



Gulf of Aden vs Malacca Strait Piracy and Counter-piracy efforts

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Piracy is one of the oldest and most lucrative illicit profession. It is an aggressive and often violent means to embezzle goods and capital, with the possibility of providing temporary but effective acquiescence from multiple stakeholders. Opportunities for attack and escape, be it in harbor or on the high seas are aplenty in the maritime arena and it usually takes the collective effort of nation states to crack down on what is essentially a trans-national criminal activity.

This essay compares the origin and evolution of piracy in the Gulf of Aden, off the coast of Somalia against the Strait of Malacca in the South China Sea. While both of these indispensable maritime routes have been plagued by piracy, it is only the Southeast Asian littoral states that have been able to contain the beast.

This essay looks into various political, legal and regional issues and challenges.

I GULF OF ADEN

Somalia has not had a government since 1991 when warlords took over and a series of clan wars engulfed the country. Apart from the hundreds of thousands that have died in this conflict, about three million people are desperately in need of aid. However, even for the international community to provide aid, is a tricky matter, given the politically volatile environment. According to John C. Marcario, assistant editor of *Seapower* magazine, the average Somali earns about \$650 per year whereas the average Somali pirate earns \$45000.

As of 2009, there are over twenty nation states patrolling the Gulf of Aden through the US Navy's Combined Task Force 151 and NATO efforts. According to the US State department this collection constitutes an unprecedented

international armada. It includes EU member states, China, India, Japan, Malaysia Singapore and Russia. This contact group also establishes a trust fund that shall be applied towards prosecuting suspected pirates. These initiatives were undertaken after the UN Security Council unanimously passed Resolution 1851(6) which allowed all states to use force both on land and off shore if they are granted permission by Somalia's government.

However, in a region such as the Gulf of Aden, with a water space of nearly 3800km, it is still impracticable to protect every vessel along the Somali coast. Even if there is a multitude of ships operating in the area, it is not feasible to be in all places and be able to thwart all attempts of piracy. The issue however, is not piracy for that is only a symptom of the larger problem of civil strife and absence of effective governance that Somalia has been experiencing since 1991. This lack of governance has allowed piracy to proliferate to the intensity that it has. In an interview conducted by *Newsweek*, with the Somali hijackers of the Ukrainian cargo ship *MV Faina*, the pirates themselves admitted that:

"They (US Task Force 150) can arrest us if they find us; they've arrested our friends many times. But that will never deter us. The only thing that can stop piracy is a strong government in Somalia".

Fishing is a major source of income for the Somali people. Somali pirates blame not only the widespread poverty and unemployment but also hold a near xenophobic scorn for the foreign shipping companies. They allege that it is the big powers, especially the Asian countries that have ousted them in their country's own territorial waters and compelled them to find solutions in piracy.

All this has lent an element of patriotic justifiability to this underground business and there is indeed a public empathy for the pirates. This has further

extended into a vicious circle because the wealth plundered by the pirates has brought affluence to their previously poor regions, thereby providing them with widespread local support.

A counter campaign against piracy in the Gulf of Aden requires both onshore and offshore targeting of pirate strongholds. Piracy in Somalia has become a well established and organized business that is dominated and mitigated by the various clans. It is a phenomenon that has brought an economic boon to a country that has been in economic and political limbo. The regions where pirates reside have witnessed a drastic rise in the level of prosperity. This inflow of wealth has in turn affected governance in Somalia, where due to the all pervasive poverty, the corruption of government officials is hard to avoid.

There is no real incentive for the Somali government to contain piracy in the Gulf of Aden, apart from pressures of the international community and the need to improve one's image therein. However, irrespective of the sentiments of the Somali state, the international community has to continue in its counter piracy efforts in the Gulf of Aden due to the multiple global stakeholders and its importance to international maritime trade. Moreover, the area of operation of Somali pirates is far from coast, not under control of any one state and therefore the burden of all stakeholders.

II

THE STRAITS OF MALACCA

Piracy in Southeast Asia also has economic origins. The first trigger was the 1997 Asian financial crisis which had a debilitating effect on the entire region and forced many people residing in the coastal areas, especially in Malaysia and Indonesia to seek sustenance in piracy in order to expand their diminished earnings. The political

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instability caused by this economic crisis allowed attention to be diverted and for the piracy problem to proliferate considerably.

