

An Examination of Privateering as a Preventative Means of Modern Maritime Piracy

Honors Thesis

By

Myles Mastrototaro

Dr. Dane Morrison

Faculty Advisor

Department of History

Commonwealth Honors Program

Salem State University

May, 2015

Table of Contents

Introduction- 3

I. Maritime Piracy

- A. Examination of early piracy - 8
 - a. Methodology - 9
 - b. Economic impact - 11
 - c. Legal structures and Methods of prevention - 13
- B. Examination of modern piracy - 16
 - a. Methodology - 18
 - b. Economic impact - 19
 - c. Legal structures and Methods of prevention - 22

II. Privateers

- A. Pre-nineteenth century - 25
 - a. Background - 25
 - b. Legal structure - 27
 - i. Letters of Marque
- B. Modern
 - a. Private Military Security Companies (PMSCs) - 28
 - b. Legal structure - 30
 - i. Letters of Marque

Conclusion - 32

Bibliography - 33

Introduction

“War is business, to which actual fighting is incidental.”¹

- Alfred Thayer Mahan

During the period ranging from the seventeenth to the mid-nineteenth century, Americans had both numerous and significant interactions with pirates as both victims and benefactors. The legal frameworks put into place by both British and American governments helped combat pirate crews that hunted Caribbean and Atlantic waters. However, what historically threatened the lives and property of merchants trading in the Americas now poses a very serious threat to global trade by pirates along the coast of Somalia and in the Gulf of Guinea. Ban Ki-moon, the secretary-general of the United Nations describes piracy as a “global menace.”² While the many regions of the world that fall victim to chronic maritime predation all have unique circumstances, Somali piracy has taken the media by storm in the recent years, with help from motion pictures and major news networks. According to International Maritime Organization (IMO) statistics, in 2010 and 2011, the coastal region of East Africa and Indian Ocean comprised 84 percent of all reported global pirate attacks.³ Although the numbers listed in IMO reports have since dropped, the threat that Somali pirates bring to the

¹ Geoffry Till, *Seapower, A Guide for the 21st Century*, pg. 58

² Ban Ki-moon, “Remarks at Launch of World Maritime Day Theme for 2011: ‘Piracy: Orchestrating the Response,’” *UN News Centre*, 4 February 2011, www.un.org

³ International Maritime Organization, “Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report-2010”

international community are undeniable.⁴ While the methods of maritime piracy have changed over the centuries, the measures of deterrence have changed little, and the effectiveness of those methods even less. Similarly, the international laws put in place to apprehend pirate vessels create the same problems of jurisdiction as they did three centuries prior.

2010 Piracy Flashpoints

Somali pirates were responsible for 92 percent of all ship hijackings in 2010.



Table 1

2010 Piracy Flashpoints⁵

“Piracy is a subset of violent maritime predation in that it is not part of a declared or widely recognized war. Within the general category of maritime predation, a precise definition of piracy universally acceptable over time and between places has eluded jurists. A broad definition that emerges from historical writing is that of the essentially *indiscriminate* taking of property (or persons) with violence, on or by descent from the

⁴ Christopher Spearin, *Promising Privateers? Understanding the Constraints of Contemporary Private Security at Sea*

⁵ ICC International Maritime Bureau via <http://realtruth.org/articles/110610-002-africa.html>

sea.”⁶ While this is the general consensus on maritime piracy, historian Todd Hutchins writes that International law “grants universal jurisdiction so that ‘every State may seize a pirate ship’ on the ‘high seas, or in any other place outside the jurisdiction of any State’, and international law also dictates that inciting or failing to repress piracy falls within the definition of piracy itself.”⁷⁸ While the laws regarding the definition and prosecution of pirates have been altered throughout the centuries, methods of apprehension have changed little, as nations and states largely depend on costly navies and military forces to traverse both land and sea only to make very little progress towards bringing down the structure supporting maritime predation.

As maritime piracy reemerges as a serious threat to the international community, privateering may follow suit, as security of merchant vessels is becoming increasingly necessary. “The pirates have weapons and are not afraid to use them,’ Lieutenant Commander Ollie Hutchinson, the British Royal Navy liaison officer aboard the liner for its trip through the Indian Ocean, tells a briefing of passengers in the ship’s theatre. ‘Once the pirates have identified their target, they will try whatever means they can to get on board.’”⁹

⁶ J.L Anderson, *Piracy and World History: An Economic Perspective on Maritime Predation*, pg. 176 <http://www.jstor.org/discover/10.2307/20078637?uid=3739256&uid=2&uid=4&sid=21106124269701>

⁷ Todd Emerson Hutchins, *Structuring a Sustainable Letters of Marque Regime: How Commissioning Privateers Can Defeat the Somali Pirates* (2011) pp. 838

⁸ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. (UNCLOS), which defines piracy as “any illegal act of violence, detention, or depredation committed for private ends by the crew or the passengers, of a private ship and directed against a ship, aircraft, persons, or property on the high seas or in any other place outside the jurisdiction of any state”.

⁹ Peter Apps, *Have Hired Guns Finally Scuppered Somali Pirates?* <http://www.reuters.com/article/2013/02/10/us-somalia-piracy-idUSBRE91902J20130210>

Currently, countries deploy naval forces attempting to thwart or capture violent maritime criminals, and although this may deter some pirates, their approach is neither sustainable nor effective. Private military and security companies (PMSCs) offer a new approach to protecting vessels from pirates on a global scale by bringing back a centuries-old practice--privateering. Acting as private-security against Somali pirates, PMSCs have been credited in reducing pirate attacks, and the shipping industry looks to them for help. Due to recent events, private enterprises are willing to pay the price when it comes to protecting their employees and vessels, as an increasing number of PMSCs are contracted to the Gulf. "Security companies report an increase in requests for armed personnel, usually retired soldiers over the age of 30. After being hijacked in April and freed by U.S. Navy SEAL snipers, the Maersk Alabama brought on an armed private-security team, which successfully fought off an attack 300 miles off the coast of Somalia on Nov. 30. Nobody was hurt."¹⁰ While the use of private security on board is certainly more sustainable approach than a mobilized naval force, it is costly method considering the number of ships that pass through the Gulf of Aden, the main shipping route between the Middle East, Asia, and Europe. The Somali pirates are a threat inhabiting one area of the world that has direct control over the global economy, and scholars like Todd Emerson Hutchins believe that privateers provide an effect means of defeating a common enemy. And, Hutchinson identifies a legal justification:

The U.S. Constitution expressly provides that Congress, by issuing letters of marque, can enable private entities to conduct maritime

¹⁰ John W. Miller, *Loaded: Freighters Ready to Shoot Across Pirate Bow*
<http://www.wsj.com/articles/SB126265833983415885>

warfare on behalf of the nation. Successive generations of American governments have employed letters of marque to combat maritime threats efficiently. Once more, the commissioning of privateers might prove to be an appropriate tool in the battle to dismantle pirate networks.¹¹

The purpose of this paper is to identify the roles and legal frameworks of privateers to establish that they provide an effective means of preventing maritime piracy. This paper is organized in a manner that examines the roles of pirates and privateers in the past and present, in an attempt to answer relevant questions that currently hinder the usage of private navies in the near future. Are the methods currently in place to prevent piracy effective? Have privateers been effective in the past? If so, how can they be implemented to de escalate the maritime pirates who are an increasingly violent threat to both human life and the global economy?

