

**Discussion Paper**  
**Clingendael Security and Conflict Programme**

*'Pioneering for Solutions Against Piracy'*  
*Focusing on a Geopolitical Analysis, Counter-piracy Initiatives and Policy Solutions*

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**Foreword**

This short overview paper is meant to introduce the topics that will be discussed during the expert seminar *'Pioneering for Solutions Against Piracy; Focusing on a Geopolitical Analysis, Counter-piracy Initiatives and Policy Solutions'*. This seminar, which will take place at the Netherlands Institute for International Relations 'Clingendael' on the 8<sup>th</sup> of July 2009, is organized by the Clingendael Security and Conflict Programme.

The seminar aims to provide a forum where experts can, under Chatham House Rule,<sup>1</sup> discuss issues concerning the phenomena of piracy, and counter-piracy initiatives in light of a geopolitical analysis, regional perspective, judicial challenges, strategic cooperation and policy options. Participants in this seminar are academics, policy makers, and top-level military staff, from EU member states and institutions, NATO, and American universities, who all have a professional interest in the subject.

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<sup>1</sup> When a meeting is held under the Chatham House Rule, participants are free to use the information received, but neither the identity, nor the affiliation of the speaker(s), or that of any participant, may be revealed.

## **1. Introduction**

In August 2009, the Netherlands will take over the command of the EU-NAVFOR mission 'Atalanta' that was initiated in December 2008 to deal with the sharply increased piracy incidents near the coast of Somalia. NATO has recently decided upon its operation 'Ocean Shield' to follow up the mission 'Allied Protector' that will be exclusively aimed at combating piracy off the coast of Somalia. The number of countries involved in combating piracy in the region, such as Russia, China, India and Japan is still increasing (see Annex 'Facts and Figures'). Although some states have brought pirates before their national courts to face trial, other states are openly reluctant, and prefer a regional or international judicial solution. Several countries, including Russia, Germany and the Netherlands, are within the ambit of the United Nations working together to explore the possibilities of an international tribunal to bring pirates to court. Meanwhile, commercial shipping companies are faced with insurance fees that have skyrocketed into ten times the amount that needed to be paid a few years ago. The question is *inter alia* whether they can expect states to offer navy protection and to what extent, and if not, whether it is a wise choice to hire private contractors to provide armed protection during the passage through the Gulf of Aden.

In short, the international community is quite active in trying to improve the maritime security off the coast of Somalia. However, what results may be expected from these efforts, and to what extent are they coordinated? The international community is aware of the fact that the problem of piracy cannot be solved by military engagement alone. The roots of the problem are more complex and are linked with the stability on-shore: in Somalia and the region itself. Therefore, a donor conference in April this year under UN-auspices hosted by the European Union has resulted in pledges for \$213 million to alleviate hunger and poverty in the country. Moreover, the mandate of the AMISOM mission has again been extended.

It is against this background that we intend to discuss the different aspects that need to be taken into account when searching for a comprehensive solution in the fight against piracy. The guiding question during the day will be how the international community, and the Netherlands for that matter, should pioneer for solutions with regard to the phenomena of piracy in light of the following dimensions.

Four different aspects that each individually and in interrelation with each other influences any solution with respect to the problem of piracy will be introduced in this paper. After that, the central policy challenges will be brought forward, as well as the questions for debate during the seminar.

In the annex attached to this paper, some facts and figures are presented on the number of piracy attacks near the coast of Somalia, the naval presence in the area, some facts about the recent history of Somalia, and an overview of the international legal framework.

## **2. Four dimensions of the piracy problem**

The problem of piracy is multi-faceted, and any attempt to find solutions should therefore take note of the different dimensions of the problem. We will focus on four dimensions that will be central to the questions raised in the expert meeting: the geopolitical dimension, the regional dimension, the legal dimension and the strategic dimension.

## 2.1 The geopolitical dimension: changing power relations

The Indian Ocean will be center stage for the Twenty-First Century, as argued by Robert Kaplan in a recently published article in *Foreign Affairs* (2009).<sup>2</sup> The United States, China, EU, Russia, India, South Korea and Japan are among the maritime powers that are currently aiming to expand or strengthen their influence in the Indian Ocean. This ocean contains vital trading routes for the countries in question, of which the vast majority of vessels pass through the Gulf of Aden.

