Piracy in Perspective

A critical analysis of the UN response to contemporary piracy

July 2009

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Master thesis, University of Utrecht

M.A. Internationale Betrekkingen in Historisch Perspectief

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Contents

Abbreviations

DOALOS	Division for Ocean Affairs and the Law of the Sea
EU	European Union
GA	General Assembly
GMDSS	Global Maritime Distress and Safety System
ICC	International Chamber of Commerce
IMB	International Maritime Bureau's
IMO	International Maritime Organization
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MRCC	Maritime Regional Co-ordination Centre
MSC	Maritime Safety Committee
NATO	North Atlantic Treaty Organization
PRC	Piracy Reporting Centre
SC	Security Council
SOLAS	International Convention for the Safety of Life at Sea
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TFG	Transitional Federal Government
UN	United Nations
UNHCR	United Nations High Commissioner for the Refugees
UNCLOS	United Nations Conference on the Law of the Sea
WFP	United Nations World Food Programme

Introduction

Shiver me Timbers! Piracy has returned. The recent surge in piracy off the coast of Somalia may lead one to believe that the pirates have risen from the dead. Attacks off the Somali coast totalled 134 last year, an increase of 125% compared to 2007, and for this year more incidents are expected.[1] The maritime marauders operate on small fishing boats equipped with large outboard engines. This allows them to overtake slower moving commercial vessels carrying everything from crude oil to humanitarian relief aid belonging to the United Nations World Food Programme (WFP). They often try to take the crew hostage, which can earn them millions in ransom. The pirates originate from Somalia, a country in ruins with no effective government since 1991 and a population on the brink of starvation ever since. However, the recurrence of piracy is not a recent phenomenon, nor is it confined to East Africa. Pirates have made their comeback approximately forty years ago, but it is debatable to when and where exactly.

In recent years, the massive increase in piracy off the coast of Somalia has been answered by an equally massive response by the international community. The United Nations Security Council has passed multiple resolutions on piracy off the coast of Somalia, repeatedly allowing for the use of "all necessary means"[2] to take action against the pirates. The European Union has realised its first maritime mission in its existence. Even NATO, traditionally confined to the protection of the North Atlantic has sent warships to the Horn of Africa. Books of law containing clauses on piracy are dusted and pirates are being brought to justice in France, The Netherlands and the United States. In this thesis, the focus will be on analysing the response to piracy by the United Nations (UN). These recent initiatives point to a shift in response towards the piracy phenomenon. This thesis tries to answer if a change in response to piracy equals a change in the perception on piracy. Is piracy suddenly seen as a threat to international peace and security? In order to answer this question and subsequently, if this view is justifiable, an analysis of contemporary piracy is essential. Surprisingly, modern day piracy has received little attention from researchers. Authorities on pirates tend to spend only a few pages on the period of contemporary piracy.[3] When it was researched it was done selectively, from either an

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[1] International Maritime Organization, *Reports on acts of piracy and armed robbery against ships – Annual report 2008*: MSC.4/Circ.133, 19 March 2009. Hereinafter referred to as IMO annual report …

[2] United Nations, Security Council, Resolution 1816 (2008), adopted by the Security Council at its 5902nd meeting on 2 June 2008: S/RES/1816 (2008). Hereinafter referred to as S/RES/… (…), S/RES/1846 (2008).

[3] See for example Joke E. Korteweg, *Kaperbloed en Koopmansgeest: 'legale zeeroof' door de eeuwen heen* (Amsterdam 2006) or Angus Konstam, *The History of Pirates* (Guilford 2002)

anthropological, legal, or political perspective.[4] Furthermore, whenever a multidisciplinary perspective was applied, it was limited to a specific area of the world.[5] In reaction to both gaps in academic research, this essay aims at producing an inclusive approach to piracy involving both a global and multidisciplinary perspective. Special attention will be paid to the historical dimension of contemporary piracy.

As an introductory text this thesis will include a historic overview, the difference between facts and fiction and present examples of how states and sovereigns have responded to piracy throughout the ages. It continues by reviewing 'contemporary piracy' as a phenomenon. The sources that are used vary from essays and books from historians as well as the occasional anthropologist. The main contributing sources however, are the International Maritime Organisation's (IMO) monthly and annual reports on piracy, supplemented by sources from the International Maritime Bureau's (IMB) Piracy Reporting Centre (PRC). In the third and fourth chapters the UN's response towards contemporary piracy will be analysed, and an answer will be given to the question if a changed response is due to a change in the perception of piracy. A great deal of attention will be paid to the conventions on international law and the use of the seas, UNCLOS and SUA.[6] The main sources include resolutions adopted by the UN Security Council and circulars distributed by the IMO's Maritime Safety Committee (MSC) both addressed to piracy. Whenever appropriate, these sources will be complemented with documents by other bodies of the UN family that have analysed or combated the phenomenon. Finally, an answer will be given to the question whether the recent surge in responses to piracy has meant that the perception on piracy has changed, and if so, if this is justifiable.

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[4] An anthropological perspective: Thomas M. Kiefer, *The Tausug: Violence and Law in a Philippine Moslem Society* (New York 1972). A legal perspective: A. Soons 'Rechtshandhaving op zee: Het internationaalrechtelijk kader', *Justitiële verkenningen,* 29-2 (2003), 87-101.

[5] Stefan Eklöf, *Pirates in Paradise: A Modern History of Southeast Asia's Maritime Marauders* (Copenhagen: NIAS Press, 2006).

[6] UN, *United Nations Convention on the Law of the Sea*, 10 December 1982, hereinafter referred to as UNCLOS III (1982), UN, *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, hereinafter referred to as SUA (1988).

