

Piracy in the Gulf of Aden:

The Impact on Security and the Economy

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The Gulf of Aden is one of the world's hotspots for pirate attacks on merchant ships. Piracy in this area has exploded in the past ten years. Although the number of pirate attacks has recently declined, it still remains a domestic and international issue that threatens regional security and global trade. Piracy is harmful to global trade and has created a market for Private Maritime Security Companies (PMSCs) due to the high number of pirate attacks on merchant ships. PMSCs should be used with caution, and international law regarding the operations and conduct of PMSCs must be developed in order to establish clear regulations and protocol for PMSCs operating on merchant ships to make them more accountable. This paper will first examine the historical context of piracy, specifically how Somalia's state collapse has caused an increase in piracy in recent years. The international and domestic implications will then be reviewed. Finally, the security issues surrounding piracy in the region will be analyzed along with the role of PMSCs.

In order to understand the rise of piracy in the Gulf of Aden, the historical context of the political and economic situations in Somalia must first be examined. British Somaliland and Italian Somalia both earned independence in 1960 and merged to form modern-day Somalia.¹

¹ Mwangi S. Kimyeni, John Mukum Mbaku, and Nelipher Moyo, "Reconstituting Africa's Failed States: The Case of Somalia," *Social Research* 77, no. 4 (2010): 1349.

Following independence, Somalia experienced a period of democracy with relatively fair and free elections. However, President Shermarke was assassinated in 1969 and a military coup led by General Mohamed Siad Barre immediately followed, putting the government and all political power in the hands of his Supreme Revolutionary Council.² General Barre remained in power, but faced growing resentment and opposition in the 1980s due to his attempts to eliminate the clan structure in Somalia.³ In response, the clans and their warlords overthrew General Barre in 1991 and the government subsequently collapsed, leading to civil war between clans in an attempt to fill the political power vacuum.⁴

State failure is arguably one of the main causes of the rise in piracy in the Gulf of Aden in the early 2000s.⁵ Rule of law ceased to exist, despite the brief success of the Council of Islamic Courts (CIC) in establishing order in Somalia's capital of Mogadishu by dispelling the warlords and gangs in 2006.⁶ This created an ideal breeding ground for illegal activities, such as piracy, to flourish.⁷ There is also an economic incentive to piracy. State collapse had a profoundly negative impact on the Somali economy. As Mwangi S. Kimyeni, John Mukum Mbaku, and Nelipher Moyo note, "These weak and poorly designed institutions have discouraged and in many instances stunted indigenous entrepreneurship and prevented the creation of wealth."⁸ A further blow to the Somali economy came in the form of illegal dumping and trawling in Somali waters by

² Ibid.

³ Ibid., 1350.

⁴ Ibid.

⁵ Ibid.

⁶ Ken Menkhaus, "The Crisis in Somalia: Tragedy in Five Acts," *African Affairs* 106 (2007): 371.

⁷ Thomas Keating, "The Political Economy of Somali Piracy," *The SAIS Review of International Affairs* 33, no. 1 (2013): 186.

⁸ Kimyeni et al., "Reconstituting Africa's Failed States," 1341.

foreign ships. The lack of a Somali state coast guard or navy made it easy for foreign ships to dump waste and trawl waters, two activities that are banned throughout the world due to their harmful impacts on the environment and fisheries.⁹ Fish is one of Somalia's primary exports and so the negative impact on the fisheries made the economic incentives of piracy even more appealing.¹⁰ Piracy can be an incredibly lucrative endeavour. According to Thomas Keating, a Somali pirate can make up to \$10,000 in a single attack while the per capita income as of 2010 was a mere \$600.¹¹ The opportunity to earn up to \$10,000 creates an economic incentive to take part in piracy.

Furthermore, with no government to enforce maritime law, some Somali fishermen took matters into their own hands and began to engage in "defensive piracy".¹² Defensive piracy was an attempt to get foreign ships out of Somali waters to prevent further damage to the fisheries. It did not take long for pirates to organize and there are now at least five pirate gangs with a total of 1,000 pirates.¹³ According to Martin Murphy, Somali piracy became largely successful after 2005 due to the efforts of pirate leader Afweyne who shaped piracy into the business model still in use today.¹⁴ Afweyne

relied on experienced pirates and the concept of the 'mother ship' from which the smaller, faster boats are based.¹⁵ These pirates are frequently financed by clan leaders or warlords and continue to be highly organized in their operations.¹⁶ This sophisticated organization is part of what makes them a formidable threat.

