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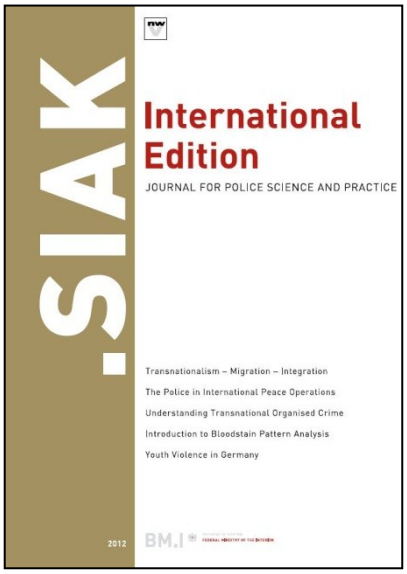

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Piracy – Criminality on the High Seas

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Since the early 1990s, piracy has made its presence felt more strongly in varying forms. The world's most piracy-infested regions are the South China Sea, the Strait of Malacca, the Gulf of Aden, the Nigerian coast and the Caribbean. Owing to the reliance on integrated supply chains and just-in-time production processes, the world economy is directly hit by delivery delays or failures. The costs of piracy range from 0.0 % to 0.2 % of total maritime trade, which is estimated at USD 8 billion annually. This article looks at the latest developments, the causes of piracy and the methods and tactics employed by pirate syndicates. International responses have resulted in joint naval operations and regional cooperation agreements, with varying success. The future of piracy will depend on a series of factors, such as the impact of failed states, the weapons trade and the influence of organised crime.

In recent years, piracy has attracted media attention solely through spectacular cases that could be made straight into Hollywood films, such as the seizure of the French luxury yacht Le Ponant and the subsequent taking of hostages, blackmail demands and successful pirate arrests in April 2008. The Le Ponant was captured by two boats with thirty pirates on board in the middle of the Gulf of Aden. A week later, the crew went free following payment of a ransom of EUR 2 million. Shortly after their release, French special forces recovered some of the ransom money by launching a helicopter operation against a pirate base. They killed one of the hijackers and captured six others.[1] Another sensational case was the seizure of the German freighter Hansa Stavanger off Somalia in April 2009, which was in the hands of pirates for 121 days. The pirates laid waste to the ship, ransacked containers and set cabins on fire. The crew was held in extremely close quarters; threats were issued and mock executions were staged.[2]

INTRODUCTION

The histories of seafaring and piracy are closely interwoven. From time immemorial, pirates have attempted to seize persons and goods transported along coasts or on the high seas. Since Antiquity, when long maritime trade routes were established in the Mediterranean, the China Sea, the Indian Ocean and elsewhere, the ships, weapons, tactics and strategies used by pirates have taken different forms.[3] Piracy is the oldest internationally recognised

crime and pirates have been historically viewed as lawless and as enemies of humanity (hosti humani generis).[4] Despite the differences, the aim and the nature of piracy have remained essentially the same: seize the booty quickly even if that entails high human losses and make a quick getaway. The image of pirates, cultivated in the Romantic age and later by modern forms of entertainment, as swashbucklers or ferocious criminals barely corresponds to the complex reality, which is predominantly marked by adversity, disease, violence and death. Piracy in the 21st century has taken on features of organised crime, not least because of its interconnectedness with regional state elements and the economy.[5]

A generally applicable definition of piracy is set out in Article 101 of the United Nations Convention on the Law of the Sea. Piracy is understood as "(…) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, 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 (…)".[6] In this sense, piracy is a criminal act, but not a terrorist act, although terrorist organisations may use piracy for their ends, such as blackmail and raising funds. While piracy is not defined as a terrorist act, experts discuss the possibility that terrorists are appropriating the methods of pirates to attack suitable targets, such as passenger ships.[7] Further significant ways in which piracy differs from terrorist acts are the absence of political motive, the avoidance of publicity and the purely material interests of the pirates or pirate syndicates.[8]

