

INTRODUCTION

PIRACY IN COMPARATIVE PERSPECTIVE

When political entities – empires, nations and states – first engaged in trade and war they sought to preserve a public order of the world community on land and on sea. The laws of war and the law of the sea were early attempts to secure minimum order including the public order of the oceans.¹ Piracy, a critical disruption of the order of the oceans, has been recorded as far back as ancient Greece and Persia, the first Empire of India and the Han Dynasty of China. The early European seafaring powers spawned norms proscribing piratical acts that became codified in contemporary international law. However, contemporary maritime piracy is a more complex phenomenon than its historical antecedents of claims and efforts to suppress unauthorized non-state coercion on the high seas. In addition to power, the contemporary piracy problem implicates other values such as well-being, respect, skill and the human dignity of seafarers taken hostage and of the coastal communities coping with poverty and armed conflict. An overwhelming number of piracy incidents today are entwined with conditions in Somalia. This inspired the Government of the United Kingdom to convene the London Conference on Somalia in February 2012. Addressing piracy the final communiqué urged that “the problem requires a comprehensive approach on land as well as sea.”² This book is a quest for such a comprehensive approach.

The piracy problem can be viewed from a multiplicity of standpoints. Each bears upon perception, appraisal and ultimately the choice of strategies and legal instruments selected to address the problem. Thus *Piracy in Comparative Perspective: Problems, Strategies, Law* approaches maritime piracy from the perspectives of contributors from four continents, diverse legal cultures, and from multiple disciplines. This work appraises the piracy problem from the comparative perspectives of those disciplines, and also from key participants in the social processes that are plagued by piracy—mariners, navies, ship owners and operators, policy makers and lawyers. The contributors bring clarity to the piracy problem through the lenses of history,

¹ See, *Myres S. McDougal & William T. Burke*, *The Public Order of the Oceans: A Contemporary International Law of the Sea*, 1962 (1987, with new introductory essay).

² Final Communiqué of the London Conference on Somalia, paragraph 14, 23 February 2012. Available at <http://www.fco.gov.uk/en/news/latest-news/?id=727627582&view=PressS>.

law, maritime security, fisheries, economics and ocean commerce. They appraise strategies – the range of available modalities to address and correct the problem – through the lenses of naval power, port state control, penal systems and development. And they appraise law – both national and international authoritative decision-making – viewing state practice, international regulations, tribunal judgments, custom and international conventions from the comparative perspectives of Africa, India, England, France and the United States.

The Problem and the Trends

While piracy has a long ancestry, its contemporary manifestation is epiphenomenal of an intensely globalized social process that has security and commerce at its core. At the center of trade and commerce is shipping, because nearly all consumer goods and hydrocarbon resources move on water. The vessels that transport resources demanded by the end user globally are susceptible to pirate attacks. Shipping is one component of a global social process that includes states, naval forces, and coastal communities that struggle to meet basic human needs. Many of these communities are abandoned by, and precluded from, the fruits of 21st Century globalization. They have become spawning grounds for piracy. Their weal and woe of life unfolds adjacent to an ocean transit corridor of Western and Asian wealth, that, for impoverished coastal communities, represents a potential source of income and power. At the same time, contemporary piracy unfolds in a post-September 11th security environment in which state elites increasingly allocate substantial assets to avert existing and emerging threats to world order. In sum, piracy is a complex problem in an environment of intense and conflicting demands of states, consumers, seafarers, impoverished coastal communities and increasingly sophisticated private armies that employ force against vessels and mariners on the seas.

To understand the piracy problem, it is important to comprehend the historical and contemporary trends that are the subject of Part I of this book. The authors frame the problem by appraising trends in piracy beginning in the ancient world. Drawing upon Roman, English, French and international law through history, Dominique Gaurier describes the pirates path from rogue adventurer and robber to the enemy of all mankind. Fozia Lone explains that piracy is discussed in the Indian Sanskrit text of Vedas and in the *Arthashastra* written by Kautilya around 300 B.C.E. Contemporary trends are appraised by the contributors including Tom Tulloch who discusses the conditions that enable the piracy problem to proliferate and explains pirate tactics and international maritime security responses. Today

maritime piracy has cost the global economy between \$7 and \$12 billion annually, as explained by Emmanuel Chassot, Patrice Guillotreau, David Kaplan and Thomas Vallée. In particular, they explain the effect of piracy on fisheries using an economic analysis. Piracy expert Martin Murphy describes trends in economic costs, human security, privatization of maritime security, naval force protection, and projects geo-strategic and political outcomes. He concludes by identifying means to reverse the current trend, invoking short term and mid to longer term strategies.

