

# Maritime Piracy's Influence upon the Maritime Industry

Brian Chambers – School of Marine Affairs  
Eric Willet – School of Marine Affairs  
Ghislain Kameni, UW Extension GTTL

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## **Introduction.**

“Piracy has posed a threat to all states’ maritime interests for nearly as long as people have sailed the oceans. States have long recognized the threat that piracy poses to political and commercial interests, as well as to human safety. Since pirates operate on the seas, the ‘great highway of all maritime nations,’ and since piracy can inflict harm upon all states, international law treats piracy as a universal crime whose perpetrators are subject to punishment by any state that apprehends them” (Barrios). This paper will discuss the international historical framework of laws to prevent piracy and discuss best practices to deter pirate attack.

“Piracy remains a serious threat to international commerce and safety in modern times, especially in Southeast Asia and Africa. Commercial ships in these regions have always been particularly vulnerable to the maritime attacks that characterize piracy due to the narrow waterways and countless small islands that define the region’s geography. Nevertheless, there was a sharp increase in these attacks in the late 1990s following the massive unemployment and political instability” caused by this region’s economy (Barrios).

“The explosion of maritime violence in [Africa and Asia] s reason for serious international concern given the region’s significant role in international commerce. Roughly 45% of the world’s commercial shipping moves through the region’s waters, and the frequent attacks on commercial vessels passing through the region can hamper international trade and lead to severe economic loss. Indeed, maritime attacks in the

region have caused an estimated \$21 billion in economic loss over the past five years” (Barrios).

“In addition, the possible links between the maritime attacks, local dissidents and terrorist groups...justifies increased international attention. While violent dissident groups have existed in the region for centuries, the attacks of September 11, 2001 and the subsequent war on terrorism have focused increased attention upon possible links between al Qaeda and dissident groups in countries such as the Philippines, Malaysia, Indonesia, Singapore, Thailand,” Nigeria and Somalia (Barrios).

“The International Maritime Bureau (IMB), an organization of the International Chamber of Commerce that tracks incidents of maritime crime throughout the world, reports the emergence in Southeast Asia of a ‘new brand of piracy’ in which the attacks are motivated by political agendas rather than a traditional motive to rob. These attacks are consistent with the theory that terrorists...have shifted strategies to encompass economic, as well as political and military, targets. Actual attacks by terrorists have thus far been limited to temporary seizures of vessels and crewmen, but officials express concern over the ease with which large vessels such as oil tankers could be hijacked and used as weapons with which to block commercial waterways” (Barrios).

### **International Law**

“Piracy became a crime under international law as seafaring became prevalent and international trade became a major part of all states’ economies. Early on, states recognized that piracy posed a threat to trade and the orderly functioning of the international community in general. Thus, the international community branded pirates as ‘*hostes humani generi*’ or enemies of the human race, and treated piracy as one of the

few crimes over which universal jurisdiction applied. As such, piracy remains punishable by all nations, wherever the perpetrators were found and without regard to where the offense occurred” (Barrios).

Maritime piracy and the slave trade were all but eradicated by the Maritime Superpowers of the 19<sup>th</sup> century. Outside of the declared wars of the 20<sup>th</sup> century, relative peace existed upon the high seas. This peace has been in jeopardy since the 1970’s. The environmental degradation, poverty and political instability suffered by regions such as Somalia and Indonesia have led to a resurgence of organized maritime piracy. The United Nations’ Convention on the Law of the Sea (UNCLOS) places the focus upon acts of piracy that occur on the High Seas, areas which are outside the primary jurisdiction of any one nation. Article 101 of UNCLOS defines piracy as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

UNCLOS Article 105 provides the ability to “seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.” Article 107 of UNCLOS limits the authority to seize pirate vessels and vessels controlled by pirates to military warships or those clearly marked as government vessels. UNCLOS clearly establishes an international framework for seizing

pirates upon the high seas; however it does not provide for the ability to seize pirates operating within a nation's sovereign territorial waters. Territorial waters extend out from the coast 12 nautical miles; crimes that occur here are considered under the jurisdiction of the coastal state<sup>1</sup>.

