

INTERNATIONAL AND REGIONAL RESPONSES IN COMBATING MARITIME SECURITY THREATS IN SOMALIA

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ABSTRACT

The paper is an exploratory research examining international responses to maritime security off the coast of Somalia at the global, continental and regional level. This is against the background of the impact of maritime insecurity that has disrupted navigation, hampered trade and posed threat to international peace and security in the Western Indian Ocean.

Keywords: Somalia, Piracy, maritime laws, maritime security, international responses, local response

INTRODUCTION

The escalation of piracy off the coast of Somalia became the focus of both international and regional actors as it disrupted international navigation, maritime trade and threatened the peace and security in the Western Indian Ocean. It also threatened ships and crew of many different nationalities. Piracy is thought to thrive where other maritime crimes occur. The threats from maritime terrorism, illegal unreported and unregulated fishing, weak maritime security and governance, environmental pollution, human trafficking, and small arms trafficking also affect the region (UNDOC, 2014). The effect of the piracy and other maritime threats to international peace and security in the region, the regional socio-economic wellbeing, rising costs in both human and commerce, eventually necessitated a multi-dimensional response by international and regional actors led by the UNSC. Several international organizations including the UN and its organs and agencies, Interpol, the intergovernmental military alliance group NATO, and regional organizations such as the EU, AU, and IGAD, together with IGOs and NGOs responded to the Somali piracy and have been actively engaged in addressing the problem at

sea and on land. Navies from the EU and NATO and from several other countries including the United States, Russia, China, India, and Japan deployed warships off the coast of Somalia and in the Gulf of Aden to protect trade routes and the global supply chain against attacks (Maluki and Okwomba 2012). A transit corridor was established in the strategic Gulf of Aden to allow for the warships to patrol and provide escort and security to shipping. The other strategies employed by the stakeholders included: the shipping industry employment of the self defence measures and BMP; global pirates' prosecutions programmes; security sector reforms in Somalia; UNODC infrastructure projects; IMO led Djibouti Code of Conduct; international cooperation; rebuilding of Somali state institutions; tackling piracy on shore support infrastructure; and AMISOM operations against Al Shabaab.

The states and organizations involved in the fight against maritime crimes have also cooperated and collaborated in many respects ranging from deployment of surveillance assets, sharing of information, and signing of agreements and MOUs.

The bilateral and multilateral strategies are aimed at interrupting criminal activities at sea, strengthening domestic maritime law enforcement capacity, and addressing the root causes of maritime crime on land.

INTERNATIONAL RESPONSES

United Nations System

Article 24 of UN Charter mandates the UNSC with the maintenance of international peace and security on behalf of Member States. In response to maritime insecurity caused by Somali pirates, the UNSC responded by issuing a series of resolutions since 2008 to facilitate an international response. Resolution 1816 (2008) authorized states acting in cooperation with, and with prior notification of, the Somali Transitional Federal Government to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea and to use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery. Resolution 1838 (2008) called on states with military capabilities in the region to apply military force as a means of repressing acts of piracy by committing both naval and air forces to fight this crime. The UNSC has subsequently renewed the Council resolutions for the counter piracy operations. The threats of terrorism, IUU, trafficking in humans, small arms and drugs are

covered under various international conventions and the UNODC programmes have targeted capacity building for the regional states to tackle these crimes. The US led task force CTF-150 based in Bahrain is an effort in the global war on terror and offers support to the naval forces in the Indian Ocean.

The UN General Assembly considers the problem of maritime piracy on an annual basis as part of its discussions on 'oceans and the law of the sea'. It adopted a comprehensive resolution in 2009 with several provisions related to piracy where among others, the crucial role of international cooperation at the global, regional, sub-regional and bilateral levels in combating, in accordance with international law, threats to maritime security (UNGA) .

The Assembly sought to address maritime piracy, armed robbery at sea, terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats, the enhanced sharing of information among States relevant to the detection, prevention and suppression of such threats, and the prosecution of offenders with due regard to national legislation, and the need for sustained capacity-building to support such objectives(UNGA). It further emphasized the importance of promptly reporting piracy incidents to enable accurate information on the scope of the problem, and called upon States to take appropriate steps under their national laws so as to facilitate apprehension and prosecution of suspected pirates. The General Assembly while urging states to actively combat piracy in cooperation with the IMO, allayed fears and concerns that the UNSC resolutions authorizing state action in the territorial waters of Somalia and inland as not establishing customary international law and apply only to the situation in Somalia.

