Piracy, Economics, and the Law

by Peter T. Leeson*

Although recent news gives the opposite impression, the problem of modern piracy remains small. Last year, there were fewer than 300 attempted pirate attacks globally. While that represents an 11 percent increase over the number of attempted pirate attacks in 2007, it represents a 34 percent decrease over the number of such attacks in 2003. Viewed over the course of the last four or five years, rather than the last one or two, piracy is on the decline, not rise.

Furthermore, only about two-thirds of attempted pirate attacks in 2008 were successful. As a proportion of the number of commercial vessels traveling the world's waters globally each year, the number of such attacks is small. Even in the most pirate-infested waters in the world — those near stateless Somalia — there were a mere 44 successful pirate attacks last year. That represents less than just one tenth of one percent of the thirty-some thousand commercial ships operating in this pirate-infested part of the globe.

Yet when pirates do successfully attack, the problem is significant indeed. Last year Somali pirates took 815 sailors hostage. Pirates may hold hostages for weeks and even months. During their captivity, merchant sailors are deprived of their freedom and must endure the stress of an uncertain fate and separation from their families. Few hostages die in pirate hands or are seriously hurt. Only four of the 815 hostages seized by Somali pirates in 2008 — or about one half of one percent — died in pirate captivity, and just two others were injured. But this is little consolation for a hostage while he remains in pirate captivity.

Besides the human cost of piracy, there is also an economic cost. Hijacked commercial ships cannot resume their course until their pirate captors release them. Further, the specter of hijacking in especially pirate-prone waters has led to rising insurance costs for vessels traveling through them. For example, some London-based insurers have begun charging ships traveling through sea dog hot spots, such as those near Somalia, a "pirate surcharge" upwards of $20,000 a trip.[1]

The most significant cost borne by commercial ship owners unlucky enough to have their vessels taken by pirates, however, is the price they must pay to have their sailors, ship, and cargo released. Modern pirates raise their revenue by ransom. After capturing their prize, a pirate negotiator contacts the commercial ship owner whose insurance company (often through a negotiator of its own) negotiates the ransom price for the captured vessel and crew's release. Commercial ship owners are understandably reluctant to reveal what they have paid pirates in ransom; though we know that at least one recent payout exceeded $1 million.

Despite this, since the probability of pirate capture is extremely low, a commercial ship owner's expected cost of sending even a defenseless ship through pirate-infested waters remains small — less than it would cost most ships to hire armed guards, as some U.S. government officials have begun to encourage American-flagged vessels to do following the Maersk Alabama's capture earlier this year. For example, the Congressional Research Service estimates that hiring armed guards would cost the hiring commercial vessel between $40,000 and $60,000 per trip.[2] This dwarfs the expected cost of even a million-dollar ransom. Thus most commercial ships, rationally and predictably, choose to take their chances. It is not that they cannot muster the effort required to prevent or "defeat" pirates. Given the current scale of the problem, it simply is not worthwhile to do so.

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[1] David Herbert, "Who's Afraid of Somali Pirates?," *National Journal*, 5.16.2009, p. 52.
[2] Herbert, p. 52.

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The smallness of the modern pirate problem is also largely responsible for why the world's governments have not taken seemingly obvious steps to further stem the Somali pirates, such as sending still more of their naval vessels to protect their merchant shipping in the area. The cost of doing so exceeds the benefit given current levels of piracy. For instance, while it is very expensive to deploy more of the United States' scarce naval resources to suppress piracy, the prospective gains of such expenditures are paltry. Only one American-flagged ship has been taken by pirates in nearly two centuries.

International naval forces currently patrolling for Somali pirates, such as NATO's, face a similar situation. A combination of large costs — for instance, the additional resources required to effectively monitor the Gulf of Aden — and small benefits — recall that only 44 ships, counting those of all nations, were seized by Somali pirates last year — make the desirability of ridding the waters of pirates questionable at best. Simple cost-benefit considerations such as these help explain what so many observers have been perplexed by, namely, why it is that naval forces many times stronger than the rag-tag Somali pirate crews they might be sent to confront do not overwhelm the watery rascals.