“The requirement that the acts be motivated for private ends restricts this definition to attacks committed with the intent to rob, and also limits the ability of states to claim universal jurisdiction over politically motivated attacks. This requirement reflects the states' primary underlying concern about interference with commercial shipping and transportation, and underscores the states' general unwillingness to assert jurisdiction over politically motivated acts that do not have a commercial aspect” (Barrios).

“Soon after UNCLOS was adopted, it became clear that its conception of piracy did not cover many of the violent crimes committed on the seas. On October 7, 1985, four armed stowaways onboard the Italian cruise liner *Achille Lauro*, hijacked the ship and killed one American passenger. The apparent political motivations for the attack, the location of the attack in Egyptian waters, and the fact that the attack originated from the vessel rather than from a separate ship, placed the attack outside the UNCLOS definition of piracy and, presumably, beyond the purview of universal jurisdiction” (Barrios).

“After the *Achille Lauro* attack, the international community, through the UN and its International Maritime Organization (IMO), promulgated the Rome Convention, which established a legal basis for prosecuting maritime violence that did not fall within the UNCLOS piracy framework. The Rome Convention made it unlawful to seize or take control of a ship by force or the threat force; to perform an act of violence against a

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<sup>1</sup> Text of UNCLOS available at <http://www.un.org/Depts/los/index.htm>

person on board a ship if it is likely to endanger safe navigation of that ship; to destroy or damage a ship or its cargo if it is likely to endanger safe navigation; to place devices or substances on a ship that are likely to destroy that ship; to knowingly communicate false information to a ship that would endanger safe navigation; and to injure or kill any person in connection with any of the above acts. The Rome Convention authorizes and, under certain circumstances, requires party states to establish jurisdiction over the perpetrators, either extraditing the perpetrators to another interested signatory state or prosecuting the alleged offenders themselves” (Barrios).

“Unlike UNCLOS, there is no assumption that non-signatories would be bound by the terms of the Rome Convention; it is clearly not a reflection or codification of customary international law, but rather a relatively recent departure from it” (Barrios).

In 2008, the United Nations Security Council passed five separate resolutions in order to deal with the large amounts of pirates operating within Somalia’s sovereign waters. These UN resolutions were passed with the consent of the Somali government, which lacks the ability to effectively pursue and prosecute pirates operating within its waters. The first of these resolutions, Resolution 1816, “authorizes nations to take action against pirates within sovereign Somali waters” (Contorovich, 2009).

Resolution 1851 was then passed, which authorizes nations to “undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea” (Contorovich, 2009). Resolution 1851’s language allows for military actions to be undertaken on land to disrupt Somali pirates’ bases of operation. These operations are authorized for a one-year period, ending in December of 2009. Due to the forecasted loss of civilian life, at the time of this paper none such

operations have been undertaken. All of the resolutions passed by the UN Security Council have broadly expanded the authority of the military vessels patrolling off of the coast of Somalia in the Gulf of Aden. The UN Security Council has stressed that these resolutions apply solely to the Somali situation, in an attempt to limit the unprecedented legal implications provided by these resolutions concerning the erosion of territorial sovereignty rights.

The International Community's efforts to provide the legal basis necessary to seize pirates operating within territorial waters and upon the high seas have been hampered by the lack of an effective venue to prosecute pirates. This is because UNCLOS requires that "captured pirates be tried and punished under the criminal law of the state holding them in local courts, not under international law in an international tribunal" (Passman, 2009). Further complications arise due to the difficulty in classifying pirates, since the act of piracy exists as neither the act of a civilian nor that of a true belligerent. This ambiguity surrounding the classification of pirates prevents a determination whether pirates are to be afforded protection by "international humanitarian law, such as the Geneva Convention, or even by country-specific protections for the criminally accused, such as the U.S. Bill of Rights" (Passman, 2009).