The IMO is a specialized agency of the United Nations that works as the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented. The IMO anti-piracy activities began as early as 1983, when the IMO Assembly adopted a resolution on measures to prevent acts of piracy and armed robbery against ships. The organization has very actively and effectively addressed the question of maritime piracy especially since the 1990s, with initiatives that have resulted in the establishment of several regional and sub-regional arrangements aimed at preventing, deterring, and repressing acts of piracy and armed robbery against ships. In 2009, IMO spearheaded the Djibouti Code of Conduct concerning

the repression of piracy and armed robbery against Ships in the Western Indian Ocean and the Gulf of Aden by Middle East and African States. In addition to these initiatives creating regional arrangements, the IMO's Maritime Safety Committee in 2009 updated its guidance on combating piracy and armed robbery against ships and adopted a set of "best management practices" to deter such attacks. The guidelines include several recommendations related to travel routes and more technical advice regarding preferred modes of communication and reporting, evasive maneuvering tactics, and other defensive measures. In December 2009, the IMO also adopted a guidance document in the form of the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships to foster regional cooperation and to coordinate governments' actions.

The UNODC is another undertaking of UN agency that set up its program to support piracy prosecutions in May 2009. The organization's assistance is focused on Kenya, Seychelles, and Somali semi-autonomous regions of Puntland and Somaliland. UNODC trained police in modern investigatory procedures and supplied them with logistical requirements. In Kenya, it supported the criminal justice system where it has trained the judiciary and also renovated courtrooms, supplied computers and provided defense lawyers. Its refurbished prisons facilities, and has undertaken similar capacity building and support programs in Seychelles.

The UNDP is also involved in the rebuilding of the Somali state institutions and capacity building in order to address the endemic root causes of insecurity in the region.

Interpol

The International Criminal Police Organization facilitates international cooperation between police forces to prevent international crimes. The UNSC recognized the importance of INTERPOL in the investigation and prosecution of pirates and consequently advised States to utilize their services through UNSC resolutions. In the case of the Somali piracy, INTERPOL continues to assist the piracy prosecutions and tracking of suspects and illicit money laundering related to the Somali piracy.

Contact Group on Piracy off the Coast of Somalia

The maritime insecurity in the region manifested by the Somali piracy attracted many players from States, international and regional organizations, and the shipping industry. The need for collective responsibility by the international community in

cooperative networks and capacity building in addressing the threats highlighted the manner in which the response developed. The response by the many stakeholders to the piracy menace led to the need for a global forum or coordinating mechanism to bring all the groups together. The need for coordination and coherence in support of the various international and regional initiatives led to the establishment

of the Contact Group on Piracy off the Coast of Somalia as an international cooperation mechanism to act as a common point of contact between and among States and organizations on all aspects of combating piracy in line with UNSC Resolution 1851(2008).

The Contact Group is a voluntary ad hoc international forum that brings together over 80 countries, organizations, and industry groups with a shared interest in combating piracy. The group coordinates political, military, and non-governmental efforts to tackle piracy off the coast of Somalia, ensures that pirates are brought to justice, and support regional states to develop sustainable maritime security capabilities. The Contact Group utilizes five thematic working groups to draw on a wide range of international expertise and adopt a problem-solving approach to piracy. It has worked closely with Somali government officials from the central government and regional administrations and also officials from regional States. The working groups include: Group 1 focusing on operational naval coordination, information sharing, and capacity building; Group 2, addresses legal and judicial issues; Group 3, works closely with the shipping industry to enhance awareness and build capabilities among seafarers transiting the region; Group 4, aims at raising public awareness of the dangers of piracy; while Group 5, focuses on disrupting the pirate criminal enterprise ashore, including the illicit financial flows associated with maritime piracy.

In reforms undertaken in 2014, the above working groups have been restructured. A new WG1 now focuses on capacity building coordination and continues the work of the former WG1 while a new WG2 focuses on operations at sea and continues elements of the work of the former WG1 and WG3. The new WG3 is the former WG5 and continues the work in the area of tracing the financial networks of piracy and working towards the prosecution of piracy kingpins. The work of WG2 and WG4 was discontinued. WG2 was replaced by a virtual Piracy Legal Forum.

