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Learning from piracy: future challenges of maritime security governance

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Learning from piracy: future challenges of maritime security governance

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Is the decade of large scale piracy off the coast of Somali over? What are the lessons from Somali piracy for maritime security governance? This article revisits the triggers of piracy and argues for the need of being cautious since the current success in curbing piracy might not be sustainable. I identify six factors that trigger piracy: (1) geography, (2) weak law enforcement and corruption, (3) maritime insecurity, (4) economic dislocation, (5) cultural acceptability and skills and (6) the prevalence of criminal minded entrepreneurs. An analysis of the rise and decline of piracy provides an explanation of why the international measures show success, but document that it is questionable if these will contain piracy in the long run. The measures address two of the factors (law enforcement and cultural acceptability) primarily. Studying the decline of Somali piracy reveals the importance of learning some major lessons for reevaluating the importance and character of maritime security. Future efforts will be necessary to increase the quality and efficiency of maritime security governance.

Keywords: African maritime security; maritime security governance; Somali piracy

Introduction

The decade of large scale piracy off the coast of Somali appears to be over. Since 2012 there has not been a successful hijacking attempt. Yet, this does not imply that piracy and armed robbery in the Indian Ocean is no longer occurring. But if it does, it is on a lower scale, and concerns smaller local trading and fishing vessels and is outside of the radar of the international community. Moreover, according to a report of the UN Monitoring Group pirates have not gone out of business, but into other (illicit) businesses.[1] Arguably it is still the time to be optimistic that the various measures adopted to curb piracy in the regions have shown effect. Has piracy off Somalia been eradicated once and for all? In this contribution I argue for the need of being cautious about the current success and the importance of learning some major lessons from Somali piracy. My core argument is that if these lessons are not learned and some significant efforts are made to build sustainable solutions that can tackle maritime insecurity in the long run, piracy might return to the region.

I start in briefly revisiting the factors that are known to be the triggers of piracy and reflect on how these provide an explanation for the rise of Somali piracy. I proceed in discussing the

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prevailing explanations for the decline of Somali piracy. Core reasons for the decline can be seen in the measures adopted by the shipping industry, including the employment of armed guards, the successful international naval programme and international prosecutions, as well as the declining support of local communities for piracy. Investigating these reasons leads to the conclusion that many of the factors that trigger piracy still pertain. This centrally concerns the high degree of maritime insecurity in the region. A primary goal hence has to be improving the quality and efficacy of maritime security governance in the region. Based on this analysis I draw some core lessons of Somali piracy for maritime security governance. This concerns the importance of broader contexts of maritime insecurity, the nature of maritime threats, the relation between security and development policies, as well as the importance of functional cooperation and of private–public coordination. I end in outlining what future efforts will be necessary to tackle piracy in the long run.

Understanding the emergence of Somali piracy

The meanwhile extensive piracy studies literature provides us with a good understanding of which factors trigger the outbreak of piracy.[2] Studies on the so called "root causes" of piracy and on the regional variations of piracy operations and their sophistication have elaborated various factors. Five triggers can be condensed from the literature: geography; weak law enforcement; maritime insecurity; economic dislocation; and cultural acceptability. Taken together these provide us with a good understanding of why piracy in Somalia has emerged.

Geography

Geography firstly refers to the obvious fact that regions with close proximity to waterways tend to have piracy. Proximity to major lanes of transportation and major ports renders piracy more lucrative and hence increases the likelihood of piracy. Geography also refers to the existence of hideouts, that is coastal strips or islands which are difficult to reach or control. Hideouts are necessary for preparing a piracy operation and for the case of ransom piracy to anchor the vessel. Piracy dens require basic infrastructure, such as roads or nearby villages to ensure the logistics needed for an operation. In principle piracy operations can also be launched from ports, especially if they are weakly governed and surveilled. In geographical terms Somalia has an impressive coastline of 3025 km. The Gulf of Aden, the southern gateway to the Suez Canal, is one of the major trading routes, with more than 20,000 ships a year, including a substantial number of the world's crude oil, navigating through it. A significant number of remote coastal villages provide dens and a sufficient infrastructure for kidnap and ransom piracy.

