



August 2021

Piracy and the US Navy

Peter M. Swartz

CNA Historical Paper Series

CNA publishes documents in its Historical Paper Series to highlight previously unpublished works with historical perspectives that may be of use to current and future researchers. The content of this paper is current through its initial writing in 2006. It is presented in its original format.

DISTRIBUTION STATEMENT A. Approved for public release: distribution unlimited.

Abstract

This paper, drafted in 2006, summarizes US Navy counterpiracy activities since the 18th century. It covers three general eras: the era of privateering (18th and 19th centuries), the era of Western imperialism (19th and 20th centuries), and the era of terrorism (20th and 21st centuries).

The content of this paper is current through February 16, 2006.

Distribution

DISTRIBUTION STATEMENT A. Approved for public release: distribution unlimited.

8/06/2021

This work was performed under Federal Government Contract No. N00014-16-D-5003.

Approved by:

August 2021

Nilanthi Samaranayake

Nilanthi Samaranayake, Research Program Director
Strategy and Policy Analysis
Strategy, Policy, Plans, and Programs Division

Request additional copies of this document through inquiries@cna.org.

Executive summary and overview

Counter-piracy operations: Lessons from history

Recent events off the Horn of Africa have once again involved the US Navy in counterpiracy operations. The Navy has been involved in operations against piracy since the 18th century. We quickly reviewed these operations and found several relevant lessons for today's operations.

Piracy activities across the centuries

We identified three distinct eras relating to piracy: the era of privateering, the era of Western imperialism, and the era of terrorism.

The era of privateering: 18th and 19th centuries

Privateers were civilians licensed by their sovereigns to seize upon the high seas vessels, cargoes, and crews of other nations against whom their own nation was at war. Pirates also operated for their own financial benefit on the high seas, but with no government authorization, and against the ships, cargoes, and crews of any nation. The Law of Nations allowed the forces of any nation to capture, try, and hang them. In the 18th and 19th centuries, however, it was often difficult to differentiate legal privateering from illegal piracy.

During this period the American merchant marine became second only to that of Great Britain in size. As one of the world's leading shipping powers, the United States had a vital interest in the safety of American ships, crews, cargoes, and profits. This was the principal mission set of the Navy through most of this period. This was the era of the Barbary pirates and the Caribbean antipiracy campaign.

The era of Western imperialism: 19th and 20th centuries

The nineteenth century saw an explosion of European and American global commerce, and a concomitant increase in attacks on that commerce worldwide. Some of these attacks were sponsored by political entities: decaying empires, petty states, local warlords, and insurgent groups. Others were clearly conducted by independent bands of true pirates. Western naval operations to suppress piracy usually involved landings and assaults ashore. These antipiracy

operations were sometimes hard to distinguish—especially in the minds of local rulers—from the various other forms of European colonial land-grabs then under way throughout the world.

The era of terrorism: 20th and 21st centuries

During the 20th and 21st centuries, piracy remains a threat, but it now coexists with the phenomena of terrorism at sea and other forms of maritime violence. Attacks at sea, including ship hijackings, are now undertaken by modern day pirates, ordinary criminals, fanatic environmentalists, mutinous crews, and hostile workers. They are also conducted by terrorist groups, antigovernment exiles, and a variety of separatists, political dissidents, guerrillas, and rebels. Under international law, “piracy” now has a very clear but very narrow definition. The International Maritime Organization (IMO) considers piracy to be those acts defined as such in the United Nations Convention on the Law of the Sea in 1982:

- Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed.
- On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft.
- Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.
- Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.
- Any act inciting or intentionally facilitating an act described (above).

Thus, acts of violence conducted for moral, religious, ideological, political, patriotic, or social ends are excluded from legal consideration as piracy, as are acts committed in territorial or archipelagic waters. The IMO has adopted the term “armed robbery at sea” to cover all other unlawful acts of violence at sea, including those in territorial waters. Suppressing perpetrators of these acts involves a more complex set of diplomatic, information, military, and economic measures than suppressing piracy, even on the high seas.

Some lessons for today

Looking across the centuries and the operations, we see that the Navy has been involved in various approaches to suppressing or eliminating piracy. Consistently, the most effective method has been to attack and destroy the pirate base of operations. While the most effective, this is the most difficult, politically. While colonialism, like privateering, is long gone, its legacy still strongly influences the attitudes of many in the world toward Western antipiracy operations and initiatives. These operations are often viewed as unwanted manifestations of

neo-imperialism, especially by people in Malaysia, Indonesia, China, the Middle East, and East Africa.

