Somali Piracy: Following the Paper Trail

Pierre St. Hilaire

Introduction

Since man first built a boat and filled it with wares, there has been piracy. The fundamentals of piracy have remained almost entirely unchanged for thousands of years. Today, as in the past, piracy involves the capture, often violently, of a merchant ship for pecuniary gain. One development in modern times has been that the cutlass has been replaced with the AK-47, and rocket-propelled grenades (RPGs), the Jolly Roger no longer flies and the financial stakes are much, much higher. However, piracy has also evolved in one more important way - rather than stealing whatever goods happen to be on-board, modern pirates often demand millions of dollars in ransom. Piracy has thus become an exceedingly lucrative crime, proving an alluring vocation in a region where young men have few other prospects to escape poverty and destitution.

Piracy is said to represent the first truly international crime. However, while all nations agree that piracy is a universal crime, their domestic laws can differ on how a particular crime is defined, whether or not court jurisdiction can be established, and what the eventual punishment for piracy must be, including how it must be delivered. Which country takes the lead in prosecuting pirates, is highly dependent on the facts of an individual case. Relevant factors, for example, may include the flag country of the captured vessel, the nationalities of the ship crew or those kidnapped, the nationality of the pirates, and the location of the ship when it was attacked and, or, hijacked. Political considerations may also play an important role in deciding whether or not, and where, to prosecute a given case of piracy. While hundreds of pirates have been prosecuted by regional states and from around the world, the pool of recruits for the organizers of piracy attacks remains constant – there is, in fact, an indication that it is growing. Through an unbroken line of resolutions on the situation in Somalia – from United Nations Security Council Resolutions 1950 to 2020 – the UN Security Council (UNSC) has recognized the need to focus on not only the pirates captured at sea but also the networks that finance and orchestrate these attacks, and to dismantle them.[1]

Increased and Sustained Focus on High Value Targets

One of INTERPOL's core missions is to assist the global law enforcement community in collecting, coordinating, and disseminating actionable information and intelligence, supporting and enhancing domestic and international enforcement, and tackling maritime piracy and its illicit funds, in collaboration with other key partners. INTERPOL's Maritime Piracy Task Force (MPTF), created in January 2010, coordinates INTERPOL's international response to the maritime piracy threat in all its facets. It specifically considers the financial aspects of the piracy criminal enterprise, with a special focus on High Value Targets (HVTs) such as pirate leaders, organizers, negotiators, and investors. INTERPOL has long recognized that, given the low risks and high rewards of piracy, simply arresting and prosecuting individual pirates captured at sea will not meaningfully lower the incidence of pirate attacks.

In the words of INTERPOL Secretary General Ronald Noble, "To strike at the heart of maritime piracy, we must investigate, understand, and use to our advantage the financial component behind each of these attacks. We must follow the money as part of a global response involving law enforcement against maritime piracy" (INTERPOL Press Release 19 January 2010). The global law enforcement community faces a number of challenges in trying to identify the organizational and financial structure of pirate networks and to prosecute these HVTs.[2] Without a concerted effort to improve information-sharing between all the actors involved it will be extremely difficult to bring to justice those who orchestrate and organize these pirate attacks.

Information-Sharing and the INTERPOL Maritime Piracy Global Database

One of the biggest obstacles in defeating piracy networks is the lack of information-sharing between key actors that collect or are in the possession of relevant data on piracy networks. The process of investigation, arrest, and prosecution of persons associated with maritime piracy is initiated in a maritime environment. However, its roots and the pursuit of closure are land-based and require the cooperation of military, law enforcement authorities, and the private sector

maritime shipping community, including owners, operators and insurance companies. There is a large volume of information on piracy networks that is fragmented and in the possession of actors that have little past experience of working together closely. For example, information on piracy attacks and those responsible may be in the possession of the military; complementary information on the same attacks may be in the possession of the flag state, the ship owner, local law enforcement, crew members and hostages, and the private actors conducting the ransom negotiations. The ultimate goal is to collect and centralize this information for use by the law enforcement community.

Either bilaterally or through Working Group 5 of the Contact Group on Piracy off the Coast of Somalia, under the stewardship of the government of Italy, INTERPOL actively works with all of these partners – the private sector, military, and law enforcement – to collect and share information about pirates and pirate attacks. All of these actors have a shared resolve to defeat the piracy networks.[3] Because of the international nature of piracy networks, even well trained local law enforcement will only be able to glean a partial picture of the network behind a lone pirate attack. It is only by sharing the results of investigations with the international community that a more complete picture will begin to emerge. Drawing on two of its core functions, INTERPOL is uniquely positioned to facilitate that kind of international collaboration. By facilitating secure global communication and offering its analytical expertise through operational data services, INTERPOL aids the international law enforcement community to identify links between different piracy incidents. Stimulating information-sharing and collecting data becomes meaningless unless the data can be analyzed and contextualized. INTERPOL's Maritime Piracy Task Force (MPTF) provides this assistance chiefly via its Global Maritime Piracy Database. On 29 July 2011, INTERPOL Washington, in collaboration with INTERPOL General Secretariat (IPSG) MPTF developed and implemented a customized database which contained information on Somali piracy in order to assist law enforcement authorities around the world by sharing information to facilitate piracy investigations, and increase piracy-related prosecutions.[4]

INTERPOL further assists select member states in proactively exploiting evidence in their custody to help identify the organizers and leaders of the pirate networks. In 2011, INTERPOL

launched Project EVEXI (Evidence Exploitation Initiative) – a strategic initiative co-funded by France and Norway – to assist select states exploit maritime piracy evidence in their custody and establish procedures for maritime piracy intelligence-gathering and forensic evidence collection. By establishing these procedures in all of the regional countries currently involved in investigating piracy, the project will provide regional investigators with an INTERPOL-supported methodology and information-sharing mechanism. Through ensuring that information assets are optimally exploited for intelligence, and evidence dispersed across jurisdictions is more able to be unified for the purposes of prosecution, local police forces will be able to better target individuals involved in the organization, financing, and implementation of acts of piracy.