For centuries, navies have been an important military indicator for measuring (super)power; from the Portuguese, Dutch and British from the 16<sup>th</sup> to 20<sup>th</sup> century, up until the American dominance of the world seas since World War II. The rise of China, and the countries' so-called 'string of pearls strategy' in the Indian Ocean is looked at with Argus' eyes by the United States. China is busy expanding its influence in the region by building commercial and naval bases and setting up partnerships from China to Africa with the purpose of securing its commodity and energy supply. Regional powers, such as India and Japan are swept along in this Sino-American rivalry, afraid this might affect their influence and interest in the region.

The growing presence and rivalry in the Indian Ocean of the countries mentioned is one of the main global geopolitical challenges of the future. On the one hand this could be seen as a risk, that makes it important to balance the (military) expansion of China with help of other regional powers, such as India and Japan. On the other hand however, it can be seen as an opportunity to incorporate China and other (Asian) actors in international alliances.

Acknowledgement is needed that maritime security, especially in the Indian Ocean, is increasingly complex and varied, with the coming together of competitive, cooperative and convergent maritime strategies that should be taken into account. The key contours of the maritime equation in the Indian Ocean are possibly configured along these trajectories.<sup>3</sup>

It is against this backdrop that changing power relations in the region could well be regarded as an important background to the various anti-piracy missions. The presence of the many American, European, Russian, and even more importantly, Asian actors involved could be seized as an opportunity to improve maritime cooperation, strengthen the (military) ties, and minimize the risk of possible future confrontation. The architecture of maritime cooperation already knows its initiatives: the 1000-ship Navy' renamed 'Maritime Security Partnership' proposed by the Americans, the Proliferation Security Initiative (PSI) and the SUA Protocol<sup>4</sup> of 2006.<sup>5</sup> Strategic decision-making on naval missions is thus likely to be shaped not only by considerations relating to the piracy problem itself, but also by this wider (geopolitical) context.

## 2.2 The regional context: the legacy of a failed state?

Any quest for a long term and sustainable solution for Somali piracy will have to take the various root causes into account. Illegal fisheries and the legacy of a failed state are therefore factors that have to be considered. The international community should thus also include initiatives that support the reconstruction of a failed state, as well as the dynamics of the

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<sup>2</sup> Kaplan, R.D. (2009) Rivalry in the Indian Ocean, in: *Foreign Affairs*, vol. 88, no. 2, pp 16-32.

<sup>3</sup> Chaturvedi, S. (2009) Issues for the near future: possibilities for cooperation in maritime security and space technology, *Synopsis conference 'Is Europe ready for Asia's rise?'*, Clingendael Institute, The Hague, 25-26 May 2009.

<sup>4</sup> Protocol for the suppress of unlawful acts against the safety of fixed platform located on the continental shelf, International Maritime Organization, 2006.

<sup>5</sup> Ibidem.

region. This subsequently has consequences for the policies and strategies eventually adopted when fighting this phenomenon.

Somalia has been without a functioning government since the ousting of President Muhammed Siad Barre in 1991. Despite an early international attempt (1992-1995) to restore order, the country soon developed into the foremost example of a collapsed or failed state. While violent lawlessness, warlordism, regional proxy wars and humanitarian crises reigned the subsequent 18 years, Somalia slowly but surely disappeared from the international radar screen.

The threat posed by Somali pirates has attracted renewed attention to the country, as it was rapidly understood that, in searching for solutions for the piracy problem, the atrocious situation in Somalia itself could not be ignored. This renewed international attention coincided with internal developments which seemed to offer a window of opportunity to end the country's turmoil. In January 2009, Ethiopia withdrew its troops, as result of a deal between the Transitional Federal Government (TFG) and a Djibouti-based coalition of Somali opposition leaders known as the Alliance for the Re-liberation of Somalia (ARS-D), thereby ending its controversial and fiercely contested two-year military presence. Later that month, ARS-D leader Sheik Sharif Sheik Ahmed, a moderate Islamist, replaced the uncompromising, Ethiopian-backed warlord Abdellahi Yusuf to become president of the country.

The international community seized the apparent momentum and readily vowed support to the TFG's new leadership and its attempts to establish control over the country. During an International Conference in Brussels last April, donors pledged \$213 million to boost Somali security institutions and the African Union peacekeeping mission in Somalia (AMISOM), underlining that only by stabilizing the country can there be hope of successfully tackling piracy in Somali waters.