This cost-benefit approach to piracy is not new. It is the same approach Britain took in the early 18th century when the Caribbean pirates of contemporary pop-culture infamy plied the seas. It was not until the early 1720s that the British government, owing to the relaxation of competing demands on its naval resources on the one hand, and the growth of the pirate problem on the other, decided to "get serious" about the piracy problem and devoted the effort required to suppress sea dogs.

Crucially, however, when it did become efficacious for the British government to focus its energies on exterminating pirates in the early 18th century, the legal regime required to do so was in place. Until 1700, Britain's colonies did not, in general, have authority to try and convict pirates on location. In 1700, parliament introduced An Act for the More Effectual Suppression of Piracy, which empowered colonial governments to do this. As a result, when, in the early 1720s, the government's earnest crackdown on sea robbers entered full swing, the legal regime needed to execute this crackdown was available.[3]

Although the data suggest that we are not yet at the point at which it makes sense to "get serious" about capturing modern pirates, if this point were to come today, legally, we may not be as well prepared as

Britain was to handle its pirate problem in the early 18th century. The potential legal obstacles to addressing modern piracy are primarily international in nature. Although the United Nations Convention on the Law of the Sea empowers any nation that seizes pirates to try and convict them in its domestic courts, such nations appear reluctant to exercise this authority because of perceived obstacles relating to international law. As Eugene Kontorovich points out, "Quite simply, making a criminal case against armed foreigners seized in remote parts of the world is very difficult."[4]

"In brief, pirates today are entitled to all of the protections of criminal defendants and also a portion of those afforded to enemy prisoners, but potentially without some of the disabilities of both classes."[5] For example, unlike with the pirates of old, international law prohibits modern governments and others from killing sea rovers encountered on the high seas except in self-defense. Today's pirates must be apprehended and dealt with via the criminal justice system. As Kontorovich also discusses, the Geneva Convention, designed to protect prisoners of war, may unintentionally provide protection for pirates if they can make an argument that they should be entitled to POW status.[6] Indeed,

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[3] For a discussion of the legal regime relating to piracy, and pirates responses to changes in this regime, in the early 18th century, see Peter T. Leeson, *The Invisible Hook: The Hidden Economics of Pirates* (Princeton University Press, 2009).

[4] Eugene Kontorovich, "A Guantanomo on the Sea: The Difficulty of Prosecuting Pirates and Terrorists," *California Law Review*, forthcoming, p. 28.

[5] Kontorovich, p. 19.

[6] For an excellent discussion of the impediments to prosecuting pirates created by international law, see Kontorovich.

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internationally agreed standards of behavior and do not become accessories in the maltreatment of detainees or members of the security forces.

It is unlikely that any single nation will be able to provide the quantity or variety of resources to meet the full range of tasks that have been outlined above. Thus the international military medical community must work within an international framework that includes military, civilian, academic, private sector, and NGO sources. The lack of such a framework has challenged the effectiveness of security sector reform by military medical forces to date. Success requires shared and mutual understanding of the intent and mechanisms for delivery of the task. While some assets such as mentors or ETTs will be dedicated to the tasks described, others assets such as pre-existing international military medical treatment facilities will have to balance their role in security sector reform with their main function of providing medical support to international military forces. There may be scope for other innovative methods of delivery such as the use of external civilian agencies or contractors in addition to using conventional military forces. This pluralistic model requires a significant investment in coordination and sharing of resources in order to achieve unity of effort even if the arrangements preclude unity of command. This includes pre-deployment orientation and training for ETTs, sharing of training resources and best practices, transparent funding arrangements

for all parties, and communication of plans and policies so as all parties understand the intent.

It is important to take a long-term view and to create international civil-military partnerships that can develop managerial structures and processes for sustainable, capable and effective local medical systems. ❖

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matters as simple as procuring and presenting evidence capable of proving cases against pirates in a manner consistent with the demands of international law also pose potential impediments to prosecuting sea dogs. Such difficulties are further exacerbated since the military is involved in pirates' capture.

On the other hand, there may be reason for optimism when it comes to straightening out legal issues relating to piracy. If the pirate problem grows large enough to earn the attention of governments that consequently capture growing numbers of sea scoundrels, the benefit of finding solutions to these legal issues will grow too, helping incentivize the relevant parties to find solutions to existing problems that hinder pirates' prosecution. ❖

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