The perceived expense associated with these legal difficulties has led the Navies patrolling off the coast of Somalia "to avoid capturing pirates in the first place, or, if captured, releasing the pirates without charging them with a crime" (Contorovich, 2009). As a result of these practices, many of the pirates who have had their weapons and equipment seized are later encountered conducting the very same pirate activities as before. Therefore, it is essential to the effective suppression of piracy that new laws are

drafted, not only to clarify the classification of pirates, but also to provide a venue within which these pirates can be prosecuted.

### **Pirates Tactics**

This section of the paper will review tactics and techniques used to avoid or deter pirate attacks, as well as mitigation measures to be taken if pirates succeed in boarding a vessel. Many of these techniques refer specifically to the newer emergence of Somalia-based pirates. For example, Somali pirates typically hold crew and vessels for ransom, where as Malaccan pirates are more likely to murder the crew and commandeer the vessel and cargo.

Of course, the master is in the best position to determine the needs and abilities of his vessel and crew; at all times he is concerned with the well-being of his crew and the safe navigation of his ship. The safety of the ship's crew should be the highest priority and the master's number one responsibility. Additionally, it is recognized not all measures will be applicable to all vessels. These best practices can be divided in to four parts depending on the phase of the vessel's operations at the time:

- Preparation and Planning
- Steaming and Watchstanding
- Pirates Inbound
- Pirates Onboard

### **Preparation and Planning**

The Preparation Phase will be composed of all measures the vessel takes prior to sailing. Much of this will focus on administrative, logistical, training, or communications procedures and will consider both corporate strategic planning and more tactical plans considered by the master onboard.

## **Corporate Planning**

“The anti-piracy contingency plan has been shown to be most effective when implemented in advance; a drill is conducted prior to arrival in the area, the plan reviewed and all personnel briefed on their duties; including familiarity with the alarm signal signifying a piracy attack” (Intertanko, et al, 2009, pg 5).

Together with the master, corporate officers should meet with the master and other key representatives (shipper, owner, charter company, etc.). These officers should conduct a risk assessment for the voyage, considering the latest intelligence and information. Risk assessment should be based on the area traveled as well as any high value cargo onboard. “The outcome of this risk assessment should identify measures for prevention, mitigation and recovery (Intertanko, et al, 2009, pg 4).

The easiest way to avoid pirate attack may be to route the ship completely away from high-risk areas; however, we realize that is not always a practicable solution. Additionally, the use of motherships has enabled pirates to strike further from shore, greatly enlarging their area of attack.

Factors such as weather and darkness should be considered during route planning. The small boats used by the pirates may be difficult to operate in moderate sea conditions. Additionally, attacks increase after periods of bad weather; one might speculate that the weather kept the pirates shoreside and they are now anxious to resume attacks. Pirate attacks occur most often during morning and evening twilight (CRS, 2009, pg 25). Only one attack has taken place at night and that was during a bright moon. Masters may want to time their voyage so they travel in darkness through the highest risk areas as described by the most current intelligence. “Any perceived reduction

in risk by transiting in darkness needs to be balanced against the fact that daylight transiting allows for early detection of potential attackers” (OCIMF, 2009, pg 4).

Company security officers and the ship’s security officers should also conduct a parallel assessment at their level; Ship Security Plans should be reviewed and updated. Crewmembers should be trained and security plans exercised. Anti-pirate plans will need to be integrated with and tested against other shipboard emergency procedures. For example, securing topside hatches and doors to pirates should not prevent crewmembers from emergency egress or responding to shipboard fire (OCIMF, 2009, pg 3).

Corporate officers will need to discuss crew size and consider additional crew in high-risk areas.

“The smaller crew numbers now found on board ships also favor the attacker. A small crew engaged in ensuring the safe navigation of their ship through congested or confined waters will have the additional onerous task of maintaining high levels of security surveillance for prolonged periods. Shipowners will wish to consider enhancing security watches if their ship is in waters or at anchor off ports, where attacks occur. Shipowners will wish to consider providing appropriate surveillance and detection equipment to aid their crews and protect their ships” (MSC/Circ.623/Rev.3, 2002, pg 2).

Additional crew can aid in watchkeeping duties in congested waters as well as serve as additional topside lookouts. The use of hiring armed security guards or embarking military personnel may be considered.

