

Briefing Memo

Piracy off the Coast of The Somali and Indian Ocean, and Anti-Piracy Operation by Private Military and Security Companies (PMSCs)

Keishi Ono

**Head, Society and Economy Division
Security Studies Department**

1. Current Trends of Piracy

Although piracy is defined as illegal or related activities on the high seas in a narrow sense, it includes those in territorial waters in a broad meaning. The figures released by international organizations like the International Maritime Bureau of the International Chamber of Commerce (ICC-IMB) are based on the latter. In addition, approximately 70% of worldwide piracy incidents in the broad sense are located in the three regions of the Somalia/Indian Ocean, West Africa and South East Asia. Traditionally, Southeast Asia, which holds the Malacca Straits, has been piracy-prone and has had half the share of piracy incidents worldwide. However, thanks to anti-piracy measures by coastal countries and assistance by surrounding countries, in which Japan is included, the number of piracy incidents had greatly decreased by 2009 (chart). Instead, there has been an increase in incidents offshore the Somali and Indian Ocean over the past several years, and in that location both the period of detainment and the ransom for hostages have increased. In February 2011, the Greek-registered tanker *Irene SL* (319,247 DWT, 25 crew member) was attacked at sea 350 nautical miles southeast of Muscat (Oman) and a ransom of \$13.59 million was paid, the record highest amount paid to pirates in a single case up until now. Moreover, in September 2008, a Belize-registered cargo vessel *Faina* (13,650 GT, 21 crew members), which was operated by a Ukrainian maritime company, was pirated offshore Somalia. Since its cargo included an RPG, AA gun, and other firearms as well as ammunition, the vessel was pursued by the U.S. and Russian navy. \$3.2 million of the originally requested ransom of \$20 million was eventually paid, while the hostages were kept for five months. Ransoms per case paid to pirates in Somali waters in 2011 averaged \$5.4 million, a 35% increase over the preceding year.

The ongoing anarchy in Somalia and its inability to prevent overexploitation by foreign fishing boats has brought about poverty of local fishermen, and as a result they have come to arm themselves to engage in piracy. In addition, there are ex-coastguard personnel, some of which were trained by PMSCs for their duty and who conducted fishing patrols, who have become pirates as public order worsened. However, as shown in the chart, the number of piracy incidents offshore Somalia and in the Indian Ocean decreased greatly in 2012 for the following reasons. Firstly the effects of countermeasures against pirates by each country (Japan dispatched a unit of its Maritime Self-Defense Force from March 2009); secondly, the recovery of this region's security due to Kenya's military operation in South Somalia (the pirates lost land bases) in 2011; thirdly, ship operators' efforts to arm around 20% of commercial ships in the area along with about 40 private patrol vessels operating (or slated for operation) in the India Ocean. At the same time, the pirates have expanded their area of operations from offshore Somalia to the whole Indian Ocean, using large stolen fishing boats as mother vessels. Many pirates had avoided acting during the monsoon season in the past, however, they have become immune to it by using a mother ship.

On the other hand, the number of piracy incidents in Southeast Asia and West Africa is on the rise. In Southeast Asia, in particular, in spite of the temporal decrease, it has been increasing since 2010. Although countermeasures

against pirates were carried out mainly in the straits (e.g. the Strait of Malacca), pirates have been shifting their bases of activity to the Spratly Islands and incidents offshore in the South China Sea are increasing. In comparison, pirates in West Africa tend to settle with comparatively low ransoms.

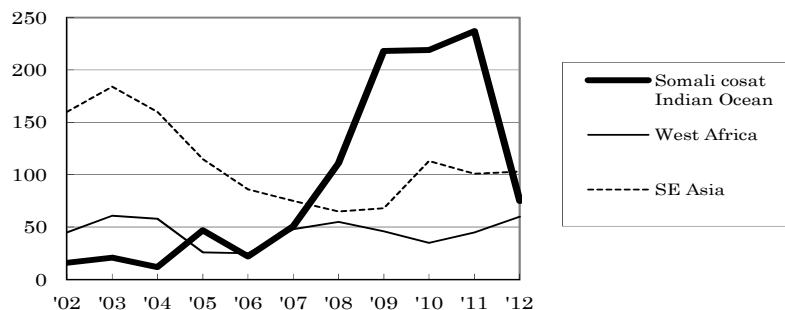


Chart: The Number of Piracy Incidents in the three Areas (2002-2012)

