

Report on combating Somali piracy

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ABSTRACT

This article first introduces the phenomenon of the Somali piracy and the challenges it poses to the world maritime order and safety. It then analyzes the complicated elements and causes which lead to this phenomenon. It elaborates on the efforts made by the community of states to combat the Somali piracy. It also points out the problems yet to be solved in the fighting against the Somali piracy. Finally it gives some suggestions on how to better combat the Somali piracy. It handles the issue of the Somali piracy from the different perspectives and it emphasizes the importance of international cooperation and the use of multi-measure in combating the Somali piracy.

Key words : Somali piracy, maritime order and safety, cooperation, warship

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1. Phenomenon of the Somali piracy and challenges it poses to world maritime order and safety

Seas cover about 71% of the surface of the Earth. Seas not only serve as bridge for world transportation but also provide many resources for mankind. With the globalization and fast development in marine scientific research and marine industries, mankind has never been so closely connected with seas than today. As a result of this, mankind faces a serious challenge in keeping maritime order and safety in the process of exploration and use of seas.

In the past several years, world maritime order and safety has been severely challenged by the Somali piracy. Nowadays the challenge posed by the Somali piracy to the world maritime order and safety becomes not lighter but more serious. As we know, piracy is an ancient crime accompanying the human maritime activity. Historical records show that piracy once became so serious in some areas of the world that it made human maritime activity heavily affected in those areas. Since the great geographical discovery and formation of world navigational network, piracy has been a global crime.¹ In modern times, marine areas, such as Caribbean Sea, the Malacca Straits, the Indian Ocean, seas off the coast of South Africa, have been repeatedly struck by large scale piracy.² But piracy in history can not be compared with current Somali piracy. The Somali piracy has been the focus of international community regarding world maritime order and safety.

The phenomenon of the Somali piracy can be summarized as follows. The Somali piracy is an organized crime. Experts say that the Somali piracy has become an “industry”. Inside the industry, there are persons who are responsible for piracy planning, persons who are responsible for executing of piracy plan, persons who are responsible for negotiation with shipowner and related parties after the targeted vessel has been hijacked, persons who are responsible for piracy financing, persons who are responsible for arms providing, persons who are responsible for information collecting, etc. The Somali pirates are well trained and well equipped. They are equipped with GPS, automatic arms, anti-tank rockets and modern satellite communication tools. They are more professional and more dangerous. They usually follow two patterns when taking attack.³ They either attack vessels on the high seas, sometimes at considerable distance from the coast, making use of “mother ships”; or they attack vessels in Somali territorial sea, sometimes under the watchful eyes of warships outside those waters. No matter which pattern they follow, they always drive the vessel to their nest after they have hijacked the targeted vessel.

1 Xu, D.-W. (2006) *Piracy*, Haerbing Publishing Press, p.81.

2 Churchill, R. R. and A. V. Love (1999) *The Law of the Sea*, Manchester University Press, p.209.

3 Refer to statement by Mr. Efthimios, E. Mitropoulos, Secretary-General of the International Maritime Organization at the United Nations Headquarters, New York, United States of America on 20 Nov. 2008.

The Somali pirates commit piracy in large scale and high frequency. According to relevant reports and statistics provided by International Maritime Organization, the number of reported Somali piracy attack in 2008 increased sharply. The number of piracy attack in the first quarter of 2008 in that marine area was 11, and the number rose to 23 in the second quarter and rocketed to 50 in the third quarter and 51 in the fourth quarter. The total number of the Somali piracy attack reached 135 in the year of 2008, with 44 ships having been hijacked by the Somali pirates and more than 600 seafarers having been kidnapped and held for ransom.⁴ In the year of 2008, the Somali piracy has caused 4 seafarers dead, 2 seafarers injured, and 14 seafarers lost.⁵ It is estimated that the total sum of ransom collected by the Somali pirates in the year of 2008 reaches USD 120,000,000.⁶ According to the reports and statistics provided by the Chinese Shipowners' Association, in the first 11 months of 2008, there were 1,265 Chinese vessels sailing through the Gulf of Aden and 83 vessels of them were disturbed in some degree by the Somali pirates. According to information provided by International Maritime Organization, the number of reported Somali piracy attack in the year of 2009 almost doubled the number in the year of 2008, rising to 217 with 47 vessels being hijacked.⁷

Some examples can show the escalating of the Somali piracy. On 25 September 2008, M/V Faina, a Ukraine cargo vessel, carrying 33 T-72 tanks and a large quantity of ammunition was hijacked by Somali pirates and the Somali pirates required a ransom of USD 35,000,000 for release of the vessel; On 15 November 2008, the Somali pirates hijacked the fully laden ULCC Sirius Star in the Indian Ocean some 450 nautical miles from the coast of Kenya⁸ and the Somali pirates required a ransom of USD 25,000,000 for the release of the tank; On 30 November 2008 the Somali pirates attacked a luxury liner. In the year of 2009, with more and more Somali piracy attacks being reported, the Somali pirates fired at escorting warships in some cases. Entering into the year of 2010, an abatement of Somali piracy has not been seen and, on the contrary, more evidence shows that the Somali pirates are becoming more aggressive, one evidence of which is that the number of vessels fired at by Somali pirates in 2009 rose to 114 compared with 39 in 2008,⁹ another evidence of which is that the Somali pirates began to use heavy weapon in attacking vessels.

