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The fight against piracy: one aspect of Germany's maritime security

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In his paper entitled "A Fragile Value Chain" (*Facts and Findings* No. 125, July 2013, http://www.kas.de/wf/doc/kas_34915-544-2-30.pdf?131119133824), Peter Hefele examined the importance to Germany of maritime security. Now David Petrovic takes up this issue and examines more closely one of the key areas of maritime security – the fight against piracy. As Mephistopheles said in Goethe's *Faust*: "War, trade, and piracy, allow, as three in one, no separation." Today, this triad is more relevant than ever. The globalised world of the 21st century relies heavily on free and uninterrupted maritime trade. The oceans have become an arena for security policy, with countries competing to assert their maritime influence, while asymmetrical threats such as modern piracy are gaining in significance. As an economic maritime power, Germany has been particularly affected by the developments of recent years.

The purpose of this paper is to provide a better understanding of the growth of modern-day piracy, particularly with regard to piracy off the Horn of Africa. It also calls on Germany to do more to address these challenges on the high seas because of its dependence on maritime trade.

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BACKGROUND

The growing problem of piracy off the Horn of Africa has meant that over the past five years the issue of maritime security has been afforded greater priority in Germany's decisions on foreign and security policy.

Piracy is certainly not a new phenomenon, but its geography has changed. From the seemingly distant waters of South East Asia, it has now shifted closer to Europe, and it is particularly prevalent in the Gulf of Aden and the Indian Ocean, one of the main transit routes for global trade. Along with its greater proximity, piracy has also taken on new dimensions. In South East Asia it mainly involved petty theft and robbery, whereas the Somali "business model" has attracted the attention of the West by hijacking ships and holding crews ransom. The increasing numbers of attacks, successful hijacks and massive ransom payments have resulted in piracy shifting from being an economic annoyance to a serious problem that affects the safe shipping routes which are so vital to Germany's economy.

Germany and the sea

The importance of the sea cannot be underestimated – over three-quarters of the surface of the earth is made up of water, and most of the countries in the world are coastal nations. In terms of traditional security policy, the sea provides an arena for conflicts between nations and for countries to extend their spheres of influence. But the sea is also vitally crucial to the supply of natural resources, food and, above all, transportation. Every year, some 90 percent of all long-haul freight is transported by sea. Globalisation would be all but impossible without the shipping lanes that provide the vital regional and transcontinental links between nations – global trade is maritime trade.

Wealthy countries are those that control trade routes and command the seas, giving them access to global markets. This was the contention of the American 19th-century strategic thinker Alfred T. Mahan, and the point still applies today in our globalised and maritime 21st century.¹ The situation off the Horn of Africa shows that the Indian Ocean has become a battlefield in the struggle for a new world order. The People's Republic of China has been increasing its influence in the Pacific and is now extending its reach towards South East Asia and, potentially, the Indian Ocean. The countries of the Asia-Pacific region are racing to expand their maritime capabilities, while European navies are shrinking in line with dwindling budgets. The stark truth is, "As one cultural group vacates the seas, another takes its place with ships on the oceans and fighter jets in the skies, all bristling with weaponry"².

Germany needs to keep a very close eye on these developments. As a country geared towards export, Germany is not "just" an economic power and one of Europe's leading industrial nations. Germany is also a maritime industrial location, an economic "maritime power"³.

"Good order at sea"⁴ is in Germany's strategic interests. Because the German economy is so reliant on exporting goods and importing resources and energy, it is vital that Germany has free access to the world's oceans and to safe, uninterrupted shipping. Safe shipping routes form the backbone of the German economy and are crucial for the country's prosperity and the strategic orientation of its vital export trade.⁵

Fragile states lead to maritime insecurity

Today, the high-risk regions for merchant shipping stretch from South East Asia to the Gulf of Guinea in West Africa via the Indian Ocean and the waters off the Horn of Africa. There is no doubt that all threats to the safety of shipping lanes have their roots on land in local and regional problems, as has been made abundantly clear by the prevalence of piracy off the shores of Somalia. Fragile states – particularly those that have partially lost their monopoly on power, facing a fragile security sector and high levels of corruption – generally provide a fertile breeding ground for organised crime. The combination of a weak state and the proximity of major shipping lanes is particularly conducive to the emergence of piracy.

