

Exploring an Integrated Approach to the Suppression and Prevention of Marine Piracy

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Dalhousie Marine Piracy Project

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1. INTRODUCTION

Piracy, one of the oldest crimes in history, has had its peaks and lows of activity throughout various regions around the world. Even though each outbreak has its own set of actors, motives, tactics and targets, anti-piracy responses have understandably focused on addressing the problem as it arises on the sea. This focus on where the problem manifests itself as opposed to the source of the problem has failed to sufficiently address the root causes of piracy.

On the premise that the source of piracy is deeply embedded in the social, political and economic structures of society, the Dalhousie Marine Piracy Project (DMPP) goal was to undertake an integrated and interdisciplinary approach to assessing and addressing the problem of contemporary piracy and its impact on the shipping and coastal communities. To achieve this goal, the DMPP aimed to understand potential piracy situations before they manifest, and sought to identify appropriate social, economic, security and political indicators and actions needed to prevent outbreaks of piracy. To that end, it also sought to provide a comprehensive suite of integrated policy alternatives to be considered by key policy actors in the suppression and prevention of piracy

In pursuit of the above goal, the project, entitled ‘Policy Development and Interdisciplinary Research for Actions on Coastal Communities, Youth and Seafarers’, embarked on:

- A comprehensive examination of contemporary piracy to determine the true socio-economic costs and effects that piracy has on seafarers, coastal states and those communities;
- An integrated assessment of cross-cutting policy alternatives for dealing with the problem in a comprehensive manner;
- A review of the consequences associated with implementing the identified policy options;
- An identification of the strategic directions that need to be adopted to implement corrective measures; and,
- The development of a preliminary generalized model for predicting the emergence of piracy.

The DMPP team recognized the significant contributions being made by scholars and practitioners who have focused on addressing the problem of piracy from either a thematic focus (e.g. operational, economic or social) and/or a geographic focus (e.g. the Horn of Africa). In contrast to this approach, the DMPP focused on drawing on these existing analyses to identify cross-cutting linkages and gaps in the knowledge base that require policy makers’ attention at the international, regional, national and local levels, in an effort to address potential actions to contribute to the discouragement and suppression of piracy. The objective was not to conduct original research, but to deliver policy innovative outputs from

the analysis in the form of an interdisciplinary suite of policy options that reflected a paradigmatic shift in the way piracy is understood, suppressed and prevented.

The intention is to make the recommended policy options available for public comment, and to present them to governments, the private sector, agencies of the United Nations and civil society, including Non-Government Organizations (NGOs). A key objective of the DMPP is to pursue opportunities for getting the project findings onto the agenda of high-level meetings of policy makers and practitioners to develop specific policy responses aimed at addressing the problem of global marine piracy in an integrated manner.

2. THE INTERDISCIPLINARY REPORT

This interdisciplinary report seeks to draw on the analysis of the socio-economic, governance aspects and operational response factors inherent in contemporary marine piracy in order to capture the key findings of each thematic area of study and, thereafter, to expand on those findings that have synergies across the reports. The report reflects the ‘integrated or interdisciplinary thinking’ of the DMPP Team - the application of the collective mind - in collating all the relevant data about the socio-economic and human costs of piracy, the counter-piracy policies and practices, and varied legal regimes, organizational strategies and governance processes. The report goes on to provide a clear reference point for other follow-up research projects and presentations.

It is important for readers of this summative report to understand that additional details and supporting evidence for the findings highlighted here (including bibliographic references) are available in the individual thematic reports. These reports may be accessed from the DMPP website at <http://dmpp.management.dal.ca>

3. METHODOLOGY

Supported by experts in Information Management, the DMPP planned objective was to: comprehensively examine three interdependent themes of Law and Governance, Socio-Economic, and Operational Responses; assess current literature on the topic of contemporary marine piracy; and, through analysis of that work, highlight potential areas for integrated policy development and implementation.

Each of the thematic areas was led by sector experts within the DMPP team and supported by external experts who contributed to the in-depth reports on the current status of global piracy from different perspectives: socioeconomic, law and governance, and operational responses. External Sectoral Working

Group (SWG) members for each thematic area critically reviewed and analyzed their respective thematic report. Feedback included comments on accuracy and omissions, identification of priority areas for attention, areas for further research and recommendations on draft policy options likely to address issues surrounding the aspects of law and governance, socio-economic or operational responses to contemporary marine piracy. The SWG reviews were incorporated into the three draft reports, for assessment and discussion by the ‘Intersectoral Working Group’ (ISWG).

