

"The problem of piracy is not new, and the international law system long ago addressed it by defining piracy as a violation of the 'law of nations'. Given that, the question of who prosecutes pirates really turns more on mundane issues like who has the resources to do so, and what will be the diplomatic consequences of one nation versus another pursuing criminal charges.

One of the more interesting questions, however, is how do companies recover the costs they suffer as a result of piracy. Vessel owners have insurance for damage to their ships and any ransoms they might be forced to pay, but what about the other costs? Who pays for cargo that is not delivered on time, has spoiled as a result of lengthier trips that avoid troubled

waters, and so on? This could be a particularly significant issue in the United States, where much of that cargo is delivered and risk management programs likely have not adequately taken into consideration the losses resulting from acts of piracy. This is an area that needs to be explored in much greater detail."

Brian Finch, counsel and head of the Homeland Security Practice at Dickstein Shapiro, LLP

In the neighborhood of the western Indian Ocean, the land of Somalia (it's not really a nation) is the abandoned house that is now a meth lab. At first you could ignore it. Grass long, cars in and out all the time. Now, there are shots being fired and your house is in danger. Somalia is a mess and we need to clean it up – well, at least contain it.

So what do you do with a "nationless nation" that has devolved into total tribal warfare? Three things come to mind – none of them nice or pleasant or diplomatic. But remember, these are kyat driven, vaguely Al Queda connected pirates not ladies at a tea party.

First, you have to cauterize the wound. That is a polite way of saying coordinate naval efforts along the coast among interested nations – perhaps organize escorted convoys through the area. Then, when the pirates attack, kill them. And keep killing them. The reason pirates do what they do is the cost of entry – a few days siege, a quick "ship-napping" and they earn millions. While fear of death might not initially dissuade them, it will make the point there is a cost for doing what they do.

Second, kill them on land. While slightly repetitious to the first point, these guys have free reign where they are. There are stolen ships and hostages at their mercy in a free "pirate" zone. Coordinated special operations attacks on these zones will again make the point there is a cost of doing business that is steep. And, yes, we will likely lose people – a point on which no one should be cavalier. But, having pirates roaming open sea-lanes in the early 21st century is so ridiculous and dangerous as to be absurd.

The third point, and this is the hard one, the US needs to work with OAU, India, and Somalia's neighbors to begin the hard process of trying to reassemble this country; or at least divide it in a

way that the north can govern itself and the south can be managed or, at least cordoned off.

None of these options is going to be easy. It took 20 years of neglect and downward spiral to create this mess. Clearly, Al Queda and others would like to see it continue. But, it is now time to start cleaning up this "meth" lab and getting some semblance of normality back in the neighborhood.

Ron Marks, Senior Vice President for Governor Relations at Oxford Analytica, Inc. and Former Intelligence Counsel to Former Senators Bob Dole and Trent Lott

Piracy is an international problem that requires an international solution. Many steps in the right direction have already been taken; including the passing of UN Security Council Resolutions 1814/1816/1838, which allow entry into Somali territorial waters to ensure critical food shipments can reach their destination. However, these primarily address monitoring and response operations...until now.

Previously, the foundational challenge of addressing the problem of piracy was the lack of an established end game, or means to hold the offenders accountable within a legal system. Somali-based piracy is flourishing because it is profitable and nearly consequence-free due to the lack of governance and a judicial system in Somalia. Although governments and industry have focused considerable attention on interdiction, an essential element of any comprehensive counter-piracy plan is the establishment of a regionally based and readily accessible "consequence delivery system" to bring interdicted pirates to justice. Mutually agreed upon procedures for this must be established before an event occurs -- trying to finalize policy during an international incident is a recipe for confusion and failure. This is very similar to counterdrug operations that take place pursuant to international agreements that allow for the prosecution of those involved.

Yesterday (Dec. 2, 2008), the U.N. Security Council unanimously passed UNSCR 1846. From our perspective, the most significant aspect of this resolution is its inclusion of the Suppression of Unlawful Acts (SUA) clause. This clause, based on the United Nations Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, provides an immediately available instrument for logistically effective consequence delivery applicable to 78% of the world's States (those nations who have signed the Convention). The SUA Convention was the result of the hijacking and murder of passengers aboard the Cruise Ship ACHILLE LAURO in 1985 by the Palestinian Liberation Front (PLF). The act was doubly egregious because the murdered victim, Leon Klinghoffer, was wheel chair bound and defenseless. The SUA Convention was adopted by the IMO in 1988 and came into force in 1992.

SUA applies to nearly all of the attacks occurring in the Gulf of Aden, and obliges State Parties to criminalize such acts and establish jurisdiction when the offense is committed against their vessels or nationals. SUA establishes a framework whereby masters of ships may deliver suspected SUA offenders to a coastal State Party and the coastal State Party is obliged to accept custody and extradite or prosecute unless it can articulate why the Convention is not applicable. Leveraging States SUA obligations in conjunction with existing international law

against piracy provides an effective legal framework to deliver an "endgame." We have worked for several months now with our partners on the Joint Staff, through the "interagency process", and with our international partners to pursue this outcome. This is definitely a step in the right direction and I will provide updates in the future.

Admiral Thad Allen, Commandant of the United States Coast Guard, from his blog on <http://www.uscg.mil/comdt/blog/2008/12/dealing-with-piracywhats-your-endgame.asp>

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