Standing patrol or convoying merchant ships has been another frequent approach to piracy. This approach will suppress pirate activity while the convoys are present; however, it is less likely to eliminate the problem than destroying the pirate base. This requires continued presence and is an asset-intensive approach. Unlike terrorists or enemy combat forces, pirates have no interest in confronting or fighting naval warships and instead seek to avoid them.

Finally, naval forces have long tried to kill or capture the pirate leaders. This approach has been less effective than destroying pirate bases; however, if intercepted at sea, naval forces have the necessary permissions to take action against the pirates. In the past, these operations have often required different capabilities than traditional forces bring, requiring smaller, faster vessels and other innovations.

Contents

Analyses and conclusions	1
Past USN methods to suppress piracy.....	1
The nature of counter-pirate operations: Lessons from history.....	1
The problem of definitions and concepts	2
The historical experience	3
The era of privateering: 18th and 19th centuries	3
Privateering and piracy	3
Revolutionary War (1775–1783).....	4
US Constitution (1789).....	4
Barbary Wars (1801–1805, 1815)	4
New Orleans Flotilla (1806–1819)	4
Caribbean antipiracy campaign (1819–1826).....	5
Antislavery campaigns (1820–1861).....	6
Operations against Greek pirates (1825–1829).....	6
The era of Western imperialism: 19th and 20th centuries	6
Piracy and imperialism.....	6
Aceh, Sumatra (1832, 1839)	7
China coast (1849–1868)	7
Mexico (1870)	8
Asiatic Fleet and Yangtze Patrol (1919–1941).....	8
South China Sea (1945).....	8
The era of terrorism: 20th and 21st centuries	8
Terrorism, hijacking, and piracy.....	8
Piracy vs. armed robbery against ships.....	8
World War I (1914–1918)	9
United Nations (1954).....	9
United Nations Convention on the High Seas (1958)	9
Seizure of SS <i>Santa Maria</i> (1961).....	9
Seizure of SS <i>Anzoatequi</i> (1963)	9
International Seapower Symposia (1969–present)	9
Seizure of SS <i>Mayaguez</i> (1975).....	9
Vietnamese boat people rescues (1975–1990s).....	10
UN Law of the Sea (1982)	10
Anti-Piracy Agreement (1982)	11
SS <i>Achille Lauro</i> hijacking (1985).....	11
The Law of Piracy (1988).....	11
IMO SUA Convention (1988).....	11
NWP 1-14M (1995)	11
IMO antipiracy project (1998).....	12
Attack on USS <i>Cole</i> (2000).....	12
Malacca Straits ship protection operations (2002).....	12

CTF-150 (2001–present)	12
RMSI (2004).....	12
Gulf of Guinea Conference (2004)	13
National Strategy for Maritime Security (2005)	13
SS Seabourn Spirit (2005).....	13

Analyses and conclusions

CNA has several efforts underway analyzing counter-piracy issues at strategic, operational, and tactical levels. This is a quick-response historical analysis, deriving insights from the Navy's long but episodic counter-piracy experience, to improve current situational awareness.

Past USN methods to suppress piracy

- Attack and destroy the pirate base
 - **Most effective and decisive method**
- Standing patrol
- Arm or convoy merchant ships
- Diplomacy (or war)
- Kill or capture pirate leaders
 - **Least effective method**

The nature of counter-pirate operations: Lessons from history

- They are always difficult.
- Politicians involve navies when other tools fail.
- Legal and diplomatic problems abound, and often constrain.
- Other violence at sea is confused with piracy, often deliberately.
- Cooperation with sovereign non-US authorities is necessary.
- Operations ashore are essential.
- Conventional warships don't work as well as purpose-built craft.
- Domestic US press and political problems can be expected.
- Innovative tactics and systems are useful.
- Cooperation with coalition navies is useful and possible.
- You only know you have won when it stops.

The problem of definitions and concepts

Most studies of piracy and counter-pirate operations include a discussion of just what piracy is. Definitions have changed over time, and have come in many varieties—legal, economic, and military. Moreover, the concept of piracy in any one period—including our own—cannot be well understood without reference to other contemporary phenomena (e.g., privateering, slave trading, resistance to Western imperialism, and terrorism).