At the time of writing, however, President Sheik Sharif's government faces serious difficulties. Islamist insurgents dominate large parts of southern Somalia and have vowed to overthrow the TFG. Mogadishu forms the chaotic scene of an intense battle between the insurgents and troops loyal to the government. On 22 June, President Sheikh Sharif declared a state of emergency and requested neighboring countries to militarily intervene in a bid to save the TFG from collapse. AMISOM is unable to halt the violence and has itself become a target for extremists who demand its immediate departure, which has raised the question whether the AU-mission has become part of the problem rather than part of the solution for Somalia's persistent crisis.

Amidst doubts on the durability of the TFG, there is a growing fear that Somalia will fall into the hands of the radical Al-Shabab and become a safe haven for terrorists. Another possible scenario is that radical Islamist movements join piracy syndicates, and increase the danger of maritime terrorism. The international community has yet to define a clear strategy on how to engage in Somalia's many problems. If ending the incidence of piracy off the coast of Somalia indeed requires addressing its persistent insecurity on land, there is a tremendous challenge ahead.

### **2.3 International judicial framework: inadequate in dealing with current threats?**

As the international community celebrates the 400<sup>th</sup> anniversary of Grotius' 'Mare Liberum', we are at the same time confronted with the question whether the current framework of the international law of the sea adequately provides an answer to the maritime threats we are faced with today?

The first problem the international community encounters is the fact that counter-piracy operations can only take place in the high seas. If piracy activities take place in the territorial waters, in international law referred to as 'armed robbery at sea', any counter operation can only be run by the coastal state. On many occasions, pirates have made use of this fact by fleeing into the territorial waters when chased by war ships on high seas. A right to reversed hot pursuit<sup>6</sup> without consent of the coastal state does not exist according to international law. Such consent should be provided by the authorities of the coastal state. When coastal states fail to provide an effective remedy to fight piracy, there is not much the international community can do according to international law.

Because of the severity of the situation, the Security Council with the consent of the Somali government, has remedied this lacuna in law, by authorizing counter-piracy activities of the international marine presence within the territorial waters off the shore of Somalia, as well as some counter piracy operations on land. This is, however, an exceptional situation.

The Security Council also encouraged the use of shipriders of the different coastal states in the area on board of war ships of the different countries present in the area, with the authority to assess each piracy incident. The shipriders would need to have the power to decide on the need for reversed hot pursuit, and can make an assessment of the evidence available needed for a prosecution in their home country.

According to international law, warships are at the high seas, and – in this specific situation – within the territorial waters of Somalia (based on the authority of the Security Council resolution) allowed to seize pirate ships, and ships hijacked by pirates, and henceforth arrest pirates. To allow for an adequate investigation and prosecution to take place, states have to make the necessary arrangements within their national legislation, *and* decide to prosecute or ask for extradition.

The current situation is that not all states have implemented national legislation to prosecute piracy. Other than that, states have, for political reasons, decided not to prosecute at all, or only in limited cases. The Netherlands is one of the few Western States, that is now conducting a criminal trial against Somali pirates. However, the Dutch government has issued a statement in which it announced that criminal prosecution would only be initiated if a clear interest of the Netherlands in a specific piracy incident would be jeopardized. This has been understood to entail the hijacking of a ship with a Dutch flag, a ship owned by a Dutch company, or in case Dutch personnel would be on board. In general, the reluctant attitude of most Western states to start prosecution, has been connected to the fear of a rise in asylum requests of arrested Somali pirates. Some states and organizations present in the area off the shore of Somalia, have made arrangements with Kenya, such as the EU, surrendering arrested pirates to the authorities of Kenya to face trial. Questions have been raised with respect to the human rights guarantees, and especially the principles of fair trial, in those situations. In this respect, the suggestion has also been made to establish an international tribunal to deal with piracy crimes.