Therefore piracy primarily has its roots in local social, political and economic conditions. Local and regional crises and conflicts such as the Asian crisis of 1997/98, the civil war in Somalia and the volatile situation on the Niger Delta in Nigeria have all provided the catalyst for the emergence of piracy.⁶

Who becomes a pirate?

Under international law, pirates are *hostis humanis generis* – enemies of mankind – and states have the right to combat piracy wherever they find concrete cause for suspicion.⁷ According to Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS)⁸, a pirate is anyone who commits illegal acts of violence against another ship for private ends with the aim of personal enrichment and who carries out the attack outside the country's territorial waters.

However, the majority of attacks occur in ports and coastal waters, so in terms of international law they cannot strictly be described as piracy. As a result, it is difficult for international bodies to prosecute pirates in areas where the coun-



tries on the coastline involved have no or very limited naval capabilities. Such attacks are categorised in the statistics as "armed robbery against ships".⁹

Modern piracy – a global phenomenon

In 2012 there were 297 incidents of piracy, the first time since 2008 that the International Maritime Bureau (IMB) recorded fewer than 300 attacks. In comparison, in 2011 Somali pirates alone were responsible for 237 attacks, more than half of the global total of 437 incidents. But it is likely that the real figures are much higher, and in West Africa very much higher, because shipping companies and ship owners are not obliged to report attacks on their ships.¹⁰

Piracy is a global phenomenon but it has some very distinct regional variations. South East Asia is the scene of just about every form of modern piracy, from "hit-rob-run" attacks to attacks on the high seas, whereas the Somali "business model" focuses solely on hijacking merchant ships. In the Gulf of Guinea, Nigerian pirates are predominantly interested in stealing cargo from smaller tankers or targeting ships' safes. But individual crew members are increasingly finding themselves the target of attacks and kidnappings.

The size of the German merchant fleet means that it is often targeted by pirates, as is demonstrated by the hijacking of the German container ship Hansa Stavanger in 2009 and the Taipan in 2010.¹¹ In 2011 German shipping lines and owners were directly attacked on at least 64 occasions, with the figures falling to 41 in 2012.¹² In total, according to the IMB, between 2008 and 2013 over 3,500 crew members were taken hostage by pirates. They were often held for months or even years in terrible conditions and in some cases subjected to torture.

SOMALIA – A HOTSPOT OF PIRACY

Somali militia – armed with AK-47s and equipped with small, fast skiffs – have become the new face of modern piracy. Ships are hijacked off the Somali coast and crews held hostage until such time as a ransom is paid. The country's proximity to the Gulf of Aden and the Arabian Sea gives the pirates access to an area with a high density of targets thanks to its strategic importance for trade and the 20,000 ships that pass through each year.

Today, piracy off the Horn of Africa is a highly organised form of crime that is driven by the possibility of huge ransom payments with low attendant levels of personal risk. Before 2004/5 it was less organised and more opportunistic, with attacks taking place in the waters directly off Somalia. But groups then began to form themselves into proper

syndicates with the sole aim of hijacking ships and extorting ransoms. As a result, the numbers of attacks exploded from 45 in 2005 to 111 in 2008, with every second hijacking being successful from the pirates' point of view.¹³

So Somali piracy is not, as is often maintained, simply a form of defence against illegal fishing or a response to the illegal dumping of toxic waste. Instead it is an attractive "business model" with clear structures and a system of profit-sharing that is negotiated and sometimes even contracted in advance. Every year since 2009, pirates have brought in ransom sums of up to 150 million US dollars.¹⁴ Although the majority of these ransoms (which since 2010 have averaged 4-5 million US dollars per ship) flow into the coffers of the pirates' financial backers, government officials and other local leaders, membership of a syndicate is still a very lucrative undertaking for the seafaring pirates, whose cut of every ransom payment amounts to some 15,000-20,000 US dollars.¹⁵

For merchant ships, the likelihood of being attacked by pirates was less than one percent. And even economic losses (estimated at some 6 billion euros in 2012) initially seem low compared to the total volume of global trade. But for individual companies, piracy represents a significant financial risk because of soaring insurance premiums and the need to either invest in defensive measures or circumnavigate the high-risk areas. In 2012 the shipping industry was left to bear some 5 billion euros of these costs.¹⁶ Piracy also has a detrimental effect on the countries that border the Gulf of Aden due to an increase in insurance premiums for the region's ports and a drop-off in tourism. Somalia finds itself faced with price increases, threats to international aid shipments and a flourishing economy of violence. And finally, piracy compromises one of the main components of the Western liberal system – the freedom of the seas.

