The editors and contributors are to be commended for providing a comprehensive and salient presentation of key issues, covering traditional topics such as flag state jurisdiction and maritime boundary delimitation/adjudication as well as emerging areas such as climate change, crime, biological prospecting and marine biodiversity conservation. This collection is an essential source for scholars and practitioners, providing a wealth of information in a single volume.

Marcus Howard, Professor at the Institute for Marine and Antarctic Studies, University of Tasmania, Australia

“Written by the masters of the field of maritime regulation and law enforcement, this authoritative collection is a staple resource for those in the Blue Economy, government and academia. The volume brings coherence to diverse fields of maritime governance, including international environmental law, international fisheries law, transnational criminal law, maritime security law and international trade law in a well-organized and highly readable format.”

James Kraska, Professor of Law at the United States Naval War College

With advances in technology and maritime transport, human use of the ocean now extends beyond the traditional activities of navigation and fishing. Emerging activities such as bioprospecting, deep seabed mineral and hydrocarbon exploration and exploitation, offshore renewable energy developments and marine scientific probes of deep sea areas challenge the applicability of maritime law and policy in new ways.

This handbook examines current regulatory and enforcement instruments and mechanisms for different sectors of maritime activity. Covering various jurisdictions, its specially commissioned chapters are authored by some of the world’s foremost authorities on maritime law, and offer unique perspectives on maritime law, policy and practice.

This comprehensive reference work will be of interest to scholars and students of maritime law, practitioners and non-lawyers interested in the regulation of offshore areas, as well as policy-makers.

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Contents

Contributors ix
Abbreviations xix
Foreword by Marie Jacobsson xxv

Introduction xxvii
Robin Warner and Stuart Kaye

PART A
International Law Considerations in Maritime Regulation and Enforcement 1

1. A Zonal Approach to Maritime Regulation and Enforcement 3
   Stuart Kaye

2. The High Seas Regime: a Model of Self-regulation? 16
   Robin Warner

3. The Use of Force 27
   Cameron Moore

PART B
Role of States and Other International Actors in Maritime Regulation and Enforcement 41

4. The Role of Flag States 43
   Sam Bateman

5. The Role of Coastal States 59
   Lowell Bautista
Contents

6. The Role of Port States 71
   Rosemary Ray fuse

7. The Role of Global Organisations 86
   J. Ashley Roach

8. The Role of Regional Organisations 106
   Kerry Tetzlaff

9. The Role of Courts and Tribunals in Maritime Regulation and Enforcement 122
   Dale Stephens

PART C

Regulation and Enforcement in Different Maritime Sectors 137

10. Fisheries Enforcement and the Concepts of Compliance and Monitoring, Control and Surveillance 139
    Mary Ann Palma-Robles

11. Shipping: Safety of Life at Sea 161
    Anthony Morrison

12. Shipping: Vessel-source Pollution 176
    Erik J. Molenaar

13. Regulation of Offshore Hydrocarbon Exploration and Exploitation under International Law 193
    Youna Lyons

14. The Regulation of Marine Scientific Research: Addressing Challenges, Advancing Knowledge 212
    Harriet Harden Davies

15. Deep Seabed Mining: Key Obligations in the Emerging Regulation of Exploration and Development in the Pacific 231
    Robert Makgill and Ana P. Linhares

16. Transnational Crime 262
    Douglas Guilfoyle

17. Combating Piracy and Armed Robbery at Sea: from Somalia to the Gulf of Guinea 277
    Clive Schofield and Kamal-Deen Ali

vi
PART D
Current Issues and Future Challenges

18. Regulation of Marine Renewable Energy
   Anne Marie O’Hagan

19. The Potential to Regulate Bioprospecting for Marine Genetic Resources: Two Case Studies
   Julia Jabour

    Katja Fennel and David L. VanderZwaag

21. Use of Technology in Maritime Regulation and Enforcement
    Chris Rahman

22. Cooperative Maritime Surveillance and Enforcement
    Warwick Gullett and Yubing Shi

23. Developing New Regulatory Paradigms for the Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction
    Robin Warner

Index

vii
Foreword by Marie Jacobsson

With the advent of UNCLOS in 1982, the idea that a coastal State could have jurisdiction and sovereign rights over vast geographical areas in which it did not have sovereignty was formalised to an extent that was unprecedented. The solution was the result of a compromise – or a political non liquet and an associated lack of legal clarity – on the status of the Exclusive Economic Zone (EEZ). No one knew how this would work and how it would be developed.

Not only did UNCLOS introduce this notion, it also accentuated the idea of different kinds of jurisdiction in the various maritime zones. Admittedly, coastal States already had the right to exercise the control necessary to prevent and punish infringement of their customs, fiscal, immigration or sanitary regulations within its territory or territorial sea, in an area contiguous to their territorial seas. They also had certain regulatory rights in fishery zones as well as sovereign rights for the purpose of exploring and exploiting natural resources on their continental shelves. In addition, UNCLOS redefined the area of continental shelf, widened the territorial sea and the contiguous zone and introduced the concepts of the EEZ, archipelagic waters and the Area. The vast areas of the high seas were left to be regulated by flag States, albeit with an encouragement to States to cooperate. Certain activities on the deep seabed beyond national jurisdiction were to be administered by the International Sea-Bed Authority.

UNCLOS introduced a complex pattern of sovereignty, sovereign or exclusive rights, levels and forms of jurisdiction and control that was unprecedented. The right to legislate was not always followed by a right to enforce. Occasionally enforcement measures were restricted or conditional, as with enforcement of fisheries offences where no imprisonment or corporal punishment is permitted. Sometimes competing jurisdictions were foreseen creating inherent tensions between flag State and coastal State exercise of regulatory and enforcement powers. So even if the world had been frozen in time since the advent of UNCLOS in 1982, there would have been uncertainties regarding the rights of regulating and enforcing regulations against the background of the legal map provided by this seminal convention.