Naval authorities in the risk area should be contacted for further intelligence and route planning. Shipping Coordination Centers are operated by Maritime Security Centre – Horn of Africa (MSCHOA), a division of European Union’s Naval Forces – Somalia, and by the Royal Navy’s UK Maritime Trade Operations (UKMTO) in Dubai. An emergency communications plan should be arranged with naval forces in the region.

## Communications Planning

Masters should consider the security of the ship's communications and communications protocols. Crew members on shore in foreign ports should be cautioned against discussing the ship's mission or cargo. Similarly, discussing this information over an unsecured radio frequency should be minimized. Pirates may be able to monitor communications and vessel movements.

Automatic Identification Systems (AIS) are required on vessels by international regulations as part of the Safety of Life at Sea (SOLAS) Convention. The following information is transmitted by the AIS and updates every few minutes:

*Static data* (pre-programmed and does not change):

- Ship's name and call sign
- IMO number
- Length & beam
- Location of antenna
- Ship's type

*Voyage related data* (to be inputted every new voyage):

- Draft
- Cargo information
- Destination and ETA
- Other relevant information

The dynamic data is updated continually.

*Dynamic data* (automatically derived from ship's interfaces):

- Time
- Ship's position
- Course over ground
- Speed over ground
- Gyro heading and Rate of Turn
- Navigational status (according to Rules of the Road)<sup>2</sup>

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<sup>2</sup> <http://www.uais.org/AISandnon-SOLASvessels.htm>

The master may wish to disable the use of the AIS, however, this also restricts the ability of naval forces to monitor and track the vessel. Intertanko, et al states, “Current naval advice is to turn it off completely” (Intertanko, et al, 2009, pg 6). However, according to OCIMF, “It is considered unlikely that the pirates currently have the ability to monitor AIS transmissions, it is recommended that the AIS be left on” (OCIMF, 2009, pg 20). Both sources advise that broadcast information be restricted to ship’s name, course, speed, operational status and safety information. AIS should be energized if a pirate attack occurs to enable tracking by military and other merchant ships.

Further communications planning includes ensuring that an officer with communications responsibility and training is available on the bridge or radio room. The master should also consider the make-up and language abilities of his crew and how warnings and instructions will be communicated. Vessel crews should be reminded that naval forces will be operating under language and communication barriers as well.

### **Steaming and Watchstanding**

“The majority of attempted hijacks have been repelled by ship’s crew who have planned and trained in advance of the passage and employed passive counter measures to good effect” (Intertanko et al, 2009, pg 3).

“Early detection of a possible attack is the most effective deterrent” (MSC/Circ.623/Rev.3, 2002, pg 3).

“Early detection of suspected attacks must be the first line of defense” (MSC/Circ.623/Rev.3, 2002, pg 9).

“If a potential attack is detected early, the ability to outrun the attackers will defeat the attack before it develops” (OCIMF, 2009, pg 3).

“In transit, effective watch procedures are recommended, since early detection of impending attacks increases the likelihood that avoidance and suppression measures will succeed. Crew preparation, training, and

responses also are credited with reducing risks of successful pirate attacks” (CRS, 2009, pg 25).

From the quotes above, it is obvious the best method of defeating pirate attacks is through the vigilance and alertness of the ship’s crew. As discussed above, the vessel owners may want to provide additional crew for lookout duties; these can be both topside lookouts and radar lookouts. Topside lookouts should be provided with additional binoculars and night vision goggles. Radar watches should look for boats shadowing the vessel’s course and speed. Watchstanders should be reminded that pirate attacks are often made by two small boats; if one is sighted, it may be a decoy while another attacks from the opposite direction. (MSC/Circ.623/Rev.3, 2002, pg 5)

Blind spots, both radar and visual, should have been identified prior to sailing. These areas can be covered by additional lookouts or closed circuit television cameras (CCTV). Special attention should be directed to the stern; the stern is frequently a blind spot for bridge lookouts and radars and is often the route of attack. According to Intertanko, et al, “Most attacks to date have occurred from the port quarter” (Intertanko, et al, pg 10). Cutouts or areas of low freeboard may need additional surveillance as well.