The Somali piracy poses grave threat not only to the safety of life of seafarers and passengers but also to the normal function of marine activities. The shipping lane through the Gulf of Aden is of strategic importance and significance to international shipping

4 Refer to http://www.imo.org/home.asp?topic_id=1178 (Last accessed on 18 April 2010)

5 ICC International Maritime Bureau (2008) *Piracy and Armed Robbery against Ships Annual Report*.

6 Refer to <http://www.baikē.baidu.com/view/2001823.htm>

7 Refer to Guangzhou Daily of 7 Mar. 2010, p.A10.

8 Refer to statement by Mr. Efthimios, E. Mitropoulos, Secretary-General of the International Maritime Organization at the United Nations Headquarters, New York, United States of America on 20 Nov. 2008.

9 Refer to information given by the International Maritime Organization.

and trade, both east and west of the Suez Canal, which is used by some 22,000 vessels annually, carrying around 8% of the world's trade, including more than 12% of the total volume of oil transported by sea, as well as raw materials and finished goods.¹⁰ If the security of this shipping lane can not be guaranteed, the flow of maritime transportation through this lane shall be forced to go through the Cape of Good Hope, which shall result in many negative results such as the extra mileage to run, an additional need for some 750 tonnes of fuel per ship, an additional volume of some 2,335 tonnes of CO₂ emitted from the additional fuel burnt, and finally an increase in freight rates. Diverting vessels around the Cape of Good Hope may not always make them safer, but the increasing cost of shipping and the time of transit can certainly drive up the price of manufactured goods and commodities. For the vessels still risk the shipping lane through the Gulf of Aden, in order to get insured by insurance company against the Somali piracy, the shipowners have no choice but to buy insurance and then they shall collect this fee from the cargo-owners.¹¹ Some shipowners pay for specialized escorting service as an alternative choice. All these together with the high fuel costs, the plummeting freight rates, and the containership surpluses make the global shipping industry especially vulnerable now. This situation further worsens the world economy which has been struck by world financial crisis.

The Somali piracy also poses potential threat to marine environment. Once the Somali pirates attack oil tank or chemical ship or gas vessel, this may result in environmental disaster.

In addition, the Somali pirates have set a bad example for others to follow. The large amount of ransom which the Somali pirates collected has attracted bad men to commit piracy in other marine areas, for instance, out-laws in West Africa have begun to follow the example of Somali pirate to attack and hijack the vessels sailing off the West African coast, and due to the influence of the success of the Somali pirates, number of attacks in the waters off the Horn of Africa doubled in 2008 compared with 2007.¹² In an era when terrorism spreads very fast, if pirates conspire with terrorists, the threat they shall pose to maritime order and safety shall be beyond our imagination.¹³

From above description, it can be concluded that the Somali piracy has become a phenomenon which deserves special attention. The Somali piracy has been escalating all the way, has severely threatened the maritime order and safety, and has done serious damages to the interests of international community of states as a whole. Consequently, international community of states has no choice but to study this phenomenon, find the causes and take effective measures against it.

10 Refer to information provided by the International Maritime Bureau.

11 Refer to CMA CGM press release at Aden Gulf Surcharge on 17 Dec. 2008.

12 Kraska, J. and B. Wilson (2009) Fighting Piracy. <http://www.armedforcesjournal.com/2009/02/3928962>

13 McLachlin, B. (2004) Legal Response to Threats of Maritime Terrorism. In : The 38th CMI Conference held in Vancouver, Jan. 2004.

2. Analysis of causes of Somali piracy

In order to take appropriate measures against the Somali piracy, the causes of the Somali piracy need first to be analyzed. We can not effectively stem and finally eradicate the Somali piracy if we can not find out the causes and elements which lead to this phenomenon. Then, what leads to the Somali piracy phenomenon? What makes the Somali piracy spread so fast? It is not easy to answer these questions because the Somali piracy phenomenon is very complicated. Generally speaking, at least the following elements should be considered in answering the above questions.

2.1 Political element

The Somali piracy phenomenon closely connects with the Somali political situation. Since the old central government of Somalia was overturned by anti-governmental forces in January of 1991, Somalia was put into anarchy. Civil war broke out and war lords occupied different areas of Somalia and competed with each another. This made it very difficult for common people of Somalia to make a living. In order to keep peace and restore social order in Somalia, the United Nations sent peace-keeping troops into Somalia, but at the end due to the attacks from the Somali war lords, the United Nations peace-keeping troops had to be pulled out of Somalia. This got the Somali political situation worse. At present, the Transitional Federal Government of Somalia can only control the capital city of Somalia and nearby district, and the large part of Somali territory was occupied by war lords. Because of the political disorder and civil war in Somalia, more and more Somali soldiers and militiamen are out of control, more and more fishermen and other common people become refugees, some of these men choose to combine together and rob the vessels sailing off the coast of Somalia.