A brief examination of American maritime history is required before continuing, specifically examining the roles of privateers during the seventeenth thru the mid-nineteenth centuries. While the actions of pirates and privateers are similar in nature, (raiding, plundering and seizing of naval vessels, assets, etc.) the authorization and legality of their actions are what set them apart. Privateers were privately licensed persons or vessels authorized by a government through legal documents known as letters of marque (which will be examine with more detail later in the paper). These letters essentially allowed the ship and crew to attack enemy shipping lanes during

¹¹ Hutchins, 819

times of war, without the penalties often faced by pirates.

Privateers were extremely effective as a means of mustering a navy of seaworthy ships and crews, but also as a tool to pressure merchant trade, force the deployment of enemy forces to protect shipping lanes, and as distractions from other engagements. Privateers who were captured during employment were to present their letters of marque to their captors, and expected to be tried as prisoners of war rather than criminals of the sea. Conversely, pirates had/have no affiliation with crown or country and given no authorization to commit illegal acts on water. Both pirates and privateers would play a significant role in American history throughout the colonial period, the War of 1812 and the Napoleonic War as a cheap and effective means to control global waters, from both soldiers and pirates.

I. An examination of early American piracy

Background

As long as maritime trade has existed, pirates have profited. Pirate captain Thomas Green once said in trial that “a pirate is in a perpetual war with every individual, and every state, Christian or infidel. Pirates have no country, but by the nature of their guilt, separate themselves, and renounce on this matter, the benefit of all lawful societies.”¹² Men (and women) who chose to sail under black flag by choice or not, no longer hailed to king or country. They had no loyalties or affiliation with authority. “Pirates through the ages have been as diverse as the rest of the human

¹² Hans Turley, *Rum, Sodomy, and the Lash: Piracy, Sexuality and Masculine Identity* (New York: New York University Press, 1999) 44.

population...Like most criminal paths, piracy has drawn courageous adventurers, sadistic psychopaths, and many who fall somewhere in between.”¹³

The cause of caribbean piracy throughout early maritime history is widely debated by pirate scholars, but in the glorified words of Pirate Captain Bartholomew Roberts, “in an honest Service, there is thin Commons, low Wages, and hard Labour; in this, Plenty and Satiety, Pleasure and Ease, Liberty and Power; and who would not balance Creditor on this Side, when all the Hazard that is run for it, at worst, is only a sower Look or two at choking. No, a merry Life and a short one shall be my Motto.”¹⁴ While it very well may have been the lust for freedom, greed, the love of the sea or the thrill of adventure that drove men to piracy, the discovery of gold and silver in the new world, thriving trade networks, unemployment and warfare made piracy a wealthy business. While piracy is rich in historical documents and lore, the methodology of early pirates is vital to determine the use of privateers during the same time period.

Methodology

Pirates during the 16-18th centuries used a wide array of techniques and tactics to target and find merchant vessels, including intelligence gathering and deception. Violence was often necessary when it came to taking prizes at sea, historian Cindy Valar explains. “Once the lookout sighted a potential target, the pirates did not immediately attack. They stalked the prey to identify the type of ship, whether she rode

¹³ Elizabeth Shostak, *Pirates Through the Ages*, Cengage Learning, (2011).IX.

¹⁴ Daniel Defoe (Captain Charles Johnson), *A General History of the Pyrates*, Edited by Manuel Schonhorn, (London, Dent, 1972), p.244

low or high in the water (full cargo vs. empty hold), and to determine the prey's possible firepower. This intelligence gathering took several hours to several days...Once pirates revealed their true intentions, they often fired a shot across their prey's bow as a warning to strike her colors and surrender. If the prey refused, the pirates attacked. To capture the vessel and her cargo while inflicting the least amount of damage as possible, their gunners peppered the sails rather than raking the prey with broadsides. Aloft, marksmen used muskets to clear the deck. Officers and helmsmen were favorite targets."¹⁵

Once aboard the vessel via netting, grapples and ropes, hand to hand combat would ensue, as described by Basal Ringrose as Spanish Bucaneer in 1680: "...such a miserable sight I never saw in my life, for not one man there was found but was either killed, desperately wounded, or horribly burnt with powder, insomuch that their black skins were turned white in several places, the powder having torn it from their flesh and bones...Their blood ran down the decks in whole streams, scarce one place in the ship was found that was free from the blood."¹⁶

Once the crew surrendered or were killed, little time was to be wasted. "The first thing the Pirates did, was to strip both Passengers and Seamen of all their Money and Cloths which they had on board, with a loaded Pistol held to every ones breast ready to shoot him down, who did not immediately give an account of both, and resign them up. The next thing they did was, with madness and rage to tare up the Hatches, enter the

¹⁵ Cindy Valar, <http://www.cindyvallar.com/tactics.html>

¹⁶ Cordingly, David. *Under the Black Flag: The Romance and the Reality of Life Among the Pirates*. New York: Random House, 1995.

Hould like a parcel of Furies, where with Axes, Cutlashes, etc., they cut, tore and broke open Trunks, Boxes, Cases and Bales, and when any of the Goods came upon Deck which they did not like to carry with them aboard their Ship, instead of tossing them into the Hould again they threw them over-board into the Sea. The usual method they had to open Chests was by shooting a brace of Bullets with a Pistol into the Key-hole to force them open.”¹⁷

While the technology differs greatly from that of today, many of the violent methods and mindset remain the same, as will be discussed later in the paper. Pirates were so effective for so long because they targeted vessels that often carried goods that did not belong to the crews that transported them, crews of men who favored their lives much more than their cargo. Similarly, it did little for pirate crews to kill entire crews, because damaged ships and goods offer little value to pirates, and living crew members provide valuable hostages. “‘Their war-cry was appalling; and the fury of the onslaught was such as to strike panic into the stoutest heart.’ After overcoming the crew, the pirates chained survivors, who would become hostages for ransom or slaves for sale, manned the captured ship, and proceeded to their home port.”¹⁸ These tactics are important for understanding pirates of the present day, especially when considering how and why letters of marque were issued to privateers during periods of heightened maritime crime.

