

## Operational Responses for the Discouragement and Suppression of Marine Piracy

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Photo: AP/Farah Abdi Warsameh

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## **Dalhousie Marine Piracy Project**

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## EXECUTIVE SUMMARY

### Introduction

1. The overall goal of the Dalhousie Marine Piracy Project (DMPP) is set out in the capping paper to this Inter-Sectoral Working Group Draft of the operational responses module report.

### Scope

2. Under the operational responses thematic area of the DMPP, the following sub-themes have been examined

- a. The discouragement of piracy: disincentive strategies designed to discourage or frustrate piracy activities.
- b. The suppression of piracy: Operational responses, naval patrols, integrated enforcement initiatives, surveillance and intelligence.

3. This report considers operational responses employed to counter recent and current outbreaks of piracy, and draws initial deductions from that analysis. It then applies those deductions to identifying the operational response issues that need to be addressed in order to deal effectively with future piracy outbreaks. Although written as a stand-alone report, it complements, and is complemented by, reports from the other DMPP modules.

4. It is not the intention in this report:

- a. To enter into the debate about navies v coastguards.
- b. To focus solely on the “at sea” part of the piracy business model. Operational responses are equally relevant to combating the land element of that model.
- c. To address tactical issues. Instead, it focuses on the higher-level principles that will guide such actions.
- d. To discuss the suitability of current naval force structures to deal with piracy, albeit that the rise of the private security option for commercial shipping is due in part to the lack of naval



assets which can, in turn, be attributed to force structure issues and funding constraints.

### **Piracy Definition.**

5. The DMPP uses a definition of piracy that is wider than that provided by UNCLOS, but narrower than the ‘piracy and armed robbery’ definition used by the IMB. This is in order to include analysis of attacks occurring in waters under a States’ jurisdiction, attacks that may be a precursor to the development of a wider piracy problem, but to exclude robbery (armed or unarmed) from ships that are berthed alongside in a port. The latter are a routine policing issue. The resulting definition of piracy is:

The participation in, planning or support of, attempted, or actual deliberate criminal interference with the rights and freedoms of the seas, which target marine craft and persons for personal economic gain

6. The growing number of definitions of piracy suggests that the UNCLOS definition, which is now 30 years old, is inadequate for today’s circumstances. Jurisdiction over the oceans is considered differently now, and some methods of deterring piracy used previously are no longer relevant given the greater degree of sovereign oversight and the more significant prohibitions on the use of force. The fundamental need is to ensure that the definition supports the full range of measures to counter-piracy, while also contributing to an accurate representation of the nature and extent of the crime. In this respect, the differentiation between acts committed inside and beyond waters under a States’ jurisdiction needs review, as does the distinction between acts committed for personal and politically motivated financial gain.

### **Operational Responses Definition and the End State Sought.**

7. **Definition.** Piracy occurs where opportunity, motive and means, combine to the extent that the potential financial gains outweigh the risk and fear of capture, injury or death. Opportunity arises from a flawed maritime security environment, weak rule of law on land, and the availability of potential targets. Means includes the availability of the organisation, finances, materiel and personnel necessary to support the activity. The basic motive relates to root causes, and is the same as for any financially related crime – the ability to achieve material gain more easily than through lawful means, and at an acceptable degree of risk. Operational responses therefore need to reduce the opportunity and remove

the means to the extent that they no longer make piracy attractive to potential participants of any part of the business model. They are defined as:

Those actions taken to counter a potential or actual outbreak of piracy which are neither targeted at the root causes of piracy, nor address the related legal and governance issues.

8. ***End State and Termination Criteria.*** In order to be able to determine and co-ordinate appropriate counter-piracy responses and measure progress, it is also important to define the end state<sup>1</sup> and or/termination criteria to which operational responses contribute or are measured against. The end state determined for this study is below and can be applied to any circumstances. In contrast, termination criteria would be determined taking into account the particular circumstances prevailing in each counter-piracy operation:

The end state is a maritime domain in which the potential for piracy, or its actual incidence, is reduced to, and/or maintained at or below an internationally agreed level of risk to the conduct of lawful activities on the seas.

### **Assumptions**

9. It is assumed that:
- a. Piracy is one of a range of threats to both maritime security and to security on land.
  - b. Operational responses alone are unlikely to be sufficient to reduce the risk of piracy to an acceptable level because they address the symptoms and not the root causes.
  - c. In any form, piracy is a criminal activity. Other than when conducted as a low-level, opportunistic, subsistence type of activity, it is organised crime, usually perpetrated by armed, non-state actors.

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<sup>1</sup>. The term “end state” rather than “commercial continuum” is used because it reflects the fact that actions to counter piracy have to be conducted both on land and at sea, and by a wide range of authorities who should ideally be co-ordinated and work towards a common goal. In contrast, emphasis on the commercial continuum runs the risk of placing undue emphasis on the maritime aspects of a comprehensive approach to countering piracy.

- d. Although there appears to be some evidence of a developing relationship between piracy and terrorism in some regions, the two have not yet become interdependent in any of the areas being studied.
- e. Piracy will never be eradicated globally, especially in its subsistence form. Where it does occur, efforts should be made to reduce it to, and/or maintain it at or below an internationally agreed level of risk to the conduct of lawful activities on the seas.
- f. Piracy not only poses a risk to maritime commerce and seafarers, and therefore to food and energy security, but also to the economic and political stability of the countries and regions affected.

### What are the Pirates doing and Why?

10. **The Business Model.** The analysis of current piracy practices highlights the fact that piracy, in all but its most basic, subsistence form, has a business model to support its activities<sup>2</sup>. Understanding that business model is therefore vital if operational responses are to be targeted at the functions that will have most adverse impact on the pirates' ability to operate. However, the exact form of the business model depends on a variety of factors, and it will vary from region to region, and even within different parts of a country. Pirates are also adaptive, and applying pressure to the business model, or their own desire to increase their revenue, will cause the model to be adjusted. As a result, agencies and organisations involved in countering piracy must be at least as adaptive if they are to be able to react to changes in a timely manner or, ideally, to pre-empt those changes.

11. **But One Part of Maritime and Land Security.** Piracy is also only one of a range of threats to security, and the problem needs to be treated holistically, with an understanding of the impact of one criminal activity on another. As with many other forms of crime, corruption is a significant enabler to piracy. It is not only responsible for aiding and abetting the disposal of stolen goods, but also supports

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<sup>2</sup>. Notes from the DMPP Inter Sectoral Working Group. In general, business models are based upon financial incentives, and personal gain is certainly a key driver for outbreaks of piracy. However, it is also evident that motives (e.g. poverty, political grievance, etc.), structures (i.e. small and loose rather than large and rigid organisational structures), forms of support (e.g. government, community, etc.) and tactics (e.g. the use of children) present in piracy outbreaks often differ from mainstream criminality. Therefore, when considering the piracy business model, these other drivers also need to be recognized, and may lead some to prefer to develop a hybrid form of model which take these drivers into account.

the provision of information about ship movements and cargo details, and forewarns pirates about attacks on their camps and other elements of their infrastructure.

12. **Targeting and Vulnerability.** It is no surprise that the low and slow are the most vulnerable, but there are studies that suggest that older vessels are also more vulnerable, even if newer vessels are more valuable. This element of the report also identifies that the Port State Control regime and enforcing compliance with the International Ship and Port Facility Security (ISPS) Code could play a much greater role in identifying vessels that are particularly vulnerable to attack.

### **What Counter-Piracy Policies and Practices are Being Followed?**

13. **Political Will.** The key issues in countering both the sea and shore based elements of the business model are political will, and backing that will with the necessary actions. It is argued that the former without the latter results in ineffective responses such as catch-and-release.

14. **Information and Intelligence.** Given the will to act, understanding the situation in order to identify the most effective counters to piracy requires effective surveillance, and the subsequent analysis and dissemination of the information and intelligence. Information sharing is vital, and needs to be extended to all those engaged in a particular aspect. It is therefore surprising and disappointing, that Privately Contracted Armed Security Personnel (PCASP) are denied access to the MERCURY system in the Indian Ocean. This denial is in force even though the system is specifically designed to achieve a better level of information sharing between merchant and military vessels operating in the area, and that PCASP, when embarked, are an important part of the counter-piracy effort. The report stresses the importance of HUMINT to complement technologically derived information and intelligence, and PCASP are a potentially significant part of the HUMINT effort.

15. **Reporting.** One of the findings focuses on the fact that a large number of attacks are unreported. This includes attacks on fishermen, which can be a precursor to a wider outbreak of piracy in a region. Without the information concerning the full extent of piracy attacks, authorities will be unaware of both an existing problem and the potential for a larger one. The ability of the reporting system to capture incidents therefore needs to be improved, and this will require an increased willingness by mariners and the industry to make reports, as well as further developments to the reporting system itself. Statistical methods can also be used to indicate the full extent of the problem,

rather than just those attacks reported through formal channels.

16. **Operational Responses on Land.** Measures to address the root causes of piracy fall outside the responsibility of those conducting operational responses. As a result, the various activities must be co-ordinated if the overall effort is to be optimised. Operational responses on land include traditional counters to crime by law enforcement forces, but will also be assisted by other means that are perhaps less traditional in the piracy areas. Other important aspects are capacity building of the national and regional capability including, where appropriate, support to the legal system to enable prosecution of suspected pirates. Despite the attractiveness of international forces conducting operations against piracy on the land, as has been approved for forces in the European Union Naval Force (EU NAVFOR) for example, the study suggests that there are negative as well as positive aspects to such actions. It is also identified that circumstances ashore might prevent effective action being taken against the land element of the pirates' business model, in which case the only option will be to address the symptoms at sea.

17. **Maritime Policing.** Maritime policing (which includes ships, aircraft, unmanned vehicles etc) is a key aspect of countering piracy, but its effectiveness is driven to a large part by the ratio and capability of available assets to the area to be policed. Therefore, it will be more effective in the relatively restricted waters of the Malacca Straits for example, than in the vast open space of the Indian Ocean. The impact of this is the need for the shipping industry to be prepared to assume some of the responsibility for its own protection when the task is too great for maritime policing forces alone. The ISPS Code already addresses this, but the implementation of Ship Protection Measures (SPMs) recommended by Best Management Practice (BMP) Guidelines, and the embarkation by some of PCASP or Vessel Protection Detachments (VPDs), are an indication of the acceptance of the need to take practical measures. The overall effort still needs to be co-ordinated in order to reduce the options available to pirates.

18. **Coastguard Function.** Coastguards have a potentially significant part to play in counter-piracy operations, although the way in which the coastguard function is executed varies considerably from nation to nation. Whereas successful execution of the function is a significant asset in countering piracy, failure has been seen to have the opposite effect if it releases better-trained seafarers back into the piracy business. In addition, as with all capacity building, establishing a national capability must

avoid gold-plated solutions, the ideal being to balance capability with the ability of the nation concerned to maintain and operate the units effectively. Despite these challenges, the development of a coastguard function within a State's overall capability can make a significant contribution to the counter-piracy effort, even if it is limited in capability, and is therefore an ideal potential recipient of capacity building support.

19. **Regional Co-operation.** Regional co-operation is essential to countering piracy, and there is a range of examples of co-operation, including the efforts of the signatories of the Djibouti Code of Conduct. Recent work in the Indian Ocean has highlighted the need for a regional (in addition to international) co-operation plan, and such engagement brings it with the added advantage that neighbours usually understand the social structures in the country affected. These structures have significant potential to be employed in countering piracy and which participants from outside the region often struggle to understand.

20. **Catch-and-Release.** The catch-and-release policy used by a number of nations in the Indian Ocean results from a number of factors. These include: an unwillingness to assume the burden associated with prosecuting pirates; the potential for captives to claim asylum in the holding country; and, concerns about the ability to prove the piracy charge because of the difficulties involved in gathering evidence that will stand up in court. In a country with a shortage of pirate volunteers, limited access to weapons and other supplies, and poor shore support, catch-and-release could conceivably work. In Somalia's case, for example, none of those conditions apply. Catch-and-release in this scenario is therefore a flawed policy that is no more than very short-term threat reduction and needs to be replaced with the apprehension and trial of the suspects.

21. **Youth Involvement in Piracy.** The fact that the UN endorsed classification of a child as anyone under the age of 18, poses a legal problem for those who capture young pirates, whether at sea or on land, particularly if a catch-and-release policy is being followed. Returning "children" to a boat with other pirates is in contravention of the responsibility to protect them from economic and social exploitation. It also returns them to a criminal activity, which is one of the activities defined as a worst form of child labour. From an operational response perspective, there is therefore a need to detain the children in conditions that ensure compliance with the UN Convention on the Rights of the Child.

22. **ISPS Code.** The International Ship and Port Facility Security (ISPS) Code (IMO, 2002)

addresses many of the security issues faced in a piracy HRA. Nevertheless, because of varying interpretations of the Code, it is not always used effectively to ensure that ships' vulnerabilities are mitigated by onboard procedures and SPMs. This is an area that the IMO needs to resolve by reinforcing existing requirements (rather than creating new ones), and by encouraging States to address the issue more thoroughly.

23. **Ship Protection Measures.** Enhanced SPMs has been the subject of considerable comment and analysis, particularly with respect to the employment of PCASP. The key issues arising from the analysis of the latter are the recognised need to establish an endorsed system of training standards, and an agreed system for accreditation, regulation and audit of armed guards, potentially including military personnel in Vessel Protection Detachments (VPDs). However, the personnel demands associated with VPDs, and other pressures on armed forces, suggests that they will remain an option that only achieves limited use. The need for regulation extends beyond the actual employment of PCASP to areas such as their ability to embark and disembark with weapons in Port and Coastal States, and the recent introduction of floating armouries to hold weapons outside territorial waters in order to overcome those constraints. The question of defensive v offensive actions by PCASP is not an issue for teams embarked in ships who are a defence against attack on that particular vessel. In contrast, the growing availability of convoy escort protection craft introduces considerations about the threshold at which their actions change from offensive to defensive, the implications of crossing this threshold, and any additional regulation necessary to cover this development.

## Stakeholders

24. From the analysis, it is possible to identify the top-level stakeholders in the fight against piracy, and to group the issues arising from the analysis by lead stakeholder. The stakeholders are:

- a. National and regional governments (excluding maritime policing authorities) in the areas in which pirates operate, and governments of other States affected by the piracy.
- b. Populations in the countries from which pirates operate, and from which seafarers are drawn. This includes religious leaders, for example, as well as political rulers.
- c. Government forces responsible for maintaining the rule of law, including maritime



policing authorities, nationally, regionally and internationally.

- d. Regional and international organisations.
- e. Commercial<sup>3</sup> and non-governmental organisations.
- f. Seafarers and their families.

25. Many of the issues identified in the study are already recognised, but are not generally brought together in this way. They are not presented in a priority order, and are generally only listed under the lead stakeholder. The headline issues are listed below under conclusions.

### Areas For Further Research

26. The analysis also identified the following areas requiring further study.

SUBJECT	PARAGRAPH
Investigate the ongoing relevance of the distinction between piracy conducted for personal economic gain, and the same act conducted for political economic gain eg, terrorism.	9
Determine how an internationally agreed level of risk of piracy is defined.	12
To investigate the implications for operational responses of the merging of piracy and terrorism in an area.	15
Develop a predictive model, or at least a clearer understanding of piracy Indicators and Warnings, in order to support the identification of areas at potential risk from piracy.	23
Investigate the impact of conducting operational responses on land and at sea, but without dealing with the root causes.	35
To investigate whether statistical methods are able to provide a reliable figure of the total number of piracy attacks each year, rather than just those that are reported through formal channels.	69
In order to assess the degree of implementation of the ISPS Code, to examine the Flags that pirated vessels were flying when taken off the coast of Somalia, and further examine the respective national maritime security regimes based on the ISPS Code.	119
To identify the relationship between the insurance industry's position and operational responses.	127

<sup>3</sup>. Commercial refers to all organisations whose aim is to generate profit through provision of a service, including PMSCs. In the case of the shipping industry, this includes ship owners, ship managers and charterers, the Flag States and the marine insurance industry.

Study the negotiation process, including the role of the insurance industry, in order to understand its relationship with operational responses better.	138
To determine measures of effectiveness for counter-piracy initiatives	142

## Conclusions

27. The headline observations from this analysis of operational responses to discourage and suppress piracy are that:

- a. Political will is necessary if an acceptable level of risk of piracy is to be determined, and the problem is to be addressed effectively. It must be supported by a defined end state, and by termination criteria against which progress in the various lines of operation can be assessed. It must also be matched by the application of practical measures and, where necessary, should be bolstered by high-level support from organisations such as the UN.
- b. It is essential to act early, before the problem escalates. However, if the involvement of international security forces is necessary to solve the problem, a clear set of termination criteria should be determined, based on the point at which responsibility can be returned to local authorities or to the commercial sector for example.
- c. Measures to combat piracy are only one strand of maintaining national and regional security, whether on land or at sea.
- d. Piracy is a form of organised crime. As with any form of organised crime, inter-agency co-operation is essential to discouraging or suppressing it.
- e. Understanding the cultural context and its impact on the business model used by pirates in a particular region is key to developing effective operational and other responses.
- f. There will be circumstances when the shipping industry has to assume some of the responsibility for the security of its people and assets, but the way in which that responsibility is exercised needs regulation.
- g. Pirates are adept at evolving their methods – those involved in countering the problem must be equally adept.

- h. Too many attacks are unreported or misreported. Because of under and misreporting, the full extent of the problem is unknown, and this impacts on the ability to address the problem and to provide support to its victims. A reporting system needs to be developed that meets the needs of all the full range of maritime interests.
- i. Information and intelligence are at the core of efforts to counter piracy. This concerns not only information about shipping movements, pirate locations, incidents, and post attack reports etc, but also lessons learned from attacks so that updated guidance such as BMP can be provided to shippers as pirates change their methods of operation. An effective information and intelligence capability requires provision for information collection (including surveillance), analysis and dissemination, some of which is conducted regionally/nationally, and some of which can occur elsewhere.
- j. The UNCLOS definition of piracy should be reviewed in order to include attacks against vessels both inside and outside waters under a State's jurisdiction.
- k. Regional co-operation makes a significant contribution to discouraging and suppressing piracy. If necessary, it should be encouraged from the highest level (the UN).
- l. Existing frameworks such as the ISPS Code and the Port State Security Regime need to be used more effectively in order to identify, and enforce, the mitigation of security vulnerabilities in ships at sea, thereby reducing the risk of a pirate attack being successful.
- m. The regulation of Private Maritime Security Companies (PMSC) and Privately Contracted Armed Security Personnel is essential to the provision of personnel trained and experienced to a minimum acceptable level. Without regulation, certification, accreditation and the ensuing checks and controls from a common international body such as the IMO, the opportunity for rogue PMSCs to provide a sub-standard service will continue, and with it the likelihood of the inappropriate use of force up to lethal force.
- n. A predictive model for piracy is essential if areas at potential risk from the crime are to be identified early. Without this early identification, it will not be possible to take pre-emptive measures to reduce the motive, means and opportunity. An associated development would be the introduction of an early warning system linked to the predictive model. If development of a

meaningful predictive model proves impossible, a formally researched set of indicators and warnings would be an alternative.

o. The effect of piracy on fishing communities is a chronic local challenge that rarely registers with the international marine transport industry or peace and security community. Nevertheless, it constitutes an ongoing threat to stability, and a breeding ground for piracy, which often lies close to important shipping lanes and therefore has potential to escalate.

p. If those enforcing the rule of law are able to enlist the support of the communities affected by piracy, and adapt lessons learned in combating other forms of organised crime, this will, in certain circumstances, add significantly to the ability to both discourage and suppress the problem. It is also more likely to result in a sustainable solution

## Part I - Introduction

### Aim and Objectives

1. The overall goal of the Dalhousie Marine Piracy Project (DMPP) is set out in the capping paper to this draft for the Inter-Sectoral Working Group.

### Scope

2. Under the operational responses thematic area of the DMPP, the following sub-themes have been examined:

- a. The discouragement of piracy: disincentive strategies designed to discourage or frustrate piracy activities.
- b. The suppression of piracy: Issues such as, naval patrols, integrated enforcement initiatives, surveillance and intelligence.

3. This report considers operational responses employed to counter recent and current outbreaks of piracy, and draws initial deductions from that analysis. It then applies those deductions to identifying the operational response issues that need to be addressed in order to deal effectively with future piracy outbreaks. Although written as a stand-alone report, it complements, and is complemented by, reports from the other DMPP modules. It therefore represents but one input to the project's analysis of the components necessary to achieve an effective, comprehensive approach to countering piracy<sup>4</sup>.

4. It is not the intention in this report:

- a. To enter into the debate about navies v coastguards. Instead, the term “maritime policing authorities” should be read as including all the agencies and units (ships, aircraft etc) with responsibility for maritime security in the waters over which a nation has jurisdiction, and

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<sup>4</sup>. Countering piracy and counter-piracy are used throughout the paper, rather than terms such as anti-piracy which tend to have a more tactical connotation.

beyond. Reference is generally made to the coastguard function, rather than to coastguards, in order to reflect the different structures that exist for exercising that role. Where navies or coastguards are given specific consideration, this is made clear in the text.

- b. To focus solely on the sea part of the piracy business model. Operational responses are equally relevant to combating the land element of that model, notably within the central hubs of each piracy hot spot.
- c. To address tactical issues, that is those issues concerning the detailed execution of the actions necessary to discourage or suppress piracy. Instead, it focuses on the higher-level principles that will guide such actions.
- d. To discuss the suitability of current naval force structures to deal with piracy. Nevertheless, it is acknowledged that the rise of the private security option for commercial shipping is due in part to the lack of naval assets, which can, in turn, be attributed to funding constraints and force structure issues.

## Piracy Definitions

5. A number of definitions of piracy are in use, most notably that from the second United Nations Convention on the Law of The Sea (UNCLOS)(United Nations, 1982, article 101). Under that definition, 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<sup>5</sup>, 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

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<sup>5</sup>. UNCLOS and customary international law recognise the Exclusive Economic Zone only for purposes of resource management, but do not extend sovereignty, and specifically preserve the freedoms of the seas, including navigation and overflight.

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

6. This definition means that acts committed within waters under the jurisdiction of a State are not counted as piracy. However, for this project to meet its aims, it is necessary to consider attacks on vessels in these waters for three reasons. First, to allow the identification of potential precursors to larger outbreaks of piracy. These are equally threatening to commercial shipping, fishing vessels and private marine craft, even though they occur in waters that are under a State's jurisdiction. Second, to capture the full extent of attacks on vessels in order to be able to make appropriate recommendations for operational responses. And, third, to enable a holistic maritime security strategy to be developed, whether nationally, regionally or internationally.

7. The International Maritime Bureau (IMB) already uses a wider definition, which combines the UNCLOS definition with that for armed robbery<sup>6</sup>. Armed robbery against ships is defined by the a (IMB, 2011), as any of the following acts:

- a. any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property onboard such a ship, within a State's internal waters, archipelagic waters and territorial sea;
- b. any act of inciting or of intentionally facilitating an act described above.

8. This wider definition also includes armed robbery from ships berthed alongside in port, but this form of criminality is deliberately not part of this project, the aim of which is to focus on acts

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<sup>6</sup> IMO resolution A. 922 (22) aimed to complete the UNCLOS definition by considering/adding "armed robbery against ships" besides/to "piracy". "Armed robbery against ships" is defined in the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (resolution A.922 (22), Annex, paragraph 2.2).



committed against vessels at sea. The DMPP's definition of piracy therefore falls between the UNCLOS definition, and that of 'piracy and armed robbery' used by the IMB, and specifically includes those in supporting roles. It is:

The participation in, planning or support of, attempted, or actual deliberate criminal interference with the rights and freedoms of the seas, which target marine craft and persons for personal economic gain.

**Deduction:** The growing number of definitions of piracy suggests that the UNCLOS definition, which is based largely on 19<sup>th</sup> century treaties, may be inadequate for today's circumstances. Jurisdiction over the oceans is considered differently today, and some methods of deterring piracy used previously are no longer relevant given the greater degree of sovereign oversight and the more significant prohibitions on the use of force. The fundamental need is to ensure that the definition supports the full range of measures to counter-piracy, while also contributing to an accurate representation of the nature and extent of the crime. In this respect, the differentiation between acts committed inside and beyond waters under a States' jurisdiction needs review – it is not recognised by the pirates, and its strict application by forces countering piracy has potential to impede their efforts. This re-examination will not be a simple task, and has potentially significant implications.

9. It is of note that limiting the definition to "personal economic gain" excludes attacks on ships for economic gain by terrorist or insurgent groups, whether or not the economic and psychological impact of such attacks are the same for the victim crews, vessels' owners, charterers and operators, the insurers and the Flag State. This raises a question about the relevance of this distinction, where personal economic gain, rather than politically motivated economic gain, is the objective.

**Further Work:** The relevance of the distinction in international law between attacks for personal economic and politically motivated economic gain merits re-examination.

### Operational Response Definition, and End State Sought

10. **Definition.** Piracy occurs where opportunity, motive and means, combine to the extent that the potential financial gains outweigh the risk and fear of capture, injury or death. Opportunity arises from a flawed maritime security environment, weak rule of law on land, and the availability of potential targets. Means includes the availability of the organisation, finances, materiel and personnel necessary to support the activity. The basic motive relates to root causes, and is the same as for any financially related crime – the ability to achieve material gain more easily than through lawful means, and at an acceptable degree of risk. Nevertheless, other factors may also drive motive, including gang or tribal

loyalties, revenge and social retribution. Operational responses therefore need to reduce the opportunity and remove the means to the extent that they no longer make piracy attractive to potential participants of any part of the business model.

**Deduction:** When the potential gains make the risk of death acceptable to a pirate, as is often the position stated by Somali pirates for example, some of the operational responses required will be different to those that will be effective when pirates have a lower risk tolerance.

11. Operational responses are therefore defined as:

Those actions taken to counter a potential or actual outbreak of piracy which are neither targeted at the root causes of piracy, nor address the related legal and governance issues.

12. ***End State and Termination Criteria.*** In order to be able to determine and co-ordinate appropriate counter-piracy responses, and measure progress, it is also important to define the end state<sup>7</sup> to which operational responses contribute. The end-state as defined for this analysis, reflects the research team's opinion that piracy will never be eradicated completely, although it may cease to be a meaningful risk in a particular region:

The end state sought by the application of operational responses to piracy is a maritime domain in which the potential for piracy, or its actual incidence, is reduced to, and/or maintained at or below an internationally agreed level of risk to the conduct of lawful activities on the seas.

It also recognised that many law enforcement operations do not have an end state, and that it is necessary in that case to think in terms of termination criteria which mark the point of transfer of responsibility away from international marine policing forces to local authorities, for example. While the end-state may be applicable globally, the termination criteria would be determined taking into account the particular circumstances prevailing in each counter-piracy operation

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<sup>7</sup>. The term "end state" rather than "commercial continuum" is used because it reflects the fact that actions to counter piracy have to be conducted both on land and at sea, and by a wide range of authorities who should ideally be co-ordinated and work towards a common goal. In contrast, emphasis on the commercial continuum runs the risk of placing undue emphasis on the maritime aspects of a comprehensive approach to countering piracy. In this respect, the commercial continuum could be deemed to be implied within the end state as defined.

**Further Work:** To determine how an internationally agreed level of risk will be defined.

### Action and Effect

13. In acting to discourage or suppress piracy, operational responses (actions) seek to realise a range of inter-related effects. The emphasis on each of the effects will vary as any particular counter-piracy campaign progresses, and they will be realised simultaneously rather than consecutively in different parts of the risk area. These effects can be defined as:

- a. **Discouragement.** Providing alternative means of income generation in order to discourage those actually or potentially engaged in piracy or its support from conducting piratical acts. Whatever an individual's role in the business model, discouragement therefore seeks to divert their efforts to other, legal activities. Discouragement can be pre-emptive, that is before piracy becomes a systemic problem in an area or, reactive, after it has become established. Measures to discourage involvement in piracy should include positive incentives, as well as the de-legitimisation of piracy, and demobilising pirates who have given up the lifestyle. Such measures fall largely within the socio-economic sphere rather than being operational responses.
- b. **Disruption:** To disrupt any or all aspects of the piracy business model. For example, through 'policing', whether ashore or at sea, from reinforcing social structures and beliefs that do not support piracy as an activity, through denial of access to funding, or by denial of intelligence/domain awareness.
- c. **Deterrence:** To deter pirates and their business associates from supporting or conducting acts of piracy. For example, through Ship Protection Measures (SPM) such as Best Management Practice (BMP) postures adopted by merchant ships, by employing Privately Contracted Armed Security Personnel (PCASP), through a maritime or land based policing presence, or by effective prosecution of alleged pirates. This is distinct from discouragement, which focuses on providing legitimate alternatives to piracy.
- d. **Defeat:** To defeat an act of piracy, for example, by disabling or destroying the boats necessary to conduct the act, or by securing the release of captured vessels and personnel without the payment of a ransom. Also, to defeat a wider piracy challenge by either eradicating

the problem, or by reducing the incidence of piracy in an area to an acceptable level.

14. The actions necessary to realise these effects will be complex and varied. All will be underpinned by information and intelligence, and by the resulting shared situational awareness and understanding<sup>8</sup> necessary to respond to incidents and to allocate counter-piracy effort most effectively.

**Deduction:** Because information and intelligence underpin all counter-piracy initiatives, effective information and intelligence sharing mechanisms are essential to the achievement of a co-ordinated effort. These mechanisms will need to exist between government organisations and agencies, as well as with others such as private intelligence providers and private maritime security companies (PMSCs) that operate outside government departments or agencies. Such mechanisms contribute to Maritime Domain Awareness (MDA) and maritime security generally, not just to countering piracy.

### Assumptions

15. It is assumed that:

- a. Piracy is one of a range of threats both to maritime security and to security on land. Its impacts are political, social and economic, and are felt locally, nationally, regionally and internationally. It therefore poses a security challenge to be addressed by a range of authorities concerned with upholding the rule of law, rather than just by armed forces, and should be treated in conjunction with other threats such as arms smuggling and illegal fishing.
- b. Operational responses alone are unlikely to be sufficient to reduce the risk of piracy to an acceptable level because they address the symptoms and not the root causes. They must therefore be considered as but one part of a comprehensive approach. However, if it is not possible to implement measures on land that “discourage” by addressing the root causes of piracy, the necessary actions will support the “disrupt”, “deter” and “defeat” effects.
- c. In any form, piracy is a criminal activity. Other than when conducted as a low-level, opportunistic, subsistence type of activity, it is organised crime employing a business model, and is usually perpetrated by armed, non-state actors.