2.2 Economic element

After the Somalia was put into anarchy, the Somali economic situation gets worse. More and more Somali civilians have been put into poverty. At the same time, some foreign vessels make use of the Somali disorder and go into the Somali exclusive economic zone to conduct illegal fishing and waste-dumping, and this further worsens the economic situation for the Somali fishermen and other people who depend on the marine resources. This leads to the conflict between foreign vessels and local people. Some Somali fishermen and militiamen begin to arrest those vessels and make money by requiring ransom. Because they make a lot of money from this activity, more and more Somali men are attracted to attack and arrest such foreign vessels, and gradually some of them even start to attack

and rob the vessels which do nothing wrong but sail off the coast of the Somalia. Nowadays, they attack and hijack any vessel which they can find and get ransom from. As a result of the large scale of piracy, some Somali villages and towns are booming. One expert from South Africa University once told reporters that the Somali pirates made a huge amount of money from the act of piracy and that they got USD 500,000 to 1,000,000 as ransom from every vessel they had hijacked.¹⁴ The huge amount of ransom stimulates them to continue or even enlarge their act of piracy and this attracts more persons to participate.

2.3 Social element

During the past 20 years, Somalia has been struck by war, drought, famine and disease. As a result of this, the social structure breaks up. The number of those who are homeless reaches 1.5 million, the average lifespan is only 46 years, and almost 1/4 of Somali children die before they are up to five years old. We can say that the Somali piracy phenomenon reflects the depth of Somali social crisis and despair. The feeling of despair drives the Somali people to the crime of piracy. After getting large amount of ransom from the hijacked vessels, in order to keep a good image and get support from local people, the Somali pirates do work of charity and often help those who are poor. The attitude of common Somali people towards the Somali pirates thus changes, in the eyes of some common Somali people, Somali pirates are not criminals but “heroes”. Because the Somali social value is distorted in regard to act of piracy, there is no social deterrence to Somail piracy.

2.4 Religious extremism element

There are many branches of Islamism in Somalia. It is believed by some experts that behind the Somali piracy there are influences from Islamic extremists. Some armed groups in Somalia commit crime of piracy and keep contact with Islamic extremists. One of such armed groups is called Al-Shabaab, which is listed by the United States as a group of terrorism.¹⁵ When the navy of the United States used force to rescue the American captain and killed some of the Somali pirates, the Somali Islamic extremists called these killed pirates as “soldiers of Islamic Holy War”. Some Islamic armed groups threatened to revenge for the killing. One such group which has close relation with Al-Qaida said that Somali pirates were protecting the Somali coast against the foreigners and they were the true followers of Allah.

¹⁴ The accurate average amount of ransom from every vessel hijacked by Somali pirates has no way to be clear as both the party that gets the ransom and the party that gives the ransom refuse to disclose related information.

¹⁵ Zhuang, W. (2008) An International Study on the Somali Piracy. *SMU Law Review*, p.403.

2.5 Geographical element

The Somalia boasts a coast line of 3,898 km in length of which 1,204 km is along the Gulf of Aden. Every year there are over 22,000 vessels sailing through the Gulf of Aden, therefore it is not difficult for the Somali pirates to find targeted vessels. As the Somalia is in anarchy, the Somali pirates can easily return to their nest after they have hijacked vessels, or they can move from one place to another to elude capture. The Somali pirates know the local geography very well and have made full use of this advantage in their act of piracy.

2.6 Military element

Due to the Somali civil war and the situation of anarchy, arms smuggling is rampant in Somalia and it is quite easy for the Somali pirates to get arms. Some Somali armed groups cooperate with the Somali pirates and provide arms for the latter. The Somali pirates also use some of the ransom to better equip themselves. Nowadays the Somali pirates employ speedboats, modern weapons and advanced communication equipment in their act of piracy. Sometimes they cheat escorting warships by disguising themselves as fisherman. Sometimes they trap the merchant vessels by pretending that they get into trouble and need help. Even though many states have sent warships to the Gulf of Aden and nearby marine area off the Somali coast to combat the Somali piracy, the Somali pirates can still manage to escape due to the fact that the warships can not cover the whole area. Another reason is that there lacks effective cooperation among the warships from different states. In addition, the Somali pirates also learn to coordinate their action and strengthen the cooperation among the different pirate groups in order to challenge the escorting warships. From military viewpoint, it seems that multi-national naval forces have not found the effective way to deal with the Somali pirates.

2.7 Cultural element

The worldwide spreading of books, movies and softwares about piracy has a negative effect on the war against piracy. Some of these works contain exaggerating information about adventure, wealth, violence and sex in describing piracy. This information may distort the social value and attitude of common people towards piracy, can easily stir up the feeling of young generation and mislead them to commit crime of piracy. Works of this kind provide spiritual soil for the flourishing of piracy.

2.8 Regime element

Finally we have to say that the current legal regime is not perfect in regard to combating piracy. Even though international community of states has passed some international conventions on piracy, there still exists much room for improvement in the definition of piracy, the jurisdiction over pirates, the punishment of pirates, and the cooperation between states and international organizations. Because of the defects in the national and international legal regimes in regard to piracy, pirates make use of these defects and escape punishment. One example can show the defects of current legal regime in regard to piracy. Some escorting warships have no choice but to release the arrested Somali pirates because the respective nations have no legal rules to prosecute and punish these Somali pirates. Therefore, it is of great significance to find out the defects existing in current legal regime and cure them.