“Piracy”—unlike “terrorism”—actually has an accepted legal definition in international law, reiterated as recently as 1982 (see below). That definition, however, is quite narrow and specific, and excludes many criminal acts at sea that in popular American parlance—and political rhetoric—a layperson might consider piracy.

The historical experience

The US Navy has had a long, episodic relationship with piracy, from its beginnings as the Continental Navy (when it was itself denigrated as a pirate force) to today.

Three distinct eras can be identified, each characterized by the salience of particular related international phenomena peculiar to the era, but linked to piracy:

- The era of privateering: 18th and 19th centuries
- The era of Western imperialism: 19th and 20th centuries
- The era of terrorism: 20th and 21st centuries

We will discuss each era in turn, chronologically. It is from this discussion that we have drawn the lessons learned provided earlier.

Each of these eras—even 18th and 19th centuries—has important lessons and implications for current US Navy thinking on antipiracy operations.

The era of privateering: 18th and 19th centuries

Privateering and piracy

From the 15th through 19th centuries, two general groups of non-naval commerce-raiders existed: *privateers* and *pirates*. *Privateers* were civilians licensed by their sovereigns to seize upon the high seas vessels, cargoes, and crews of other nations against whom their own nation was at war, and to dispose of them in a prescribed manner, for their own benefit. Even the US Constitution of 1789 recognized the legitimate use of privateering in warfare, providing Congress the authority to issue letters of marque and reprisal. Privateering was, however, subsequently outlawed by international treaty in 1856, ending 500 years of customary practice. While not a signatory to the treaty, the United States never since issued a privateer's commission (although the southern Confederacy did, briefly).

Pirates also operated for their own financial benefit on the high seas, but with *no* government authorization, and against the ships, cargoes, and crews of *any* nation. The Law of Nations allowed the forces of any nations to capture, try, and hang them. In the 18th and 19th centuries, however, it was often difficult to differentiate legal privateering from illegal piracy, and privateering was often a facade behind which piracy flourished, especially in the Caribbean. In 1820, the US Congress categorized slavers as pirates, conflating the two.

This period was also one in which the American merchant marine became second only to that of Great Britain in size. As one of the world's leading shipping powers, the United States had a

vital interest in the safety of American ships, crews, cargoes, and profits. Safeguarding those interests was, in fact, the principal mission set of the Navy through most of this period.

Revolutionary War (1775–1783)

American and British privateers operated freely, and American privateers served both sides. In the rebel cause, some 792 privateers captured or destroyed 600 British vessels. Accusations were leveled by the British throughout the war that American naval sea captains were in fact pirates operating without proper commissions. John Paul Jones and Gustavus Conyngham in particular were so accused.

US Constitution (1789)

The US Constitution, as enacted in 1789, states that “The Congress shall have the Power . . . To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.”

Quasi War with France (1798–1800)

The US government deployed warships and authorized privateers to counter the depredations of Revolutionary French warships and privateers, as well as rebels and pirates working out of Haiti and other French or former French islands. Successful US Navy antipirate patrol and assault operations included sinking pirate ships and bombardment of their shore fortifications.

Barbary Wars (1801–1805, 1815)

The North African Barbary States had long deployed commissioned privateers to prey upon European—and later American—commerce, seizing ships and their cargoes and holding crews for ransom. European nations normally paid tribute to Barbary rulers to avoid such government-organized harassment. During the early 19th century, the US government deployed naval squadrons against Tripoli and Algiers, conducting combat operations afloat and ashore, and used naval officers as diplomats in dealing with the governments of Morocco and Tunis. To support these operations, an advanced base was set up at British-held Gibraltar, and special shallow-draft craft were loaned to the Navy by the Kingdom of Sicily. The Barbary threat to shipping ended soon thereafter due to concerted European naval efforts and the French occupation of Algeria. These wars have become famous in US Navy folklore as campaigns against the Barbary “pirates” (which they were not; nor were they “terrorists”). Subsequent actual US Navy operations against real pirates have been, however, often ignored in the history books.