Weak law enforcement

The factor of weak law enforcement stresses that the lower the risk of getting caught and punished for piracy, the higher the likelihood that piracy occurs. This concerns various levels of law enforcement stretching from coast guard and naval capabilities by which coastlines and the sea are patrolled and surveilled, to policing, intelligence and persecution capabilities on land, as well as the efficiency of the judicial sector allowing for the prosecution of piracy. As shown in various studies the prevalence of official corruption is a further major factor impacting the likelihood of piracy, since pirates do not always operate outside the law but often in collaboration with law enforcement agencies.[3] Finally, also the quality of regional inter-state collaboration in maritime security matters has to be considered. Pirates operate across (maritime) borders and

efficient collaboration mechanisms are needed to allow for hot pursuit of perpetrators as well as the sharing of intelligence and evidence between national agencies.

Somalia's maritime, coastal and territorial law enforcement has been weak after years of civil conflict. Yet, Somalia has never been in a state of lawlessness. Basic law enforcement is provided through the rudimentary policing and judicial capacities of the regional governments, such as the government of Puntland. Perhaps more importantly, the mechanisms of the traditional clan-based law of Xeer govern wide parts of the Somali society (van Notten, 2007). Yet, as a deliberative form of law based on compensations, crimes such as piracy are not subject to it if members of Somali clans are not involved as victims. Clearly there was and is a lack of capacities to police effectively the Somali coast and the sea or persecute suspects, in Somalia as well as littoral countries. Moreover, there have been frequent accusations that parts of Somali governmental elites benefit from or even participate in piracy operations, which points out that corruption is endemic.

Maritime insecurity

A factor closely related to weak law enforcement is the degree to which the maritime environment of a region is insecure and prone to violence. Piracy tends to occur in seas in which there is a host of other illegal activity, such as trafficking, smuggling and illegal fishing. This is not only related to the question of coast guarding and law enforcement at sea, but also in how far violence and insecurity at sea is considered to be the norm. The more the maritime environment is securitized and it is, for instance, normal to carry weapons at sea, the higher the likelihood of piracy.

The coastal waters of Somalia were even under the Siad Barre regime weakly governed. Since the end of the regime and the withdrawal of the maritime component of the UN operation in 1995, insecurity in Somali waters has continuously increased (Weir, 2009). Insecurity is not only related to informal and often illicit trade which includes trafficking of people or small arms. Weakly regulated fishing has been a main source of insecurity (Hansen, 2008; Weir, 2009). With the practice of selling fishing licences to foreign companies by warlords in the 1990s and offering armed protection services to fishing companies, as well as the fact that international fishing vessels increasingly have become armed, Somali waters increasingly became a securitized and indeed militarized space.

Economic dislocation

Rightfully piracy has often been described as a business model and seen as an activity that is primarily economically motivated. While piracy promises considerable revenues, a direct causal link between poverty or lack of employment opportunities and piracy cannot be constructed. Rather than poverty per se, the crucial factor is economic dislocation. Communities that tend to engage in piracy are those which have been economically marginalized, have been put at a disadvantage by economic developments and globalization processes or are not allowed to participate in sources of wealth.

Economic dislocation refers to Somalia in at least two senses. One the one hand with the end of the UN intervention in the 1990s, Somalia became a territory that received only scant attention from the international community. While humanitarian aid continued to flow, before counterpiracy changed the picture, Somalia has neither benefitted from large scale international development support, nor gained a share of globalization induced economic wealth. Hence, for instance Kamola (2012, p. 17) suggests that Somali piracy can be "understood as creative (and profitable) attempts to develop a vibrant economic sphere within places marginalized from the world economy for more than a century".[4]

On the other hand, one has also to account for the fact that coastal communities belong to the marginalized parts of the population within Somalia. In a primarily pastoral society in which cattle implies prestige, coastal communities which largely rely on subsistence fishing have lower status. With maritime insecurity and foreign fishing exploitation increasing from 1995 (Weir, 2009), coastal communities have been disproportionally disadvantaged and fundamentally threatened in their livelihood (Marchal, 2011).