I A history of Piracy

Krieg, Handel und Piraterie, dreieinig sind sie, nicht zu trennen[7]

Johann W. von Goethe

Everyone has preconceptions on pirates; they have entered our dreams and fantasies since childhood. Pirates, villains they may be, have acquired legendary status as keelhauling, swashbuckling and hornswaggling seafarers. Still, many among us will find it hard to answer the question which of these was a real pirate: Captain Hook, Blackbeard or Long John Silver?[8] The preconceptions on pirates undeniably result in prejudice. Separating fact from fiction, as well as providing an overview of pirates in world history will be the main focus of this chapter. Added to this is how the international community – for most of history probably better referred to as states and sovereigns – responded to piratical activities.

1.1 Pirates: facts and fiction

Even though most of us have never seen any pirates we all know what a pirate looks like. A pirate wears a flamboyant black waistcoat with accompanying boots, a handkerchief tied across his head and his hand holds a spyglass. He is armed to the teeth with at least a sword, a couple of knives, and three sets of pistols tucked in his coat. One of his eyes is covered with an eyepatch and one of his legs is made of wood. On his shoulder sits a parrot, spitting even fouler language than his master. We also know how a pirate supposedly behaves. Pirates bury their treasures, which are always chests full of gold and silver coins. And if one were not to comply with the captain's wishes, he would keelhaul you, or make you walk the plank.

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[7] Johann, W. von Goethe, *Faust*, Ludwig Wilhelm Hasper, (Bohlan, 1888), 362.
[8] The answer is Edward Teach, a.k.a. Blackbeard. For a vivid description of his tales: Charles Johnson, *A General History of the Pyrates* (zp 1724)

First edition, 1724

Black-beard the Pyrate

Figure 1: Blackbeard the pirate[9]

These images are partly true. Pirates often made use of a crutch or wooden leg after a leg was lost during one of many fierce battles, or as a result of bad weather conditions. Pirating was a dangerous occupation and left many scarred for life, some in need of an eyepatch. Pirates were armed to the teeth not out of sheer boldness but precaution. The damp conditions aboard the ships often made the pistols malfunction making a second, or a third piece a necessity. Parrots were carried along from the tropics by pirates and sailors to serve as presents or merchandise. Obviously, there are also misconceptions. Who would have guest that the notorious Blackbeard wore stockings? (figure 1) Pirates did not bury their treasure but spent most of their acuities on women and booze. They did not make one walk the plank but threw whoever did not comply with their wishes simply overboard. Alternatively one was persuaded to accept the offer of joining the crew. (figure 2)
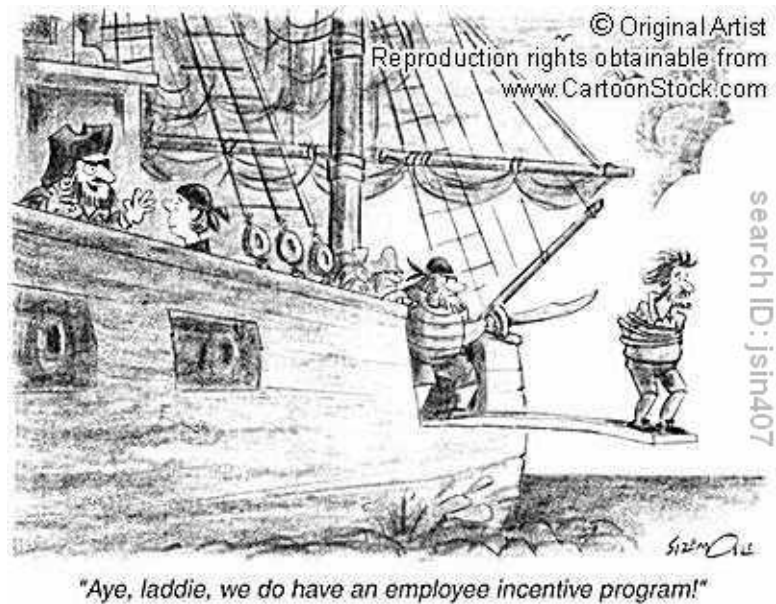
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[9] Ibid, 46.

Figure 2: Pirates offered their captives a chance of joining the crew.[10]

The images we have of pirates are the result of centuries of books, plays, poems, films and bedtime stories. Two of the greatest literary classics are *Treasure Island* by Robert L. Stevenson and *Peter Pan* by J.M. Barrie. We admire pirates, because of their boldness and daring and their pursuit of values like freedom, equality and honour. Again, there is some truth to these aspects. To be a pirate or captain, one needed to be courageous to face the many dangers at sea or the prospect of being hanged when caught by the admiralty. And pirates did adhere to democratic principles. They elected the one they saw most fit to command as captain by majority of vote. Pirates then agreed upon what were to be their most important norms and values, and secured these in a document that every member of the crew was to sign. Consider the following selection of articles drawn up by the crew of captain John Philips:

> (1) Every man shall obey civil Command; the Captain shall have one full share and a half in all prizes; the Master, Carpenter, Boatswain and Gunner shall have one Share and quarter.
>
> (4) If at any Time we should meet another Marrooner (that is, Pyrate,) that Man that shall sign his Articles without the Consent of our Company, shall suffer such Punishment as the Captain and Company shall think fit.
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> (8) If any Man shall loose a Joint in time of an Engagement, he shall have 400 Pieces of Eight; if a limb, 800.