International Naval-Military Response

The UNSC acting under Article 39 and 42 of Chapter VII of the UN Charter, respectively determined the existence of threat to international peace and security and authorized member states to 'take such action by air, sea, or land forces as may

be necessary to maintain or restore international peace and security' in the region. UNSC Resolution 1816 (2008) authorized naval forces to enter Somali territorial waters in pursuit of pirates. These resolutions have been renewed several times and have enabled the deployment of the EU operation ATALANTA, NATO Combined Maritime Forces' CTF 151 and other navies acting in their own capacity in cooperation with the Somali TFG. These naval forces have contributed to the enhancement of security at sea.

The European Union launched the EU Naval Force codenamed Operation Atlanta in December 2008 within the framework of the European Common Security and Defence Policy in accordance with relevant UN Security Council Resolutions and International Law. EUNAFOR Somalia has a mandate to protect WFP, AMISOM and other shipping against attacks by pirates, monitors fishing activities off Somali coast, deters and disrupts piracy and armed robbery at sea, and supports other EU missions and international organizations working to strengthen maritime security and capacity in the region.

The EU also took the lead in establishing and maintaining the Internationally Recommended Transit Corridor, in which maritime traffic is safe from pirate attacks. EU NAVFOR is the largest single group among the naval units and forces operating in the region. NATO in 2008 deployed naval units under Operation Allied Provider on the request of the UN Secretary-General to provide escorts to UN World Food Programme vessels delivering relief supplies to Somalia and in addition to undertake piracy deterrence patrols. This operation was succeeded by Operation Allied Protector in 2009 with an expanded mission is to contribute to international efforts to counter maritime piracy while participating in capacity building efforts with regional governments. Operation Ocean Shield cooperates closely with other naval forces.

The other naval deployment in the region is the US led Combined Task Force 150 and 151. This is a multinational coalition naval task force working under the 25 nation coalition of Combined Maritime Forces based in Bahrain with a responsibility to monitor, inspect, board, and stop suspect shipping in pursuance of the "Global War on Terrorism" and in the Arabian sea to support operations in the Indian Ocean.

CTF-150 was tasked with maritime security operations, which include counter terrorism and maritime security. However, piracy being more of a law enforcement mission, it was decided that CTF-150 could not conduct counter-piracy operations effectively in the region with their maritime security mandate. Consequently CTF-151 was established in January 2009 with a specific piracy mission-based mandate under

the authority of UNSCRs 1816, 1838, 1846, 1851 and 1897.

Other navies operating in the region include countries such as Russia, China, Japan, South Korea, Malaysia and India who have deployed elements of their navy in the Gulf of Aden and Western Indian Ocean. These navies' mandate to combat piracy is derived from international law and the UNSC resolutions. Japan, South Korea and Malaysia have also deployed single vessels in the waters of the region, while states such as Yemen and the Kingdom of Saudi Arabia have occasionally deployed vessels as part of the earlier mentioned.

The coordination and information sharing amongst the naval-military efforts to combat Somali piracy is conducted through the meetings of the Shared Awareness and De-confliction group based in Bahrain. It brings together representatives from the multilateral naval initiatives and countries with naval forces operating in the region, the UN, Interpol and the shipping interests to share best practices, discussions, and 'de-conflicting' the activities of those nations and organizations involved in military counter-piracy operations in the region.

CONTINENTAL RESPONSES ON MARITIMES

The African Union (AU)

The AU 's response to the maritime challenges in the region and the continent in general is seen in the 2009 Durban Resolution on maritime security and protection of the marine environment, 2010 African Maritime Charter, the 2012 Africa Integrated Maritime Strategy and the African Charter on Maritime Safety, Security and Development. The frameworks aim to protect and sustain the exploitation of the maritime resources in a stable and secure environment. The Durban resolution by Ministers in charge of maritime transportation undertook to: support the efforts of the IMO and UNSC in coordinating an international response to piracy along the coast of Somalia including the establishment of the piracy information Centers and building of sub-regional capacity and capabilities. The resolution aimed to also enact national legislation where appropriate and to take all the necessary measures to give full effect to relevant international instruments in the area of maritime, port safety and security in order to ensure safe, secure, efficient, and environmentally friendly shipping. In terms of its article 18, it also encouraged the implementation of the Djibouti Code of Conduct.

The African Maritime Transport Charter came after the Durban resolution with the objectives of articulating and implementing harmonized maritime transport policies by the AU member states as per article 7. The 2050 Africa Integrated Maritime

Strategy aims at achieving a comprehensive understanding and sustainable development of Africa's maritime domain over a period of time and in a secure environment. It mandates the African sub-regions to harmonize their policies and set up a maritime element in the sub-regions standby forces. While the frameworks brought together African states to strategize on eliminating the threats to maritime security and achieve growth in the utilization of the maritime resources, they supported the current international efforts in dealing with the threats.