While the international community is struggling with the questions, whether international law need to be revised and an international tribunal needs to be established, commercial shipping companies are putting much pressure on governments to provide them with armed protection

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<sup>6</sup> A right to hot pursuit entails the right to continue a pursuit from within the territorial waters (or the contiguous zone) into the high seas, when a violation of the laws of the coastal state is committed in the territorial waters (or the contiguous zone), and the pursuit is not interrupted. Reversed hot pursuit entails a pursuit from outside the territorial waters into the territorial waters from crimes committed at the high seas as laid down in the UNCLOS treaty (see Annex). This right does not exist so far. A reversed hot pursuit can only take place with consent of the coastal state.

during their passage of the Gulf of Aden. The Belgium government has given out an initial promise to place armed marines on board commercial ships during their passage. The Dutch government, on the other hand, is of the opinion that there are too many insecurities regarding this proposal, and has refused to do so. Meanwhile, many private security companies are offering their services, even though not all states allow their shipping companies to make use of this construction. Some private security companies claim they have found a loophole in the law, by including arms on the export list, which can be used by their personnel on board the commercial ships when in danger. The question, is of course, whether this is indeed legally allowed, and if so, where the responsibility and accountability falls in situations of misuse.

## **2.4 Strategic and operational challenges in fighting piracy**

It is against this backdrop of the geopolitical importance of the Indian Ocean, the legacy of failed state Somalia, and the inadequateness of the international legal framework that the different naval powers present in the Somali basin have to operate. Despite the awareness among the international community that Somali piracy cannot be solved by military engagement alone, most of the initiatives undertaken by the international community until now are maritime missions (see Annex).

The challenges of realizing maritime cooperation in this context are multiple, and there are several aspects that need further scrutiny. First of all, on a technical level, by improving communication possibilities, synchronizing (data) systems, and exchanging information and intelligence. The latter is a sensitive issue in this regard, and a problematic one as well. The mere fact that even sharing intelligence between EU and NATO is difficult by the mistrust between Cyprus and Turkey that block security arrangements on this issue, makes clear that sharing information with less obvious partners, such as China and India is no sinecure. Secondly, it is needed that doctrines and rules of engagement are fine-tuned to make sure that the several actors present can fall back on more or less the same basis for operating in the Indian Ocean arena. The judicial challenges described above can also be considered to be part of this operational challenge. Thirdly, joint trainings and operations would improve interoperability, but also the effectiveness of the international performance until now. Making the transit-group way of operating under the EU Atalanta mission a shared effort in which all actors present take part, would be an important endeavor in this regard. Sharing burdens and tasks would optimize the efforts of the international community. Protecting ships merely for the national flag-state is a practice that should be overcome in this light as well.

However, what is needed for multinational maritime cooperation above all is the political will to work together in combating piracy and improving the effectiveness of current maritime cooperation. From this starting point it is possible to formulate the aforementioned (strategic) policies towards (naval missions in) the quest for maritime security and stability in the Indian Ocean for the several actors involved.

The question is, however, how inclusive and cooperative partnerships between the actors involved can be built in pursuit of comprehensive and convergent rather than competitive (maritime) security strategies? How can operational challenges be overcome and to which extent is this possible or even desirable?

### 3. Policy Challenges

In light of the multi-faceted challenges described above, how should the international community pioneer for solutions against piracy?

To make a first attempt in discussing these challenges, the following questions will be ground for debate in the panels, as well as during the afternoon-session:

- To what extent are the anti-piracy missions of the various countries involved motivated by the pursuit of broader geopolitical aims in the Indian Ocean, and what does this implicate?
- Where lie the limitations to cooperation in maritime security in the Indian Ocean between Europe, the US, China, India, Japan and other actors involved?
- If the stability in Somalia is the durable solution to the problem of piracy, what steps should be undertaken to optimize the efforts already in place?
- Is there any purpose served by continuing to maintain the national integrity of a unitary Somali state if large regions like Somaliland and Puntland are either openly opposed or resistant to it?
- Is it possible that not only the delivery of goods and services to the Somali people, but the interests of the international community – including the suppression of piracy offshore – might be better served by working with effective authorities wherever they are to be found, even if that means permitting the devolution of political authority?
- What are the strategic and operational challenges in the maritime counter-piracy initiatives? What implications does this have for future cooperation between the different actors present?
- How can the maritime cooperation contribute to pro-active counter-piracy operations, like the seizing of mother ships, and the arrests of pirates before they engage in hijacking operations?
- How should the system of transit passage or escorted passage, taking into account the specific requests of slow ships, be organized, without limiting the execution of escorted transits to flag ship alliances?
- How can we prevent that the proliferation of private security companies that offer armed protection during the passage of the Gulf of Aden, initiate a spiral of violence in the region?
- Does the current limitation in the UN Convention on the Law of the Sea, that only allows states to act against piracy on the high seas, still –in all circumstances- satisfy the wishes of the international community to provide safety at sea?
- Should special circumstances allow anti-piracy acts by the international community within the territorial waters of a state that is unwilling or unable to guarantee the safe use of sea lines of communication, or should such actions be limited to situations of hot pursuit from the high seas into the territorial waters?
- What steps should be undertaken to avoid impunity of piracy activities?
- In the case of Somalia, should the international community make use of the authority to act against piracy on the territory of Somalia?