The thematic (‘sector’) reports provided the input for the integrated discussion by experts spanning all of the thematic areas and formed the basis for the ISWG deliberations. These three thematic reports included an analysis, synthesis, and evaluation of information on marine piracy, based on the currently available evidence. This approach highlighted a number of interrelated problem areas which provided a focus for additional discussion and analysis and the identification of potential solutions. A tabular summary showing the major research findings from each thematic report is presented in Table 1 (see Appendix 1).

At the inception of the Dalhousie Marine Piracy Project, the intended methodology was to examine the problem of global marine piracy in seven (7) researchable issues. These included the:

- a. Origins and Manifestations of Piracy
- b. Costs of Piracy
- c. Apprehension of Pirates
- d. Prosecution of Pirates
- e. Prevention of Piracy
- f. Discouragement of Piracy; and the
- g. Suppression of Piracy

As originally planned, these issues corresponded well with the three (3) main thematic modules: Socio-Economic; Operational Response, and Law and Governance. However, with regular updates and interactions across the thematic working groups during the conduct of the research, it quickly became apparent, that for each of these thematic areas, there are implications which concern all of the areas. On this basis, it became necessary to identify those cross-cutting or interrelated areas which are of concern, and to ensure that these are dealt with from a holistic or inter-module perspective.

Consequently, it was determined that a number of issues researched to date in the current literature had not been appropriately addressed or resolved during the multiple contemporaneous outbreaks of marine piracy. Key interrelated issues identified as a result of this cross-sectoral exercise among the DMPP team are illustrated in Table 2 (see Appendix 2).

4. IDENTIFICATION OF CROSS-CUTTING THEMES AND ISSUES

While recognizing the importance of each of the cross-cutting issues identified in Table 2 as deserving of attention, given the remaining time and financial resources available to the DMPP team, it was necessary to prioritise key areas for the possible development of draft policy recommendations. To assist with this task, the following criteria were used to assess each of the identified cross-cutting areas of concern:

- The issue should be recognized as a global concern in the suppression, discouragement or prevention of marine piracy;
- The issue should be either unidentified or underemphasized by current antipiracy activities being carried out on a regional or global basis;
- The issue should not have other organizations or programs currently addressing it nor have potential policy solutions to address it being developed elsewhere;
- The recommended policy solutions should be able to provide a significant impact in the current efforts to suppress, discourage or prevent marine piracy;
- The development of a work plan and subsequent actions to deal with the identified situation should be within the financial, temporal, and logistical capabilities of the DMPP.

Five key issues were identified for possible consideration by the DMPP team of researchers using the above-listed criteria. These issues, while viewed from three (3) different perspectives, were nevertheless seen as requiring a holistic approach to the problem, one that would address the specific concerns of the different sectors through a consistent and non-conflicting suite of policies or, if appropriate, a single policy.

The identified key cross-cutting areas of concern and themes were:

- a. The *need for business model* analysis in order to explain the emergence, development, and mode of operation of the different outbreaks of piracy. This model should identify key variables that affect the profitability and costs associated with the practice of piracy in the different regions so as to identify points of vulnerability where antipiracy policies would have the most effect in suppressing piracy and maritime crime.

- b. The *use of children in piracy*, as a specifically identified problem, provides a serious constraint for maritime forces operating to counter piracy, and presents both legal and procedural obstacles to the apprehension, investigation, and prosecution of pirates and others involved in marine crime incidents, particularly where children or juvenile suspects are present.
- c. The *presence of refugees* in the maritime region also presents a specific problem to maritime forces, through the reluctance of their nations to assume responsibility for the care of refugees, while having an obligation for their protection and safety.
- d. The current international *legal definition of piracy and jurisdictional implications*, prevent the effective suppression and prosecution of piracy. The current definition does not adequately permit actions to be taken against supporters, organizers, financiers and other parties contributing to the practice of piracy who are not present on the seas during a piracy attack.
- e. There is a need to identify the appropriate level, and mechanisms for *organizing and coordinating antipiracy activities*, both operational and legal.