3. Efforts made to combat the Somali piracy

After having analysed the causes and elements which lead to the Somali piracy phenomenon, states and international organizations have made efforts to combat the Somali piracy.

Firstly, states and international organizations have made full use of the international conventions which contain provisions of dealing with piracy. Here some of the main international conventions can be mentioned such as Geneva Convention on High Seas 1958, the United Nations Convention on the Law of the Sea 1982, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988, etc. According to provisions of these conventions, some member states have made relevant national laws in order to specify the application of the conventions. It should be pointed out that these conventions mainly deal with piracy happening on the high seas or waters outside the jurisdiction of any state. The Somali pirates sometimes start attack within the Somali territorial sea, or they commit crime of piracy on the high seas and then flee into the Somali territorial sea to elude capture. So the above international conventions can not be fully applied in these situations.

In order to meet the gap between the restricted application of the above conventions and the need to combat the Somali piracy within the Somali territorial sea, the Security Council of the United Nations made relevant resolutions to solve this problem. The Security Council Resolution 1816 authorized naval forces entry into Somali territorial sea to pursue pirates. The resolution emphasized cooperation on prosecution by calling on states to collectively determine jurisdiction in the investigation and prosecution of persons who are

suspected of committing acts of piracy off the coast of Somalia. This resolution also encouraged states to increase and coordinate their efforts to deter acts of piracy in conjunction with the Transitional Federal Government of Somalia. Since Somalia has no maritime law enforcement capability, the resolution also called on states, the International Maritime Organization and other international organizations to build a partnership to develop coastal security forces. The Security Council adopted Resolution 1838, expressing its grave concern over the proliferation of acts of piracy against vessels off the coast of Somalia, and the threat it poses to the delivery of World Food Program shipments to Somalia. The resolution called upon states to take part in fighting piracy by deploying naval vessels and aircraft to the Gulf of Aden and surrounding waters. The Security Council Resolution 1846 broadened the international political support and legal capabilities to combat piracy off the Somali coast. The resolution suggests states consider application of the 1988 Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation to facilitate the extradition and prosecution of the Somali pirates. The Security Council Resolution 1851 authorized states to take action against piracy safe havens on the shore in Somalia. The resolution also invited the states with maritime forces in the area and the regional states to conclude “shiprider” agreements or arrangements so that local law enforcement officials could embark on board foreign warships patrolling the area. The regional countries are particularly important in this regard because they are ideally situated to conclude the endgame — conducting criminal investigations and trials. In order to restore social order and stop armed conflicts in Somalia and cut support for Somali piracy from outside world, the Security Council made resolutions 733 and 1676 respectively in 1992 and 2006, prohibiting the export of arms to Somalia and the provision of military technology and military training for Somali armed groups.¹⁶

In order to coordinate actions against the Somali piracy, the United Nations established the Contact Group on Piracy off the Coast of Somalia on 14 January 2009. This Group is responsible for information collection and for negotiation and coordination among the states in regard to combating Somali piracy. The Group has several working groups to develop collective action regarding different aspects of the effort against Somali piracy.

The United Nations at the same time encourages the regional organizations to make collective efforts to combat Somali piracy. As a result of this, the Africa Union, the Arab League, and the European Union take measures respectively to deal with the Somali piracy. For example, the European Union deployed naval forces to the Gulf of Aden under Operation Atalanta, the first EU operational naval deployment outside Europe, to conduct counter-piracy patrols and to provide escorting service for the vessels sailing off the Somali coast and for the vessels to deliver humanitarian aids to Somalia.

¹⁶ These resolutions adopted by the Security Council of the United Nations are closely connected. For a better understanding of these resolutions, please visit the official website of the United Nations for the full version of the resolutions.

As a response to the resolutions of the Security Council of the United Nations, some states also send warships to the marine areas off the coast of Somalia to combat the Somali piracy and to provide escorting service. Warships from the United Kingdom, the United States, Denmark, the Netherlands, France, Pakistan, India, Iran, Russia, China, New Zealand, Australia, Republic of Korea and other countries operate at the same time in the area. China sent a series of warships to fight Somali piracy, the first overseas operational deployment in the history of the Chinese navy. Japan approved a deployment by the Japanese Maritime Self-Defense Force as a “police action” to patrol the marine area off the Somali coast. The multinational counterpiracy naval force of more than 20 nations also made coalition efforts against the Somali piracy.

In addition, in order to help Somalia solve the political, economic and social problem and crisis, the United Nations is very active in pushing forward the Somali political reconciliation process, the United Nations is also engaged in Somali humanitarian aids program.

Finally, many special international organizations also pay close attention to the Somali piracy. For example, the International Maritime Organization has been constantly considering the issue of the Somali piracy. Its center in Kuala Lumpur keeps monitoring the incidents of the Somali piracy, collects and distributes information about the Somali piracy, and gives an important impetus to the legislation on the Somali piracy. It also adopted a resolution in November 2007, which called on regional states in east Africa to conclude a treaty to prevent, deter and suppress piracy.