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<sup>8</sup>. Situational Awareness and Understanding are concerned with perception and understanding of the environment critical to decision-makers in complex, dynamic areas.

d. Piracy and terrorism have not yet become interdependent in any of the areas currently experiencing the former. Although there is evidence of a developing relationship between the two in countries such as Nigeria and Somalia, there is currently insufficient to support the deduction that the two have become any more closely related. Any such interdependence will likely be subject to strong local influences. Because the ideologies driving the two forms of criminality differ, if one merges, or even becomes closely aligned with the other, it is likely to have implications for the operational responses required. This aspect requires further study

**Further work: To investigate the implications for operational responses of the merging of piracy and terrorism in an area.**

e. Piracy will never be eradicated globally, especially in its subsistence form. Where it does occur, efforts should be made to reduce it to, and/or maintain it at or below an internationally agreed level of risk to the conduct of lawful activities on the seas. This equates to the approach taken to crime on land, where it is recognised that there are insufficient resources to eradicate crime completely, but sufficient resources are generally applied to reduce the risk to an acceptable level.

f. Piracy not only poses a risk to maritime commerce and seafarers, and therefore to food and energy security, but also to the economic and political stability of the countries and regions affected. The risks from piracy run through the global supply chain, the just-in-time nature of which can only absorb very limited disruption, and extends into other sectors such as insurance. The problem therefore has to be addressed rather than ignored.

## Constraints

16. Two key constraints have imposed on this work:

a. Time. The timescale available for the review of piracy and operational responses worldwide has been limited, particularly in relation to the ability to assimilate the wealth of information that is available, and to keep pace with new analysis as it is published.

b. Completeness, Continuity and Comparability of Incident Recording. The International Maritime Organization (IMO) and International Maritime Bureau (IMB) both publish details of

reported attacks on merchant vessels, but the data sets do not match. Although coordination has improved since Bruyneel (2003) explored reasons for the discrepancies, they still occur. In addition, many incidents of piracy are not reported for reasons such as the fact that shipping operators or companies risk losing significant amounts of money through increased insurance premiums or declarations of waters as higher risk areas. Furthermore, the IMB's headline figures make no distinction between piracy and armed robbery, albeit that the detailed breakdown provided in the reports does distinguish between them. Analysis of trends is further complicated by the fact that the areas reported change, especially from the early years to later years. In the IMB reports for example, the Red Sea/Gulf of Aden figures were combined in the early years, but are now treated separately.

**Deduction:** If formal reporting mechanisms are not capturing all piracy incidents in a region, measures should be implemented that will improve the ease of access to a reporting hub for those making the report, encourage incidents to be reported (change of culture), and establish national and/or regional reporting systems that combine in a seamless manner. Only then will counter piracy activities be targeted to best effect, and a more complete record of piracy activity identifying the true extent of the problem be established. The need for such a layered reporting system is given further emphasis by the sometimes very limited nature of communications available to vulnerable vessels such as small fishing boats.

## Part II – Methodology

### Overview

17. The operational responses module adopted a comparative case study approach to its research, focusing on areas that have been affected by piracy in the recent past, as well as those that are still affected. These areas include: South East Asia, the Gulf of Guinea, the Gulf of Aden, Latin America and the Caribbean. Such an approach allowed the determination of specific and common issues affecting operational responses to piracy

18. The research was divided into two phases. The first phase consisted of a comprehensive literature review, and the production of case studies for South East Asia, Latin America and the Caribbean, the Gulf of Guinea, and the Indian Ocean and Gulf of Aden. Each regional study examined what the pirates are doing, and why, and what counter piracy practices are being followed. Based on the regional reports, the research team was able to identify dominant trends and issues regarding both piratical activity and operational responses. The second phase of the research brought the regional trends and issues together in order to make appropriate deductions.

19. Some corroboration of the findings was possible through informal discussions with a range of specialists in the subject, and through attendance at the “Human Face of Maritime Piracy: Consequences and Policy Options” conference in Karachi, Pakistan in February 2012. This conference provided an opportunity to hold discussions with ships’ Masters, owners and government officials. It had originally been planned to achieve additional corroboration through a number of interviews, but the introduction of a Sectoral Working Group phase to the process, meant that this was achieved more easily, and comprehensively, by specialists’ contributions during that phase.

### Research Questions

20. Seven research questions were identified, the first two of which provide a baseline understanding of the causes of piracy, of the methods used by pirates and the reasons for those methods, and of the operational responses employed to counter the pirates. The research questions are:

- a. What are the pirates doing and why?



- b. What counter-piracy policies and practices are being followed?
- c. What are the roles of the private/commercial sector in countering piracy, and how do these correlate with the medium and long-term governmental aims and responsibilities on a national, regional and international scale?
- d. What do national governments and societies need to do to prevent or counter piracy effectively?
- e. What resources and capabilities do government and non-governmental/commercial organisations involved in anti-piracy measures need to accomplish their aims?
- f. How can the practical approaches to countering piracy be implemented to best effect, and are they agile enough to cope with a rapidly evolving situation?
- g. In the event that an act of piracy has been conducted, what measures/actions/capabilities are required to bring the situation to a successful conclusion?

## DEDUCTIONS FROM RECENT OR ONGOING PIRACY OUTBREAKS

### Part III – Background

#### Areas Studied

21. In the past 30 years, there have been at least six distinct outbreaks of “piracy”, all of which have occurred in areas historically associated with the activity even before these more recent manifestations of the problem. These have been sufficiently different in geography, motivation and execution to preclude a uniform solution.

<b>Location</b>	Caribbean Basin	Gulf of Thailand	Straits of Malacca	West African coast	South China Seas	East Africa/ Red Sea
<b>Time</b>	1980s – ongoing	1970s - 1980s	1980s – ongoing	1990s – ongoing	1990s - ongoing	2000 - ongoing

22. For this module of the project, these areas have been grouped into four regions: West Africa; the Indian Ocean, the Gulf of Aden and Southern Red Sea (Somalia); Latin America and the Caribbean (LAC); and, South East Asia (the ocean area extending from the Bay of Bengal (Bangladesh eastward), the Malacca Strait and Singapore Strait, the South China Sea as far north as China’s southern island of Hainan, and the Sulu and Celebes Seas to the west). Maps of these regions showing the associated shipping routes are at Appendix A.

#### National and Regional Variations

23. Although there are commonalities, physical, political, social and economic conditions vary significantly between and, importantly, within the regions that have experienced piracy. Globally, these variations highlight the fact that the problem is not limited to weak, failed and failing states such as Somalia, albeit that the definitions of such states and the continuum from “failed” to “stable” are the subject of ongoing debate. For example, although Indonesia and Malaysia have their own challenges, the Failed States Index (Foreign Policy, 2011) indicates that they enjoy a much greater level of stability than Somalia and a number of the West African states that are suffering from piracy. Even so, they are still home to pirates, reminding us that even stable states may be unable (or unwilling) to enforce the rule of law. Narrowing the view to a national one, even though Puntland in Somalia is the source of

most of the acts of piracy, neighbouring Somaliland has been successful in all but eradicating the crime and is assessed as being relatively stable.

**Deduction:** An effective predictive model developed to support the identification of areas at potential risk of supporting piracy will need to take account of many factors, including the fact that social systems are not, by nature, predictable. Despite the risk of false positives being generated by such a model, it has potential to allow operational and other responses to be initiated early in order to prevent the problem evolving. Ownership of the model should rest with a high-level organisation such as the United Nations Office on Drugs and Crime. If development of such a model is not possible, a clear understanding of the Indicators and Warnings associated with piracy outbreaks will also support early action to prevent the problem escalating.

**Further Work:** Develop a predictive model to support the identification of areas at potential risk from piracy or, if that is not possible, identify the relevant Indicators and Warnings, noting where these are context specific.

### Socio-Economic Factors

24. Nevertheless, it is clear that the current headline piracy outbreaks in Somalia and West Africa are in regions with severe social, political and economic challenges. The countries involved are therefore often those that are less able to invest the resources necessary to counter piracy effectively, or do not have the ability to develop the appropriate capabilities<sup>9</sup> without external support. In some, there is also a lack of will to tackle the problem.

**Deduction:** Individual nations, or regions, may not have the political will or resources to prevent piracy. Other governments, non-governmental and commercial organisations, should therefore be prepared to support co-ordinated and persistent (rather than periodic) capacity building in order to develop a sustainable national and/or regional capability (for example, the EU Capacity Building Project). This is in addition to any commercial investment that might be employed nationally to develop a capability. In certain cases, centralised co-ordination of capacity building may be required if simply satisfying the self-interests of the supplier/customer, or infringing upon national sovereignty are to be avoided. This also applies when a company is hired by an external State to develop capacity.

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<sup>9</sup>. Throughout this paper, the terms capability or capabilities refer to all aspects of the ability to counter piracy, and not just the possession of the associated equipment. These therefore include: training; equipment; personnel; infrastructure; doctrine; organization; information; and logistics.

## Regional Complexity

25. A further factor complicating the ability to achieve a regionally co-ordinated response to piracy is the number of states involved. The situation in East Africa, where relatively few states border a significant length of coastline, is less complicated than West Africa for example, where many states border a relatively short length of coastline.

**Deduction:** Where a number of countries in a region have an actual or potential piracy problem, and lie along a relatively short length of coastline, pirates are able to exploit discontinuities in security arrangements, and in legal and governance issues, by moving from the waters of one State to those of another. This emphasises the need for regional co-operation and co-ordination on an interagency/authority basis if acts of piracy and cross-border transits by pirates are either to be reduced to an acceptable level of risk, or eradicated.

## Piracy in Context

26. Reference has already been made to the lack of distinction between piracy and armed robbery in the headline figures often quoted. The table below breaks down the IMB's global piracy and armed robbery figures for 2011 (IMB, 2012a) and the first half of 2012 (IMB, 2012b), but in doing so does not seek to minimise the very real impact on the victims of actual and attempted attacks, nor the economic and social implications. It simply puts the headline figure of reported attacks in context, incomplete as that figure is known to be (percentages are of the headline figure):

2011 Headline Figure of Attacks 439 (100%)					
Successful <sup>10</sup> Attacks			Attempted Attacks		
221 (50.3% of headline)			218 (49.7% of headline)		
Boarded		Hijacked	Fired Upon	Attempted Boarding	
176 (40.1%)		45 (10.2%)	113 (25.8%)	105 (23.9%)	
Berthed	Anchored	Steaming	Berthed	Anchored	Steaming
5 (1.1%)	120 (27.3%)	96 (21.9%)	2 (0.5%)	12 (2.7%)	204 (46.5%)
2012 Figures to End Of Quarter 2 as a Percentage of the Headline Total of 177 Successful and Attempted					
7 (3.9)	60 (33.8)	33 (18.6)	1 (0.5)	11 (6.2)	65 (36.7)

**Deduction:** In 2011, as many attacks failed as were successful, and significant growth in the

<sup>10</sup>. IMB reports refer to these as "Actual" Attacks.

employment of PCASP for Indian Ocean transits occurred only in the second half of 2011. Assuming that there is no radical change in the pirates' methods of operation or reduction in maritime policing, implementation of BMP or employment of PCASP, the 2012 figures are expected to show a growing percentage of failed attacks conducted by Somalis against ships that are steaming. Figures for Quarter 2 of 2012 show this trend already (IMB, 2012b), with 55 (79%) of the 69 recorded attacks by Somalis against ships steaming failing, compared with 65% in the whole of 2011. The fact that a higher percentage of attacks globally have succeeded so far in 2012 reflects the success of attacks in South East Asia and off West Africa.

**Deduction:** Over 50% of the attacks that were successful worldwide in 2011 occurred when vessels were at anchor or berthed, and therefore generally inside territorial waters, unable to deploy PCASP and unable to manoeuvre, thus favouring the pirates. (Only one of these attacks involved Somali pirates). Although ship protection measures can be employed in territorial waters, a significant part of the responsibility for preventing these attacks must lie with the Port or Coastal State in whose waters the vessels are located.

Conversely, and unsurprisingly, of the attacks that are attempted but fail, a very low percentage (2.7%) of the headline figure are at anchor. The majority are against ships that are steaming, and that are therefore able to manoeuvre, employ ship protection measures and, when outside territorial waters deploy PCASP, thereby highlighting the value of these measures.

## Part IV - Analysis - What Are The Pirates Doing, And Why?

27. In order to provide a baseline from which to consider operational responses to piracy in the future, it is necessary to develop an overview both of the causes of piracy in each region studied, and of the pirates' mode of operation. Each of the regions will be addressed, but only to the extent necessary to allow deductions to be drawn. This section is not intended to be an in depth review of piracy methods or causes - that is available in the References.

### Somalia

28. **Origins.** The exact date at which the surge in Somali piracy activity started is academic in the context of this study. The key issue is that it is widely agreed that the failure of governance in Somalia resulted in a failure to maintain both land and maritime security. This opened the way for the exploitation of Somali waters by foreign fishermen and by those conducting illegal dumping at sea, although some believe that the latter had the agreement of the local clan leaders.

29. **Result.** The result is widely documented. The problem started with what were claimed to be defensive attacks on foreign fishing boats, apparently illegally exploiting Somali marine resources in Somali claimed territorial waters (the Somali-claimed 200 nautical mile (nm) territorial limit is significantly in excess of the 12nm limitation imposed by UNCLOS, and was used as justification for some of the resource exploitation). Attacks then extended outwards to become the offensive piracy that is now prevalent throughout the region. Simplistically, as described by a variety of commentators, "Somali fishermen and others, with ready access to small arms and portable rockets due to the civil war, and with weak rule of law on land which allowed them to establish the land-based elements of their business model, took to the insecure seas to make a living attacking foreign fishing and cargo ships off their coast". Although there is evidence to support the claim that initial attacks were defensive, Somalis have always attacked vessels other than just those engaged in fishing, thus indicating that, even at an early stage in its development, piracy was being conducted for profit (Hansen, 2009). This highlights the fact that motivation may be grievance rather than greed led (Berdal and Malone, 2000), even if only initially.

**Deduction:** Piracy cannot thrive if the maintenance of law and order on land is effective enough to

prevent development of the land-based elements of the pirates' business model. The foremost requirement in preventing piracy is therefore to act on land to discourage piracy as a way of life, and to deny pirates the support (the means) necessary to sustain the land element of their business model. Nevertheless, the Somali example makes it clear that the initial incentive to become a pirate can be due in part to an actual or perceived external threat to a nation's marine resources, whether on a local, national or regional scale, albeit that the underlying motive remains one of self interest. This also points to the importance of the citizens believing that they have the respect of, and are able to participate in, the national and international community.

**Deduction:** If a state fails to the extent that it is unable to maintain security in its territorial and adjacent waters, the responsibility for maintaining such security either needs to be assumed by an international body, such as the United Nations, or by a regional partner(s). Such arrangements could include consideration of a form of marine "protectorate". Other custodians may also be identified, but these are more likely to be "sub-contracted" by the authority assuming overall responsibility. In this context, although piracy does not fit the "Responsibility to Protect" criteria, the general principles of providing support to a nation's citizens when the nation itself is unable to do may have relevance. Where appropriate, the associated functions should also include regulation, for example the issue and control of fishing and other licenses for natural resource exploitation, whether in territorial waters or in the exclusive economic zone. There is a variety of models for actually executing that responsibility, including employing commercial companies to conduct enforcement patrols and issue licences for example.

30. **Characteristics.** The current identifying features of Somali piracy are:

- a. The hijacking of vessels to use as motherships, in order to support the pirates for longer periods and over greater distances/at greater speed. The use of motherships carries added advantages: improved sea keeping so that there are fewer weather constraints, albeit that attacks skiffs will continue to be so constrained; improved logistics support for the pirate attack groups; and, the presence of the hostage crew to act as a deterrent to maritime policing forces which might otherwise attempt to recapture the vessel. The ease with which merchant vessels as opposed to dhows can be identified is leading to an increased use of the latter, even though features such as operating range are reduced.
- b. The ready availability and use of weapons, and growing use of violence (Hurlburt, 2012), including the alleged murder of hostages in August 2012 in order to "encourage" the payment of ransom.



- c. The use of youth in pirate gangs, and the ready availability of young volunteers.
- d. Hijacking vessels in order to ransom the crews and vessel rather than just the vessel or cargo.

31. **Ransom.** Of these features, the issue that sets the Somali business model apart is the practice of demanding a ransom for the crew and vessel. Although this model does occur elsewhere, it is much less usual, and such incidents are outnumbered by piracy for theft of material possessions, money, cargo or the vessel itself. A number of analysts have drawn the conclusion that this is only possible in the Somali case because of the poor governance along much of Somalia's coast. This in turn provides many options for safe havens in which to hold the captured vessels until they are released. It has also been suggested that this permissive environment exists because much of Somalia lies between a state of total anarchy and one of full and effective governance<sup>11</sup> - there is sufficient stability to allow piracy and all of its supporting mechanisms to thrive, but not enough stability to provide a level of security that would prevent it. That is, that a State has the infrastructure necessary to support the survival of a community but not to the extent that it is able to enforce international recognized laws. Percy and Shortland's analysis (2011, p.13) supports this by suggesting that piracy benefits from sufficient stability to allow pirates to do business, "that pirates need an infrastructure and stable business environment: hostages need to be fed, to be provided with a certain level of care, and be under the pirates' control so that they can be ransomed". In most cases, this is achieved by keeping captives onboard their hijacked vessels, but this could change (and already has on occasion) if pirate bases and anchorages come under increased pressure from security forces. In sum, the same authors state (p.5) that Somalia "represents the perfect collision of means (extensive small arms), motive (poverty) and opportunity (lack of governmental authority and proximity to shipping) for effective pirate operations".

32. **Infrastructure Implications.** Taking a different perspective, it also seems reasonable to propose that the conditions within Somalia actually force the business model to be one of holding crews for ransom instead of stealing and reselling or ransoming the cargoes, even though the latter could be of greater value. That is, that the lack of infrastructure for the transport and resale of stolen

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<sup>11</sup>. Although it can easily be argued that all States lie somewhere along this continuum.



cargoes imposes a constraint as well as providing suitable conditions for the current piracy business model to thrive.

**Deduction:** The business model adopted by pirates will be determined by the circumstances under which they operate, and will therefore vary from area to area and from group-to-group such as clan-to-clan. Identifying the factors that determine the pirates' mode of operation is not only important to the development of the most appropriate operational responses, but also to determining how their business model might evolve when put under pressure.

**Deduction:** Without an understanding of the pirates' business model and of their methods of operation at sea, responses are unlikely to be targeted at the elements of that model where they will have most impact. Multi-agency/organisation co-operation is required in order to develop this level of understanding, and a community-based approach to the sharing and analysis of information will need to be adopted. This community needs to be based upon those with credible and reliable knowledge, not simply participation in certain named communities.

33. **Societal Factors.** In the context of whether piracy can exist within a society, taking Puntland as an example, analysis suggests that there is sufficient stability to support the activity. This is in contrast to most of the southern region of Somalia (south of Gulmudug), which is currently significantly more unstable and with too many competing interests (Middleton, cited in Bahadur, 2011a, p.39). As a further contrast, in Somaliland there is little or no piracy because the Province is too stable to support this type of organised crime, and acted early to suppress it. In February 2012, the Somaliland government further strengthened this position by passing new anti-piracy legislation. This includes the construction of a detention centre designated for prisoners charged with piracy, and defines piracy as a crime in Somaliland, allowing authorities to charge pirates (Dahir, 2012). As Hansen states (2009, p.30):

Somaliland reacts fast against rumoured pirate groups, catching pirates when they are in the process of organizing themselves. In this sense, Somaliland shows that piracy can be curtailed at a local level and this despite poverty problems in its coastal zone and a weak police force. The strength of Somaliland is not its offshore capacities, but the efficiency of local law enforcement, including popular militias, in curtailing piracy. Its strength lies in local ownership and control over relevant areas by means of local popularity.

**Deduction:** Early action to discourage and suppress piracy is essential if the likelihood of its

escalation is to be minimised. Law enforcement ashore plays a vital role in this process, and needs to be upheld by the classification of piracy and all of its supporting activities as a criminal act.

**Deduction:** Lessons learned from operational responses to piracy should be identified and assessed for their applicability elsewhere. This is equally relevant, whether on a national, regional or global basis, but must recognise the impact of the particular circumstances present in a piracy prone area that might influence the direct applicability of lessons learned if applied elsewhere.

## South East Asia

34. ***Migrating “Hot Spots”***. A striking feature of contemporary piracy in South East Asia, as also seen in the Indian Ocean and the Gulf of Guinea, is the migration of “hot spots”, with changing circumstances. Following World War Two, piracy resurfaced in South East Asia in the 1950s and 1960s as colonial powers transferred governance to newly independent states. It remained small scale through the 1970s and 1980s, except for the systematic victimization of “Boat People” in the Gulf of Thailand (case study below after para 35). In 1990-1992, the Malacca and Singapore Straits developed into a “hot spot” until anti-piracy patrols intensified, and the International Maritime Bureau’s Regional Piracy Reporting Centre was established in Kuala Lumpur. Most activity then shifted to the South China Sea, especially the “HLH Terror Triangle” between Hong Kong (China), Luzon (Philippines) and Hainan (China), albeit that the pirate gangs involved there were not the same as in the Malacca and Singapore Straits. After 1995, increased Chinese enforcement at sea and in the ports, resulted in the epicentre moving back to the Indonesian coast, particularly in the wake of the 1998 collapse of the Suharto regime. The 1997 Asian financial crisis coincided with increased frequency of attacks until, in 2000-2005, the region reached its peak as the global marine piracy “hot spot”, with South East Asia accounting for over half of worldwide reported cases (242 out of 469 attacks) (Banaloi, 2011, p. 25). Incidents reduced markedly in the Malacca Straits area after 2005 because of increased regional and international cooperation, and the agreement reached with the Aceh rebels.. It reached a new low in 2010. In 2011, resurgent hijacking occurred to the east and south of the Malacca and Singapore Straits, presumably to avoid the trilateral piracy patrols (MALSINDO) and Eye in the Sky (EiS) patrols that concentrate in the Malacca Straits (Frécon, 2011). In the first half of 2012, the number of armed robberies in the Indonesian archipelago increased to 30 from 24 in the same period in 2011 (ReCAAP, 2012a).

**Deduction:** With enough resources and cooperation, maritime policing can make a significant contribution to the suppression of activity in a relatively small region such as the Malacca Strait. In

contrast, where the high-risk area (HRA) becomes extensive, maritime policing authorities acting alone are unlikely to be effective because of the ratio of available assets to the area to be patrolled. In that eventuality, additional options for SPMs such as the employment of PCASP will also need to be considered. In either case, if political, economic and social conditions are not also addressed, the perpetrators will simply find ways to negate the pressure being applied to their operations, including moving them elsewhere.

35. *Types of Pirates.* A useful framework for understanding the perpetrators of marine piracy in South East Asia (and beyond) is to distinguish between two broad types: local opportunists and organized criminals. As Liss (2011) suggests, the “vast majority of pirate attacks today are simply hit-and-run robberies committed by what can best be described as sea robbers” (p. 40), while the “second group of pirates are characterized by a much higher level of sophistication” (p. 41). Localized piracy is usually, but not always, opportunistic and community based, and is analogous to municipal petty crime and street gangs that operate without any notable supporting organisation. Organised piracy, on the other hand, is usually, but not always, transnational and analogous to large biker gangs, Mafiosi and other criminal syndicates. Even though the eventual choice of the specific target may be opportunistic, in this form the activity relies on a well-founded support structure that forms part of the business model. If the conditions allow, opportunist pirates may evolve to become organised, but in both cases there must be an enabling cultural and social environment that permits criminal groups or sub-cultures to flourish. Piracy is, after all, a group activity. Frécon (2011) suggested the evocative terms for piracy in South East Asia: countryside pirate and town pirate. The country pirates are normally born in the area in which they operate, and are less demanding than the town pirate. In contrast, the town pirates have generally migrated to the area in which they operate, and are braver and less scared by counter-piracy patrols. It is therefore easier to deter the country pirate. The town v country pirate distinction is highlighted by the following short case studies.

**CASE STUDY - COUNTRY PIRATES - GULF OF THAILAND**

In the case of the persecution of Vietnamese, Laotian and Cambodian “boat people” (many of them ethnic Chinese Hoa) between 1975 and the early 1990s, there was a confluence of enabling factors: economically disadvantaged fishermen; vulnerable refugees, some of them relatively wealthy; and state encouragement to attack them in order to prevent an influx of unwanted refugees (Elleman 2010). Even the Vietnamese government turned a blind eye, considering that “the refugees were traitors, or at least lacking in patriotism” (Eklöf, cited in Elleman, p. 107). In essence, the Gulf of Thailand experienced a unique form of criminality “which quickly became a highly organized business” (Elleman, 2010, p. 104). The attacks subsided after targets dwindled and the political environment calmed, but it had served as a spawning ground. “The pirates, without an easy target, either quit or focused on other maritime groups, including fishermen, yachtsmen, or commercial vessels”. (Elleman, 2010, p. 107).

**Deduction:** In the absence of effective counter-piracy measures, the presence of refugee traffic is a potential catalyst for the development of piracy. Attacks on refugees in this way may be opportunistic to start with but, if the refugee flows persist, may develop into an organised form. This must be recognised where refugee flows or human trafficking exist, such as in the Red Sea and Gulf of Aden, or have potential to exist, and should form part of the risk assessment phase of maritime security planning.

### CASE STUDY – COUNTRY PIRATES – BANGLADESH

The Bay of Bengal has long been declared a high-risk area for piracy, and in 2006, the IMB identified Chittagong as the most dangerous port in the world. In January 2012, the high-risk classification was removed because of the reduction in attacks, and the fact that the targets are in Chittagong's anchorages and approaches, that is, within territorial waters. They are therefore armed robberies rather than piracy as defined by UNCLOS. The 2011 IMB annual report records only 10 attacks for Bangladesh, all against merchant ships either at anchor off, or alongside, in the port of Chittagong. As Menefee (2010, p.129) points out though, although there is very little empirical data regarding Bangladeshi piracy, media reports indicate levels of activity that extend well beyond reported thefts from vessels at Chittagong and Mongla.

In fact, the scale and systematic organization of piracy in Bangladesh waters is considerable. But, presumably because the victims are overwhelmingly local fishers, it does not rise above the world's media horizon. In September 2011 alone, it was reported (United News of Bangladesh, 2011) that:

Pirates kidnapped 100 fishermen along with 11 fishing trawlers, plundered cash, fish, fishing nets and other valuable items after attacking 95 fishing trawlers...They mercilessly beat and injured 35 fishermen during their 2-week raids...They took away 11 fishing trawlers abducting 100 fishermen after committing mass robbery. Later, they demanded money as ransom from families of abductees, threatening to kill the captives if their demands were not met soon. The incident has sent panic waves among fishermen and their families across the villages in the two coastal upazilas [*sub-districts or counties*]. Panicked fishermen were not going to catch fish far off their village in fear of more raids by bandits. Most fishermen of the localities are staying in their villages and catching fish in narrow rivers and coastal water strips while some go to Bay with trawlers for fishing remaining close to coasts to avert pirates' raids.

Unlike other pirate-prone areas (except perhaps for the Philippines [and Indonesia]), the perpetrators are well known in Bangladesh – “pirate gangs and their leaders are notorious and their identities are known to the authorities and journalists” (Liss, 2011, p.196). In just one localized syndicate, for example, “influential bosses” head up “five individual pirate gangs, with each gang controlling a specific area, where they attack fishing boats and sell protection cards to trawlers for TK50,000 (US\$878), which are valid for one year” (Liss, 2011, p.196-197). As one analyst concludes, marine crime “appears to be part of Bangladesh's social and political fabric” (Menefee, 2010, p. 133). However, the problem should not be considered isolated or irrelevant. Menefee cautions that, “if local piracy remains unchecked, it could easily escalate and lead to increased national and regional instability ... (a)ttacks on simple fishing boats in Bangladesh might in time grow to piracies against supertankers” (p. 133).

A study in 2011 proposed that an answer to the problem could rest with the fishermen themselves. Rana (cited by Philipp, 2011) suggests that “A critical point of departure would be to recognize the fishing community as a huge stakeholder in countering piracy in the Bay of Bengal.” She notes that a large part of current anti-piracy efforts in the Bay of Bengal includes the active engagement of coastal communities, but identifies that the potential of these communities to counter-piracy “remains far from fully utilized”.

**Deduction:** The fact that pirate attacks on fishing vessels are being identified as a possible precursor to wider acts of piracy re-emphasises the importance of ensuring that such attacks are reported so that measures to counter the piracy can be introduced.

**Deduction:** Operational response planning should consider using local social structures to help counter piracy where possible. Such an initiative, using local fishermen as scouts, watchmen or spotters for example, may offer greater persistence and cost effectiveness than actions conducted by government forces alone.

**Deduction:** When the identities of the pirate leaders are known, but little action is taken, it indicates a lack of political will to address the problem, and/or a lack of capability, including supporting legislation. In the case of Indonesia, for example, it also results from extortion by policemen or soldiers. Until these issues are overcome, the problem will not be resolved.

### CASE STUDY - TOWN PIRATES

Robbing the crew of an oceangoing ship while it is underway may be attractive to adventurous countryside pirates, but hijacking a ship, disposing of the cargo and sometimes re-registering the ship itself (creating a phantom ship) is a more complex proposition that requires a criminal organization. Often, it is not a random choice of target but rather a specified and contracted operation that is transnational in nature. In the 2002 case of the *Han Wei*, captured at the northern entrance to the Malacca Strait, the perpetrators were a gang of Thais and Burmese, led by a Thai and hired by a Taiwanese (Liss, 2011, pp. 173-174).

Crime gangs usually recruit through a front man, often an employment agent, often with a false identity. Recruits tend to be of two types.

- “Unemployed or desperate fishers” who may not be familiar with the operation of larger vessels but do at least have sufficient nautical skill to get the pirates on board and in control of the vessel and crew (Liss, 2011, p. 113).
- Urban youth, sometimes those who have migrated to the coast seeking jobs, are on “stand by”, waiting for calls and opportunities to hijack merchant vessels.

**Deduction:** Piracy is not an isolated phenomenon, but is part of the criminal spectrum that must be addressed in a broad law enforcement and criminological context. In addition, if a counter-piracy strategy is to do more than establish a perpetual cycle of capturing or killing pirates, it must create viable, satisfying alternate employment for young people. This takes more than job creation, and may require programs drawing on the experience of post-conflict Disarmament, Demobilisation and Reintegration (DDR), or criminal rehabilitation, thereby emphasising the need to involve NGOs in the counter-piracy effort. At the very least, it will require a comprehensive and empathetic understanding of pirates as individuals.

**Further work:** Separate research is required to investigate the impact of conducting operational responses without dealing with root causes, and how it may contribute to a process of natural selection by forcing pirates to adapt or improve; weeding out the less effective, and evolving the capabilities and resilience of the more adaptable.