New Orleans Flotilla (1806–1819)

As the American west developed, the amount of American trade that flowed through the French—then Spanish—port of New Orleans increased drastically, and with it the scourge of

piracy throughout the Gulf of Mexico. In 1803 New Orleans came under American control, and in 1806 the US Navy established a “New Orleans Station,” whose principal mission was piracy suppression using small, shallow-draft schooners and gunboats. Its most famous campaign was against the pirates Jean and Pierre Lafitte and their base on Barataria Island in 1814, in cooperation with the US Army. An operation was later launched against Lafitte’s base in Galveston, protested by the Spanish, which claimed Galveston was part of Spanish Texas, not American Louisiana. (A related operation was conducted in 1818 against pirates operating out of Amelia Island, in the north of Spanish Florida, in cooperation with the US Army.) In these campaigns (Galveston excepted), problems of state sovereignty in territorial waters were minimal or nonexistent, as the territorial waters in question were mostly American and the Spanish American Empire was fast becoming a “failed state.”

Caribbean antipiracy campaign (1819–1826)

This was the most significant and successful antipiracy campaign in US naval history—and, arguably, in the world. The revolt of Spain’s American colonies resulted in an exponential increase in pirate and privateer attacks on Caribbean commercial shipping, much of it American and much of it bound to or from New Orleans, now the second-largest American port. Spain and the insurgent colonies all licensed privateers, many of whom were actually pirates operating against American shipping. Nearly 3,000 piratical attacks were reported in the Caribbean between 1815 and 1823. Congress passed an act in 1819 empowering the Navy to convoy American merchantmen and seize pirate vessels, and in 1822 President James Monroe deployed an aggressive antipiracy West India Squadron, forward-based at Key West. This brought the US Navy into confrontations with pirates, Spaniards, and Latin American insurgents alike, ashore and afloat.

The West India Squadron—at the time the largest, most powerful, and most important element of the US Navy—cruised the Caribbean, sinking and burning pirate vessels. These vessels generally worked out of Spanish Cuba and Puerto Rico, however, and to kill them often necessitated hot-pursuit landings on those islands and agreements with local Spanish authorities—some of whom were actually in collusion with the pirates themselves. The squadron’s most famous commander, Commodore David Porter, wound up court-martialed by his own Navy for exceeding his authority and precipitating an international incident due to armed actions ashore in Fajardo, in Spanish Puerto Rico.

Over time, the squadron shed its big blue-water frigates—useful for convoy but little else—and adapted its force structure to the problem at hand, deploying purpose-built shallow-draft schooners and barges to pursue pirates into their coves. Commodore Porter even applied some then-transformational cutting-edge technology, deploying a converted Connecticut river steamer as a gunboat—the first steam vessel to engage in naval warfare in world history. His successor imaginatively deployed merchantmen, crammed full of armed sailors and marines, as decoys, to successfully draw pirates into battle and defeat them. Another particular feature of the campaign was the close cooperation between the US Navy and Royal Navy—mortal

enemies less than a decade before. Combined operational squadrons were constituted, combined landing parties were deployed, and American naval commanders turned many pirates over to the British for execution, rather than send them back to the United States for trial (and possible acquittal).

This important combined Anglo-American antipiracy campaign, acquiesced in ashore by weak Spanish colonial governments, was globally significant and, indeed, transformational. The Caribbean went from being a dangerous, pirate-infested no-man's-land into a peaceful backwater where vast seaborne commercial flows could occur without interruption.

Antislavery campaigns (1820–1861)

Congress categorized slave traders as pirates in 1820, and authorized the death penalty for slaving. A formal US Navy Africa Squadron was constituted from 1843 to 1861, to work with the Royal Navy in capturing slavers. It set up its advance base in the Cape Verde Islands. The US Navy captured just over 100 slave ships, but only nine were carrying “cargo.” The federal courts seldom supported the Navy’s efforts. Even those convicted as guilty were seldom penalized severely, and only one slave trader captured by the US Navy was ever hanged for piracy.

Operations against Greek pirates (1825–1829)

In 1823, during the Greek War of Independence against the Ottoman Empire, defeated Greek naval forces reconstituted themselves as privateers. These ostensible privateers, however, also attacked neutral American shipping—acts of piracy, not privateering. Consequently, the US government surge deployed a reinforcing squadron to the Mediterranean in 1825, to supplement the routinely forward-deployed Mediterranean squadron and deter such attacks. After the reinforcing squadron left the Mediterranean in 1826, however, Greek pirate attacks on US merchant shipping increased again. The Mediterranean Squadron began convoying American merchantmen, using small, speedy sloops to chase pirate ships, and pursuing their crews ashore throughout the Aegean Islands. The pirate threat did not ebb until European navies finally intervened as well, and Greek independence was recognized in 1829.

