Maritime Piracy and Armed Robbery Against Ships
• are global
• are opportunities

but

• they are threats

Solutions
• are multi-sectorial on the national, regional, and international level
MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS: EXPLORING THE LEGAL AND OPERATIONAL SOLUTIONS. THE CASE OF MADAGASCAR

By
Mr. Jean Edmond Randrianantenaina
OUTLINE

1. INTRODUCTION

2. LEGAL ASPECT OF COMBATING MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS

3. OPERATIONAL ASPECT OF COMBATING MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS

4. FURTHER RECOMMENDATION & CONCLUSION

5. DISCUSSION
1. INTRODUCTION

THE DIMENSION OF THE THREAT
Terminology

• Maritime piracy = Piracy acts as defined by UNCLOS perpetrated on the high seas or the EEZ

• Armed Robbery against ships: Acts that are similar to maritime piracy but are perpetrated in the territorial sea, the archipelagic waters, or the internal waters
The dimension of the threat for Madagascar

The type of threats:

1. Somali piracy

2. Local maritime piracy and armed robbery against ships
Madagascar’s neighboring countries
The dimension of the threat for Madagascar (Cont.)

Source: EUNAVFOR
The dimension of the threat for Madagascar (Cont.)

Mother ship system
The dimension of the threat for Madagascar (Cont.)

High Risk Area

International Ports
The dimension of the threat for Madagascar (Cont.)

### Reported Cases

<table>
<thead>
<tr>
<th>Period</th>
<th>Number of Cases</th>
<th>Location of the Incident</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992 to 2011</td>
<td>10</td>
<td>In ports, anchorage area, Territorial Sea and EEZ</td>
</tr>
</tbody>
</table>

(Sources: IMO GISIS & IMB Report)

Other unreported cases exist
The dimension of the threat for Madagascar (End)

<table>
<thead>
<tr>
<th>Domain</th>
<th>Affected subject/Field</th>
<th>Possible consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Security</strong></td>
<td>Human (Seafarer, fishermen, passengers, etc.)</td>
<td>Injury or loss of life</td>
</tr>
<tr>
<td></td>
<td>Property (Ships)</td>
<td>Partial or total destruction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Loss of property</td>
</tr>
<tr>
<td></td>
<td>Sovereignty</td>
<td>Loss of law and order in the maritime space</td>
</tr>
<tr>
<td><strong>Economy</strong></td>
<td>Maritime trade</td>
<td>Disruption of activities and supply</td>
</tr>
<tr>
<td></td>
<td>Maritime tourism</td>
<td>Increase in cost</td>
</tr>
<tr>
<td></td>
<td>Fisheries</td>
<td>Loss of profit</td>
</tr>
<tr>
<td></td>
<td>Energy</td>
<td>Loss of income</td>
</tr>
<tr>
<td></td>
<td>Offshore activities</td>
<td></td>
</tr>
<tr>
<td><strong>Environment</strong></td>
<td>Marine life and ecosystem</td>
<td>Pollution</td>
</tr>
</tbody>
</table>
2. THE LEGAL ASPECT OF COMBATING MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS
Approach and Methodology

1) Examination of:
   a) International treaties and instruments
   b) National legislation models of countries in the East Africa and Western Indian Ocean region
   c) Current Madagascar national legislation

Considered parameters: Definition, Criminalization, Jurisdiction, Judicial process, human rights issues, and international cooperation

2) Proposition of the legislation improvement

3) Proposition regarding the judicial capacity
Maritime piracy and armed robbery against ships under International law

- Convention on the High Seas (Art. 14 to 23)
- UNCLOS (Art. 100 to 107, 110 and 111)
- SUA Convention
- Organized Crime Convention (OCC)
- Hostage Convention (HC)
- UN General Assembly & Security Council Resolutions
- IMO General Assembly Resolutions
Key findings regarding international law on the issue

- International law provides a workable legal framework (Zonal approach vs Generalized approach)

- Key legal elements and standards are provided for the development of a national legislation (Definition, Criminalization, jurisdiction, enforcement measures, judicial process and human rights issues, International cooperation)