Moreover, the ASEAN nation's premium on sovereignty took forefront, particularly through Malaysia and Indonesia who saw the issue of piracy purely as a domestic concern and to be addressed internally by each state. In the initial stages, Singapore was the only state that was willing to engage not only the regional but also the extra-regional stakeholders in combating piracy.

The ASEAN nations have come a long way since then. The biggest contrast with Somalia against Southeast Asia is not only stable governments, but also economies that have demonstrated the ability to recuperate. Moreover, as a regional grouping, ASEAN has been far more successful than the African Union (AU) or even the UN in containing piracy in the Gulf of Aden.

There have been significant multilateral measures that have set the groundwork for effective countering of piracy. One of the first was the MALSINDO coordinated patrols; introduced in 2004, it involved the navies of Malaysia, Indonesia and Singapore. The most recent and prominent anti-piracy measure has been RECAAP, which came into force in 2006. In addition to the ten ASEAN member states, this also included other stakeholders from the Asian region such as China, Korea, India, Bangladesh and Sri Lanka.

Apart from the above treaties and initiatives, there has been a commendable transition towards a culture of multilateral cooperation amongst the ASEAN nations that has contributed to the plummeting in the number of pirate attacks.

III

RELEVANT INTERNATIONAL LAWS AND AGREEMENTS

United Nations Convention on the Law of the Sea (UNCLOS)

From among the range of international and regional conventions on Maritime Law, UNCLOS is the most prominent and widely acknowledged. A major drawback of the UNCLOS is its definition of piracy and also what constitutes as piratical acts. For instance this act requires for there to be violence, depredation and detention for an attack to constitute as piracy. In reality, while often violent, pirates also use the threat of violence for stealing goods and vessel. Some attacks can be as swift as half an hour and not constitute as 'detention'. Two ships are needed as

per this agreement for it to constitute as an act of piracy and given the means that modern day pirates use, this is an archaic provision.

Moreover, this agreement mostly applies to coastal areas and territorial water whereas most pirate attacks occur on the high seas. The most severe drawback of this is the hot pursuit flaw, wherein persecution of pirates by one country terminates the minute the pirates enter another country's territorial waters. This is a major reason why by and large, pirates and piracy is able to survive so well. The probability of being caught is understood as not being as high as it could be.

Suppression of Unlawful Acts (SUA)

The 1988 Suppression of Unlawful Acts against the safety of Maritime Navigation Convention allows for countries to determine criminal jurisdiction and sets a framework for the arraignment of the offenders. In the Southeast Asian perspective, a major drawback is that the coastal states of Malaysia and Indonesia have not ratified this document, despite the fact that it is not binding. According to this agreement even if a state has jurisdiction, the prosecution and penalties for the guilty party is discretionary under SUA. Moreover, it is widely held that this agreement is more beneficial to countries whose territories are set in stone and therefore problematic for much of the developing world especially Southeast Asia, where maritime territorial disputes do exist.

Regional Cooperation Agreement on Combating Piracy (RECAAP)

This 2006 agreement is also known as the Regional Cooperation agreement on combating piracy and armed robbery against ships in Asia. A distinguishing feature of this agreement is that apart from UNCLOS's definition of piracy, it also includes the offence of 'armed robbery against ships'. This specification is an improvement over the previous maritime agreements. This agreement encompasses most countries from Asia including, nearly all of South Asia. However, the exclusion of regional players like Australia and New Zealand is perceived as a drawback for much could be achieved with the resources and intelligence of these nations

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IV GREY AREAS

Ownership

A solution suggested for the problem of piracy has been to allow pirates formal ownership rights in the waters that nobody claims. Western countries such as the United States especially are against this type of solution due to its policy of not negotiating with criminals and terrorists. Moreover, perhaps the ownership issue should not involve pirates but other legal actors, especially nation-states. Maritime security entails a range of things apart from countering piracy and if pirates are granted ownership rights, it shall leave no room for environmental concerns, marine research, and tourism or even guarantee smooth international commerce.

The best form of protection can only be afforded if states decide amongst themselves who owns the waters. Then that particular country should take the lion's share of responsibility in making that region safe, along with the opportunity to utilize the collective resources of the international community as and when the need arises.

Ransom

Paying ransom to pirates in return for crew should be the last resort method and instead an efficient security apparatus should be developed, the kind that was applied by the US in rescuing the captain of US merchant ship Maersk Alabama. This is primarily because ransom money often goes towards financing arms and ammunition that would be used by the nexus of pirates in further attacks.