Deployment of naval forces to protect merchant shipping

Since December 2008, German forces have been involved in protecting merchant shipping off the Somali coast as part of the EU Naval Force Operation Atalanta. Operation Atalanta's primary aim is to safeguard shipments of humanitarian aid to Somalia, but it is also involved in protecting merchant shipping and pursuing and fighting piracy. NATO's Operation Ocean Shield and the Combined Task Force (CTF) launched by the USA are the other missions that make up the "big three". For NATO and the CTF, the priority is fighting piracy, so their more robust approach results in ships being freed from the hands of pirates. Other countries such as China, Russia and India also have their own national forces operating in the region. The main aim of these very active units is to protect their own merchant shipping. This often takes the



form of convoys to accompany their ships and the recapture of hijacked vessels.

However, the proximity of so many different naval missions with different priorities and operational powers can lead to problems, which are exacerbated by national provisos and restrictions. As a result, this has led to an intense need for coordination within and between the various missions. Practical, operational cooperation improves the effectiveness of the individual operations and offers an opportunity to balance out national caveats and restrictions within an operation.

Success in the fight against piracy

In 2008 the majority of attacks took place in the Gulf of Aden and coastal waters, and the protection provided by the navies resulted in greater security in this area.

This was largely due to the establishment of the Internationally Recommended Transit Corridors (IRTC) which allowed merchant shipping to sail past the Arabian Peninsula through the Gulf of Aden under the close surveillance of the task forces.

The pirates reacted to this by extending their area of operation to cover the whole of the Western Indian Ocean. Attacks were recorded from Madagascar to just a few hundred nautical miles off the Indian coast. This shift in operations was accompanied by a massive increase in attacks – in 2010 there were 219 attacks and 49 hijackings.

It is almost impossible to protect such a huge region because any effective surveillance would require many more patrol vessels than the international community is prepared to deploy. At present 15 ships are attempting to secure a region ten times the size of Germany. The navies' areas of operation are also restricted by their mandates.

The extension of the pirates' operations and increasing numbers of attacks have led shipping companies to invest more heavily in passive defence. The sheer size of the area to be patrolled means there is no guarantee that naval forces will be in a position to intervene in the event of an attack, so shipping companies have increasingly turned to employing private armed security teams on their vessels. This approach has proven to be successful, and to date no vessels have been hijacked when they have private armed security teams on board.

Even though the military task forces were initially unable to stem the tide of piracy, it is still right and proper that they were deployed because the protection of shipping routes constitutes a sovereign duty. Atalanta and NATO have worked together very closely to react to the changing circumstances, and since early 2011 their more robust actions against the pirates have met with some success. In May 2012 Atalanta's mandate was extended to include fighting piracy on land, a logical next step in light of previous experiences. Despite the fear of mission creep, this has in fact failed to materialise. Combating piracy at sea has also been enhanced by a mission to train the Somali security forces (EU Training Mission, EUTM) and, more recently, the provision of training for naval units, coastguards and police in the relevant coastal nations as part of the Regional Maritime Capacity Building for the Horn of Africa and the Western Indian Ocean mission (EUCAP NESTOR).

Have the Somali pirates been put out of business?

There has been a significant drop in the number of pirate attacks off the Horn of Africa since 2012 (75 attacks compared to 237 in 2011). This can largely be traced to three factors. Firstly, many pirate bands have already been caught as a result of the more robust Atalanta and NATO operations. The navies' show of force in the direct vicinity of known pirate villages on the Somali coast has also proven to be an effective deterrent. Secondly, the fact that shipping companies have increasingly taken steps to protect themselves, particularly through the use of private armed security teams on board merchant vessels, has led to a significant drop in pirates' success rate. As a result, pirates are finding it harder to cover their costs and the business is beginning to look less attractive. Thirdly, pirates are also facing more pressures on the terrestrial side. Military interventions in coastal villages have forced pirates to abandon some of their strategic bases.

This military pressure from land and sea and the pirates' reduced success rates mean the "business" has collapsed even further. In the first six months of 2013 there were only eight recorded incidents, including two ship hijacks, compared to 163 incidents during the same period just two years earlier.¹⁷ But even though piracy seems to be almost vanquished, there is still a need for caution. Internal conflicts in Somalia have led to battles for control over particular regions. Armed conflicts are generally detrimental to the pirates' business model. It remains unclear whether the pirates will be able to regain lost ground and quite how their groups will come out of the current wrangling for position. Piracy in Somalia has certainly not yet been defeated, and it is still necessary for German forces to play their part in the Atalanta operation and the training and support missions.