The era of Western imperialism: 19th and 20th centuries

Piracy and imperialism

The 19th century saw an explosion of European and American global commerce, and a concomitant increase in attacks on that commerce world-wide. Some of these attacks, in what up until recently we would have called “the Third World,” were sponsored by political entities: decaying empires, petty states, local warlords, insurgent groups. Others were clearly conducted by independent bands of true pirates. Western merchants—and the governments that backed

them—tended to regard all these attacks as “piracy.” Western naval operations to suppress piracy usually involved landings and assaults ashore. These antipiracy operations were sometimes hard to distinguish—especially in the minds of local rulers—from the various other forms of European colonial land-grabs then under way throughout the world. This was especially true in the Malay peninsula and archipelagoes, along the China coast, and in the Persian Gulf (“The Pirate Coast”) and Arabian Sea.

While colonialism—like privateering—is long gone, its legacy strongly influences the attitudes of many in the world regarding Western anti-piracy operations and initiatives. These are often viewed as unwanted manifestations of neo-imperialism, especially by Malaysians, Indonesians, Chinese, Arabs, and East Africans.

Aceh, Sumatra (1832, 1839)

Piracy was endemic in the various Malay sultanates on both sides of the Straits of Malacca during the 19th century. Suppression of piracy was an often-used rationale for British and Dutch inroads on Malay independence, which disappeared by the end of the century. In the 1830s, northern Sumatra (the modern Aceh, scene of the US Navy’s 2005 Tsunami relief efforts) was still an independent sultanate, the source of some of the world’s finest pepper, and the site of a thriving pirate industry. Steep price declines and rising tensions between American buyers and Malay sellers were accompanied by an increase in piracy. A successful pirate attack on a Salem pepper trader in 1831 led President Andrew Jackson to deploy a US Navy frigate to the region, which proceeded to attack five Malay coastal forts, burn the town of Kuala Batu, and kill dozens of Malay men, women and children ashore in the process.

This action resulted in a public outcry back in the United States, and was used as ammunition by the President’s political enemies. The President publicly backed the warship’s captain, but chastised him privately, effectively ending his career.

As it turned out, the Navy’s severe retaliation did not end local attacks on Salem pepper merchants and seizures of their goods. In 1838, therefore, another Navy captain—deployed on a round-the-world cruise—brought his ship off the Acenese coast, demolished fortifications, burned one town, and negotiated agreements with several local rajahs. Meanwhile, the pepper trade began to fall off, subsequent local Malay attacks on American traders had no success, and the Dutch eventually moved in to conquer the area.

China coast (1849–1868)

Piracy was as thriving an enterprise along the 19th century China coast as it was among the Malays. China at the time was a crumbling empire—a failing state—beset by internal rebellions and European incursions. Here the lead in piracy suppression was usually taken by the Royal Navy, with US Navy frigate and sloop captains occasionally contributing ships and men to combined antipirate operations afloat and ashore.

Mexico (1870)

In 1870, a US Navy steam sloop attacked a Mexican pirate ship in response to an appeal by a Mexican provincial governor. The US warship located the pirate gunboat 40 miles up the Teacapan River in the Gulf of California and set out to capture it. The river was too shallow for even a sloop to enter, so the captain sent 79 sailors and marines in 6 ships' boats to seize the ship. The pirates retreated to the shore and opened fire on the Americans, who burned the ship and withdrew back down the river. (A young Navy officer killed during this antipiracy action was honored with a plaque prominently displayed today in the US Naval Academy chapel).

Asiatic Fleet and Yangtze Patrol (1919—1941)

Deterrence and suppression of piracy was one of the stated reasons for maintaining US naval forces on the China coast and on China's Yangtze River before World War II.

South China Sea (1945)

In the midst of a major World War II military campaign, a US Navy submarine, on patrol against Japanese shipping, happened upon Malay pirates attacking a Chinese-manned Japanese schooner en route to Singapore. The submarine off-loaded those crewmen not already murdered by the pirates, sank the schooner, and pursued and destroyed the pirates.