*In short, what policy challenges and options can be identified in searching for solutions in combating piracy, and what are the possibilities to deal with them in the (near) future?*

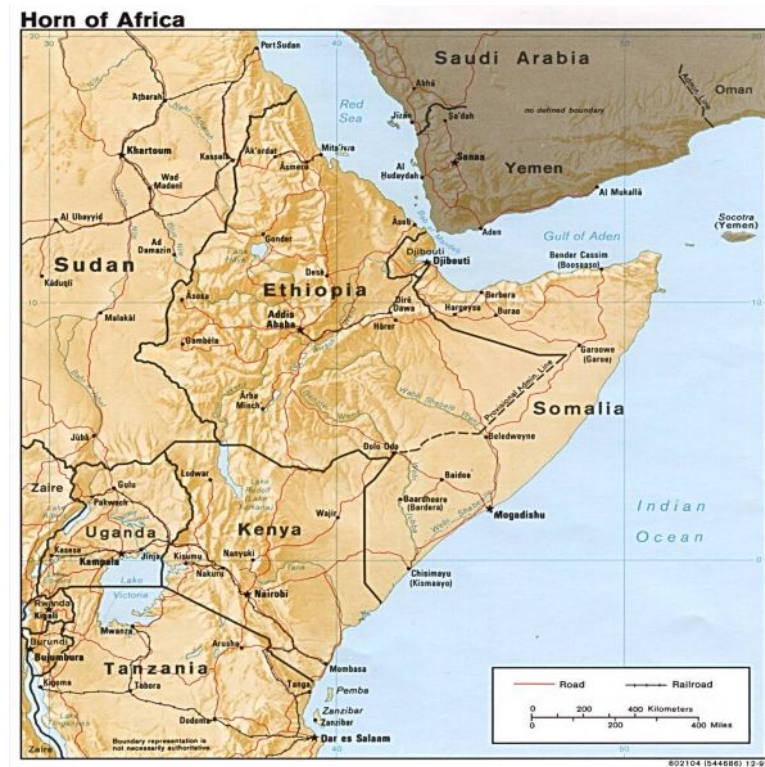
## Annex: Facts and Figures

### Facts on Somalia

<i>Capital:</i>	Mogadishu
<i>Population:</i>	9 million
<i>Number of Somalis facing an acute food, nutrition and livelihood crisis according to the World Food Programme:</i>	3,1 million
<i>Religion:</i>	Islam (Sunni Muslim)
<i>GDP:</i>	\$600 (per capita)
<i>Key dates:</i>	

- 1991: Muhammed Siad Barre, president since a 1969 coup, is ousted. A power struggle between different clan militias erupts. Somaliland unilaterally declares independence.
- 1992: Famine hits Somalia. Establishment of a US-led multinational force (UNITAF) to secure a relief operation carried out by the UN (UNOSOM).
- 1994: The US withdraws its troops from Somalia after losing 18 soldiers in a fire-fight in Mogadishu.
- 1995: The UN formally ends UNOSOM II, which aimed at supporting the rebuilding of the Somali state.
- 1998: Puntland declares autonomy.
- 2004: The 14<sup>th</sup> attempt to restore central rule since 1994. A transitional parliament is established in Kenya; the body elects Abdullahi Yusuf as president of a Transitional Federal Government (TFG).
- June 2006: The Union of Islamic Courts (UIC) defeats a coalition of warlords and takes control of Mogadishu and parts of the south.
- Dec. 2006: Ethiopian troops intervene and re-establish the authority of the TFG. Fighting between insurgents and TFG forces continues.
- 2007: Establishment of an African Union peacekeeping mission (AMISOM) in support of the TFG.
- June 2008: The Djibouti faction of opposition movement the Alliance for the Re-liberation of Somalia (ARS-D) signs a deal with the TFG.
- Jan. 2009: Ethiopia withdraws its troops. Extension of the parliament with 149 ARS-D members. ARS-D leader Sheikh Sharif Sjeikh Ahmed is elected president.
- June 2009: TFG-troops and Islamist insurgents battle for Mogadishu.