5. DISCUSSION AND ANALYSIS

This section provides a brief overview of the rationale behind the identification of the five key areas of concern as possible areas for further policy level development by the DMPP team. However, it is important to note that, consistent with the project methodology, the output from this phase of the research was discussed by the broader Intersectoral Working Group (ISWG), comprised of a diverse grouping of external subject matter experts in marine piracy. The purpose of soliciting advice from the ISWG, as described in the project proposal, was to obtain third-party guidance and approval of the final list of cross-cutting areas on which the DMPP should concentrate its work for the second phase of the project. In doing so, the DMPP team recognized that the ISWG might identify areas that the team had not previously considered and/or recommend the elimination of areas prioritized by the team.

5.1 A Functional Definition of Piracy

One of the key points of discussion throughout the initial analysis was on the definition of piracy, and how this would limit or otherwise restrict the study by excluding activities which did not fit the fairly narrow description of “piracy” found in international law of the sea. In order to ensure that the project included not just those acts which occurred on the high seas, and between two vessels, but also the associated acts and similar activities committed in the same regions by the same perpetrators, the DMPP adopted a functional definition. While not necessarily legally or politically acceptable, this definition was

none the less relevant since it allowed the inclusion of those elements which were of concern to the operational and socio-economic based groups dealing with the problem.

On this premise, the following definition was developed which would serve as an initial basis for the study. This would also provide a reference point for demonstrating the deficiencies in the current legal or other definitions of piracy and maritime crime.

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

5.2 The Need for Business Model Analysis

Piracy has been defined as an economic or commercial crime. Since the general motivation for piracy tends to be economic gain, it follows logically that pirates will pursue an activity as long as it is profitable. Like any other commercial activity, there will be costs involved in carrying out the activity: purchasing supplies, hiring and compensating gang members, renting or obtaining the necessary hardware, and paying assorted bribes and payoffs. Profits to be gained for any piracy enterprise will be the booty or ransom obtained from the pirated ship. As such, it can be assumed that pirates will discontinue their activity, or switch to another mode of operation when the profits from an enterprise do not cover the costs, or when the risks associated with the enterprise are seen as too high to compensate for the likely pay off.

It can be seen, that piracy is not unlike other commercial activities, and pirates, especially the more sophisticated ones, can be expected to organize their enterprises to pursue maximum profitability, while minimizing the cost. It follows therefore that, if an examination is made of a pirate enterprise, it may be possible to determine, through the use of common business analytical tools, those elements which are the most vulnerable or have the highest risk to the profitability of the undertaking.

Understanding the fundamental business model on which piracy may be based may prove a highly effective tool in determining the most effective mechanisms in countering piracy. However, there are sufficient differences between the way piracy is carried out in different regions of the world to preclude a uniformed solution or uniformed tactics in its suppression. Nevertheless, by analyzing the business model, antipiracy forces may be able to target specific actions or logistical requirements. Weakening the business structure not only makes it more difficult to attain profitability, but also leads to a reduction or possibly elimination of the attacks.

5.3 The Use of Children in Piracy

The use of children in piracy has been identified as a major component factor in the current operations in the Horn of Africa. Several key features have emerged from the DMPP studies. First, a significant portion, perhaps as much as a third of the arrested and suspect pirates are juveniles. Using the definition specified in the United Nations Convention on the Rights of the Child anyone under the age of 18 is considered a child and as such, requires special handling and consideration in their employment, treatment by the courts, and handling by military or police forces. Moreover, international policies recognize that children should have a right to education, freedom from oppression and exploitation, and the opportunity to grow and develop within their societies.

The presence of large numbers of juveniles presents a problem not only for those involved in the suppression of piracy, but also for the international community as a whole. While the exploitation of juveniles on land generally falls within the national jurisdiction of the country, juveniles involved in piracy on the high seas have been placed in an area where all states may be involved in exercising their freedoms of the seas. As such, it may be argued that all states have a justifiable concern when juveniles are being used as a means of interfering with those freedoms.

