

Transitioning the Operational Coordination of Maritime Law Enforcement in the Horn of Africa and Western Indian Ocean

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Introduction

The international response to Somali piracy has been effective in mitigating the risk of hijackings at sea in the greater Horn of Africa and Western Indian Ocean (hereafter called the region). This response has, however, been largely driven and resourced from outside of the region, and regional states and stakeholders are therefore highly vulnerable to the arbitrary reduction or removal of critical components of that response by external decision-makers. International actors and the regional states need to pursue a strategy that transitions this high level of dependency on external actors to a situation whereby ownership of critical components of the response resides within the region and where the balance of the dependency equation shifts to one of significant external support rather than dependency. This is a non-trivial but tractable problem, and while it may not be feasible to transfer all of the relevant components of the international response to the region in the short term, it is entirely feasible to progressively develop tactical and higher order operational capacities with regional ownership and management so that the effective coordination of crime prevention is sustainable. The required transition is not simply one of shifting the center of gravity of the geographic ownership but also requires a shift in paradigm from a military-centric anti-piracy solution to a joint military/law enforcement/industry maritime crime and security solution, consistent with the rule of law.

Crime as a Globalized Phenomenon

The necessity for and value of effective maritime security in the region is not simply an issue for regional states. Ultimately the impact of the maritime crime committed in the region is on victims in the most developed parts of the world in terms of increased costs, counterfeit goods,

illegal migrants, illegal drug abuse, acts of terror and so on. A significant part of the underlying motivation for, and organization of, maritime crime committed in the region originates outside of the region in wealthier parts of the world where the greatest criminal proceeds are to be derived. Maritime criminal activity is as much about transit (e.g. trafficking) as theft (e.g. piracy, illegal fisheries), is largely driven by external market forces, and is inextricably linked with crime and security risks in other parts of the world. As such, it requires both a regional and a global response. Any regional maritime crime and security solution must of necessity benefit from extra-regional intelligence to optimize interdiction at regional level, and reciprocally, investigative outputs derived from the interdiction should be shared outside of the region so that the global criminal organizations can be targeted. This has been the experience of piracy – investigating suspects pirates detained at sea has ultimately provided a strong basis for targeting organizers and their extra-regional support. This asymmetric reciprocity requires dual military/law enforcement with practical mechanisms for informal exchange of information, as well as formal evidential transfer and mutual assistance.

Coordination of Maritime Security Efforts

Our aim must be to achieve the coordination of regional state authorities with international partners in the deterrence, detection, interdiction, investigation and prosecution of unlawful acts in the region's maritime space. Key to this is the creation of a sustainable regionally-hosted solution for maritime data fusion and the coordination of intelligence, operations and prosecutions to operationalize a broader crime prevention and law enforcement strategy. Not only should it incorporate the critical components of the current international response in the region (e.g. the Shared Awareness and De-confliction (SHADE) mechanism), it should seek to leverage key lessons learned from our recent counter-piracy experience to influence the development of a revised rule-of-law oriented response for a lasting transition. These lessons learned include, inter alia: the value of closer cooperation between the military, law enforcement and industry in achieving crime prevention, detection and response; the fundamental importance of maritime domain awareness in general for situational awareness in particular; the premium on intelligence-led operations in a maritime space of such scale; the challenge of navigating (and

sometimes having to ‘patch’) the mesh of legal instruments ranging from international mandates, laws and conventions through bilateral agreements and Memorandums of Understanding (MoUs) to domestic laws in any single instance of interdiction and prosecution; and last but not least, the critical importance of the operational coordination of tactical capacities to contribute to overall strategic success.

The Military/Law Enforcement Interface – Tactical Success/Operational Failure

Broadly speaking, the international military response to piracy has been effective in dramatically reducing the risk of piracy at the tactical level. Particularly impressive has been their agile adaptation to constabulary tasks such as boarding, search, detention, arrest and evidence collection. At the regional level, a number of local coastguards such as that in the Seychelles have integrated their operations into SHADE coordination and have demonstrated the ability to interdict and arrest pirate attack groups, and have on a number of occasions even successfully retrieved hostages from captivity. The effect of the tactical edge is enhanced as a result of the SHADE coordination mechanism as the various navies integrate their individual efforts into more cohesive optimized operations.