The era of terrorism: 20th and 21st centuries

Terrorism, hijacking, and piracy

As we have seen, during the 18th and 19th centuries, piracy co-existed with privateering, which complicated anti-piracy operations. During the 20th and 21st centuries, piracy remains a threat, but now co-exists with the phenomena of terrorism at sea and other forms of maritime violence. Attacks at sea, including ship hijackings, are now undertaken by modern day pirates, ordinary criminals, fanatic environmentalists, mutinous crews, and hostile workers. They are also conducted by terrorist groups, antigovernment exiles, and a variety of separatists, political dissidents, guerrillas, and rebels.

Piracy vs. armed robbery against ships

The International Maritime Organization distinguishes between "piracy" and "armed robbery against ships." It considers "piracy" to be those acts defined as such in the UNCLOS in 1982

"Armed robbery against ships" means "any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of 'piracy,' directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offenses."

World War I (1914–1918)

The Allies leveled charges of piracy against the Germans for their use of submarines.

United Nations (1954)

The Soviet Union alleged that “piratical raids” were being conducted by naval vessels sailing out of Taiwanese (Republic of China) and US-controlled ports.

United Nations Convention on the High Seas (1958)

This was the first true codification of international law on piracy. It has remained the base for subsequent law on piracy. The United States was a signatory.

Seizure of SS Santa Maria (1961)

Following the seizure of the Portuguese-flag cruise ship *Santa Maria*, which had more than 600 passengers and crew aboard, by 70 armed Portuguese rebel passengers, US Navy Atlantic fleet surface ships and maritime patrol aircraft were ordered to find and trail the hijacked vessel. The ship entered port at Recife, Brazil, after US Navy forces had boxed it in. The hijackers surrendered shortly thereafter, following negotiations with US and Brazilian Navy leaders, and were granted asylum. This was the first modern-day hijack at sea. The Portuguese government considered the insurgents as pirates.

Seizure of SS Anzoatequi (1963)

The Venezuelan merchant ship *Anzoatequi* was seized in Dominican Republic waters by Cuban-oriented leftists. US Navy air and surface units tracked the ship for several days, after which Brazilian Navy forces took it under control.

International Seapower Symposia (1969–present)

Since 1969, the Chief of Naval Operations of the US Navy has convened an international conference of chiefs of naval staff every other year at the Naval War College in Newport, Rhode Island. While never a central topic of discussion, cooperative anti-piracy measures have normally been among the issues raised in each symposium.

Seizure of SS Mayaguez (1975)

The US container ship *Mayaguez*, carrying US military cargo, was seized—probably in Cambodian territorial waters—by gunboats (including a US-built PCF “Swift”) of the newly-installed Communist Cambodian government, and escorted to Koh Tang Island. President Ford initially labelled the seizure an “act of piracy,” although he subsequently referred to it as “an illegal act,” or a seizure “in clear violation of international law.” US Marines boarded and

recaptured the *Mayaguez* from a US Navy frigate and went ashore under fire on Koh Tang Island. The Cambodians turned the ship's crew over to another US Navy warship. Air cover was flown by US Navy carrier aircraft and by US Air Force fighters operating from bases ashore in Thailand.

Vietnamese boat people rescues (1975–1990s)

Following the Vietnam War, Vietnamese refugees endeavored to escape the Communist regime and the poverty of the country by taking to the sea in boats. While at sea they were often preyed upon by gangs deploying in small craft from Thailand, Malaysia, Indonesia and the Philippines, referred to popularly as “Thai pirates.” US Navy ships and aircraft routinely helped rescue “boat people” in the South China Sea during this period, saving many from pirate attack.

UN Law of the Sea (1982)

The United Nations Convention on the Law of the Sea (UNCLOS) was signed in 1982. Article 101—retaining the language of the 1958 Convention on the High Seas—defined piracy in international law as follows (emphasis added):

- *Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:*
 - *On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft*
 - *Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State*
- *Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft*
- *Any act inciting or of intentionally facilitating an act described (above).*

Thus, acts of violence conducted for moral, religious, ideological, political, patriotic, or social ends are excluded from legal consideration as piracy, as are acts committed in territorial or archipelagic waters.

The wording is hardly accidental. “Third World” nations did not want to cede broad authority to the US Navy (or allied warships) to seize foreign flag vessels suspected of piratical acts at sea. Nor did those states—and Cuba—want to empower the US Navy to apprehend “freedom fighters” accused of committing piratical acts in a “war of national liberation.”

While the US government has yet to ratify UNCLOS, successive US Chiefs of Naval Operations have publicly endorsed its provisions.