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[10] www.cartoonstock.com/directory/I/Incentives.asp

Article eight might even have served as inspiration for a modern cartoonist looking for a comical way of portraying a treasure map (figure 3). Clearly equality, loyalty, and generosity towards the needy are admirable values.

"It's a treasure map."

Figure 3: Pirates compensated those among them that had lost limbs in battle[11]

Admiration is also found among historians. Philip Gosse, a leading authority on pirates wrote about the buccaneers[12]: "A ruffianly, dare-devil lot, who feared neither God, man, nor death"[13] He hereafter continues to describe a less heroic period in history: "But by this time piracy had degenerated to mere sea-robbing, the days of gallant and ruthless sea-battles had passed, and the pirate of those decadent days was generally a Spanish-American half-breed, with no courage, a mere robber and murderer".[14]

One must not be mistaken. What has characterised the pirates most throughout centuries was their unequalled brutality. Clinton Black makes two important remarks on our collective positive image of pirates and how to put this into perspective: "It is the picture of a flamboyant, swashbuckling seafarer, […] the picture of a daredevil, scarfaced seawolf, […] of a rakehell ashore, drinking and whoring in some secluded cove or pirate port." He ironically adds to this statement: "Not unnaturally however, their contemporaries failed to appreciate these romantic

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[11] www.cartoonstock.com/directory/p/pirate.asp
[12] The Buccaneers are seventeenth century pirates operating around the West Indies.
[13] Philip Gosse, *The Pirates' Who's Who* (London 1924), 12.
[14] Ibid, 12.

features."[15] David Cordingly provides us with a vivid picture of what the pirates were actually capable of:

> "Piracy, like rape, depended on the use of force or the threat of force, and pirate attacks were frequently accompanied by extreme violence, torture and death. John Turner, who was chief mate of the Ship *Tay*, was captured by Chinese pirates in 1806 and held prisoner for five months. He was beaten and kicked and imprisoned at night below deck in a space eighteen inches wide and four feet long; but this was nothing compared with the treatment meted out to officers of the Chinese navy who had also been captured. Turner described how one man was nailed to the deck through his feet with large nails, 'then beaten with four rattans twisted together, till he vomited blood; and after remaining some time in this state, he was taken ashore and cut to piece'. The pirates disembowelled another officer, cut out his heart, soaked it in spirits and ate it."[16]

Unimaginable as these activities might seem to us, it is well worth remembering that these pirates came from amongst our midst. Pirates according to economist Peter Leeson, were no more sadistic than any average member of society could be:

> "So instead, what we often see in the historical record is pirates displaying quite remarkable feats of generosity. The other side of that, of course, is that if you resisted, they had to unleash, you know, a hellish fury on you. That's where most of the stories of pirate atrocities come from. That's not to say that no pirate ever indulged his sadistic impulses. But I speculate that the pirate population had no higher proportion of sadists than legitimate society did. And those sadists among the pirates tended to reserve their sadistic actions for times when it would profit them."[17]

To explain the sadistic activities by pointing to economic motivators is probably too shallow a theory to hold its ground in future historical debates. Nevertheless, dehumanizing pirates will not help us to form a clearer picture of who they were.

1.2 Pirates in world history

Pirates have been around for many centuries. In the writings of Homer (approximately 750 BC), we find descriptions of pirates operating in the Mediterranean Sea.[18] In the age of antiquity there were outcasts and other unfortunates who, after having been subjected to political and economic turmoil, sought refuge in piracy. The Macedonian emperor Alexander the Great (336-323 BC)

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[15] Clinton V. Black, *Pirates of West Indies*, (Cambridge 1989), 1.

[16] David Cordingly, *Life Among The Pirates – The Romance and the Reality* (London 1995), 3.

[17] Ryan Hagen, 'Pirate Economics 101: A Q&A With Invisible Hook Author Peter Leeson', *New York Times*, April 20 2009.

[18] Homer, *The Odyssey*, trans. Alexander Pope (Philadelphia 1828), 38, 158.

encountered a pirate who supposedly dared question the ruler's authority by claiming his own misdeeds were only small in comparison to those of the emperor.[19] Probably one of the most cited incidents of piracy mentioned by historians is the abduction of Julius Caesar (102-44 BC) by pirates.[20] Plutarch describes how Caesar intended to travel to Rhodes in order to visit a renowned tutor. He was intercepted by Sicilian pirates who later sold him for ransom. The most interesting details of the abduction should be taken with a grain of salt. Caesar behaved in captivity in the same commanding way as when he ruled as emperor. Caesar, according to Plutarch, suggested that the pirates should ask more than twice as much ransom as they initially opted for. He even ordered the pirates to keep quiet when he wanted to go to sleep![21]

Piracy was not limited to the Mediterranean Sea. The Vikings marauded from the eighth to tenth century AD. The sagas have left us vivid impressions of these northern barbarians who were feared throughout the coastal settlements of France, Ireland and Britain. Across the globe, the Japanese Wo-k'ou plundered the coasts of South and East China during the Ming dynasty (1368 – 1644).[22] The Dutch Sea Beggars, who helped William of Orange in liberating the lowlands from the Spanish occupation (1571 – 1572) prove that one nation's pirates are another's heroes.

Pirates who sailed the Mediterranean Sea were called corsairs. Especially after the Moors were expelled from Spain, they ventured out of Muslim countries in order to attack mainly Christian vessels. The most dreaded of these were the red-bearded Turkish Barbarossa brothers, who sailed in the sixteenth century. Another group of pirates were called the buccaneers, and operated in the Caribbean and around the coast of South America during the seventeenth century.