But time has not been frozen. As the editors point out: advances in technology, transport and human activities in all parts of the ocean and the deep seabed are steadily increasing. Furthermore human rights and the rule of law at international and national levels can no longer be neglected. Perceptions of what is acceptable from a human rights and environmental perspective have changed. There is an increasing awareness of the consequences of climate change, sea-level rise and possible “environmental refugees”. UNCLOS and sustainable development are now equally important in the international system and the situation of small island developing states poses new challenges. The implications of the right of the individual to enjoy full respect for his or her human rights at all times and irrespective of where the individual is located, are yet to be addressed. Protection of the rights of seafarers can no longer be neglected.
The decades that have passed have shown that States have developed national, regional and multilateral implementation and approaches to the various challenges they face. At the multinational level, we recall the examples of the Agreement relating to the Implementation of Part XI of UNCLOS and the United Nations Fish Stocks agreement, the increasing number of regulations to increase both safety and security adopted by the IMO and the welcome addition to international labour law through the adoption of the ILO Maritime Labour Convention, as well as the measures taken under the auspices of the United Nations Security Council to fight piracy and armed robbery off the coast of Somalia. Regional cooperation includes not only the establishment of RFMOs, but also initiatives and measures taken by ASEAN, the EU, CCAMLR and the Arctic Council on a variety of maritime matters. Initiatives such as the Proliferation Security Initiative, regional measures aimed at cooperation to combat drug crimes and trafficking in human beings as well as measures to respond to migrants at sea are other examples. All such initiatives and measures will have to take international law, including law of the sea, into account in determining regulatory and enforcement measures.

Underlying all these efforts are national legislation, regulations, rules of operation and engagement. National courts have had to interpret the rules and so have international courts and tribunals, as well as regional courts. A web of case law at the domestic and international level has already emerged and more is to be expected.

All this takes place against a somewhat uncertain “territorial” background and the basic international law rule that land dominates the sea. As maritime disputes are not solved, tensions between States increase as they attempt to assert their jurisdiction or regulatory measures over disputed areas.

All these issues are addressed in the present volume. It is a modern, well composed, informative and analytical work, but it is not uncontroversial – the authors do not shy away from taking positions on sensitive questions. The Handbook is a comprehensive and welcome contribution for all of us that are trying to navigate the legal maritime domain.

The diverse array of maritime regulatory and enforcement issues addressed in this volume demonstrates the many areas of international law relevant to the sea. International law is a legal system and the challenge facing the international community is to move ocean governance gradually into a more integrated and cross-sectoral system. This process is still evolving and steadily growing in importance for the international community.
Combating Piracy and Armed Robbery at Sea: from Somalia to the Gulf of Guinea

Clive Schofield and Kamal-Deen Ali

Introduction

Piracy and armed attacks against shipping represent a longstanding and enduring threat to maritime trade and safety at sea. Recognised as a hazard to navigation from times of antiquity, the “golden age” of piracy took in the latter part of the seventeenth and early part of the eighteenth centuries – a period celebrated and embedded in the popular imagination thanks to novels such as Robert Louis Stevenson’s *Treasure Island,* the swashbuckling films of Errol Flynn and company, and more recently Johnny Depp *et al.* in *Pirates of the Caribbean.* While piracy subsequently declined significantly, in large part thanks to the concerted efforts of the navies of colonial powers keen to secure vital trade routes to possessions overseas, nonetheless piracy and armed robbery at sea was never entirely eradicated. Indeed, there has been a contemporary resurgence in piracy and armed robbery against ships. This has especially been the case in the north-western quadrant of the Indian Ocean and particularly off the Horn of Africa which witnessed a significant and sustained increase in attacks against shipping from 2007. The statistics of attacks in the Gulf of Guinea have also been high since 2008, while the dynamics and trends of the incidents are increasingly complex.

The objective of this chapter is to examine ways to combat the threat of piracy and armed robbery at sea through the lens of case studies of piracy off the Horn of Africa, where incidents of piracy are now in decline, and in the Gulf of Guinea, which has witnessed a surge in such illegal activities in recent years. The aim of this exercise is to try to identify what lessons may be gleaned from the experience of combating piracy and armed robbery against ships off the Somali coastline and how they may be applied to address the increasing threat of analogous activities in the Gulf of Guinea and elsewhere. Prior to tackling these case studies the chapter addresses the status and adequacy of the international law framework for combating piracy and armed robbery at sea with particular emphasis on the relevant LOSC provisions and the application of the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988* (SUA Convention) to such incidents.
Pirates versus sea robbers: the concept of piracy and armed robbery in international law

The above-mentioned campaign on the part of European colonial powers in particular against the “pirate scourge” led to piracy becoming the first of the limited number of crimes to be subject to universal jurisdiction.4 However, even if the capturing State has enacted relevant legislation against piracy and armed robbery against ships – something that is by no means certain – they are not obliged to do so. Indeed, as highlighted below, the significant practical challenges that exist in relation to transferring, prosecuting and imprisoning pirates means that capturing States are often dissuaded from pursuing such prosecutions.

The contemporary definition of piracy is included in the United Nations Convention on the Law of the Sea (LOSC) of 1982,5 which provides the generally accepted legal framework governing the law of the sea as a whole. LOSC has achieved broad international recognition and has, at the time of writing, 166 parties.6 Under LOSC, which is generally taken to be reflective of customary international law on the issue, States Parties are committed to cooperate in the suppression of piracy on the high seas (LOSC, Article 100). Key elements of piracy, as defined under Article 101 of LOSC, include criminal intent, the use of force, the taking over of a vessel against the wishes of its master, and the robbery of cargo, the possessions of those on board, or even the vessel itself.7 Piracy also extends to the operation of a pirate ship which is a ship used to commit piratical acts (LOSC, Article 103), a provision that encompasses the use of, for example, “mother ships” (see below). A particular feature of the LOSC definition is that piracy is undertaken for private ends (lucri causa) and the term does not cover politically motivated acts.8 This requirement is problematic since it is practically difficult to prove the private motive for a crime.9