## Map of Somalia



Source: CIA Factbook Somalia

## Piracy facts

	<b>2008</b>	<b>First Quarter 2009</b>
Number of piracy attacks worldwide (attempted and succeeded)	293	102
<i>Facts with regard to Somali piracy:</i>		
Number of piracy attacks near Somalia attempted/ succeeded	111/ 42	61/ 10
Number of deaths	4	0
Number of injured	2	4
Missing crew	14	0
Number of taken hostages	815	157
Estimated ransom sums in millions of euro	300	50
Types of arms used:	guns, knives, other	guns, knives, other
Types of vessels attacked	bulk carriers, containers, general cargo, chemical, LNG and crude oil tankers, tug boats, yachts, fishing trawlers, supply ships	bulk carriers, containers, general cargo, chemical, LNG and crude oil tankers, tug boats, yachts, fishing trawlers, supply ships

Source: International Maritime Bureau

### *Costs shipping industry:*

Sailing through the Suez Canal takes 14 days, but sailing along Cape of Good Hope takes 33 days which brings the total costs 19 days lost, € 500.000 and additional fuel costs. It has been estimated that piracy is causing the shipping industry between 13 and 16 billion dollars each year.<sup>7</sup>

## **Naval presence in the region**

### *Europe/ European Union:*

- France/ Denmark/ the Netherlands: individual operations in 2008-2009 upon request of the United Nations
- EU missions: EUNAVCO coordination team in 2008, forerunner of ESDP-mission EUNAVFOR Atalanta since December 2008, runs at least until December 2010  
Countries involved: Belgium, Germany, France, Greece, Great Britain, Italy, the Netherlands, Norway, Portugal, Spain, Turkey and Sweden<sup>8</sup>
- Operation Atalanta costs € 9.5 million each 12 months it is operative<sup>9</sup>

### *NATO:*

- Operation Allied Protector in 2008 of Standing NATO Maritime Group 1  
Countries involved: Germany, the Netherlands, Spain, Portugal, United States of America, Canada, Norway and Denmark<sup>10</sup>
- Operation Ocean Shield in 2009 of Standing NATO Maritime Group 2  
Countries involved currently: United Kingdom, Greece, Italy, Turkey and United States of America<sup>11</sup>

### *Russia:*

- Individual operations since 2008

### *United States:*

- Combined Task Force 150 in light of Operation Enduring Freedom has been commanded by: Canada (1), United Kingdom (4), France (6), Pakistan (2), Germany (2), Spain (1), Denmark (1), and the Netherlands (1)<sup>12</sup>
- Combined Task Force 151 since end of 2008, exclusively focused on combating piracy. This is a alliance of several actors, including the United States of America, United Kingdom, Singapore, Pakistan and Greece<sup>13</sup>

### *Asian actors:*

- China has deployed 2 destroyers and a supply ship since 12 January 2009<sup>14</sup>
- India has deployed 1 destroyer since October 2008<sup>15</sup>
- Japan has deployed 2 destroyers since March 2009<sup>16</sup>

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<sup>7</sup> European Union Navy Force (Atalanta) 2009 <http://www.vredesmissies.nl/eunavfor%20atalanta.htm>

<sup>8</sup> European Union Navy Force (Atalanta) 2009 <http://www.vredesmissies.nl/eunavfor%20atalanta.htm>

<sup>9</sup> European Union Navy Force (Atalanta) 2009 <http://www.vredesmissies.nl/eunavfor%20atalanta.htm>

<sup>10</sup> The Standing NATO Maritime Group 1 (SNMG1) [http://www.manw.nato.int/page\\_snmg.aspx](http://www.manw.nato.int/page_snmg.aspx)

<sup>11</sup> Participating Forces of The Standing NATO Maritime Group 2 (SNMG 2)

[http://www.afsouth.nato.int/organization/CC\\_MAR\\_Naples/Factsheets/SNMG2/SNMG2composition.htm](http://www.afsouth.nato.int/organization/CC_MAR_Naples/Factsheets/SNMG2/SNMG2composition.htm)