Law enforcement has also demonstrated that it can be effective at the tactical level with the INTERPOL-coordinated, US Naval Criminal Investigative Service (NCIS) supported and state assisted systematic exploitation of released vessels as evidence-rich crime scenes, and the sympathetic de-briefing of released hostages. Once again some regional authorities have been quick to adapt and the INTERPOL Evidence Exploitation Initiative¹ has ensured that all information and evidence obtainable from the transfer of pirate suspects is harvested for intelligence and evidential value and is either indexed or uploaded onto the strategic Global Piracy Database. This tactical edge has given rise to higher level opportunities as the cultivation of witnesses amongst the released hostages and pirate crews helps to target those who organize and finance piracy expeditions. At the tactical level, there has already been a transition to less extra-regional dependency for evidence harvesting as the forensic and analytical equipment and training donations increase local capacities.

A noticeable weakness in the international response, however, has been that no law enforcement coordination mechanism equivalent to the military SHADE mechanism has been established within the region, either for transnational investigative coordination or for interfacing with military information exchange mechanisms, such as SHADE. Understandably the legal component of the UN-established Contact Group on Piracy off the Coast of Somalia (CGPCS) initially focused primarily on capacity building for legal, prosecution and custodial services for dealing with suspect pirates detained at sea, placing less emphasis on the proactive investigation of piracy networks as a whole. The problem has been exacerbated by the reluctance of the victims of crime (i.e. private industry) to share evidence and testify in criminal proceedings and the reluctance of states to invoke jurisdiction over piracy cases. The compounding of these issues has been detrimental to the overall effectiveness of the counter-piracy strategy – only a limited subset of the pirates detained at sea have been prosecuted and virtually all of the organizers and financiers of piracy remain at liberty in their communities.

The military/law enforcement interface at the tactical level has been successful (i.e., the handover of evidence and the provision of witness support) but higher-level innovation and success has not been achieved in operational terms. By and large, military and law enforcement *operations* have remained mutually discrete above the tactical level and the international response (conceptualization, resourcing and implementation) to Somali piracy has been disproportionately military-centric, with the line between military and law enforcement drawn down the center of the jetty on which suspect pirates are landed and handed over for prosecution. Any lasting transition from the international piracy response to a regionally-led solution must of necessity revise this to have an appropriately balanced military/law enforcement (and industry) personality at multiple levels. The single initiative within the region that has tried to address this imbalance at the operational level is the development of RAPPICC hosted by the Republic of Seychelles and co-funded and led by the UK, which seeks to create an interface for practical military, law enforcement and industry interaction at the operational coordination level. Fortunately the need for military-law enforcement cooperation is recognized at the global level where INTERPOL, Industry and EUNAVFOR have worked hard to ensure that information captured at sea is shared appropriately with the Law Enforcement community. Just as