A further point of distinction in the international law definition of piracy is that, in accordance with Article 101 of LOSC, piracy only refers to acts taking place outside the territorial sea. A key achievement of the LOSC framework was that it established clear spatial limits to national claims to maritime jurisdiction. Under the terms of Article 3 of LOSC, the breadth of the territorial sea may be “up to a limit not exceeding 12 nautical miles” measured from baselines along the coast. Unsurprisingly, the vast majority of coastal States have taken advantage of this provision and claimed 12 nautical mile breadth territorial seas.10 As many piracy-style acts in fact take place in relatively close proximity to the coast, the term “piracy” is often misapplied. In international law terms such piracy-like act taking place within the territorial sea are instead referred to as “armed robbery against ships”.11 Here, however, the term “piracy” is used inclusively to cover both attacks against shipping within the territorial sea and acts of piracy taking place seaward of territorial sea limits.

The international legal framework for combating piracy, however, goes beyond the LOSC. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1988, equally addresses the threat of piracy-like acts under a broader rubric of criminal activities referred to in the Convention as “unlawful acts”.12 The relevance of the SUA Convention is that it addresses and aims to “cure” some of the gaps in the LOSC definition of piracy which excludes other violent attacks which nonetheless endanger the safety and security of ships.13 Under the SUA Convention, an actual attack or threat of violence constitutes a crime, irrespective of whether it comes from within or outside the ship and regardless of the motive of the actors.14

The rise and decline of piracy off the Horn of Africa

If there was a popular perception of piracy as a thing of the past, events off the Somali coast in recent years served to shatter this comfortable view. In fact, piracy had never entirely disappeared,
with the waters off the Horn of Africa being one of several areas of focus for acts of piracy and armed robbery against ships. For example, over 700 attacks against ships were recorded in the period 1993–2005. However, the precipitous rise in the incidence of piracy and armed attacks against ships, predominantly off the Somali coast, that occurred from 2007 catapulted piracy to global prominence as a significant threat to navigation.

During 2007 pirate attacks off Somalia more than doubled to 51 from 22 in 2006. The following year, 2008, witnessed a further surge in piratical activity with an increase in attacks of nearly 200% over the previous year to 111 reported or nearly 40% of the 293 attacks reported globally. In spite of counter-piracy efforts on the part of the international community, including the despatch of multiple naval vessels to patrol the waters off Somalia, attacks increased substantially in 2009, nearly doubling once again with the total number of incidents attributed to the Somali pirates reaching 217 (of 406 globally). The number of reported incidents increased further in 2010 (219 of 445 globally) and 2011 (237 of 439 globally). In the period 2009–2011 therefore Somali pirates accounted for in excess of half of the number of reported piracy attacks worldwide.

A significant shift has, however, occurred since 2011 with a precipitous decline in the number of reported attacks to 75 reported for 2012. Further, this downward trend has been sustained with 15 incidents being reported off Somalia in 2013, and 11 for 2014 all of which were thwarted. A further notable aspect of these figures is that the rising trend in successful attacks on ships resulting in hijackings and hostage-taking has also been reversed as illustrated by the fact that over 40 ships per year were hijacked in the northwestern Indian Ocean in 2009 and 2010 with hijackings being progressively reduced to 28 incidents in 2011, 14 in 2012, two in 2013 (with both vessels being released within 24 hours as a result of naval interventions) and no successful hijackings in the region in 2014.

The significant decline in piracy and armed attacks against shipping that has been achieved in the north-western Indian Ocean is attributable to a number of factors.

**Multilateral efforts to counter piracy**

As noted above, the international community moved swiftly to respond to the surge in piracy attacks off Somalia in the latter part of 2008 by deploying naval forces on counter-piracy missions in the north-western Indian Ocean. Numerous interested States rushed warships to the Horn of Africa region. This has led to the establishment of a series of inter-related naval operations, notably NATO’s operation **Allied Provider** (later operation **Allied Protector** and, from August 2009, operation **Ocean Shield**), the European Union’s **Operation Atalanta** and the US-led **Combined Task Force (CTF) 151**. Additionally, naval vessels have been deployed from a number of “independent deployers” including Australia, Canada, the People’s Republic of China, Japan, the Republic of Korea, Malaysia and Russia, as well as more local or regional States such as India, Iran and Pakistan. Cooperation amongst the international naval presence off the Horn of Africa has been achieved largely under the auspices of a regional code of conduct designed to address piracy and armed robbery against ships in the Western Indian Ocean, generally termed the “Djibouti Code”, as well as through the Contact Group on Piracy off the coast of Somalia which facilitates regular meetings allowing for tactical coordination among representatives of the deployed navies and the shipping community. These operations have been authorised by a series of increasingly robust United Nations Security Council Resolutions.

The significant difficulties presented by the Somali piracy threat, including the expanded reach of the pirates (see below), and thus the vast area to patrol, coupled with the speed of attacks led to a number of strategies being developed. These have included the organisation of
convoys and provision of escorts, and the embarkation of vessel protection teams on merchant vessels, often though not exclusively of their own flag, to provide ship borne security. A related means to ensure better protection for shipping has been the establishment of a safe route, the Internationally Recommended Transit Corridor (IRTC) through the especially piracy-prone Gulf of Aden, protected by ships from CTF 151, NATO and EU NAVFOR. However, even this approach did not necessarily guarantee against attacks on shipping.

Additionally, more robust and proactive counter-piracy efforts have increasingly been undertaken. These have included initiatives to deal with the pirate “mother ships” which are crucial to extending the range of pirate operations and to disrupt “Pirate Action Groups” before they were in a position to initiate attacks on shipping. Similarly, the willingness of international forces to take action on land, including mounting a combined naval forces raid on a pirate base on shore in May 2012, has been credited with discouraging pirates from putting to sea.