The use of juveniles in piracy operations, like the use of child soldiers, or the general employment of children in other criminal activities is a common practice for a number of reasons. These include the ready supply of children, their malleability and the fact that they are generally cheaper to employ. This makes them attractive as a low-cost source of manpower for criminal employers. Removing young people from the potential employment pool for piracy enterprises will both increase the cost, and possibly decrease the number of piracy enterprises, particularly in regions where children constitute as much as 50% of the population. Moreover, criminalizing the use of juveniles in piracy activities will provide an extra legal sanction which may be used against the organizers, financiers, and backers of marine piracy enterprises.

5.4 The Presence of Refugees

While no specific linkage has been found between the presence of refugees, and the outbreak of piracy in the Horn of Africa region, there have been sufficient connections in the past to warrant serious consideration of the need to protect refugees at sea from pirate attacks. While refugees are not the most lucrative target, in general they may not have much in terms of wealth, they oftentimes carry their most valuable possessions with them. Since refugees at sea are often present in large numbers while fleeing famine, war or political strife, they make an easy target of opportunity. Refugee vessels are generally unarmed, unreported, and unsupervised due to the nature of refugee migrations. It is also noted that many

countries actively discourage their naval forces from becoming involved with refugee vessels unless absolutely compelled by safety of life considerations.

Refugees at sea therefore are a tempting target of opportunity for piracy, and this has led to extremely violent attacks in the past. Refugee vessels also provide a shield for pirates, since pirates, and even pirate vessels, may hide themselves among the refugees, knowing that naval patrols will not venture too close for fear of becoming involved as a source of asylum. There are currently no appropriate guidelines or policies for either the protection or the handling of refugees at sea.

5.5 The Legal definition and Jurisdictional Implications

It has been recognized by all three thematic studies that the current definition of piracy does not adequately address the legal, operational, or socioeconomic realities of dealing with the contemporary outbreaks. While there is a recognized definition and United Nations Convention on the Law of the Sea (UNCLOS), the DMPP research has highlighted that this reflects more the political limitations to be placed on the suppression of piracy, rather than providing a realistic guideline for recognizing and dealing with the problem.

Under international law, piracy is recognized as a crime of universal jurisdiction, allowing any nation whose warship encounters a pirate vessel on the high seas to take action, arrest the suspects, turn them over to their national courts, and try them under national law. However, there is no consistency as to the criminal offenses or procedures to be followed within the national courts. In addition, there are widely divergent opinions as to whether piracy is a crime which requires either a violent, or an economic component, as is specified in the current UNCLOS definition.

Further, there is also no consistency among national laws as to whether the act of piracy must exist as a distinct criminal offense, or whether piracy suspects may be tried for murder or other violent crimes committed during the attack. This lack of consistency in national piracy legislation will undoubtedly lead to considerable problems in joint antipiracy operations since there are differing legal standards for the administration of justice, sentencing standards, rights of the accused, and the handling of juvenile suspects. There have been numerous attempts to establish consistent rules and procedures for the handling of piracy suspects, and the conducting of piracy trials. These have met with some success in the Horn of Africa situation, but have shown less promise in their ability to be transferred to other regions or jurisdictions having different legal standards and customs.

5.6 Mechanism for Organizing and Coordinating Antipiracy Activities

It is obvious from the studies that no one nation has either the operational resources or the full legal authority to deal with anything but the most localised outbreak of marine piracy,. As with a number of other maritime matters, pirates and piracy do not respect jurisdictional, court or territorial boundaries and thus, while antipiracy forces may be precluded from crossing into territorial seas or going on land in their pursuit of pirates, the pirates themselves show no such restraint.

Since piracy affects a range of stakeholders in the international community, the efforts to counteract pirate attacks have of necessity involved the cooperation of a wide variety of authorities, organisations and agencies, including international maritime forces, the international shipping community, and those states most immediately involved. Various cooperative mechanisms have been established to deal with the problem, including the reporting and sharing of information, the establishment of joint enforcement patrols, and the development and implementation of policies and procedures. Because of the differences in the way that piracy is carried out in different regions around the world, it is often neither practical nor desirable to attempt the implementation of a uniform and consistent standard of legal or operational procedures to suppress piracy. It may be, as responses in several of the regions have demonstrated, that what is necessary is to develop regional mechanisms for the suppression of piracy, and for these mechanisms to draw on lessons learned from counter-piracy operations in other regions. Based on existing regional arrangements and using or augmenting existing frameworks, it may be possible to develop an effective response which is both acceptable and implementable by the parties within a specific region.