At the end of the eighteenth and beginning of the nineteenth century, the largest wave of piratical activity ever manifested itself in Southeast Asia. The most famous of the pirate leaders was a former prostitute called Cheng I Sao, who commanded a total fleet of 1800 vessels and 70,000 pirates in 1809.[23] From a western perspective, the most famous pirates roamed the western Atlantic and Caribbean seas between 1690 and 1730. This period, especially between 1716 and 1726, is called the golden age of piracy.[24]

In many places piracy did come to an end when states and sovereigns were both willing and able to combat the phenomenon, although piracy did not disappear entirely. There are the

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[19] Philip De Souza, *Piracy in the Graeco-Roman World* (Cambridge 2002), 40-41.
[20] For example: Joke E. Korteweg, *Kaperbloed en Koopmansgeest*, 22. Clinton V. Black, *Pirates of West Indies*, 2.
[21] Joke E. Korteweg, *Kaperbloed en Koopmansgeest*, 22.
[22] Robert, C. Ritchie, *Captain Kidd and the war against the pirates* (Harvard 1989), 6.
[23] Dian, H. Murray, *Pirates Of The South China Coast 1790 – 1810* (Stanford 1987), 76-149.
[24] Marcus B. Rediker, *Villans of all nations: Atlantic pirates in the golden age* (Boston 2004)

Tausug for example, an ethnic group in the southern Philippines, who are believed to have been continuing the practice from the mid 1900s to the present day.[25] The exact causes of diminished piratical activities were influenced by local as well as global factors, but it suffices to conclude that piracy on a significant scale had disappeared almost everywhere at the beginning of the twentieth century.

1.3 The response of states and sovereigns to piracy

As we have seen, the presence of pirates transcends time, borders and cultures. So what to make of the response by states and sovereigns to this maritime menace? In theory, the consensus in Europe since antiquity has been that piracy should be treated as *hostis humani generis* – as an enemy of humanity. In reality however, the response towards piracy has been more complex. Trade and piracy have been intertwined throughout the ages and therefore, the response to piracy has been ambiguous.

From the eight century BC onwards the Greek city-states expanded their trade to include outposts on further away coasts than before. When pirates threatened the long-distance trade the Greeks took action against them. Interestingly, piracy was not the main concern of the politicians, it were the merchants who urged upon the establishment of laws on the use of the seas and protection of their cargo. During the Roman time, piracy was being combated whenever it suited the emperor. Caesar had all of his abductors executed. The Roman emperors, like many rulers in history, could not afford to spend too many resources on combating piracy. Nor was this always appreciated by other sovereigns. When Rome expedited a small fleet to combat the Illyric pirates (238-218 BC), the Macedonian emperor Philip V interpreted this as an infringement on his territory (the Balkans), and therefore supported the pirates.[26]

For many centuries, piracy served as a tool in international politics. In the absence of a free trade-ideology, to expand the nation's resources it was legitimate to seize vessels belonging to other nations. When not at war with piracy, states and sovereigns tolerated the phenomenon. And when tolerating proved insufficient, piracy was encouraged either directly or through the sanctioning of 'privateers'. The privateers were simply put: legalized pirates. Originally they were merchants whose cargo had been stolen and were granted the privilege of seizing a vessel belonging to a hostile nation. The privateers were equipped with a 'letter of marque and reprisal',

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[25] Stefan Eklöf, *Pirates in Paradise,* 41.
[26] Joke E. Korteweg, *Kaperbloed en Koopmansgeest*, 25.

safeguarding them from prosecution as pirates. By allowing them to attack hostile ships, states and sovereigns were in effect spared the cost of having to build and maintain a large standing navy. The practice continued throughout the sixteenth, seventeenth and eighteenth century. Stephan Eklöf summarizes:

> "In the mercantilist ideology of the age, moreover, trade and war were both seen as means towards the goal of national advancement at the expense of other nations, and state-sponsored piracy or privateering could thus, in anology with Clausewitz's characterization of war as an extension of diplomacy by other means, be seen as trade by other means."[27]

Some pirates were not only tolerated or encouraged, but even honoured. Sir Henry Morgan, one of the greatest buccaneers, was awarded a knighthood, after a great deal of successful campaigns against the Spanish. When he died in 1688 he was even awarded a state funeral. Sometimes the distinction between piracy and state activities was even more blurred. In the Far East piracy had ceased to be a noticeable menace in the early sixteenth century. That is, until the Portuguese conquered Melaka in 1511. With their superior naval forces they attacked, plundered and sank all who did not purchase certificates of safe conduct, thus acting as pirates themselves! In general however, the role of the state in stimulating piracy should not be overrated. Piracy largely stemmed from private initiative, and therefore, piracy flourished when state authority was in decline.

Privateering and piracy were only seriously combated when the ideology of mercantilism was gradually replaced by that of free trade. It was only when the British and subsequently other western powers came to see piracy as an obstacle to international trade and economic development, that serious action against piracy was undertaken. The increase of trade and economic development and the advancement in technology stimulated policing of the oceans and combating piracy. Exemplary is the declaration of Paris with which in 1856 the European powers abolished the use of privateers.

1.4 Conclusion

There is no question that pirates have been one of the most romanticised villains in history. It is important to distinguish fact from fiction. This has revealed that there is a surprising element of

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[27] Stefan Eklöf, *Pirates in Paradise*, 7-8.

truth to the myths on pirates. And although the argument brought forward by economist Leeson that pirates only exposed sadistic sentiments when in need of profit is definitely putting too much weight to the argument of economic motivators it is true that pirates came from our midst and were no more sadistic than any of us could be.