In conclusion, many states and international organizations have worked hand in hand to deal with the Somali piracy. Much effort has been made and many measures have been taken. The measures include but not limited to political, diplomatic, legal, economic, social and military measures.

4. Problems yet to be solved

Though much effort has been made and many measures have been taken, the Somali piracy has not been brought under control, one evidence of which is that the Somali pirates are still able to carry out attacks in a vast marine area off the Somali coast. There are still daily reports that the Somali pirates have hijacked vessels. This shows that the effort is not enough and the measures are not perfect. There still exist some problems which need to be addressed.

4.1 Definition of piracy

The first problem is that the current definition of piracy is confusing and

misleading. According to the Geneva Convention on the High Seas 1958 and the United Nations Convention on the Law of the Sea 1982, piracy includes any outlawful act of violence, detention or depredation committed on the high seas for private ends by the crew or passengers of a private vessel or aircraft against another vessel or aircraft or persons or property on board it.¹⁷ This definition precludes any act of warship or government ship being classified as act of piracy.

Statistics show that a large portion of marine piracy happens within territorial seas,¹⁸ but the above definition does not cover the piracy acts which take place within a state's territorial sea. If the state in whose territorial sea the act of piracy takes place can not or would not like to exercise jurisdiction over such act of piracy, then such act of piracy can escape punishment. In addition, above definition only refers to piracy attacks conducted by a private vessel or aircraft against another vessel or aircraft, so above definition can not cover the piracy acts against oil platform or artificial island or any other marine constructions. The above definition also precludes the piracy acts with nature of politics or religion. It ignores the fact that some acts of piracy are conducted in the name of politics or religion. Due to these defects, the above definition of piracy can not meet the current need of combating piracy. A new and uniform definition of piracy should be codified.

4.2 Jurisdiction over and punishment of piracy

Because piracy heavily damages the marine order and threatens the safety of life and property on the seas, piracy act is called a crime against the whole community of mankind.¹⁹ Pirates are deemed as persons who are not entitled to the protection of any state. Therefore, Geneva Convention on High Seas 1958 and the United Nations Convention on the Law of the Sea 1982 require the community of states to cooperate in stemming the piracy taking place on high seas or waters outside jurisdiction of any state. According to these conventions, any state's warships and vessels on governmental service are allowed to visit or board any vessel of whatever flag on high seas if the vessel is suspected of committing crime of piracy.²⁰ However, if the suspicions finally prove unfounded and the vessel has done nothing to justify the visiting and boarding, any losses or damages it has sustained should be compensated by the state whose warship and governmental vessel has conducted the act of visit or boarding. If the suspicion is confirmed, pirate vessels can be seized and the pirates can be arrested by the visiting or boarding warship or governmental

17 Refer to Article 15 of the Geneva Convention on the High Seas 1958 and Article 101 of the United Nations Convention on the Law of the Sea 1982.

18 Danadillon (2005) Maritime Piracy: Defining the Problem. *SAIS Review* 25(1), p.156.

19 Huang. J.-P (2001) On Universal Jurisdiction Principle and Practice. *Politics and Law Forum* (Issue 2), p.45.

20 Refer to Article 21 of the Geneva Convention on the High Seas and the Article 107 of the United Nations Convention on the Law of the Sea.

vessel. Certainly, if the seizure or arrest proves wrongful, the state whose warship or governmental vessel has carried out the seizure and arrest shall be responsible for the wrongful seizure and arrest and shall compensate any losses and damages so incurred.²¹ These provisions lay down very strict conditions for warships and governmental vessels to visit or board vessels suspected of committing piracy and impose strict liability for any wrongful seizure of suspected vessel or arrest of suspected pirate. These provisions may make warships or governmental vessels worry about the effects of their intervention and do nothing or act passively in combating piracy. Using the Somali piracy as an example, if the warships or governmental vessels only response passively to calls of help in order to observe the above strict conditions and avoid any liability, the Somali piracy can not be stemmed and eradicated. Taking into consideration of the large scale, the high frequency and the ferocity of the Somali piracy, the warships and governmental vessels in that marine area should be given more freedom in operation to restore the normal marine order. According to international law on armed conflicts, during armed conflict, merchant vessels may be boarded under the belligerent right of visit and search to determine the neutral character of the goods on board. The Security Council of the United Nations may, treating the fight against the Somali piracy alike an armed conflict, authorize all states to take all necessary action against the Somali piracy and provide more freedom of visit and board for the warships.

One problem for the warships patrolling off the Somali coast is what to do with the Somali pirates who have been caught. To determine which state should prosecute the Somali pirates caught at sea is particularly vexing, considering that an incident of the Somali piracy attack may concern persons, properties and interests of different states. According to Geneva Convention on High Seas 1958 and the United Nations Convention on the Law of the Sea 1982, pirates can be tried by any state before whose court the pirates are brought, and this state can apply its own law in imposing penalty on the pirates. But it depends on the municipal law of each State to implement this competence. In the case of the Somali piracy, the reality is that municipal laws of many states have no relevant provisions in regard to the trial and punishment of the Somali pirates. For those states that have relevant provisions, the treatment of the Somali pirates is quite different in law and practice. There is an urgent need to unify the law and practice in relation to the trial and punishment of the Somali piracy.