**Efforts towards overcoming legal and capacity challenges**

A key drawback to the international cooperative naval effort has been uncertainty as to what to do with pirates, or alleged pirates, once apprehended. As noted above, despite the fact that piracy is acknowledged as a crime subject to universal jurisdiction, punishable by any State regardless of the nationality of the victim or perpetrators, a number of practical and legal challenges have arisen which have tended to complicate or forestall efforts to prosecute and incarcerate pirates. For example, and despite repeated calls for States to criminalise piracy in their national laws in UN Security Council Resolutions, by no means do all States have adequate and up to date domestic laws criminalising piracy. Further, the costs of prosecuting and incarcerating pirates have proved strong disincentives to action. Concerns have also been raised that once convicted pirates have served their time it may be difficult to return them to Somalia because of human rights concerns. Consequently, many navies operating off the Horn of Africa have been operating on a “catch and release” basis where captured pirates are disarmed but otherwise face no real consequences for their actions such as prosecution and imprisonment. This led the UN Secretary-General’s Special Adviser on Legal Issues related to Piracy off the Coast of Somalia, Jack Lang to suggested that “more than 90 per cent of the pirates apprehended by States patrolling the seas will be released without being prosecuted.”

The absence, at least until recently, of a functioning government and judicial system in Somalia itself and capacity issues within the wider region have been recognised as fundamental problems by the international community, resulting in strenuous efforts to address these concerns. In this context criminal justice capacity building efforts have been made to assist those States whose judicial systems have been facing considerable challenges in dealing with a significant influx of piracy-related cases and prisoners. These initiatives have been coordinated by the UN Office on Drugs and Crime (UNODC) counter-piracy programme (CPP) in Kenya, Somalia, the Seychelles, Mauritius, Tanzania and the Maldives. Additionally, efforts have been made to cooperatively deal with pirates on a regional basis. In particular, apprehending States such as those of the EU and US, have negotiated bilateral transfer agreements allowing for the prosecution of alleged pirates in regional third States such as Kenya, the Seychelles and Tanzania for trial in their jurisdictions. This practice has, however, placed great strain on the criminal justice systems of the States receiving the alleged pirates as well as raising concerns over handing suspects over to such jurisdictions on human rights grounds. Further, there exist multiple practical difficulties for the transferring State as personnel involved in the capture of alleged pirates may be required to give evidence at their trial.
Shipping industry responses

The shipping industry has also developed a range of responses to the rise in piracy attacks off the Somali coast. Whilst the proximity of key sea lanes such as that linking the Northwest Indian Ocean to the Mediterranean and Europe via the Suez Canal, Red Sea, Bab al Mandeb Straits and Gulf of Aden, to the Somali coast, coupled with the substantial range of pirate operations has meant that simply avoiding pirate prone areas is extremely challenging, some re-routeing options designed to minimise the risk of attack do exist.

In particular, many vessels have opted to divert their routes as far as possible away from the Somali coast such that they hug the western coast of India, therefore skirting the eastern side of the piracy risk zone. This is economically attractive as this adds only around one day to a transit through the High Risk Area (HRA) for piracy in the north-western Indian Ocean. Concerns have, however, been raised that adherence to the recommended practice of divergence around the fringes of the HRA rather than directly across it is gradually eroding as the threat of piracy attacks declines and as shippers seek to cut corners.

The shipping industry has also developed a range of precautionary measures to minimise their risk of being attacked and hijacked. These are encapsulated by industry Best Management Practice (BMP) guidelines for protection against Somali-based Piracy. Among these guidelines is the recommendation for vessels traversing pirate-threatened waters to maintain a strict 24-hour radar and anti-piracy watch. Early detection of a potential attack allows the threatened vessel to increase speed and engage in evasive manoeuvres. Indeed, speed is a key factor with vessels travelling at 18 knots and above generally considered to be immune to boarding from small boats, largely because of the bow wave and wake that they generate. Early detection also provides the opportunity to mobilise anti-piracy responses such as the use of high-pressure water hoses and foam.

Other options to deter attacks include the use of obstacles to boarding such as barbed or razor wire. Efforts have also been made to make accessing key parts of the ship such as the bridge, engine room and crew accommodation area more challenging for boarders. A related option is for the crew of an attacked vessel to lock themselves in a safe room or “citadel” should the pirates manage to board their vessel. The objective of these measures is essentially to delay boarders from gaining full control over the vessel and taking hostages and thus potentially providing time for intervention by international forces. The use of citadels does not necessarily guarantee safety from hijacking and the ship’s crew being taken hostage, however. This is illustrated by the experience of the freighter, the Beluga Nomination, in early 2011. Having been attacked and boarded, the crew of the vessel withdrew to their citadel below-decks. Unfortunately international naval assistance was unavailable and after two days the pirates managed to cut their way into the safe room using welding gear and took the crew hostage.

Additionally, innovative technologies such as long-range acoustic devices (LRAD), designed to generate noises at painful, but non-lethal decibel levels with the aim of disorienting and deterring potential pirates have been deployed in the region though with mixed success. For example, an LRAD was used by the crew of the cruise liner Seabourn Spirit, as one of a number of counter-piracy measures deployed when it was attacked on 5 November 2005. This counter-piracy effort can be deemed to be successful in that the Seabourn Spirit escaped without being boarded. However, one rocket-propelled grenade round did penetrate the hull, while another reportedly bounced off the ship’s stern.

Increasingly, and despite traditional reluctance on the part of both mariners and ship owners to the arming of merchant vessels, the shipping industry is countering the piracy threat by
employing armed guards – privately contracted armed security personnel (PCASP). Despite the reservations within the shipping industry regarding their employment, utilising PCASP has proved to be effective and increasingly popular. While having such a security team on board does not necessarily forestall attacks, at the time of writing, no ship carrying armed security personnel had been successfully hijacked. Significant concerns have, however, been raised over the regulation of this growing maritime security sector. While acknowledging the “deterrent effect” of PCASP as playing a part in the reduced number of successful hijackings in 2011, the International Maritime Bureau (IMB) noted that the “regulation and vetting” of such personnel “still needs to be adequately addressed.”