Piracy is not a recent phenomenon; it is "as old as mankind, as old as boats"[28]. It has been intertwined with trade since before antiquity. This explains the ambivalent attitude that states and sovereigns have shown towards piracy. Where theoretically piracy was condemned, in reality piracy served as a useful element in conducting trade and diplomacy. Action was being taken against pirates whenever it suited states and sovereigns. On other occasions piracy was being encouraged, either directly or through the use of privateers. There is a large truth to the statement by Nicolas Rodger that the distinction between piracy and peaceful commerce is blurred, "by a very wide area of debatable ground and questionable practices."[29]

It is important to conclude that many times, states or sovereigns did not leave important decisions to be dictated by the presence of piracy. Often, changes in ideology, technological advancement or the decision to wage war were of greater importance. The disappearance of piracy was fuelled by a complex set of local and global influences for which a detailed explanation goes beyond the scope of this thesis. It suffices here to conclude that piratical activity almost completely disappeared at the beginning of the twentieth century when mercantilist ideology had given way to a belief in free trade and when the deployment of faster ships paved the way for the decline in piracy.

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[28] Clinton V. Black, *Pirates of West Indies*, 1.
[29] Nicolas A. Rodger, *The Safeguard of the Sea: A Naval History of Britain, 660-1649* (New York 1997), 115.

II Contemporary Piracy

We're not afraid of arrest or death or any of these things. For us, hunger is our enemy.[30]

Sugule Ali

Piracy as a phenomenon has probably never ceased to exist. However, because it occurred in such few numbers or in such remote places, at the beginning of the twentieth century it was regarded as extinct. Pinpointing the exact time of resurgence is highly dependent on the geographical location that is being probed and the number of accounts of piracy that one finds significant enough to establish that piracy has resurfaced. This chapter focuses on the period of contemporary piracy of which it is essential to establish an overview in order to assess a possible change on response and perception by the United Nations. Therefore, besides determining to what extent piracy has returned and in what numbers it is worthwhile reviewing any trends in piracy that can be identified. These trends include an analysis of the different forms in which piracy has occurred as well as the causes that have been influential to the recurrence.

2.1 Piracy in numbers

1975 – 1985: Piracy resurfaces

Contemporary piracy emerged in many different places. One of which was the Caribbean, in the early 1970s. Piratical activities in this region were greatly intertwined with the illegal transportation of drugs and guns. Yachts which were hijacked served to transport drugs illegally into the United States.[31] This trend continued into the 1980s. Yachts were and still are a frequent sight in the climatologically and ecologically attractive Caribbean islands. This type of piracy was limited to private yacht owners and the threat for oceanic traders seemed negligible, except for

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[30] Jeffrey, Gettleman, "Q. & A. With a Pirate: "We Just Want the Money", *New York Times*, September 30 2008.

[31] Jennifer G. Marx, *Pirates and privateers of the Caribbean* (Malabar 1992), 12.

the known troubled spots of Central America. These were ports which were renowned for their criminal activity, like Santos in Brazil.

Figure 4: Yachts are still being pirated (April 2009)[32]

Between 1975 and 1977 piracy also increased alongside the West African coast, specifically in Nigeria, around the Lagos area. The main contributing factor was the increase of Nigerian trade, due to the rapidly expanding oil production. The port of Lagos was not designed to handle the increase in ships, and many had to wait anchored outside the harbour before they were allowed to enter. These ships were not well protected and became an easy target for pirates who preferably operated at night. With or without the forced assistance of the crew, the vessel was emptied of valuable cargo; usually the items that would do well on the local market the next day. This indicated a high level of involvement of local officials. The attacks became more frequent up to 1983 after which they decreased to the total of one attack for the whole of West Africa in 1984.[33]

At the start of the 1980s pirates also began to attack large commercial vessels while they were en route. A few cases occurred in West Africa but the area most affected was Southeast Asia. Especially the Malacca Strait between Malaysia and Indonesia where most of the cargo between East and West passes. The pirate gangs consisted of five to ten persons and used small boats with powerful outboard engines to overtake and enter the commercial vessels at nighttime.

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www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=349020&story_id=13496719

[33] Roger Villar, *Piracy Today*, 20.

Like the West-African pirates, their eastern counterparts preferred to operate unseen. With little interest in the cargo, the pirates went straight for the crew's valuables. Their main target was the safe which they either plundered or took as a whole. If they were spotted they forced the crew to part with their valuables threatening them with machetes and knives.

Even more violent piracy also occurred. Around the Philippine archipelago small pirate groups had been active for decades if not centuries. The precise background and activities of these pirates have been underresearched. What is clear is that during the early age of contemporary piracy these were not fulltime pirates. The anthropologist Thomas Kiefer, who researched the Tausug in the 1960s, describes the origin of piratical activity:

> "The traffic in smuggled cigarettes from Borneo has created new opportunities for piracy and cargoes are sometimes hijacked in an atmosphere of Byzantine intrigue. […] Chinese merchants and wealthy Christians are a favourite target, although raids are sometimes conducted against relatively poor isolated settlements of non-Tausug Moslems; in some cases an entire village might be looted. For the most part these activities are conducted by younger men in search of fortune and adventure who in less adventurous moments are simple farmers or fishermen; fulltime 'professional' pirates are rare."[34]