### West Africa



36. **Overview.** In West Africa, militancy and organised crime, including piracy and armed robbery, are long established facts of daily life across much of the Gulf of Guinea. The Niger Delta in particular, has a long history of politically and economically motivated militancy and violence on its waterways. This has been largely targeted at the oil industry, and oil theft (bunkering) is estimated to have cost Nigeria approximately US\$90-100 billion between 2003 and 2008 (Coventry Cathedral, 2009, p.193), and US\$7Bn in 2011 (Alohan, 2011). Although operational responses to attacks conducted on internal waters are outside the scope of this study, the attacks deserve mention for two key reasons. First, because they have been targeted mainly at the oil industry, theft of which oil not only leads to significant revenue losses, but also finances organised crime. Second, because such activity is not restricted to the Delta region. It is increasingly a feature of territorial waters and beyond, where experience gained in the Delta region is used to seize relatively lootable offshore installations and ships in order to steal or ransom their cargoes.

37. **Evolution.** Off Lagos and South-West Nigeria, piracy has traditionally been of a subsistence (country pirate) character, with relatively small groups preying on ships as they approach Lagos port. More recently, it appears that these groups have become increasingly organized and more violent, to some extent copying the tactics of Niger Delta piracy (Hansen and Steffen, 2011), as well as continuing existing practices. Some analysts believe that the 2009 amnesty deal in the Niger Delta actually drove the militants and gangsters offshore in pursuit of seaborne business opportunities. However, it is of note that the number of piracy incidents reported off Nigeria dropped by just over 25% in the year that the amnesty for militants was declared, although part of this reduction may have been the result of local elections, many of the root causes of piracy in this area being political.

**Deduction:** The potential use of an amnesty merits consideration as an operational response to piracy, but needs to be configured appropriately in order for its impact to be both immediately effective and sustainable. It needs to address all three elements of disarmament, demobilisation and reintegration.

38. **Oil Cargo Theft.** The attacks off Nigeria and Benin in particular, have included hijackings of tankers and offshore installations in order to offload the oil and product cargoes for subsequent disposal on the black market (Smith, 2011). A comprehensive overview of bunkering within the Niger Delta is available in the United Nations Office on Drugs and Crime's report on *Transnational Trafficking and the Rule of Law in West Africa - A Threat Assessment* (United Nations, 2009, pp. 20-26).



**Deduction:** If resale of stolen oil and oil products on the open market is a known part of the business model, stringent measures need to be taken to prevent this occurring, including acting to reduce corruption. If there is no market for the goods the business model will fail or adopt another form, for example, one in which the target becomes looted goods that are more easily disposed of.

39. **Adaptability.** Co-coordinating the attacks with the subsequent offload of the cargo and its resale on the commercial market indicates a high degree of organisation, of enabling corruption, and of practices exported from many years of similar activity within the Niger Delta area. This illustrates the ability of pirates to adopt practices from other forms of organised crime or terrorism/insurgency, and to use the same infrastructure. The practice of using motherships to support pirate operations is a further example of the pirates' adaptability.

**Deduction:** The existence of the organisation and infrastructure necessary to support one form of organised crime or terrorism/insurgency, may allow piracy to "piggyback" on that same infrastructure rather than having to develop a completely new business model. Efforts to disrupt or suppress one form of organised crime may therefore have consequences for other forms in the same country or region. This re-emphasises the need for international and inter-agency/organisation co-operation if the business model and its inter-relationships are to be understood.

**Deduction:** The practice of capturing vessels for subsequent use as motherships suggests that methods used by Somali pirates and others are being adapted for use in other regions. Somali pirates may themselves have learned it from practices in South East Asia. If this is the case, it demonstrates the readiness of pirates in one region to learn from experiences in another. Although supporting evidence has not been found, it can also be postulated that the same organisers/financiers may be active in a number of regions, and export successful practices as they extend their activities.

40. **Migrating "Hot Spots".** It is apparent that, as vessels move away from the piracy hotspots off the coast of Lagos to conduct ship-to-ship transfer operations elsewhere, the pirates have followed further offshore, and have also moved along the coast to neighbouring Benin, particularly off the port of Cotonou (UK P&I Club, 2011), and to Togo. Reports suggest that the increased number of attacks off Benin and Togo in 2011 may have been the result of activities by organised gangs in Nigeria, who have been forced to look for targets elsewhere because of increased Nigerian counter-piracy patrols and activity. Since late 2011 when Nigeria and Benin agreed to co-operate in the conduct of maritime patrols, the incidence of piracy off Benin has reduced, although there may of course be other contributing factors. There were a total of 25 actual or attempted attacks off Nigeria and Benin up to the end of Quarter 3 2011, and 30 to the end of Quarter 4, only one of the five new attacks being off

Benin. In the first half of 2012, there was one actual and no attempted attacks off Benin, but a total of 17 actual and attempted attacks off Nigeria (IMB, 2012b). There was also an increase in attacks off Togo and, as with Benin previously, these have been attributed to Nigerian pirates (IMB, 2012b p.25)

**Deduction:** Regional co-operation can have a significant impact on the effectiveness of all aspects of counter-piracy actions and maritime security generally. Without such co-operation, and effective maritime security across the region, successful suppression of piracy in one nation's territorial and adjacent waters may simply displace the problem to those of a less capable neighbour.

41. **Ship Movements.** Practices followed by the shipping industry in the Gulf of Guinea can also favour the pirates. In response to the International Bargaining Forum's designation of the territorial waters of Benin and Nigeria as a piracy "High Risk Area" in March 2012, one ship's Master wrote (cited by Schuler, 2012) that:

...The difference between here and Somalia is that in Somalia you only pass at full speed. Here in West Africa, when we arrive at Lagos with a full cargo, we sometimes have to wait 6-8 weeks before we are allowed to enter port to discharge. Due to the risk of pirates, our charterer does not allow us to drop anchor so it means we have to drift a "safe distance" offshore for many weeks. My personal record is 8 weeks drifting and during this time we noted 5 attacks in our surroundings.....

Informal discussion has also indicated the growing practice of conducting transshipments hundreds of miles offshore in order to avoid the most active piracy areas. But this practice also puts the vessels beyond the range of shore based help if there is an incident, and prevents timely reaction in the event of an oil spillage. It also avoids the payment of dues that would help to improvise facilities for operations closer inshore. Such practices may be the result of a formal risk assessment, but it indicates that there are wider implications, albeit not necessarily the primary interest of the shipper.

**Deduction:** Shipping companies, owners, operators and charterers, need to have a full understanding of local threats in order to be able to take decisions that will be effective in balancing the risk of piracy to their crews and ships against other risks. This requires the provision of accurate threat assessments, revised as the situation develops, and a willingness to act on them. It also highlights the need to establish "safe areas" for cargo transshipment and offload.

42. **Impact on Fisheries.** Subsistence piracy and fisheries disputes are also common occurrences along parts of the Gulf of Guinea coast. Nigeria's Maritime Security Task Force on Acts of Illegality in Nigerian Waters (IAMSTAF) reported in December 2008 that Nigerian fishing boats suffered 293

attacks between 2003 and 2008. The assaults ranged from demands for protection money from fishermen, to the theft of catches, and even to the wholesale theft of fishing boats and killing of their crews (Akinsanmi, 2008). The situation had deteriorated so much that, at one point in 2010, a headline in *The Vanguard*, one of the leading newspapers in Lagos, announced “*FISH SCARCITY LOOMS!*” as it reported that “some 170 fishing trawlers were idle because their owners were afraid to put out to sea, threatening some 50,000 jobs” (Gabriel, Bivbere and Udwalu, 2008). However, these attacks were not captured by the IMB’s reporting mechanisms. More recently (Usman, 2011), it was reported that hijacked ships and trawlers are being used as bait to attack other, unsuspecting vessels, and that hijacked fishing vessels are being used as motherships.

**Deduction:** Attacks on fishermen can have significant adverse impact on the economy of a coastal nation, as well as on the availability of food staples. This can be destabilising to the nation concerned, highlighting the fact that the social, economic and political impact of piracy is not restricted to the implications of pirating larger merchant ships.

**Deduction:** Unless reporting mechanisms record attacks on smaller vessels such as fishing boats, the true extent of the piracy problem will remain hidden. If it remains hidden, the need to implement suitable operational responses such as protection of fishing vessels or actions against the land element of the pirates operation will not receive the necessary emphasis, and the potential risk of a wider piracy problem will not be recognised.

## Latin America and the Caribbean

43. **Overview.** Despite a wide range of criminal activity on the water, most of the theft and violence directed at professional and recreational mariners in the Latin America and Caribbean region (LAC) occurs in territorial waters, and mainly in ports and anchorages (nevertheless, a working group member cites instances of ships having weapons on the bridge at sea). Arguably there have been only two, or possibly three incidents in the past few years that would meet internationally accepted criteria for marine piracy, as distinct from offences against national laws:

- a. Possibly an April 2010 attack against a yacht that may have occurred well off the coast of Venezuela (Caribbean Safety and Security Net);
- b. An attempted attack on a tanker underway 79 miles off the coast of Ecuador in February 2011. It is of note that, although this was recorded by the IMO following Flag State reporting

of the incident, it did not appear in the IMB's reports (IMO, 2011a. MSC Circular MSC.4/Circ.175).

c. An attempt to board an un-named container ship 45 miles off the Pacific coast of Colombia in January 2012 (IMB, 2012b).

44. **Why so little piracy?** The general absence of piracy in the LAC area outside territorial waters raises the question, why is it not present? There is undoubtedly a wide range of contributory factors including regional security arrangements, the strong US presence in the Caribbean, and the fact that on small islands that rely so much on tourism, the supporting activities and perpetrators would be harder to hide and therefore more likely to be disrupted or apprehended respectively. Furthermore, the presence of lucrative targets such as yachts in ports and anchorages negates the need to operate further offshore, attacks may simply go unreported, and highlighting a problem would have potential impact on the tourist industry. Alternatively, it is also possible that the development of a systemic piracy problem would conflict with the other organised criminal activity (drug smuggling, arms smuggling, irregular migration and money laundering) that is so prevalent in much of the region. Therefore, although it has already been deduced that the piracy business model can piggyback on the model established to support other forms of organised crime, in the Caribbean, it is possible that the drugs trade is so dominant that piracy is discouraged because of the heightened security attention that it would cause. If so, this also means that suppressing the drugs trade may allow a surge in piracy, unless mechanisms are in place that either discourage and/or suppress the activity effectively. However, it also needs to be remembered that piracy and smuggling are compatible activities, and that much of the small boat hijacking that occurred in the 1970s was drug related.

**Deduction:** When piracy is not present where it would seem to have potential to thrive, analysis of other organised crime in the area, the narcotics trade for example, may reveal the reason. That is, that other well-established criminal activities may discourage or suppress piracy in order to avoid the risk of heightened security measures that would put their own businesses at increased risk.

### **Pirates' Ability to Adapt**

45. What is apparent in all of the areas studied is the pirates' ability to adapt as the circumstances in which they operate change. Prime examples of this are the following:

- a. The ability to change hunting areas as increased maritime policing makes existing areas too risky, or as shipping patterns change.
- b. The capture and subsequent use of motherships, which has allowed the range of the pirates' operations to be extended.
- c. The ability to adapt techniques in order to counter improvements in shipboard security or heightened maritime policing activity. In addition, successfully targeting more vulnerable vessels as ship protection methods become more common and more effective in others.
- d. The holding of hostages, even after a ransom has been paid, in order to gain the release of captive pirates or persuade governments to exercise "catch-and-release" rather than detaining pirate suspects.
- e. Cases of hostages being removed from ships, where they are in an identifiable location, and taken to hiding places inland, where they are harder to track and release.

**Deduction:** Pirates are entrepreneurial and innovative. Planners must therefore recognise the adaptability of pirates, and try to identify both the intended and unintended consequences of operational responses.

**Deduction:** Pirates' adaptability and fast-evolving nature in discrete environments confirms that each hot-spot is a highly local phenomenon that requires local analysis and customized response. This suggests that operational responses can draw on "lessons learned" from other regions only with a strong local interpretation and the heavy involvement of local stakeholders who can recognize and account for key local features. Effective response cannot be designed by international authorities alone drawing on generalized principles about piracy that do not account for local realities.

### Vulnerability of Potential Victims

46. **Overview.** The IMB's annual piracy reports for 2010 and 2011 (IMB, 2011 and 2012a) both show that approximately 80% of actual and attempted reported attacks (including both piracy and armed boardings) are against Bulk Carriers, Container ships, Chemical Tankers, General Cargo Ships, Tankers and Product Tankers. However, this generalisation also reflects the fact that these vessel types constitute the majority of the world's ocean going shipping, and masks variations by region. These variations are driven by the pirates' own business model, the nature of traffic in the region, the

preparedness/vulnerability of the vessels, and the apparent shortcomings in recording attacks on vessels such as small fishing boats and recreational craft. In addition, regional variations may result from social/religious differences such as pirates returning to their villages and away from their area of operations during Ramadan, or moving from the coast during the monsoon season when their operations are restricted by the sea state.

47. **Lessons from Somalia.** Unsurprisingly, analysis of the types of vessels most likely to be targeted by Somali pirates indicates that they prey on the vulnerable – the low and slow, and those not following Best Management Practice (BMP) guidelines and/or not carrying Privately Contracted Armed Security Personnel (PCASP) or Vessel Protection Detachments (VPDs). Older vessels may also have less motivated crews, so are easier to overcome (Murphy, 2011, p.109). Bateman (2010, p.744) suggests that Somali pirates take account of weaknesses when deciding on targets, and details analysis that indicates that ships successfully hijacked tend to be older and smaller, and that some appear to be sub-standard, albeit that newer and faster vessels are also attacked on occasion. There are also suggestions that vessels under specific flags may be preferred targets because of the high likelihood that the ransom will be paid and the lower probability of military intervention.

Kiourktsoglou and Coutroubis (2011), identify that:

Somali piracy is not a random phenomenon at least as far as the flags of the attacked vessels and the corresponding crews are concerned. However, the absence of randomness (and in the former case the proof of a rock-solid statistical correlation) does not necessarily entail the existence of causal link(s).

More specifically, Somali pirates seem to attack certain flags comparatively more than others. This fact debunks the theory of randomness but does not prove causality. In other words, the flag of a ship does not necessarily create risk of attack. However, there is a very strong correlation between the former and the latter.

48. **Speed and Freeboard.** More recent work (Catlin Asset Protection, 2011), identified that the average speed of the ships seized is 13 knots and the average freeboard is 4.5 metres. It also stated that there had been no successful attacks reported on vessels with a service speed of more than 18 knots and with more than 8 metres freeboard. This highlights the fact that reducing transit speeds in order to save fuel may increase the certain vessels' vulnerability to attack. If embarking PCASP is deemed



necessary by threat and vulnerability assessments for the slower speed transit, this will offset the financial savings achieved by burning less fuel.

**Deduction:** Understanding a vessel’s vulnerability is essential: to the owner/operator/charterer, so that mitigating measures can be taken; to its Master, because it determines how to react in response to a piracy attack; and, to maritime policing units in their prioritisation of vessels that need their support most. The vulnerabilities identified will determine whether BMP alone will provide enough ship protection to mitigate the risk, or whether additional measures are required, such as the embarkation of PCASP.

49. **Port State Control Implications.** Bateman (2010a, p.746) also suggests that the Indian Ocean Memorandum of Understanding (MOU) on Port State Control<sup>12</sup>, to which many successfully hijacked ships off the Horn of Africa should be exposed, “appears much less effective, in terms of inspection rates, than other major Port State Control MOUs. This is the MOU through which many of the ships hijacked in the Indian Ocean should be inspected”. As a result, he suggests that the area frequented by Somali pirates could be where sub-standard ships are prevalent. It has also been suggested (Bateman, 2010b, p.17) that some charterers sail unseaworthy vessels in the HRA in order to minimize the cost of any loss due to pirate activity. This creates a vicious circle, because the unseaworthy vessels make pirate activity easier and therefore more profitable and widespread. Such unseaworthy vessels should not be permitted to operate. Not all deficiencies identified during a Port State Control inspection would have a bearing on ships’ vulnerabilities to pirate attack, and vessels such as dhows and fishing boats are not inspected anyway, but shortcomings such as low manning levels or sub-standard maintenance in the wider marine fleet would have such an implication<sup>13</sup>. Bateman summarises by stating that:

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<sup>12</sup>. **Port State Control** is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules. IMO has encouraged the establishment of regional Port State Control organizations and agreements on Port State Control - Memoranda of Understanding or MoUs - have been signed covering all of the world's oceans: Europe and the north Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU ([http://www.imo.org/blast/mainframe.asp?topic\\_id=159](http://www.imo.org/blast/mainframe.asp?topic_id=159) )

<sup>13</sup>. The classification of a ship as “seaworthy” under the ISPS code and the SOLAS Convention of 1974, includes the need to meet certain security standards.



The Port State Control regime, as the main ‘safety net’ to eradicate sub-standard ships, is not effective in some parts of the world, even though the system has now been in existence for nearly two decades. This is particularly the case off the Horn of Africa and parts of South East Asia where inspection rates are low. The token participation of many member countries, such as Singapore which, despite being one of the busiest ports in the world, only achieved an inspection rate of 4.63% during 2009 (5.16% in 2010) (Tokyo MOU, 2010, Annex 2, Table 2), well below all other members of the Tokyo MOU with the sole exception of Fiji, is suggestive of simply maintaining a front to appear as a responsible flag state, or to ensure that strict enforcement does not affect the competitive advantage of the country’s ports. This can only lead to higher numbers of sub-standard ships and potentially higher risks of shipping accidents and piracy attack. More action is required by the international community to reduce the number of sub-standard ships still plying the seas.

This general view is echoed in a recent study (Griffiths and Jenks, 2012, p.33), which stated that “Enhancing Port State Controls has been identified by Gisela Bichler as probably the most effective method of combating a wide variety of maritime crime, including trafficking”.

**Deduction:** Although seldom commented on in relation to countering piracy, the Port State Control regime has a role to play in operational responses by reducing the number of ships at sea with key vulnerabilities. This is not THE answer, but a significant part of the overall effort to reduce the ability of pirates to conduct successful attacks. It also has a role in assessing the degree to which the security aspects of the International Ship and Port Facility Security (ISPS) Code have been implemented in ships being inspected (including as they do, Best Management Practice guidelines where appropriate).

50. *Age of Vessel.* Another study (Coutroubis and Kiourktsoglou, 2011) suggests that there is significant evidence to indicate that Somali pirates are better able to successfully press home their attacks on older vessels (over 25 years old), even though newer vessels may prove to be more valuable in terms of crew and cargo ransom. The study identifies that, in the period 2007-2010, “just under one in five of vessels attacked were more than 25 years old, and more than one out of every three vessels pirated belonged to the same age range, suggesting that pirates are more likely to be successful when they attack older vessels”. It is also evident that some owners of older vessels, especially those from poorer countries, are more reluctant to implement SPMs such as recommended by BMP guidelines, or to pay for PCASP, again making their vessels more vulnerable.

51. *West Africa.* The dominance of oil-product related attacks off West Africa indicates that the current business model is focused mainly on the capture, trans-shipment and subsequent resale of such products on the commercial market. Nevertheless, there are also instances of other types of vessels being attacked, and of crews being held for ransom. The latter practice could be the result of pirates learning from the Somali business model, although such tactics have also been a feature of attacks by insurgent in the Niger Delta, so could equally well be an extension of that business model. The practice of loitering in the region while awaiting orders, certainly increases the time in which vessels are at risk.

52. *South East Asia.* Commercial vessels targeted in South East Asia currently include a full range of vessel types, although there is a focus on vulnerable tugs, small tankers and other small craft. Most attacks occur to the east and south of the Malacca and Singapore Straits (ReCAAP, 2011), outside the area on which maritime patrol activity concentrates. In the first half of 2012, all seven incidents reported in the Malacca and Singapore Straits involved tugs towing barges, a continuation of the trend seen in 2011. In one input to this study, an analyst stated that “some pirates do not attack Indonesian ships – not because of any ‘national solidarity’, but because they know that the seafarers are poor and that the gains will therefore be limited”. There have also been suggestions that some companies support attacks on their commercial rivals, and another contributor identified that some attacks result from “inside information”.

53. *Latin America and the Caribbean.* In this region, attacks are generally against fishermen, ships at anchor and yachts. They appear to be opportunistic rather than organised, and have the advantage that their targets habitually frequent the same areas. Nevertheless, such attacks do occur, and hijacked vessels have been known to be used later for drug smuggling.

54. *Vessels in Port and at Anchor.* This study does not address attacks against vessels berthed in port, as highlighted when considering the definition of piracy, but it does include analysis of attacks against vessels at anchor. Nevertheless, it is worth reiterating that armed robberies against berthed vessels do form a small proportion of attacks recorded by the IMB.

**Deduction:** BMP guidelines were published with specific reference to the Indian Ocean High Risk Area (HRA). Other guidelines such as ReCAAP’s guidance to tug Masters are also region specific. However, the principles of the measures are equally applicable in other HRAs, albeit that the threat in

each, and vulnerabilities of individual vessels will vary, as therefore will the risk they face. Although many ships in those areas already implement ship protection measures, it is recommended that the emphasis on the Indian Ocean HRA should be removed from BMP. Instead, their use should be encouraged in all HRAs, to the extent deemed appropriate by the risk/vulnerability assessment for individual vessels. Insurance premiums may be the driver for this wider application of BMP, but formal measures will be required if it is to be enforced.

55. **Fishing Vessels.** Attacks on fishing vessels are a common occurrence in some areas, but many of these attacks go unreported through the formal channels, or the authorities become aware that a vessel has been attacked only after the victims are released. In South East Asia for example, such attacks occur relatively steadily throughout the region and, as Liss notes, “vary in nature and character according to local conditions and often appear to occur in areas where attacks on merchant vessels also take place” (p. 65). Fishers can find themselves in “short-term hot-spots”, the location of which “changes as law enforcement agents increase patrols or arrest gangs, or pirates simply move on to more lucrative waters, or stop their activities altogether” (Liss, p. 63). In the Sulu and Celebes Seas, local traders as well as fishers have also experienced attacks (Storey, 2007). The question has also recently been asked about whether overfishing in Senegalese waters by foreign fishing fleets could lead to piracy and violence off that coast on the scale of Somalia, even though the country is far more stable (Vidal, 2012). The threat to fishing vessels is reflected in the fact that some now employ PCASP.

**Deduction:** The effect of piracy on fishing communities is a chronic local challenge that rarely registers with the international marine transport industry or peace and security community. Nevertheless, it constitutes an ongoing threat to stability, and a breeding ground for piracy in areas which often lie close to important shipping lanes and therefore have potential to escalate. IMB and IMO reports do not give a realistic picture of events in such areas because of under-reporting. Local agencies such as the Malaysian Maritime Enforcement Coordination Centre, which acts as the Marine Monitoring and Action Agency in Malaysia and covers the Sulu and Celebes Sea, may have a clearer picture and have a role to fill in overcoming this shortcoming. In addition, fishermen mistaken for pirates by PCASP/VPD are sometimes fired on and injured or killed. The presence of such armed guards therefore has the undesirable effect of increasing the risk to the fishermen and thus to their communities as well.

### Targeting of Potential Victims

56. **Overview.** As well as considering the vulnerability of individual vessels to pirate attack, the pirates’ method of targeting (selecting) ships for attack also has to be considered. Without this knowledge, it will not be possible to determine whether there are ways in which to minimise or deny

access to information and intelligence that can be used for targeting purposes.

57. **Local Knowledge.** Most simplistically, targeting relies on local knowledge and on observation of shipping movements and patterns. Such elementary methods are impossible to counter because it is not possible to deny access to the coast or adjacent waters. Some pirates are able to use this knowledge in order to place themselves in known shipping areas and to pick a target of opportunity, particularly when working closer to the coast. Others use more sophisticated methods to gain information and build intelligence, for example through analysis of open source information or by exploiting corrupt employees within the shipping industry. Once in possession of this additional information, they have the potential to improve their targeting. It is apparent from informal discussion with a Master whose vessel was hijacked in the Indian Ocean that, in some cases at least, pirates are seeking a particular type or nationality of vessel, and arrive prepared with details of a company's ships and generic details of crew numbers to be expected. Nevertheless, the general view of analysts is that such methods are in the minority.

58. **Open Source Information.** The greater challenge in countering this more sophisticated approach is the plethora of open source information concerning both shipping movements and measures being taken to counter the pirates. Much of the information, such as that collected by Automatic Identification System (AIS) tracking, is as available to pirates as it is to forces acting to suppress piracy, as anybody who takes out even a trials subscription of the AIS product will know. Google's "Ship Finder" will only add to the accessibility of information about shipping movements, and there is a considerable amount of information about movements on ship-spotters' sites. Even if a Master switches off AIS in an HRA (and the recommendation in the Indian Ocean is to leave it on, but to restrict the information transmitted), it is a simple task to use speed-time-distance calculations to predict the general area that a ship will be in at a certain time by plotting on from its last full data report. Some Masters are now indicating on AIS that they have PCASP embarked (and who outside the ship is to know whether they have or not?). Even this has negative as well as positive implications. Although it may reduce the chance of that particular ship being attacked, it may also increase the chances of attack on another vessel not declaring that information. Measures such as using encrypted AIS would also only be of value until the pirates acquire the equipment necessary to decrypt the signals, and are therefore unlikely to be cost effective. There are also suggestions that some gangs check oil prices before an attack, so that their action can be planned to coincide with higher market

prices.

59. **Inside Information.** The prospect of attacks being based on inside information also has to be considered. As one example of this risk, Rosenberg (2009, p.54-55) cites a 2001 IMO survey which reported “over thirteen thousand cases of falsified documents of seafarers, most of whom were from Indonesia and the Philippines”. The fact that such falsification is so prevalent provides an easy opportunity for pirates or hijackers to infiltrate a ship’s crew. More recently, a report by the Organisation for Economic Co-operation and Development (2005, p.13) also highlighted the problem, and stated that: “a number of attacks were carried out with the help of an accomplice stowed away or serving among the ship’s crew”. Crew co-operation in such circumstances may result from weak loyalty caused in part by low rates of pay and poor working conditions. Pirates can also get information about the cargo, for example, from legal seamen who are from the same family or from the same island. This is the case for pirates from the Riau Islands in Indonesia, which are also the source of many workers in Singapore. It is easy to send text messages across the Strait! In addition, one contributor highlighted cases of policemen living in kampongs alongside pirates and smugglers, thus making it easy for the pirates to know the patrol schedule. Also, of patrol boats anchoring near hideouts, thus making it easy for pirates to see where the maritime police are patrolling (eg, the police HQ in Sekupang, in Batam, in front of a well-known pirate den in Belakang Padang).

**Deduction:** Without enforcing a significant change in the way that those involved with the shipping industry view the availability of open source information, it will not be feasible to deny pirates potential access to information that can be used for targeting. Such behavioural change is very unlikely because it has become so well established as common practice. The solution therefore lies in preventing piracy from becoming a feasible and attractive form of income generation in the first place, and in providing the capability to defend ships against attack, whether through an effective maritime policing regime, or the implementation of ship protection measures.

**Deduction:** It is recognised that conducting background checks is an enormous task (nearly 1.2m seafarers), complicated by differing record keeping systems in countries around the world, systems that themselves represent varying degrees of accuracy of record keeping, and the fact that many seafarers come from developing countries where record keeping is even poorer. Nevertheless, the apparent wide availability of forged documents places an added responsibility on owners, operators and agents to vet their personnel in order to minimise the risk of being subject to attack cued by insider information.

## The Business Model

60. The analysis of current piracy practices highlights the fact that piracy, in all but its most basic, subsistence form, has a business model to support its activities<sup>14</sup>. Understanding that business model is therefore vital if operational responses are to be targeted at the functions that will have most adverse impact on the pirates' ability to operate. However, the exact form of the business model in use depends on a variety of factors, and it will vary in exact form from region to region, and even within different parts of a country. Operational responses that are successful in working to break the business model in one area may therefore not work in another area if the business model operates in a different way. Efforts to counter the business model must also not constrain the sorts of approach that might be applied - it must be recognised that different organisations responsible for planning and conducting operational responses will have a different perspective on the model. Pirates are also adaptive, and applying pressure to the business model, or their own desire to increase their revenue, will cause the model to be adjusted. As a result, agencies and organisations involved in countering piracy must be at least as adaptive if they are to be able to react to changes in a timely manner or, ideally, to pre-empt those changes.

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<sup>14</sup>. Notes from the DMPP Inter Sectoral Working Group. In general, business models are based upon financial incentives, and personal gain is certainly a key driver for outbreaks of piracy. However, it is also evident that motives (e.g. poverty, political grievance, etc.), structures (i.e. small and loose rather than large and rigid organisational structures), forms of support (e.g. government, community, etc.) and tactics (e.g. the use of children) present in piracy outbreaks often differ from mainstream criminality. Therefore, when considering the piracy business model, these other drivers also need to be recognized, and may lead some to prefer to develop a hybrid form of model which take these drivers into account.



## Part V – What Counter-Piracy Policies And Practices Are Being Followed?

61. Having considered the causes of piracy and the pirates' methods of operation in each of the regions, the baseline can now be completed by analysis of the counter-piracy practices followed to date. It is not the intention to set out a complete review of the situation in each region, work that is more than adequately covered by the References, but to draw out the key points from which deductions may be made.

### **Political Will, Capability and a Defined End State/Termination Criteria**

62. Experience gained working in the current risk areas has shown the importance of political will to address piracy from across all levels of government. This includes the will to act against all of piracy's related functions such as money laundering, and of providing the capabilities required to support that political will. Political will also needs to work towards a defined end state or, where more appropriate, to a clear set of termination criteria that define the point at which the responsibility for addressing the problem moves from international forces to local authorities, for example. In Singapore, Malaysia and Indonesia, the combination of political will to suppress piracy and the capabilities required to do so, have resulted in the implementation of measures sufficient to achieve a significant reduction in the risk of being attacked. Even so, it is of note that the political will of these States was strengthened by the insurers, who declared the area as high risk, and by the potential for counter-piracy activity in the region to be internationalised if the regional nations did not take action to suppress piracy in and around the Malacca and Singapore Straits. As already shown, the political will to discourage and suppress piracy in Somaliland has meant that there is little or no piracy, despite a paucity of enforcement assets. In contrast, a number of the nations involved in the international response to the threat in the Indian Ocean have shown enough political will to deploy units to counter the threat, but insufficient will to back that deployment with the capture and prosecution of pirates. This has resulted in their use of catch-and-release and other disruptive policies that remove the immediate threat, but do not solve the medium and long-term problem.



**Deduction:** Political will at regional, national and local levels is an essential precursor to, and enabler for the successful conduct of operational responses to piracy. Such will needs to be supported by the capabilities required to implement it and an agreed end state and termination criteria to work towards. The lack of any one or more of these elements will hinder the counter-piracy effort.