In concluding on Somalia and by extension the Indian Ocean and Gulf of Aden, it can be said that despite the challenges and limitations of each of the responses discussed above, they have collectively contributed to decreasing the threat of piracy in the region. The international community has equally learnt crucial lessons that may be applicable to combating the threat of piracy beyond that region. The following section addresses the rising threat of piracy in the Gulf of Guinea in particular before a concluding assessment is made concerning whether the approaches that worked in Somalia may be suitable and effective to apply to piracy threats elsewhere.

The evolving dynamics of Gulf of Guinea piracy

As the global response to piracy off the coast of Somalia was building up, alarm bells were ringing concerning growing maritime insecurity on the ‘other side’ of Africa, specifically in the Gulf of Guinea region. Indeed, following the recent rapid decline in piracy off Somalia, the Gulf of Guinea stands as the most dangerous maritime area in the world in terms of successful rate of attacks and increasing violence. This prompted two resolutions of the UN Security Council in 2011 and 2012 expressing concerns about the rising insecurity in the region, its impact on regional and global security and calling on regional States and the global community to take remedial action.

A rising threat

While the threat of piracy in the Gulf of Guinea is presently on a different scale to that of Somali piracy at its peak, it can be regarded as an increasingly pressing concern. This is not only because of the rapidly increasing rate of incidents but due to the complex dynamics of the attacks.

In clear contrast to the waters off Somalia, the Gulf of Guinea is witnessing rising incidents as well as a broadening scope of operations on the part of the pirates. Reported incidents rose from 23 in 2005 to 60 in 2007, which is more than 100% rise in two years. The records took a slight dip in 2008 and 2009 but have since swelled from 2010 to 2013, with 2012 recording the highest at 64 incidents. It is also noteworthy that at the close of 2013, the Gulf of Guinea recorded more incidents of attacks in the high seas compared to the previous years. Moreover, in 2014 41 incidents were reported off West Africa with five vessels being hijacked. Additionally, the situation is also arguably worse than the statistics depict because it is believed that unlike other regions, approximately half of the incidents of piracy in the Gulf of Guinea are actually reported by ships’ captains and operators due to fears of reprisal attacks upon their next visit. Notwithstanding the limited reports, the Gulf of Guinea region has since 2009 been noted as the new piracy “territory”, displacing Somalia especially with regards to violence employed in the attacks.
Combating Piracy and Armed Robbery at Sea

From parasitic to full-scale piracy

Global attention on piracy has generally been limited to examinations of the statistics of attacks with occasional, more nuanced attempts to understand the root causes of piracy. Between these two extremes is a significant gap—analyses of the evolutionary tracks of piracy. This is an essential requirement for matching the trends of piracy with effective counter-piracy measures. To appreciate that evolutionary process in the Gulf of Guinea it is important to first understand the fundamental landscape, or better still seascape, of piracy in the region. Here, we distinguish between the occurrence of a piracy incident, which can happen anywhere, and the development of what can be characterised as a “piracy enclave” which is the possible location of pirates and focus for their operations. Nigeria stands out as the epicentre of Gulf of Guinea piracy and is therefore classified as the primary piracy enclave. Nigeria alone accounts for 80% of reported incidents of piracy in the Gulf of Guinea. Indeed, the Nigerian primary-piracy enclave has progressed from its parasitic character in and about 2005 to what can be termed full-scale piracy in 2012. Embedded in this criminal cycle is the fact that a large part of Nigerian piracy is born out of the Niger Delta insurgency.

The parasitic or opportunistic phase of Gulf of Guinea piracy fits piracy incidents up to 2005 but also extends to 2007. Two-thirds of attacks during this period took place in ports and anchorages, interspersed with limited robberies in the territorial sea. It needs to be emphasised that the taxonomy of this phase as “opportunistic” is not based on the capability of the actors but relates to sea robbery as a subsidiary activity. The attention of insurgents during this period was on attacking offshore platforms, however, ships were also hijacked and crew kidnapped for ransom. Piracy reports during this period gave indications of what would become core in the profile of threats to sea lanes of communication (SLOC) security, that is, gangs of hijackers using speedboats armed with heavy weapons.

For example, in 2006 four crew members of the Northern Comrade were kidnapped for ransom; then over 40 people armed with guns in six speedboats attacked the Dlb Cheyen in May 2007. They were engaged by the Nigerian military in a shootout but succeeded in kidnapping the crew. Moreover, in the same month Oloibiri was attacked using explosives and its crew was again kidnapped for ransom. Thus the tactic of kidnapping for ransom of expatriate oil workers was being employed in the hijacking of ships but largely as an occasional activity. From this parasitic phase, the pirates widened the enclave to cover the neighbouring coasts of Cameroon and Equatorial Guinea but still in the context of opportunistic piracy. Most of the accounts of illegal boarding of ships on the coasts of the two States in 2008 described the pirates and robbers as “Nigerian rebels”, “Nigerian militants” and “protectors of the Bonny River”. The point to note is that the spread of the pirate threat to neighbouring coasts signalled the ability of the insurgents to extend the intensity and scope of their activities with wider security consequences.