These Sulu-sea pirates showed little regard for human life. The pirates showed a tendency towards mutilation and acts of sadism were not uncommon. More often then not, they preferred to leave no witnesses, throwing the crew overboard. However, these actions faded in comparison to those of the pirates that attacked the Vietnamese Boat People. When the communists came to power in Vietnam, Laos and Cambodia in 1975, many people fled these countries to non-communist neighbouring states like Indonesia, Hong Kong, Malaysia and Thailand. A real exodus took place between 1975 and 1977 with approximately one and a half million refugees leaving in search of a better future. The ones that left per boat were almost all intercepted by pirates. The overcrowded and often unseaworthy vessels were an easy target for the pirates, who were after their valuables aboard:

> "Many of the boat refugees were comparatively well-off professionals and businessmen who took their life-time savings and possessions with them in easily portable and exchangeable forms such as cash, gold and jewellery. Few of these vessels were armed, in part because of fears of punishment for illegally carrying arms and in part because of fears of escalating the violence in case they were attacked. The exodus of Vietnamese boat refugees thus produced a steady flow of richly loaded and defenceless vessels, providing pirates with an unprecedented opportunity to attack, loot and abuse the hapless refugees."[35]

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[34] Thomas M. Kiefer, *The Tausug*, 85. Quotation taken from: Stefan Eklöf, *Pirates in Paradise*, 40.

[35] Stefan Eklöf, *Pirates in Paradise*, 17.

In case of the pirates who preyed upon the Boat People, roughly two different formats can be distinguished. There were the Thai fishermen who turned pirate, and criminals who transferred their area of operations to the sea. The following attack is exemplary:

> "As I watched, twenty or so young Thais clambered onto our boat, grasping a variety of weapons, long knives, hatchets, hammers, but no guns. Looking at their faces, which appeared simple rather than vicious, it registered on me that these were fishermen-pirates rather then the professional cutthroats who terrorised the Boat People. [...] Our pirates rounded everybody upon deck and threatened us. Then they searched us and the boat, taking our money, jewellery, and a few shirts that caught their fancy. They also liberated our compass and binoculars. But they left us food and water, and they pointed us toward the sea lanes before climbing back on their trawler and sailing off. Afterward we called them our honourable pirates."[36]

The distinction became blurred over time as the amount of violence increased. Untill 1979 most of the attacks seem to have been conducted in a fairly 'reasonable' manner. After 1979 the attacks became more vicious. Refugees were being attacked many times over and had their valuables taken. The women refugees were raped or if pretty enough, first raped and then abducted. If the women were too exhausted to comply, they were often just shot and thrown overboard. The pirates, if left with nothing else to plunder, would even take the refugees' food and water supply.[37]

It must be stressed that these attacks were not isolated incidents. In the year 1981, 452 boats arrived in Thailand carrying 15,479 refugees. Out of 452, a total of 349 boats had been attacked an average of three times each resulting in at least 578 women raped; 228 women abducted; and 881 people left dead or missing.[38] The real figures are probably higher because of two reasons. Firstly, some of the boats did not arrive at all, leaving no one to pass on the statistics. And secondly, many women felt too ashamed to report the abuse.

Characteristic for the whole period of 1975 – 1985 is the difficulty in describing piracy in actual numbers of attacks. It is clear that whereas the attacks on the Vietnamese boat people have been extensively researched, other areas where piracy was practised escaped closer scrutiny. Although the increase in numbers from very little to noticeable and even considerable, as was the case in the gulf of Thailand, can be seen as representing a considerable increase, one must not forget that halfway through the 1980s the piracy attacks worldwide decreased to hardly epidemic numbers.

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[36] Truong Nhu Tang, *A Vietcong Memoir* (New York 1986), 304-305. Quotation taken from: Stefan Eklöf, *Pirates in Paradise*, 18.

[37] For eye witness accounts, see for example: Anonymous, http://www.boatpeople.org/a_true_story.htm last updated: June 1999, accessed March 30, 2009.

[38] Mark Cutts (ed.), *The State of the World's Refugees 2000: Fifty years of humanitarian action* (UNHCR 2000), 87.

1985 – 1997: Piracy expands

The attacks on the Boat People dropped in the second half of the 1980s to virtually nonexistent in the early 1990s in correlation with the number of refugees trying to cross to Thailand. The same can be noted on the West African coast. Piracy decreased because of a diminishing supply of opportunities: the Nigerian oil boom subsided and due to a capacity increase of the port of Lagos fewer ships had to stay anchored off the harbour. Whereas the number of attacks lessened, the violence used by the pirates did not. The pirate attacks were highly dangerous to the crew, not only because of the violence used, but also because apart from the cargo, pirates tended to steal everything that wasn't securely locked, including communication and navigation equipment. In South America and the Caribbean wealthy yacht owners remained a target as well as vessels anchored in ports known for high security risks in Brazil, Venezuela and Colombia. On the whole, however, one cannot speak of an upheaval in piratical activities in these areas.

In the early nineties, due to the increase in trade in the Gulf of Aden and the worsening situation on the Somali mainland, piracy came into existence there. In South East Asian waters, a different trend emerged. Whereas pirates up to 1989 had used hit and run tactics, they expanded their methods to stealing complete ships and cargo. The following story outlines the massive preparation efforts that these pirates undertook in managing to pull off these daring operations:

> "During a voyage from Bangkok to Busan in August 1990, a general cargo vessel was boarded by armed pirates. The pirates knew her exact location and it became clear that they had made detailed preparations to relieve the vessel of her cargo of Tin plate. […]All [pirates] were armed, and the crew of seven were told that they would stay alive if they followed instructions. […] The next day, the funnel was repainted and the pirates brought a stencil with them to change the name of the vessel. They also brought another country's national flag which was hoisted at the stern. However, no attempt was made to change the vessel's point of registry. After the vessel sailed a southerly course for the next two days, the vessel dropped anchor and the pirates made contact with accomplices ashore. During the night, the pirates began discharging the cargo of tin plate into a barge. Forklifts were used and the whole operation took about two and one-half days. During this time, the crew were kept below and the portholes were covered so they could see nothing of the operation. After two more days at anchor, the vessel headed north and then northwest. Two days later the pirates anchored the vessel and left using a lifeboat."[39]