<sup>12</sup> Combined Task Force 150 U.S. Naval Forces Central Command

<http://www.cusnc.navy.mil/command/ctf150.html>

<sup>13</sup> Combined Task Force 151 <http://www.cusnc.navy.mil/command/ctf151.html>

<sup>14</sup> <http://www.bloomberg.com/apps/news?pid=20601080&sid=aIQMfIQ8hgtE&refer=asia>

<sup>15</sup> [http://news.bbc.co.uk/2/hi/south\\_asia/7741287.stm](http://news.bbc.co.uk/2/hi/south_asia/7741287.stm)

<sup>16</sup> <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?lng=en&id=98783>

- Malaysia has deployed 2 frigates and a support ship since September 2008<sup>17</sup>
- South-Korea has deployed 1 destroyer since March 2009<sup>18</sup>
- Singapore has deployed a landing ship tank on 23 April 2009<sup>19</sup>

#### *Gulf Actors:*

- Saudi Arabia has deployed 3 frigates since January 2009<sup>20</sup>
- A consortium of Arab states (Saudi-Arabia, Bahrain, Djibouti, Egypt, Jordan, Kuwait, Oman, Qatar, Sudan, UAE and Yemen) have stated in June 2009 to set up an anti-piracy naval force to prevent the spread of piracy from the Gulf of Aden to the Red Sea or Suez Canal<sup>21</sup>
- Iran has sent naval ships to the Gulf of Aden on several occasions to protect its oil tankers
- Yemen has formed an anti-piracy unit within the Yemen Coast Guard<sup>22</sup>

## **Legal Framework**

### *Definitions of piracy*

Definition piracy as used by the International Maritime Bureau:

“An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.”

United Nations Convention on the Law of the Sea definition of piracy (Article 101):

“Piracy” consists of any of the following acts:

- (A) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (B) Any act of voluntary participating in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (C) Any act of inciting or of intentionally facilitating an act described in subparagraph (A) or (B).”

### *Seizure of a pirate ship or aircraft*

Article 105 UNCLOS:

“On the high seas, or in any other place outside the jurisdiction of any state, every state may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the state which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights or third parties acting in good faith.”

### *Ships and aircraft which are entitled to seize on account of piracy*

Article 107 UNCLOS:

“A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.”

### *Right of visit*

Article 110 UNCLOS

<sup>17</sup> <http://thestar.com.my/news/story.asp?file=/2008/9/5/nation/22243847&sec=nation>

<sup>18</sup> <http://www.abs-cbnnews.com/pinoy-migration/03/03/09/skorea-launches-naval-unit-against-somali-pirates>

<sup>19</sup> Singapore Navy Joins Counterpiracy CATF 151 [http://www.navy.mil/search/display.asp?story\\_id=44606](http://www.navy.mil/search/display.asp?story_id=44606)

<sup>20</sup> <http://www.menewslines.com/article-2363-Saudi-Navy-Joins-Anti-Piracy-Miss.aspx>

<sup>21</sup> The Middle East News Source, June 30, 2009

<sup>22</sup> <http://www.americanchronicle.com/articles/view/75791>

“1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
- (b) (...)

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

(...)

#### *Right of hot pursuit*

#### Article 111 UNCLOS

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing state, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone received the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established. (...)”

IMO Resolution 992, 22 January 2002, Annex, Article 2.2

“Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against a ship or against persons or property on board such a ship, within a state’s jurisdiction over such offences.”

United Nations Security Council Resolution 1816 (2008), 2 June 2008, adopted under Chapter VII of the Charter:

“The Security Council (...)

7. Decides that for a period of six months from the date of this resolution, states cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:

- (a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and
- (b) 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;

(...).”

United Nations Security Council Resolution 1851 (2008), 17 December 2008, adopted under Chapter VII of the Charter:

“The Security Council (...)

3. Invites all states and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials (‘shipriders’) from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;

(...)

6. In response to the letter from the TFG of 9 December 2008, encourages member states to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in rooting out piracy and armed robbery at sea, and decides that for a period of twelve months from the date of adoption of resolution 1846, states and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the TFG to the Secretary-General may undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG, provided, however, that any measures undertaken pursuant to the authority of the paragraph shall be undertaken consistent with applicable international humanitarian and human rights law; (...)”