

## **Rethinking counter-piracy**

*Piracy presentation on the occasion of the port visit of the HNLMS Rotterdam to Mumbai, 24 November 2012*

Admirals, your excellencies, ladies and gentlemen,  
Thank you for the invitation and the opportunity to participate in this seminar.

When talking about piracy during presentations, or to students, I always start with looking at the root causes. Most of you are probably familiar with them, but to quickly list them, they include: The internal situation in Somalia, the geographical setting with the Gulf of Aden, the vastness of the area (2,000,000 sq nmi) the opportunities created by the sea lines of communications (SLOCs) (33.000 ships passing through GoA = 7 % world's trade) and lack of protection of ships (slow speed and low freeboards), the exploitation of the seas through European fishery companies, illegal toxic dumping, low risk of being caught, profits rising, enabling communities, lack of law enforcement, and lacunae in international law.

But once that is established, in many debates, one tends to move to the counter-piracy activities and forget the local context that feeds the problem.

Many argue that the counter-piracy operations, at least from a military perspective, are successful. That could be the case. But on a closer look, we need to wonder: Are they really?

Yes, the number of successful piracy attacks have gone down. But can we say the same for the number of incidents? Although they have come down in numbers, this was not with the same percentage as the decrease in successful piracy attacks. In other words, pirates have not given up all together.

Also the reasons for the decrease in the percentage of successful attacks are multiple: navies are active, better implementation of the Best Management Practices (BMPs) by the commercial shipping industry to protect their ships, the presence of Private Security Companies (PSCs), the influence of the weather, or simply because pirates are regrouping and waiting for the moment the navies leave, which could be the case in time due to austerity measures. Pirates over the years have always changed their modus operandi, and adapted to the circumstances. It is an old phenomenon, and there has always been a waterbed effect.

So the question is what will happen if navies leave? But also in more general terms: are we really successful in taking away the root causes, or are we in order to contain the problem, due to always stay and deal with the sea-based symptoms of the piracy problem?

I argue that external efforts, however, have only partially been successful. They have made piracy more difficult, but to many Somali it is still worth the effort. The incentives remain high, and the risks remain low.

What is needed is a comprehensive approach, based on a good analysis of the problem. So far, a lot of different initiatives are implemented that in different manners try to contribute to a solution against piracy. In 2008, when there was a strong rise in piracy attacks of the Coast of Somalia, this phenomenon attracted worldwide media attention.

In 2008, the Security Council adopted Resolution 1816 (followed by numerous other resolutions) determining that piracy committed in Somali territorial waters was considered a threat to international peace and security, authorizing international naval forces to conduct counter-piracy operations in Somali waters, something that is not allowed according to public international law. With this mandate, we also saw an increase in the countries and organisations contributing to the navy operations. (i.a. NATO's Ocean Shield mission, EU Atalanta, CMF, and 25 nations on a unilateral basis).

That was how it started, but now we have a kaleidoscope of counter measures : military (mainly navy), legally, capacity-building, protection, information sharing, private initiatives, SSR, good governance, and rule of law projects. Whereas, at first there was a complete lack of coordination, there has been a steep learning curve, and now there are many attempts for cooperation, and information exchange. However there is not one body for coordination and leadership. Also in terms of legal responses, one has become much more efficient. There has been improvement of evidence gathering, clearer mandates for arrests, detention, extradition, prosecution, and jurisdiction.

Yet, all of these measures rather form a patchwork of initiatives. The sum of all these measures, after all do not automatically become a comprehensive approach.

Two mechanisms are worth elaborating on, namely the EU comprehensive approach and the Contact Group on Piracy Off the Coast of Somalia.