Cultural acceptability and skills

Piracy has also a considerable cultural dimension. In order for piracy to prevail it requires some sense of legitimacy. Foot soldiers have to be recruited and convinced that to engage in piracy is a legitimate activity and the majority of piracy operations are dependent on support from local communities, which provide shelter, food and other supplies. In the case of Somalia cultural acceptability has mainly been provided through the prevalence of a narrative which justifies piracy as a legitimate response to maritime insecurity. In this "coast guard narrative" piracy is projected as a legitimate, almost state-like practice of protecting coastal waters against outside threats such as illegal resource exploitation or environmental crime (Bueger, 2013a). This narrative of the benevolent protective character of piracy has been a crucial factor in recruitment as well as for ensuring the support of local communities.

Another cultural dimension is the availability of skills required for piracy among the populace. Such skills include navigation, boarding, weapon handling or negotiation skills. Skills necessary to perform piracy are widespread in Somalia and form part of a traditional cultural repertoire. This includes the navigation skills of fishermen and dhow traders, or the negotiation skills provided by a society governed by customary law and informal governance processes (e.g. Menkhaus, 2004). Skills such as the handling of weapons have been learned in decades of civil war; others, such as the handling of navigation devices or boarding skills, have been learned in attempts at setting up coast guards. As Stig Jarle Hansen (2008) has shown many of the skills required for contemporary piracy, including the use of GPS, maritime tracking or techniques of boarding ships, were transferred to Somalia by a private security contractor, which was hired to train the Puntland coast guard. Also (land-based) kidnap and ransom taking had become a widespread practice in Somalia before the rise of piracy, hence skills and experience most likely have transferred to piracy. As Ken Menkhaus (2009, p. 23) remarks "the act of piracy is little more than an extension of activities that armed groups have engaged in for years: militia roadblocks, extortion and kid napping for ransom are a staple source of income for gangs and militias in Somalia".

Entrepreneurs

Taken together these factors provide us with a sufficient heuristic for the conditions under which piracy emerges and flourishes. Different combinations and variations in degree also provide, as shown by Hastings (2009), an explanation for different forms of piracy and levels of sophistication. These factors however largely emphasize structural conditions. An additional dimension will also require consideration, that is, the actor dimension. To a certain degree piracy will always depend on individual actors which plan, prepare and invest in piracy operations. A business plan needs to be developed. Hence, a considerable driving force of piracy will always be criminal-minded "entrepreneurs". For the case of Somalia such entrepreneurs included individuals such as Mohamed Abdi Hassan "Afweyne", and the early generation pirate leaders Garad Muhammed, Boya or Farah Abdullahi who, following Hansen (2009), invented and introduced the Somali kidnap and ransom form of piracy (see also Marchal, 2011).

Understanding the decline of Somali piracy

Against this heuristic backdrop Somali piracy almost provides a model case for contemporary piracy. How does this heuristic help us to understand the decline of Somali piracy and what conclusions does it suggest for the likelihood that piracy will return?

A quite impressive arsenal of international measures has been put in motion since 2008 to address Somali piracy. As discussed in detail elsewhere,[5] the activities include the international naval operations, self-defensive measures by the shipping industry, a global prosecution programme, security sector reform and infrastructure projects such as in the frame of the counter-piracy programme of the United Nations Office of Drugs and Crime (UNODC), the European Union's capacity building mission EUCAP Nestor, the Djibouti Code of Conduct (DCoC) process led by the International Maritime Organisation (IMO), and a range of counter-piracy awareness campaigns and reconstruction projects. As well summarized in the statement by US counter-piracy coordinator Donna Hopkins below, there are at least four reasons for the decline of Somali piracy:

> One is the willingness of private ship owners and commercial maritime companies to arm their ships and to adopt best management practices that prevent pirate boardings in the first place. I give the commercial industry a great deal of credit for that enlightened self-interest. I know it is expensive and difficult but it has proven completely effective and that no ship that carries armed security has been hijacked, ever, to date. The second is the extremely good and close cooperation between the naval forces from many nations who are working together productively off the Horn of Africa to disrupt and repress the pirate actions. […] Third, I would say the increased willingness of countries to prosecute pirates in their national courts. Right now there are 1148 pirates either suspected or convicted in custody in 21 countries. We have put a significant dent in the prospective pirate population in that respect. So no longer can prospective pirates count on impunity from prosecution. Fourth, […] Somali communities along the coastal areas of Somalia themselves have grown disgusted by the toxic and corrosive effect of pirates in their communities and they are starting to run the pirates out of town. (cited in "Maritime TV panel discussion with Donna Hopkins", 2013)

Hopkins hence suggests that we should pay attention to four main reasons which explain the decline of piracy: self-defensive measures by the shipping industry including compliance with the best-management practices (BMP) and the employment of armed guards; the international naval surveillance, patrol and guarding programme; the prosecution of piracy suspects; and the declining support by local communities. Hopkins' position is not unique, but widely shared among counter-piracy practitioners. If we interpret these four factors in the light of the above heuristic, we can come to the following conclusions.

Three of the reasons provided for the decline of Somali piracy are related to the changing character of law enforcement. The international naval programme directly affects and improves law enforcement in the region's waters. The global prosecution programme supported at sea by the work of naval forces and on land by the UNODC's counter-piracy programme equally has direct impact on the quality of law enforcement and the effective persecution of piracy suspects. If only indirectly, we might also want to include the self-defensive measures of the industry, notably the use of armed guards on board vessels as a contribution to law enforcement. While armed guards do not alter the risk of "getting caught" and being persecuted, they imply a significant risk of "getting shot" in action and induce significant operational costs for piracy operations. If seen in the intermediate term, these three types of measure, arguably, do not provide sustainable solutions. With the current decline in incident rates, it is likely that support for the international naval programme will significantly drop and spending will be cut, eventually up to a degree that the international and national naval missions will withdraw. Presumably, also the compliance of the international shipping industry with the BMP will decline and considering the significant

costs of armed guards in a very competitive market, it is likely that these will be withdrawn within a short time span. The persecution programme, notably UNODC's work, has a more long term orientation and is geared towards maritime security sector reform and the rule of law. UNODC's counter-piracy programme is however dependent on voluntary contributions (as are other projects such as the IMO's DCoC project). It is very likely that UNODC's and IMO's funding for counter-piracy projects will be cut considerably in the near future. Then, we can reasonably expect that these factors have not significantly altered the problem of weak law enforcement in the inter-medium and long term. This does, however, not imply that the investments made in counter-piracy infrastructure may not be useful in the future. Indeed, the current infrastructures can provide, if appropriately institutionalized and funded in the medium term, the seeds for transforming the quality of law enforcement in the region's waters in the long run.

Hopkins' fourth factor, the growing lack of support or even resistance to piracy operations by local communities, can be interpreted in the light of economic dislocation as well as cultural acceptability. Arguably the declining community support for piracy gangs has much to do with the levels of insecurity pirates have brought to communities and has to be seen in relation to reports which suggest growing inter-pirate violence, and the spread of crime, use of narcotics and prostitution in the villages that supported pirate operations.[6] Seen in the light of economic dislocation, the international counter-piracy programme has firstly clearly increased attention for the needs of local coastal communities. Meetings between naval forces and village elders, as well as revived development investments, for instance, in the fishing sector, have impacted on the level these communities are recognized as actors and are economically situated.[7] In consequence, these communities have become less marginalized. Taken together with the costs that have to be paid for piracy-induced insecurity, this has also affected the economic benefit calculations of local communities. Understood in the light of cultural acceptability the growing resistance points to the declining success of the coast guard narrative as a mean of legitimizing piracy. This is related to the increasing implausibility of the narrative's core element, that piracy is a form of protection, but also to the impact of the counter-piracy campaign which provides a counter-narrative and presents piracy as immoral and criminal (Bueger, 2012). Communities will continue to play an important role in counter-piracy. To sustain their disapproval of piracy will however depend on ongoing assistance whether it is in the form of development aid, infrastructure programmes or the provision of employment opportunities.