- Deficiencies exist but they can be corrected during the implementation phase in national legislation
National legislation models in the region

- The French legislation
- The Mauritian legislation
- The Seychellois legislation
- The Tanzanian legislation
- The Kenyan legislation
Key findings regarding national legislation models

- Use of UNCLOS, IMO Res. A.1025 (26) and SUA Convention as international legal references

- Adaptation of the definition to the practical context

- Criminalization of attempt, commission, incitement, participation and facilitation of piracy and armed robbery at sea acts and a provision of deterrent penalty (For example 60 years of imprisonment)

- Extension of the jurisdiction regarding the competency of national courts to the high seas, EEZ, and territorial sea

- Designation of the competent authority for the arrest and seizure and their rights and duties

- Adaptation of the judicial process to the context of piracy and armed robbery at sea case taking into account human right issues and rules of evidence matters

- Introduction of provision related to international cooperation especially in the area of transfer of suspected pirates and armed robbers at sea
Examination of the existing legislation on the issue in Madagascar

- Maritime Code (Provisions on maritime piracy)
- Penal Code
- Criminal Procedure Code
- Presidential order concerning the protection of the child
- Decrees related to the repression of money laundering
Deficiencies in the current national legislation

- Restricted definition
- Criminalization do not cover the full aspect of piracy and armed robbery against ships
- Jurisdiction of courts are no clarified
- Enforcement measures are not detailed (Right of visit, use of force, arrest, seizure, diversion to the nearest port)
- Issues regarding the arrest and duration of detention at sea arrangement
- Rules of evidence issues
- Inexistence of provisions on international cooperation
Proposed areas of amendment

• Definition: Maritime piracy, armed robbery against ships, maritime violence

• Criminalization: Attempt, commission, incitement, participation and facilitation of piracy and armed robbery at sea acts, involving minors and use of proceeds of crime

• Jurisdiction: extension of the court’s territorial competence to the maritime zones and identification of the competent court

• Clarification of enforcement measures

• Arrest and detention at sea arrangement

• Amendment of the rules of evidence: Introduction of video linked evidence

• Introduction of international cooperation provisions
Additional measures

• Capacity development of the judiciary personnel: Investigators, prosecutors, judges

• Establishment of a pool of translators and defense lawyers

• Technological infrastructure improvement in courts’room

• Improvement of prisons’ infrastructure to meet human rights standards
3. OPERATIONAL ASPECT OF COMBATING MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS
Approach and methodology

1. Examination of the international and regional operational initiatives in the East Africa and Western Indian Ocean Region

2. Assessment of Madagascar operational response capacity

3. Proposition of improvement
International and regional operational initiatives in the East Africa and Western Indian Ocean Region
Somali piracy model

Source: Spiegel online
Anti-piracy and armed robbery against ships’ stakeholders in the region

- Shipping industry and its partners: Ship owners and operators, private maritime security companies, marine insurance companies, seafarers’ unions, etc.

- Multinational naval forces: EUNAVFOR, CTF 151, NATO & other independant naval forces

- International and regional organization: UN, IMO, UNODC, INTERPOL, AU, SADC, IOC

- Coastal States in the region
Action taken in the region

1. Developing information sharing arrangement to have a Maritime Situational Awareness:
   - Land-based information centres (MSC-HOA, UKMTO, NSC, MARLO, IMB PRC)
   - Recognized Maritime Picture (RMP)
   - Mercury

2. Taking preventive measures:
   - Application of ISPS Code measures
   - Best management practice or BMP (Preparation, planning, report & SPM)
   - Use of Privately Contracted Armed Security Personnel (PCASP) or Vessel Detachment Protection (VDP)
   - International Recommended Transit Corridor (IRTC)
   - Maritime patrol

3. Responding to maritime piracy and armed robbery incidents

4. Coordinating the action through SHADE and CGPCS

5. Promoting regional cooperation & Capacity-building through the DCoC, UNODC CPP, INTERPOL counter piracy effort
Ship Protection Measures (SPM)