Developing Regional Capacity to Conduct Complex Transnational Investigations, including Financial Investigations

INTERPOL plays a central role in capacity-building efforts, including through improving and providing infrastructure and exchanging data. INTERPOL's counter-piracy strategy is organized around a single, unifying principle: to build, balance, and integrate the tools of regional structures to combat maritime piracy by strengthening existing assets of investigation and prosecution, reinforcing investigative skills, and building international cooperation. A European Union-funded, 36-month capacity building project aimed at developing the forensic and investigative capacity of seven Eastern African countries will provide essential equipment and/or training to law enforcement in those respective countries. In addition to building the forensics capacity of select member states involved in prosecuting maritime piracy (notably the Seychelles, Kenya, Tanzania and Mauritius), INTERPOL's projects and initiatives with "front-line states" in Eastern Africa seek to further develop the capacities for criminal investigation units in those countries conducting the type of pro-active, transnational investigations required to successfully prosecute those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia.

More specifically, UNSCR 1976 calls for the "implementation of anti-money-laundering laws," and "the establishment of Financial Investigation Units" as tools against the international criminal networks involved in piracy. Regional states, as well as other states, could be vulnerable to efforts by piracy networks to launder the proceeds of maritime piracy. Assisting states in the effective implementation of the Financial Action Task Force (FATF) 40 Recommendations remains a high priority in addition to creating FIUs, and developing trained financial investigators that are experienced in financial investigatory matters involving both domestic laws and international conventions and standards.

"Countries should make it a policy priority to ensure that there are an adequate number of properly trained financial investigators. These financial investigators should be adequately trained, and experienced in financial investigatory matters involving both domestic laws and international conventions and standards. Countries should create institutional conditions that provide the appropriate environment to carry out financial investigations and to facilitate cooperation by providing the proper legal authority for any involved agencies."

INTERPOL, along with other partners such as the United Nations Office on Drugs and Crime (UNODC) and the World Bank, should continue their collaborative efforts to develop FIUs in front-line states and to train "financial investigators" to identify and arrest "those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia." This objective is eminently reasonable and possible given that an FIU in the Seychelles which has set the gold standard for financial investigations could serve as a model for other countries.[5]

Conclusion

The costs of maritime piracy are enormous. Seafarers are being held hostage in horrific conditions, many of whom have been tortured, abused, and sometimes murdered. It is, first and foremost, a humanitarian issue that must be addressed with urgency. Action must be taken that attacks all of the components of the intricately orchestrated international crime of maritime piracy. INTERPOL has established initiatives to actively engage military and national law

enforcement bodies alongside private sector stakeholders in coordinated efforts to facilitate the identification and traceability of suspects associated with maritime piracy, as well as in their prosecution, and will continue to build on such initiatives.

---

[1]For example, UN Security Council Resolution 1950 (passed in 2010) calls on member states to work with INTERPOL to investigate international criminal networks involved in piracy off the coast of Somalia, including those responsible for illicit financing and facilitation. In Resolution 1976 (passed in 2011), the UNSC called on INTERPOL and other international and regional organizations to assist countries in Eastern Africa to strengthen their counter-piracy law enforcement capacities, including the implementation of anti-money laundering legislation, the establishment of Financial Investigation Units (FIUs), and the strengthening of forensic capacities. A later UNSC Resolution urged "all States to take appropriate actions under their existing domestic law to prevent the illicit financing of acts of piracy and the laundering of its proceeds" and "in cooperation with INTERPOL and Europol, to further investigate international criminal networks involved in piracy off the coast of Somalia, including those responsible for illicit financing and facilitation," stressing the "need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia."

[2] Four of those primary challenges can be summarized as follows:
1. Poor communication among ship owners, navies, and law enforcement agencies means that it has been difficult to develop complete pictures of what happens in pirate attacks.
2. Local law enforcement agencies may lack the expertise, manpower, physical and technologies to effectively conduct what are often complex piracy investigations.
3. Without international communication and coordination, law enforcement agencies struggle to build legal cases against the facilitators and financiers of piracy, and the truly international pirate networks.
4. There are relatively few law enforcement personnel in the world who have on the ground experience in investigating piracy. This lack of experience, especially among countries in East Africa, is problematic.

[3] INTERPOL's MPTF has a robust information-sharing relationship with EUNAVFOR, the US Naval Criminal Investigative Service, members of the Combined Maritime Forces (CTF-151), and more recently, with the NATO's Operation Ocean Shield.

[4] Database content is entirely unclassified and fully shared with international law enforcement. As of February 2012, the database contains information on: approximately 700 subjects (including pirates, negotiators and financiers); transactional information on pirates arrested and their co-conspirators; various businesses; GPS units; documents; serial number of skiff engines; and weapons. Database information is analyzed by INTERPOL and synthesized into analytical products that can be shared with international law enforcement. These products include subject profiles, link analysis depicting connections between multiple pirate events, incident mapping, and telephone calls analysis.

Requests to check subject names and phone numbers against the database are submitted to INTERPOL daily, typically with a response time of a few hours. Notably, the database was endorsed by UNSCR 2020 in November 2011. In this resolution, the UN commended INTERPOL for the creation of the piracy database and urged all states to share information with INTERPOL for use in the database.

[5] INTERPOL, the World Bank and UNODC are actively involved in a study of this phenomenon. The focus of the study is to follow the illicit flows of the proceeds generated by piracy off the coast of Somalia.