Source: International Chamber of Commerce International Maritime Bureau, *Piracy and Armed Robbery against ships*, 1 January – 31 December 2012, ICC-IMB, 2013, pp. 5-6; International Chamber of Commerce International Maritime Bureau; *Piracy and Armed Robbery against Ships*, 1 January – 31 December 2006, ICC – IMB, 2007, prepared from p.4

2. Anti-Piracy Operations by PMSCs: – Countermeasures by Private Goods

In economics, military and police activities are defined as public goods in which exist non-rivalry (expenses do not increase as users increase) and non-excludability (free-riders cannot be excluded). Coastal countries are responsible for crime control in the territorial waters, while the flag state of a ship has exclusive jurisdiction when a piracy incident happens in the high seas. However, pirates acting on the high seas can readily run away, so accordingly, entrusting the jurisdiction to the flag state of the pirate ship (particularly where a flag of convenience is hoisted) is unrealistic. Therefore, a universal jurisdiction enabling the application of the domestic criminal codes of each country has been applied for pirate actions. Further, authority for seizure, official inspections and pursuit of pirate vessels/aircraft based on the universal jurisdiction is given to ships and aircraft on government service (coastguard, etc.) as well as warships and military aircraft. Pirate countermeasures activities offshore Somalia include a multinational response framework (Operation Ocean Shield of NATO, Operation Atlanta of the EU Naval Force, and Combined Task Force 151 of a coalition of combined maritime forces led by U.S.) and activities individually made in response by each country. Regardless of the framework of the activities, the participant navies exchange information with each other, and these operations function as public goods of “area security” or securing the safety of the sea lanes.

PMSCs also provide services of vigilance and security, they are a supplier of a private good for individual vessels or point security based on each contract, and they are in complementary relationship with the navy and coast guard for maritime security. Nowadays, PMSCs specializing in maritime operations offer security services for commercial vessels in dangerous waters or for fishery patrols, which may be regarded as rather a substitute than a complement to the navies.

Different from land-based services, PMSCs’ anti-piracy operations have an aspect of risk management, such as recapturing of hostages, vessels and cargos, and ransom negotiations. Their anti-piracy operations can be classified

as follows: information services, instructions/training prior to incidents; protection/response during the incident, and damage control after the incident (see table below). While some of these are supplied by the navy and coast guard as public goods, the PMSCs act complementarily to them to offer private goods responding to individual customers' requests. Although large-scale PMSCs such as Control Risks and G4S carry out all of these services, there are small-to-medium size PMSCs specializing in piracy countermeasures established by a small number of former military personnel, coastal security commandos, police personnel and so forth. The latter type of PMSCs have advantages in that they are able to flexibly furnish personnel and equipment in line with the customers' demand.

Table: Anti-Piracy services by PMSC

| | Classification | Content of services |
|---------------|-------------------------------|--|
| Pre-incident | Information services | Pirate activity information/information of insurance fee base |
| | Instruction/Training | Coaching and consulting |
| Mid-incident | Protection/response (unarmed) | Acoustic devices, non-lethal weapons, water cannon, screw arresters, etc. |
| | Protection/response (armed) | Protection/response with firearms |
| Post-incident | Damage control | Hostage release, ransom negotiation, media relations, mental care for hostage family |

3. For an orderly complimentary relationship

Since the effectiveness of armed security for commercial vessels off the coast of Somalia is recognized, it is being allowed in other areas. IMO had not been affirmative toward arming commercial vessels, because it would make the situation worse, requires special training, raises the risk of accidents and is not covered by regulations that permit justifiable defense. However, the IMO's Maritime Safety Committee (MSC) had decided to tentatively recommend having contracted armed security personnel on board ships in the high risk area if and when a flag state determines that such a measure would be appropriate and lawful. In the U.S., though, whether a vessel is armed or not is left to its owners' or operators' decision, and the Coast Guard requests all the U.S. flag commercial vessels sailing dangerous waters to be guarded defining the requirement to be satisfied by the security personnel, including armed guards. Britain also allowed armed guards for commercial vessels of British nationality in December 2011. Ship operators have to submit security plans to the Department for Transport while PMSCs must receive prior inspection by the Home Office and police. As of December 2012, armed guards are allowed in the U.S., U.K., Cyprus, Finland, Germany, Greece, Italy, Norway and Spain. At this point in time, although having armed guards onboard has not yet been recognized by the Japanese government, the legislation for it is under preparation.