Concerned at the rising incidents of acts of piracy threatening the marine order and safety of navigation, the International Maritime Organization proposed the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation in 1988. This Convention specifies as crime certain acts against shipping, including the seizure of vessels, the endangering of safe navigation by the use of violence against persons on board

21 Refer to Article 20 of the Geneva Convention on the High Seas and the Article 106 of the United Nations Convention on the Law of the Sea.

or by damage to the vessel, its cargo or equipment. According to this Convention, member States should make these listed acts as punishable under their municipal laws and establish their jurisdiction over offences committed on or against their ships, in their territory, or by their nationals.²² This Convention further stipulates that a member State in whose territory an alleged offender is found is obliged either to extradite him to any State asserting jurisdiction over him or to submit without any exception the case to its own competent authority for prosecution. In regard to the case of the Somali piracy, one problem is that many states are reluctant to exercise jurisdiction over the Somali pirates because of the high cost in prosecution. In most cases, it is quite complicated and expensive to send the suspects to the arresting state for trial and punishment. As a result, it often happens that the patrolling warships just release the Somali piracy suspects shortly after they have successfully captured or arrested the suspects.²³

For piracy acts committed within the territorial sea of Somalia, the problem is that the Somali government is not able to exercise jurisdiction over the pirates because of the nationwide disorder and anarchy. In addition, there are not enough lawyers and judges in Somalia and the relevant laws and procedures are quite far from international standards.

In conclusion, on the one hand, the Somali government can not be relied on when jurisdiction and punishment of the Somali pirates is concerned; on the other hand, most other states would not like to exercise jurisdiction either due to the municipal law barrier or due to the high cost thereof. As a result, the Somali pirates often escape trial and punishment.

4.3 Cooperation among the naval forces

Many states have dispatched warships to the marine areas off the Somali coast to provide escorting service and to combat the Somali piracy.²⁴ Because every state insists on the exclusive control over the operation of its own patrolling warships, there lacks effective coordination among warships of different states.

Nowadays the Somali pirates operate attacks not only in the Gulf of Aden but also in large marine area of west of the Indian Ocean, this makes it necessary to send more than 60 warships to cover the whole area.²⁵ The reality is that there are only about 40 warships working in that area. This means there is a serious shortage of patrolling

22 Refer to Articles 5 and 6 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988.

23 For example, Russian Ministry of Defence confirmed on 7 May 2010 that its navy had released 10 Somali pirates after they had been captured by a Russian patrolling warship for attacking a Russian commercial vessel on 6 May 2010. For the detailed information, please refer to Sanjin Municipal Newspaper 8 May 2010.

24 China has participated in the international effort and has sent its warships for the first time in its history to the marine area off the Somali coast for combating the Somali piracy.

25 Refer to <http://wenku.baidu.com/view/072a0e66f5335a8102d22000.html> (Last accessed on 17 Jun. 2010)

warships. The shortage of patrolling warships in together with the lack of good coordination makes combating effect far from satisfaction.

The fact that more than one-third of attempted ship hijackings in the Gulf of Aden are successful illustrates that the shortage of warships and the strategy of the passive defence adopted by the naval forces have been unable to deter or disrupt many piracy attacks. This means that we not only need more warships but also need to reconsider the strategy and tactics we are using to address the problem.

4.4 The Use of force against Somali piracy

In the process of operation, warships sometimes use force against the Somali pirates. In most cases they are too conservative in use of force. When to use force and how to use force is quite a problem for the warships.

In addition, with the escalating of Somali piracy, more and more merchant vessels get armed²⁶. There arises a debate on whether a merchant vessel should be armed and what effect an armed merchant vessel can have on safeguarding the marine order and safety and on protecting the persons and property on board the vessel. The same question raised to warships can also be raised on armed merchant vessels: when to use force and how to use force.

If the above questions can not be correctly addressed, there must be disorder in the use of force against Somali piracy and this can lead to disaster.

5. Some suggestions

In order to address the above problems and effectively combat the Somali piracy, the following measures should be considered.

International conventions in regard to combating piracy should be reviewed. Uniform rules should be made according to principles of international law, and especially a uniform definition of piracy should be given in order to enable it to cover all piracy acts. Such uniform rules should get rid of any conflicts or contradictions existing in the current international conventions. This can set down universal standards and can unify the national practice in the field of combating piracy.