Piracy, which was considered to have already been overcome, was first brought back to the attention of the international public when Malayan and Thai pirates attacked Vietnamese refugee boats in the 1980s.[9] The 1990s saw a marked increase in piracy in South East Asia, the China Sea, the Indian Ocean, the waters off the coasts of West Africa and the Caribbean. According to the International Maritime Bureau (IMB), 406 pirate attacks were mounted worldwide in 2009. Globally, the number of cases of piracy since 1948 is estimated at well over 5,000, while it should be noted that many instances go unreported.[10]

CAUSES AND EFFECTS

The causes of this surge in piracy should be viewed in both a global and regional context. In the global context, the increase in piracy is related to changes brought about by the end of the Cold War, when the military presence of the superpowers and their allies in international waters declined. As the global economy became increasingly interconnected and trade barriers were lowered, the size of merchant fleets increased, yet coastal inhabitants of impoverished regions did not benefit from their commercial success. The effects of the global economic crisis, such as rising unemployment and low public spending, exacerbate the imbalance. That is why "(…) the super freighters passing by (…seem) like unattainable department stores – unless you ambush them".[11]

In the regional context, the most prominent cause is the decline or elimination of state systems of law and order, such as in Somalia, Nigeria or some territories in the South China Sea. As a result of that vacuum, the smuggling of people, drugs and weapons has increased. The reduction or termination of effective coastguard services has been conducive to the spread of piracy. The same is true of overfishing by international fishing fleets and the contamination

of coastal waters by international companies that dump waste illegally, since such activities deprive traditional coastal fisherman of their livelihoods.[12] Another cause of piracy is organised crime deploying local people, such as on the Nigerian coast, where ships and platforms owned by international petroleum and natural gas companies are attacked on a regular basis. The local inhabitants feel exploited by the Nigerian government and the companies concerned.[13]

The impact of piracy, however, should be assessed as global, since delivery delays or failures are extremely costly in a world of integrated supply chains and just-in-time production processes. The costs of piracy account for 0.01 % to 0.2 % of total maritime trade, which is estimated at USD 8 billion annually. The International Tribunal for the Law of the Sea estimates the damage at USD 13 to 16 billion annually.[14] In the period between 1995 and 2009, it is believed that around 730 people were killed, around 80 people injured and 3,850 people taken hostage. Around 230 people were kidnapped and released in exchange for a ransom and threatened with violence.[15] The increased risk of passing through certain waters has led to a rise in insurance premiums, which is why it is not uncommon for ship owners not to make an official report and to opt to pay the ransom themselves. Ransom payments to pirates in the Gulf of Aden in 2008 are thought to have run to at least USD 30 million.[16] A total of 86 % of German shipmasters think that the costs of maritime trade have risen partly because of the higher insurance premiums and partly because the high-risk areas have to be circumnavigated.[17]

FORMS OF PIRACY

The International Maritime Bureau, established in 1992, distinguishes three types of piracy:[18]

- Low-Level Armed Robbery (LLAR):

This form of piracy is carried out using light weapons and is typically directed against ships anchored at harbour. The pirates target cash and easily transportable valuables. The loss amount runs from USD 5,000 to USD 15,000 per case. The perpetrators are commonly recruited from among port staff.

- Medium-Level Armed Assault and Robbery (MLAAR):

Ships travelling near the coast are attacked, usually at night, using light weapons or medium-heavy weapons (assault rifles, anti-tank weapons, hand grenades etc.) The pirates are interested in valuables and do not shrink from serious violence, including murder, to achieve their ends. In these cases, the amount of loss is between USD 10,000 and USD 20,000.

- Major Criminal Hijack (MCHJ):

Pirate attacks in the highest category require proportionately thorough preparations. Their execution requires an international piracy network, technical and logistical knowledge and extensive information concerning the ship type, cargo, route, crew and security measures. Pirate syndicates obtain the necessary details from corrupt employees at the relevant ports or shipping companies. They kidnap the crew and seize possession of the entire ship and its cargo. In these cases, the seized ships are repainted and resold with forged documents. They also reappear as "phantom ships", for example as mother ships for future pirate attacks. In such cases, the costs of carrying out the attack run to at least USD 300,000. Some pirate syndicates earn around USD 50 million yearly.