¹⁷ *Extract from the Boston News-Letter. August 22, 1720. Via John Jameson, http://www.gutenberg.org/files/24882/24882-h/24882-h.htm#Footnote_1_828*

¹⁸ Lambert, Frank. *The Barbary Wars: American Independence in the Atlantic World*. New York: Hill and Wang, 2005. pg. 39

Economic Impact of Piracy

J.L. Anderson's work, *Piracy and World History: An Economic Perspective on Maritime Predation*, analyzes the legal and economic concepts of the nature and significance of piracy."The legal aspects of piracy affect expected returns and costs in what was essentially a business." Piracy itself results in a reduction in tradable assets. These losses can be considered as immediate, both indirectly and directly. Direct losses refer to the destruction of capital from the cargo of the ships, as well as loss of labor of those pirates who perish at sea. Indirect losses on the other hand, seem to be less obvious and according to Anderson, less noticed in the literature on piracy. Indirect losses include the resources consumed in contesting assets at sea, by both the pirate and the victimized merchant, such as ammunition, taxes paid for the defense of the target vessel, and insurance.¹⁹

When looking at piracy from an economic perspective, it is important to consider the immediate effects that theft has in the normal channels of trade. The producers as well as consumers of products which are taken during acts of piracy both are going to suffer as a result, although in different ways. For the consumer, fewer goods will be available, and at a higher price in terms of supply and demand. If the pirates placed the stolen goods on the market, the producer would have a total loss, which would inevitably have an effect on further production of said goods. Therefore, predation increases the risk of business, which drives the producer to self-insure against piracy, and lower the risk of business for their own best interest.²⁰

¹⁹ J. L. Anderson, 179

²⁰Ibid

According to historians George Francis Dow and John Henry Edmonds, authors of *The Pirates of the New England Coast: 1630-1730*, piracy's effect on the British colonies was so blatantly obvious at the tail end of the 17th century, that "the profits of piracy and the irregular trade practiced at that time were large, indeed, and twenty-nine hundred per cent profit in illicit trade was not unusual..."²¹ As piracy had increasing effects on the market in the colonies and Euro-American trade routes, England began taking steps to suppress maritime crime.

Legal Structures and Methods of Prevention

During the height of maritime predation there were two ways to reduce losses due to piracy: "through a reduction of predation, affected perhaps by more efficient naval patrols, and through a reduction in the costs of providing a given level of protection, as could result from the development of fewer but individually more effective warships."²² By the turn of the 18th century, England began cracking down on piracy, and by increasing naval forces as well as passing effective navigation acts, pirates were running out of places to operate. "In the Caribbean and colonial waters, increased volume of trade in the eighteenth century meant that governors, state officials, as well as planters and merchants, could benefit more from legitimate activities than from corruptly supporting or clandestinely supplying the pirates."²³

While piracy thrived in the Americas for over two and a half centuries, growth in

²¹ George Francis Dow and John Henry Edmonds, *The Pirates of the New England Coast: 1630-1730*. (Salem, MA: The Marine Research Society, 1923; reprint, Mineola NY: Dover Publications, 1996), 19.

²² J. L. Anderson, pg. 180

²³ Ibid, pg. 185

America of domestic production and trade afforded alternative employment for labor and capital and led to a demand for the suppression of piracy. As a result, agents and officials of the states, as well as the naval powers were becoming more efficient and of increasing reliability.

A series of navigation acts put into place by the English government throughout the 17th and 18th centuries helped suppress piracy in the Caribbean .While there was much motivation for England to stop and enforce piracy which was taking place in the Caribbean and along the Atlantic coast, during the late 17th and early 18th centuries the legal problem of suppression of piracy was compounded by questions of jurisdiction. While nation-states were being formed and often contested in Europe, the sea could not be divided or protected based on boundaries. There could be no lawful general policing of the ocean, as there was almost always a war going on, and privateering running amok.²⁴

Prior to the navigation acts implemented in America by Britain during the turn of the 18th century, the problems with jurisdiction and unclear policies made it close to impossible to prosecute successfully criminals at sea. The British legal system at the time was built upon common law, allowing circumstantial evidence to be admissible. However, in order to administer punishments, or to be tried in that matter, all criminals had to be extradited back to England. This nuisance of conflicting jurisdiction for relatively weak colonies, who themselves had weak or non-existent navies, was accompanied by the problem of the sheer size of the Caribbean and Atlantic.

²⁴ Alfred P.Rubin, *The Law of Piracy*. (University Press of the Pacific, 2006). 337-46

Vice Admiralty Courts would later be established in the colonies operating under the High Court of Admiralty in England. However, some scholars believe that there seemed to be some doubt as to whether or not they really had enough jurisdiction to try pirates.²⁵ These courts would try pirates, who if found guilty would be put to death by hanging. *“Murthers and Robberies committed upon the Sea...shall be enquired into, try’d, heard, and determined, in such Places and Counties within the Realm, as shall be limited by the King’s Commission...and such Commissions (being under the Great Seal) shall be directed to the Lord Admiral, his Lieutenant or Deputy, and to three or four such others as the Lord Chancellor shall name”*²⁶

Furthermore, while Vice Admiralty Courts provided a means for pirates to be put to trial, navigation acts helped to deter would be pirates from criminal activity. One of these acts entitled *An Act for the more Effectual Suppression of Piracy*, commonly referred to as the Piracy Act of 1698, was commissioned as such: “Upon notice given, or knowledge of the Landing of any Pirate or Sea-robber, or other Person suspected to be such, all Officers, Civil and Military, are required and impowered to raise and levy such a Number of well-arm’d Men, as they shall judge necessary for apprehending them; and in case of Resistance or Disobedience, to kill them. All Persons opposing or resisting this Authority, by striking or firing upon any Person in Execution of this Act, declared a Felon without Benefit of Clergy. Every such Officer omitting or neglecting his Duty herein, forfeits fifty Pounds Sterling, half to the King, half to him that will inform or

²⁵ Andrews, *The Colonial Period of American History*. (1938), 222-271

²⁶ Original document is reprinted in: Alfred P. Rubin, *The Law of Piracy* (Newport, RI: Naval War College Press, 1988)

sue.”

As the colonies continued to flourish, American and European trade boomed and the naval presence in the Caribbean increased in order to protect growing assets. Piracy dropped significantly, but was not completely eradicated. As piracy fell, a different form of maritime predation occurred using legalized methods. While pirates had lost control of the Atlantic by the early 19th century, privateers were becoming an increasingly useful service for America and nations alike.