Piracy poses a substantial threat to the international economy, particularly global trade. According to Murphy, "[pirates] have mounted what amounts to the most substantial non-state threat to the security of international shipping

for half a century and perhaps longer."¹⁷ When 90 percent of world trade is done via shipping, piracy is a threat that must be addressed.¹⁸ A fair share of international shipping goes through the Gulf of Aden and around the Horn of Africa as it is coming or going from the Suez Canal. It is hard to

accurately quantify the impact piracy has on global trade. Estimates of how much piracy costs the global economy are anywhere from between \$1 billion and \$16 billion a year.¹⁹ Although these numbers are small when compared to global trade, which is in the trillions of dollars,²⁰ it does not diminish the importance of the piracy issue and its negative impact on trade. The bulk of shipping that passes through the Gulf of Aden makes ships easy targets for Somali pirates in the area.

The increase in pirate attacks in the Gulf of Aden and around the Horn of Africa has led to insurance companies raising their premiums

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⁹ Keating, "The Political Economy of Somali Piracy," 186.

¹⁰ The World Factbook: Somalia, Central Intelligence Agency, last modified June 23, 2014, <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html>.

¹¹ Keating, "The Political Economy of Somali Piracy," 188.

¹² Ibid., 186.

¹³ Alexa K. Sullivan, "Piracy in the Horn of Africa and its Effects on the Global Supply Chain," *Journal of Transportation Security* 3, no. 4 (2010): 234.

¹⁴ Martin Murphy, "Security Responses to Piracy in Southeast Asia, West Africa and Somalia," *The Emirates Center for Strategic Studies and Research* no. 11 (2013): 5.

¹⁵ Ibid.

¹⁶ Keating, "The Political Economy of Somali Piracy," 188.

¹⁷ Murphy, "Security Responses," 1.

¹⁸ Helen B. Bendall, "Cost of Piracy: A Comparative Voyage Approach," *Maritime Economics and Logistics* no. 12 (2010): 180.

¹⁹ Ibid., 183.

²⁰ Ibid.

exponentially on any vessel traveling through the area.²¹ The increased insurance premiums add further costs to both the shipping companies and consumers.²² This has forced some shipping companies to bypass the Gulf of Aden completely in order to avoid increased insurance premiums. Instead of using the Suez Canal and sailing through the Gulf of Aden, shipping companies are opting instead to sail around the Cape of Good Hope, which cuts down insurance costs and eliminates the Suez transit fees.²³ However, despite the decrease in insurance costs and Suez transit fees, a route around the Cape of Good Hope requires more fuel and more time.²⁴ Furthermore, the Suez Canal Authority has reported a significant decrease in canal traffic due to the increase of pirate attacks which has led to a decrease in revenue.²⁵

Piracy also has a negative impact on Somalia domestically. The increase in pirate attacks by Somali pirates has damaged Somalia's reputation in the international community. According to Kimyeni, Mbaku, and Moyo, piracy has "become one of the most profitable industries in Somalia,"²⁶ and also one of its most well-known. Somalia has been struggling to build a state since the collapse of the government in 1991, and its poor reputation in the international community associated with piracy will certainly not help its state-building endeavours. Somalia's international reputation has been further damaged due to the fact that most pirate attacks occur after cargo has been discharged in Somali ports,²⁷ which indicates that pirates are more interested in ransom than in the goods onboard. Alexa Sullivan notes:

... it is still a very risky situation for shipping companies and manufacturers alike. Ports in Somalia may not have been the cargo's final destination and there is no guarantee that Somalian port authorities will ensure that goods reach their proper final destinations. In addition, most shipping companies and manufacturers will not likely risk the fate of their goods in the care of Somalian port authorities, especially given that Somalia ranked last on the 2009 Corruption Perceptions Index.²⁸

Recent research has shown that piracy has contributed to the Somali economy and development of regional areas that provide the "material inputs" of piracy.²⁹ Despite this growth, the coastal villages that many Somali pirates come from have failed to see the same development.³⁰ There are certainly economic benefits to piracy, but the benefits are not evenly distributed.