PIRATE TACTICS

Successful pirate attacks over larger distances require a sophisticated organisational structure, as shown below based on the example of the Somali pirate syndicates:[19]

The necessary weapons, such as AK 47 assault rifles, are easily obtainable. Many fishermen are armed to protect their boats or to kill captured sharks and dolphins. This makes it more difficult for international aerial reconnaissance teams to distinguish between fishermen and pirates.[20] Pirates either hunt for suitable prey near the coast with around three boats or remain for up to two weeks on the open sea with a mother ship that carries two or three small boats. In the Gulf of Aden or in the Strait of Malacca, where there is very heavy shipping traffic, the pirates hide in groups of fishing boats. If suitable prey approaches, they mount their attack from the shelter of the group. Target ships have the best chance of flight or effective resistance before they are boarded by the pirates. As soon as the target ship has been boarded, maritime associations, ship owners and the IMB recommend ceasing resistance immediately.

Ships that are captured with subsequent taking of hostages and blackmail demands are brought near the coast, for example off Somalia. The hostages form a human shield for the sea and land pirates, explaining why they are not taken inland.[21] Later on, the pirates mainly negotiate directly with the shipmasters. The ransom is paid in cash and in some cases is thrown down over the ships by aeroplane.[22]

Below is an analysis of the regions where piracy is the most prevalent and the regional and international responses in each case.

THE CARIBBEAN

Merchant shipping in the Caribbean, and to some extent off the Atlantic and Pacific coasts of South America, has been exposed to piracy since the 17th century.[23] In the last few decades, sailing yachts and motor yachts have been attacked on a continual basis, in some cases using a considerable degree of violence. On average, there is one reported piracy incident in Latin America monthly. The coasts of Venezuela and Trinidad are particularly at risk.

The pirates target cash and portable valuables. The boats are not infrequently hijacked and resold or used for drug smuggling, but the regional pirate organisations are relatively poorly organised. The topography of the Caribbean, with its roughly 7,000 islands, and weak coastguard services mean that this region lends itself to criminal activities. Freighters are rarely attacked, while fishing boats are in greater jeopardy. However, such attacks frequently do not show up in the statistics.[24] The neighbouring countries have not managed to agree on effective, broad-based regional initiatives to date.

SOUTHEAST ASIA

Some 50,000 vessels ply the Strait of Malacca annually and it is of great strategic importance because of essential raw material supplies, particularly of petroleum to China, Korea and Japan. Around 40 % of worldwide maritime trade passes through this sea lane.[25] Piracy in this region therefore represents a great economic risk. The vast majority of pirate attacks have been launched from the Indonesian islands, ten times more than from Malaysia or Singapore.[26]

Source: Rottenberger

Leadership	This is normally located in third-party states, rather than in the country that the pirates operate out of; in the case of Somalia, some sources report syndicates with leadership in Northern Europe
Country organisation	This is in charge of recruiting new pirates, obtaining weapons, boats, fuel etc.
Reconnaissance and connection unit	This is located, for example, in the ports relevant to the operation and provides information about loading, speed and route etc. of possible target ships
Sea unit ship	This is responsible for the operative task, namely the capture of the ship and is typically composed of former fishermen
Land unit	This takes charge of ships near the coast and largely does not have nautical experience
Logistical unit	This is in position directly by the coast to supply provisions to land and sea pirates, as well as captured crews

Organisational structure of pirate syndicates

One reason for this is the weak Indonesian coastguard. The risk of a link between Islamist terrorism and regional piracy, as well as the great importance of the Strait of Malacca for raw material supplies, prompted intensified efforts to combat piracy after 9/11.