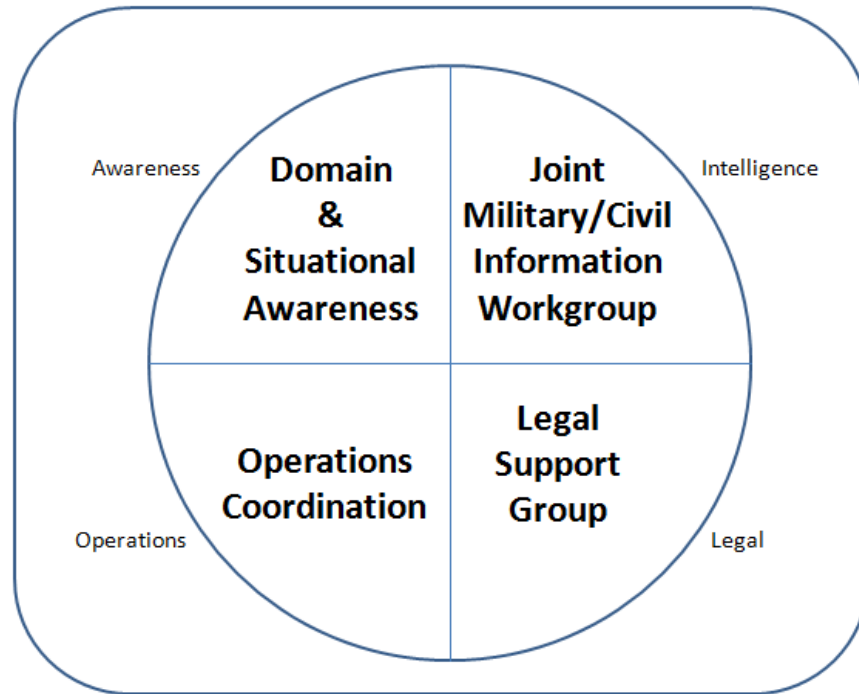
operationally coordinated tactical military successes at sea deter and disrupt maritime piracy, operationally coordinated tactical law enforcement can successfully target piracy organizers, financiers and their assets and thus deter and disrupt the enterprise of piracy... and its deterrent and disruptive value may persist well beyond the withdrawal of the international maritime forces.

A Functional Component View

A transitioned maritime security coordination solution for the region should leverage existing working components. It is likely to be somewhat distributed in nature, with mutually-supporting centers of service provision at the Global and Operational levels linked to national (tactical) actors. Achieving rule of law will require specific components within this network at the Operational level that address the provision of key services such as:

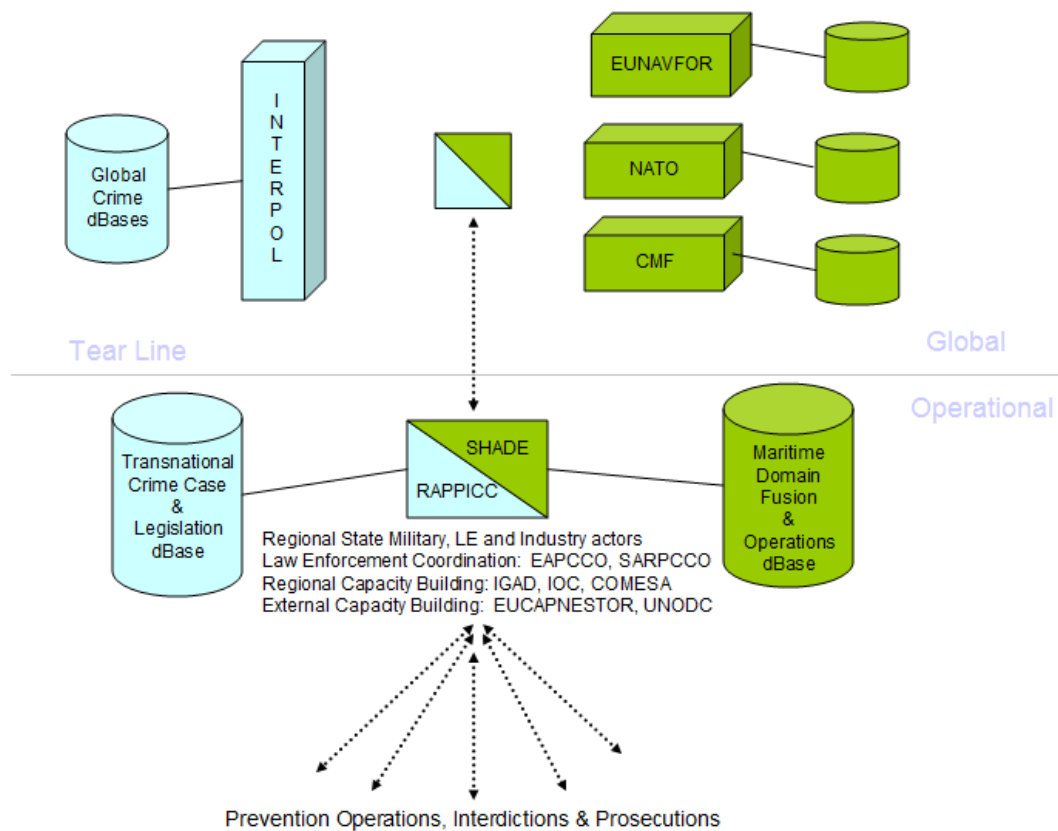
- The fusion of industry, military and law enforcement data at the operational level to provide regional maritime domain awareness;
- The appropriate declassification and handling of military intelligence that may be actionable for law enforcement, for fusion with criminal intelligence, in order to inform maritime enforcement operations and transnational investigations;
- Training, Logistics and Operational Coordination to achieve capacity for the tactical positioning by the military of law enforcement assets for successful interdiction or intervention;
- A prosecutions knowledge-resource for the lawful navigation of the mesh of legal instruments for each instance of interdiction.