In these cases it is clear that organised crime was involved in this form of piracy. Another area in which incidents of piracy increased was the Malacca Strait. Attacks expanded from seven attacks in 1988, to twenty-eight in 1989, and fifty in 1991, thus amounting to a serious threat.[40] The attacks around the Philippines continued, but more significantly, there was a relatively new area

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[39] Eric Ellen, "Contemporary Piracy" *California Western International Law Journal* 21-2 (1990): 125-126.
[40] IMO, "Piracy and armed robbery at sea", *Focus on IMO* (2000), 3.

that came into sight: the South Chinese Sea. From approximately 1994 onwards, attacks in the South Chinese Sea increased. The attacks remained low in violence for the first part of the 1990s, although pistols and occasionally assault rifles were being used. Incidents were recorded involving officials, pointing to an increase in local corruption. Whether these incidents involved pirates dressed up as officials or officials dressed up as pirates is not entirely clear.

When taking the entire period between 1985 and 1997 into consideration, there is an undeniable expansion to be seen. Where the worldwide piracy-attacks totalled 38 in 1986, for the years hereafter, they increased to 57 for both 1987 and 1988, 107 in 1991, 90 in 1994 and the most dramatic 188 in 1995, followed by a steady increase to 228 attacks in 1996 and 229 in 1997.[41]

1997 – 2009: Piracy continues

In 1998, piracy attacks decreased worldwide, after which the incidents in specific areas increased to previously unseen heights. First and foremost a surge in piracy attacks occurred in the South Chinese Sea. The pirates' tactics were similar to the trend that developed at the end of the eighties, but certain elements differ:

> "When a band of 30 armed pirates attacked a cargo ship in the South China Sea late one night in September 1995, they pistol-whipped and shackled the 23 crewmen before dumping them overboard near the south coast of Vietnam. Rather than taking the ship to their native Indonesia, to nearby Vietnam or even to one of the deserted islands that dot the area in between, the pirates steered the ship and its $5 million sugar cargo several hundred miles north to this sleepy-looking fishing port, in China."[42]

The goal of the pirates was to hijack the complete vessel and steal its complete cargo. What differed in comparison to earlier hijackings in this area, were the methods used. Instead of releasing the imprisoned crew after they had stolen the cargo, the pirates dumped the whole crew overboard in order to get rid of the evidence. The pirates then set course to a 'sleepy-looking fishing port' in China for good reason. There they had arranged to meet up with a buyer if they had not been arrested after a tip from IMO officials. The pirates were set free a few months later. The involvement of local officials in tolerating and facilitating the piracy provided a safe-haven for pirates. This type of piracy therefore only subsided when the Chinese

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[41] IMO annual reports 1986, 1987, 1988, 1991, 1994, 1995, 1996, 1997. Summary taken from P. Buhler, 'New struggle with an old menace: Towards a Revised Definition of Maritime Piracy', *Currents* 61 (1999), 61.
[42] Technically, this raid occurred in 1995, though it is more exemplary for the period 1997 – 2001. Seth Faison, "Pirates, With Speedboats, Reign in China Sea Port", *New York Times*, April 20 1997.

government started to involve itself more severely with the crackdown on pirate activities after 2003.

This was not the only place in Southeast China where piracy picked up at the end of the nineties. Especially in 1999 and 2000, attacks increased on ships passing through the Malacca Strait and the Indian Ocean. The attacks increased from 8 in 1998 to 37 in 1999 and a stunning 112 in the year 2000.[43] The attacks on vessels in the former area started to bear more and more concern because of the geographical nature of the Malacca Strait. At Singapore Strait, the strait narrows to only 1,5 nautical miles (2.8 km) wide. Up to two hundred vessels pass through the Malacca Strait each day. Some of these vessels are supertankers filled with crude oil, LNG or LPG. The cargo is of little value to pirates because of the advanced technology needed to process the chemicals. But if a large oil tanker would steer out of control, catastrophe becomes imminent. Fortunately, no such dramatic tragedy has yet unfolded.

Figure 5: Bombing of the USS Cole[44]

In the post 9/11 modern age of terrorism, security experts have pointed out that intentional attacks on vessels carrying a volatile cargo are becoming a serious threat to international peace and security.[45] On 12 October 2000 the USS Cole was refuelling in the port of Aden (Yemen), when it was attacked by a suicide bomber and seventeen sailors were killed. On 6 October 2002 the French supertanker *Limburg* was attacked off the Yemini coast in the Gulf of Aden. The

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[43] IMO annual reports 1999, 2000.
[44] www.huffingtonpost.com/2008/06/30/uss-cole-bombing-charges_n_110016.html

[45] Cees Homan, 'De Nieuwe wereld(wan)orde' in: Bert Bomert, Theo van den Hoogen and Ramses A. Wessel (eds.)*, Jaarboek Vrede en Veiligheid 2008* (Nijmegen 2009).

suicide bomber who rammed the vessel with a speedboat full of explosives only succeeded in blowing a hole in the outer hull of the supertanker. Technically, it is doubtful if these incidents should be considered acts of piracy. However, their close relationship with the potential hijacking of vessels carrying extremely volatile cargo as described above makes a reference here worthwhile.