II. Examination of Modern Piracy:

Background

While Somali piracy has been a global threat since the 1990's, recent events like those depicted in the 2013 blockbuster film *Captain Phillips* have helped inform those of us not directly impacted by the violence on the water. “On April 8, 2009, in waters about 350 miles (563 kilometers) off the coast of Somalia, four pirates boarded the *Maersk Alabama* in a botched attempt to seize the cargo ship. After a stand-off with the ship's crew, the Somali pirates took the captain, Richard Phillips (1963–), hostage and sped off in a life boat. They were soon surrounded by military warships and helicopters from several nations, and for five days the pirates held the captain at gunpoint on the small boat. Footage of the hostage situation was broadcast to millions of television viewers throughout the world. In the end, U.S. Navy snipers killed the pirates and rescued Phillips. But piracy experts noted that the rescue of Phillips was the exception; at the time of his rescue, pirates held hundreds of other hostages in Somalia. The *Maersk*

Alabama incident, only one among hundreds of pirate attacks in the waters off Somalia over the period of a few years, brought international attention to the rise in piracy in the twenty-first century, after many twentieth-century history books had pronounced piracy a thing of the past.”²⁷ While the Maersk Alabama incident helped shine light on the growing problem of maritime predation in the Gulf of Aden and put into motion methods of piracy prevention, it is vital that we examine the cause of modern piracy, specifically Somali.

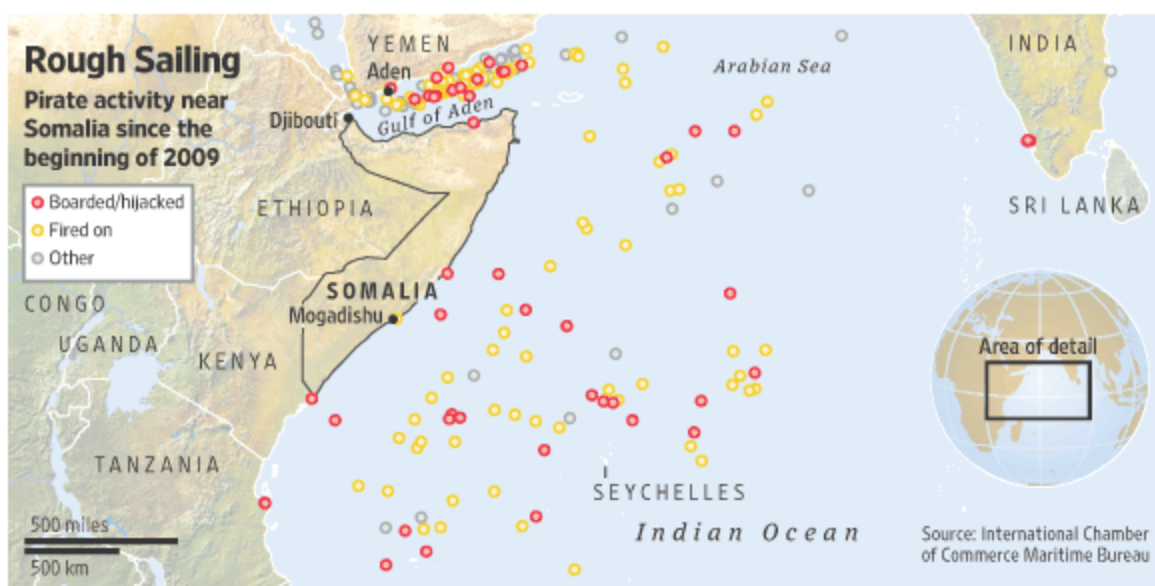


Table 2

Rough Sailing - 2009 Somalia Piracy²⁸

²⁷ Elizabeth Shostak, viii

²⁸ IMAGE <http://www.wsj.com/articles/SB126265833983415885>

Modern historians, economists and military minds agree that there are multiple factors that come into play when trying to determine the cause of piracy, and Somalia is no exception. “Wilson (2009) states that piracy generally occurs when poverty is present, coupled with a weak or non-existent government. He notes that maritime crimes in Somalia gradually soared in 2005, resulting from the deteriorating economic situation in the country and the absolute neglect by the international community. This culminated in extreme anxiety on the part of Somalis to survive. The annual income in Somalia is estimated at US \$650 whereas a single act of piracy can yield US\$10,000 or even more for an average pirate. The quest for economic survival has thus been the major propeller of some citizens into piracy in Somalia.”²⁹ Somalia presents a lawless state in which piracy can thrive, both on land and at sea. Pirates have homes to return to without threats, which makes apprehension so difficult (as will be discussed.) It seems to be clear that the root cause of Somali piracy is the unstabilized nature of both the government and economy. “The threat of piracy, though seen as a local event, actually has global repercussions and only by collaboration among states can the threat be dissolved. However, it must be noted that the problem of piracy cannot be eliminated, just contained, reduced and the perpetrators punished. The stabilization of Somalia would be the first step to overcoming piracy (Wilson, 2009)”³⁰

Methodology

²⁹ Joana Ama Osei-Tutu, *The Root Causes of Somali Piracy*, <http://dspace.africaportal.org/jspui/bitstream/123456789/31688/1/Occasional-Paper-31-Joana.pdf?1>, referencing Wilson, B. (2009). *Effectively Confronting a Regional Threat: Somali Piracy*.

³⁰ Ibid pg. 6

As mentioned before, pirates of the 21st century are well equipped and willing to fight. The U.S. Department of Transportation Maritime Administration does an excellent job of describing Somali pirate tactics: “pirates are using motherships loaded with attack skiffs, to intercept shipping. Attack skiffs are off-loaded to conduct the attack.”³¹ These pirates look for the ideal target, a vessel with a low freeboard (a design that allows easy access to the surface of the water³²), a slow speed of under 14 knots (Kts), and no protection.³³ These skiffs then sail alongside the merchant vessel “shooting automatic weapons and rocket propelled grenades...pirates use grappling hooks and modified ladders to climb aboard and secure the crew.”³⁴ After the crew and vessel are secured, pirates direct the vessel to a pre-determined area along the coast, where negotiations ensue between a pirate negotiator and either ship owner or shipping company. Prisoners are rarely harmed, although “frequently threatened with bodily harm.” Both the ship and crew are released when ransom is received, although some vessels may be stolen and converted to be used as motherships by pirates.

Economics of Piracy

Interestingly, the financing of pirate crews is rather sophisticated. “They estimate that between \$339m and \$413m was paid in ransoms off the Somali coast between 2005 and 2012. The average haul was \$2.7m. Ordinary pirates usually get \$30,000-75,000 each, with a bonus of up to \$10,000 for the first man to board a ship and for those

³¹ Paulo Bruno, http://www.marad.dot.gov/documents/Somali_Piracy_Trifold_30NOV2010.pdf

³² <http://maritime.about.com/od/Glossary/g/Freeboard-What-It-Means-And-Why-Its-Important.htm>

³³ http://www.marad.dot.gov/documents/Somali_Piracy_Trifold_30NOV2010.pdf

³⁴ Ibid

bringing their own weapon or ladder.”³⁵ With crew sizes varying from half a dozen to two dozen men, a significant (and the majority) amount of the haul goes to investors, debtors, equipment and third parties. For some pirate crews, narcotics and take a toll on returns. “Qat, a narcotic plant that is chewed by many, is often provided to pirates on credit during an operation. Their consumption is recorded and, when the ransom is paid, each pirate gets his share, minus what he consumed. Other deductions include food and fines for bad behaviour, such as mistreating the crew, which often carries a \$5,000 fine and dismissal.”³⁶

As discussed in the previous section, poverty is recognized as one of the leading causes of Somali piracy. The economic hardships experienced by the majority of these pirates can often be perpetuated by the crimes they commit, rather than halted. “Some pirates find it difficult to retire because they end up in debt at the end of a hijack...Payments go to cooks, pimps and lawyers, who are increasingly sought after, as well as banknote-checkers with machines that can detect fakes. Money is also paid to militias that control ports. Under one agreement in Haradheere, a port north of Mogadishu, Somalia’s capital, pirates paid a “development tax” of 20% to the Shabab, an Islamist rebel group tied to al-Qaeda.”³⁷ Under these circumstances, it is clear to see how some people who turn pirate end up having to repeatedly commit crimes in order to sustain any form of lifestyle.

