MARINE AFFAIRS **POLICY FORUM**

Perspectives on current and emerging issues in Atlantic coastal and ocean policy

The Dalhousie Marine Piracy Project explores an Integrated Approach to the Suppression and Prevention of Marine Piracy

INTRODUCTION

Piracy, one of the oldest crimes in history, has had its peaks and lows throughout various regions around the world. While each outbreak has its own set of actors, motives, tactics and targets, anti-piracy responses have understandably focused on addressing the problem at sea. Focusing on where the problem manifests itself as opposed to the source of the problem, has failed to address the root causes of piracy.

On the premise that the source of piracy is deeply embedded in the social, political and economic structures of society, the Dalhousie Marine Piracy Project (DMPP) has undertaken an integrated and interdisciplinary approach to assessing and addressing the problem of contemporary piracy and its impact on the shipping and coastal communities. The project, entitled 'Policy Development and Interdisciplinary Research for Actions on Coastal Communities, Youth and Seafarers', (PIRACY) embarked on:

- A comprehensive examination of contemporary piracy to determine the true socio-economic costs and effects that piracy has on seafarers, coastal states and communities;

- An integrated assessment of cross-cutting policy alternatives for dealing with the problem in a comprehensive manner;

- A review of the consequences associated with implementing the identified policy options;

- An identification of the strategic directions that need to be adopted to implement corrective measures; and,

- The development of a preliminary generalized model for predicting the emergence of piracy.

The DMPP team recognized the significant contributions being made by scholars and practitioners who have focused on addressing the problem of piracy from either a thematic focus (e.g. operational, economic or social) and/or a geographic focus (e.g. the Horn of Africa). In contrast to this approach, the DMPP focused on drawing on these existing analyses to identify cross-cutting linkages and gaps in the knowledge base that require policy makers' attention at the international, regional, national and local levels. The objective was not to conduct original research, but to deliver policy innovative outputs from the analysis in the form of an interdisciplinary suite of policy options that reflected a paradigmatic shift in the way piracy is understood, suppressed and prevented.

THEMATIC ANALYSIS

The DMPP comprehensively examined three interdependent themes of **Law and Governance**, **Socio-Economic**, and **Operational Responses**. The Socio-Economic Module conceptualizes piracy as an economic crime and considered political, social, and historical factors associated with piratical activities. Key findings have linked the root causes of piracy to the relatively high chances of substantial income; the relatively low opportunity costs and economic risks; the ability to gain social status through piracy; the existence of local community support for piracy; the existence of corruption within a state; the presence of armed groups; limited state capacity; and regional disputes.

The Law and Governance Module investigated whether failed states, other governance gaps and linkages between piracy and other forms of illegal activity as well as with legal forms of activity such as fishing, were significant to the origins and manifestations of piracy. This module also examined the laws dealing with the location and apprehension of pirates in national and international waters and how pirates are prosecuted nationally or possibly by international tribunals.

The Operational Responses Module considered piracy to be one of a spectrum of threats to maritime security and to security on land. It approached the problem as a security challenge to be addressed by a range of authorities concerned with upholding the rule of law. It examined disincentive strategies designed to discourage or frustrate piracy activities and operational responses to suppress piratical activities.

The thematic analyses provided the input for the integrated discussion by experts spanning all of the thematic areas and formed the basis for intersectoral deliberations; and highlighted

a number of interrelated problem areas which provided a focus for additional discussion and analysis and the identification of potential solutions.

Corresponding with the three main thematic modules, the DMPP examined the problem of global marine piracy in seven researchable issues, including the (i) Origins and Manifestations of Piracy; (ii) Costs of Piracy; (iii) Apprehension of Pirates; (iv) Prosecution of Pirates; (v) Prevention of Piracy; (vi) Discouragement of Piracy; and (vii) the Suppression of Piracy.

CROSS-CUTTING THEMES AND ISSUES

When viewed from three different perspectives, five key issues were identified as requiring a holistic approach to the problem of contemporary piracy. The identified key cross-cutting areas of concern and themes were:

1. The **need for a business model** analysis to explain the emergence, development, and mode of operation of the different outbreaks of piracy.

2. The **use of children in piracy** presents both legal and procedural constraints in the apprehension, investigation, and prosecution of pirates and others involved in marine crime incidents, particularly where children or juvenile suspects are present.

3. The **presence of refugees** in the maritime region which presents a specific problem to maritime forces, through the reluctance of their flag states to assume responsibility for the care of refugees, while having an obligation for their protection and safety.