According to the EU, Atalanta is part of the comprehensive approach of the Horn of Africa. In November 2011 the EU adopted a Strategic Framework for the Horn of Africa. The objectives of the comprehensive approach are to prevent and deter pirates from interrupting global maritime trade but also to contribute to a sustainable and long-term solution to piracy through building-up the capacity of the states in the region, including Somalia, to take ownership of the fight against piracy. The EU also works to eradicating the root causes of piracy by contributing to the social and economic development of Somalia, concentrating on three sectors of cooperation: governance, education and the productive sectors, particularly rural development. More particularly, the EU works towards improving security on the ground in Somalia through the empowerment of Somali capacities with the EU Training Mission (EUTM Somalia) which trains Somali soldiers in Uganda to contribute to strengthening the TFG and the institutions of Somalia. Additionally,

the EU offers substantial financial and technical support to the African Union's military mission to Somalia (AMISOM). The new EU civilian EUCAP Nestor mission will help to build the regional maritime capacity in the Horn of Africa. It will develop the civilian coastal policing capacity in Somalia and strengthen the coastguard function in Djibouti, Kenya, the Seychelles and Tanzania. It will reinforce those countries' ability to fight piracy and face other challenges such as illegal fishing and trafficking. The EU also supports some programs that tackle piracy on land. And the EU runs a wide range of programs related to the prosecution, trial and detention of piracy suspects. Mostly in cooperation with UNODC and UNDP. An EU Special Representative to the Horn of Africa has been appointed in December 2011, Mr. Alexander Rondos. Should coordinate initiatives. Yet, financial assistance and guidance on policies comes from different organs: EU External Action Service (EEAS) on most of the development aid etc; CMPD (crisis management planning department) on civil/mil operations; EU Military Committee and EU Military Staff on the military operation

Part of these activities are also discussed in the working groups of the Contact Group on Piracy off the coast of Somalia (CGPCS). Working Group 1 focuses on effective naval coordination and cooperation and capacity building on judicial, penal and maritime capacity of regional states. Working Group 2 deals with legal issues. Working Group 3 has contributed to the further development of the BMPs. Working Group 4's focus is on strategic communication. And finally, Working Group 5 focuses on identifying and disrupting financial networks. The purpose of the CGPCS as formulated on its website is to 'facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia'. The main question is : Is the CGPCS an adequate mechanism for achieving the aim of facilitating discussion and coordination towards suppressing piracy off the coast of Somalia? Two sub-questions are relevant to analyse and to evaluate the state of the art of the counter-piracy policies, before we focus on possible future scenarios for the CGPCS:

1. Is the purpose of the CGPCS, and hence its reason for existence, to completely eradicate piracy off the coast of Somalia or merely to bring it back to manageable proportions (which is?)?
2. Is the combination of measures taken and policies adopted well-balanced and contributing to an effective approach of countering piracy, or are there contradictory effects, overlap of policies and lacunas?

The answer to the first sub-question is highly dependent on the political will of mostly the participating states in the Contact Group. As to the second sub-question, it seems that this is not the case. The number of instruments, forums, mechanisms

and actors involved in counter-piracy related programs are impressive, but also shows that there is a lot of overlap in activities. Many of the topics covered by the working groups of the CGPCS are thus also on the agenda of other mechanisms. The answer to this sub-question is also related to the pros and cons of the CGPCS's current institutional make-up.

Positive aspects are:

- The strength of the CGPCS lies in its lack of clarity of the purpose, and its lack of articulation of the specific powers and authorities. This offers a lot of flexibility to quickly adjust to the particular needs in dealing with the problem.
- The CGPCS offers a great platform to exchange information in order to coordinate policies.

Negative aspects are:

- The level of flexibility could, however, turn into a non-committal attitude by states, if their initial interest diminishes, leaving the CGPCS empty handed without any power to demand compliance.
- Everyone always wants to coordinate, nobody wants to be coordinated. As a consequence, although some coordination mechanisms are in place, and the maritime approach of the problem is backed with on-land programs, capacity-building and investments in the rule of law, the sum of these policies do not automatically make a comprehensive approach. Overall, such a comprehensive approach, based on an overall analysis of the problem, as well as an assessment of all the effects of the different policies henceforth identifying overlap, lacunas and contradictory effects, is missing.