³⁵ The Economist, *Somali Piracy: More Sophisticated Than You Thought*
<http://www.economist.com/news/middle-east-and-africa/21588942-new-study-reveals-how-somali-piracy-financed-more-sophisticated-you>

³⁶ Ibid

³⁷ Ibid

Conversely, those who finance pirate operations in Somalia make large profit for relatively low overhead given that much of the equipment for pirates is loaned.

“Financing pirate expeditions can be quite cheap by comparison. The most basic ones cost a few hundred dollars, which may be covered by those taking part. Bigger expeditions, involving several vessels, may cost \$30,000 and require professional financing. This comes from former police and military officers or civil servants, qat dealers, fishermen and former pirates. They take anywhere between 30% and 75% of the ransom. A typical operation has three to five investors. Some provide loans or investment advice to other financiers. Some financiers, especially those in the Somali diaspora who have little cash inside Somalia but large deposits abroad, employ what the report describes as ‘trade-based money-laundering’ to send funds to Somalia. This involves finding legitimate Somali importers willing to use a financier’s foreign money to pay for their shipments and reimburse him at home in cash once the goods are sold.”³⁸

While the costs of piracy are minimal to investors considering the potential payouts that governments and companies are willing to pay for hostages, piracy is costing the global economy significantly, with little of that cost associated with the hostage. According to a report by Oceans Beyond Piracy, the 2011 economic cost of piracy was between \$6.6 and \$6.9 billion.³⁹ “The report assesses nine different direct cost factors specifically focused on the economic impact of Somali piracy,” explained Anna Bowden, the report’s author, “Over the past year we have had substantial

³⁸ Ibid

³⁹ Anna Bowden, *The Economic Cost of Somali Piracy*
2011://www.worldaffairsjournal.org/content/somali-piracy%E2%80%99s-impact-global-economy-nears-7bn

cooperation from maritime stakeholders which has helped to ensure the figures are as reliable as possible.”⁴⁰

As the report describes, it is not the hostages or inventory that makes up the majority of the economic impact of Somali piracy, but rather the methods of prevention and avoidance. “The vast majority (99%) of the billions spent are attached to recurring costs associated with the protection of vessels – costs which must be repeated each year. This figure is in sharp contrast to the \$38 million spent for prosecution, imprisonment, and building regional and Somali capacity to fight piracy. Average ransoms increased 25% from approximately \$4 million in 2010 to \$5 million in 2011. Although the total cost for ransoms was \$160 million for 2011, money collected by pirates represents a mere 2% of the total economic cost. While ransoms provide the incentive for Somali pirates to attack vessels and hold hostages, they represent a disproportionately small cost compared to the nearly \$7 billion spent to thwart these attacks.”⁴¹ Pirates in Somalia and around the world present a complex problem to the global economy, a problem that has been addressed and responded to within the last few years with a variety of methods.

Legal Structures and Methods of Prevention

As pirates today arm themselves with rocket launchers, fully automatic weapons and speedboats, they are becoming increasingly capable of committing violent crimes. Furthermore, with the failed state of Somalia and corrupt officials providing many them

⁴⁰ Ibid

⁴¹ Ibid

with a safe haven, a global response is necessary and required for piracy to be contained. To address the serious threat that piracy brings to the international community, organizations have pioneered maritime enforcement regime, designed to work with comprehensive, but often ineffective, international laws. Entitled “Law of the Sea Convention”, the United Nations define piracy as acts of violence, depredation, and hostility for by private means outside of the jurisdiction of any state.⁴² Under this definition, waters along the coast of Somalia, which make up a significant number of pirate attacks, are excluded. However, if an attack were to occur in international waters, warships have the legal precedence to use force to engage and deter pirates. “Therefore, when piracy occurs in the territorial waters of a particular state, pirates are subject to that state’s jurisdiction and capacity to prosecute...The narrow scope of the Law of the Sea Convention’s piracy provisions severely limits the availability of international law to deal with piracy in places such as Somalia.”⁴³

Clearly, jurisdiction and legal structures in place in territorial waters pose a serious problem for many maritime vessels that may be engaged and require help, and as the Law of the Sea Convention definition “[These attacks] do not fall under the definition of piracy, but are simply considered ‘sea robbery’ under international law, and are dealt with by the laws of that country. Domestic laws seldom permit a vessel or warship from another country to intervene. Illegal acts committed for political rather than

⁴² Law of the Sea Convention, 87

⁴³ Mario Silva *Somalia: State Failure, Piracy, and the Challenge to International Law*, Virginia Journal of International Law Volume 50-issue 3, pg. 570

private ends also fall outside the international law definition of piracy.”⁴⁴ The United Nation Security Council (UNSC) have worked diligently to find solutions that best deal with the Somali situation. The UNSC “call [ed] upon States...to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by developing naval vessels and military aircraft...”⁴⁵ By adopting new resolutions to help increase the effectiveness of the Law of the Sea Convention, in 2008 the UNSC implemented and repeatedly extended an initiative that allowed the repressing of piracy in Somali territorial waters by multinational naval coalitions for a period of six months, by whatever means necessary.⁴⁶

Navies today provide the major role in deterring and fighting pirates, “with thirty warships from China, the North Atlantic Treaty Organization (NATO), the European Union, the United States, and even Iran. Yet the ragtag Somali pirates have the upper hand in the fight against the unified fleet...”⁴⁷ Described as the largest anti-piracy force in modern history⁴⁸, a unified navy does not provide a sustainable approach. Rather than implementing strategies that prosecute captured pirates, these unified naval forces often focus on catch and release strategies. “A U.S. Navy ship has sunk a pirate "mother ship" in the Indian Ocean and captured 11 pirates, and then promptly let them go...A Naval official told ABC News that the practice of releasing pirates is not unheard

⁴⁴ *Modern Day Piracy and International Law*, Simpson Grierson.