OUTLOOK AND RECOMMENDATIONS

The way Somali pirates have managed to threaten shipping lanes in the Gulf of Aden shows how the instability of seemingly far-off countries can have a direct impact on developed nations. In the medium term, the fragility of these states and the increase in the numbers of attacks in West Africa could drive Germany to become more involved in the protection of shipping routes in this area. Germany's dependence on the sea has to be mirrored by an increase in its engagement in this respect. Some specific recommendations:

1. Germany must recognise its dependence on the sea.

The importance of the sea for natural resources, food, transportation and as an arena for international conflicts will continue to grow in our maritime 21st century. In strategic documents, Germany needs to focus on its interests more strongly and boldly than ever before. It is also vital that the German public be made aware of the importance of the sea for the country's prosperity and the need to deploy political and military capabilities to safeguard access to trading routes.

2. Germany also has to be prepared to combat piracy off the coast of West Africa. The increase in attacks in this area is a cause for concern. Consideration should be given to assisting the coastguards in Nigeria and Benin to expand their capacity with the backing of EUCAP NESTOR, and to providing support for the West African economic community ECOWAS. Germany must be prepared to react appropriately to such developments, both politically and militarily.

3. State institutions in the region need to be strengthened in order to prevent maritime insecurity.

Piracy is a symptom of weak states, so at present Western countries are particularly committed to building and strengthening state institutions. However, if there is a clear unwillingness on the part of these states to take action against piracy, then Germany has an obligation to work with holders of regional and local power in order to combat piracy. In Somalia, this could take the form of a practical collaboration with local coastguards and militias, perhaps in the areas of intelligence and prosecutions.

4. Germany must create the correct legal basis to ensure that its military forces are given legal certainty.

The transfer of police duties to the military is particularly prevalent in asymmetrical conflicts. Even if the police hold legal powers, they generally lack the means to make themselves felt in the Horn of Africa. In Atalanta, the deployment of German forces is governed by article 24, paragraph 2 of the German constitution as a system of collective security

within the EU, because the scope of article 87a of the constitution is insufficient to cover such deployment. Pragmatic approaches such as Atalanta may bring lasting solutions, but in the upcoming legislative period efforts should be made to pass an amendment to article 35 of the constitution (legal and administrative assistance) and add an addendum to article 87a paragraph 2 to include the deployment of German military forces outside sovereign territory in accordance with international law in order to provide support for German federal authorities.¹⁸

5. Germany needs to have effective naval forces that are to be maintained solely in conjunction with its European partners.

The deployment of naval forces to fight piracy off the Horn of Africa has shown that Germany is prepared to make a military commitment to ensuring the safety of trade routes. Secondly, the European Union moved outside its area with its first maritime mission in the Indian Ocean. Thirdly, when it comes to the Indian Ocean and the shift of power in Asia, Germany's security policy needs to have an effective maritime component. All this means that Germany needs a broad-based and fully operational navy. However, budgetary considerations mean that the necessary military capacity can no longer be maintained at the purely national level, so it is all the more necessary to strive to increase European capabilities. Germany needs to drive forward initiatives such as Pooling & Sharing in order to make the most of synergies in the maritime area.