Source: Allianz-Piracy

Risk Mitigation
IRTC

Source: EUNAVFOR

UNITED NATIONS-NIPPON FOUNDATION FELLOWSHIP PROGRAMME 2012-2013
United Nations-Nippon Foundation Fellowship Programme 2012-2013

Multinational naval forces & Private Maritime Securities

- 20,000 ships per year
- 7% global oil traffic
- 28% global container traffic

High Risk Area

- Al Hudaydah - Yemen
- Aden - Yemen
- Djibouti - Djibouti
- Mombasa - Kenya
- Male - Maldives
- Colombo - Sri Lanka
- Singapore
- Oman

Somali Pirates
- Highest ransom US$13.5m
- Total ransom for 2011 US$146m
- Average hosting duration 158 days

Pirates and Privateers
Provide security in the Indian Ocean

Private Counter Piracy Forces
- 2700 armed guards
- 18 floating armouries
- 40 private armed patrol boats
- Over 140 private security companies

Naval Counter Piracy Forces
- Up to 40 ships & aircraft
- From over 20 countries
- Operating costs US$1.5m per
The case of Madagascar

[Map showing high risk areas and international ports in Madagascar]
# Madagascar current response capacity assessment

<table>
<thead>
<tr>
<th>INTERNAL FACTORS</th>
<th>STRENGTHS</th>
<th>WEAKNESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Access to the DCoC information sharing network</td>
<td>Insufficient capabilities to ensure the monitoring, surveillance and control of the maritime space and limited funding to support maritime patrol operations</td>
</tr>
<tr>
<td></td>
<td>Location of Naval Base and Stations in the vicinity of piracy and armed robbery at sea prone area</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL FACTORS</td>
<td>International and regional counterpiracy and armed robbery against ships initiatives in Eastern Africa and Western Indian Ocean region</td>
<td>Political crisis in Madagascar</td>
</tr>
<tr>
<td></td>
<td>Existence of neighboring countries having acceptable naval capabilities</td>
<td>Suspension of the cooperation with and the support to Madagascar by the international community</td>
</tr>
</tbody>
</table>
Operational recommendations for Madagascar

• Development of information acquisition and sharing arrangement

• Strengthening the operational capabilities

• Coordination of stakeholders’ actions

• Taking preventative measures: Land-based shoreline patrol, rigorous implementation of the ISPS Code in ports and onboard ships, facilitating the use of PSCAP & VDP, promote the compliance to BMP, maritime patrol

• Training of the personnel (legislation, operational tactics, hostage negotiation, treatment of suspected offenders, gathering and protection of evidence)

• Developing operational procedures regarding counterpiracy and armed robbery against ships operations (Rules of engagement, Standard operating procedures for the arrest, seizure and transfer to the judicial authority)

• Promoting joint patrol and shiprider arrangement with the naval forces of the neighboring countries
4. FURTHER RECOMMENDATION & CONCLUSION
POLITICAL WILL

1. ON THE NATIONAL LEVEL:

   – Commitment to good governance, ocean governance and rule of law
   – Commitment to invest in maritime security (Capabilities, capacity-building and funding)
   – Establishment of a national coordination platform

2. ON THE REGIONAL AND INTERNATIONAL LEVEL:

   – Promotion of cooperation supporting the legal and operation arrangement
   – Support of the regional and international community
CONCLUSION
National Response model

- LEGISLATION REFORM
- JUDICIAL CAPACITY

GOOD GOVERNANCE, OCEAN GOVERNANCE & RULE OF LAW
INVESTMENT IN MARITIME SECURITY
NATIONAL, REGIONAL & INTERNATIONAL COOPERATION

INFORMATION SHARING ARRANGEMENT
CAPABILITIES AND RESOURCES
LAND-BASED AND SEA-BASED PREVENTATIVE MEASURES
INCIDENT RESPONSE MEASURES
«Pirates are not fish. They don’t live in the sea, they live in the cities.» Hirshi, A.

THANK YOU FOR YOUR ATTENTION
MARITIME PIRACY AND ARMED ROBBERY AGAINST SHIPS: EXPLORING THE LEGAL AND OPERATIONAL SOLUTIONS. THE CASE OF MADAGASCAR

By

Mr. Jean Edmond Randrianantenaina