Anti-Piracy Agreement (1982)

The US government and other western nations funded a United Nations High Commission on Refugees (UNHCR) program to assist Thailand in taking air and sea patrol measures to stop attacks by “Thai pirates” on “Vietnamese Boat People” in the Gulf of Thailand. This was a good example of states and international organizations working in conjunction with a committed coastal state.

SS Achille Lauro hijacking (1985)

Following the Palestinian terrorist hijacking of the Italian cruise ship *Achille Lauro* off Egypt, US Sixth Fleet vessels moved into the Eastern Mediterranean. Carrier-based F-14s forced down an Egyptian airliner, with the hijackers aboard, to the US naval air base at Sigonella, Sicily where the hijackers were taken into Italian custody. The US Ambassador to the United Nations tied the hijacking to piracy and likened the hijackers to pirates.

The Law of Piracy (1988)

The Naval War College Press publishes Alfred P. Rubin’s authoritative reference work *The Law of Piracy* as the 63rd volume in its “Blue Book” series of studies in international law. Rubin’s comprehensive work acknowledges the confusion regarding the law of piracy and criticizes the use of a legal term by some to justify a range of political actions.

IMO SUA Convention (1988)

The *Achille Lauro* hijacking led to the International Maritime Organization (IMO) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), which has provided rules for the extradition and prosecution of perpetrators of maritime violence, including terrorism. A listing of punishable offences was provided, but boarding, apprehension, extradition, and prosecution remained discretionary by only the coastal state and the potential prosecuting state—not potential third party states and their navies (like the US Navy).

NWP 1-14M (1995)

Commander, Naval Doctrine Command published Naval Warfare Publication (NWP) 1-14M (formerly NWP 9 (Rev A)), *The Commander’s Handbook on the Law of Naval Operations*. This most recent version of the publication is the basic official US Navy reference on piracy, and has been widely distributed, translated, and used by allied and coalition navies. International and US law regarding the use of naval vessels to suppress piracy is discussed in Section 3.5, “Repression of Piracy.” Section 3.5.3.2 “Pursuit of Pirates into Foreign Territorial Seas, Archipelagic Waters, or Airspace,” carefully discusses circumstances relating to hot pursuit of a pirate vessel international waters into adjacent territorial waters.

IMO antipiracy project (1998)

The International Maritime Organization, founded in 1949 and headquartered in London, is a specialized agency of the United Nations. The United States is represented at the IMO by US Coast Guard officers. Since 1998, the IMO has been combating piracy through a formal program of regional seminars and workshops; and evaluation and assessment.

Attack on USS Cole (2000)

Terrorists in a small boat blew a large hole in the side of USS *Cole* (DDG 67) which had stopped briefly to refuel in the port of Aden, Yemen. Seventeen US Navy sailors were killed, and twice that number were wounded. As a result, stringent new “force protection” measures were instituted worldwide for US Navy warships, especially when visiting foreign ports.

Malacca Straits ship protection operations (2002)

The US Seventh Fleet deployed a succession of single surface combatants to patrol the Strait of Malacca to provide protection against pirate and terrorist attacks for transiting high-value ships. These ships were supporting Operation Enduring Freedom (OEF) against terrorist forces in Afghanistan, in the wake of the September 11, 2001, terrorist attacks on New York and Washington. Later, Indian Navy units joined the US Navy in patrolling the Strait.

CTF-150 (2001–present)

US Navy warships had maintained a significant and visible presence throughout the Arabian Sea and Gulf region since 1979. This presence intensified and was formalized in the 1990s after Operation Desert Storm with the creation of the US Fifth Fleet, headquartered in Bahrain. Since 2001 and the Al Qaeda attacks on America, the US Navy has been a strong participant in a dedicated combined coalition antiterrorism task force (CTF 150) in international waters off the Horn of Africa, as part of Operation Enduring Freedom. This same area of operational responsibility (AOR) coincides with the high seas area of operations of the Somali pirates.

While not conducting special proactive antipiracy patrols, CTF-150 has monitored reports of pirate attacks and in some instances sent assistance. Fears that terrorists have teamed with pirates—or have the potential to do so—have recently increased the attention paid by US Navy units in the region to piracy.