- 1| *Recommended further reading: Mahan, A. T. (1890): The Influence of Sea Power Upon History, 1660-1783. 12. Boston: Little, Brown and Company.*
- 2| *Yoshihara, T.; Holmes, J. R. (2011): Red Star over the Pacific: China's Rise and the Challenge to U.S. Maritime Strategy. Hamburg: Mittler & Sohn, p. 3. On the arms race in Asia cf.: Hefe, P.; Tensi, J.; Barth, B. (2012): Military Build-up Dynamics and Conflict Management in East and Southeast Asia, KAS International Reports 6/2012, pp. 64-89.*
- 3| *Feldt, L.; Masala, C.; Stricker, H.-J. & Tsetsos, K. (2013): Kein Land in Sicht, FAZ dated 01.04.2013. Accessed: 20.07.2013.*
- 4| *Till, G. (2009): Seapower. A Guide for the 21st Century. 2nd edition. London, New York: Routledge, p. 10.*
- 5| *For a more detailed examination: Hefe, P. (2013): A fragile value chain: The need for German maritime engagement, Facts and Findings no. 125, Konrad-Adenauer-Stiftung: Sankt Augustin. Cf. also: Petretto, K. (2013): Der maritime Raum und maritime Sicherheit: Deutschlands zwiespältige Dimension, in: Bruns et al.: Maritime Sicherheit, Wiesbaden: Springer VS, pp.147-164.*
- 6| *Chalk, P. & Hansen, S. (2012): Present Day Piracy: Scope, Dimensions, Dangers, and Causes, Studies in Conflict & Terrorism, Vol. 35:7-8, pp. 497-506.*
- 7| *If piracy is suspected, a warship or ship that is clearly marked as being in government service is permitted to stop and inspect the suspected ship on the high seas. If concrete evidence of piracy is discovered it is permitted to seize the pirate ship, arrest the suspected pirates and seize the property on board. Cf.: United Nations Convention on the Law of the Sea, article 100.ff., in particular articles 105 and 110.*



- 8| For a legal discussion, particularly with regard to German law, cf. König, D.; Salomon, T.; Neumann, T. & Kolb, A. (2011): *Piraterie und maritimer Terrorismus als Herausforderung für die Seesicherheit: Objektive Rechtsunsicherheit im Völker-, Europa und deutschem Recht*. Hamburg: Institut für Friedens und Konfliktforschung, Arbeitspapier 7.
- 9| Maritime terrorism will not be examined here in detail, for more on this see: Lehr, P. (2013). *Maritimer Terrorismus*, in: Bruns et al.: *Maritime Sicherheit*, Wiesbaden: Springer VS, pp. 115-127.
- 10| For more details on these figures, see annual reports for 2008-2012 entitled "Piracy and Armed Robbery against Ships" published by the International Maritime Bureau. For constantly updated figures on numbers of attacks, cf. *IMB Live Piracy Map*, <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures>.
- 11| After the *Taipan* was rescued by the Dutch navy, the attackers faced prosecution in Germany's first piracy trial for 400 years. The perpetrators were sentenced to up to 7 years in prison.
- 12| For more details on the global situation, see annual reports for 2008-2012 entitled "Piracy and Armed Robbery against Ships" published by the International Maritime Bureau. In the first six months, German shipping companies and owners were involved in 23 of the 138 incidents reported worldwide. For more details, see: ICC International Maritime Bureau (2013). *Piracy and Armed Robbery against Ships: Report for the period of 1 January-30 June 2013*, p. 16.
- 13| For a detailed review of the growth of piracy, cf. Hansen, S. (2009): *Piracy in the Greater Gulf of Aden. Myths, Misconception and Remedies*. Norwegian Institute for Urban and Regional Research Report 2009:29. For more on current developments, cf. Petretto, K. & Petrovic, D. (2012): *Fernab jeder Romantik – die moderne Piraterie vor der Küste Somalias*, *Aus Politik und Zeitgeschichte (APuZ)* 48/2012, pp. 10-16.
- 14| In comparison: The Puntland region in the Horn of Africa – home to most of the pirate villages – has an estimated annual budget of 16 to 20 million US dollars. Interview by the author with Saeed Mohamed Raage, <http://www.ims-magazin.de/index.php?p=artikel&id=1322049300,1,dnp>. Accessed: 20.07.2013.
- 15| Cf.: Geopolicity (2011). *The Economics of Piracy. Pirate Ransoms & Livelihoods off the Coast of Somalia*. http://www.geopolicity.com/upload/content/pub_1305229189_regular.pdf. Accessed: 20.07.2013. Cf. also: Financial Action Task Force (2011). *Organised Maritime Piracy and Related Kidnapping for Ransom*, Paris.
- 16| For more on the economic impact, cf. Bellish, J. (2013): *The Economic Cost of Somali Piracy 2012*, Broomfield: Oceans Beyond Piracy.
- 17| ICC International Maritime Bureau (2013): *Piracy and Armed Robbery against Ships: Report for the period of 1 January-30 June 2013*, pp. 5-6, 18.
- 18| Cf.: Feldt, Lutz (2009): *Was ist zu tun? Seesicherheit, Piraterie und Terrorismus auf See*. http://www.marineforum.info/html/body_feldt.html. Accessed: 08.08.2013.