## Surveillance

63. ***Situational Awareness and Understanding.*** The foundation of any operational response is an analysis of the challenge being faced. Without this foundation, the necessary situational awareness and understanding will not be achieved, either on land or at sea, the effectiveness of counter-piracy actions will be reduced, and potential targets will not have the near real-time information necessary to allow them to avoid known piracy incident areas. Surveillance, analysis and dissemination of information and intelligence are the basis of this foundation, and are essential to achieving Maritime Domain Awareness (MDA) and to understanding the land element of the pirates' business model. A number of factors are known to influence pirates' movements and modes of operation, and this knowledge, supported by appropriate modelling, should be made available to mariners and units working to counter piracy in order to allow them to take appropriate risk mitigation measures. Environmental conditions are a particular factor influencing patterns of piracy activity – wind, wave height and direction, and swell for example, all impact on the ability to conduct attacks and determine the direction from which they are likely to be mounted. Such information is available to mariners and PCASP/VPD, and should be a key consideration when determining the level of risk for a ship's actual and projected location.

64. ***Technology and Human Intelligence.*** Technology based surveillance is as necessary for building intelligence about the land based elements of the pirates' activities as it is for those at sea. Each element of the surveillance system is important in its own right, but the key to success is integrating the products from the various systems in order to achieve a wide area, persistent surveillance capability and resulting picture. Only in this way will it be possible to differentiate between normal and abnormal behaviour, and compliant and non-compliant vessels. Although technology has a significant role to play in the collection phase, human intelligence<sup>15</sup> (HUMINT) is

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<sup>15</sup>. "A category of intelligence derived from information collected and provided by human sources". AAP-6(2008) NATO Glossary of Terms and Definitions. Retrieved from <http://www.fas.org/irp/doddir/other/nato2008.pdf>

also of considerable value, and is a vital element in being able to identify *and confirm* that a vessel of interest is indeed a threat, for example. It is, in fact, essential to gaining an understanding of how the piracy business model works, and how the pirates think within the context of the culture and society within which they operate. That is, to support the ability to get into the mind of the adversary. Without this understanding, any assessment of the effectiveness of operational responses will be incomplete, and pooling of information (share rather than protect) between organisations underpins this understanding. Collecting HUMINT can be a challenge in the risk filled environments often associated with piracy, but engaging village and tribal elders, as well as the local fishing communities, is of significant benefit. Mariners and PCASP are also a source of information that should be exploited by encouraging them to report what they see to the relevant authorities. Internet based social networking is one example of a more recent form of exploitable HUMINT, and allows families and trusted family connections to be tracked, rather than simply relying on a geographic approach.

**Deduction:** Technology complements, but does not replace HUMINT. Both are essential to supporting the counter-piracy effort, whether in planning and executing operational responses, or when assessing the effectiveness of those responses.

**Deduction:** More effort needs to be committed to creating the incentives, structure and technology necessary to allow government actors (local and foreign) to exploit into the considerable HUMINT available in local coastal fishing communities in piracy-prone areas.

65. **Surveillance Capability Enhancement.** There is still a pressing need to develop surveillance capability in areas where it is currently lacking, and to continue to improve the effectiveness of the existing capability, including through the integration of useful technology. In this regard, the report on Long Range Identification and Tracking (LRIT) to the May 2012 meeting of the IMO's Maritime Security Committee highlighted that 66 LRIT Data Centres are now connected to the International LRIT Data Exchange (IDE), and that the IDE has been fully operational since October 2011. Efforts are also being made by a number of piracy-prone states to develop or improve their own surveillance capabilities. In March 2011 for example, it was reported that the Nigerian Navy completed a training program on the new U.S. Navy-funded coastal surveillance system, the Regional Maritime Awareness Capability (RMAC). Along the coast, Ghana, in conjunction with Eltel networks, is in the process of setting up a vessel traffic management and information system (VTMIS) to provide electronic monitoring of its entire coast in an effort to counter piracy and armed robbery at sea (Ghana Govt,

2012). Four new patrol boats were also commissioned for the Navy in February 2012. But building such a surveillance system, and maintaining and using the capability effectively, are two different challenges – will, where present, may not be matched by ability. Using it effectively relies on a number of factors, not least the ability to analyse the information gathered, to integrate it with that gained from other sources, effective information flows to those responsible for the maintenance of law and order, and the availability of maritime and land policing units. The latter should be capable of conducting routine counter-piracy operations, as well as being able to react within the normally short time available to prevent an attack being successful. In addition, over-capable surveillance systems can suffer from maintenance issues, loss of the personnel who were trained in their operation, and loss of funding for example, all of which reduce their effectiveness. This is not to suggest that the specific examples cited above fall into this risk category but, where this risk is evident, it is suggested that investment should be more modest and be maintainable over time.

**Deduction:** The gold plated capability solution is not necessarily the right one when the long-term ability to maintain and operate the equipment is considered. Simpler solutions may actually provide a more lasting capability.

66. **Dissemination.** The information and intelligence derived from surveillance must be made available to those who have a legitimate and verifiable need for that information, whether that is for the protection of a vessel, or for actions against the support elements ashore. This is not only relevant to forces responsible for law enforcement at sea and on land, including PCASP, but also to commercial users such as ships' Masters and operators, who can use the products for avoiding known piracy incidents, or for routing through areas where the sea state prevents the operation of pirate vessels. The Master, and PCASP/VPD if embarked, who know about likely threats and the level of risk along the intended track and in the area around the vessel (Vessel Centric Intelligence) are forewarned and more likely to be prepared.

**Deduction:** National and regional investment in maritime security, and in regional co-operation, must recognise the importance of achieving effective MDA. Without it, the ability to counter piracy and other maritime security threats will be seriously impeded.

**Deduction:** Building and integrating the various elements of an effective surveillance capability, together with arrangements for information and intelligence processing, analysis and dissemination, underpin the ability to maintain law and order both on land and at sea. Without comprehensive

situational awareness (including MDA) and understanding, it will not be possible to monitor, pre-empt or react to piracy activity. Extending this capability should therefore be a high priority in efforts to counter piracy, and must generate outputs that meet the needs of the full range of stakeholders, whether they are government departments, NGOs or the commercial sector.

**Deduction:** Whatever the system architecture eventually agreed upon, central co-ordination and regulation of a comprehensive surveillance system, including establishing common definitions and data sets, will most likely be required. This will be driven by the sensitivity of the information gathered, and the need to develop a global picture of piracy (and other criminal activity) and trends. Achieving this will require greater acceptance and implementation of the need to share rather than the need to know.

### Piracy Incident Information Exchange and Analysis

67. **International Maritime Bureau.** Globally, the IMB's Piracy Reporting Centre (PRC) has assumed the lead role for incident reporting, and advertises itself as "the only manned centre to receive and disseminate reports of piracy and armed robbery 24 hours a day, across the globe" (IMB, 2011). As a specialised division of the International Chamber of Commerce, it states that it is "an independent body set up to monitor these attacks free of political interference". Nevertheless, some debate whether the IMB, sponsored by industry, or the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), sponsored by governments, is the more independent. The IMB's main functions are to:

- a. "be the single point of contact for ship Masters anywhere in the world who are under piratical or armed robbery attack".
- b. "immediately relay information received from the Masters to the local law enforcement agencies, requesting assistance, and also to all vessels in the ocean region – thus highlighting the threat to a Master en-route into the area of risk".

68. **Classification of Attacks.** Comparing the IMO and IMB's method of classifying incidents with that used by the ReCAAP Information Sharing Centre of , Bateman (2010, p.739) suggests that the latter follows a more useful approach. This is because it classifies each event by significance based on the level of violence used in the attack and the economic loss incurred. Incidents are categorised by ReCAAP as: Category 1, or Very Significant; Category 2, Moderately Significant; Category 3, Less Significant; and, Petty Theft, Minimum Significance. This final category was introduced in March

2012 “in order to further streamline the CAT 3 incidents and filter out incidents involving robbers who are not armed and do not inflict harm on the crew”. This differentiates incidents of petty theft from incidents of armed robbery “in order to provide a better understanding of the nature of incidents which mostly occurred at ports and anchorages” (ReCAAP, 2012). This research supports the view that the additional detail provided by ReCAAP, or a similar model, merits consideration for wider use because it allows fuller analysis of piracy trends<sup>16</sup>.

**Deduction:** Individual analysts could apply the ReCAAP classifications, or a similar categorisation of type and impact of attacks, to data provided by ReCAAP, the IMO and IMB. However, it is likely to be more efficient to do this centrally, and such a development would lead to an improved understanding of the true nature and extent of the piracy problem. Alternatively, those reporting on attacks should make their definition bases available to the IMO for inclusion on the counter-piracy web. This will facilitate the comparison of data.

69. ***Under and Misreporting.*** The fact that the current systems do not capture all piracy events has already been highlighted, and it therefore appears that the PRC does not meet the full needs of mariners. This could be for a variety of reasons:

- a. Mariners being unwilling to report attacks because of potential delays to their passage as an incident is investigated. Alternatively, because they are concerned about the consequences of reporting attacks, including the risk of having increased insurance rates imposed on them as a result of the fact that the value of their vessel or cargo is inconsequential compared to overall operating costs, or because they have something to hide.
- b. Mariners being unaware of the reporting arrangements, for example because they have not been briefed by the owner or because reporting arrangements are confused.
- c. Smaller vessels such as some fishing boats not having the equipment, language ability or even desire, to make the report, or having no conduit for verbal reports even when back in port.

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<sup>16</sup>. The IMO used another typology for a study trip in the Malacca Straits in 1993 by differentiating: Low Level Armed Robbery, Medium Level Armed Assault and Robbery, Major Criminal Hijack and Peripheral Threat. (IMO 1993)

- d. Failure to report a meeting with pirates that does not result in an attack, for example when a pirate skiff is deterred by the sight of PCASP onboard a merchant ship.
- e. Reporting centers failing to include a report because they feel that it does not correlate with other reports, or because they cannot independently verify the information themselves.

The reporting structure will need to overcome under-reporting of piracy, and there are well-defined methods within statistics to estimate a true size of the problem based on data that is held.

**Deduction:** Reporting systems need to be developed further in order to provide a network that meets the need of all mariners. This means that they must be relevant regardless of the size of the vessel concerned, the area in which the incident occurs, or the language spoken. They must be trusted by the shipping industry, because more complete incident reporting will require a culture change among many of them.

**Further work:** To investigate whether statistical methods are able to provide a reliable figure of the total number of piracy attacks each year, rather than just those that are reported through formal channels.

70. **Regional Mechanisms.** In addition to the PRC's global service, there are also a number of regional reporting agencies and mechanisms that provide facilities for Masters to report both their passage through a high-risk area, and piracy incidents. Appendix B illustrates the main conduits for this information in the Indian Ocean by identifying the reports made by a vessel transiting from Halifax to Singapore via the Suez Canal (NATO Shipping Centre, 2012). For comparison, a flow chart of ReCAAP's recommended reporting processes for use in their reporting area is at Appendix C.

71. **Indian Ocean.** As well as the major reporting centres discussed above, there are a number of Indian Ocean regional centres. The Regional Maritime Rescue Coordination Centre (MRCC) (Mombasa, Kenya), the Rescue Coordination Sub-Centre (Dar es Salaam, Tanzania), and the Regional Maritime Information Centre (Sana'a, Yemen) are all Information Sharing Centres (ISCs). They disseminate alerts regarding imminent threats or incidents to ships, as well as collect, collate and analyse information transmitted through the participants, and prepare statistics and reports based on that information. The centres not only exchange information with each other about the movement of pirates, but also do so with the European Union Naval Force (EU NAVFOR), UK Maritime Trade Operations (UKMTO in Dubai), the Maritime Liaison Office (MARLO in Bahrain), and with



ReCAAP. In South East Asia, ReCAAP Focal Points fulfil the same regional role. In some cases, the Rescue Co-ordination Centres (RCCs) of ReCAAP Contracting Parties also serve as the national ReCAAP Focal Points. The RCCs disseminate information of an incident as appropriate.

72. **Indian Ocean – NATO and European Union.** In the Indian Ocean, NATO, the Maritime Security Centre - Horn of Africa (MSC HOA) and UKMTO release piracy reports across the regional information-sharing network coordinated through the three ISCs. This network passes piracy attack information to all participants, and is the trigger for passing warnings to shipping. Because of the need to collaborate on an unclassified basis with ships in the region (including with warships of non-EU and non-NATO partners), early in their mission the EU established MERCURY, a website that enables trusted users with internet access to collaborate and maintain awareness of pirate activities and military actions to disrupt those activities. The site provides online awareness, 24-hour chat (including private chat forums), relevant documents and a graphical representation of merchant and recreational shipping, as well as detailed information of actual and suspected pirates and pirate activity (NATO, 2011). Despite the apparently inclusive nature of the system, PCASP are denied access to it, and are therefore unable to contribute by this means. An Information Distribution Facility (IDF) was also established by the IMO for the provision of Long Range Information and Tracking information to security forces operating in the Gulf of Aden and the western Indian Ocean (IMO, 2010). Access to the IDF has been provided to both the North Atlantic Treaty Organization (NATO) and the European Union Naval Force (EU NAVFOR) in order to improve maritime domain awareness and warn vessels near potential piracy threats. In November 2011, information sharing was expanded still further by an Agreement between the three ISCs and the ReCAAP ISC to establish a set of standard operating procedures for communicating and exchanging piracy-related information and expand the reporting area of such incidents (IMO, 2011b). However, the system is still vulnerable due to a lack of training and a lack of inclusion of key players.

**Deduction:** The web of reporting systems that exists in the Indian Ocean means that there is the beginning of effective information sharing, but this requires further emphasis and effort if a common operating picture is to be achieved and information is not to become stove-piped. This includes the urgent need to make information available to PCASP team leaders, and to capture in near real time all of the information on pirate activity that PCASP gather in the course of a transit.

73. **South East Asia – ReCAAP.** ReCAAP, along with its ISC, was the first regional government-



to-government agreement to promote and enhance cooperation against piracy and armed robbery in Asia, and 18 States have become Contracting Parties. The roles of ReCAAP ISC include exchanging information among Contracting Parties on incidents of piracy and armed robbery, supporting capacity-building efforts of Contracting Parties, and facilitating cooperative arrangements. Although the strategically vital littoral states of Malaysia and Indonesia have not become Contracting Parties, both cooperate with the ISC (Raymond, 2010, p.116). Nonetheless, ReCAAP has a good working relationship with the Malaysian Maritime Enforcement Agency and Indonesia's BAKORKAMLA (Marine Security Coordination Agency) (Ho, 2008, p.2). The Information Fusion Centre (IFC) in Singapore was established in 2009 in order to improve information sharing between the armed forces (rather than just between coastguards or police forces) in the region. The IFC is not part of ReCAAP, but co-operates with it, and hosts liaison offices from a number of other countries in the region.

**Deduction:** The threat posed by piracy in SE Asia and the Indian Ocean led to the creation of networked reporting systems which support both the reporting of incidents and the reaction by maritime policing authorities. This development was still reactive rather than proactive, and lessons learned should be incorporated as reporting systems are established in other areas.

74. **Caribbean.** In the Caribbean region, no government appears to identify “piracy” as a pressing concern, so there are no mechanisms dedicated to reporting piracy. Nonetheless, the existing structures for maritime security and the countering of transnational organized crime (especially drugs trafficking) and potential terrorism provide the reporting framework to the extent that it is required. Here, as elsewhere in the world, various yachting organisations also provide a conduit for reports for yachtsmen.

75. **West Africa.** In West Africa, although there are regional reporting mechanisms, these are not as well developed as those in the Indian Ocean. The IMB PRC is therefore the channel for many reports. This weakness is recognised, and measures are being taken by Central African States to establish a Regional Centre for Maritime Security in Central Africa (CRESMAC), based in Pointe Noire in the Republic of Congo, as well as the multinational coordination centres already operational in Angola, Cameroon and Congo. Member States of the Economic Community of West African States (ECOWAS) have also recently intensified efforts on a joint maritime security plan (UN, 2012a).

76. **Coordination and Consistency.** Across the regions there are, therefore, a variety of means of

reporting movements, suspicious incidents and attacks. This can be a positive feature, not only because reporting mechanisms within an area provide for a range of contingencies, but also because establishing regional organisations (the MRCCs and ISCs) is sound preparation for the time when any international presence and commitment of resources to an area reduces in favour of other priorities. In contrast, it can also lead to duplication and confusion, and reduce the likelihood of timely reaction to an incident if co-ordination between the reporting agencies is less than optimised. It is of note, for example that UKMTO, the NATO Shipping Centre (NSC), and IMB PRC's websites all include the statement that they are the primary (or single) point of contact, albeit that there is clarification elsewhere. The Head of the IMB (Mukundan, 2011), emphasised the importance of avoiding duplication of services whenever possible because of the risk of confusing those needing to make reports, and the additional costs involved. He argued that reporting should be achieved through a single channel, wherever in the world it is required, a system that "survives the problems of today and is able to respond to those of tomorrow". He also stated that:

The real value of multiple regional centres is in building local capacity, a role they are well placed to perform. It may be unnecessary for these centres to also provide multiple reporting channels, as this could in time result in a plethora of expensive centres requiring a disproportionate amount of resources, when the problem has already moved on to other areas of the world.

**Deduction:** Reporting mechanisms need to be: comprehensive in nature, in order to allow all incidents to be reported in a timely manner; co-ordinated across defined boundaries; effective in their information exchange processes; and, unambiguous in nominating the lead authority. Rather than generating ad hoc, potentially duplicative arrangements, a layered reporting system building on regional facilities that come together into a single global system and data repository, appears to offer the best solution. This must be founded on well developed horizontal and vertical linkages, and build on, but rationalise where necessary, the existing arrangements. This will most likely be achieved by being proactive. By defining the global requirement, and then debating ownership and management against an agreed requirement.

## Operational Responses on Land

77. **Overview.** While operational responses to piracy at sea are given a high profile, there also needs to be a significant level of counter piracy activity ashore that is distinct from the socio-economic arena if maritime policing is to be able to evolve to wider law enforcement. This effort needs to be co-

ordinated with maritime policing and other activities. Murphy and Joseph (2011, p.2) state that:

Effective counter-piracy requires concerted and coordinated efforts on several fronts, most especially onshore initiatives able to offer alternative opportunities, the restoration of a lawful economy, and the strength to crowd out the piracy network leaders by depriving them of human and capital resources. This process of crowding out requires the building of institutions for physical and economic security and sustained deterrence that do not merely mirror international models, but which work with the grain of Somalia's messy and decentralised politics.

78. **Finance.** Operational response activities ashore include not only traditional means of maintaining law and order, but also more diverse activities such as those required to track ransom money after it has been delivered. In November 2011, the Royal Netherlands Marechaussee (Constabulary) started participating in a new German-Dutch investigation team set up to focus primarily on identifying the organisers, financiers and negotiators involved in hijacking merchant shipping. It was reported (German-Dutch, 2011) that the investigation team will try to discover where the ransom money goes in an effort to track down the broader piracy network. As Atallah (2011, p.4) stresses, "Attacking the pirates' financial system may yet prove to be the most effective counter to piracy, so pressuring and disrupting the flow of finance to the pirates is essential". The growing use of mobile phones for transactions may provide a vulnerability in the system. Nevertheless, the opaque nature of the Hawalah system, its dominance in Somalia, and elsewhere where similar transaction systems are used, and the small percentage of money transactions relating to piracy, will provide a significant challenge to money tracing unless the system becomes more regulated and transparent. That appears unlikely at this stage. To add to the challenge, in the case of Somalia the Transitional Federal Government Audit Investigative Report (Fartaag, 2012) highlights many irregularities in the management of Somalia's finances. Another recent report (ISSP-CGCC Joint, 2012, p.viii), states that Somalia is an "economy without a state", is the most corrupt country in the world, and "has no effective national financial regulatory institutions and essentially no formal banking system". It goes on to highlight that:

The Somali economy operates through a mixture of licit trade and revenue extraction from illicit financial flows, including public corruption, piracy, arms and human trafficking, and trade-based money laundering, especially in the export of charcoal and livestock and the import

of basic foodstuffs and consumer goods.

**Deduction:** Identification of finance flows offers an opportunity to localise key members of the business model and their trusted connections, and then to act against them. This potential vulnerability needs to continue to be exploited, despite the considerable challenges that it faces, particularly where corruption is also rife.

79. **Inter-agency/Organisation Co-operation.** Experience with organised crime on a regional and global scale, indicates yet again the importance of continuing to develop and progress an international, interagency, inter-organisation approach to the problem. Elements of such co-operation are already in place, for example, INTERPOL’s special task force to co-ordinate the international response to all aspects of the maritime piracy threat. In a similar vein, Joint Inter-Agency Task Force South (JIATF(S)), with its responsibility for detecting, monitoring and interdicting illegal traffic in the Latin America and Caribbean region, has been identified as an example of best practice for inter-agency co-operation (Munsing and Lamb, 2011). Lessons learned from organisations such as this should be exported to counter-piracy operations, as should relevant lessons learned about co-ordination between public and private entities. Despite these examples of best practice, the difficulty achieving consensus among so many stakeholders is leading some analysts to categorise countering piracy as a “wicked” problem<sup>17</sup>.

**Deduction:** Whether established nationally, regionally or internationally, best practice examples of inter-agency co-operation in combating other forms of organised crime should be examined for their relevance to counter-piracy work. Lessons learned from that examination should then be implemented as part of the counter-piracy operational response in a manner appropriate to the context.

80. **Training and Capacity Building.** The value of providing training (an element of capacity building) to shore based elements of the security forces in a country such as Somalia is evident in the

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<sup>17</sup>. There is no absolute definition of a wicked problem, but they have been identified as “ill-defined, ambiguous and associated with strong moral, political and professional issues. Since they are strongly stakeholder dependent, there is often little consensus about what the problem is, let alone how to resolve it. Furthermore, wicked problems won’t keep still: they are sets of complex, interacting issues evolving in a dynamic social context. Often, new forms of wicked problems emerge as a result of trying to understand and solve one of them.” (Retrieved from <http://www.swemorph.com/wp.html>). Wicked problems also have no single optimal solution, but can have multiple solutions in which different factors are “optimized” at the expense of others at various times in an evolving balance. This complicates the definition of an end state or termination criteria.

successes that have been achieved in Somaliland, and are starting to be achieved against pirate bases in Puntland. In December 2011, the President of Puntland announced that training of Puntland's Maritime Police Force (PMPF) would resume, supported by the United Arab Emirates, and that a community engagement program would be established to assist with the rehabilitation of reformed pirates. In early 2012, this was followed by reports that members of the PMPF who were already trained were conducting attacks on a pirate base west of Berbera, and in March 2012 arrived in the pirate haven of Eyl in order to establish a counter-piracy presence (Puntland Post, 2012). Whether these efforts have a long-lasting impact has yet to be seen. However, the status of the PMPF has itself been questioned, as has the potential risk posed by unpaid but well armed members of the force now that its trainers have been withdrawn. Although other sources paint a less rosy picture of the PMPF's capabilities (NAFTRADE, 2012), the recent report by the UN's Monitoring Group on Somalia and Eritrea (United Nations, 2012a) stated in reference to the involvement of Saracen international with the PMPF, that:

Thanks to this massive initiative, the Puntland Maritime Police Force is now a well-equipped elite force, over 1,000 strong, with air assets used to carry out ground attacks, that operates beyond the rule of law and reports directly to the President of Puntland. This private army disingenuously labeled a 'counter-piracy' force, has been financed by zakat contributions mainly from high-ranking officials from the United Arab Emirates, including Crown Prince and Deputy Supreme Commander of the UAE Armed Forces, Sheikh Mohammed bin Zayed Al Nahyan. The UAE government, however, has officially denied any involvement in the project. Without the intervention of its state sponsor, there is no realistic prospect of this initiative receiving authorization from the Committee, meaning that it will continue to represent a flagrant breach of the sanctions regime on Somalia, characterized by a disturbing lack of transparency, accountability or regard for international law.

Countering piracy will always be a greater challenge when corrupt officials benefit from the proceeds, or are even players in the business model as is reported to be the case in a number of parts of Somalia and in other "mafia" states. In a similar but contrasting vein, support needs to be provided to officials operating to discourage and suppress piracy, so that they can work (and live) at an acceptable level of risk to themselves and their families.

**Deduction:** Countering corruption, whether at the regional, national or local levels, is likely to make a significant contribution to curbing this form of organised crime. Not only will corrupt officials no

longer be able to encourage or ignore it in order to benefit financially, but other advantages such as reduced leaking of potentially useful information about shipping movements and barriers to money laundering will also accrue.

81. ***Social Inhibitors – Somalia.*** It is of note that when the Islamic Courts Union was dominant in Somalia in 2006, the incidence of piracy reduced dramatically. Murphy (2011, p. 91) cites a comment by the US Office of Naval Intelligence, that the threat of strict punishment under Sharia law “was likely a significant deterrent to piracy operations off the east central coast of Somalia”. He does not suggest that an Islamic based administration is the only solution to piracy, but it is another example where social (religious) pressure has contributed to the reduction of the threat. There are other examples of local communities discouraging people from becoming pirates, and preventing pirate operations, thereby indicating the potential value of engaging local communities in those areas where piracy is not a historic activity and societal norm. Although not in Somalia, an example of this social pressure occurring is the Riau Islands in SE Asia. In the Somali context, it will be interesting to track the effectiveness of efforts to curb piracy in the area in light of the new imperative to control the problem because of the discovery of oil reserves off the coast of Puntland. Elsewhere, community policing may also have a role to play in assisting the local elders and religious leaders. In any society, criminals require the support of the population (or at least its silence) so that they remain undetected and so that no complaints are levied against them. Community policing may be a way of starting to break down this barrier. As a further initiative, it may be possible to adapt measures used to curb the recruitment of child soldiers in order to achieve the same result with children involved in piracy.

**Deduction:** If those enforcing the rule of law are able to enlist the support of the communities affected by piracy, and adapt lessons learned in combating other forms of organised crime, this will, in certain circumstances, add significantly to the ability to both discourage and suppress the problem, and is also more likely to result in a sustainable solution.

82. ***International Interventions – Somalia.*** Although international forces conducting counter-piracy operations have the approval of the UN to operate in Somali territorial waters and ashore in order to progress their mission, this has seldom been done. Many would question why not, since attacking pirate bases would seem to be the obvious way in which to reduce the likelihood of piracy attacks? In answer, Murphy (2011, p.168) suggests that to do so might have an adverse impact, because non-Somalis attacking pirate bases could be perceived as a challenge to Somali nationalism and cause a bolstering of support for al-Shabaab, as well as placing hostages at additional risk. That is,



that it would be seen as a military rather than a law enforcement act. Shortland (2012) suggests that it would be to risk exacerbating the problem they are trying to solve, because the coastal communities who host the bandits “benefit little from ransom money, and may be open to a negotiated solution which offers a more attractive alternative”. However, Shortland’s analysis is in contrast to many other observers’ views. They, like Atallah (2011, p.2), identify the fact that:

Piracy does not simply enrich individuals or pirate groups; it brings wealth to entire villages. Coastal villages make money by providing food to pirates and hostages who wait for negotiations to end favourably. Local negotiators make money by bringing the ship owners to pay the ransom money via a cash drop at sea or on land. Further, pirate financiers - in many cases, pirates themselves - invest in pirate crews who venture out to capture vessels on the high seas. The wives of these pirates receive compensation money before their husbands go out on a mission.

83. An additional challenge associated with attacking pirate bases on shore is that they use the same basic equipment as fishermen. Counter-piracy forces therefore face the risk that they might accidentally destroy fishing equipment, or that pirates may subsequently steal the equipment from fishermen if their own is destroyed, thus adversely affecting the fishing industry. Nevertheless, in March 2012, the EU extended EU NAVFOR’s area of operations to include Somali coastal territory as well as its territorial and internal waters. The stated objective of this move was to enable Operation Atalanta to work directly with the Transitional Federal Government and other Somali entities to support their fight against piracy from the coastal area (Council of the European Union, 2012). The specific purpose of this development is to interdict the logistics chain for the pirates in order to prevent them from being able to sustain their operations at sea (Wiegold, 2012). The first such attack by EU forces was conducted on 15 May 2012, and the reaction by pirates included the statement that further attacks would lead to the murder of ransom victims. An earlier attack by unknown aircraft in April 2012 was reported to have caused civilian casualties, and was condemned by the Puntland Government (Ahmed, 2012). As of the end of September 2012, there have not been any further attacks.

**Deduction:** Attacks on pirate bases by international forces may appear to be an effective approach to reducing the threat, but can worsen the problem instead by alienating the local population, particularly if there is collateral damage. In contrast, non-corrupted and ethnically heterogeneous indigenous forces may be able to enlist the help of the local social hierarchy such as community or tribal elders, thereby increasing the chances of gaining local support for the action and achieving a sustainable result. A



lasting solution to piracy will require significant support from the local population. The local administration, community leaders and respected persons need to be supportive if efforts to establish pirate-free zones are to prove successful. However, this is unlikely to be a valid option if corruption within the indigenous forces or local administration weakens the ability to enforce the rule of law.

84. **Caribbean.** It has already been suggested that the surveillance and policing capability created to suppress the land and sea based element of drug trafficking, is equally effective at preventing the development of anything other than occasional, opportunistic piracy on the high seas, or some instances of armed robbery. Existing mechanisms therefore appear to be reasonably effective.

85. **Failure to Address Root Causes.** Throughout this study, emphasis has been placed on the fact that the root causes of piracy, the motivators, can generally only be countered ashore. As Till states (2007, p.32) “disorder at sea is most often the consequence of disorder on land and that, in consequence, naval activity conducted purely at sea usually deals with the symptoms of the problem rather than its causes”. Despite this fact, situations will exist where the actions necessary to address root causes on land cannot be taken. In Somalia, although the initial cause of piracy was foreign exploitation of their marine resources, the ongoing situation exists because of the lack of effective government throughout much of the country, limited alternative employment and no western appetite to place military forces in country because of previous experience. In West Africa, the circumstances vary from country to country, but impediments to addressing root causes include the political situation, economics, the level of corruption, geographic circumstances and the weak nature of a number of the States. In these circumstances, a maritime response addressing the symptoms but not the cause may prove to be the only option available, and its value should not be dismissed, even if it is not the ideal solution.

**Deduction:** Although a permanent solution to piracy is only likely to be achieved through actions on land, there will be occasions when conducting such actions is not possible because of the circumstances in a State or region. In that case, enforcement of effective maritime security will be essential to countering piracy, as will ship protection measures as appropriate, even though these are only addressing the symptoms.

### Maritime Policing

86. **National Capabilities.** All coastal states depend to a significant extent on their waters, including for import/export, fishing, oil, gas and other natural resource exploitation, and tourism. It is

therefore vital that national governments recognise the importance of achieving an effective level of maritime security capability within, and beyond, the waters under their national jurisdiction. This is not just about countering piracy, but is also necessary for the suppression of activities such as illegal, unreported and unregulated fishing, illegal dumping, drug trafficking, weapons trading and irregular migration. Tellingly, even in July 2011, the Commander of the Benin Naval Training Center, stated that ...“Countries like mine do not realize what they are losing at sea by not conducting security...” (Africa Centre for Strategic Studies, 2011). As Peter Pham commented (2011, p.3), “the ability of West African states to counter piracy is also limited by an underdeveloped appreciation of the value of their territorial seas, to say nothing of insufficient maritime domain awareness, inadequate intelligence and early warning capabilities, and the inability to sustain patrol operations with sufficient reach over any meaningful period”. In this respect, the cultural context among the ruling peoples is critical – if they do not embrace maritime issues, the challenges of maritime security are unlikely to be addressed. Land locked States also have a significant reliance on unhindered access to port facilities and shipping lanes, so they too have a vested interest.