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In addition to harming the domestic and international economies, pirate attacks have created a severe security issue in the Gulf of Aden and the increase in attacks on ships from around the

world has prompted an international response. States around the world have deployed their naval forces to combat pirate attacks in the

²¹ Ibid., 179.

²² Ibid.

²³ Ibid., 184.

²⁴ Ibid., 191.

²⁵ Ibid., 183.

²⁶ Kimyeni et al., "Reconstituting Africa's Failed States," 1352.

²⁷ Sullivan, "Piracy in the Horn," 236.

²⁸ Ibid.

²⁹ Anja Shortland, "Treasure Mapped: Using Satellite Imagery to Track the Developmental Effects of Somali Piracy," *Chatham House* (January 2012), 3, http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/o112pp_shortland.pdf.

³⁰ Ibid.

region, including the US and Canada.³¹ According to Anna Petrig, the increased naval presence in the region has had relative success in deterring and preventing piracy attacks. However, naval forces have expanded their patrol areas while the number of forces has not increased.³² Increasing patrol areas without also increasing the number of forces can spread them thin and decrease their overall effectiveness of protecting merchant ships. Petrig proposes that Vessel Protection Detachments (VPDs) or Private Maritime Security Companies (PMSCs) must be deployed along with state navies in order to fill the gaps left by state navies and to effectively protect merchant ships in the area from pirate attacks.³³ VPDs are “small teams of law enforcement officials embarked on board merchant ships ... comprised of uniformed state officials acting within their capacity as military or law enforcement agents who are subject to disciplinary procedures and are authorized to execute the state’s monopoly on the use of force.”³⁴ VPDs are essentially an extension of the state. They have a clear set of regulations and code of conduct that complies with state law to make them accountable for their actions. However, the availability of VPDs is limited, and so shipping companies must opt for PMSCs instead.³⁵

It is estimated that between 15 and 35 percent of vessels travel with armed guards from PMSCs on board.³⁶ PMSCs should be hired with caution. They are private contractors and therefore not accountable to the state like state navies or VPDs are. It is crucial that these PMSCs establish clear regulations and codes of conduct that comply with maritime law and the

state law whose flag the ship is flying under in order to prevent unnecessary conflict and violence. The Baltic and International Maritime Council (BIMCO), the world’s largest international shipping association, advocates that the use of PMSCs “must be seen as a temporary measure lasting only until governments fulfil their responsibility to protect crews and ships from pirate attacks and that an unnecessary proliferation of PMSCs and their institutionalization must be avoided.”³⁷ However, according to Ilja Van Hespen, it is no longer a question of *whether* PMSCs should be used, but rather *how* they should be used in order to ensure safety and accountability.³⁸

Regulating the use of PMSCs has proven to be difficult. The most pressing issue concerning PMSCs is the use of force by armed contractors, but the legalities surrounding the procurement and carrying of weapons and equipment has proven to be more complicated.³⁹ Domestic law or laws specific to PMSCs usually deal with the issue of weapons procurement and carrying, and contractors are governed by the flag state law while on board a ship. If a domestic law does not exist, then the ship is subject to international rules, which are often ambiguous at best.⁴⁰

Furthermore, the Suez Canal has its own set of rules and regulations, which only further complicates matters, since most ships traveling through the Gulf of Aden will likely pass through the Suez Canal as well.⁴¹ The Suez Canal Authority and the Egyptian Ministry of Defence prohibited all vessels from having weapons on board traveling through the canal in

³¹ Anna Petrig, “The Use of Force and Firearms by Private Maritime Security Companies Against Suspected Pirates,” *The International and Comparative Law Quarterly* 62, no. 3 (2013): 668.

³² *Ibid.*

³³ *Ibid.*, 669.

³⁴ *Ibid.*

³⁵ *Ibid.*, 670.

³⁶ *Ibid.*

³⁷ *Ibid.*, 671.

³⁸ Ilja Van Hespen, “Protecting Merchant Ships from Maritime Piracy by Privately Contracted Armed Security Personnel: A Comparative Analysis of Flag State Legislation and Port and Coastal State Requirements,” *Journal of Maritime Law and Commerce* 45, no. 3 (2014): 361.

³⁹ Petrig, “The Use of Force,” 675.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 678.