Following initial difficulties and concerns about their sovereignty being curbed, 14 Asian states signed the Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (RECAAP) in 2004 in response to the pirate attacks. This cooperation is focused on information exchange and the development of anti-piracy capacities. In Singapore, a round-the-clock RECAAP information sharing centre was established, which is linked to coastguard services, police forces, navies, customs and shipping companies. These measures led to a halving of the number of incidents.[27] Joint naval operations have also been performed.[28] In 2004, some 40 % of all piracy incidents worldwide were recorded in the Strait of Malacca. Pressure from the security forces and not least the devastating effects of the tsunami in December 2004 are thought to have led to a considerable reduction in piracy. According to the IMB, a total of 17 attempted and actual pirate attacks were recorded in the first quarter of 2011.[29]

WEST AFRICA

Attacks on employees and facilities of petroleum and natural gas companies on the Nigerian coast are rife. Attacks are made on land, in harbours and in coastal waters alike. Due to the growing number of attacks, Shell has already threatened to pull out of Nigeria. Nigeria is Africa's largest oil producer and its crude oil reserves are estimated at 36 billion barrels.[30] The acts of piracy are politically motivated in part. The pressure on oil firms is designed to force payment of outstanding sums by the central government and oil companies for certain regions. Numerous attacks are also mounted along other coastal stretches of West Africa, such as off the coasts of Liberia, Sierra Leone, Côte d'Ivoire and Ghana. In most of these states, the security situation is fragile, often combined with a decline in law and order. According to the IMB, the pirate attacks have become more brutal, with injury to crews viewed as acceptable "collateral damage" or even intended.

Source: IMB 2011

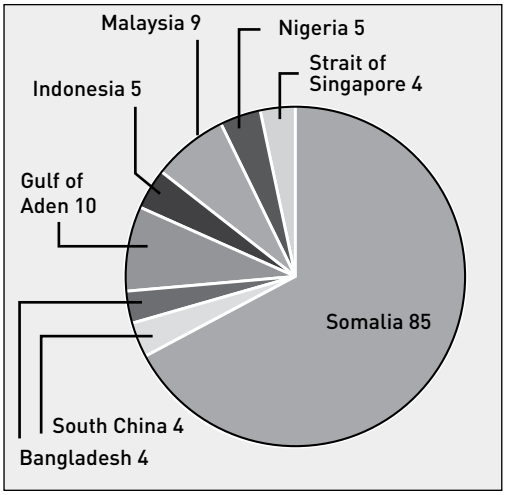
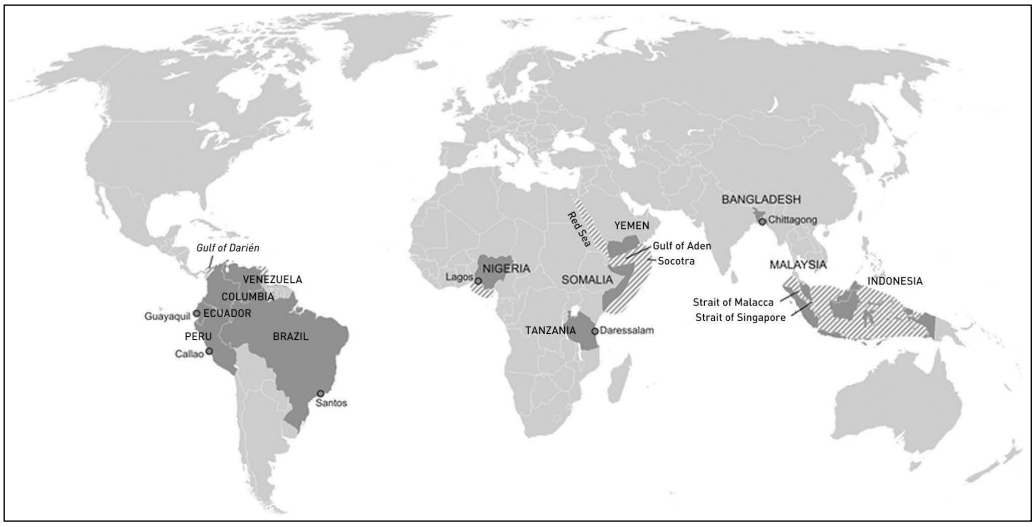