**Deduction:** States, and regional economic and security organisations, must understand the importance of the seas adjacent to their coastlines, and develop the ability to regulate them in an appropriate manner. This is a significant challenge when the focus of many States is what is occurring on land, and land locked states, which still depend on port access, have little involvement with maritime security.

87. **Operating Area.** Experience in the Indian Ocean has shown that, when areas the size of the current High Risk Area (HRA) are involved, it is very unlikely that there will be enough maritime policing assets (ships, aircraft and unmanned units etc) available to provide the necessary level of presence and protection. This shortcoming is further highlighted by the fact that the average piracy attack takes less than 15 minutes, so the likelihood of having a policing asset close enough to intervene in time to prevent a boarding is very limited. In less extensive areas, it will not necessarily be the case that the task is beyond the ability of the maritime policing authorities to deal with. The co-ordinated actions taken by Malaysia, Singapore and Indonesia in the more restricted waters of the Malacca Straits (Trilateral Coordinated Patrols (MALSINDO)), and the Eyes in the Sky (EiS) air patrol arrangement instituted to complement MALSINDO, have had an impact on the pirates’ ability to operate in those waters. This holds true even if the deterrent effect was largely psychological rather than physical because the forces deployed were either insufficient or unable to operate in the mangrove swamps for example. The same was true when Malaysia and Thailand started joint patrols along their maritime

boundaries in 2004. However, the pressure applied in the Malacca Straits appears to have simply displaced the problem elsewhere to areas where counter-piracy initiatives are less effective. Attacks currently tend to occur to the east and south of the Malacca and Singapore Straits, presumably to avoid the MALSINDO and EiS patrols (ReCAAP, 2011 and 2012). This suggests a potential future threat to the increasing post-Malaccamax traffic (vessels with too deep a draught to use the Malacca Straits) as it transits the Lombok and Makassar straits, and the Celebes Sea, and this is recognised by the US' International Criminal Investigative Training Assistance Program (ICITAP).

**Deduction:** The limited success of military counter-piracy operations in the Indian Ocean should not be taken as an indication that military forces cannot be effective in the fight against piracy in other scenarios. In the right circumstances, including the necessary ratio of forces:size of operating area, and effective cross-border co-operation, co-ordinated military actions can be effective. However, even then, it is not addressing the root causes, but acting to disrupt, deter or defeat. Success will not be achieved by military operations alone, but by a comprehensive approach.

**Deduction:** Co-ordination of effort is required to ensure that pirates do not just move their hunting grounds elsewhere when they are put under pressure in one area. Such co-ordination is not only required between maritime policing authorities, but also with the commercial sector and, importantly, regionally. Only if States in a region act together will their efforts be optimised, and maximum benefit be gained with the limited resources likely to be available. However, regional co-operation is unlikely to be successful until states have at least a basic level of effective internal co-ordination and co-operation between government agencies and private organisations.

**Deduction:** A potential piracy outbreak can be most easily discouraged or suppressed if its precursors are recognised, and early action is taken to prevent it from escalating. Acting early will also help to constrain it to a manageable area. This highlights the potential value of a predictive model for identifying areas at potential risk from piracy, and of intelligence preparation of the battlespace (IPB).<sup>18</sup>

88. **Arms Escalation.** Because of the action-reaction dynamic inherent in an arms race, there is also perceived and actual risk in a maritime security capability build up, whether the capability is to counter piracy or to deal with other threats. As an example, the Deputy Nigerian High Commissioner

<sup>18</sup>. IPB is a systematic, continuous process of analyzing the threat and environment in a specific area.

to the UK voiced concerns that: “A continued increase in piracy could also trigger a militarization of West African coastal waters. We could see deadly skirmishes erupt between rival pirate navies jostling for supremacy. Furthermore, we could see an increased projection of naval power by the United States and China in a bid to protect their energy supply lines, possibly leading to Sino-American contest for geostrategic naval dominance in West African waters in much the same way as in South East Asia in the last century” (Nwana, 2011, p.6). To that, can be added the fact that providing hardware to corrupt regimes may only exacerbate the problem of regional tension.

**Deduction:** The risk that neighbouring States may see national maritime security measures as escalatory, has to be acknowledged. Regional co-operation has an important role to play in reducing this risk of an arms race developing.

89. *Coastguard Functions.* The effective conduct of the coastguard function has a potentially significant part to play in counter-piracy operations, although the way in which those responsibilities and capabilities are organised and executed varies considerably from nation to nation. Some have a dedicated coastguard and others vest that role in the navy or share it between a number of organisations. The vital issue is that the functions are addressed within the totality of the maritime policing effort. Regardless of the organisational structure adopted, although successful execution of the coastguard function is a significant asset in countering piracy, failure has been seen to have the opposite effect. Not only does the failure mean that the responsibilities are no longer being met, but it also has the potential to release better trained seafarers back into the business of piracy, as was the experience in Somalia (Bahadur, 2011b). In addition, the newly capable coastguard may not be used for the purpose intended. An example of this is Yemen, where the USA provided vessels and training, but these were hired out for convoy protection (Coker, 2011). Experience in Somalia and elsewhere suggests that strict regulation and clarity of intent will be required if the operation is to properly meet the government’s aims and the risk of corruption is to be minimised. Establishing such a capability can also be expensive, but the gold-plated solution is not normally the right one. Instead, the requirement is to balance capability with the ability of the nation concerned to maintain and operate the units effectively, whether they assume the responsibility immediately or after an interim period during which the function is provided under a contractual arrangement, for example. Despite these challenges, the development of a coastguard type function, whether vested in a dedicated coastguard or not, and even if limited in capability, can make a significant contribution to the overall maritime security effort. It is

an ideal focus for capacity building, not only in terms of craft to operate, but also for training and sharing of information and best practices.

**Deduction:** Any form of capacity building and provision of commercial services must be conducted with awareness, by both customer and supplier, that failure may worsen the existing situation by providing better trained individuals and groups for the illegal activity that they were recruited to counter. Likewise, corruption may mean that equipment such as police launches can itself be used for criminal activity such as smuggling. Guidance may be necessary from the IMO, for example, about the suitability of commercial companies for the task under consideration.

**Deduction:** The successful conduct of the coastguard function can be a significant force multiplier in the effort to discourage and suppress piracy, and contributes to all four effects (Discourage, Disrupt, Deny, Defeat (para13)). Establishing such a capability in a properly regulated form should therefore be given the appropriate high priority, noting its contribution to maritime security as a whole and not just to countering piracy. This is likely to require significant capacity building support, but should result in a sustainable solution rather than a gold-plated one. It is also for consideration that land-locked countries utilising port facilities in a neighbouring state should be encouraged to make some sort of contribution to the maritime security effort if their economic circumstances allow.

### Regional Co-Operation – Principles

90. As has been seen in all of the recent and current piracy prone areas, suppressing piracy is not just a national challenge and responsibility, but also has regional and/or international dimensions. Regional co-operation leads to improved co-ordination of the overall effort, which is especially important when law enforcement assets are scarce. Without this wider co-operation, pirates will be able to use maritime and land boundaries and borders as a discontinuity in the counter-piracy effort that can be sheltered behind. It should be self evident that such co-operation does not only include enforcing the rule of law on land and at sea but, ideally, should also extend to issues such as training, doctrine, reporting arrangements and information exchange. Where applicable, it could also include shiprider or similar agreements to facilitate cross-boundary operations, and alignment of the legal status of pirates and acts of piracy.

**Deduction:** Regional co-operation requires political will in order to ensure that good ideas and rhetoric are translated into practical measures. However, where there are tensions between states in a region, including concerns about potential threats to sovereignty, this will be a significant impediment to co-operation because of self-interest.

91. **Mismatched Priorities.** Another impediment, sometimes underestimated by extra-regional parties, is that of differing priorities. The United States, a significant influence in the South East Asia region for example, is focused on its “global war on terrorism” and freedom of navigation – in other words, safe transit of warships and international trade through South East Asian waters. Similarly, Japan with its energy dependence on oil transiting through the region, is also focused on the maritime choke points, thus its initiation and financial support to ReCAAP. But the South East Asian States themselves have many other pressing challenges, including combating illegal fishing, arms, drug and human smuggling, and refugees. Sato (2007) indicated that

Anti-piracy in the Malacca Straits, on which Japan has spent considerable diplomatic efforts, is not the highest priority in Thailand. The main shipping lanes of the Malacca Strait are beyond Thai sovereign waters. Thai concerns center on the maritime smuggling of arms, illicit goods, and illegal migrants from neighboring countries, mainly but not limited to Burma.

**Deduction:** The extent to which there is both political will to tackle the problem, and the desire to co-ordinate efforts to counter-piracy may usefully be indicated by the extent to which there is agreement about the priorities and end state sought, and the willingness to commit resources to achieve them.

### Regional Co-operation – West Africa

92. **Ongoing Challenges.** In the Gulf of Guinea, 15 very varied States have a combined coastline that is less than twice the size of that of the whole of Somalia. Regional complexities therefore require significant effort if they are to be overcome and not have an adverse impact on the development of a regional, co-ordinated approach to countering piracy (including standardising the legal status of pirates). In addition, some neighbouring States may be in disagreement over issues such as borders and boundaries, and may also be in competition with each other in terms of attracting ships to their ports.

**Deduction:** The greater the number of coastal states bordering a piracy area, the greater the challenge to achieving multi-lateral as opposed to bilateral co-operation, and the more outside assistance that may be required to achieve a co-ordinated effort. Ongoing boundary disputes make co-operation and co-ordination even more difficult, as well acting in favour of the pirates, and their resolution in piracy areas merits additional attention.

93. **Progress.** The progress being made in regional co-operation in the Gulf of Guinea is reflected in the UN’s adoption of a supporting rather than leading role in the region’s efforts to discourage and



suppress piracy. The joint maritime security patrols instigated by Benin and Nigeria in 2011 are one example of this progress, but the challenge is still significant. The UN Security Council recognised this in 2011 (United Nations, 2011b), the result being UNSCR 2018 (United Nations, 2011c) condemning all acts of piracy and armed robbery at sea committed off the coast of the states of the Gulf of Guinea. The seven key points of the Security Council discussion had co-operation as a core theme. For example:

encouraging the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS) and the Gulf of Guinea Commission (GGC) to develop a strategy against maritime piracy; and, encouraging states to counter piracy in the Gulf of Guinea through bilateral or regional maritime patrols, in line with relevant international law, while ensuring that such activities do not hinder the freedom of navigation on the high seas or the right of passage in the territorial sea to vessels of other States.

The impact of the UN's encouragement was seen during the March 2012 ECOWAS and ECCAS Maritime Safety and Security Conference, when progressing regional co-operation and developing a memorandum of understanding were discussed.

**Deduction:** The complexity of multinational, multi-agency/organisation operations, is likely to require the establishment of a specific forum through which to achieve at least deconfliction and at best co-ordination of effort in the affected region. But there has to be a willingness to co-operate, and a realisation that weak co-operation creates vulnerabilities for pirates to exploit.

94. **Coastguard Co-operation.** In addition, the Sub-regional Coast Guard Network is a joint International Maritime Organization (IMO)/Maritime Organization of West and Central Africa (MOWCA) project aimed at reinforcing cooperation between member States in the face of mounting problems in maritime areas. The aim of the Sub-regional Coast Guard Network is therefore “to coordinate existing national coast guard activities on a sub-regional level through establishing a network of four coast guard zones with four Coastguard Zonal Coordinating Centres (in Senegal, Cote d’Ivoire, Nigeria and Congo) and two Principal Coordinating Centres (in Ghana and Angola) where the member states can share and exchange security-related information” (Oceans Beyond Piracy, 2012a). This is an important development because, as already identified, true co-operation requires a collective surveillance system, mechanisms to coordinate information gathering, analysis/processing and



exchange, and the ability to react to potential or actual incidents. Nevertheless, the ability to develop the concept into an effective capability has yet to be seen.

**Deduction:** Talk is easy. Action requires political will and the ability to commit resources or to request capacity building assistance.

### Regional Co-operation – Indian Ocean

95. *Djibouti Code of Conduct.* A feature of both the Djibouti Code of Conduct (DCoC) and the Contact Group on Piracy off the Coast of Somalia (CGPCS), is the importance placed on regional co-operation.
96. The DCoC signatories agreed to co-operate in (IMO, 2009):
- a. the investigation, arrest and prosecution of persons, who are reasonably suspected of having committed acts of piracy and armed robbery against ships, including those inciting or intentionally facilitating such acts;
  - b. the interdiction and seizure of suspect ships and property on board such ships;
  - c. the rescue of ships, persons and property subject to piracy and armed robbery and the facilitation of proper care, treatment and repatriation of seafarers, fishermen, other shipboard personnel and passengers subject to such acts, particularly those who have been subjected to violence; and
  - d. the conduct of shared operations – both among signatory States and with navies from countries outside the region – such as nominating law enforcement or other authorized officials to embark on patrol ships or aircraft of another signatory.
  - e. The signatories also undertook to review their national legislation with a view to ensuring that there are laws in place to criminalize piracy and armed robbery against ships, and to make adequate provision for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders
97. The DCoC therefore has four broad pillars (IMO, 2011c):

- a. Information sharing.
- b. Capacity building, specifically developing effective Maritime Domain Awareness.
- c. Updating and co-ordinating anti-piracy legislation.
- d. Regional training.

98. **CGPCS.** As a result of UN Security Council Resolution 1851, and the Djibouti Code of Conduct discussions, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established in 2009. Its aim is “to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia”. This international forum has brought together more than 60 countries and international organizations, all working towards the prevention of piracy off the Somali coast. At its first meeting in January 2009, the CGPCS identified six areas of focus (CGPCS, 2009):

- a. Improve operational and information support to counter-piracy operations. Chaired by the United Kingdom, Working Group 1 (WG1) is responsible for ensuring effective naval operational co-ordination and supporting the building of the judicial, penal and maritime capacity of Regional States to ensure they are better equipped to tackle piracy and maritime security challenges.
- b. Establish a counter-piracy coordination mechanism. Also the responsibility of WG1.
- c. Strengthen judicial frameworks for arrest, prosecution, and detention of pirates. Working Group 2 on Legal Issues is providing specific, practical and legally sound guidance to the CGPCS, States and organizations on all legal aspects of counter-piracy.
- d. Strengthen commercial shipping self-awareness and other capabilities. Working Group 3, chaired by the United States of America, has responsibility for concerns of the participant states, maritime industry and labour groups regarding the actions that should be used to provide self-defensive actions to protect vessels from hijacking by pirates in the high risk waters off Somalia.
- e. Pursue improved diplomatic and public information efforts. Working Group 4, chaired by Egypt, focuses mainly on the public diplomacy aspect of the problem of combating piracy

off the coast of Somalia. It aims at raising awareness of the dangers of piracy and highlighting the best practices to eradicate this criminal phenomenon.

f. Track financial flows related to piracy. Working Group 5, chaired by Italy, coordinates international efforts to identify and disrupt the financial networks of pirate leaders and their financiers.

99. **IMO Role.** The impact of IMO involvement with the DCOC and CGPCS has been to enhance co-ordination of effort between those working to reduce the risk of piracy. This has brought to the forefront the benefit of having an empowered co-ordinating body when the challenge being faced requires the involvement of many, disparate nations and organisations, and the State at the heart of the problem has no effective government. In adopting such a role, care must be taken that co-ordination does not become unduly influenced by commercial or national interests.

**Deduction:** Unless there is regional progress in co-operative development of all aspects of maritime security, and in enforcing the rule of law on land and across borders, the ability to progress successful counter piracy initiatives will be seriously impeded. This requires both political commitment and resource allocation, and will benefit in some instances from the provision of external leadership, as seen in the IMO's lead role in the implementation of regional initiatives under the Djibouti Code of Conduct and the Contact Group on Piracy off the Coast of Somalia.

100. **Indian Ocean – SHADE.** In the Indian Ocean, the Shared Awareness and Deconfliction initiative (SHADE) was established in 2008 as the number of organisations and navies involved in countering piracy grew. Oceans Beyond Piracy (2012b), reports that the SHADE meetings are “used as a forum to co-ordinate and de-conflict ongoing military counter-piracy operations in the Gulf of Aden and the western Indian Ocean”. It goes on to say that, “an important aspect of SHADE is information sharing and the exchange of views between stakeholders from force-providing nations, regional countries, international organizations and industry groups”. However, while the various naval forces in the area appear to be achieving a growing degree of co-ordination, there still seems to be a lack of co-operation in some aspects of the relationship between the industry and maritime policing authorities. One example of this is that many ships transiting the HRA (reported by the NSC to be approximately 30%) still do not report their movements to the UKMTO or MSC HOA. Furthermore, PMSCs are not yet included in meetings.

**Deduction:** Only when co-operation develops further, will it be possible to improve the prioritisation of tasking for the scarce assets in order to provide support to those vessels and areas that need it most.

101. *Southern Africa.* As a further example of where regional co-operation is being achieved, in 2011 a German NGO supported Tanzania, Mozambique and the Comoros, in their efforts to reach an agreement on the delimitation of the maritime borders between them, thus opening the way to improved maritime security in their territorial waters. In 2012, South Africa agreed to act with Mozambique and Tanzania to constrain the southwards spread of piracy in the Mozambique Channel.

**Deduction:** Resolving boundary disputes has the potential to have a positive impact on regional maritime security, but may require an external facilitator if successful negotiation is to be achieved.

### Regional Co-operation – South East Asia

102. *Complexities.* The complexity of relationships in South East Asia puts a premium on regional co-operation, and much progress has been made. Initiatives such as the Malacca Straits Patrol (MSP)<sup>19</sup>, a set of cooperative security measures undertaken by the four States that border the Malacca Strait (Indonesia, Malaysia, Singapore and Thailand) to counter maritime piracy and terrorism, are indicative of an underlying will to work together to improve maritime security in the region. Other co-operative arrangements exist, the ASEAN Plan of Action to Combat Transnational Crime being another example, but are not yet fully effective. Nevertheless, as Frécon notes:

One major roadblock to increased cooperation involves the perception by many regional states of regional cooperation measures as opportunities to enhance their national sovereignty — or as a risk to reduced sovereignty at the hands of other states. To this effect, slowdowns in regional cooperation can be expected when the process is perceived by states as threatening their national sovereignty. A related challenge concerns the maritime boundary disputes that continue to apply in Southeast Asia. Overlapping maritime boundary claims are a constant irritation in interstate relations among Southeast Asian nations, and this problem hinders

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<sup>19</sup>. The MSP is an umbrella name which comprises the Malacca Strait Sea Patrols (MSSP), the Eyes-in-the-Sky (EiS) air patrols, the Joint Coordinating Committee, the Intelligence Exchange Group (IEG), and a joint Standard Operating Procedure. (Oceans Beyond Piracy, 2012a)

effective regional cooperation measures against maritime piracy (2011, p.27).

103. **ReCAAP.** ReCAAP is a good example of co-operation shaped by this complexity. Although it is a positive step in regional cooperation, the two most important littoral States (Malaysia and Indonesia) are not Contracting Parties, and the organisation is focused on information exchange rather than operational coordination. The ongoing disputes over maritime boundaries in the South China Sea and Malacca Straits also inhibit cooperation in that region although, arguably, the associated naval presence may suppress pirate activity as a side effect. Furthermore, ReCAAP's role is specifically directed at piracy and armed robbery, and not at other mutual security challenges such as maritime terrorism. But it also has its strengths. It is accomplishing its role of "facilitating capacity building efforts that help improve the capability of member countries in combating piracy and armed robbery in the region". The requirement to establish national Focal Points encourages internal inter-agency cooperation. The capacity-building role is also being fulfilled through dialogue and exercises, which help to break down information silos. In addition, it is progressing "co-operation with organisations and like-minded parties" by building a network of "governmental, intergovernmental, international or non-governmental organisations, and research institutes" (Ho, 2008, p.2).

### **Regional Co-operation – Latin America and the Caribbean**

104. It has already been suggested that the co-operation that already exists in the matrix of counter-drug and counter-terrorism arrangements in the Caribbean, should serve to address outbreaks of piracy if they occur. The Atlantic coast of South America has not experienced piracy problems, and if piracy in the Amazon River delta spreads to sea, the responsibility would fall to Brazil unless it grows to the extent that Brazil alone cannot cope. On the Pacific coast, there have been two attempted attacks reported in the past two years, one off Ecuador and one off Columbia (para 43 above), but other activities have all occurred in territorial waters. In the future, the increasing number of oil and gas platforms could give rise to a whole range of maritime security challenges that will need to be addressed, ideally proactively, rather than reactively, and increased piracy could be one such challenge that requires enhanced co-operation.

### **Regional Co-operation – Collateral Advantages**

105. Al Nabhani (2012), highlights the need for a regional co-operation plan to counter Somali based

piracy, and summarises that: “The affected countries need to put their hands together in order to stop this problem”. Elements of this co-operation are being seen, as indicated in paragraphs 89-103 above. In addition, India has recently given increased emphasis to its regional counter-piracy role and co-operation with other nations operating in the area. Although not stated in Al Nabhani’s paper, regional co-operation of this sort often brings an important benefit that is seldom highlighted – an inbuilt understanding by participants of the social structures in the affected country, structures that have significant potential to be employed in countering piracy, and which participants from outside the region so often struggle to understand. That lack of understanding leads at best to failure to employ those structures effectively or, at worst, alienates the host. An example would be trying to impose a Western solution to a very non-Western situation. Nevertheless, progress still relies on political will to address the problem, and this is not always evident in a region’s Port and Coastal States.

**Deduction:** Regional solutions to a piracy problem have the advantage that they may be enduring after other contributors from outside the region have moved on to the next problem. They also bring together participants with a greater understanding of the social structure in the nation affected and, when appropriate, can therefore employ these structures to counter potential or actual piracy activity.

### Capacity Building

106. **Principles.** For nations and regions that lack the resources to develop their own counter-piracy capabilities, capacity building is essential if they are to assume the necessary level of capability and responsibility for their own maritime security and for law enforcement ashore. At the start of 2011, the IMO (IMO, 2011d) adopted an anti-piracy action plan with six objectives, of which Objective 5 specifically addresses capacity building: “To assist States to build capacity in pirate-infested regions of the world, and elsewhere, to deter, interdict and bring to justice those who commit acts of piracy and armed robbery against ships”. But capacity building is not without its risks, and one working group member reports instances of pirates subsequently being found to have attended courses being run for maritime security forces!

107. **Indian Ocean.** In a January 2012 meeting between the UN Secretary General and the newly appointed Secretary General of the IMO, both agreed that capacity building in Somalia and neighbouring countries should be enhanced through cooperation between the IMO and UN, UN specialized agencies and other relevant international organizations. This initiative will build on IMO’s existing capacity-building activities under the DCoC (IMO, 2012a).



108. *West Africa.* Following a UN assessment team's visit to the Gulf of Guinea in late 2011, a UN official (United Nations, 2012b) highlighted the fact that:

The resources at hand are inadequate and the region lacks a harmonized legal framework in the field of maritime security. This, in turn, can undermine effective cooperation to initiate and implement joint and timely anti-piracy activities. While welcoming the support provided by members of the international community to Gulf of Guinea countries to strengthen their maritime security capacities, he stressed the need to do more in the face of the deepening threat, significant logistical support being required, in order to bolster national and regional maritime capacities.

109. There is already a range of capacity building initiatives in place in the Gulf of Guinea, involving a diversity of donor nations and organisations. These include the US and other nations' Africa Partnership Station initiative, as well as the Gulf of Guinea Guard. National contributions cover the full spectrum from training, to the provision of patrol craft.

**Deduction:** The Somali situation, where the ability of the national government to enhance its security capability is limited, highlights the value of a top level (eg, a UN agency) co-ordinating body for capacity building. In contrast, in West Africa and South East Asia, the national governments are more able to engage with and, where necessary, regulate the activity themselves.

**Deduction:** Building the capability to maintain the rule of law at sea and on land must be matched when necessary by capacity building of the legal system. Unless the legal system is equally developed, the improved ability to apprehend the pirates and their supporters will not be matched by the ability to try them and punish those found guilty.

110. *South East Asia, the Caribbean and Latin America.* Despite the apparent stability and economic prosperity of the South East Asian nations plagued by piracy, capacity building has still been required in countries such as Indonesia and the Philippines, as has encouragement for some countries to take practical actions. In the Caribbean, as already highlighted, capacity building related to countering the drugs trade and improving regional security also appears to have contributed to suppressing piracy, even if it is not directed specifically at a potential piracy problem.

**Deduction:** Piracy is a threat to maritime security, and operational responses should therefore be part of the maritime security strategy on a national, regional and global basis. This wider benefit needs to be understood and taken into account when investment decisions related to maritime security are being



made, and when capacity building is being planned.

**Deduction:** Capacity building support needs to result in national/regional (or even provincial) structures that can be sustained by the national or regional authorities as appropriate. It should not result in long-term dependency on donor/supporting nations.

### Catch-and-Release

111. The legal and governance module report sets out the detail of the reasoning behind the catch-and-release policy being employed by a number of nations with naval units in the Indian Ocean. In short, it results from: an unwillingness among some nations to assume the burden associated with prosecuting pirates once captured; the potential for captives to claim asylum in the holding country; and, concerns about the ability to prove the piracy charge because of the difficulties involved in gathering evidence that will stand up in court. Without such evidence, the alleged pirates could themselves to have been kidnapped! The result is the practice of releasing the suspected pirates, having first destroyed their equipment, but leaving them enough fuel, food and water to reach the Somali coast. In a country with a shortage of pirate volunteers, limited access to weapons and other supplies, and poor shore support, this approach could conceivably work. In Somalia's case, none of those conditions apply. Catch-and-release may thus prevent an act of piracy in the short term, but it does not prevent the return to sea of the same personnel once they have re-equipped. In the case of child pirates, the practice is also in contravention of UN legislation on children and crime (below). Catch-and-release is therefore a flawed policy that is no more than very short-term threat reduction.

112. *Asylum.* Pirates taken onboard a warship would not have a right to claim asylum or refugee status under international law, although the State of the warship may, as a matter of national law or policy, offer temporary asylum to individuals who are at risk. Both Canada and the United States have expressed a legal opinion that mere presence on board a warship does not grant grounds for making a refugee claim (US Navy, 1995, p 3-2). As long as refugees are not returned to the place from which they fled, the apprehending State is not specifically obliged to grant them refugee status and all that that entails under its national law. This interpretation would certainly appear to remove the risk perceived by some that asylum might be sought, but does not address the will of apprehending nations to prosecute the alleged criminals, whether for imprisonment in the prosecuting country or for transfer to another nation. Nor does it remove the risk that asylum might be sought in the country in which the

prosecution is being conducted or prison sentence served.

**Deduction:** The resolution of factors preventing the capture, transfer where appropriate, and trial of suspected pirates is essential to complement more traditional responses such as naval deployments and development aid

### Implications of Youth Involvement in Piracy

113. **Legal Basis.** The UN Convention on the Rights of the Child, states that a child is anyone under the age of 18, and this is reconfirmed in the International Labour Organization's (ILO) Convention 182 for the elimination of the worst forms of child labour. The employment of children in criminal activities is considered a "worst form of child labour", and piracy is an "international criminal activity", thereby making it an international responsibility to address the problem. ILO member States (183 in total) "which have not yet ratified Convention No. 182 must, without being bound by each and every one of its provisions, still gear their policies towards the effective abolition of child labour" (ILO, 2000). The Optional Protocol on the Prevention of Children in Armed Groups (2002)(United Nations, 2000), which accompanies the Convention on the Rights of the Child, emphasizes that armed groups can voluntarily recruit children between the ages of 16-18, but that they must have written consent of the parent/guardian, and cannot be used on the frontline. Using children as pirates therefore violates a number of children's rights. The Convention on the Rights of the Child (CRC), which came into force in 1990, holds that "States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities." Using children as pirates also violates the International Covenant on Economic, Social and Cultural Rights Article 10 (3.), which states "children and young persons should be protected from economic and social exploitation." (Hurlburt, 2011, p.26).

114. **Counter-Piracy Implications.** The UN endorsed classification of a child as anyone under the age of 18, therefore poses a legal problem for those who capture pirates, whether at sea or on land, particularly if a catch-and-release policy is being followed. Returning "children" to a boat with other pirates is in contravention of the responsibility to protect them from economic and social exploitation. It also returns them to a criminal activity, which is one of the activities defined as a worst form of child labour. It could be argued by defenders of the policy, that it is difficult to prove an individual's age, but this would certainly be hard to support in the case of pirates as young as 11, as was the situation

when the Indian Navy captured 61 pirates in March 2011. Twenty five of those captured were suspected to be under 15 years of age, and four of them were judged to be around 11 years old (Pandit, 2011). However, it must be understood that it is adults who use children, and opportunities to stigmatise adults who do so may be a useful factor in reducing the recruitment of youth into piracy. Apprehending the “youth/children” who are employed by adult pirate gangs does not adequately address this situation, which must be resolved on land. Children are also plentiful in each of the areas under consideration, and are often viewed as expendable. From an operational response perspective, there is therefore a need to detain the children in conditions that ensure compliance with the CRC.

**Deduction:** The presence of those under the age of 18 in pirate gangs poses a legal problem to the application of operational responses to piracy, especially for international forces at sea. Although stopping children from becoming pirates requires a socio-economic solution, it should also be taken into account in operational response planning and conduct. Practices such as catch-and-release as currently exercised fail in this respect, because they place children back into a criminal (“worst form of child labour”) environment, and should therefore be re-examined.

### Ship Protection Measures

115. The International Ship and Port Facility Security (ISPS) Code (IMO, 2002) is the fundamental international security regime for ships on international voyages and for the port facilities that service them. The Code describes an approach that guides those responsible for the management of security through how to organize controls so that the vessel or port is operating at no more than an acceptable level of residual risk. The Code came into force on 01 July 2004, and all Contracting States to the Safety of Life at Sea Convention are expected to have enshrined the ISPS Code into their relevant national laws, regulations, rules or other measures (requirements). Given the time that has passed, Contracting States are also expected to have had reasonable time to ensure that those various requirements are being adhered to by those that the affect.

116. Under the ISPS Code, ships are expected to have identified critical areas and to have conducted a Ship Security Assessment, essentially a Threat and Risk Assessment, intended to prevent a range of undesirable acts or conditions. They are expected, and are in fact regulated, to ensure that they have developed a credible plan and have put that plan put into force on board the vessel. These are both conditions associated with the mandatory requirements defined in Part A of the ISPS Code and, consequently, can be reasonably believed to be consistently applied in laws and regulations from all

Contracting States. Those that fail to do so are also identified as having failed to meet mandatory requirements. This identification is often achieved through inspections coordinated under Port State Control regimes, and has a detrimental effect on the ship, the owner / operators and, if the Flag State is determined to have failed in its oversight, on the Flag State (in terms of blacklisting of the state or its ports).