6. CONSIDERATION BY THE INTERSECTORAL WORKING GROUP

As noted above, the Intersectoral Working Group (ISWG) members were drawn from among the external experts participating in each of the three Sectoral Working Groups. As such, the ISWG was comprised of experts on law, military and security matters, shipping, coastal communities and other areas. The principal role of this integrated working group was to participate in consensus-oriented, collaborative analyses and discussions of priority issue areas that the DMPP team should pursue in order to determine possible policy options for dealing with piracy in an integrated and comprehensive manner. The work of the ISWG members was facilitated by an intensive three-day workshop at Dalhousie University, hosted by the DMPP team.

Recognizing the specific roles and perspectives of each of the three thematic areas in addressing the problem of piracy, the ISWG members are tasked with working collaboratively to:

- critically review the context and analyses contained in the individual sector reports for accuracy and omissions;
- identify and prioritize issues of shared concern to all three sectors;
- identify areas for attention and further research;
- recommend integrated draft policy options to address issues surrounding the three thematic aspects of contemporary marine piracy.

To maximize the contribution of the ISWG members during the three-day in-person workshop, the DMPP team further reviewed the five key crossing areas and reduced them to three major areas of concern. Furthermore, recognizing the breadth of the piracy problem and the importance of recommending integrated policy options that addressed both existing sources of piracy and preventing situations from arising in the first place, ISWG members focused on discussing both reactive and pre-emptive policy options to address the agreed upon priority areas of concern.

In narrowing the key areas down from five to three, the following additional priority-setting criteria were used by the DMPP team:

- Does the area of concern add value to the current body of research addressing the problem of contemporary marine piracy?
- Does the resolution of the area of concern require a cross-sectoral set of responses?
- Will addressing the area of concern have a viable impact or reduce the serious consequences experienced by stakeholders?
- Will addressing the area of concern serve to build and strengthen the DMPP output/deliverable to contribute to addressing the problem of marine piracy?

Based on the research conducted and consistent with the criteria for priority setting the three priority areas identified by the DMPP for discussion by the ISWG were: *Business Model Analysis of Piracy as Organized Crime*, *Children in Piracy*, and *Governance Regimes for addressing Piracy*.

In addition, the DMPP team agreed that the constraints arising from the current definition of piracy, as provided for in the 1982 UN Convention on the Law of the Sea, should be brought to the attention of the ISWG as it cut across each of the three identified priority areas.

It was further anticipated that the expected outcomes of the review by the ISWG members would lead to guidance on the following:

- Agreement on priority areas of concern for the DMPP team to advance;
- Analysis of options, alternatives and expected consequences associated with the agreed upon priority issue areas;
- A comprehensive suite of integrated policy alternatives to inform the further development of an integrated approach to countering piracy;
- Determination of priorities, strategies, potential Plan of Action, possible implications and areas for follow-on projects.

7. CONCLUSION

This summary report sought to analyse the interrelated nature and cross sectoral relevance of the key issues identified by the Sector Working Groups in their module reports. By establishing value-added criteria, it provides a basis for assessment and discussion during the ISWG deliberations. The subject matter experts represent a cross section of geographic and sectoral interests concerning marine piracy, which spans all three of the DMPP external sector working groups. Using a cross-sectoral assessment is anticipated to provide key “reality checks” during the analytical phase and ensure that different concerns and perspectives are brought forward for inclusion in the policy alternatives and recommendations put forward by the DMPP. Validation of the findings of the sectoral working groups, prioritization of action, and the identification of additional issues of concern are all anticipated outputs for the ISWG.