Diagram showing reported pirate attacks in the first quarter of 2011

HORN OF AFRICA

In terms of piracy, the international spotlight is currently on the Horn of Africa, and in particular the coast of Somalia. Since 1991, there has effectively been no state system of law and order and a civil war has ravaged the country for many years. Large parts of the country are ruled by clan and tribe structures, two autonomous regions, Somaliland and Puntland, have been created, and the influence of the internationally recognised government is restricted to the capital Mogadishu. One consequence has been the collapse of the Somali police force, customs authorities, coastguard service and navy. This situation has been exploited by international fishing

Source: Internet



Piracy is a worldwide phenomenon

fleets, including from Spain, China and Japan, which have illegally and systematically depleted the fish stock of the Somali waters using state-of-the-art nets. The lack of control has also been exploited for the disposal of hazardous waste off Somalia. The reduction and poisoning of the fish stock have impoverished the local fishermen. One response to this has been the formation of armed vigilante groups against international fishing fleets, as well as the "sale" of fishing licences and the imposition of "fines".

The Horn of Africa is located at the intersection of several historic regional and international waterways. Today, the Gulf of Aden records traffic of 30,000 to 40,000 ships annually, while approximately 20,000 ships pass along the north-east coast of Africa. Since 90 % of the crude oil production from the neighbouring Gulf states is delivered by ship (roughly 15 million barrels a day) and the Horn of Africa needs to be circumnavigated, the strategic importance of this region is evident.[31] In 2010, around 20 pirate syndicates, each with around 200 members, were active here. In the 1990s, one of the targets of these syndicates were vessels operated by the World Food Programme bringing aid to the impoverished population of Somalia. They were ambushed and after payment of a ransom allowed to continue and unload their cargo in the harbours of Somalia.[32] According to the IMB, the information of a total of 588 sailors and 28 vessels were under the control of the Somali pirate syndicates in April 2011.[33] In recent years, over USD 100 million is said to have been paid in ransom money.[34]

In the neighbouring states of the Red Sea, these developments are watched with concern. The Suez Canal is a big money earner for Egypt, and the country is highly critical of piracy, which threatens trade through the waterway. In Saudi Arabia and Egypt, the coastguard services are cracking down on piracy. Meanwhile, a possible link between the pirates and Al-Qaeda is being investigated by the Yemeni central government, whose motivation appears to be the securing of foreign aid.

Such a connection is rather unlikely. There have, however, been incidents of Yemeni pirates seizing ships, taking them to the Somali coast and selling them on to Somali pirates there. The Yemeni coastguard is also vigilant and at pains to retain control in the territorial waters.

Source: Internet

Piracy incidents in 2010

COMBATING PIRACY

The UN, EU and NATO have been forced to react because of the threat off Somalia, not least because of pirates taking refuge in the territorial waters of Somalia. UN Security Council Resolution 1816 (2008) authorised other states to take action against pirates using warships and aircraft. According to the Resolution, all necessary means may be taken to repress acts of piracy and armed attacks at sea, in response to the threat to important shipping routes, including in territorial waters. NATO positioned warships off the coast of Somalia from November 2008. The EU launched its "EU NAVFOR Atalanta" operation in line with UN Resolution 1846 (2008). The operation comprises up to six frigates, two patrol boats and 1,200 soldiers. Article 2 describes the aim of the operation as, inter alia, the protection of vessels operated by the UN World Food Programme and of merchant ships off the coast of Somalia. The operation is supported by sea patrol aircraft. In addition, India, China and other states have dispatched warships for the protection of their national merchant ships. Merchant ships are given the possibility of travelling through certain patrolled corridors of the Gulf of Aden.

However, armed attacks have occurred on a continual basis since the beginning of the operation. Although the operation has been presented as a success internationally, so far the pirate syndicates have not been deterred. The two regional monsoon seasons, which interrupt shipping traffic, mean fewer attacks. Close to the start of EU NAVFOR Atalanta, the EU is seeking to declare this natural reduction in acts of piracy to be a success of the operation. However, the IMB recorded a record number of piracy attacks in the first quarter of the year.[35] The fact remains that it is difficult to patrol a massive operational area with few vessels, despite sea reconnaissance that makes use of aircraft and satellites. Pirate boats are highly mobile and difficult to pick up by radar because of their relatively small silhouettes.[36] Furthermore, modern warships lack the necessary equipment. They are designed for special tasks, such as anti-submarine warfare, but not for a "small war" and police operations on the high seas. Pirates, on the other hand, are equipped with modern technology, satellite telephones and GPS.