At present, many states, global and regional organizations have involved in combating the Somali piracy. There urgently needs an effective organizer to harmonize

²⁶ Fitzgerald, M., naval general of the United States, once said that merchant vessels themselves should take appropriate preventive measures against Somali piracy because warships could not provide 100% protection for every vessel. For detailed information, please refer to China News Network on 16 Apr. 2010.

all the actions against the Somali piracy. In order to make full use of the forces and resources, we should strengthen the international cooperation and emphasize the role of the United Nations in coordinating all the efforts in combating the Somali piracy.²⁷ According to the Charter of the United Nations, one of its main functions is to harmonize the actions of the world community of states. As the Somali piracy has been focus of world attention and the Somali pirates have been threatening world peace and security, it naturally follows that the United Nations should play a primary role in combating the Somali piracy. In order to solve the problem of lacking effective coordination among the warships of different states, the Security Council of the United Nations can establish a special committee to coordinate the military action against the Somali piracy. This special committee should be composed of representatives from all the states which have deployed patrolling warships to that area.

In order to solve the problem of jurisdiction over the Somali pirates and to unify the punishment of the Somali pirates, a special tribunal can be established by the Security Council of the United Nations. There have been precedents for the Security Council of the United Nations to establish special tribunal for the trial and punishment of a series of special crime. For instance, the Security Council of the United Nations has established a special tribunal for the crimes in the Rwanda and in the former Yugoslavia respectively. The advantages of the special tribunal regime are as follows: it can concentrate all the resources, it may overcome the barrier of municipal procedures, it is neutral and independent, it can achieve substantial and procedural justice,²⁸ and it is helpful for the piracy suspects and common people to recognize and accept the judgment on the Somali pirates.

At present, in order to solve the problem of prosecution and trial of the Somali pirates, some states have reached special arrangement with some African states on the handling of the Somali pirates captured by their warships. For example, the United Kingdom signed a counterpiracy cooperation agreement with Kenya in December 2008, agreeing to transfer captured pirates to the latter for trial and prosecution. The United States and Kenya have made a similar arrangement. These agreements can on the one hand facilitate the handling of the captured pirates and on the other hand benefit the patrolling warships by ensuring the quick removal of captured pirates from warships and freeing them for follow-on tasking. But Kenya and other states in this region have insufficient number of lawyers, prosecutors and judges, and they sometimes lack other resources for the prosecution and trial. In view of this, the Security Council of the United Nations can enter into a special agreement with, for example, Kenya, on establishing an international tribunal Kenya for the prosecution and trial of the captured Somali pirates. I believe the operation of such

27 International cooperation is a basic principle in the Geneva Convention on High Seas 1958, the United Nations Convention on the Law of the Sea 1982 and the Charter of the United Nations.

28 Zhang, L. (2009) Criminal Issues in Combating the Somali Piracy. *International Law of the People's University* (Issue 9), p.47-48.

a tribunal can be more efficient.

Each state concerned should establish national counter-piracy centre for effectively harmonizing all its resources and forces against piracy. Operation against piracy relates to many government departments such as ministry of defence, ministry of foreign affairs, ministry of communication and transportation, etc. The successful operation against piracy depends on efficient information collection and exchange, and on high organization of the forces and resources of different government departments. If there is no such a national counter-piracy center, there shall be no concentrated force against piracy.

Each maritime enterprise and each vessel should establish its own security regime against piracy. Practice has proved that it is a fundamental work in combating the Somali piracy for each enterprise and each vessel to get well-prepared for any piracy attack.²⁹ High alert and strong self-defence is very important in combating the Somali piracy. For enterprises which operate off the Somali coast and for vessels which sail off that area, special arrangement must be made against possible Somali piracy attack. For example, enough counter-piracy equipment should be provided, crew should be well-trained for piracy attack, special watching and alert regime should be kept during the passage of that area. There are many cases in which the Somali pirates have been defeated by the well-prepared, well-equipped and well-trained crew. This shows the extraordinary importance of the counter-piracy regime of concerned enterprise and vessel.

We should study the feasibility of arming the merchant vessels. This suggestion may cause some opposition and doubt. The main opposition is based on the following reasons: it can result in high cost of operation of vessel, it can increase the possibility of internal disorder inside a vessel, it can cause the strong reaction from the pirates,³⁰ port authorities of some states refuse the port access to armed merchant vessels, etc. But we can not deny that armed merchant vessel is more a deterrence to pirates and armed merchant vessel can enhance the confidence of the crew in combating piracy. The shortcomings of armed merchant vessel can be overcome by the establishment of a special control regime, for example, merchant vessels can only be armed when usually sailing in marine area where pirates often strike, armed service can only be provided by registered professional company, and the use of arms must follow a strict procedure. Through detailed design, the advantages of armed merchant vessel can be fully developed and the disadvantages can be effectively avoided. Evidence shows that armed merchant vessel can in most cases defeat the attacks by pirates.³¹ A typical example of these cases is about

29 There are many examples in which well-prepared crew successfully fought the Somali piracy attacks. One of these examples is the crew of M/V Zhenhua No.4 in combating the Somali piracy attack. <http://zhidao.baidu.com/question/98427504.html?fr=ala> (Last accessed on 17 Jun. 2010)

30 Mariners and some naval officials express some concern that a more robust defense or greater resistance on the part of merchant vessels might lead to more aggressive tactics by pirates. International Maritime Bureau once expressed its worry that with more merchant vessels being armed there might be an arms race between the armed merchant vessels and the pirates and this arms race might result in more armed attacks by pirates.

an American vessel. This vessel first was hijacked by the Somali pirates in April 2009. This same vessel defeated the Somali pirates at the same marine area in November 2009. At the first time, it was not armed; at the second time, it was armed.³² So we have enough ground to try the armed merchant vessel. With the practice going further, we can finally seek truth from the facts. If the result is positive, we can continue and enlarge the practice; if the result shows more negative effects, we can just stop the practice.