Interpreting the decline of Somali piracy in the light of the heuristic of factors triggering piracy however also reveals what factors have not been significantly altered by the international counter-piracy measures. Due to its geographical location and long coastline, Somalia will always be a fruitful terrain for piracy operations. The skills required for piracy remain widespread. And the regional waters remain a zone of insecurity host to a broad range of illegal activities. Although the quality of law enforcement, inter-state cooperation, intelligence and evidence sharing and the judicial sector have been improved it is questionable how sustainable these developments are. In short, piracy in Somalia might return, if the lessons of the past outbreak are not learned and sustainable structures are put in place.

Key lessons of Somali piracy

What are the broader lessons of Somali piracy for maritime security governance? I suggest there are a number of key lessons that can be learned from Somali piracy. Piracy is in many ways not only the most visible maritime security challenge, but also a paradigmatic one.[8] These lessons are hence not exclusively related to Somalia, or East Africa, but lessons that refer to the wider international approach to maritime security governance.

Maritime insecurities are interdependent

As discussed above piracy develops in a larger context of maritime insecurity. If coastlines, exclusive economic zones or the international sea are weakly governed, host a broad range of illegal activities, maritime violence is naturalized or sea transport militarized, threats such as piracy are more likely to occur. Different illegal activities re-enforce and trigger each other. Maritime threats should hence been seen as interdependent and the goal has to be to address the full spectrum of maritime insecurities.

Maritime security threats are sticky, asymmetric, quickly escalate and can have global effects

Although piracy is only one of several other maritime security threats it can be considered as a paradigmatic one. Piracy illustrates that maritime security threats tend to be sticky. Once they emerge they are difficult to eradicate. Hence prevention strategies and mechanisms are crucial. As documented by the rise of Somali piracy between 2005 and 2010, maritime security threats can quickly escalate. If threats cannot be prevented it is important to have early warning and early response mechanisms in place in order to avoid escalation. Maritime security threats are moreover asymmetric. They cannot be addressed by military might or firepower alone. They require complex and coordinated responses and tactical innovation. Somali piracy moreover forcefully reveals how apparently local problems can have considerable global effects. Maritime insecurity will hence have to be understood as a problem requiring ongoing international attention and action.

Maritime security is situated in a security–development nexus

Piracy highlights that maritime security threats have a security as well as a development dimension. Factors such as corruption, economic dislocation, cultural acceptability or skills emphasize that development policies are crucial in addressing maritime insecurity. This includes awareness campaigns, reintegration programmes, as well as vocational training or infrastructure measures which are beneficial to marginalized coastal populations. Moreover, as a World Bank (2013) report on piracy stressed, maritime threats such as piracy have significant economic consequences. The benefits of a country's ports, coastline and exclusive economic zone can only be realized in the realm of good maritime governance. This calls for a close coordination between security and development policies and actors. Yet, as studies of the security–development nexus have shown, coordinating or even integrating security and development policies and actors is very intricate.[9] Different thought styles, vocabularies, institutional structures, normative frameworks as well as common prejudices between development and security practitioners make integrated approaches difficult. While in conceptual terms coordination is logical, in practice this is difficult to achieve.

Functional cooperation works

The most successful cooperative mechanisms to curb Somali piracy were those which worked on a functional, rather than a diplomatic or political level. Part of the reason why the DCoC or the Shared Awareness and Deconfliction Mechanism (SHADE) are successful in coordinating diverse actors (some of them adversaries) is that they are technical and centred on coordination, training and information sharing primarily among specialists and experts, such as coast guards, naval officers or maritime specialists (Bueger, 2013b). This forcefully highlights that maritime security challenges do not necessarily, or primarily, have to be addressed on a political level. Instead of putting political declarations or grand strategies first, agreements tend to work best if they are pragmatic, problem-oriented and technical in character.

Technology is only one part of the solution

To emphasize the importance of functional cooperation does not imply that technology is the single most important component in addressing maritime security. Much emphasis has been placed in East Africa on developing maritime surveillance capacities (maritime domain awareness) and information sharing platforms. One needs to keep in mind that given the nature and "unruliness" of maritime space, surveillance capacities will never be able to give a full real-time depiction of what happens at sea. Moreover, data on movements and incidents, even if they are accurate and adequately shared, are only meaningful if the political will and the capabilities exist to act upon this knowledge. Hence, technological infrastructure is only one part of the broader spectrum of measures that are required for maritime security.