2011.⁴² Failure to comply with this regulation would make any ship carrying weapons through the canal liable to Egyptian criminal law.⁴³

Petrig notes that some PMSCs have started dumping their weapons at sea to avoid prosecution by Egyptian authorities while others use ships or docks at sea as “floating armouries.”⁴⁴ These are poor solutions that should not be condoned. Carelessly dumping weapons in to the ocean could harm the environment and ‘floating armouries’ are at risk of falling into the wrong hands. International law regarding the procurement and carrying of weapons on board ships could prevent these things from happening. It is widely accepted that the use of force by PMSCs is governed by domestic, rather than international.⁴⁵ However, as Sony Vijayan notes, “This practice of deploying armed forces without proper Rules for the Use of Force (RUF) may produce serious jurisdictional conflicts between the flag states and the coastal states.”⁴⁶ In order to avoid jurisdictional conflicts, the use of force by PMSCs on board ships should be regulated by international law due to potential variations in domestic law. PMSCs need to be regulated internationally if traveling through international waters and numerous ports around the world. Richard argues that letters of marque should be revived and that they would serve to regulate PMSCs.⁴⁷ However, it would be the duty of states to issue letters of marque and to set their own state regulations. The issue with this is the potential regulation variations from state to

state. International law would ensure that PMSCs are regulated and acting under a code of conduct that applies regardless of the flag state they are sailing under.

The key issue surrounding the development of a comprehensive and cohesive international law regarding not only PMSCs, but piracy overall, involves the very definition of piracy itself. International law relies on the United Nations definition of piracy in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) 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 private aircraft and directed on the high seas against another ship, aircraft; against persons or property on board such ship or aircraft, against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; 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.⁴⁸

The problem with this definition is its inclusion of the term ‘high seas’ to define an act of piracy. According to Sullivan, this means that an act cannot be defined as piracy if it is committed within sovereign waters.⁴⁹ It therefore cannot be prosecuted by criminal law. The International Maritime Bureau (IMB) has defined piracy as “the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act.”⁵⁰ The IMB removes the problematic

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid., 686.

⁴⁵ Ibid., 688.

⁴⁶ Sony Vijayan, “The Use of Armed Forces on Merchant Vessels Without Strict Rules for the Use of Force,” *Journal of Maritime Law and Commerce* 45, no. 1 (2014): 15.

⁴⁷ Theodore T. Richard, “Reconsidering the Letter of Marque: Utilizing Private Security Providers Against Piracy,” *Public Contract Law Journal* 39, no. 3 (2010), <http://search.proquest.com/docview/615891180/C0DE9E0B8B914110PQ/1?accountid=12599>.

⁴⁸ United Nations Convention on the Law of the Sea United Nations, December 10, 1982, last modified August 22, 2013, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

⁴⁹ Sullivan, “Piracy in the Horn,” 233.

⁵⁰ Ibid., 232.

term ‘high seas’ and applies piracy to acts committed within sovereign waters. However, this definition is not supported by international law.⁵¹ International law should adopt the IMB’s definition of piracy in order to prosecute acts of piracy regardless of whether they occur in international or sovereign waters, especially when foreign ships are the vessels being attacked.

Overall, the surge of piracy in the past decade can be directly attributed to both Somalia’s state collapse in 1991 and the illegal dumping and trawling in Somalia’s fisheries. The lack of rule of law created an ideal breeding ground for piracy and the harm being done to the fisheries forced Somali fishermen to mobilize “defensive piracy” in order to protect their livelihoods. Piracy has significant international and domestic implications. It has cost the global economy billions of dollars and the rise in insurance premiums has forced many shipping companies to avoid the area altogether. Somalia’s reputation in the international community is tarnished by piracy and corruption in the country has made shipping companies avoid Somali ports, taking away potential revenue domestically. Furthermore, piracy has created severe security issues in the region, creating a market for PMSCs. While PMSCs can be useful in filling the gaps left by state navies, they must be used with caution and in moderation. International law regarding the operations and conduct of PMSCs must be developed in order to establish clear regulations and protocol for PMSCs operating on merchant ships in the high seas to make them more accountable. Accountability is key to preventing unnecessary violence and conflict on the high seas. In order for a comprehensive international piracy law to

be created, however, the very definition of piracy itself must change.

⁵¹ Ibid.