For wider use of PMSCs and their complementary relations with navies and coast guards, appropriate regulations and supervision are imperative. The Montreux Document was adopted in September 2008 with the Swiss Department of Foreign Affairs and the International Committee for the Red Cross (ICRC) taking central roles in the process. As of May 2013, 46 countries and the European Union have approved the document, although Japan has not yet done so. While the Montreux Document is a guideline aimed at governments, as a document for the PMSCs, the International Code of Conduct for Private Security Service Providers (ICoC) was formulated in September 2010 similarly at the initiative of the Swiss Department of Foreign Affairs, and as of April 2013, 602 providers of 74 countries/regions are participating in it. Of these, about half are PMSCs specializing in maritime operations and less than 20 percent are PMSCs providing both maritime and overland services. Under this situation,

agreement by representatives from signatory companies, civil society and governments has been reached on the Charter for the Oversight Mechanism of the ICoC in February 2013. The purpose of this independent governance and oversight mechanism is to ensure the effective implementation of the ICoC through the certification and monitoring of private security providers, as well as through the adoption of a third-party complaint process.

While piracy countermeasures by navies are yielding results offshore Somalia, should pirates scatter to a broad array of maritime zones over the Indian Ocean and other areas to avoid them, the costs necessary (including personnel and temporal costs) will greatly increase. In this respect, using the PMSCs to offer “point” security for individual commercial ships that obtain rivalry and excludability to establish complimentary relations with navies and coast guards which supply “area” security is a rational action from the viewpoint of economics. In addition, some PMSCs undertake monitoring fishing using patrol craft, which is rather a substitute than a complement for the authorities. The problem is that provisions of laws and regulations are insufficient in comparison with such rational movements. Today, PMSCs are maritime security providers following the navies and coast guards, therefore they should be appropriately supervised and overseen while being incorporated into the legal system.

(References)

1. Keishi Ono: “Anti-Piracy Services by Private Military and Security Companies (PMSCs): Its Potential and Problems,” *The Journal of International Security*, Vol. 40, No. 3, Dec. 2012.
2. Keishi Ono: “Actual and Legal Status of Private Security and Military Companies: Toward an effective regulation and monitoring,” *International Affairs*, No. 587, Dec. 2009.
3. Claude Berube and Patrick Cullen eds., *Maritime Private Security: Market responses to Piracy, Terrorism and Waterborne Security Risks in the 21st Century*, Routledge, 2012.
4. Anna Bowden and Shikha Basnet, *The Economic cost of Somali Piracy*, 2011, One Earth Future Foundation, 2012.
5. James Brown, “Pirates and Privateers: Managing the Indian Ocean’s Private Security Boom,” Analysis, Lowy Institute for International Policy, Sep. 2012.
6. Dana Dillon, “Maritime Piracy: Defining the Problem,” *SAIS Review* vol. 25 no.1, Winter/Spring 2005.
7. Carolin Liss, “Private Military and Security Companies in the Fight against Maritime Piracy,” a paper for Global Challenge Regional Responses: Forging a Common Approach to Maritime Piracy,” a paper for Global Challenge, Regional Responses: Forging a Common Approach to Maritime Piracy,” in Dubai, Apr. 18-19, 2011.
8. Nis Leerskov Mathiesen, “Private Security Companies in Anti-Piracy Operations,” a paper for 7th Pan-European IR Conference in Stockholm, 9-11 Sep., 2010.
9. Theodore T. Richard, “Reconsidering the letter of Marque: Utilizing Private Security Providers against Piracy.” *Public Contact Law Journal*, vol. 39, no.3, Spring, 2010.
10. Bibe van Ginkelet al., *State of Private Protection against Maritime Piracy?* Clingendael, 2013.

(Completed on May 7, 2013)

The views expressed in this article are of the author’s own, and not necessarily those of the National Institute for Defense Studies (NIDS).
All rights reserved.
Contact information is available at the Planning & Management Division, Planning & Administration Department, NIDS. (URL): <http://www.nids.go.jp>