With the success rate of pirate attacks going down, the question is whether states will stay as committed as they were to profit from the strength of the CGPCS in comparison to other instruments?

Possible solution could be to guarantee more strategic agenda-setting capacity and a more long-term commitment by the chair to see the agenda's goals being translated into action, is to prolong the term of the chair of the CGPCS to a year. Also, and in relation to the argument made with regard to the earlier-mentioned second question that a true comprehensive approach is still missing, a change in the institutional and procedural make-up of the CGPCS could place the chair in a better position to overlook the comprehensiveness of the strategy and to better coordinate the work of the different working groups of the Contact Group.

Even though, as mentioned, statistics show that the success rate of pirate attacks has declined in the last year, the number of attacks has not gone down with the same percentage. Strategies that really target the root causes of piracy, as far as they are implemented at all, have not been successful yet. These topics are in any case not really covered by the working groups of the CGPCS. Furthermore, the narratives of the pirate communities as well as the Somali community at large, is still based on

the protection narrative. We can therefore conclude that especially WG 4 on the public diplomacy and strategic communication, has not been very successful in its messaging campaign. In that sense, more commitment to a flexible allocation of resources with multiple stakeholders is needed to contribute to sustainable solutions of the problem.

So what are the challenges for the future?

Clearly what is needed is a truly comprehensive approach. At this moment, the patchwork quilt of different strategies results in overlap, contradicting priorities and lacunae of sea- and land-based counter-piracy strategies on 1. Protection and deterrence; 2. Prosecution; 3. Capacity-building and training programs; 4. Regional security and stabilisation; and 5. Unravelling the criminal networks on the financing.

I would like to stress again that a comprehensive is not merely the sum of these strategies. A thorough and shared analysis of the problem is moreover first of all needed. Piracy in Somalia is nested in a much wider political economy of violence and state weakness, in which armed groups and their patrons seek to secure rent from control over key territories. Taking place in a country with a tradition in warlordism and an economy of protection and strong clans. In this context, piracy is just one of the many profitable activities in Somalia. Piracy is furthermore not taking place in completely ungoverned space. Rather, pirates are more active in an area of Somalia where semi-autonomous government (Puntland) has been in existence for over a decade. One also needs to realize that piracy is now a major industry: involving as much as about \$ 160 million in ransom payments in 2011, an enormous sum that has a transformational impact on the local political economy. Piracy works with a business model which allegedly thrives on investments from the Somali diaspora. Piracy also has its own Robin Hood (grievance) narrative, that is embraced by many. And although no longer true, this is something one should understand if one wants to build on Somali partnerships in countering piracy. This narrative is delegitimizing the counter-piracy operations of the international community. From interviews conducted with pirates it becomes clear that they still see that the piracy is committed as a protection against overfishery and pollution and illegal dumping. It is sort of a protection fee for free passage. One pirate claimed: "It is to give you protection against ourselves". The framing of protection also serves to create suspicion and often hostility towards the multi-national counterpiracy initiatives. Popular stories go around telling that the helicopters are used to steal livestock and camels, or that the operations are a cover up for interventions or stealing extractives.

What is needed is to deal with these narratives; to de-couple counter-piracy operations from other forms of intervention in the region; to seriously tackle illegal waste dumping and illegal fishing, and prosecute offenders of these crimes as well.

One also needs to acknowledge that other geopolitical interests are at play in the region, such as counter-terrorism, human trafficking and illegal migration, improving the humanitarian circumstances, and regional power dynamics.

Some argue we need to approach the problem through a post-conflict lens, implementing lessons learned from peace-building, such as context sensitivity, pragmatic incrementalism (approach that does not use technocratic idealized objectives (managerialism), more sensitive to the complexity of the situation and does not assume that there are best solutions) and no wishful thinking or ambitious nation-building projects. Also one needs to take into account that each policy creates winners and losers, and the latter can act as spoilers. And finally, and very importantly, at least all stakeholders should be included in the search for and implementation of solutions, to guarantee sustainability for the future.

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