4. The international **legal definition of piracy and jurisdictional implications**, which hinders the effective suppression and prosecution of piracy by not adequately permitting actions to be taken against supporters, organizers, financiers and other parties contributing to the practice of piracy who are not present on the seas during a piracy attack.

5. There is a need to identify the appropriate level, and mechanisms for **organizing and coordinating anti-piracy activities**, both operational and legal.

THE NEED FOR BUSINESS MODEL ANALYSIS

Piracy has been categorized as an economic or commercial crime, where the general motivation is economic gain and pirates will pursue an activity as long as it is profitable. There will be costs involved in carrying out the activity: purchasing supplies, hiring and compensating gang members, renting or obtaining the necessary hardware, and paying assorted bribes and payoffs. Profits gained for any piracy enterprise are the booty or ransom obtained from the pirated ship. As such, it can be assumed that

pirates will discontinue their activity, or switch to another mode of operation, when the profits from an enterprise do not cover the costs, or when the risks associated with the enterprise are seen as too high to compensate for the likely pay off.

As with any other commercial activities, pirates can be expected to organize their enterprises to pursue maximum profitability, while minimizing the cost. It follows therefore that, if an examination is made of a pirate enterprise, it may be possible to determine, through the use of business analytical tools, those elements which are the most vulnerable or have the highest risk to the profitability of the undertaking.

Understanding the fundamental business model on which piracy may be based may prove a highly effective tool in determining the most effective mechanisms in countering piracy.

However, there are sufficient differences between the way piracy is carried out in different regions of the world to preclude a uniformed solution or uniformed tactics in its suppression. Nevertheless, by analyzing the business model, antipiracy forces may be able to target specific actions or logistical requirements. Weakening the business structure not only makes it more difficult to attain profitability, but also leads to a reduction or possibly elimination of the attacks.

THE USE OF CHILDREN IN PIRACY

The use of children in piracy has been identified as a major factor in the current operations in the Horn of Africa. Several key features have emerged from the DMPP studies. First, a significant portion, perhaps as much as one-third of the arrested and suspect pirates are juveniles. Using the definition specified in the 1989 United Nations Convention on the Rights of the Child anyone under the age of 18 is considered a child and as such, requires special handling and consideration in their employment, treatment by the courts, and handling by military or police forces.

Moreover, international policies recognize that children should have a right to education, freedom from oppression and exploitation, and the opportunity to grow and develop within their societies.

The presence of large numbers of juveniles presents a problem not only for those involved in the suppression of piracy, but also for the international community as a whole. While the exploitation of juveniles on land generally falls within the national jurisdiction of the country, juveniles involved in piracy on the high seas have been placed in an area where all states may be involved in exercising their freedoms of the seas. As such, it may be argued that all states have a justifiable concern when juveniles are being used as a means of interfering with those freedoms.

The use of juveniles in piracy operations, like the use of child soldiers, or the general employment of children in other criminal activities is a common practice for a number of reasons. These include the ready supply of children, their malleability and the fact that they are generally cheaper to employ. This makes them attractive as a low-cost source of manpower for criminal employers. Removing young people from the potential employment pool for piracy enterprises will both increase the cost, and possibly decrease the number of piracy enterprises, particularly in regions where children constitute as much as 50% of the population. Moreover, criminalizing the *use* of juveniles in piracy activities will provide an extra legal sanction which may be used against the organizers, financiers, and backers of marine piracy enterprises.

THE PRESENCE OF REFUGEES

While no specific linkage has been found between the presence of refugees, and the outbreak of piracy in the Horn of Africa region, there have been sufficient connections in the past to warrant serious consideration of the need to protect refugees at sea from pirate attacks. While refugees are not the most lucrative target, they oftentimes carry their most valuable possessions with them. Since refugees at sea are often present in large numbers

when fleeing famine, war or political strife, they make an easy target of opportunity. Refugee vessels are generally unarmed, unreported, and unsupervised due to the nature of refugee migrations. Many countries actively discourage their naval forces from becoming involved with refugee vessels unless absolutely compelled by safety of life considerations.

Refugees at sea are therefore a tempting target of opportunity for piracy, and this has led to extremely violent attacks in the past. Refugee vessels also provide a shield for pirates, since pirates, and even pirate vessels, may hide among the refugees, knowing that naval patrols will not venture too close for fear of becoming involved as a source of asylum. Currently there appears to be no appropriate guidelines or policies for either the protection or the handling of refugees at sea.