117. The application of the ISPS Code has posed significant challenges due to varying interpretations of its content. Sound security doctrine requires that assets (such as ships) be protected consistently at a level appropriate for the risks that they face. This would support an interpretation that a ship passing through a HRA would be expected to maintain an appropriate security posture, and that the plans that define those measures would have been developed taking into account known threats and risks along the ship's planned route. Another interpretation, including amongst certain regulators, is that the ISPS Code is intended for periods where the ship is near to port infrastructure. The resulting discrepancy has led to lack of clear direction, which has been interpreted by some States as allowing an administrative approach to security that tends to apply only when the ship is in port or well inside territorial waters.

118. Similarly, there would appear to be an issue in terms of how the IMO guidance is handled within the industry. This relates directly to the development and dissemination of guidance material. While the ISPS Code, enshrined within SOLAS and the laws of various Flag / Contracting States, is reasonably considered to be mandatory, this does not apply to all guidance material. Certain forms of guidance such as BMP might actually be better defined in terms of providing options for meeting the requirements defined in the SOLAS / ISPS Code, if appropriate to the operations of the vessel and the risks to personnel.

119. At least a significant proportion of the vessels seized by piracy were certified as being ISPS Code compliant. Given that the Code addresses very similar outcomes such as preventing unauthorized boarding, gaining access to restricted areas and preventing the entry of unauthorized weapons, and that the threats faced by vessels in the HRA are well defined and communicated, serious questions are being raised by some in the security business about whether or not the Code is being applied in practice or is being treated as an administrative certification regime. Similarly, it is noteworthy that the BMP4 has been allowed to function as specific and prescriptive guidance rather

than providing options to address current challenges. The result has been the erosion of the structure of the ISPS Code by reducing the onus on certain groups to conduct proper assessments of the threats, vulnerabilities and risks to the vessel and its crew.

**Further Work:** In order to assess the degree of implementation of the ISPS Code, to examine the Flags that pirated vessels were flying when taken off the coast of Somalia, and further examine the respective national maritime security regimes based on the ISPS Code.

**Deduction:** As the situation evolves, the IMO should take steps to reinforce the security requirements set out under the SOLAS, ISPS and the Safety Management Codes. It should also strengthen its role of providing guidance (such as BMP) with respect to options that, dependent upon the specific operation and design of the vessel, are intended to assist those involved in dealing with specific conditions and circumstances but not to create regulation through other means. This approach would reinforce existing requirements (as opposed to creating new ones) and would assist the IMO in encouraging certain States to address the issue of security more thoroughly.

120. **Recent Developments.** Two key developments have marked the shipping industry's recognition of their need to assume at least some of the responsibility for the protection of their vessels. The first is the implementation of the BMP guidelines for use in the Indian Ocean HRA. These are the result of collaboration across the industry and beyond. The second is the growing practice of embarking armed guards (whether PCASP or VPD). Both became necessary as the maritime community recognised that maritime policing units, whether indigenous or deployed to the region, could not achieve the force levels necessary to prevent piracy in the Indian Ocean, and that wider measures were therefore required. Although some have wholly embraced the employment of PCASP, concern and hesitation are still evident in many areas, including the IMO and among Flag States. Both initiatives have been highlighted by events off Somalia, but their principles are equally valid in any high-risk piracy area, and have been practiced in some form for many years in areas such as the Gulf of Guinea and South East Asia.

**Deduction:** BMP were formalised because of efforts to defend ships against piracy attacks in the Indian Ocean HRA, although some originated from efforts to counter piracy in South East Asia and other areas. Their principles are therefore equally relevant to other piracy risk areas, and it is thus appropriate to emphasise their relevance worldwide, rather than just in response to the Somali threat. The details of which measures should be implemented in individual ships would need to be determined by strengthened and more closely regulated risk/vulnerability assessments. Means of monitoring compliance would also need to be formalised, and could perhaps involve Port State Control inspections

as already highlighted.

121. **Shipping v Fishing.** In addition to using BMP and PCASP, some vessels are re-routing in order to reduce the time spent in the open ocean portion of the Indian Ocean HRA. Such measures increase the pirates' need to use motherships with extended ranges, and also put the vessels concerned more under the umbrella of Indian surveillance and maritime policing support. However, where this is being achieved by routing closer to the coast of India, for example, it brings with it the increased likelihood of interaction between merchant ships and coastal fishing activity, and an associated danger of collisions and Search and Rescue incidents which place a further burden on the resources of the coastal state. As a result of rerouting closer to the Indian coast, between January and March 2012, there were four incidents reported to the ReCAAP ISC (ReCAAP, 2012a) when fishermen were mistaken for pirates, and there are believed to be many more that are not reported. Of those that have been reported, the most publicised was the incident involving *Enrica Lexie*, when military personnel onboard are alleged to have fired at and killed two fishermen onboard what they believed to be a pirate boat.

**Deduction:** When re-routing is considered, processes need to be in place to make Masters, PCASP/VPD and government forces aware of the nature of activity in the unfamiliar coastal shipping lanes in order to reduce the risk of over-reaction to routine, legitimate activity. Indigenous users of the same waters should also be made aware of the changes to shipping patterns, so that they understand the added risk of being mistaken for pirates. ReCAAP contributed to this understanding in June 2012 when they published a special report on “Fishing Activity of The South West Coast of India” (ReCAAP, 2012b)

122. **Best Management Practice Guidelines.** Guidance on Best Management Practices (BMP) were developed by the International Chamber of Shipping/International Shipping Federation and other shipping industry organisations, in cooperation with naval authorities, “in order to help companies and ships avoid becoming victims of piracy in the Gulf of Aden, off the Coast of Somalia and in the Western Indian Ocean” (International Chamber of Shipping, 2011). They contain three basic principles – Register at MSCHOA, report to UKMTO and implement ship protection measures (SPMs) - and highlights that not all SPMs identified will be applicable to all ship types. It is widely quoted that the added layer of defence provided to some vessels by PCASP has so far prevented the boarding of any such vessels by pirates. The same may be true of vessels where BMP SPMs have been implemented to the degree determined necessary by a properly conducted risk assessment. This detail is not currently



captured in piracy incident reporting, and could anyway be misreported by those who may wish to avoid a contested insurance or charter party claim. Even if reported, assumptions based on such data would therefore have to be made with that caveat.

**Deduction:** Reporting of attempted attacks by pirates should include a requirement to indicate which BMP measures were implemented at the time of the attack, and whether PCASP were embarked. As much of this information as possible should also be collected from vessels that are pirated, recognising that this will be particularly difficult in the case of vessels that are hijacked. Increased reporting in this way will require a culture shift from some areas of the industry where there is reluctant to report incidents for the reasons already highlighted.

123. **Privately Contracted Armed Security Personnel (PCASP).** A far more controversial development than the use of BMP, has been the recent growing practice of embarking PCASP in ships transiting a HRA. As already highlighted, not all are in favour of such a development, but the gradual move by the industry to employ PCASP eventually led to guidance from the IMO Maritime Security Committee (MSC) to States on the use of PCASP (IMO, 2011e) and on their selection and employment (IMO, 2011f). However, the MSC circulars make it quite clear that the IMO does not endorse the use of PCASP. Instead, they state that the carriage of such personnel and their firearms remains subject to Flag State legislation and policies, and that it remains a Flag State decision about if, and under which conditions, they will be authorised. It is also stressed that PCASP are an enhancement to other BMP measures, and not an alternative. In terms of the incentive to embark PCASP, different types of insurers have responded with different degrees of enthusiasm. Nevertheless, a report in 2011 (Catlin Asset Protection, p.120) suggested that:

Underwriters will look for this protection by PCASP for the most vulnerable vessels, generally bulkers with a freeboard of no more than 5 metres and speed of less than 13.5 knots or tankers with no more than 6 metres of freeboard and a maximum speed of less than 14 knots.

Underwriters will also take this precaution into account in rating higher and faster ships.

### Armed Guards – Issues

124. **Flag State Issues.** The fact that IMO guidance places the responsibility for decisions about PCASP employment with the Flag State has both positive and negative implications. On the positive side, it makes the associated issues ones that the governments of Flag States should address, and there



has been clear evidence of engagement in countries such as Germany, the UK and US. Nevertheless, Flag States have still taken a variety of views about the carriage of PCASP in ships under their flag. These range from “No legal disposition allowing the existence and the use of weapons on board” (eg, Portugal) (International Chamber of Shipping, 2012) to the USA Department of State’s statement in July 2011 “insisting” that all US-flagged vessels carry security personnel, whether armed or unarmed (cited in Oceans Beyond Piracy, 2012c). The shipping industry is therefore faced with a range of Flag State positions, including instances of limited Flag State oversight of the use of PCASP, and the option to choose an Open Registry that does not bring with it an appropriate degree of regulation. It is also true that the choice of Flag is driven by a range of factors, of which piracy related issues are but one. Although related to the movement of destabilising commodities such as narcotics and arms rather than piracy, a January 2012 Policy Paper (Griffiths and Jenks, 2012) highlights weaknesses in the vessel registration system. It draws attention to the fact that “the rigour with which the norms and standards are implemented and enforced can vary widely between different registries”, and citing examples of the ease of re-registering ships even when the vessels were subject to UN Security Council resolutions and subject to national sanctions.

125. To put the Open Registry issues in context, nearly 70% of the world’s merchant fleet by tonnage is not registered in the country of domicile of the owner. Almost half of this tonnage (ie 30-35% of the world tonnage) is registered in the open registries of Panama and Liberia. Of the two, Panama neither recommends nor prohibits the presence of security personnel and does not place any prohibition on the presence of weapons onboard, and Liberia does not place any prohibition on the presence of security personnel or weapons onboard (International Chamber of Shipping, 2012).

**Deduction:** All registries should work to the same demanding criteria in terms of the audit trail required to prove legitimate ownership of a vessel before it is allowed to be registered.

**Deduction:** To reduce the risk of the inappropriate practices, including the use of disproportionate force by PCASP, Flag States should progress the adoption of internationally agreed codes and standards of practice for PMSC/PCASP employed to protect ships. This agreement should be collective to the greatest extent possible, and include all Flag States. Progress in this area was made during the IMO MSC’s 90<sup>th</sup> session in May 2012.

126. *Port and Coastal State Issues.* The employment of PCASP also raises wide-ranging issues for Port and coastal States, not least national legislation concerning the presence of firearms on merchant

ships in their waters. Some States do not permit their presence at all, while others require advance notification of the weapons, ammunition and personnel embarked, and for weapons and ammunition to be sealed in a secure compartment while the ship is in waters under their jurisdiction. As has already been identified, the desire of Port and Coastal States to control the use and availability of weapons in their waters is understood, but such control imposes an obligation for the State concerned to uphold its sovereignty by providing the security necessary to reduce the risk of ships being attacked to an acceptable level. Port State restrictions also affect the ability of PCASP to embark and disembark legally with their weapons in many ports. In recognition of this problem, the Multinational Security Business Group (MSB) is working with Coastal States on a standard solution to the logistical challenge of “the use and movement of small arms and equipment used in the protection of merchant vessels sailing high risk waters” (MSB, 2012). The IMO MSC also provided guidance to Port and Coastal States on the use of Privately Contracted Armed Security Personnel On Board Ships in the High risk Area (IMO, 2011g). In the meantime, the challenge for PMSCs is being partly overcome in the Indian Ocean, for example, by the introduction of floating armouries (Hourelid, 2012). But this development in itself raises a number of issues concerning the regulation, security and operation of the vessels being used as armouries, not least the fact that they are flagged under open registries, some at least of which provide little oversight of their activities.

**Deduction:** The shipping industry’s ability to employ PCASP would be simplified in operation and regulation by the adoption of regional or, preferably, internationally agreed legislation/arrangements. Ideally, this would relate to the embarkation and carriage of weapons and ammunition in commercial and recreational vessels while in waters in which a Port State has jurisdiction but, more realistically, may need to settle for agreeing guidelines for floating armouries for example.

**Deduction:** A Port or Coastal State’s desire to control the availability and use of weapons by PCASP on ships in waters under its jurisdiction is understandable. But, as a result, States must recognise that such legislation then places on the Port or Coastal State part of the burden of responsibility to provide effective protection against attack on vessels in its waters.

**Deduction:** The issues associated with the use of floating armouries need to be addressed as a matter of urgency, either in policy or law, and probably through the IMO or UN.

127. **Industry issues.** The primary concerns of the shipping industry are to be able to undertake its commercial operations at an acceptable level of risk to crews, passengers, cargoes and vessels, at an economically acceptable cost, and in a timely manner. In terms of risk and the employment of armed guards, this includes the need to be able to hire personnel who are trained and experienced to the level

necessary to conduct the task effectively while protecting the owners, operators and Master of the ship from the risk of liability arising from the PCASPs' conduct of the task. In addition, insurers are driving certain aspects of the operational response to piracy because the insurance industry sets the premiums for ships transiting HRAs, monitors the implementation of security measures (including armed guards) and offers premium discounts for ships using armed security teams (thereby at least acknowledging the utility of PCASP if not encouraging the growth of the private maritime security industry and carriage of armed guards). In sum, the maritime insurance industry plays a significant role in the costs associated with piracy and in the dynamics of the operational response, but further work is required to understand the relationship better.

**Deduction:** If the embarkation of PCASP, or the employment of commercially contracted escort craft is necessary to achieve safe operations, the shipping industry must be provided with recognised standards against which to judge the quality of the armed security service provider they are seeking to employ.

**Further work:** To identify the relationship between the insurance industry's position and operational responses.

128. *Potential Escalation.* Many observers have voiced concern that the implementation of enhanced SPMs such as those in the BMP guidelines, and the embarkation of PCASP in particular, will lead pirates to adopt a more violent approach in order to gain access to the target vessels. To date, although boardings and kidnappings can certainly be violent, the feared escalation as a reaction to the increased use of SPMs has not been observed, and the measures appear to have contributed significantly to the reduction in successful attacks in the Indian Ocean at least. In the case of Somali piracy, where ransom of hijacked crews is the pirates' aim rather than ransom or resale of the cargo, it may also be counter-productive for them to increase the risk of injury or death of crewmembers in their attacks. To do so would be to negate the benefit of achieving the boarding in the first place. However, increased security in some vessels will inevitably drive the pirates to focus on others that are less secure, or more vulnerable by design. This further reinforces the need for all vessels to be subject to threat, vulnerability and risk assessments, for the application of the appropriate elements of SPMs, including BMP and PCASP in High Risk Areas to be encouraged, and to achieve a higher level of co-operation with maritime policing authorities in the relevant region.

**Deduction:** The implementation of SPMs such as those identified by BMP, and the embarkation of

PCASP, appears to have been a significant contributory factor in the reduced number of successful attacks in the Indian Ocean. Nevertheless, such measures must be seen as a part of the overall response to counter piracy, and should be co-ordinated with the actions of military forces in the area in order to allow the relevant commander to allocate forces to best effect.

**Deduction:** The level of violence that the pirates are willing to use in attempted boarding will be influenced by their own risk tolerance and by whether the crew or the cargo is the objective of the attack. The pirate's business model may therefore determine the effectiveness of the employment of PCASP and the risk of such employment leading to an escalation in the level of violence used by the pirates.

129. **Additional Risks.** Although an attack against any type of ship is highly undesirable, the possibility of greater violence and longer-range weapons being used by pirates raises additional concerns. Because of the greater risk of fire and hull damage, the risk of environmental damage becomes increasingly likely if pirates use more force to achieve a successful attack. In addition, if crew and passenger ransom rather than cargo or vessel theft is the aim, the risk to cruise ships also increases, and cruise ships have not been immune from attack. These two issues in particular, suggest a potential need to achieve a greater standoff distance (lateral separation) between a vessel and potential pirates than is currently the practice in order to increase the time in which effective defensive measures can be taken. This in turn raises the defensive versus offensive question as regards PCASP roles, a question that will be addressed in paragraph 132 below.

**Deduction:** Any emerging need to keep potential attackers at greater range from a target introduces a new range of issues about defensive v offensive roles of PCASP.

130. **Regulation and Training.** Despite the apparent success of the use of armed guards, there are also drawbacks such as the potential for, and actual, disproportionate use of force and of injuring or killing fishermen mistakenly identified as pirates. The issue of whether self/industry or external regulation is appropriate is also the subject of ongoing discussion. There is therefore still significant work to be done to address the regulation and training of PMSCs and their PCASP when operating at sea. Some of these may also apply to Vessel Protection Detachments consisting of armed forces' personnel. The International Code of Conduct (ICoC, 2012) for Private Security Service Providers was established in order to set industry standards with which its members comply. Although originally designed for security companies operating on land, it has provided a baseline standard to which many PMSCs operating in the maritime domain relate, but is not binding, and carries with it no enforcement

mechanism. Beyond that, a number of organisations are engaged in the task of industry representation and moving the process of training and regulation forward. The Security Association for the Maritime Industry (SAMI) is a non-governmental organisation that uses being a signatory of the ICoC as its entry point for companies seeking to undertake the SAMI accreditation programme. The accreditation programme itself has the backing of a wide range of stakeholders within the shipping industry, and has been submitted to the IMO for approval (SAMI, 2012). It bases its standard on the IMO MSC's guidelines for the selection and use of PMSC's (IMO, 2011e and 2011f). Membership involves no more than being a signatory to ICoC and paying a fee, but the subsequent accreditation process for PMSCs involves three stages, including an on-site audit. Meanwhile, the focus of the International Association of Maritime Security Professionals (IAMSP) is also geared towards the maritime security industry. It was founded by several companies within the industry in order to establish "standards of best practice" (IAMSP, 2012a), and is also a supporter of ICoC. The organisation has been actively involved on all four elements (working and technical) with respect to the ICoC, has developed and made available training associated with duty of care, use of force, human rights and legal elements of the maritime industry, and is actively introducing a range of vetting procedures ranging from personal and corporate vetting, to vetting for technology. However, establishing such standards is not necessarily an issue to be left to the industry alone, as is recognised by a number of states. A UK House of Commons Select Committee (Foreign Affairs Committee, 2011) stated that:

We conclude that it is vital to ensure that armed guards are properly trained and deployed in sufficient numbers. We urge the Government in its response to this report quickly to bring forward proposals for a national regulatory structure (whether governmental or industry based self regulation) that would provide a measure of quality assurance".

131. **Progress.** As an example of where progress is being made, an announcement was made at the Inaugural Conference of the Security in Complex Environments Group (SCEG) in the UK in March 2012, that standards designed to ensure high levels of quality and professionalism of all UK Private Security Companies operating in a maritime environment would be in place before the end of 2012 (Advance, 2012). The draft standards will be submitted to UK Government Ministers so that the

government can participate in the selection of independent certification bodies that will audit individual private security companies against the standards, when they are finalised<sup>20</sup>. Elsewhere within the sector, in March 2012, the IAMSP produced comprehensive guidance on the Use of Force (IAMSP, 2012b) and the Baltic and International Maritime Council<sup>21</sup> (BIMCO) published the GUARDCON “Standard Contract for the Employment of Security Guards on Vessels” (BIMCO, 2012a). The former is not intended to cover all aspects of the Use of Force, but to address the key points from “a broad and international focus”. The latter provides ship owners and PMSCs “with a clearly worded and comprehensive standard contract to govern the employment and use of security guards, with or without firearms, on board merchant vessels”. The associated release by BIMCO acknowledges that the organisation “would not like to see the use of armed security guards on ships becoming institutionalised, but recognises that while the industry awaits a more permanent long term solution, armed guards currently provide an effective deterrent to piracy attacks”. Both of these documents represent progress although, as stated by the IAMSP but equally true for both, they are not obligatory and are not monitored. In April 2012, BIMCO made a further announcement that they are working to establish an ISO standard for the accreditation and certification of PMSCs providing PCASP to ships (BIMCO, 2012b). In May 2012, the President of the IMO announced the intention to launch a working group that will focus on global standards for PCASP in more general terms (IMO, 2012b). The International Organisation for Standardisation will report to the MSC in November 2012, and produce a set of performance standards for Member States to approve, thereby giving Flag States the basis for embodying those standards in their national legislation.

**Deduction:** Independent efforts to provide a baseline standard of experience, training and service for PCASP are encouraging. Unless a single, or at most a limited number of internationally agreed standards and processes for regulation are established, shipping companies will still be presented with

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<sup>20</sup>. The Security in Complex Environments Group (SCEG) is a Special Interest Group within ADS (Advancing UK AeroSpace, Defence & Security Industries). It brings together private security companies operating on land and sea around a common agenda of raising standards and introducing robust and independent accreditation for companies operating in complex and high-risk environments. ADS was appointed by UK Ministers as the government’s industry partner for the regulation and accreditation of private security companies in June 2011, and an announcement was made in Parliament.

<sup>21</sup>. BIMCO is the largest of the international shipping associations representing ship-owners controlling around 65 percent of the world’s tonnage and with members in more than 120 countries drawn from a broad range of stakeholders having a vested interest in the shipping industry, including managers, brokers and agents.



PMSCs complying with one or more of a range of standards. This will only go part way to ensuring the necessary quality of service.

**Deduction:** There is a risk that the growing number of organisations addressing training, regulation, audit and certification of PMSCs, will dilute the impact of their efforts. Bringing these organisations closer together is more likely to provide a definitive way ahead, but the different positions being taken by some of the leading organisations suggests that a governmental/international (eg, IMO) lead will continue to be required.

132. *Defensive v Offensive.* Debate about the employment of PCASP also raises the question about whether they should be defensive, that is simply there to protect the ships on which they are embarked, or should adopt a more offensive role and conduct activities such as the wider suppression and apprehension of suspected pirates - roles which have traditionally been the responsibility of government forces. As Spearin points out (2010, pp.61-62) international law does not permit PMSCs to conduct offensive action against pirates. He cites Article 107 of UNCLOS (United Nations, 1982) which states, “A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.” Spearin goes on to state that the UNCLOS definition of piracy as “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.” means that only defensive measures are permissible, and that offensive action may itself be deemed to be piracy. The distinction thus appears to be quite clear, and one that is generally supported by the industry. In contrast, the introduction of a Convoy Escort Program (CEP) in the Indian Ocean announced for the summer of 2012 (Hellenic Shipping News, 2012), raises a number of offensive v defensive questions. In particular, the rules for the use of force issued to the crews operating the boats will need to be quite explicit about the threshold at which defensive actions become offensive, and these will need to be applied scrupulously. This will be a challenge in a fast moving scenario in a sometimes cluttered (many and varied vessels) marine environment, and brings with it the inherent risk of operating beyond the legally acceptable limit. In addition, another PMSC’s announcement (Typhon) that its own escort vessels will employ an exclusion zone around the ships being escorted (Sibun, 2012), introduces a number of additional issues. These include the legal basis on which commercial units can enforce this zone when such enforcement runs counter to the normal rights of vessels on the high seas, including the provisions of the anti-collision regulations.



**Deduction:** The current practice of employing PMSCs/PCASP in a defensive role, emphasises the advantages of/need for co-operation between commercial and government forces if assets are to be deployed to provide the most effective support to vessels. This is particularly so when government forces, whether indigenous to the area or international, cannot provide enough resources to enforce maritime security across the whole of the risk area.

**Deduction:** The planned introduction of escort craft on a commercial scale highlights the urgent need for clarification, and possibly also regulation, concerning the legal extent of their role. Means of deconflicting (worst case) or co-operating (best case) with maritime policing units/forces will also need to be considered and implemented.

133. **Potential Abuse.** A potential downside of the use of PCASP is the risk that the unethical will use armed detachments, ostensibly embarked for ship protection, as a cover for other activities. Such was the suspicion in March 2012 when the Russian tanker *Iman* arrived in the Syrian port of Tartus with what were declared to be PCASP, even though there were reports that the personnel were actually part of an anti-terrorist unit (Radia, 2012). This is one aspect that is unlikely to be overcome by international regulation – the unethical will always find a means of acting unethically to achieve their goals. Such apparently isolated incidents do run the risk of bringing the PMSC’s contribution to maritime security into disrepute.

134. **Military Detachments.** Some nations such as Thailand, Iran and Italy, are already using Military Vessel Protection Detachments (VPD) in vessels registered under their flags – small military teams embarked for the purpose of ship protection, and under national control, but only armed if the Flag State’s national laws permit this. The Netherlands is another example of a country following this practice, and Dutch military security teams travelling on board merchant vessels will be using the port of Singapore as their base, including for the storage of weapons and ammunition (Netherlands Ministry of Defence, 2012). Military personnel should be trained and regulated, and operate under nationally approved command and control arrangements (including for Rules of Engagement), rather than industry/company derived rules regarding the use of force. Despite this, the alleged shooting of two Indian fishermen by an Italian military team embarked in the *MV Enrica Lexie* in February 2012, threw the whole issue of the employment of armed personnel and their training and experience into a new perspective. It has never been claimed that all armed forces’ personnel are equally capable, but the incident raised a number of questions. These included concerns about the prospects of other similar instances occurring where less well trained teams are embarked, particularly if the use of lethal force

on the open ocean can subsequently be disguised or covered up? In addition, the rotation of such personnel (normally larger teams than used by PMSCs), combined with the number of vessels involved, will create a very significant training and manpower burden for the armed forces of the nations involved. There are also other challenges such as the requirement to provide medical support, which adds to the size of the team, liability issues in the event of collateral damage, and issues concerning the movement of government forces personnel and weapons from one State through another. Even if the cost of providing the teams is recovered from the hirer, most western style armed forces are currently cutting back, and therefore have fewer personnel to draw from anyway. Finally, mistaken use of lethal force by a VPD immediately becomes a national diplomatic and legal problem, a risk that some nations will choose not to incur.

**Deduction:** Although some, including some Flag States, prefer the use of VPDs to PCASP, there are still issues to be resolved concerning training, experience and availability of personnel. As with all such considerations, not all providers are equal in terms of training, experience, and application of international law. A common standard of performance for vessel protection should therefore be established and maintained by those that can demonstrate verifiable security and asset protection knowledge. This standard would apply to any person, regardless of employment status, involved in this effort, including VPDs.

135. *Asian Shipowners' Forum Initiatives.* An alternative approach to PCASP has been proposed by the Asian Shipowners' Forum (ASF) (InterManager, 2012) whose members called for a United Nations resolution by which the UN would sponsor and manage armed personnel on board ships sailing through pirate-infested waters. As with VPDs, this would involve very large numbers of military personnel, with all the associated implications highlighted above, and is therefore unlikely to be practical. The ASF's statement said:

If adopted, the ASF would expect armed military personnel sponsored and managed by the UN to provide much needed protection to merchant ships and their crews in the Gulf of Aden and the Indian Ocean. "The key idea is to use floating bases on sea to serve as embarkation or disembarkation points for these military personnel

**Deduction:** This additional proposal by the ASF has not been progressed, but it indicates the unease felt in some areas of the shipping industry concerning the practice of employing PCASP. It reinforces the need for further work to determine the feasibility and practicality of the various options, particularly resolution of the issues associated with regulation, accreditation and inspection.

136. **Summary.** As *Oceans Beyond Piracy* (2012c) sums up: “There are many legal and logistical challenges to the use of armed guards aboard ships that have not yet been resolved:

- a. Documents such as the International Code of Conduct for Private Security Providers, the Montreaux Document (both designed for land operations in times of conflict) and MSC. Circ. 1404 suggest protocol for private security teams, but have no legal status and no standardized training or certification to ensure compliance with guidelines.
- b. Currently the regulation meant to ensure quality of the private security industry is weak, making it difficult for ship owners to discern reputable companies offering private security. There is no required reporting of incidents, although it is recommended in all of the guiding documents.
- c. Flag State policies regarding the use of armed guards vary greatly; many policies are not reported.
- d. International navies, IMB, INTERPOL and UKMTO have a neutral or no stance toward the use of private armed security. The IMO considers the use of private armed security to be a Flag State concern. There are varying stances among shipping companies, Flag States and Regional Nations regarding their usage, indicating that this industry is still very new and international bodies are still developing their official policies toward its usage.”

**Deduction:** There remains an urgent requirement to resolve the debate about the need for formal accreditation and regulation of armed personnel conducting ship protection tasks. It is suggested that regulation should be reflected in internationally mandated standards in order to ensure that PCASP and VPDs are trained, equipped and experienced to a standard recognised as being suitable for the task to be conducted. Only in this way will sub-standard organisations be removed from the sector, the shipping industry be assured of the standard of armed personnel contracted, and innocent bystanders not be placed at undue risk by the inappropriate application of force up to and including lethal force. Once these standards are established, audits of their implementation will be necessary. This will not be easy to achieve, as illustrated by the challenges encountered when addressing the issue of private security on land in theatres such as Iraq and Afghanistan.

### **Training and Technology.**

137. Although the use of PCASP has achieved a very high profile when means to deter and defeat attempted piracy attacks are discussed, it is clear that the risk from pirates can be reduced significantly

by the correct application of SPMs, and a growing number of these SPMs involve technology not normally found in merchant ships. Technology is a key component of the “Use of Force Continuum”, which relies on a layered defence and ranges from simple, non-lethal measures such as implementing BMP and showing suspected pirates approaching a ship that PCASP are embarked, to the use of lethal force. There is a wide variety of equipment available to reduce a vessel’s vulnerability, options ranging from the simple, such as razor wire, to the complex, such as the deployment of hand-launched surveillance drones. Adopting some of this technology itself raises questions about a need for regulation, particularly where equipment is being employed to cause injury or death, or could have environmental impacts. Laser dazzlers are but one case in point, and this indicates the need for attention to be paid to this area, as well as to the chance of such equipment falling into the hands of the ill-disposed. Nevertheless, technology has much to contribute to ship protection measures, whether through inclusion in BMP, or through provision of a stand-alone capability, and must continue to contribute to the layered defensive system. However, a key factor that can be overlooked is the training and preparedness of the crew themselves. A well-trained team is a vital part of the layered defence, whereas a poorly trained or unalert team is a liability.

**Deduction:** The use of technology as a means of denying pirates the opportunity to complete an attack, or of defeating that attack, remains as valid as ever. Nevertheless, it must be considered as part of the layered defence required by ships. Training of crewmembers is also a vital part of the defensive system, and must be given appropriate attention.

### Negotiation, Ransom and Recapture by Force

138. **Ransom – Somalia.** The Somali pirates’ practice of hijacking ships in order to ransom<sup>22</sup> their crews and cargo as well as the ship, and the presence of the same method elsewhere, albeit practiced less frequently, has resulted in a new role for negotiators. Time constraints have prevented piracy related negotiation being addressed in this study, and it is a sensitive area that may not be suitable for open discussion anyway. Nevertheless, in terms of operational responses to piracy, it is an area that

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<sup>22</sup> Ransoms are paid by the ship owner who is then reimbursed by property underwriters, that is the underwriters of the hull and of the cargo, neither of which are driven by time issues. Third-party liability insurers, the Protection and Indemnity (P&I) clubs, who traditionally insure for loss of life and injury to crew, play no part in the ransom payments.