<http://www.simpsongrierson.co.nz/assets/publications/onthecase/ModernDayPiracyDec08.pdf>

⁴⁵ S.C. Res. 1838, U.N. Doc. S/RES/1838 (Oct. 7, 2008)

⁴⁶ S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008)

⁴⁷ Hutchins pg. 827

⁴⁸ Alisha Ryu, *Somali Piracy Exposes Weakness in UN Law of the Sea*, Voice of America (Apr. 8, 2009), transcript available at <http://www.voanews.com/english/new/a-13-2009-04-08-voa67-68785907.html>

of.”⁴⁹ The use of this tactic stems from the issue of prosecution and legal responsibility, and is complicated further when naval vessels that are charged with combating pirates find themselves with a captured crew of pirates while there are still countless potential threats sailing in the Gulf of Aden. “If the country of the attacked ship does not want to prosecute the pirates, and if Kenya, which has signed a Memorandum of Understanding with the Naval forces, does not agree to prosecute them, there are few options as to where the suspected pirates can be held and tried.”⁵⁰ The need for another method of prevention is dire, accompanied by a sustainable method of pirate prosecution and conviction. Current laws like the Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention), requires states to prosecute any pirates that are brought to their countries, and contains detailed legal frameworks for prosecution. However, many countries in the vicinity of piracy lack the resources and/or prisons to house criminals.

Another unsustainable method of preventing pirate attacks in the Gulf of Aden used by some companies is to bypass the area altogether, “adding three thousand miles and from two to three weeks to voyages, incurring additional fuel costs of \$3.5 million per year for tankers and \$74.4 million per year for the liner trades”⁵¹ As previously mentioned, much of the maritime trade industry depends on very small profit margins in order to be successful, and not only does this method do nothing to deal with

⁴⁹ Dana Hughes and Krit Radia, *U.S. Navy Ship Grabs More Pirates, Lets Them Go*, via ABC World News. <http://abcnews.go.com/WN/pirates-captured-released/story?id=10270726>

⁵⁰ Ibid

⁵¹ David Isenberg *The Rise of Private Maritime Security Companies* <http://www.seasecurity.org/mediacentre/the-rise-of-private-maritime-security-companies/>

the underlying problem of piracy, which is the existence of a failed state, it also doesn't benefit the global economy.

While statistics show that an increased naval presence in Somali waters and other known areas of maritime crime do have a positive effect on reducing pirate attacks, it is costing between \$250 million and \$400 million per year. It is not the most practical, sustainable, and in terms of the global economy, not nearly the cheapest.

II. Pre-Nineteenth Century Privateering

Background

"Many of history's major pirate eras began with governmental policies that encouraged the licensing of privateers, private ships or ship owners commissioned by their government to raid enemy ships during wartime. The actual work that pirates and privateers do is the same. They attack ships, usually merchant vessels, or coastal communities, and they use violence or the threat of violence to rob their victims of valuables, sometimes taking the ship itself as a prize. The main difference between pirates and privateers is that pirates work solely for their own profit, while privateers, at least in theory, work for their country. While piracy is illegal, privateering is considered legal, at least by the nation that licenses the privateers."⁵²

Historically, privateers were privately owned and operated vessels that were granted licenses to seize the shipping assets belonging to the citizens of enemy states

⁵² Shostak, ix.

and if necessary hunt down pirates. An effective means of waging war on scales both grand and small, privateers had many advantages from the standpoint of the licensing government, and played a significant role in naval warfare throughout American and European history. At times, these licensed privateers provided the majority of the naval force employed by one or all of the belligerent powers, the United States included.⁵³ Many historians consider early privateers as legal thieves. “In the Mediterranean Sea, from the sixteenth to the eighteenth century, the line between piracy, privateering, and trading was seldom easily discernible.”⁵⁴ Although many privateers acted like criminals, their actions were more so a reflection of circumstance, during a time when predation was “an intrinsic part of public finance and of circumstance,”⁵⁵ and income was determined by what was seized during privateering missions, as determined by letters of marque. Many privateers were often commissioned for the purpose of pirate hunting, a role that may again help combat criminals off the coast of Somalia. In order to better understand the basis for privateers and the legal structure of privateering itself, the historical properties of letters of marques must be examined, commissions that may very well be used in the near future.

Legal structure: Letters of Marque

⁵³ Cato Journal, Vol. 11, No. 1 (Spring/Summer 1991). Copyright © Cato Institute. All rights reserved. The authors are professors in the Department of Economics at California State University, Northridge.

⁵⁴ J.L. Anderson, pg. 186.

⁵⁵ Ibid

In order to significantly reduce maritime predation, letters of marque will once again have to be introduced. The term letters of marque emerged as early as 1205 AD⁵⁶ as a means of universal recognition by more than one state despite mixed perceptions towards one another. In the maritime application, a letter of marque is a “legal authorization enabling private entities- privateers- to use force on behalf of the state to harass or prey on vessels belonging to foreign nations or individuals.”⁵⁷ Constitutionally, the Marque and Reprisal Clause allows Congress to issue letters of marque to private ventures as a means to protect American interests, both domestically and abroad; a cost-effective and more sustainable investment than traditional armed forces.⁵⁸

While privateering traces its roots to 13th century Europe, throughout the colonial period privateers played an important global role protecting merchant trade, until the rise of powerful British and Spanish navies limited the practice to the western hemisphere.⁵⁹ In fact, the issuance of letters of marque under the reign of Queen Elizabeth was so significant that when James I ascended to power and reversed the privateering policies, “tens of thousands of out-of-work English privateers soon moved their operations to the Caribbean...many essentially became pirates.”⁶⁰

Just as letters of marque played a key role in both Europe and America during the colonial period, they rose in popularity during the Revolutionary War, under the

⁵⁶ Acts of war authorized by letters of marque, English Grant to the Captor of Ships in 1205. ENGLISH GRANT TO THE CAPTOR OF SHIPS (1205), <http://www.hillsdale.edu/dept/History/Documents/War/Med/Naval/1205-Captor.htm>.

⁵⁷ Hutchins, pp. 844

⁵⁸ “The Congress shall have Power To...grant Letters of Marque and Reprisal” United States Constitution. The Marque and Reprisal Clause. Article 1, Section 8, Clause II.

⁵⁹ Theodore Cooperstein, Letters of Marque and Reprisal: The Constitutional Law and Practice of Privateering, 40 J. mar. L. & COM. 224 (2009)

⁶⁰ Hutchins, 846. (Quoting Amanda J. Snyder)

Articles of Confederation. In opposition to the rebelling colonies, Britain called to arms privateers to attack and seize colonial vessels, ships of war, and any other means of supplies belonging to colonists, even allowing them to keep half the value of the prizes.

⁶¹ In fact, letters of marque were so common that in the period between 1777 and 1783, British Lord High Admiral and his agents had issued a total of 7352 letters. “This considerable total of over 1225 a year compares with 97 (or 47 a year) issued during the War of the Quadruple Alliance (1718-20), 1570 (about 160 a year) during the War of Austrian Succession (1739-48) and 2104 (almost 300 a year) during the Seven Years War. Of the 7352 commissions issued...31 percent were issued against America.”⁶² The role of privateers for the purpose of warfare or anti-piracy is essentially the same; attack and seize the enemy ship, confiscate goods and persons, and return for payment. Privateers, when used responsibly were and can still be an effective force to deal with marine predation, without having to devote countless man hours required by naval forces.