APPENDIX 1

Table 1: Major Thematic Area Findings

Socio-Economic	Law & Governance	Operational Responses
Root Causes of Piracy (Context)		
<ul style="list-style-type: none"> Analysis of the causes of piracy indicates that the Economic Root Causes are related to the relatively high chances of substantial income; low costs of and attack; and low opportunity costs and economic risks. Social Root Causes are linked to Maritime Capacity and tradition in a region; the ability to gain social status through piracy; the existence of grievance; and the existence of community support for piracy. Political Root Causes extend to the existence of corruption within the state; presence of armed groups; limited state capacity; and regional disputes. 	<ul style="list-style-type: none"> The effectiveness of existing governance regimes at the national, regional and international levels are inextricably linked to the root causes of piracy. Failure to sufficiently address the root causes of piracy has been a major limitation to previous and current efforts to effectively address the problem of piracy. Analyzed the root causes and dominant conditions of state failure and state weakness that seemingly allow piracy to gain a foothold (particularly within the Gulf of Aden). The stability of a State is a very important factor in creating opportunities for piracy to flourish. 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. Possible designation of ‘pirate waters’ which could be applied to areas of the territorial sea of failed or failing states, and would allow anti-piracy enforcement by foreign warships 	<ul style="list-style-type: none"> Understanding the root causes, their context and their impact on the business model used by pirates in a particular region is crucial to developing effective operational and other responses. 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 organization, finances, materiel and personnel necessary to support the activity. 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. 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. Operational responses need to reduce the opportunity and remove the means to the extent that

Socio-Economic	Law & Governance	Operational Responses
		they no longer make piracy attractive to potential participants of any part of the business model
Targets, Tactics and Enabling Factors		
<ul style="list-style-type: none"> • Pirates are not a homogenous group. They differ in terms of their motives, organization, and tactics. There are distinct differences, for instance, between the actors engaged in small-scale, subsistence piracy and those involved in larger organized pirate gangs. 		<ul style="list-style-type: none"> • Piracy, except in its most basic, subsistence form, has a business model to support its activities. 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. • Pirates are adaptive. As such, agencies and organizations 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.
Socio-Economic Impacts		
<ul style="list-style-type: none"> • Threats of an attack on commercial shipping result in major changes in vessel management, an increase in various security measures, and higher insurance premiums. The impact of actual attacks (Gulf of Aden) has resulted in the payment of ransoms for kidnapping and hijackings not covered by insurance; and losses due to damage to or theft of the crew’s belongings, cargo and the vessel. • Attacks on fishers have resulted fishers abandoning their livelihoods, and in even worse cases, relatively high number of deaths, resulting in emotional loss and substantial economic loss to their families. 		<ul style="list-style-type: none"> • Piracy appears to have negatively influenced the economies of the regions analyzed. This is predominantly as a result of the impacts on the shipping and fishery industry. It causes unemployment amongst fishers, increases prices for products in the region and prevents profitable industries from being developed. 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.

Socio-Economic	Law & Governance	Operational Responses
Human Costs		
<ul style="list-style-type: none"> • These costs relate to Seafarers, Seafarers’ families, Pirate Crews, Child and Youth Pirates, Women, Fishers, Naval Officers). Violence towards seafarers when being held captive and the lack of proper follow-up treatment have resulted in considerable number of deaths among seafarers (from malnutrition, disease, or suicide). Effects of post-traumatic stress disorder (PTSD) on former captives and their family members are largely unknown. 	<ul style="list-style-type: none"> • There is considerable danger of death, injury, or imprisonment faced by pirates, the financiers and sponsors of these attacks face comparatively few risks. • The overall responsibility of the labour standards aboard ships lies with the ship owners and operators. However, a significant number of ship owners have failed to implement best practices in relation to piracy and are therefore in breach of their duty of care to seafarers. 	<ul style="list-style-type: none"> • Some elements of the shipping industry itself therefore pose a considerable risk to the safety and protection of seafarers. Their continuing resolve to transit high-risk areas due to factors such as the delivery of time sensitive goods and their reluctance to implement security measures such as Best Management Practices has unnecessarily placed seafarers at greater risk of attack.
Children in Piracy		
<ul style="list-style-type: none"> • Recruitment of children and youths by piracy gangs indicates that the socio-economic factors (poverty, armed violence, lack of educational or employment opportunities, orphans, displacement, and exposure to disease) that make children vulnerable to use by armed groups exists in each of the major areas in which piracy currently is reported. • In addition, in many of the regions where piracy exists, children are being used by terrorist groups, criminal gangs and within state and non-state armed groups. Therefore the use of children and youth by pirate groups could be viewed as a natural extension of these armed groups. • The lack of clarity in the context of child pirates highlights the need for the international community to demand revision of the legal principles and how it can address the best interests of the child. 	<ul style="list-style-type: none"> • Children employed in piracy have become a global area of concern; and since it may be viewed as an international problem, it may be amenable to an international solution. • There is a need for a recognized international standard to determine the age of suspected juvenile offenders. • Procedures and protocols need to be put in place to allow navies which have detained juvenile pirates to safely discharge their legal obligations while safeguarding the rights of the child in question. • Practical legal mechanisms for dealing with those who seek to employ children in piracy. • The recruitment and use of children is an important component in the business model for piracy that is being overlooked globally. 	<ul style="list-style-type: none"> • 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. • Procedures and protocols need to be put in place to allow navies which have detained juvenile pirates to safely discharge their legal obligations while safeguarding the rights of the child in question.