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmaff/1318/11062203.htm>

merits further study.

Further work: Study the negotiation process, including the role of the insurance industry in order to understand its relationship with operational responses better.

139. The issue of ransoms is more transparent. A report in early 2012 (Bowden and Basnet, 2012) reported that 31 ransoms were paid to Somali pirates in 2011, totaling just under \$160 million. The average ransom was approximately \$5 million, an increase from the 2010 figure of around \$4 million. Although pirates achieved fewer successful hijacks in 2011 than in 2010, the increased price of ransoms therefore meant that they actually earned more.

140. **Challenges.** Having started the practice of paying ransoms, thereby raising the expectation of financial gain among the pirates, it will be extremely risky to crew members currently being held hostage if ransoms cease being paid at this stage. Nevertheless, an International Pirate Ransoms Task Force created in 2012 is considering options “for preventing the payment of ransoms; options for avoiding the payment of ransoms/alternative strategies to paying ransoms; and options for reducing the size/frequency of ransom payments” (Foreign and Commonwealth Office, 2012). The risk to seafarers is also likely to increase if piracy and terrorism become more closely related because of the more violent way that terrorists normally operate. In addition, if crews transiting the HRA know that a ransom will not be paid for their release, a possible (likely?) impact would be a shortage of crews willing to risk HRA transits, with resulting impact on routing of ships (Cape of Good Hope rather than Suez), and increased costs. However, if pirates elsewhere in the world employ a similar business model in the future, the precedent of paying ransoms should be carefully examined before it becomes accepted practice. It may turn out to be the only option, but should not be assumed to be the default, even if it has been shown to be a practice that is very difficult for governments to control. There is also a potential conflict of interest to consider if a PMSC provides armed guards for ships, but is also involved in facilitating the payment of a ransom. In contrast, the possible opportunity to intercept pirates between the ship and shore as they depart with the ransom should be exploited if circumstances allow.

**Deduction:** The decision to pay ransoms or not has to be balanced against the risk to the well-being of seafarers being held hostage. Once ransom payment becomes a presumption based on previous practice, it will be extremely difficult to change the expectations of pirates. The international position on ransom payments therefore needs careful consideration, and opportunities to turn the practice to

advantage by efforts to track ransom payments as the money passes around the pirates' business chain progressed.

141. **Recapture.** Once a vessel has been hijacked, the only alternative to ransom payments is the recapture of the vessel by force. But this places the crew/hostages at significant risk, as Ploch et al (2011) and many others point out. To date, more seafarers have died as a result of military action being taken to re-capture a ship than have been killed by pirates. Nevertheless, there will be occasions when such action is necessary, and Special Forces detachments need to be available in or close to the theatre of operations if recapture by force is required, and must have access to the relevant ship plans.

**Deduction:** Ship Protection Measures and maritime policing must be sufficient to reduce the chance of a successful pirate attack to an acceptable level. However, should an attack be successful, recapture by force remains an option, albeit at risk both to the hostages in the vessel being recaptured, and in other vessels if pirates take reprisals. The fact that the risk to a crew is reduced if recapture of the vessel can be achieved before the citadel is breached by the pirates indicates the need for the availability of quick reaction forces in the vicinity. However, this is unlikely to be achieved where the geographical area to be patrolled is as large as the Indian Ocean HRA, thereby placing greater emphasis on the need to prevent the attack in the first place.

### Measures of Effectiveness

142. Throughout this work, there has been discussion about what needs to be done, but no mention of how to assess progress towards the desired end-state. Without measures of effectiveness, it is impossible to make an objective assessment of whether counter-piracy actions (be they operational, political, socio-economic, etc) are effective and achieving the desired effect of reducing piracy or, for example, simply displacing it to another area. If effective measures can be determined, they will also create a means by which fluctuations in piracy activities due to factors such as regional instabilities/re-stabilities, shipping routes, changes in national counter-piracy legislation, can be compared.

**Further work:** To determine measures of effectiveness for counter-piracy initiatives



## **LOOKING AHEAD – OBSERVATIONS AND RECOMMENDATIONS**

### **Stakeholders**

143. From the foregoing analysis, it is possible to identify the top-level stakeholders in the fight against piracy, namely:

- a. National and regional governments (excluding maritime policing authorities) in the areas in which pirates operate, and governments of other States affected by the piracy.
- b. Populations in the countries from which pirates operate, and from which seafarers are drawn. This includes religious leaders for example, as well as political rulers
- c. Government forces responsible for maintaining the rule of law, including maritime policing authorities, nationally, regionally and internationally.
- d. Regional and International organisations.
- e. Commercial<sup>23</sup> and non-government organisations.
- f. Seafarers and their families.

144. This stakeholder framework offers a means of grouping issues and actions that need to be considered in any future efforts to counter piracy, and is used in parts VI-X that follow. Many of the issues identified are already recognised, but are not generally brought together in this way and are not presented in priority order. They are generally only listed under the lead stakeholder.

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<sup>23</sup>. Commercial refers to all organisations whose aim is to generate profit through provision of a service, including PMSCs. In the case of the shipping industry, this includes ship owners, ship managers and charterers, the Flag States and the marine insurance industry.



## Part VI – The Operational Responses Required From National Governments and From Society in Order to Discourage or Suppress Piracy

145. This report’s analysis supports the view that the counter-piracy role of governments and civil society is to create the conditions where opportunity, motive and means do not combine to the extent that they make piracy an attractive or feasible way of life. Within the remit of operational responses, there are thus a range of issues and actions that governments and civil society must recognise and act on.

- a. Political will and capability. Recognising that the political will to address the problem must be supported by practical measures, and that even though practical measures may be implemented, the extent to which that can be effective will be constrained if political will is absent. Political will is necessary if an acceptable level of the risk of piracy is to be determined, and the problem is to be addressed effectively. It must be supported by a defined end state and/or termination criteria against which progress in the various lines of operation can be assessed. Where necessary, political will should be bolstered by high-level support from organisations such as the UN.
- b. Understanding the importance of the sea to the economy of a State. Without this understanding, achieving maritime security will not be given the appropriate priority, countering piracy being but one aspect of maritime security.
- c. Recognising the benefit of acting early to discourage or suppress piracy. The longer the problem is ignored, the harder it will be to solve. A predictive model to support the identification of areas at potential risk of developing a piracy problem is an important enabler to acting early.
- d. Establishing and maintaining the governance, law and order necessary to prevent piracy. Until, or unless this is achieved on land, the counter-piracy effort will need to focus on the symptoms at sea, rather than the root causes. Co-operation between agencies/departments is essential if the necessary level of security is to be achieved.
- e. National criminalisation of pirates and their supporting activities. The activities

necessary to counter piracy need to be supported by the appropriate regional and international legislation. Development of such legislation must be flexible enough to keep pace with changing circumstances.

f. Progressing the resolution of border and boundary disputes. Where maritime boundary disputes exist, there is less chance of counter-piracy and other efforts to enforce maritime security being conducted seamlessly, thereby providing security discontinuities that pirates can exploit. Additional emphasis should be given to resolving such disputes in areas where maritime security faces particular challenges.

g. Exploiting national capabilities. Where circumstances allow, and within the caveat of acceptable measures, actions taken nationally are more likely to be enduring than solutions imposed by external players. However, this does not preclude the acceptance of capacity building assistance or external investment, or the involvement of a top-level international enabling organisation such as the UN or its individual agencies such as the IMO and UNODC. The lack of international capability to deal with the piracy problem in large areas such as the Indian Ocean, places greater emphasis on national and regional co-operation, and on issues such as capacity building.

h. Developing ever more effective inter-agency/organisation. Such co-operation on a local, national, regional and international scale is essential in dealing with this form of crime, particularly when it is organised rather than subsistence in nature. This is equally valid whether countering the land or sea-based elements of the business mode, and includes co-operation between State and non-State actors. Without wide and transparent co-operation, efforts to counter piracy will be less than fully effective or, at the extreme, will fail completely. Such co-operation includes the shift from need-to-know to need-to-share information. If agencies act in isolation, it is wasteful of often scarce resources.

i. Working with regional and international partners to develop regional co-operation. Regional co-operation can do much to prevent the spread of piracy, or its movement from one hot spot to another as counter-piracy actions become effective in an area. It also allows cross border pressure to be applied to the pirates' operation. However, to be effective, a basic working level of co-operation between agencies and organisations within each State needs to be

achieved first, and this requires both top down and bottom up effort.

j. Working to reduce corruption. Efforts to prevent piracy can be countered by officials or individuals who gain advantage from the piracy effort. Opportunities to achieve gain in this way can be either direct, such as pay-offs, or indirect, if the individual concerned is a supplier of a commodity required by the pirates. Conversely, reducing corruption can lessen the effectiveness of the piracy operation. Reducing corruption at local, national and regional levels, is therefore an important part of countering piracy.

k. Encouraging social norms that are unaccepting of criminal activity, and working together to make those norms effective in preventing piracy. Using social pressures to discourage or prevent piracy can be an effective tool in areas where such criminality is not a societal norm. This is particularly so if communities are suffering because of pirate activity, for example where fishermen cannot put to sea for fear of attack. An example of such activity is The UN's Office on Drugs and Crime's Piracy Advocacy Campaign (UNODC, 2012) which EU NAVFOR is supporting. It is also a key part of discouraging youth from becoming involved in piracy, and in stigmatising those who exploit youth in this way.

l. Information sharing. Achieving effective international and inter-agency co-operation faces many challenges, not least being the unwillingness to share certain information and intelligence. Efforts to improve such co-operation and information/intelligence sharing therefore underpin the achievement of maritime and land domain awareness and the successful implementation of an effective security strategy, including as it must, measures to counter piracy. At its worst, failure to share can negate the benefit of collecting and analysing information and intelligence in the first place. This requires a strong government lead. Nations should look for examples of best practice, including those developed to counter other forms of organised crime. Some collection, exchange and analysis of information and intelligence may occur within the confines of national or regional boundaries. Nevertheless, the primary mode of operation must be through the efforts of communities of experts that can provide direct, meaningful, reliable and credible inputs to the process, and who can be trusted not to allow economic or political aims to enter into the efforts or, at least, to remain undeclared.

m. Recognising piracy as a form of organised crime. With this recognition, comes an

increased ability to employ appropriate techniques developed from successfully countering other forms of organised crime. These also help to identify the relationship between the business model used by pirates and that used by other forms of organised crime in the region. Identifying the financial flows associated with piracy, and ways to block them, is an important aspect of dealing with piracy itself, as is acting against related money-laundering aspects.

n. Understanding the pirate business model and the specific factors shaping it in any area, country or region. Understanding the business model is essential to the ability to identify where pressure can be applied to best effect in order to break the model and apprehend the criminals. This understanding will also allow informed assessments to be made of the possible evolution of the model when it is put under pressure.

o. Catch-and-release. The practice of catch-and-release is not an effective option, and should cease in favour of mechanisms for bringing alleged pirates to trial. It may well represent a short-term win for the rule of law, but it is not a lasting solution. It also brings the commitment to the overall effort into question, thus having the potential to send an encouraging subliminal message to the pirates, and is in contravention of international legislation regarding the treatment of child pirates.

p. Incident reporting. There is a need to develop comprehensive and easily used national systems for reporting piracy incidents, and for integrating these into a global system with a single top-level focus. Reporting mechanisms need to cater for all potential victims of pirate attack, ranging as they do from small and unsophisticated fishing boats and pleasure craft, to large commercial vessels. A greater proportion of piracy incidents need to be recorded, and accuracy of reporting needs to be improved. Information exchange between reporting centres also needs to be optimised. Until all of this happens, the true extent of the problem will remain hidden, precursors to the development of a major piracy problem will not be identified, and attacks will continue to impact on local communities and have potential to develop into a more widespread problem. In this respect, reporting and recording attacks against fishing vessels is a vital part of the overall picture that is currently under-represented. Post-attack reports should also include details of which SPMs (including BMP) were implemented, what hardening was in place, whether PCASP were embarked, and what actions were taken. Reporting systems that

are put in place for the tracking of these events also need to operate in such a way as to reflect the situation on land and at sea and not be subject to political or commercial interference.

- q. Incident Categorisation. Categories of incident should be defined and used globally in order to provide an improved, common understanding of incident trends.
- r. Combining an effective reporting system with the ability to react to incidents in a timely manner. Reports need to be passed to maritime policing authorities in near real time in order to support their efforts to disrupt, deter and defeat an attack.
- s. Operating within national and international law to counter piracy, but exploiting that law to advantage rather than being unnecessarily constrained by it. Changes to the law should be sought when the mode of operation of the pirates cannot be countered within existing law. Criminals operate outside the law, so the law must be responsive to the genuine needs of those operating to curb the criminality. This includes the need to address shortcomings in the internationally recognised definition of piracy enshrined in UNCLOS.
- t. Flag States' Contribution to Maritime Security. The responsibilities of Flag States for maritime security are enshrined in agreements such as the ISPS Code. Where there are variations in interpretation of those responsibilities, the differences should be resolved and regulations enforced in order to prevent ships being re-registered under more lenient flag state regimes.
- u. Recognition by Port and Coastal States of their responsibility for the safety of vessels in their territorial waters. In territorial waters, where a Master's ability to act in defence of his vessel is significantly constrained by national and international legislation, the Port or Coastal State must recognise that this imposes on that State a responsibility for the protection of vessels against piracy. In addition:
- v. Role of the Port State Control regime. The Port State Control regime has a potentially significant role to play in identifying vessels whose shortcomings make them additionally vulnerable to piracy. Consideration should therefore be given to using the regime's powers more effectively and, where necessary, to strengthening the roles and responsibilities of Port

State Control authorities. The fact that security is required for ISPS Code compliance and is classed as a component of seaworthiness provides the foundation for such actions.

w. Working to maintain the separation between piracy and terrorism. Where terrorism and piracy exist alongside each other in a region, the potential exists for a nexus to form between the two activities. Counter-piracy policies and actions need to be crafted to maintain that separation, and ensure that pirates are not forced into the arms of terrorists.

x. Creating an amnesty. An amnesty for pirates may be a useful tool in the efforts to discourage and disrupt pirate gangs. It may usefully include programs for drawing on their maritime skills and using them to contribute to the State's maritime security. If used, an amnesty must include measures to cater for Disarmament, Demobilisation and Reintegration, and draw on lesson learned from similar models used to combat organised crime on land in Colombia and Afghanistan, for example.

y. Regulation and audit of PCASP and VPDs. The regulation of the provision of armed security services must include elements that provide both minimum standards with respect to the service provided (regardless of status as military, paramilitary, or private), and supporting regulation to ensure that all providers of these services are subject to comparable controls. Without this regulation, and the ensuing checks and controls, the risk of a sub-standard service will continue, and with it the likelihood of the inappropriate use of force up to and including lethal force.

z. Maritime Domain Awareness. States need to recognise the importance of MDA to all aspects of maritime security, including piracy. This requires the ongoing development of the information and intelligence collection, processing and dissemination capabilities necessary to generate a wide area, persistent surveillance capability.

aa. Ship Protection Measures. Greater emphasis must be placed on the implementation of SPMs such as those contained in BMP guidelines. The extent of that implementation will be driven by formal risk assessments.



## Part VII – The Operational Responses Required From Government Forces Responsible For Maintaining the Rule of Law in Order to Discourage or Suppress Piracy

146. Without effective rule of law, criminality will be able to flourish. The role of forces responsible for maintaining the rule of law is therefore to reduce the opportunity and means to engage in piracy. This will include making the combination of the risk of being caught supporting or conducting piracy, and the resulting penalties, outweigh the financial gain (motive). Achieving this requires law and governance principles to be supportive of the operational responses necessary to discourage or suppress piracy.

147. Drawing on these factors, and the earlier analysis, the following are the key issues and actions as they affect forces responsible for maintaining the rule of law in order to discourage or suppress piracy:

- a. Overall security strategy. Recognising that operational responses to piracy are but one element of a wider land and maritime security strategy.
- b. Need for capacity building. Recognising that land and maritime security and other law enforcement capacity building may be required if nations in a region are to be able to act to prevent piracy in the long term. Developing a sustainable capability involves not only the provision of equipment, but also of key elements such as training and a program to train-the-trainers.
- c. Treating piracy in any form as a crime, and as organised crime with a supporting business model if it develops beyond being opportunistic. Considering piracy from this perspective brings increased focus on interagency and international co-operation, and, if necessary, to the need for amendments to the legal foundation for operations.
- d. Understand the business model. Understanding the pirates' business model, so that it is possible to identify its most vulnerable elements, and those elements the disruption of which will have greatest impact on the ability of pirates to continue operations (Centre of Gravity). They may well not be the same. Also, recognise that the piracy business model in use in an area can

adopt that used by other forms of organised crime such as narcotics or human trafficking operating in the same region, or can share parts of that business model. Activities to suppress one form of organised crime can therefore have both intended and unintended consequences for other forms. This also has the potential to create the circumstances in which piracy can thrive if it has been suppressed by a more dominant criminal activity and that activity then becomes less dominant.

- e. Recognising the degree of risk that pirates appear willing to accept, and how this evolves with time. Where death is an acceptable risk, operational responses will be different to those where deterrence is more likely to be effective, and this needs to be reflected in the posture adopted. This includes SPM implementation, the decision to embark PCASP, and the Rules of Engagement issued to maritime policing units. Impeding access to a ship continues to be the best way to prevent an attack from being successful.
- f. Co-ordination and deconfliction. Achieving the co-ordination of effort required to optimise operational responses with other agencies and authorities, so that all are working towards the same end state.
- g. Understand the social context and structures present in the country concerned. In order for operational and other responses on land to be optimised, there must be a thorough understanding of the social structure in the country concerned. Operational responses can then be implemented that reinforce societal norms where they are unsupportive of piracy.
- h. HUMINT. Avoid over-reliance on technologically derived information, and include HUMINT in the methods employed to understand the pirates' method of operation and identify key personnel. Sources of such HUMINT include villagers, fishers and former pirates, as well as others with insights into the way the business model works.
- i. Adaptability. Forces must strive to be responsive (or even pre-emptive) and adaptable to changes in the pirates' business model and method of operation.
- j. Refugees. Recognising that a seaborne flow of refugees may attract pirates. This form of piracy may be opportunistic to start with but, if sustained, is likely to become more organised.

- k. Coastguard Functions. Exploiting the potential contribution to maritime security of the effective conduct of the coastguard function, whether vested in a dedicated coastguard or in another organisation such as a navy. In addition, encouraging States to avoid counter-productive competition between government departments for resources and influence.
- l. Maritime policing resources v area of operation. If the area of operations is too large for the available maritime policing assets to control effectively, greater emphasis will need to be given to layered ship protection measures including the possible employment of PCASP/VPD. But, it should not be assumed that armed guards are the default option where the area is smaller and there are enough maritime policing assets to achieve the necessary discouragement or suppression.
- m. Acting early to counter-piracy. There is potential for the challenge posed by maritime piracy to escalate to a level beyond that at which it can be controlled by local coastal states alone. This reinforces the need for action to be taken early in order to pre-empt an outbreak or, at worst, to react to it while it is still in its early stages of development.
- n. Forcible recapture. Forces capable of operating safely and effectively in the unique environment presented by a ship will not be held by every nation, and the decision to use such force will need to be decided on a case-by-case basis. However, if circumstances dictate the need to recapture a vessel, forces trained for the task must be made available.
- o. Migrating hot spots. Act on the understanding that a lack of regional co-operation and capability will allow pirates to move their areas of operation to those where they are less at risk of disruption, deterrence and defeat.
- p. Lessons Learned. Lessons learned from pre-empting the development of a piracy hot spot, or from reacting to an already present problem, need to be recorded and made available to other States and organisations facing a similar challenge elsewhere. However, it must be recognised that some lessons will be particular to the social and political context in which they were learned, and their that relevance to a different context will need to be reviewed.
- q. Determining an internationally acceptable level of risk? The agreed level of risk should

serve as a baseline for determining termination criteria – the criteria which, once met, mark the point at which operational responses can draw down in favour of diplomatic, legal or social ones.

- r. Better government liaison activities for counter-piracy coordination. Improve mutual communication of priorities, planned activities and preferences between commercial shipping and naval/coast guard authorities involved in counter-piracy.

## Part VIII – The Operational Responses Required From Regional and International Organisations in Order to Discourage or Suppress Piracy

148. The full range of operational responses will only be effective if the international community has the will to both prevent the problem arising, and to suppress it where it is already present. This requires co-operation in the widest sense, particularly if a number of potentially piracy-prone nations lie along a relatively short length of coastline. The following issues and actions have been identified:

- a. Piracy definition. This analysis suggests that there is a case for removing the UNCLOS distinction between acts on the high seas or in waters not under a State's jurisdiction, and those in waters under the jurisdiction of a State. The definition therefore needs to be re-examined, either within the structure of UNCLOS, or separately where such changes can be supported by customary law.
- b. Regional co-operation. Regional co-operation contributes significantly to any counter-piracy effort, particularly in areas where a number of countries, with differing economic and social standing, and varying stability, lie along a relatively short length of coastline. Lack of co-operation creates significant opportunities for pirates to exploit the seams between those States because of factors such as their varied ability to conduct surveillance of their territorial and adjacent waters, to police those waters, and to achieve a common legal approach to piracy. Regional co-operation is therefore essential to achieving effective counter-piracy responses that are seamless in their application, and which are supported by the capacity building necessary to provide the level of capability appropriate to the circumstances.
- c. Reporting systems. The need to develop reporting systems that capture more piracy incidents is necessary in order to allow both timely reaction to an attack, and to provide a true picture of the extent of the problem globally. Although there is a national component to this network, there is a wider case for a seamless global reporting system that has a single top-level authority such as the IMO or IMB. In addition, if not already done, statistical analysis should be employed to estimate how much more piracy there is than is formally reported. Whatever the system architecture eventually agreed on, central co-ordination and regulation of a comprehensive surveillance system, including establishing common definitions and data sets,

will most likely be required because of the sensitivity of the information gathered, and the need to develop a global picture of piracy (and other criminal activity) and trends. Achieving this will require greater acceptance and implementation of the need to share rather than the need to know. Reporting systems that are put in place for the tracking of these events also need to operate in such a way as to reflect the situation on land and at sea and not be subject to political or commercial interference.

- d. Boundary disputes. Boundary disputes allow pirates to operate in, from or around contested areas at lower levels of risk to their operations. Efforts to resolve such disputes in areas at risk of, or suffering from piracy, must recognise the overall positive impact on the resulting ability to achieve the necessary level of maritime security. However, it is not suggested that measures taken to resolve such disputes should impact adversely on the rights and freedoms of navigation enshrined in UNCLOS.
- e. International solution to failed maritime security. Consideration should be given to establishing a “maritime protectorate” or “exclusion zone” when a state fails to the extent that it is unable to provide any form of maritime security in the waters off its coast. The authority appointed to monitor the zone on behalf of the State concerned would be responsible for its security and regulation.
- f. Need for an international lead. It has been shown that in some situations, notably when the State in which the pirates are based has no effective government, a strong international lead is required to oversee counter-piracy effort.
- g. ISPS Code. The IMO should take steps to reinforce the security requirements set out under the SOLAS, ISPS and the Safety Management Codes. It should also strengthen its role of providing guidance (such as BMP) with respect to options that, dependent upon the particular operation and design of the vessel, are intended to assist those involved in dealing with specific conditions and circumstances but not to create regulation through other means. Wider use of BMP. Consideration should be given to encouraging the use of BMP in HRAs beyond the Indian Ocean, tailoring them to the particular threat as appropriate. This is coherent with the ISPS Code and with a vessel’s security being a component of its seaworthiness classification.



- h. Port State Control. Full application of the powers of the Port State Control regime has the potential to help the identification of vessels that will be transiting HRAs and that are particularly vulnerable to pirate attack and have shortfalls in their security. Such a measure could be linked to increased emphasis on risk and vulnerability assessments, and on ship security plans, all of which are relevant to its seaworthiness. This too is in accordance with the ISPS Code.
- i. Surveillance. The underlying requirement to support the identification of abnormal behaviour is a wide area, persistent surveillance capability. Development of this capability should therefore continue to be given a high priority, noting that its contribution is to maritime security as a whole rather than just to countering piracy. Development should be tailored to the specific needs of the host country and, ideally, integrate with regional and global systems.
- j. Information Exchange. The ability to react to actual or potential piracy incidents depends heavily on effective information exchange between all the appropriate stakeholders. Creating the systems and trust to allow such exchanges contributes to all aspects of MDA and must continue to be a priority.
- k. Lessons learned and best practice export. Ensure that lessons learned and best practices developed in one piracy area are available for adaptation and application in other piracy areas. The pirates do it! The same applies for the export of experiences gained while countering other forms of organised crime.
- l. Recognise Piracy Precursors. Attacks on fishermen and refugees are possible precursors to the development of more widespread piracy in some areas (where they are not based solely on inter-family feuds for example). It is essential to act early to ensure that such attacks are reported and that the reports are acted upon. This will also reduce the likelihood of grievances among those attacked leading to terrorist acts.
- m. Predictive Model. A predictive model for piracy is essential and should include factors that identify both the potential emergence of pirate networks on shore and their ability to operate at sea. Without this early identification, it will not be possible to take pre-emptive measures to reduce the motive, means and opportunity. If a predictive model cannot be developed, a clear understanding of indicators and warnings associated with a piracy outbreak are an alternative.

n. International Approach to PCASP and VPD employment and regulation. There will be future situations in which there is a need for specific vessels to employ PCASP and VPD in order to provide an additional layer of ship protection. International organisations such as the IMO need to recognise this reality, and provide a firm lead on related issues such as regulation, training, and rules for the use of force. The regulation of armed security providers must include elements that provide both minimum standards with respect to the service (regardless of status as military, paramilitary, or private) and supporting regulation must be put in place to ensure that all providers of these services are subject to comparable controls. Without this regulation, and the ensuing checks and controls, the risk of a sub-standard service will continue, and with it the likelihood of the inappropriate use of force up to lethal force. Nevertheless, it should not be assumed that employing PCASP is the standard response. The level of defence that is appropriate to individual vessels can only be determined by an objective threat, vulnerability and risk assessment.

## Part IX – The Operational Responses Required From Commercial and Non-Governmental Organisations in Order to Discourage or Suppress Piracy

149. Although the commercial sector has a great deal to contribute to countering piracy, there is one particular tension that has to be considered at the outset when analysing the relationship between its roles and government aims. Simply put, businesses exist to make money. Therefore, while piracy poses a threat to the ability of some businesses to use the seas lawfully, to others it offers a business opportunity. There are those who would level the charge that this has the potential to make some businesses less effective in their efforts to counter piracy because the very presence of piracy generates business. Although this potential is certainly present, the actuality of such accusations is discounted here until there is firm evidence to support it. Nevertheless, the potential to benefit from piracy emphasises the need for effective regulation, where such regulation is appropriate, in order to ensure that unscrupulous involvement is not simply for financial gain, designed to build long term dependence on the supplier, or introduces additional risks such as small arms proliferation. This apart, the following issues and options have been identified for which the commercial and Non-Governmental Organisations are the lead stakeholder.

### Non-Shipping Industry

- a. Socio-economic support. If circumstances allow, the main role of the commercial and non-governmental organisations sectors on land lies within the socio-economic and governance spheres. Nevertheless, they also have an important contribution to make to operational responses in activities such as capacity building, whether conducted for commercial or political reasons, in fostering inter-agency co-operation, and in regulation of private security providers.
- b. Focused activity. Where it is not possible to impose a blanket (top down) solution to piracy, success may be achieved most effectively by extending operational responses outwards (bottom up) from areas where piracy has already been successfully managed.
- c. International contribution to the rule of law. Where effective governance is absent, other nations, international bodies and NGOs have a key role to play in supporting the establishment of some form of effective government, whether nationally or provincially based, and then to help build its ability to enforce the rule of law and strengthen the economy so that

piracy and other forms of maritime crime become neither attractive nor viable.

d. Capacity building. National and regional capacity building is an important aspect of supporting operations to discourage and suppress piracy, but must be conducted with the awareness that in some circumstances, failure may worsen the problem it set out to solve.

e. Defensive v offensive actions by PCASP. There seems to be no question that PCASP embarked on the ships that they are defending are acting in a defensive role. In contrast, the growth in the number of companies offering convoy escort programs raises a number of questions about the threshold at which defensive actions become offensive, and how the risk of transitioning to offensive action will be controlled. This needs to be resolved, and the resolution enshrined in regulation.

f. Regulation of PMSCs. PMSCs should embrace the regulation of their activities as a positive move. Standardising training, experience levels required for certain tasks and oversight within the industry, will raise the level of performance and weed out “cowboy” companies.

## Shipping Industry

g. Criteria for vessel registration. All registries must work to the same high standards in terms of the audit trail required to prove legitimate ownership of a vessel before registration is permitted.

h. Ship protection measures. Where maritime policing capability alone cannot sufficient protection at sea, additional security measures such as the implementation of BMP and the option to embark PCASP and VPDs for self-defence are appropriate enhancements when based on a requirement identified by a risk assessment. Having assumed some of the responsibility for the security of its people and assets in this way, the means by which that responsibility is exercised requires clarification in terms of its oversight and regulation. In addition, aspects such as ship design will need to continue to evolve in order to incorporate features such as effective citadels (if they continue to be a recommended option of last resort), and to provide built in means of implementing ship protection measures such as those recommended by BMP.

- i. Background checks. Regulation of, and effective background checks on crew members should be strengthened in order to reduce the risk of piracy by lessening the opportunity for “insider information” to be provided to pirates.
- j. Behavioural changes. Risk mitigation for shipping involves both physical measures, and behavioural changes such as reducing lengths of time spent loitering in HRAs, particularly if the vessel is known to be vulnerable to attack. If loitering or slow transit through an HRA is a commercial necessity, and the vessel is vulnerable, additional layers of ship protection measures should be employed. This is particularly relevant for tugs and their towed craft, and for specialist ships.
- k. Vessel Vulnerability. Apply greater rigour/formalisation to risk/vulnerability assessment and mitigation.
- l. Training versus technology. Continue to recognise and develop the importance of training to countering piracy among all seafarers (not just officers).
- m. Value of open source information to pirates. Identify any reasonable, practical steps that will reduce the availability of open source information that might be useful to pirates. The only likely way to achieve this will be for individual companies and organisations to be more aware of what they are each giving away that might be of use to a pirate organisation.
- n. Local knowledge. When re-routeing is required in order to reduce the time spent in the most dangerous parts of a HRA, ensure that all concerned are aware of the routine activity that is likely to be encountered along the new route. This is necessary in order to reduce the likelihood of local users placing themselves at undue risk, and of ships’ teams over-reacting to a benign event. Crew training has an important role to play in this respect.
- o. Support research and development initiatives to help with counter-piracy tactics and technology (lethal and perhaps more importantly non-lethal means). Such investment will help to reduce the chance of attacks being successful, and costs would be offset or negated by reduced insurance premiums for deploying more effective deterrence measures.
- p. Better government liaison activities for counter-piracy coordination. Improve mutual

communication of priorities, planned activities and preferences between commercial shipping and naval/coastguard authorities involved in counter-piracy.