Modern Privateers

Private Military and Security Companies (PMSCs)

As the purpose of this paper is to determine the potential effectiveness of privateers as a means to combat Somali pirates, and the legal and jurisdictional requirements associated with such a task, it is necessary that we identify the parties best suited to take on the role. Within the past couple of years, private military and

⁶¹ Cooperstein, 225

⁶² Walter Minchinton, *Marque Declarations Against America 1777-1783*, Public Record Office <http://www.1812privateers.org/Great%20Britain/Intro.pdf>

security companies, also known as PMSC's, have proven that they are capable of implementing lethal force to protect merchant vessels from threats at sea.

David Isenberg, an analyst in national and international security affairs, claims that "If you have spent any time following the news about Somali piracy the past several years you are likely aware that private security contractors have been used to an increasing extent to protect commercial ships transiting near the Red Sea, Gulf of Aden, Arabian Sea, Gulf of Oman and parts of the Indian Ocean."⁶³ PMSC's operate through contracts with governments, states, officials and in the private sector, by providing armed security and a "boots on the ground" approach to a range of scenarios. PMSC's seem to have taken advantage of the outbreak of piracy in Somalia, and have become one of the best options for merchants and global traders. "[PMSC] personnel seems to be effective in repelling piracy attacks and so far no ship with armed guards has been taken by pirates. Thus, by contracting maritime security protection, multinational companies look to minimise risks and to maximise profits. They try to protect their human resources and cargo and avoid payments of ransoms and insurance complications."⁶⁴

The request for armed personnel is on the rise, and some insurers are making a point of arming ships that pass through the Gulf of Aden. Catering to the worries of these companies, PMSC's are busy providing both armed and unarmed protection for a

⁶³ David Isenberg, *Somalia and the PMSC Market*, <http://iisonline.net/somalia-and-the-pmsc-market/>

⁶⁴ Pedro Barge Cunha, *Somalia as a market for private military and security companies: definitions, agents and services*, https://repositorio.iscte-iul.pt/bitstream/10071/5107/1/6Pedro_Cunha_Somalia.pdf

cost. "Hiscox Ltd., for example, now offers premium reductions of up to 50% for ships that buy armed protection...rates for a team of armed guards vary greatly, between \$25,000 and over \$100,000 for crossing the Gulf of Aden...the guards carry handguns, but the risk of a catastrophic escalation is minimal"⁶⁵ While the cost of protection varies, for some companies it just is not possible to arm every ship that they send across the Gulf. With over 20,000 ships sailing through the Gulf of Aden, many of whom are "already operating with almost no profit margin due to the global recession...would have difficulty assuming these additional costs."⁶⁶ The concept of PMSC as applied as a preventative measure against piracy is hopeful, but to make it affordable and sustainable, an international approach to the legal structures is mandatory. A structured letters of marque convention will allow for PMSC's to take the role of modern privateers in an effort to make the waters surrounding India and Somalia a stable environment.

Letters of Marque for the Modern Privateer

In order to be effective privateers will need to be globally recognized. Whether hired by a private party or a state, they will have to follow the same legal structures set in place by internationally recognized law, most likely put into place supported by organizations like U.N. and NATO. One of the problems that PMSC's and naval forces face under the laws currently in place, is whether or not lethal force force or firearms should or can be used to deter pirates. "Although the provision and use of weapons at sea for self defense is legal, there are a myriad of contradictory laws as soon as those

⁶⁵ John W. Miller, (2010).

⁶⁶ Hutchins, pg.836

security teams start heading to port. Additionally there is a growing public, government and industry concern that the provision of this force may be yet another armed group that needs to be regulated.”⁶⁷ While PMSC’s today are stationed on board the vessel that they are guarding, the most effective means for privateering would be in smaller, armored vessels that will be able to patrol the Gulf of Aden, an area roughly $\frac{2}{3}$ the size of the United States. As most PMSC’s are heavily armed and capable military veterans, proper equipment will not be a problem. However, for privateers to be effective and economically sustainable by the public and the state, they will need to be given contracts mandating terms of service.

In conjunction with a new system of international imprisonment, the United States can lead the charge against piracy with a new privateering regime. “Without any international or domestic legal bars, the U.S. Congress could safely and transparently reinstate letters of marque. Today, both sides of the political spectrum express openness to using private entities to fight pirates and protect merchant shipping”⁶⁸, and as researcher Todd Hutchins states, letters of marque should focus on transparency and accountability, implementing safeguards that include professional licensing and meticulous procedural requirements to ensure that privateers do not “go rogue.”⁶⁹

⁶⁷ David Isenberg, *The Rise of Private Maritime Security Companies*, SAMI, <http://www.seasecurity.org/mediacentre/the-rise-of-private-maritime-security-companies/>

⁶⁸ Hutchins, pg. 877

⁶⁹ Ibid

Conclusion

In order to put a stop to piracy, the global community needs to change the current approach. Issuing PMSC's with letters of marque provides the international community with new methods of combating not only the pirates on the water, but also the investors, kingpins and corrupt officials that are backing criminal activity. Somalia is a failed state that acts as a revolving door, ushering in terrorism and crime to the Gulf of Aden. Privateers, when kept in check, can provide effective force for deterring pirates. While the legal structures necessary for reinstating privateers for an extended period of time would require a global effort, the United States already has the constitutional capabilities to issue letters of marque. Article 1 section 8 of the Constitution states that "Congress shall have the power to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."⁷⁰ In a world ridden with terrorist and extremist threats like ISIS, Al Qa'ida and Al Shabaab, putting a stop to the piracy would do more than stabilize the shipping industry, it would be one step closer to protecting innocent lives, foreign and domestic. Many scholars today believe that privateering is an archaic notion, no longer applicable to modern society. The same was said about piracy, and within the past decade it has taken the international shipping industry by storm; capturing and robbing vessels, kidnapping

⁷⁰ <https://www.law.cornell.edu/constitution/article1>

crews, and taking the lives of both innocents and pirates alike. Piracy is a legitimate threat to the global economy, and privateering is a legitimate approach to dealing with maritime crime.