Good law does not imply good law enforcement

A powerful lesson of Somali piracy is that it demonstrates that good law is not the same as good law enforcement. While UNCLOS provided a sufficient legal framework to address a threat such as piracy, the problem that the international community faced was how to enforce the law.[10] This includes implementation challenges such as how to work across different legal regimes, for instance, in transferring suspects. Hence, even if it is important that states improve their legal codes to respond to maritime security challenges, this does not necessarily or directly translate into good law enforcement.

Private–public coordination is crucial

One of the reasons for the success in containing Somali piracy has been the measures adopted by the industry. This includes centrally the best management practices (BMP). The success of the BMP is telling in at least two regards. Firstly, the BMP were developed in a form of public–private partnership. Originally drafted by a group of industry representatives, the guidelines were refined and finalized in consultations with the IMO as well as the UN Contact Group to Counter Piracy off the Coast of Somalia (see Hansen, 2012). The BMP are a form of self-regulation, and compliance is either self-enforced or supported by insurance policies. Secondly, the cornerstone of the BMP is the cooperation between state agencies and the industry. Shipping companies agree to coordinate with naval agencies by registering their movements. The coordination between private agencies, that is, actors from the shipping, fishing and resource industry, and state agencies is crucial for maritime security. This also includes the relation between private security providers and state actors.

Conclusion

The problem of Somali piracy has led to a fundamental re-evaluation of the importance of maritime security for the African continent, and indeed there is a strong international consensus to act and support regional actors to tackle maritime security challenges. In this sense, piracy has opened a window of opportunity to re-organize maritime security governance and build sustainable institutions. With the decline of Somali piracy there is however also the risk that the "momentum" could get lost soon and that the window of opportunity closes. It is vital that the international community starts learning from piracy, countries restructure their maritime sector and a sufficient amount of resources is made available for implementing programmes that tackle maritime insecurity.

What is required is nothing less than fundamental reforms of the maritime security sector on national and regional levels which acknowledge the aforementioned lessons. A mainstreaming of

maritime security concerns across international donor policies will be needed. If maritime inse-curity breeds threats, then the long term goal has to be to work towards de-securitizing the mar-itime and building regional maritime security communities. This, in the end, might be the core paradox of current strategies: in order to achieve a de-securitization of the sea in the long run, what is first required is a securitization, that is, the recognition for the serious impact that maritime threats have on economies, livelihoods and national and international security interests.

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Christian Bueger is Reader in International Relations at Cardiff University. He is the principal investigator of the research project "Counter-Piracy Governance. A Praxiographic Analysis" and one of the lead investi-gators of the lessons learned project of the Contact Group on Piracy off the Coast of Somalia (see http://www.lessonsfrompiracy.net). The focus of his research is on maritime security, piracy, global governance, international political sociology and praxiography. Further information is available at http://bueger.info

Notes

1. Cp. UN Doc. S.2013/413.
2. More extensive reviews of this literature are provided in Bueger (2014), Menefee and Mejia (2012) and Seay (2013).
3. See for instance the analyses by Anyu and Moki (2009), Hastings (2009) or Vagg (1995).
4. See also the related analyses of Klein (2013) and Samatar, Lindberg, and Mahayni (2010).
5. See for instance Bueger (2012, 2013b), Kraska (2011), as well as the contributions in Guilfoyle (2013) and Struett, Nance, and Carlson (2013).
6. See for instance "Pirates vs the people" (2011).
7. See the discussion in Bueger (2012), Magnaes Gjelsvik and Bjoergo (2012) and Ramsey (2011).
8. For a discussion of piracy in the context of other maritime security challenges see Vreÿ (2010) and Wambua (2009).
9. See the discussion in Bueger (2012), Menkhaus (2004) and Stern and Ojendal (2010).
10. See Geiss and Petrig (2011) as well as the contributions in Guilfoyle (2013).

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