The four components illustrated below are critical to operationalizing an effective regional-maritime crime prevention and response strategy.



As the tactical level of engagement, whether military or law enforcement, is essentially defined by national policy and law, it is at the transnational level that we can be most creative. It is tempting to consider a flexible center or distributed regional network (a ‘container’ if you wish) of defined functional components that can be invoked via specified interfaces to provide focused services and which can be combined and adapted to respond effectively to changing maritime crime and security risks. We should leverage what exists. Existing UN conventions offer remarkable opportunities for cooperation to willing states. At the global level, INTERPOL already offers a range of global resources such as the piracy database and other tools and services, interfaces strategically with forces like EUNAVFOR, NATO or Combined Maritime Force (CMF) intelligence functions and can act as a conduit for appropriately handled alerts to regionally-led maritime security centers staffed by joint military/law enforcement teams. At the operational level within the region, successful military operations coordination mechanisms such as SHADE could be integrated with law enforcement oriented mechanisms such as the RAPPICC and interact with (funded and empowered) regional police cooperation mechanisms such as the East Africa Police Chiefs Cooperation Organization (EAPCCO) and the Southern African Regional Police Chief Council Organization (SARPCCO), to form an end-to-end rule of law coordination solution for combating maritime crime. Training and resources for operational

and tactical capacity building could be coordinated by a group formed from the regional actors (including the Intergovernmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA), and the Indian Ocean Commission (IOC). Regional forensic support could be provided by the Joint Theater Forensic Analysis Center (JTFACT) - Djibouti, INTERPOL or EUROPOL.



Conclusion

Various initiatives are underway to transition current maritime security operations from being externally driven to regionally-led. To achieve sustainable maritime security in the region requires a transnational crime *prevention* and *response* strategy that is oriented on the ultimate rule of law rather than on commendable but limited military results alone. Given the globalized nature of maritime crime, this strategy can best be operationalized by a solution which leverages extra-regionally owned intelligence assets to optimize regional interdiction and which can

reciprocate with intelligence and evidence derived from regional prosecution efforts. The operational environment coupled with the primacy of the rule of law demands an integrated military/law enforcement solution. While there has been effective military/law enforcement cooperation at the global and tactical levels, a deficiency to date has been the lack of military/law enforcement coordination at the operational level to translate tactical successes into greater strategic impact. Much of what we need to achieve success is in existence in terms of legal framework, mechanisms and process. We need to progressively address deficiencies in the coordination of appropriate military, law enforcement and industry actors at the regional operational level and ensure a greater participation of the regional States if we are to transition to an end-to-end rule of law maritime security solution.

Endnotes

¹ **EVEXI** is the INTERPOL Evidence Exploitation Initiative project supported and funded by Norway and France, piloted in Seychelles in 2010 and now rolled out across the region which ensures the systematic collection and exploitation of evidence, both physical and testimonial, collected during piracy interdictions and arrests

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