As piracy proved to be a lucrative crime, the insurgents moved into a new phase in the cycle where vessels where specifically targeted; thus the pursuits began. This type of activity, typically featured the identification of a high value target which would then be shadowed further out to sea and violently attacked at the most vulnerable location possible. In February 2009 grenades were thrown at an oil tanker (Front Chief) killing a crew member. The crew of Emirates Swan, Sevastopolskaya Buhta and other vessels also suffered serious injuries during attacks in the same year. These high levels of violence paralleled the Gulf of Guinea with historical instances where pirates employed violence and killing to subjugate their theatre of operations. What it also implied is that by 2009 Gulf of Guinea piracy had incubated all the elements of a regional and global threat. This would become manifest in 2011 when pirates widened the enclave...
westwards and the coasts of Benin and Togo effectively came under siege. In both cases pirates were able to come deep into port areas and anchorages to hijack vessels. In the case of the hijacking of *Aristofanis* which took place in the port of Benin, the vessel was sailed to open seas where its cargo was discharged.66

The hijacking of the *Duzgit Venture* in 2011 also demonstrated the growth of transnational criminal networking in the Gulf of Guinea.67 The *Duzgit Venture* was hijacked off the coast of Benin and the Captain was forced to sail the vessel all the way to the coast of Gabon, where the pirates planned to transfer the oil onto a barge.68 Having failed to meet with the barge, the Captain was forced to sail to a location off Warri, Nigeria in order to try to offload the cargo. After a series of unsuccessful attempts, the pirates disembarked into fast boats, kidnapping the Captain and another crew member. This reflects the growth in piracy networks that facilitate the sale of stolen cargo. The pirates were in cahoots with other actors about 4,000km away from the point of hijack, and successfully commandeered the ship to sail across the coastal spaces of five States.69 The incident also raises serious questions about the capability of Gulf of Guinea States to monitor their maritime domain.

By the close of 2011, therefore, piracy in the primary piracy enclave had consolidated and the coasts of Togo and Benin had become piracy hotspots in addition to the epicentre – Nigeria. From this consolidation came the westerly extensions of piracy activities to the coast of Cote d’Ivoire marked by the hijacking of the *Orfeas* in October 2012. After gaining control of the vessel, the pirates sailed over 2,000km to the coast of the Niger Delta, stole the ship’s oil cargo, and released the vessel two days later.70 Further, in July 2013 the Maltese flagged vessel, the *Cotton*, was hijacked off the coast of Gabon, the first of its kind off that coast, portending a widening of the piracy threat southwards.71 This deepening threat has continued into 2014 with Angola and Ghana registering their first significant cases of hijackings, thus reinforcing the urgency of implementing effective counter-piracy measures in the region.

Further down south the *Kerala* was hijacked off Angola in January 2014.72 The tanker was subsequently sighted under the control of the hijackers off the coast of Nigeria where part of its oil cargo worth an estimated US$8 million was stolen.73 Then in the months of June and July the coast of Ghana registered three cases of hijacking, two of which were on oil tankers, signifying a further entrenchment of the piracy threat.74

Of particular note, the attacks off Angola and Ghana shattered the record of the two States as among the safest coastal waters in the region. These incidents also underscore the oil-related focus of attacks, suggesting that oil facilities and particularly tankers and supply vessels are highly likely to continue to be targeted by pirates because the financial rewards involved for the pirates, their accomplices, as well as the buyers of the stolen oil, are extremely high.75 However, while the Niger Delta pirates hunt for these high value targets, all other vessels become potential prey and susceptible to attack.

**Legal and jurisdictional challenges**

The problem of Gulf of Guinea piracy lies not only in the complexity of its evolutionary tracks but in current and emerging legal challenges. First is the legislative deficit with respect to the crime of piracy in the Gulf of Guinea. A review of the national legislation database of the United Nations Division on the Law of the Sea (UNDOALOS) shows that Liberia and Togo are the only States in the region that have enacted piracy legislation.76 It is only since January 2013 that Nigeria is reported to have initiated a process for the enactment of a law to combat piracy and other maritime crimes.77 The UN Assessment Mission to the Gulf of Guinea also observed that the definition of the crime of piracy in the national laws of Benin was outdated and not
Combating Piracy and Armed Robbery at Sea

consistent with the provisions of the LOSC. Thus, even if Gulf of Guinea States are able to conduct patrols off their coasts, the efficacy of such patrols would be seriously undermined by the absence of domestic legislation to prosecute and punish for the crime of piracy. This will practically lead to a case of “catch and release” in the Gulf of Guinea as happened in Somalia or the pirates may be prosecuted for crimes other than piracy.

The second legal challenge in the Gulf of Guinea is with respect to the slow progress evident in the delimitation of maritime boundaries in the region leading to an incomplete regional maritime jurisdictional picture. Although some parts of the Gulf of Guinea have been delimited, or at least there exist arrangements of Joint Development Zones (JDZs), the coast stretching from Nigeria through to Guinea, featuring multiple potential maritime boundaries, remains undelimited. This renders the legal distinction between piracy and sea robbery tenuous and equally leads to maritime security jurisdictional uncertainties. Incidentally this is also the area featuring endemic piracy especially from Nigeria to Cote d’Ivoire.

Conclusion and lessons for combating piracy

Despite past successes in combatting piracy, most recently off the Horn of Africa, it is abundantly clear that the “pirate scourge” has not been eradicated. Among the current “hotspots” for piracy the Gulf of Guinea looms large. That said, it should be noted that even in areas where progress has been made in the past, the threat of incidents of piracy and armed attacks against shipping recurring remains, as recently demonstrated by a fresh spate of incidents in the South China Sea. The objective of this concluding section is to draw out some of the responses to piracy derived from the foregoing discussion. What becomes clear is that the complex nature of piracy today dictates a multi-faceted approach and this must take into consideration the different piracy environments and the crime profile. The experience of the global community in Somalia, which represents the most remarkable case of modern piracy, has reinforced the need for a combination of different tools; from the pen to the sword, and the responses must be simultaneously flexible and robust. Six responses of particular importance are highlighted here: governance, effective legal regime, patrols and enforcement, regional cooperation and global support.

Governance

The mention of governance in any discourse tends to provoke many questions, but few easy answers. The common questions will include: how can we empirically connect governance and maritime (in)security, in this case piracy? What is the measurement of the governance gap and how can that be corrected? Which interventions are necessary to ensure good governance? Further, how will success be measured and with what indicators?

Answers to these questions must be on a case by case basis but the governance–maritime security connection can certainly not be discounted. Poor or weak governance is partly responsible for the perpetuation of piracy in Somalia, and this can be viewed in two ways. First, there is always the likelihood for crime to be prevalent in communities where people live in disadvantaged or impoverished conditions. Weak governance also makes it impossible for law and order to be maintained and edges the particular state and the whole international community towards anarchy. The lack of a credible and effective government meant that without external intervention criminality and transnational crimes including piracy could persist in Somalia.