RMSI (2004)

Admiral Thomas Fargo, Commander, US Pacific Command (PACOM), testified publicly before Congress on the Regional Maritime Security Initiative (RMSI), to combat piracy, maritime terrorism, and sea-trafficking in people and narcotics. ADM Fargo stressed RMSI’s emphasis on regional information-sharing. In response to an unrelated question, however, ADM Fargo

mentioned that he was looking at things like putting special operations forces (SOF) and Marines on high-speed vessels to conduct interdiction operations.

Resultant press reporting and speculation triggered negative public and governmental reactions to RMSI in Malaysia, Indonesia, and elsewhere. Two months later, ADM Fargo gave a detailed public explanation of RMSI in Canada, again stressing its information-sharing aspects, and categorically denying that it would result in a standing naval force patrolling the Pacific. At a meeting of the International Institute for Strategic Studies (IISS) Asia Security Conference (styled the “ShangriLa Dialogue”) in Singapore later that year, US Secretary of Defense Donald Rumsfeld averred that ADM Fargo had been misquoted. His Malaysian counterpart warned against the deployment of foreign forces in the region but acknowledged a need to expand intelligence-sharing cooperation with the United States. Later in the year, the Commander of the US Pacific Fleet explained the RMSI to regional naval leaders gathered in Singapore for the Ninth Western Pacific Naval Symposium. He noted that all actions under RMSI would be consistent with existing international and domestic law.

Gulf of Guinea Conference (2004)

The Commander, US European Command, sponsored an international conference on maritime security in the Gulf of Guinea. The conference was hosted by the Commander, US Naval Forces Europe in Naples, Italy. Cooperative measures to counter piracy were among the major topics discussed by the American, European and West African naval leaders present.

National Strategy for Maritime Security (2005)

This comprehensive high-level strategy statement was hammered out by the US Navy and other US governmental agencies and published in September 2005. It provides for an additional eight national implementation plans to provide amplifying detail and specificity. Piracy and counter-piracy policies are mentioned periodically, but are not central to these documents. The basic strategy notes the following: “capabilities to board and commandeer large underway vessels—demonstrated in numerous piracy incidents—could also be employed to facilitate terrorist acts.” It further asserts the following:

The United States will use the agencies and components of the Federal Government in innovative ways to improve the security of sea-lanes that pass through international straits. We will work with our regional and international partners to expand maritime security efforts. Regional maritime security regimes are a major international component of this Strategy and are essential for ensuring the effective security of regional seas.

SS Seabourn Spirit (2005)

The US-based luxury cruise ship *Seabourn Spirit* was unsuccessfully attacked by armed pirates nearly 100 miles off the coast of Somalia. The ship repelled an attempted boarding by the

pirates, who also fired on the ship; it suffered some damage and a crew member was wounded in the attack. An explosive ordnance demolition (EOD) Team from a US Navy Fifth Fleet frigate boarded the ship two days after the attack to remove unexploded ordnance.

Piracy off the Somali coast had increased sharply with the breakdown of a functioning Somali government in the early 1990s. The year 2005, however, saw an even more marked increase in piratical attacks there. Although incidents of piracy and armed robbery against ships, off Somalia and elsewhere, have been steadily rising over the past decades, this particular event triggered worldwide press coverage and a flurry of governmental, commercial and intergovernmental planning activity to counter piratical activity.

This report was written by CNA's Strategy, Policy, Plans, and Programs Division (SP3).

SP3 provides strategic and political-military analysis informed by regional expertise to support operational and policy-level decision-makers across the Department of the Navy, the Office of the Secretary of Defense, the unified combatant commands, the intelligence community, and domestic agencies. The division leverages social science research methods, field research, regional expertise, primary language skills, Track 1.5 partnerships, and policy and operational experience to support senior decision-makers.

Acknowledgments

The author wishes to thank the following individuals who helped with the research, editing, and publication of this document: Kim Deal, Eric Thompson, Nilanthi Samaranayake, Elizabeth Yang, Annaleah Westerhaug, Regina Lee, Robin Smith, Dana Smith, Linette Neal, Michelle McSweeney, and Greg Mercer.

CNA is a not-for-profit research organization that serves the public interest by providing in-depth analysis and result-oriented solutions to help government leaders choose the best course of action in setting policy and managing operations.



Dedicated to the Safety and Security of the Nation

DIM-2019-U-022385-1Rev

3003 Washington Boulevard, Arlington, VA 22201

www.cna.org • 703-824-2000