To Arm or Not to

One of major challenges of the escalated and prolonged practice of piracy is that marauders acquire sophistication and take the hijacked ships

further out to sea. This brings to the fore debates on whether or not the crews should be armed or not. This is something that shall never quite be supported by international law because it entails some kind of an authorization for escalation to full blown armed conflict at Sea. Moreover, there is also the argument that pirates tend to be more merciful towards unarmed crews. Ultimately it would have to be agreements between individual states and the space of their respective territorial waters where it shall be feasible to arm crews of civilian vessels. Apparently, it is even a Somali pirate 'code' not to harm innocent sailors that they take over. While escorts for civilian merchant shipping vessels by naval warships provide an effective form of deterrence, it is not possible to avail their protection at all times but mostly during high alert.

Local Maritime Laws

A situation of utmost concern for the international maritime community is where a coastal state does not have any specific anti-piracy legislation which implies that even if arrested pirates go unpunished and back into the vicious circle of crime. This makes the pursuit and capture of pirates pointless.

V CONCLUSION

While all countries in the world today engage in varying degrees of maritime trade, it is countries with naval forces that shall lead the piracy debate and not the entire international community. Apart from the dearth of strong stable governance, there are other factors including the differing progression of piracy as well as the existing infrastructure and laws in the two regions, which contribute to the current circumstance. Pirates are essentially businessmen. The maritime arena is a highly material world where both the marauder as well as the marauded is looking for the most cost efficient means of doing business. Piracy is a complex problem that cannot be solved overnight nor entirely done away with in the near future. It can however be contained to the extent that it is a marginal concern as opposed to a looming menace.

The naval powers which have large investments and dependence on maritime trade for sustenance have no choice but to contribute in whatever capacity especially in a region such as Somalia. However in Southeast Asia, it is the littoral states of Malaysia and Indonesia and Singapore that are taking the reins, quite effectively. While piracy has been significantly contained in Southeast Asia, in Somalia it cannot be contained unless a strong government is formed.

References

- Teo Chee Hean, Minister for Defense of Singapore. ASEAN and Asia's Regional Security Architecture. Military Technology MILTECH, March 2009.
- Ian Storey. Maritime Security in Southeast Asia: Two Cheers for Regional Cooperation. Southeast Asian Affairs 2009.
- Netina Tan. Maritime Security in Southeast Asia. Pacific Affairs. Vancouver: Spring 2009, Vol. 82, Iss. 1; pg. 152, 3 pgs.
- Wolfgang Legien. The Republic of Singapore Navy: Interview with Rear-Adm, Chew Men Leong, Chief of the RSN. Military Technology, MILTECH, May 2009.
- Vijay Sakhuja. Maritime Security in Southeast Asia. Singapore: Aug 2007, Vol. 29, Iss. 2; pg.392, 3pgs.
- Catherine Zara Raymond. Piracy and Armed Robbery in the Malacca Strait: A problem solved? Naval War College Review, Summer 2009, Vol. 62, No.3.
- Sam Bateman, Joshua Ho and Mathew Mathai. Shipping Patterns in the Malacca and Singapore Straits: An assessment of the risks to different types of vessel. Contemporary Southeast Asia, Vol 29, No 2 (2007), pp. 300-32.
- Rosemary Collins and Daud Hassan. Applications and shortcomings of the Law of the Sea in combating piracy: A Southeast Asia perspective. Journal of Maritime Law & Commerce, Vol. 40, No.1, January 2009.
- Clive Schofield and I Made Andi Arsana. Beyond the Limits: Outer Continental Shelf opportunities and challenges in East and Southeast Asia. Contemporary Southeast Asia Vol 31, No.1 (2008), pp 28-63.
- Phillippines hosts International Maritime Law enforcement conference. Asia Pulse, Newswire, 31 July 2009.
- Palawan maritime authorities to strengthen law enforcement through trilateral agreement. PNA, Newswire, 7 August 2009.
- Singapore to send naval ship, helicopters to Gulf of Aden. Japan Economic Newswire, 12 February 2009.
- Thailand works on Maritime Security. Thai News Service, The Financial Times Limited, 6 October 2008.
- Anushree Bhattacharyya Chakraborty. 16th ASEAN regional forum: Has it gone beyond rhetoric? Article # 2979, 8 October 2009.



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