Source: Internet

Pirates use modern communications equipment

What action can crews take against pirate attacks? Non-lethal means are used predominantly. In 2005, when the Seaborn Spirit cruise liner was shot at off the Horn of Africa, the crew responded with a sonic canon, which causes painful damage to the hearing of those it is aimed at. The crews of some vessels attempt to defend against pirates by using fire hoses. The International Chamber of Commerce also recommends using technical measures to secure ships, for example barbed wire on the deck rail or an electric fence around the vessel.

Pirates first disable ships' antennae so that the vessels cease to transmit signals and cannot be located. For this reason, the satellite-controlled positioning system Shiplog, which can easily be hidden in an inconspicuous chest, is used to call for help and enable the position of the ship to be determined.[37]

LEGAL CONDITIONS

The Convention on the Law of the Sea of 1982 allows states to use coercive force against pirate vessels and vessels suspected of piracy. These vessels may be boarded. It is permitted to arrest the persons and seize the property on board. If the crew of such a vessel has committed an act of piracy, the courts of the intervening state may determine the penalty to be imposed.[38] There is concern, however, that pirates will act more aggressively and be more inclined to use violence against their hostages if they feel under increased pressure of being prosecuted. Just as obtaining relatively heavy and comprehensive weaponry is not an obstacle for the pirates because of easy availability, for example, in Somalia, the pirates also have places of refuge where they can receive provisions on land. UN Security Council Resolution 1816 (2008) permitted entry to Somali territorial waters for the purpose of fighting piracy.[39] Operations on land, such as the operation by French special forces in April 2008 referred to at the beginning of this article, require the permission of the Somali transitional government according to UN Resolution 1846 (2008).[40] However, the effective control of the transitional government is limited to the capital Mogadishu and its exercise of sovereignty is therefore restricted. This hampers international cooperation considerably.

Source: Internet

Somali pirate

Insufficient powers to use force and human-rights obligations when capturing and detaining pirates pose a major challenge for the international operational teams. For example, minimum standards of detainment on warships, such as sufficient space, access to fresh air, light, food, drink and exercise must be ensured before persons are arrested. In addition, the legal treatment of pirates following detention must adhere to the relevant human rights standards (for example, pirates must be handed over for trial without unnecessary delay and may not be transferred to states where they may be subject to torture or the death penalty etc.). Measures employed to date, including the delivery of detained pirates to Kenyan courts, are therefore to be deemed legally objectionable.[41]

Source: Internet

US commando inspects a suspicious ship

OUTLOOK

The 21st century is the century of maritime trade and sea routes are the veins of globalisation. The disruption of strategically important waterways by criminal acts needs to be countered effectively. There are three options for tackling modern piracy:

- After a simple costs-benefits calculation, the economic option leads to the conclusion that the costs of ransom payments, higher insurance premiums, delivery delays etc., are less than the risk of total losses of ships and their cargo. The likelihood of a pirate attack is relatively small in relation to the level of shipping traffic, for example in the Gulf of Aden. For this reason, many ship owners and shipmasters reject tougher measures against piracy.
- The technical option consists of developing at least minimal state law and order systems, in particular capable coastguard services with the necessary infrastructure, vessels and reconnaissance equipment. This would reduce the pressure on external security forces, such as European navies, in the short term, but would not provide a sustainable solution. Moreover, international naval operations providing assistance must be seen as short-term measures that alone cannot ensure the safety of sea routes.
- The sustainable option aims to eliminate the causes of piracy, which are found on land. This involves the development of effective state security structures, in both the executive and judicial sphere, and economic support for other forms of employment and rehabilitation of former criminals.