While the Gulf of Guinea may not be described as a region of “failed States,” available statistics show that many States in the region suffer systemic weaknesses and are confronted with
enormous socio-economic challenges. Nigeria has systematically slipped from a relatively strong position of number 54 in the “failed State” rankings of 2005 to number 14 in 2011, thus joining the top 20 fragile countries in the global “failed State” rankings. During the same period piratical attacks off the coast of Nigeria have risen to high levels. Global counter-piracy measures must therefore prioritise improving governance in the counter-piracy response tool-kit.

**Patrols and enforcement**

Presence is crucial in all situations of fighting crime. Prior to multilateral naval deployments in the Indian Ocean, Somali pirates essentially had free reign at sea and the safety and security of commercial shipping was in the hands of the marauders. The impunity with which ship hijackings are conducted in the Gulf of Guinea, at times deep into the port areas of States, is similarly symptomatic of weakness in terms of maritime policing, surveillance and response capabilities across the Gulf of Guinea.

Although security sector funding is generally inadequate, the situation with respect to navies and coastguards is more problematic. Angola’s allocation of resources with respect to the protection of its maritime estate is typical of Gulf of Guinea States. Angola has an estimated coastline of 1,600km – the longest in the Gulf of Guinea. Its GDP is the second highest in the region, and much of that is derived from offshore resources. Yet the personnel strength of the Angolan Navy is only 1,000 (compared to 100,000 for its Army and 6,000 for its Air Force) and the equipment state of the Angolan Navy is palpably inadequate when contrasted with that of the Army. The Nigerian Navy is similarly underfunded and has limited capability. Its personnel strength is 8,000 – the largest in the Gulf of Guinea, but that is in sharp contrast to its 62,000-strong Army. Thus there is a clear gap in naval capability in the Gulf of Guinea. However, unlike Somalia, where foreign navies filled the gap, this seems unlikely to occur in the Gulf of Guinea, not least because of the sovereignty concerns of the coastal States involved. The solution may lie in bilateral initiatives where third States would use existing political and security cooperation to facilitate counter-piracy deployments.

**Effective legal regime**

Piracy normally thrives in the environment of a weak legal regime with Somalia providing the classic case of this occurring. Indeed, it was only when the naval deployment in Somalia was backed with effective investigation and prosecution of pirates that the tide began to turn. To effectively combat piracy in the Gulf of Guinea, the existing legislative deficit must be addressed. This observation is underscored by a review of the national legislation database of the UNDOALOS which shows that Liberia and Togo are the only States in the region to have enacted piracy legislation. Indeed, it is only since January 2013 that Nigeria is reported to have initiated a process for the enactment of a law to combat piracy and other maritime crimes.

Thus, even if Gulf of Guinea States are able to conduct patrols off their coasts, the efficacy of such patrols would be seriously undermined by the absence of domestic legislation to prosecute and punish for the crime of piracy. This will practically lead to a case of “catch and release” in the Gulf of Guinea as happened in Somalia or the pirates may be prosecuted for crimes other than piracy. The second legal challenge in the Gulf of Guinea is with respect to inconclusive maritime boundary delimitation. Although other parts of the Gulf of Guinea have been delimited, or at least there exist arrangements of Joint Development Zones (JDZs), the region from Nigeria
through to Guinea remain un-delimited. This renders the legal distinction between piracy and sea robbery tenuous and equally leads to maritime security jurisdictional uncertainties.

Regional cooperation

Article 100 of the LOSC encapsulates the obligation of cooperation in the repression of piracy. Here the importance of the Djibouti Code can be highlighted. Similarly, there is a positive trend of regional cooperation in the Gulf of Guinea. This started with the adoption of a Maritime Security Protocol in 2009 by member States of the Economic Community of Central African States (ECCAS) based on a structure that divides the ECCAS region into zones to enhance joint patrols, monitoring and enforcement. The ECCAS initiative provided the impetus for a region-wide framework – the Yaoundé Code of Conduct for the repression of illicit activities at sea. This is an important achievement in the context of a regional approach to maritime security, although it is by no means sufficient. On the one hand the Yaoundé Code will promote information sharing and cooperative responses in general, on the other hand, its effectiveness is likely to be undermined by the absence of legal framework and lack of enforcement capability, as outlined above.

Multilateral engagement

Finally, international support or multilateral engagement is critical in combating piracy and has proved to be an especially important facet of countering piracy off Somalia. Indeed, the obligation to cooperate in the LOSC is not limited to regional initiatives. The corollary to piracy being a crime of universal jurisdiction is the expectation that the global community will contribute to counter-piracy efforts in every region and so in a viable way. Resolutions 2018 and 2036 of the UN Security Council have laid the foundation for multilateral support to maritime security in the Gulf of Guinea. Already, the United States through its Africa Partnership and some other agencies is delivering maritime security support to the Gulf of Guinea. The European Union also launched the Critical Maritime Routes in the Gulf of Guinea (CRIMGO) project in January 2013. The project is designed to improve safety and security off the coasts of seven States in the Gulf of Guinea. Although international cooperation holds prospects for enhancing maritime security in the Gulf of Guinea, a number of challenges would have to be addressed. Particularly deserving of attention is the need for coordination of international partnerships, something in large part achieved through multiple deployments of naval forces off Somalia. Multiple cooperative initiatives are currently being unpacked in the Gulf of Guinea region to which national administrators and regional institutions are required to respond and implement. This overcrowds national and regional policy, adversely affecting maritime security decision-making and coordination. The lesson from this experience is that external actors, donor agencies and relevant international organisations all need to engage with maritime security challenges through a harmonised platform.