## Part X – The Operational Responses Required From Seafarers and Seafarers’ Organisations Order to Discourage or Suppress Piracy

150. The operational responses required from seafarers relate to the way in which they operate their vessels. The relevant issues concern compliance with regulations regarding the security of their vessels, understanding the risks to be faced during a particular voyage, and ensuring that all onboard are trained to the requisite level.

151. An area not addressed by this study, but identified as requiring further work, is that of negotiation. If pirates successfully board a vessel and breach the citadel, the ship’s Master is the first point of negotiation, and needs to have at least a basic level of understanding of how to interact with the pirates, if interaction is even possible.

152. Organisations supporting seafarers have done significant work to highlight the plight of those who have suffered at the hands of pirates, and to provide post-event care. The human cost of piracy is dealt with in detail in section 5.1 of the DMPP socio-economic report but, as an example here of a related operational response the Maritime Piracy: a Humanitarian Response Programme has as its objectives:

To implement a model for assisting seafarers and their families with the humanitarian aspects of a traumatic incident caused by piracy attack, armed robbery or being taken hostage to be offered as an integral part of the Emergency Response Procedures of shipping companies and manning agencies in cooperation with partners involved in seafarers’ welfare (maritime, union, faith or secular based agencies), company representatives and other bodies as appropriate (MPRHP, 2012).

However, organisations such as this are filling a gap that should perhaps be more properly filled, in part at least, by Flag States, owners and operators, to name a few.

### Part XI – Themes Passed To, And Received From, Other Modules

<b>Module</b> <b>Theme</b>	<b>Legal and Governance</b>	<b>Socio-Economic</b>
Measures to address the root causes of piracy.		To
Need for all States to classify piracy and its support as a crime.	To	
Definition of piracy.	To	
Catch-and-release of children.	From	From
Refugee status onboard government vessels.	To	
Role of society in countering piracy.		To
Potential for the creation of a maritime protectorate or exclusion zone.	To	
Amnesty.		To
Economic impacts of piracy, including the impact of attacks against fishing vessels		To
Reducing corruption.		To
The piracy business model	To/From	To/From
Development of a Disarmament, Demobilisation and Reintegration model for individual piracy areas		To

## Part XII –Areas for Further Research

153. The following areas requiring further research have been highlighted in the analysis:

SUBJECT	PARAGRAPH
Investigate the ongoing relevance of the distinction between piracy conducted for personal economic gain, and the same act conducted for political economic gain eg, terrorism.	9
Determine how an internationally agreed level of risk of piracy is defined.	12
To investigate the implications for operational responses of the merging of piracy and terrorism in an area	15
Develop a predictive model, or a clearer understanding of piracy Indicators and Warnings, in order to support the identification of areas at potential risk from piracy	23
Investigate the impact of conducting operational responses on land and at sea, but without dealing with the root causes.	35
To investigate whether statistical methods are able to provide a reliable figure of the total number of piracy attacks each year, rather than just those that are reported through formal channels.	69
In order to assess the degree of implementation of the ISPS Code, to examine the Flags that pirated vessels were flying when taken off the coast of Somalia, and further examine the respective national maritime security regimes based on the ISPS Code.	119
To identify the relationship between the insurance industry's position and operational responses.	127
Study the negotiation process, including the role of the insurance industry, in order to understand its relationship with operational responses better.	138
To determine measures of effectiveness for counter-piracy initiatives.	142

### Part XIII – Conclusion

154. In conclusion, the headline observations from this analysis of operational responses to discourage and suppress piracy are that:

- a. Political will is necessary if an acceptable level of risk of piracy is to be determined, and the problem is to be addressed effectively. It must be supported by a defined end state, and by termination criteria against which progress in the various lines of operation can be assessed. It must also be matched by the application of practical measures and, where necessary, should be bolstered by high-level support from organisations such as the UN.
- b. It is essential to act early, before the problem escalates. However, if the involvement of international security forces is necessary to solve the problem, a clear set of termination criteria should be determined, based on the point at which responsibility can be returned to local authorities or to the commercial sector for example.
- c. Measures to combat piracy are only one strand of maintaining national and regional security, whether on land or at sea.
- d. Piracy is a form of organised crime. As with any form of organised crime, inter-agency co-operation is essential to discouraging or suppressing it.
- e. Understanding the cultural context and its impact on the business model used by pirates in a particular region is key to developing effective operational and other responses.
- f. There will be circumstances when the shipping industry has to assume some of the responsibility for the security of its people and assets, but the way in which that responsibility is exercised needs regulation.
- g. Pirates are adept at evolving their methods – those involved in countering the problem must be equally adept.
- h. Too many attacks are unreported or misreported. Because of under and misreporting, the full extent of the problem is unknown, and this impacts on the ability to address the problem

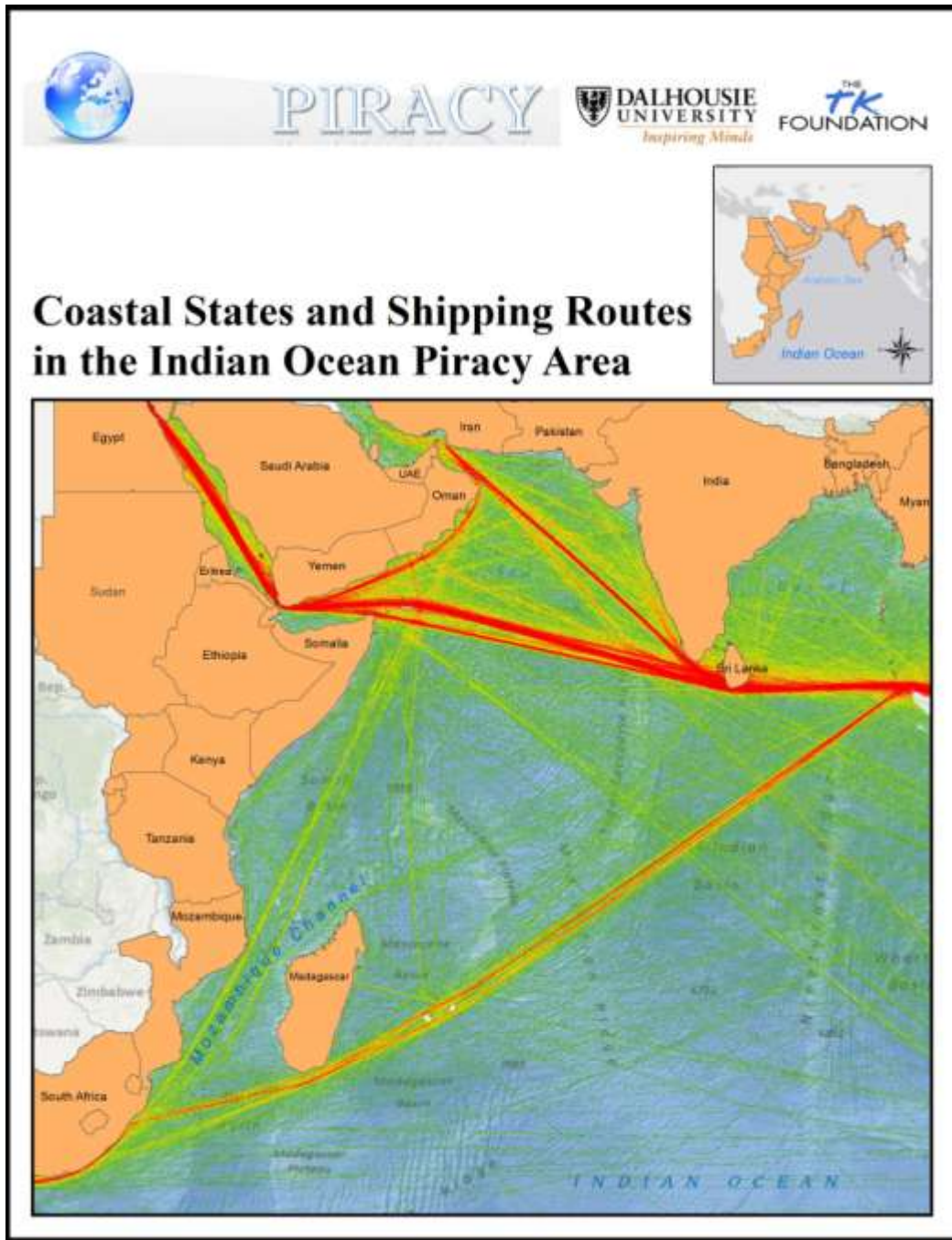
and to provide support to its victims. A reporting system needs to be developed that meets the needs of all the full range of maritime interests.

- i. Information and intelligence are at the core of efforts to counter piracy. This concerns not only information about shipping movements, pirate locations, incidents, and post attack reports etc, but also lessons learned from attacks so that updated guidance such as BMP can be provided to shippers as pirates change their methods of operation. An effective information and intelligence capability requires provision for information collection (including surveillance), analysis and dissemination, some of which is conducted regionally/nationally, and some of which can occur elsewhere.
- j. The UNCLOS definition of piracy should be reviewed in order to include attacks against vessels both inside and outside waters under a State's jurisdiction.
- k. Regional co-operation makes a significant contribution to discouraging and suppressing piracy. If necessary, it should be encouraged from the highest level (the UN).
- l. Existing frameworks such as the ISPS Code and the Port State Security Regime need to be used more effectively in order to identify, and enforce, the mitigation of security vulnerabilities in ships at sea, thereby reducing the risk of a pirate attack being successful
- m. The regulation of Private Maritime Security Companies and Privately Contracted Armed Security Personnel is essential to the provision of personnel trained and experienced to a minimum acceptable level. Without this regulation, certification and accreditation from a common international body such as the IMO, together with the and the ensuing checks and controls, the opportunity for rogue PMSCs to provide a sub-standard service will continue, and with it the likelihood of the inappropriate use of force up to lethal force.
- n. A predictive model for piracy is essential if areas at potential risk from the crime are to be identified early. Without this early identification, it will not be possible to take pre-emptive measures to reduce the motive, means and opportunity. An associated development would be the introduction of an early warning system linked to the predictive model. If development of a meaningful predictive model proves impossible, a formally researched set of indicators and warnings would be an alternative.

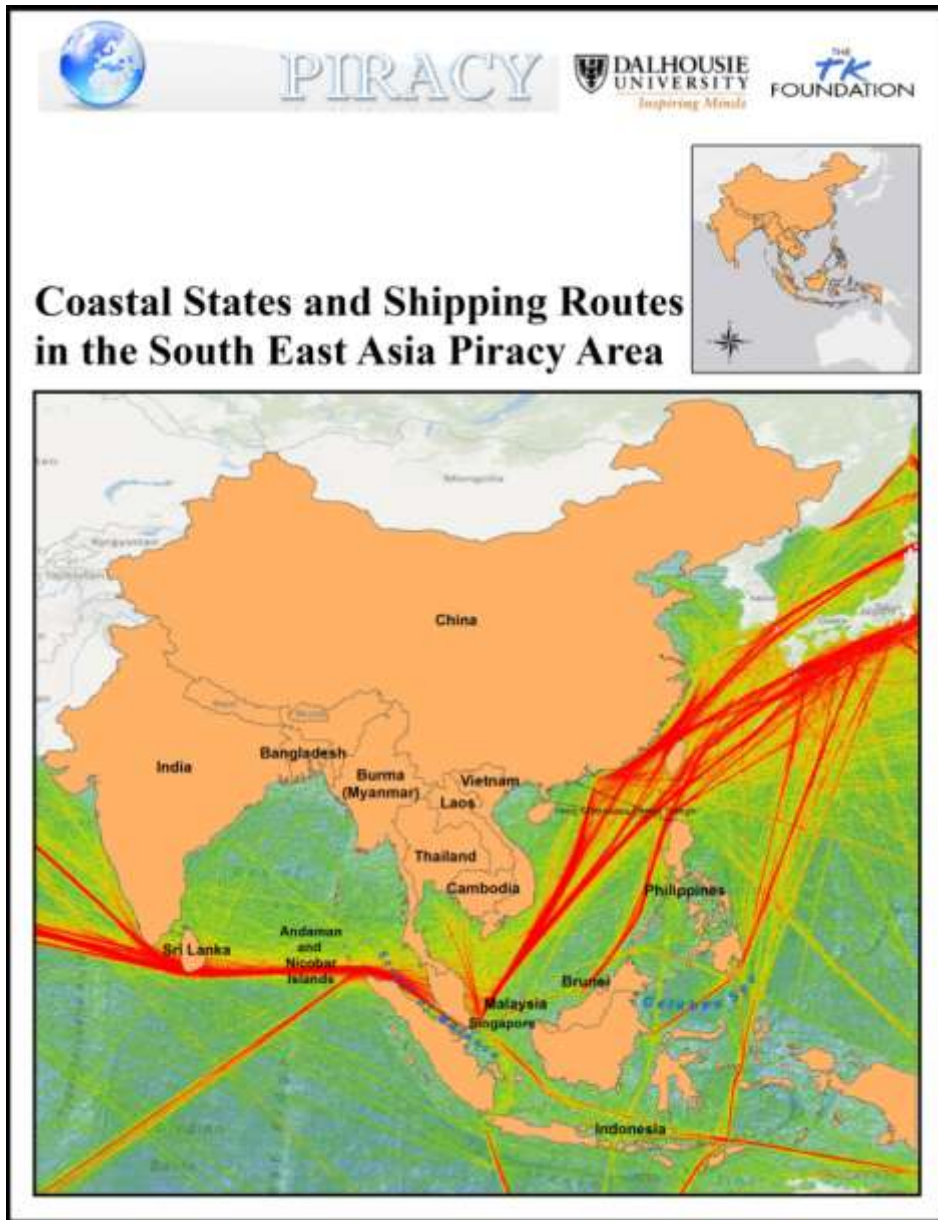
- o. The effect of piracy on fishing communities is a chronic local challenge that rarely registers with the international marine transport industry or peace and security community. Nevertheless, it constitutes an ongoing threat to stability, and a breeding ground for piracy, which often lies close to important shipping lanes and therefore has potential to escalate.
  
- p. If those enforcing the rule of law are able to enlist the support of the communities affected by piracy, and adapt lessons learned in combating other forms of organised crime, this will, in certain circumstances, add significantly to the ability to both discourage and suppress the problem. It is also more likely to result in a sustainable solution.

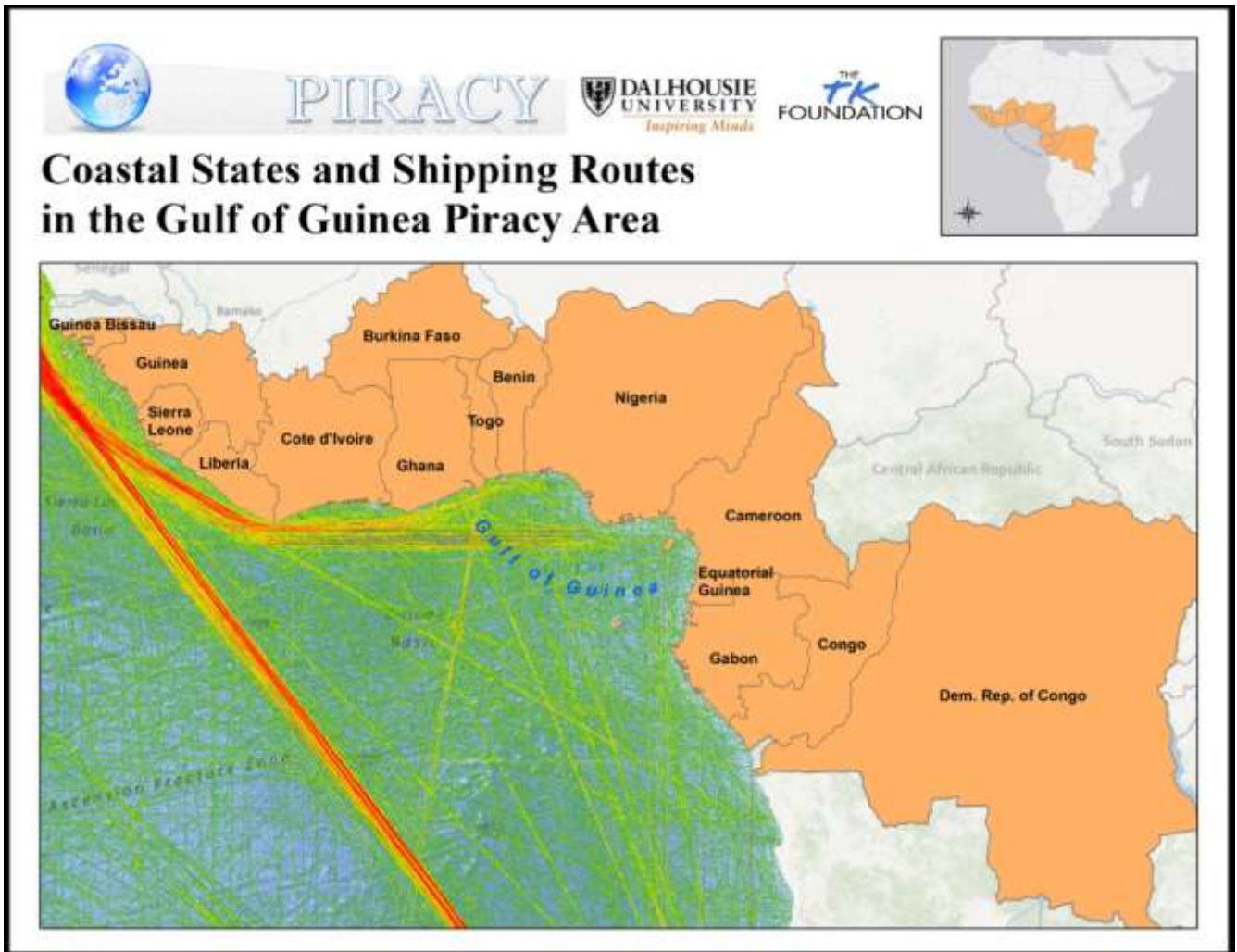
Appendix A To  
Dalhousie Marine Piracy Project  
Operational Responses Report

**COASTAL STATES AND SHIPPING ROUTES IN THE MAIN PIRACY AREAS**









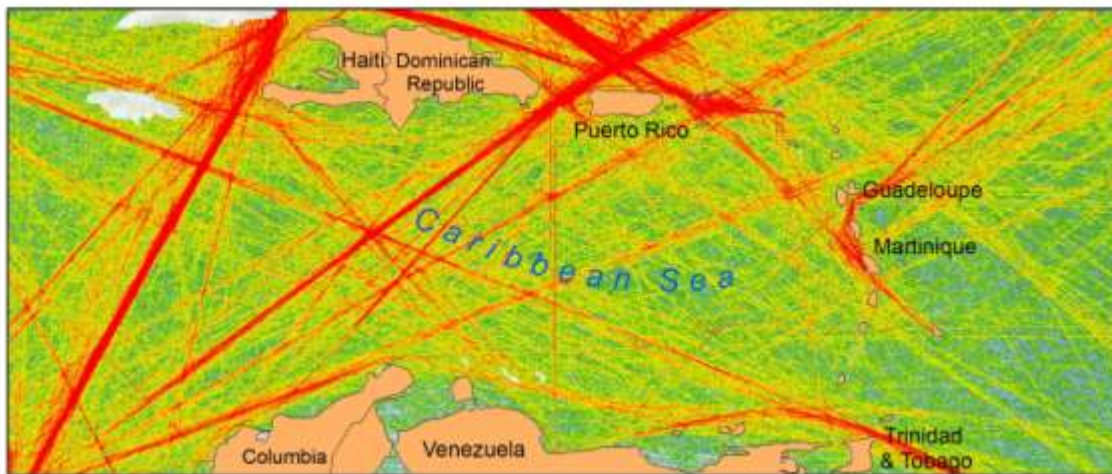
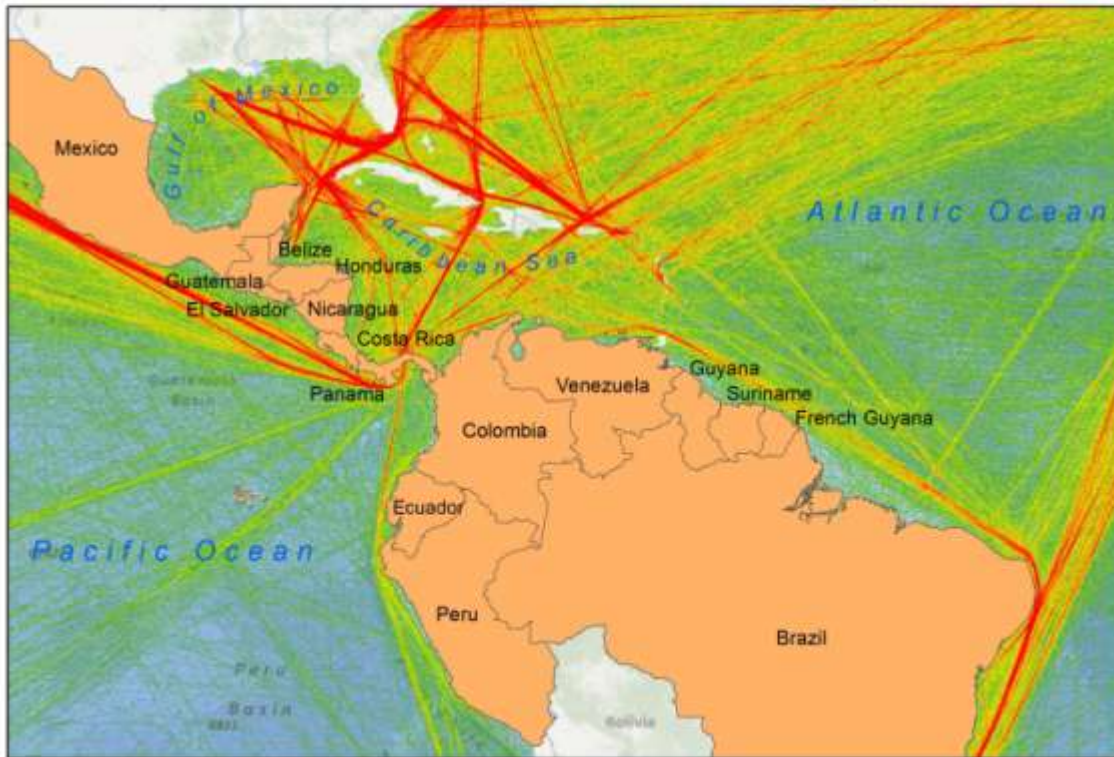




# PIRACY



## Coastal States and Shipping Routes in the Latin America and Caribbean Piracy Area



**MERCHANT SHIP REPORTING CHRONOLOGY – HALIFAX TO SINGAPORE VIA SUEZ**

1. Pre-sail and crossing the Atlantic. Monitor the **IMB Piracy Reporting Centre (PRC)** for worldwide situation and the **NATO Shipping Centre** for regular updates about the situation off the east coast of Africa.

NSC coordinates between NATO and other naval/military agencies and the shipping industry. It is the primary point of contact for agencies and officials (the commercial shipping community as a whole), not individual ships.

*For the ship.* NSC is a source of broadcast information. Any communication by a ship to NSC is forwarded directly to MSCHOA/UKMTO

2. At any point in the voyage prior to clearing the Suez Canal. Register with the **Maritime Security Centre Horn of Africa (MSCHOA)**.

Part of the EU NAVFOR organization (Op. Atalanta) in cooperation with the marine transport agency. Compiles the big picture and coordinates with UKMTO, NSC, MARLO and the industry. Registration online or using the form in BMP4.

All ships should register, whether in convoy or not, and whether carrying an armed security team or not.

For the ship: MSCHOA will broadcast NavWarnings. Any direct contact with a ship involved in an incident will be through UKMTO.

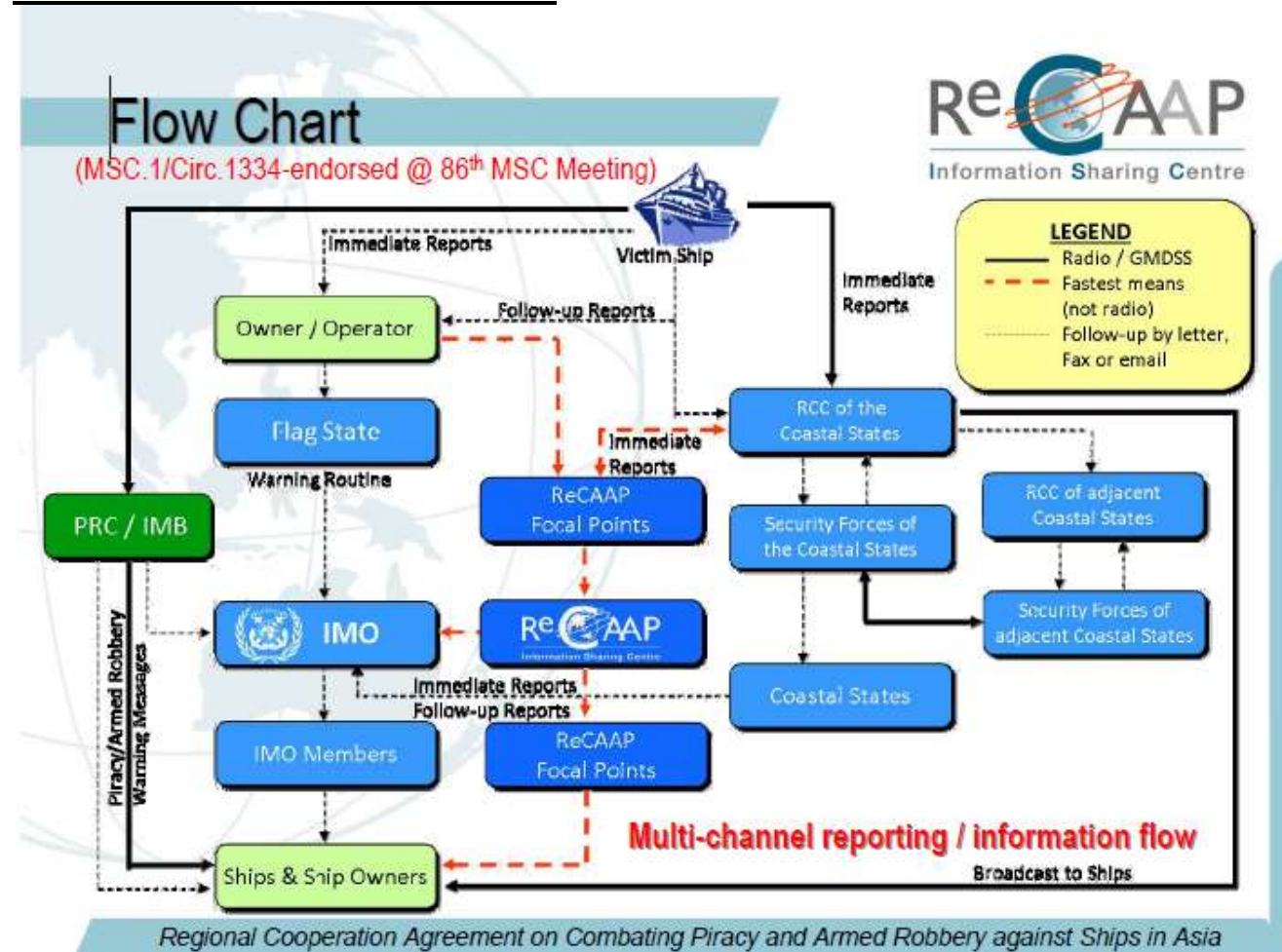
3. Once into the danger area. Make regular reports on position, course, speed, ETA etc to **UK Maritime Trade Operations (UKMTO)**. The NSC will contact vessels within 50nm in the IRTC, or within 100nm and heading towards the incident in the rest of the HRA.

*For the ship:* UKMTO works directly with individual ships involved in an incident while in transit through the High Risk Area and is, therefore, the Master's primary point of contact in the area. Information and reports on incidents will be forwarded to naval forces in the region for a co-ordinated response.

4. The Master will monitor the **IMB PRC** during the transit as a supplementary source of information, and after any attack or attempted attack report to IMB PRC. IMB PRC will also provide the continuity of picture as the ship leaves the Somalia risk area and approaches South East Asia (where the Master will start monitoring **ReCAAP** for piracy warnings).

5. After passing 78E. Check out of with The US **Maritime Liaison Office (MARLO)** which is a coordination point between the US Navy/CENTCOM and the shipping community. It is only a secondary point of contact for ships (and then usually only US ships).

**ReCAAP REPORTING FLOW CHART**





Appendix D To  
Dalhousie Marine Piracy Project  
Operational Responses Report

**ABBREVIATIONS**

AIS	Automatic Identification System
ASF	Asian Shipowners Forum
BIMCO	Baltic and International Maritime Council
BMP	Best Management Practices
CGCC	Center on Global Counterterrorism Cooperation
CGPCS	Contact Group On Piracy Off The Coast Of Somalia
DCOC	Djibouti Code of Conduct
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EiS	Eyes in the Sky (Malacca patrol)
EU NAVFOR	European Union Naval Force
GGC	Gulf of Guinea Council
HRA	High Risk Area
Humint	Human Intelligence
IAMSP	International Association of Maritime Security providers
ICoC	International Code of Conduct (for maritime security providers)
IDF	Information Distribution Facility
IGAD	Intergovernmental Authority on Development
IMO	International Maritime Organisation
IMO MSC	International Maritime Organisation Maritime Security Committee
IMB	International Maritime Bureau
INTERPOL	International Criminal Police Organization
ISC	Information Sharing Centre
ISPS	The International Ship and Port Facility Security Code
ISSP	IGAD Security Sector Program
JIATF(S)	Joint Inter Agency Task Force (South)
LAC	Latin America and Caribbean
MALSINDO	Malaysia, Singapore, Indonesia (trilateral coordinated patrols)
MARLO	Maritime Liaison Office (Bahrain)
MDA	Maritime Domain Awareness
MOWCA	Maritime Organization of West Africa
MRCC	Maritime Rescue Co-ordination Centre
MRPHP	Maritime Piracy - Humanitarian Response Programme
MSC HOA	Maritime Security Centre – Horn of Africa
NATO	North Atlantic Security Organization
NGO	Non-Governmental Organisation
NSC	NATO Shipping Centre
nm	Nautical mile
PCASP	Privately Contracted Armed Security Personnel
PMSC	Private Maritime Security Company
PMPF	Puntland Maritime Police Force

PSC	Port State Control
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
RMAC	Regional Maritime Awareness Capability
SAMI	Security Association of Marine Insurers
TFG	Transitional Federal Government
UKMTO	United Kingdom Maritime Trade Organisation
UN	United Nations
UNCLOS	Second United Nations Convention on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime
VPD	Vessel Protection Detachment



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