MSC cautions that pirates could target lookouts and lookouts should attempt to remain hidden. Dummy lookouts can be positioned on the weather decks to demonstrate an effective watch and to simulate a larger than normal crew size (MSC/Circ.623/Rev.3, 2002, pg 7; OCIMF, 2009, pg 10). Attempts should be made to “harden” critical topside spaces, such as the bridge, and provide extra protection to lookouts. Bridge watch and lookouts should have immediate access to body armor and helmets; bridge windows should be protected with security glass or metal shielding. Bridge wings can be sheltered

with sand bags. Flammables and gasses should be removed from the bridge and topside spaces or protected with sandbags (OCIMF, 2009, 12-14).

Ship's lighting should be consistent with the International Regulations for Avoiding Collisions at Sea (COLREGS); departing from the Rules is the master's responsibility. Vessels should not "darken ship" to hide from pirates. A true blackout is hard to attain. It is recognized, however, that a dark ship may hinder pirates' ability to "establish points of reference" and that suddenly illuminating the ship may disorient the attackers. MSC recommends "the maximum lighting available consistent with safe navigation" (MSC/Circ.623/Rev.3, 2002, pg 7). Spotlights or searchlights may be used to make random sweeps or to illuminate possible radar contacts. Light sweeps seen from a vessel may provide deterrent effects against the pirates. Use of lights should be coordinated with and balanced against the use of night vision equipment.

As stated above, CCTV can be used to cover blinds spots inaccessible to lookouts. If pirate attacks are imminent, they provide a way to monitor the attack without exposing personnel outside the ship. Camera operating stations should be placed on the bridge, in the engine room and at the crew's secure muster locations. A CCTV system should have the ability to record evidence and may be helpful in identifying and prosecuting pirates after an event. (OCIMF, 2009, pg 10-11 & 28).

### **Pirates Inbound**

One of the most common defenses against attack is the use of fire hoses directed against the small boat or at access points. Prior to attack, hoses can be fixed to cover obvious boarding locations, such as a cutout or the stern. Fixed hoses have the advantage

that they can be operated without exposing crewmembers to attack; if hoses are pre-rigged, they can be energized and operated from the engine room or damage control station. Water from fire hoses may also disable or swamp the attacking small boat; assertive use of hoses may deter the attack altogether (OCIMF, 2009, pg 16-17; MSC/Circ.623/Rev.3, 2002, pg 8-9).

The most effective method of defeating pirate attack is the use of speed and evasive maneuvers. No pirate attacks have occurred on vessels traveling over 16 knots (OCIMF, 2009, pg 3). Even if maximum speed is less than this, faster speeds increase the amount of time and distance the pirates have to travel. “Evidence to date from failed attacks is that the pirates will give up if unable to board within 30 - 45 minutes” (Intertanko, et al, 2009, pg 11). Faster speeds may buy additional time for military forces to arrive or for the crew to take their defensive positions. Evasive maneuvers, such as zigzagging, also make boarding more difficult for pirates. The master may be able to use the vessel’s wake or bow wave to push away or swamp the attacking boat. Steaming into the prevailing seas reduces any lee the small boat may have alongside and makes the ride rough and uncomfortable. Masters should ensure all main engines, maneuvering machinery (steering pumps) and necessary auxiliary equipment (generators, fire pumps) are online and engineering spaces are manned.

Vessels under attack should assemble the crew at their designated pirate attack muster stations. Topside access to the ship should be secured with particular emphasis on the entry points to the bridge, engine room and steering room. Any tools or equipment the pirates may use should be secured or stowed below. Secure areas inside the ship should be identified; these areas should have communications with the bridge, as well as

provisions: food & water, toilet facilities, first aid, fire fighting equipment, lighting and access to the CCTV system (OCIMF, 2009, pg 17-18; MSC/Circ.623/Rev.3, 2002, pg 7-8). Additionally, vessels should activate their communications plan with corporate headquarters and nearby military forces.