The economic version presents a convenient, albeit questionable solution. It does not limit piracy; on the contrary, it is a significant incentive to criminals and will serve to encourage pirate activities. It is debatable where the most effective option, the sustainable method, is feasible in political terms at the international level, i.e. whether it is legitimate under international law, and whether it will be supported and implemented by a sufficient number of competent states. The lack of willingness to engage in crisis areas like Somalia raises doubts on that point. It is more likely that efforts will be focused on a technical, one-off solution, such as the EU training mission for Somali security forces in Uganda. For active and potential pirates, the prospect of quick gains coupled with a relatively low risk of being prosecuted remains an attractive alternative to regular ways of earning a living like fishing.

[1] See report given by the captain of the Le Penant (Marchessau 2009).

[2] See report given by the captain of the Hansa Stavanger (Kotiuk 2010).

[3] Cf. Ormerod 1997; Bohn 2007; Bono 2009.

[4] Cf. Joyner 2005, 137.

[5] Cf. Schwind 2009, 616.

[6] Cited from the 22nd United Nations Convention on the Law of the Sea, dated 10 December 1982. The Convention on the Law of the Sea governs the means by which piracy may be combated and piracy committed by both private individuals and states (Randelzhofer, 2002, 321). This definition corresponds verbatim to the Geneva Conventions on the Law of the Sea of 1958 (Joyner 2005, 137).

[7] The seizure of the Achille Lauro is a case in point. The Italian passenger ship was seized by five Palestinian terrorists in the Mediterranean in October 1985. See also Stockfisch 2004; Luft/Korin 2004.

[8] Talk given by Judge Türk at the Diplomatic Academy in Vienna on 11 January 2010 and Murphy 2007.

[9] The pirates targeted the gold into which the refugees had converted their entire resources. The women and children were carried off and forced into prostitution (Carini/Macallen 2008, 214).

[10] Talk given by Judge Türk at the Diplomatic Academy in Vienna on 11 January 2010.

[11] Cf. Carini/Macallen 2008. For the global context, see also de Wijk 2010.

[12] Cf. Anderson 2010.

[13] For in-depth information about the regional context, see Anderson 2010.

[14] Talk given by Judge Türk on 11 January 2010.

[15] Based on de Wijk 2010, 39. De Wijk refers to the difficulty of obtaining precise statistics.

[16] Mader 2009. It should be noted that all figures related to ransom money are estimates because there is no publicly available data.

[17] Frankfurter Allgemeine Zeitung, 30 June 2011, 12.

[18] Grünhagen 2008, 13 f and Carini/Macallen 2008, 217 f.

[19] This description is based on various interviews, including with Cyrus Mody of the International Maritime Bureau in London on 14 April 2011.

[20] Interview with Cyrus Mody on 14 April 2011.

[21] For this reason only one rescue attempt was made between 2007 and 2009.

[22] The tactics described are used by Somali pirate syndicates and are subject to continual change, particularly under pressure from anti-piracy operations and the improved responses of crews and shipmasters.

[23] Cf. Exquemelin 2007.

[24] Cf. Wiese 2010, 30.

[25] Talk given by Judge Türk on 11 January 2010. See also Bossow 2008.

[26] The IMB reports in 2004 of 93 pirate attacks on the Indonesian coasts, only nine in Malaysian waters and only eight in the territorial waters of Singapore.

[27] Cf. Ho 2009.

[28] Cf. Raymond 2009, 36.

[29] Cf. IMB 2011, 8.

[30] Cf. Wiese 2010, 40.

[31] Cf. Hosseus 2007, 233.

[32] Interview with Cyrus Mody on 14 April 2011.

[33] Cf. International Maritime Bureau 2011, 19.

[34] Cf. Boot 2009.

[35] See press releases issued by the operation command at http://www.eunavfor.eu and International Maritime Bureau 2011, 23.

[36] Cf. Stehr 2009.

[37] Mader 2009.

[38] Article 105, Convention of the Law of the Sea of 1982 (Randelzhofer 2002, 321).

[39] See UN Resolution 1816 of 2 June 2008.

[40] See UN Resolution 1846 of 2 December 2008.

[41] The assessment of the legal situation was made with the kind assistance of Sebastian Wseticzka, international law department at the Austrian Ministry of National Defence and Sport (BMLVS).

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