We should reorganize the patrolling strategy. Because the shipping line is too long and the marine area which needs to be patrolled is too large, there is a serious shortage of patrolling warships. In addition, patrolling warships of each state act by themselves and operate in the whole area, and this practice aggravates the shortage of patrolling warships. In view of the shortcomings of this practice, at the international conference on coordinating the patrol over the Gulf of Aden held in November 2009, China proposed a new strategy of “United Action, Divided Patrolling Zone” to address this problem. The main point of this new strategy is that all the patrolling warships from different states should be united together and the patrolling warships of each state should be given, according to the number of warships and their condition, a particular piece of marine area for patrolling.³³ Thus patrolling warships of each state need not patrol over all the area, and they need only escort the vessels sailing through their given patrolling area. This new strategy can level up the cooperation among the warships and improve the efficiency of the escorting and patrolling. For the success of this strategy, there also needs a fast response regime that can maintain 24-hour communication among the maritime states patrolling off the Somali coast, the flag states and the regional states so that these nations may quickly coordinate interdiction of vessels hijacked by pirates and resolve questions regarding the disposition of the pirates captured.

More support should be provided to the regional states around Somalia for strengthening their ability to keep marine order and safety. The support should include development of coastal surveillance infrastructure, patrol boats and maritime interdiction capabilities. If these regional states can stabilize their own coast and marine area, and at the same time provide necessary assistance to the international operation against the Somali piracy, this will be a great contribution to the combating of the Somali piracy.

More attentions should be paid to problems existing on land of Somalia³⁴. The problem of the Somali piracy exhibits on seas but the root is on land. The phenomenon

31 According to John Harbour, the spokesman for the European Union Naval Forces, some merchant ships sailing off the coast of Somalia have been armed, and it is true that armed merchant ships can deter the attacks of pirates and increase their difficulty in seizure of vessels.

32 Refer to Xinmin Evening Newspaper of 19 Nov. 2009, p.A18.

33 Refer to the Xinmin Evening Newspaper of 19 Nov. 2009, p.B2.

34 A high officer of the International Maritime Organization once said that the Somali piracy problem was essentially a problem of peace and development and that military action alone could not solve the problem. Please refer to article on Yangzhou Times of 20 Nov. 2008.

of the Somali piracy is a reflection of the combined crisis of politics, economy, society and culture inside Somalia. Therefore, in order to eradicate the root of the Somali piracy, the international community of states should speed up the Somali political process of internal conciliation, help establish a powerful central government of Somalia, help restore the social order in Somalia, continue the humanitarian aids program, and help solve the problem of poverty in Somalia. It is a systematic work to combat the Somali piracy, it is necessary to make use of any means and any resources to combat the Somali piracy, and it is very important to strengthen the cooperation in the battle against the Somali piracy.

References

- Churchill, R. R. and A. V. Love (1999) *The Law of the Sea*, Manchester University Press.
- Huang, J.-P. (2001) On Universal Jurisdiction Principle and Practice. *Politics and Law Forum* (Issue 2).
- Herrmann, A. W. (2004) *Maritime Piracy and Anti-piracy Measures*, Naval Force.
- Xu, D.-W. (2006) *Piracy*, Haerbing Publishing Press.
- Danadillon (2005) Maritime Piracy: Defining the Problem. *SAIS Review* 25(1).
- Evans, D. M. (2006) *International Law Documents*, Oxford University Press.
- Zhuang, W. (2008) An International Study on the Somali Piracy. *Shanghai Maritime University Law Review* 2008.
- IMO (2008) *Annual Reports on Acts of Piracy and Armed Robbery against Ships*.
- Jia, B.-B. (2008) *An Introduction to International Humanitarian Law*, Tsinghua University Press.
- ICC International Maritime Bureau (2008) *Piracy and Armed Robbery against Ships Annual Report*.
- Zhang, L. (2009) Criminal Issues in Combating the Somali Piracy. *International Law of the People's University* (Issue 9).
- McLachlin, B. (2004) *Legal Response to Threats of Maritime Terrorism*. In : The 38th CMI Conference, Vancouver.
- Kraska, J. and B. Wilson (2009) Fighting Piracy. <http://www.armedforcesjournal.com/2009/02/3928962>
- Yangzhou Times*. 20 Nov. 2008.
- Xinmin Evening Newspaper*. 19 Nov. 2009.
- Guangzhou Daily*. 7 Mar. 2010.
- Geneva Convention on the High Seas 1958.
- United Nations Convention on the Law of the Sea 1982.
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988.

<Website>

- http://www.imo.org/home.asp?topic_id=1178
- <http://www.baike.baidu.com/view/2001823.htm>
- <http://zhidao.baidu.com/question/98427504.html?fr=ala0>
- <http://wenku.baidu.com/view/072a0e66f5335a8102d22000.html>