Notes

1 Robert Louis Stevenson, Treasure Island (1883).
10 See, for example, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, *Table of Claims to Maritime Jurisdiction*, as at 15 July 2011, available at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table_summary_of_claims.pdf. A small number of States do, however, claim territorial seas that are either less than 12 nautical miles in breadth, such as Jordan on account of its restricted coastal front and the proximity of neighbouring States at the head of the Gulf of Aqaba, and Greece and Turkey with respect to the Aegean Sea, or are broader than 12 nautical miles in breadth, for instance the anachronistic 200 nautical mile territorial sea claims of Benin, Congo (Brazzaville), Ecuador and Peru. See, J. Ashley Roach and Robert W. Smith, *Excessive Maritime Claims*, 3rd edition, (2012), 137 and 144–148.
14 See, in particular, Articles 3 to 6. For a detailed explanation of the scope of these articles, see Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea*, 2009, pp. 254–259.
24 Operation Allied Provider (October–December 2008) evolved into Operation Allied Protector in early 2009 and subsequently, in August 2009, became Operation Ocean Shield which at the time of writing was ongoing. See, North Atlantic Treaty Organization (NATO), Maritime Command (MARCOM),


28 For example, unlike earlier resolutions such as UNSC Resolutions 1816, 1838 and 1848, UNSC Resolution 1851 of 16 December 2008 authorised the international community to operate not only within Somali waters but also within the land territory of Somalia which is used to plan, facilitate or undertake acts of piracy and armed robbery. Subsequent UNSC Resolutions include Resolutions 1918 and 1950 of 2010, Resolutions 1976, 2015 and 2020 of 2011, and Resolutions 2124 and 2125 of 2013. UN Security Council Resolutions available at, http://www.un.org/Docs/sc/.


30 NATO, ‘The Growing Threat of Piracy to Regional and Global Security’, para.73

31 For example, the Malaspina Castle was attacked and hijacked whilst transitting the forerunner to the IRTC, the Maritime Security Patrol Area (MSPA) in 2009. See Mark Tran, ‘Somali pirates seize British owned ship’, The Guardian, 6 April 2009, www.guardian.co.uk/world/2009/apr/06/somali-pirates-hijack.


44 See, Huggins and Kane-Hartnett, ‘Somali Piracy – Are we at the End Game?’
45 BMP 4.
46 Ibid.
55 IMO, Reports on Acts of Piracy and Armed Robbery Against Ships: Annual report 2013, MSC.4/Circ.208, 1 March 2013. It is noted that there is an error in the date of adoption of the Annual Report 2013. The correct date should be 1 March 2014.
64 IMB, Piracy and Armed Robbery Against ships – Annual Report 2009.
69 Ibid.
72 IMO, Reports of Piracy and Armed Robbery against ships January 2014, MSC.4Cir/206, 7 March 2014.
73 ‘MT Kerala Returned to Angolan Authorities After Hijacking’, Reuters, February 2014.
74 The hijacked vessels in June are MT Fair Artemis, a Greek-owned oil tanker flying Liberian Flag, a Ghanaian registered fishing vessel, MV Mariner 771, while Hai Soon 6, a Kiribati flagged oil tanker was hijacked in July.
Combating Piracy and Armed Robbery at Sea

77 See ‘NIMASA Seeks Legal Backing to Fight Piracy’, This Day, 14 February 2013.
87 Generally on the implications of weak naval and policing capability for maritime security, see, Martin Murphy, Small Boats, Weak States, Dirty Money: Piracy and Maritime Terrorism in the Modern World, (Hurst, 2010).
94 Kamal-Deen Ali and Tsamenyi, ‘Fault Lines in Maritime Security’.
95 Article 100 of UNCLOS provides: “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.”
96 See ECCAS, Protocole Relatif a la Strategie de Securitisation des Interest Vitaux en Mer des Etats de la CEEAC du Golfe de Guinea (Yaoundé, Cameroon. 24 October 2009). Zone A: Angola, DR Congo; Zone B: Angola, Congo (Brazzaville), Gabon; Zone D: Cameroon, Equatorial Guinea, Gabon, São Tomé and Príncipe.
97 Summit of Heads of State and Governments of ECOWAS and ECCAS, Yaoundé, Cameroon on 24–25 June 2013.
Clive Schofield and Kamal-Deen Ali


99 European Commission, New EU initiative to combat piracy in the Gulf of Guinea, Press Release, Ref IP/13/14, Brussels, 10 January 2013.

100 Benin, Cameroon, Equatorial Guinea, Gabon, Nigeria, São Tomé and Príncipe and Togo.
The editors and contributors are to be commended for providing a comprehensive and salient presentation of key issues, covering traditional topics such as flag state jurisdiction and maritime boundary delimitation/adjudication as well as emerging areas such as climate change, crime, biological prospecting and marine biodiversity conservation. This collection is an essential source for scholars and practitioners, providing a wealth of information in a single volume.

Marcus Haward, Professor at the Institute for Marine and Antarctic Studies, University of Tasmania, Australia

"Written by the masters of the field of maritime regulation and law enforcement, this authoritative collection is a staple resource for those in the Blue Economy, government and academia. The volume brings coherence to diverse fields of maritime governance, including international environmental law, international fisheries law, transnational criminal law, maritime security law and international trade law in a well-organized and highly readable format."

James Kraska, Professor of Law at the United States Naval War College

With advances in technology and maritime transport, human use of the ocean now extends beyond the traditional activities of navigation and fishing. Emerging activities such as bioprospecting, deep seabed mineral and hydrocarbon exploration and exploitation, offshore renewable energy developments and marine scientific probes of deep sea areas challenge the applicability of maritime law and policy in new ways.

This handbook examines current regulatory and enforcement instruments and mechanisms for different sectors of maritime activity. Covering various jurisdictions, its specially commissioned chapters are authored by some of the world's foremost authorities on maritime law, and offer unique perspectives on maritime law, policy and practice.

This comprehensive reference work will be of interest to scholars and students of maritime law, practitioners and non-lawyers interested in the regulation of offshore areas, as well as policy-makers.

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