Bibliography

- Apps, Peter, *Have Hired Guns Finally Scuppered Somali Pirates?* Reuters.com
<http://www.reuters.com/article/2013/02/10/us-somalia-piracy-idUSBRE91902J20130210>
- Anderson, J.L., *Piracy and World History: An Economic Perspective on Maritime Predation*. Journal of World History. 1995.
<http://www.jstor.org/discover/10.2307/20078637?uid=3739256&uid=2&uid=4&sid=21106124269701>
- Andrews, Charles M., *The Colonial Period of American History*. (1938), 222-271 via Temple University Article, <http://www.jstor.org/discover/10.2307/844565?uid=3739256&uid=2&uid=4&sid=21106356346891>
- Bowden, Anna, *The Economic Cost of Somali Piracy 2011*. (2012) One Earth Future Foundation.
http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf
- Bruno, Paulo, *Freeboard: What it Means and Why It's Important*.
<http://maritime.about.com/od/Glossary/g/Freeboard-What-It-Means-And-Why-Its-Important.htm>
- Cooperstein, Theodore, *Letters of Marque and Reprisal: The Constitutional Law and Practice of Privateering*, 40 J. mar. L. & COM. 224 (2009).
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1406677
- Cordingly, David. *Under the Black Flag: The Romance and the Reality of Life Among the Pirates*. New York: Random House, 1995.
- Cunha, Pedro Barge, *Somalia As a Market For Private Military and Security Companies: Definitions, Agents and Services*, 2013. https://repositorio.iscte-iul.pt/bitstream/10071/5107/1/6Pedro_Cunha_Somalia.pdf
- Defoe, Daniel (Captain Charles Johnson), *A General History of the Pyrates*, Edited by Manuel Schonhorn, (London, Dent, 1972), p.244
- Dow, George Francis and Edmonds, John Henry, *The Pirates of the New England Coast: 1630-1730*. (Salem, MA: The Marine Research Society, 1923; reprint, Mineola NY: Dover Publications, 1996), 19.
- The Economist, *Somali Piracy: More Sophisticated Than You Thought*. (Nov. 2, 2013)
<http://www.economist.com/news/middle-east-and-africa/21588942-new-study-reveals-how-somali-piracy-financed-more-sophisticated-you>
- Hughes, Dana and Radia, Krit, *U.S. Navy Ship Grabs More Pirates, Lets Them Go*, via ABC World News.

(April 2, 2010), <http://abcnews.go.com/WN/pirates-captured-released/story?id=10270726>

Hutchins, Todd Emerson, *Structuring a Sustainable Letters of Marque Regime: How Commissioning Privateers Can Defeat the Somali Pirates* (2011)

IMAGE: 2010 Piracy Flashpoints. ICC International Maritime Bureau via *Terror on the Seas, Somalia's Piracy Plague*. <http://realtruth.org/articles/110610-002-africa.html>

International Maritime Organization, "Reports on Acts of Piracy and Armed Robbery against Ships: Annual Report-2010" (April 1, 2011)
http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/Statisticalresources/Piracy/Documents/Piracy%20annual%20reports%201996%20-%202012/15_MSC_4.Circ.169%20-%202010.pdf

Isenberg, David, *Somalia and the PMSC Market*. (October 21, 2013.)
<http://iissonline.net/somalia-and-the-pmsc-market/>

Isenberg, David, *The Rise of Private Maritime Security Companies*, SAMI, (May 26, 2012),
<http://www.seasecurity.org/mediacentre/the-rise-of-private-maritime-security-companies/>

Via John Jameson, *Extract from the Boston News-Letter. August 22, 1720.* ,
http://www.gutenberg.org/files/24882/24882-h/24882-h.htm#Footnote_1_828

Ki-moon, Ban, "Remarks at Launch of World Maritime Day Theme for 2011: 'Piracy: Orchestrating the Response,'" *UN News Centre*, 4 February 2011, www.un.org

Lambert, Frank. *The Barbary Wars: American Independence in the Atlantic World*. New York: Hill and Wang, 2005. pg. 39

Miller, John W. *Loaded: Freighters Ready to Shoot Across Pirate Bow* (January 26, 2010)
<http://www.wsj.com/articles/SB126265833983415885>

Minchinton, Walter, *Marque Declarations Against America 1777-1783*, Public Record Office
<http://www.1812privateers.org/Great%20Britain/Intro.pdf>

Via Neznanich, Baron Modar, *Acts of war authorized by letters of marque, English Grant to the Captor of Ships in 1205*, <http://www.modaruniversity.org/LOM.htm>

Osei-Tutu, Joana Ama, *The Root Causes of Somali Piracy*,
<http://dSPACE.africaportal.org/jspui/bitstream/123456789/31688/1/Occasional-Paper-31-Joana.pdf?1>,
 referencing Wilson, B. (2009). *Effectively Confronting a Regional Threat: Somali Piracy*.

Rubin, Alfred P, *The Law of Piracy*. (University Press of the Pacific, 2006). 337-46

Ryu, Alisha, *Somali Piracy Exposes Weakness in UN Law of the Sea*, *Voice of America* (Apr. 8, 2009), transcript available at <http://www.voanews.com/english/new/a-13-2009-04-08-voa67-68785907.html>

Elizabeth Shostak, *Pirates Through the Ages*, Cengage Learning, (2011).
<http://www.gale.cengage.com/pdf/introduction/PiratesPSintro.pdf>

Silva, Mario, *Somalia: State Failure, Piracy, and the Challenge to International Law*, *Virginia Journal of International Law* Volume 50-issue 3, pg. 570

Simpson and Grierson, *Modern Day Piracy and International Law*. (2008) <http://www.simpsongrierson.com>

Spearin, Christopher, *Promising Privateers? Understanding the Constraints of Contemporary Private Security at Sea*. Naval War College Review.
<https://www.usnwc.edu/getattachment/2229dcd3-de54-4651-9f1c-64fd6af04f02/Promising-Privateers--Under-standing-the-Constraint.aspx>

Till, Geoffrey, *Seapower, A Guide for the 21st Century*. pg. 58. (2013; Routledge, New York)

Turley, Hans, *Rum, Sodomy, and the Lash: Piracy, Sexuality and Masculine Identity* (New York: New York University Press, 1999) 44.

United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. (UNCLOS)

United Nations, Resolution 1838. S.C. Res. 1838, U.N. Doc. S/RES/1838 (Oct. 7, 2008)
<http://www.un.org/press/en/2008/sc9467.doc.htm>

United Nations, Resolution 1816. S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008)
<http://www.un.org/press/en/2008/sc9344.doc.html>

United States Department of Transportation Maritime Administration,
http://www.marad.dot.gov/documents/Somali_Piracy_Trifold_30NOV2010.pdf

United States Constitution, "The Congress shall have Power To...grant Letters of Marque and Reprisal" .The Marque and Reprisal Clause. Article 1, Section 8, Clause II.

United States Constitution via <https://www.law.cornell.edu/constitution/articlei>

Valar,Cindy, <http://www.cindyvallar.com/tactics.html>

IMAGE Rough Sailing,The Wall Street Journal, <http://www.wsj.com/articles/SB126265833983415885>

The authors are professors in the Department of Economics at California State University, Northridge. Cato Journal, Vol. 11, No. 1 (Spring/Summer 1991). Copyright © Cato Institute. All rights reserved.