Socio-Economic	Law & Governance	Operational Responses
Legal Definitions		
	<ul style="list-style-type: none"> • Examination of the growing number of definitions in Law of Nations, UNCLOS, SUA etc. indicates that those definitions are inadequate for today’s circumstances. This has reduced the effectiveness of international and national antipiracy measures • Any national definition of piracy must not only be <i>internationally acceptable</i>, but also <i>nationally applicable</i>. • 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. 	<ul style="list-style-type: none"> • 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. Using a wider definition than that provided by UNCLOS but narrower than the ‘piracy and armed robbery’ definition used by the IMB, allows the inclusion of attacks occurring in waters under a States’ jurisdiction, attacks that may be a precursor to the development of a wider piracy problem, but excludes robbery (armed or unarmed) from ships that are berthed alongside in a port. The latter are a routine policing issue.
Legal/Governance Arrangements		
	<ul style="list-style-type: none"> • Key arrangements for coordinating and organizing the fight against piracy, at the international, regional and other institutional/organizational levels. • An assessment of the varying mandates of those organizations for dealing with security issues (piracy) is needed on whether the treaty and governance parameters within which they operate enable those organizations to meet their responsibilities. • A major policy response to addressing piracy may be focused on identifying and strengthening gaps in governance arrangements at the international, regional and/or national levels 	<ul style="list-style-type: none"> • Individual nations, or regions, may not have the political will or resources to prevent piracy. Other governments, non-governmental and commercial organizations, should therefore be prepared to support coordinated and persistent (rather than periodic) capacity building in order to develop a sustainable national and/or regional capability. • 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. • 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

Socio-Economic	Law & Governance	Operational Responses
		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.
Apprehension, Prosecution & Imprisonment		
<ul style="list-style-type: none"> • Arrangements are needed to harmonize national laws and mechanisms to permit the effective prosecution of piracy backers, organizers and financiers. 	<ul style="list-style-type: none"> • Further deliberations regarding the desirability of establishing a specific legal framework for international organizations to pursue a collective approach to the prosecution of pirates. • There needs to be an expansion in the provisions of national or international law to allow states more scope to apprehend and prosecute backers, organizers, and financiers of piracy operations. • More consistency in legal mechanisms would not only ensure that individuals arrested and charged in different jurisdictions face a common standard of prosecution, but may also simplify the transfer of suspects to other jurisdictions for trial, sentencing and incarceration. • A potentially suitable regime is utilizing national courts within the region, with international support, to prosecute pirates, considering also, the implications for implementing suspect and post-trial transfer schemes in other regions. 	<ul style="list-style-type: none"> • Mechanisms for entry into the territorial sea or changes to the regime of hot pursuit might be possible and acceptable to allow antipiracy enforcement forces sufficient latitude to deal with the problem of escaping pirates. • The catch-and-release policy used by a number of nations have resulted from: 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. • Catch-and-release may also be viewed as 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.

Socio-Economic	Law & Governance	Operational Responses
Regional Cooperation		
<ul style="list-style-type: none"> • Piracy is a form of organized crime. As with any form of organized crime, inter-agency cooperation is essential to discouraging or suppressing it. 	<ul style="list-style-type: none"> • Determination of the factors that may contribute to enhance and/or constrain cooperation among littoral states to respond and pre-empt the threat of piracy is needed. Examination of the complexities inherent in the multi-scale, multi-level nature of regional governance. • Regional co-operation makes a significant contribution to discouraging and suppressing piracy. If necessary, it should be encouraged from the highest level (the UN). • Addressing the deficiencies in the current efforts to focus on strengthening regional level arrangements. 	<ul style="list-style-type: none"> • Regional cooperation is essential to countering piracy (in addition to international cooperation) - such engagement brings the added advantage that neighbors 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. • Examining if there are deficiencies in the current efforts to focus on strengthening regional level arrangements need to be addressed; and under what conditions might a regional approach not be effective. • 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. • 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.
Generalized Model for predicting Piracy		
<ul style="list-style-type: none"> • The hot spots of organized piracy have frequently changed, as gangs tend to gravitate to areas where the opportunity cost of engaging in these activities is lower. Pirates’ areas of operation migrate as law enforcement patrols and arrests 	<ul style="list-style-type: none"> • Predictive model would provide the global maritime community with a preliminary decision-support tool aimed at anticipating potential piracy ‘hot spots’ • Ownership of the model should rest with a high-level organisation such as the United Nations Office 	<ul style="list-style-type: none"> • 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