The Participants and Their Perspectives

A participant observing or affected by the piracy problem will view it variously depending upon his or her standpoint and perspectives. Thus, in this book multiple standpoints and perspectives are presented. The first perspective, in the Foreword, is, appropriately, Somali. The President of Puntland State of Somalia, His Excellency Abdirahman Mohamed Mohamud (Farole), explains the piracy problem from the Puntland perspective. President Mohamud Farole underscores that piracy is both a land-based and a sea-based problem. Hence, the solution will require strategies and legal instruments calibrated for each context. Patrick Chaumette in his chapter "Seafarers: Piracy Protection," addresses the problem from the seafarer's perspective explaining the applicable legal and regulatory regimes and strategies for protection. The seafarer is a key actor and decision-maker in pirate incidents. Mariners face intense physical, psychological and workplace challenges as they operate on the frontlines of piracy. Challenges to the industry, from the perspectives of ship owners and the industry, are presented in chapters by Simon Delfau and by Arthur Bowring and Alexander McKinnon. Because perspectives on the piracy problem are also shaped by culture, geography and crisis, two chapters explain the views from India and West Africa. Fozia Lone presents an Indian perspective on counter-piracy indicating distinct views of piracy incidents, counter-strategies and applicable law. West African piracy receives less attention than East African Somali piracy. Thus, Claude Ichilanga writes of perspectives from Central and West Africa with a particular focus on incidents in the Gulf of Guinea.

Counter-Piracy Strategies

Strategies, the range and use of instruments and modalities to wage counter-piracy, are the subject of Part III. Maritime security law specialist James Kraska presents the larger security strategic framework in a chapter comparing European, American, African and Asian counter-piracy strategies. Cédric Leboeuf focuses on an important maritime security feature of the framework in his chapter appraising Operation Atalanta. Although piracy is

largely conceived as a high seas activity, there is a role for ports and instruments of port-state control for strategic deterrence. Thus Oya Özçayır describes how port-state control is an effective counter-piracy strategy. Insurance, a strategic instrument intended to restore economic loss, performs a special role in our globalized commercial system. Thus “The Global Insurance Industry and Piracy,” Poomintr Sooksripaisarnkit discusses the global insurance industry and piracy including specialized kidnap and ransom (K&R) insurance that has been available in varying guises since the early part of the 20th Century. Pirate organizations, states, NGOs and international organizations use media strategically. How media is strategically used and its actual and potential media impact on piracy is assessed by journalist Edward Girardet.

Law

Part IV appraises law understood as all pertinent authoritative decisions and their potential application to piracy. The international legal framework, its attributes and pathologies, is appraised. This framework includes the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which defines the crime of piracy and provides a legal basis for jurisdiction and state cooperation, the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Rome Convention) which proscribes acts of violence including robbery at sea that threaten navigation, and the relevant United Nations Security Council Resolutions that authorize multilateral mobilization of armed forces and which are designed to also insure respect for human rights. Thus Gwenaële Proutière-Maulion urges a reconsideration of the law of the flag and a holistic approach to piracy incorporating greater corporate social responsibility and implementation of the new maritime labour convention. Michael J. Stepek appraises international and national legal arrangements and mechanisms in his chapter, “Challenges of Prosecution and Jurisdiction.” Mr. Stepek examines the fractured nature of the international legal architecture, its relationship to domestic law, prosecution pitfalls and possible solutions. The two subsequent chapters focus specifically on national legal systems. Noting that “some gestation periods can be long,” Valérie Boré Eveno presents the new French law on piracy which was negotiated and drafted over a period of sixteen months. Dr. Boré Eveno discusses French law in reference to UNCLOS and in the context of the broader legal framework. Attorney Timothy Steigelman appraises historical and contemporary United States law on piracy with reference to the international legal system. Cumulatively, these national and international legal systems, instruments and mechanisms comprise the contemporary counter-piracy law repertoire.

Outcomes

Because of gaps in strategies, and an appreciation of diverse perspectives and inadequacies of the legal framework, there is a discrepancy between counter-piracy goals and desired outcomes. Outcomes accruing from the cumulative application of law and strategy to contemporary piracy problems are appraised in a concluding chapter that explores our public order of the oceans in this contemporary age of piracy. Coordinated strategic responses are producing some measurable results as the number of successful attacks has decreased. But as noted in the final Communiqué of the 2012 London Conference on Somalia, these have not fully addressed the fundamental issues of piracy.³ There is a need for new strategies in new combinations accounting for diverse identifications, expectations and demands to achieve a comprehensive and thus more effective approach. Such an approach will account for all those who live with the piracy problem daily. These perspectives and problems are treated in the pages that follow. The editors have sought to insure that the cumulative result would be multi-method, multi-cultural and multi-national with a view to addressing the problem of maritime piracy in the global common interest. It is hoped that the following pages will inform the reader, and encourage a consideration of maritime piracy problems through a fresh lens.

³ Final Communiqué of the London Conference on Somalia, 23 February 2012. Available at <http://www.fco.gov.uk/en/news/latest-news/?id=727627582&view=PressS>.