### **Other weapons**

Several other defensive options have been used to defeat small boat attacks or are currently in development. “In November 2005, the cruise ship Seabourn Spirit in the western Indian Ocean fended off pirate speedboats, partly by blasting them with a long range acoustic device (LRAD), which is designed to cause painful level of sound up to 300 meters away. But a similar use of an LRAD three years later didn't stop a chemical tanker from being seized by more Somali pirates. The bad guys may have figured out that earplugs or blast muffs greatly reduce the LRAD's effectiveness as a weapon.” (Wagenseil, 2009). LRAD's are also used by Japanese fisherman to counter anti-whaling protestors.

The US Air Force has developed weapons that shine dazzling bright lights that disorient and electromagnetic waves, like microwaves, that bring sudden pain. Known as the Active Denial System, the microwaves system is planned to be deployed on Army Humvees. Future, smaller versions could have application on ships.<sup>3</sup>

For years, the US Coast Guard has deployed a twisted snarl of lines to stop fleeing vessels. Known as an “entangler,” the knotted line becomes trapped in the boat's propeller. Versions could be developed that launch entangling nets towards

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<sup>3</sup> <http://www.globalsecurity.org/military/systems/ground/v-mads.htm>

attacking boats. Similarly, lines could be trailed off the quarter behind merchant ships to ensnare approaching pirate boats.

As featured on the Discovery Channel show “Whale Wars,” environmental activists attacked a whaling ship using methocel, a water-loving type of cellulose that gets slippery when exposed to water, and stink bombs composed of butyric acid.<sup>4</sup> Similarly, the US Marine Corps has developed a Mobility Denial System consisting of slippery foam used to trip and disable enemies.<sup>5</sup> Slippery agents could be run through the vessel’s firefighting system and directed against the small boat or to make the deck of the merchant vessel too slippery to board.

Electric fences may also be an option, particularly at easy access points. Warning signs should be displayed on the fence but could even be shown where the fence is not electrified. Electric fences are not recommended for ships carrying oil, other flammables or explosives (OCIMF, 2009, pg 14; Wagenseil, 2009).

### **Pirates Onboard**

When attackers are on board, the actions of the master and crew should be aimed at:

1. Securing the greatest level of safety for those on board the ship;
2. Seeking to ensure that the crew remain in control of the navigation of the ship; and
3. Securing the earliest possible departure of the attackers from the ship. (MSC/Circ.623/Rev.3, 2002, pg 10).

Once pirates have boarded the vessel, crew should remain calm and cooperate. The pirates should be assured they have taken anything of value from the ship (including

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<sup>4</sup> <http://animal.discovery.com/videos/whale-wars-making-methocel.html>

<sup>5</sup> <http://www.globalsecurity.org/military/systems/munitions/mds.htm>

access to the ship's safe). This may persuade the pirates to leave. Aside from these basic guidelines, it is hard to provide further recommendations. "The options available to the master and crew will depend on the extent to which the attackers have secured control of the ship [and crew]" (MSC/Circ.623/Rev.3, 2002, pg 11).

If military teams board the ship, crewmembers should remain on the deck with their hands covering their heads. Use of flash photography, flares or firearms against the pirates at this time may confuse military forces and draw their fire towards the crew. Military forces will need to sort the pirates from the crew; the crew should be prepared to provide ID and answer identifying questions. As noted above, military forces in the region may speak a variety of languages; it may take time to overcome this barrier (OCIMF, 2009, pg 28; Intertanko, et al, 2009, pg 11-12).

## **Conclusion**

Decisions to counter piracy are made on many levels: as international policy and diplomacy, in corporate boardrooms and on the high seas. The international solutions of nation building are complex, long-term and resource-intensive; they are outside the scope of this paper.

Corporate decisions are mainly economic. It costs money to sail around the pirates operating areas or to provide more cameras and security. Often the easiest and cheapest solutions are to simply pay the ransom. This leads to a moral hazard; paying the pirates is short-term solution however, the ransom money breeds more piracy and passes the problem along to other vessels.

Defense against pirates and protection of life and property has to be considered a debate along moral and ethical lines instead of just economics.

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