THE LEGAL DEFINITION AND JURISDICTIONAL IMPLICATIONS

All of the DMPP studies noted that the current international definition of piracy does not adequately address the legal, operational, or socioeconomic realities of dealing with the contemporary outbreaks. Rather than providing a realistic guideline for recognizing and dealing with the problem, the DMPP team found that Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) focused more on the political limitations being placed on the suppression of piracy.

Under international law, piracy is recognized as a crime of universal jurisdiction, allowing any nation whose warship encounters a pirate vessel on the high seas to take action, arrest the suspects, turn them over to their national courts, and try them under national law. However, there is no consistency as to the criminal offenses or procedures to be followed within the national courts. In addition, there are widely divergent opinions as to whether piracy is a crime which requires either a violent, or an economic component, as is specified in the current UNCLOS definition. Further, there is also no consistency among national

laws as to whether the act of piracy must exist as a distinct criminal offense, or whether piracy suspects may be tried for murder or other violent crimes committed during the attack. This lack of consistency in national piracy legislation will undoubtedly lead to considerable problems in joint antipiracy operations since there are differing legal standards for the administration of justice, sentencing standards, rights of the accused, and the handling of juvenile suspects. There have been numerous attempts to establish consistent rules and procedures for the handling of piracy suspects, and the conducting of piracy trials. These have met with some success in the Horn of Africa situation, but have shown less promise in their ability to be transferred to other regions or jurisdictions having different legal standards and customs.

A Functional Definition of Piracy

One of the key points of discussion throughout the initial analysis was related to the definition of piracy. This was seen as limiting or otherwise restricting the study by excluding activities which did not fit the fairly narrow description of "piracy" found in international law of the sea. In order to ensure that the project included not just those acts which occurred on the high seas, between two vessels, but also the associated acts and similar activities committed in the same regions by the same perpetrators, the DMPP adopted a functional definition. While not necessarily legally or politically acceptable, this definition was none the less relevant since it allowed the inclusion of those elements which were of concern to the operational and socio-economic based groups dealing with the problem. On this premise, the DMPP developed the following definition of piracy as the basis for the study:

The participation, planning and support of attempted or actual deliberate (violent) criminal interference with the rights and freedoms of the seas, which target marine craft (vessels) and persons for personal economic gain.

This definition also provides a reference point for demonstrating the deficiencies in the current legal or other definitions of piracy and maritime crime.

MECHANISM FOR ORGANIZING AND COORDINATING ANTI-PIRACY ACTIVITIES

It is obvious that no one nation has either the operational resources or the full legal authority to deal with anything but the most localised outbreak of marine piracy. As with a number of other maritime matters, pirates do not respect jurisdictional, court or territorial boundaries and thus, while antipiracy forces may be precluded from crossing into territorial seas or going on land in their pursuit of pirates, the pirates themselves show no such restraint.

Since piracy affects a range of stakeholders in the international community, the efforts to counteract pirate attacks have of necessity involved the cooperation of a wide variety of authorities, organisations and agencies, including international maritime forces, the international shipping community, and those states most immediately involved. Various cooperative mechanisms have been established to deal with the problem, including the reporting and sharing of information, the establishment of joint enforcement patrols, and the development and implementation of policies and procedures. Because of the differences in the way that piracy is carried out in different regions around the world, it is often neither practical nor desirable to attempt the implementation of a uniformed and consistent standard of legal or operational procedures to suppress piracy. It may be, as responses in several of the regions have demonstrated, that what is necessary is to develop regional mechanisms for the suppression of piracy, and for these mechanisms to draw on lessons learned from counter-piracy operations in other regions. Based on existing regional arrangements and using or augmenting existing frameworks, it may be possible to develop an effective response which is both acceptable and implementable by the parties within a specific region.

CONCLUSION

Piracy can never be totally eradicated globally but, where it does occur, efforts should be made to ensure that it is kept at an internationally acceptable level of risk so as not interfere with lawful activities on the seas. Focusing on any one thematic area - be it Law and Governance, Socio-Economic or Operational Responses - is unlikely to be sufficient to reduce the risk of piracy to an acceptable level. Instead, this can be achieved through a combination of concerted actions conducted by a range of actors, agencies and organizations, using a range of regulatory and non-regulatory policy instruments. The DMPP team equates this to the approach taken to crime on land, where it is recognised that there are insufficient resources to eradicate crime completely, but sufficient resources are applied to reduce the risk to an acceptable level. To achieve this end-result, the DMPP has aimed to understand potential piracy situations before they manifest, and has sought to identify appropriate social, economic, security and political indicators and actions needed to prevent or suppress outbreaks of piracy.