Of significance is African Charter on Maritime Safety, Security and Development which sets out comprehensive provisions on maritime security on the continent.

AU is also engaged in security stabilization of Somalia through the AMISOM forces. Significant progress has been realized with the country establishing a new Federal Government of Somalia in 2012 replacing the TFG, the influence of the extremist Al Shabaab forces has been reduced with large areas under their control wrestled. The Somali national security forces are undergoing capacity building and have been able to take control of areas under government control. These efforts have important implications on maritime security

Regional Responses

One of the strategies needed to defeat piracy and other maritime threats in the East African region is the enhancement of maritime security and governance. The threats emanating from Somalia requires that international and regional actors work towards a stable government in Somalia with a regional population that supports and defends the rule of law as pirates and those who commit maritime crime flourish under weak governance and cannot function effectively under rule of law. The region's littoral States have weak maritime governance capabilities due to limited surveillance assets and other resources. The borders are therefore porous allowing some of the criminal activities to pass through. As reiterated by Martin Murphy (2009), the factors that contribute to piracy (and also other maritime crimes) include legal and jurisdictional weakness, favorable geography, conflict and disorder, under-funded law enforcement/inadequate security agencies, permissive political environments, cultural acceptability/maritime tradition and promise of reward. These factors are still present in Somalia and the Western Indian Ocean region generally.

The United Nations Political Office for Somalia is a political mission managed by UN Department of Political Affairs responsible for promoting political stability and the rule of law inside Somalia. The political stability and rule of law should ultimately be

the key to stopping the lawlessness and criminality off its shores.

Inter-Governmental Authority on Development (IGAD)

According to IGAD (2019), Somalia contribute to the creation of an environment conducive to the strengthening of numerous criminal and terrorist groups that already seem to control entire sections of the sea frontages of Somalia and Yemen witnessing an equally dangerous territorial and political fragmentation of their very closer Yemeni neighbor.

Both Yemen and Somalia share disturbing similarities, such as the weakness of the state, the uncontrolled circulation of huge stocks of weapons and ammunition, the presence of numerous terrorist groups and acute poverty. The role of IGAD is to restore credible states able to fully control their territorial, maritime and air domains. Yemen and Somalia remain a threat to regional and global peace and security and could soon lead to an upsurge in maritime piracy that the international community has successfully eradicated in 2012. The Arab Peninsula States with whom they share common maritime borders to jointly and quickly put in place, a body entirely dedicated to the political dialogue and the coordination of every initiative aimed at strengthening the security and safety of this regional and international maritime area (IGAD, 2019).

The African Union Mission in Somalia is an active, regional peacekeeping mission operated by the African Union with the approval of the United Nations. The African Union's Peace and Security Council created the mission on 19th January 2007 with an initial six-month mandate. It replaced the Inter-Governmental Authority on Development Peace Support Mission to Somalia or IGASOM. The UNSC authorized the AU to deploy a peacekeeping mission with a mandate of six months under UNSC Resolution 1744(2007). The aim of the peacekeeping mission was to support a national reconciliation congress. However, over time, the UNSC has expanded the mission's mandate to deal with Al Shabaab threat, assistance to the Federal Government of Somalia in consolidating and expanding control over its national territory, assist the FGS in setting conditions for effective governance among other state reconstruction areas (AU, AMISOM, 2019).

The strengthening of local judicial capacity is being undertaken with the support of the UNODC and has led to enactment of antipiracy laws, training of Somali law enforcement officers and the rebuilding of courts and correctional facilities. The European Union EUCAP NESTOR capacity building mission also aims to strengthen

regional maritime capabilities through the development of a coastal police force and support for judicial institutions in Djibouti, Somalia, Kenya, the Seychelles and Tanzania (CEU, 2019).

Other UN entities working in partnership with DPA to combat Somali piracy include the United Nations Office of Legal Affairs, the International Maritime Organization, the UN Development Programme and the United Nations Office on Drugs and Crime. The Contact Group established in 2009 set up a counter-piracy Trust Fund to support piracy prosecutions and detention-related activities in 2010(UNDP,2019).