Socio-Economic	Law & Governance	Operational Responses
increase.	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.	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.

APPENDIX 2

Table 2: Cross-Sectoral Issues

Socio-Economic	Law and governance	Operational response
a. Origins and Manifestations of Piracy		
		Development of a business model for piracy
		Understand the distinction between piracy for economic gain and similar acts committed for other objectives
	Consider the vulnerability of failed or failing states to the development of piracy	Develop a predictive model for piracy, or a clearer understanding of indicators and warnings.
Determine the vulnerable points in the piracy cycle	Develop a predictive model and identify a potential piracy cycle	
		Investigate whether statistical methods are able to provide a reliable figure for the total number of piracy attacks, rather than just those reported.
Examine the underlying political causes of piracy		
Examine the economic advantages for the use of children in piracy		
b. Cost of Piracy		
	Need to determine the economic impact of piracy including the impact of attacks against fishing vessels	
		Determine how on internationally agreed level of risk piracy as defined
c. Apprehension of Pirates		
Examine the legal and social problems inherent in the catch and release of children in piracy	Consider the recognized legal standards for the detention of children in piracy	Operational challenges related to the catch and release of children involved in piracy

Socio-Economic	Law and governance	Operational response
	Need to develop political and legal mechanisms for the protection of refugees from piracy attacks	Needed to clarify the status of refugees onboard government vessels
	Determine mechanisms for the entry into territorial seas, or hot pursuit	
d. Prosecution of Pirates		
	Need to establish a consistent definition of the crime of piracy	Need to harmonize the definition of piracy
		Need for all states to classify piracy and its support as a crime
	Consideration of the suitability of the horn of Africa national court model, and suspect and post-trial transfer agreements.	
	Development of an international court model for prosecution	
	Consider the suitability of specialized piracy courts	
	Consider the responsibilities for the post transfer supervision of piracy suspects and convict Pirates	
	Consider the legal standards for the prosecution of children piracy	
e. Prevention of piracy		
	Consider the designation of pirate waters for failed or failing states.	Need to determine the potential for the creation of a maritime protectorate or exclusion zone when a state is unable to support its own maritime security
		Measures to address the root causes of piracy
		Need to clarify the role of society and countering piracy

Socio-Economic	Law and governance	Operational response
		Need to reduce corruption associated with piracy
f. Discouragement of Piracy		
		Amnesty for Pirates
		Development of a disarmament, demobilization, and reintegration model for individual piracy areas
		Assess the degree of implementation of the ISPS code, and the Port State Control regime
Determine the appropriate response from the commercial sector		Identify the relationship between the insurance industry position and operational responses
		Study the relationship between the negotiation process and operational responses
		Determine measures of effectiveness for counter piracy initiatives
	Consider the use of RICO or organized crime statutes against piracy leadership	
	Consider the harmonization of national laws for the prosecution of piracy backers and financiers	
g. Suppression of Piracy		
	Consider the use of antiterrorism legislation, and the links between terrorism and piracy	Investigate the implications of operational responses of the merging of piracy and terrorism in a regional area
		Investigate the impact of conducting operational responses on land and sea without dealing with the root causes piracy

Socio-Economic	Law and governance	Operational response
	Need to determine factors that contribute to the enhancement or constraint of cooperation among littoral states	Determine measures of effectiveness for counter-piracy initiatives.
	Needed to coordinate antipiracy activities with other law enforcement activities	
	Identify the appropriate level for developing and strengthening governance arrangements	
	Identify the success criteria for governance arrangements	
		Examine the appropriate standards for use of force