



**S. RAJARATNAM SCHOOL
OF INTERNATIONAL STUDIES**
A Graduate School of Nanyang Technological University

RSIS COMMENTARIES

RSIS Commentaries are intended to provide timely and, where appropriate, policy relevant background and analysis of contemporary developments. The views of the authors are their own and do not represent the official position of the S.Rajaratnam School of International Studies, NTU. These commentaries may be reproduced electronically or in print with prior permission from RSIS. Due recognition must be given to the author or authors and RSIS. Please email: RSISPublication@ntu.edu.sg or call 6790 6982 to speak to the Editor RSIS Commentaries, Yang Razali Kassim.

SECURITY AT SEA: CAN ANYTHING BE DONE AT THE SOMALI COAST?

Jane Chan and Sam Bateman

6 October 2008

Three months since it was put to a vote, it was obvious that the United Nations Resolution 1816 (2008) did not work as intended. Warships are now clearly present in Somali waters, yet they are not much of a deterrence to the number of hijacking incidences.

WATERS OFF the coast of lawless Somalia are currently one of the world's most dangerous shipping zones. Piracy cases have become more frequent and their perpetrators more brazen. The surge in maritime hijackings for ransom has led France, the United Kingdom and Panama to initiate a UN Security Council resolution that would authorize countries to fight piracy and to arrest pirates in Somali waters. In June this year, the Security Council voted and unanimously agreed to UN Resolution 1816 (2008), which allows countries with consent of the Somalia's interim government to use any means to repress acts of piracy.

Essentially, Resolution 1816 authorizes countries to enter Somali territorial waters and use "all necessary means to identify, deter, prevent and repress acts of piracy and armed robbery" by boarding, searching and seizing suspect vessels and arresting the perpetrators. The key conditions require states taking such action to cooperate with Somalia's interim government and to notify the UN Secretary General.

The presence of an international coalition of warships has reportedly assisted in repressing potential attacks. The United States Navy established a Maritime Security Patrol Area in August this year, which creates a safe passage for ships. Coalition navies secure this safe passage through surface patrols and air-surveillance. This is an interim solution whilst the International Maritime Organization and the shipping industry work towards a long term solution. Unfortunately, this effort did not seem to deter daring attacks.

Only good on paper

Three months since Resolution 1816 was put to vote, the effectiveness of the UN move remains questionable. Warships of various nationalities are now clearly present in Somali waters, yet they have

not provided much deterrence. There has been no let up in the number of hijacking incidences. There has even been an increase in violence during such attacks. The limitations on what action warships may take under international and national laws are a major problem as they restrict the effectiveness of the response. For example, in a recent incident, a Danish warship released pirates caught “red-handed” because it would not be possible to prosecute them under Danish law.

The International Maritime Bureau Piracy Reporting Centre has thus far reported over 60 attacks on vessels this year in Somali waters, predominantly in the Gulf of Aden. The most recent attack involved the hijacked-for-ransom of a Ukrainian freighter carrying military tanks and weapons. Even though the perpetrators were quickly surrounded by foreign warships, there was no indication that they were willing to release the freighter without ransom being paid. It is almost as if the pirates were provoking a military response. Although the pirates had clearly indicated that all they wanted was the ransom, there were real concerns that the military hardware on the hijacked freighter might fall into the wrong hands.

A high profile retaliation in mid-September saw the French navy operate unilaterally, rescuing two French hostages from the hands of the Somali pirates, killing one pirate and capturing six others in the process. This is not the first time France has taken an aggressive and proactive approach when dealing with pirates. Earlier in April this year, French military forces had chased fleeing pirates onto Somalia’s shores, capturing them overland and extraditing them to France to be tried. That French adventure in many ways contributed to the initiation of Resolution 1816. The French initiative, to some, had effectively challenged the principle of state sovereignty.

To act or not to act

Few questions remained to be answered. Who should be the first to act or react in such harsh shipping conditions? In any case, is relying on foreign military intervention the best bet the shipping industry has in ensuring safe passage along the Somali coast? In posing these questions, it is not intended to judge the contribution of the coalition of navies now on duty in those treacherous waters. But one needs to consider the effectiveness and the practical extent of the military rules of engagement especially when the proponents they are pitted against are not state actors and no war has thus far been declared.

Conversely, is it reasonable to ask victimized ship operators not to negotiate and pay ransom to the pirates, when the safety and security of their assets and crews are at stake? In any case, ship operators are often reminded that they have to take all necessary precautions, to ensure the safety and security of their vessels at all times. For some, private security services had been hired, and for the unfortunate, ransoms had been paid. Ship operators are increasingly adopting self-help approaches at their own expense. No doubt the main criticism is that by paying the ransom, it only perpetuates the problem, but in the meantime, who is able to help?

Following the Straits of Malacca model

There are loud and clear calls from user states, ship operators and security analysts alike for more to be done by the coalition navies present in Somali waters. In fact, many advocate more warships to be deployed within the required rules of engagement. They often argue that the UN Convention on the Law of the Sea (UNCLOS) and Resolution 1816 should be enough to allow for repressive actions against pirates in Somali waters. Others believe that more resources should be invested to enhance current naval capability in anti-piracy operations. All in all, many believe that military intervention will be the most effective in purging pirates in those infested waters, pronto.

A long term solution calls for a regional cooperative mechanism, much like the current framework implemented in the Straits of Malacca, to be put in place along the Gulf of Aden. Similarly, it should

aim to provide constant patrols and surveillance and, when need be, effective enforcement.

Given the current political climate, it may be highly challenging for Somalia to garner enough political will and financial support to initiate the effort. As with the successful cooperative efforts in the Straits of Malacca, firm regional resolve, coupled with strong international support and relevant international law and national legislation, may prove to be the key to maintaining order in the waterways.

Jane Chan is Associate Research Fellow and Sam Bateman is Senior Fellow at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University. They are with the Maritime Security Programme.