The IMO is a specialized UN agency charged with overseeing activities relevant to the safety, security, and environmental impact of ships. IMO has adopted several international conventions relevant to maritime piracy and terrorism such as the SUA Convention (1988) and its 2005 Protocol, the International Ship and Port Facility Security Code, and Safety of Life at Sea Convention.

UNODC was established in 2009 to implement, together with other agencies, the recommendations of the Contact Group. It aimed at enhancing the criminal justice capacity among Somalia's neighbours. This was as a result of the need for the prosecution and imprisonment of captured pirates to be humane, efficient and within a sound legal framework. UNODC has worked with Kenya, Tanzania, Seychelles and Mauritius to review their national legal frameworks in conformity and consistent with international laws and human rights norms. The UNODC project also included the training of legal staff, improving court facilities and the restoration of the rule of law in Somalia. The UNDP and the World Bank Group are involved in the Somali State Institutional capacity building and reconstruction. They focus on governance, security, and economic systems. The semi-autonomous Somali states of Puntland and Somaliland have benefited from the programmes on legal aid to suspected pirates, new prison facilities, and police training (Security Council, 2009)

The IMO sponsored the Djibouti Code of Conduct in its role in promoting regional cooperation in addressing regional threats. This was initiated by IMO in line with the successes of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia. The Code of Conduct is a non-binding instrument that brought together the Middle East and African States affected by the Somali piracy(Haywood and Spivak). The Code of Conduct takes into account and promotes the implementation of the aspects of UN Security Council and General Assembly resolutions falling within the competence of IMO. It aims or desires to

promote greater regional co-operation and thereby enhance their effectiveness in the prevention, interdiction, prosecution and punishment of those persons engaging in piracy and armed robbery against ships on the basis of mutual respect for the sovereignty, sovereign rights, sovereign equality, jurisdiction and territorial integrity of states.

The signatories agreed to co-operate in: the investigation, arrest and prosecution of persons suspected of having committed acts of piracy and armed robbery against ships, including those inciting or intentionally facilitating such acts; the interdiction and seizure of suspect ships and property on board such ships; the rescue of ships, persons and property subject to piracy and armed robbery and the facilitation of proper care, treatment and repatriation of seafarers, fishermen, other shipboard personnel and passengers subject to such acts; and the conduct of shared operations. Additionally, the Code provides for sharing of related information, through a number of centres and national focal points using existing infrastructures and arrangements for ship-shore-ship communications such as the Regional Maritime Rescue Coordination Centre in Mombasa, and the Rescue Coordination Sub-Centre in Dar es Salaam, and the regional maritime information centre in Sana'a, Yemen. The signatories also undertook to review their national legislation with a view to ensuring that there are laws in place to criminalize piracy and armed robbery against ships and to make adequate provision for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders.

The IMO issued guidelines to the shipping industry to employ the services of Private Maritime Security Companies to protect ships against pirates boarding in 2012 (IMO 2012). There is no global legal framework for the use of Privately Contracted Armed Security Personnel and therefore it is up to the flag state to ensure their authorization procedures. The use of the armed guards is lauded as it has prevented successful boarding of ships by pirates. It is however costly to the shipping industry and may not be considered sustainable.

Several states responded to the UNSC appeal and enacted laws to criminalize piracy and to prosecute alleged pirates in their local courts. Kenya and Seychelles have been the most active in piracy prosecutions in Africa. Others include several European countries and the United States of America. Pursuant to UNSC Resolution 1851(2008) that had urged states and regional organizations to conclude special agreements with countries willing to take custody of and prosecute pirates, Kenya entered into several agreements with the European Union, the United Kingdom, the United States,

Denmark, China, and Canada (Gathi 2010).

The international and regional efforts in tackling the maritime security threats within the East African region have been spearheaded by the UN and supported by both state and non-state actors. The responses have been multifaceted and complex requiring a coordination mechanism and frameworks. Maritime crimes occurring at sea or being carried out through use of the maritime domain requires coordinated and comprehensive approaches and strategies targeting both land and the sea-based activities. The high seas fall outside the jurisdiction of any single state hence posing a great challenge that requires the collective responsibility of all. The states and organizations involved in the fight against maritime crimes have also cooperated and collaborated in many respects ranging from deployment of surveillance assets, sharing of information, and signing of agreements and MOUs. The bilateral and multilateral strategies are aimed at interrupting criminal activities at sea, strengthening domestic maritime law enforcement capacity, and addressing the root causes of maritime crime on land. Several instruments are available to both the international and regional actors in addressing the range of maritime threats

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