The taking of hostages, although not new to contemporary piracy, became more frequent after the year 2000. In August 2003 alone, acts of piracy led to the hostage taking of crew members in the Malacca Strait, Indonesia and Nigeria.[46] One of the attacks as described by the IMO:

> "Eight pirates armed with automatic machine guns and a grenade launcher opened fire and boarded the ship from a fishing boat while underway. The pirates forced the Master to sail towards Pulau Jemor. At 20:10 LT, the pirates took the master, C/E and two other crew members as hostages. The pirates escaped with their loot taking the hostages with them. The ship arrived safely at Penang Inner anchorage. The three crew members, including the Master, were released by the pirates after the payment of $52,000 according to the Malaysian Maritime Police"[47]

What is most interesting about this attack is that the ransom amount paid to the pirates was disclosed. Although unofficially shipping companies have disclosed the amount of ransom that was paid, publicly this is kept quiet so as not to encourage other (potential) pirates.

The most recent explosion of piracy attacks has occurred in East Africa off the coast of Somalia and in the Golf of Aden. Whereas in 2006 the attacks dropped from 49 to 31, they increased again to 60 attacks in 2007 and 134 in 2008.[48] The East African pirates are all of Somali origin. Somalia is a failed state and for the Somalis there is not much opportunity besides illegal arms trade and venturing into the piracy business. The pirates are armed with machetes, guns, sometimes machineguns and have even used grenade launchers. Consider the following example. On the seventeenth of October 2007, the *Almarjan* had just finished offloading at Mogadishu, Somalia, when it was proceeding to Mombasa, Kenya. At 18:30, pirates approached in a boat, chased the *Almarjan*, and opened fire with automatic weapons. The pirates then successfully boarded the ship, sailed to coastal waters and anchored close to the shore. The crewmembers and ship were held hostage for 47 days until ransom was paid and both the ship and its crew released.[49] Although the amount paid to free the hostages was not disclosed, it is estimated that

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[46] IMO, *Reports on acts of piracy and armed robbery against ships,*
Issued monthly - Acts reported during August 2003: MSC.4/Circ.40, 4 September 2003. Hereinafter referred to as IMO monthly report …
[47] Ibid
[48] IMO annual reports 2006, 2007, 2008.
[49] IMO monthly report October 2007.

shipping companies have been generous to Somalia pirates, paying up to three million dollars[50], a huge amount compared to the previously mentioned fifty-two thousand dollars.

When taking the entire period into consideration there are dramatic increases to be seen, especially in the periods 1990 – 1991, 1994 – 1996 and 1998 – 2000, and 2007 – 2008. Consider the year 2000 when an increase occurred from 309 to 471. The figures show an increase in almost every region. From 16 to 29 in East Africa, from 136 to 140 in the South China Sea, from 37 to 112 in the Malacca Strait, from 51 to 109 in the Indian Ocean and from 29 to 41 in South America and the Caribbean. There was a negligible decrease from 36 to 33 in West Africa decrease and from 4 to 2 in the Mediterranean Sea."[51] However, if one looks at the years in between, for example 2005, then it is interesting that in almost all the regions of the World except in this case East Africa, piracy decreased. In 2005 piracy attacks decreased from 330 in 2004 to 266 in 2005, totalling 19%. The attacks decreased from 60 to 20 in the Malacca Strait, from 46 to 26 in South America and the Caribbean, from 113 to 97 in the South China Sea and from 57 to 23 in West Africa. There was a slight increase in the Indian Ocean, from 41 to 51, and a much larger increase in East Africa, from 13 to 49 attacks.[52]

For 2008, piracy increased by 8.5% over 2007. A more critical view reveals that piracy actually decreased in most areas of the world (There was a decrease from 60 to 50 in West Africa, from 40 to 26 in the Indian Ocean, from 12 to 2 in the Malacca Strait, from 25 to 19 in South America and the Caribbean, and from 7 to 1 in the Arabian Sea) but increased in from 67 to 72 in the South China Sea and from 60 to 134 in East Africa. The latter figure has been widely reported in the media.

2.2 Trends in piracy

Piracy increased from incidental occurrences to four hundred attacks in the period between 1980 and 1984 excluding the attacks on the Vietnamese Boat People. This trend momentarily discontinued. The savage attacks against the Vietnamese Boat People which had reached epidemic proportions between 1977 and 1982 dropped to virtually nonexistent. Piracy then resurfaced in 1989, especially in the Malacca Strait where piracy increased sevenfold between 1989 and 1991. The 1990s and 2000s showed previously unseen levels of piracy alternated by

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[50] This is the assumed amount paid for the release of the Sirius Star, pirated in November 2008.
[51] IMO annual report 2000.
[52] IMO annual report 2005.

years when most levels of piracy decreased. In most years however, like the previously mentioned 2008, piracy increased in one or more areas of the world, while it decreased in other areas.

The increase of piracy over the last three decades is, considering the evidence, undisputed. Whether a dramatic increase has occurred is highly dependent on the scope of one's view. Between 1975 en 2008 piracy has definitely increased dramatically. Between 2006 and 2009 piracy has also increased dramatically. However, an even more dramatic increase occurred between 1985 and 1997. This leads to the following observation: between 1997 and 2008 the increase totalled only 54, from 252 to 306, hardly a dramatic increase over the period of 11 years. Furthermore, if one were to deduct the numbers of incidents (74) from the area in which piracy decreased the most in 2008, (East Africa) then an actual decrease has occurred, from 252 to 232. This is summarized by the IMO in figure 6:
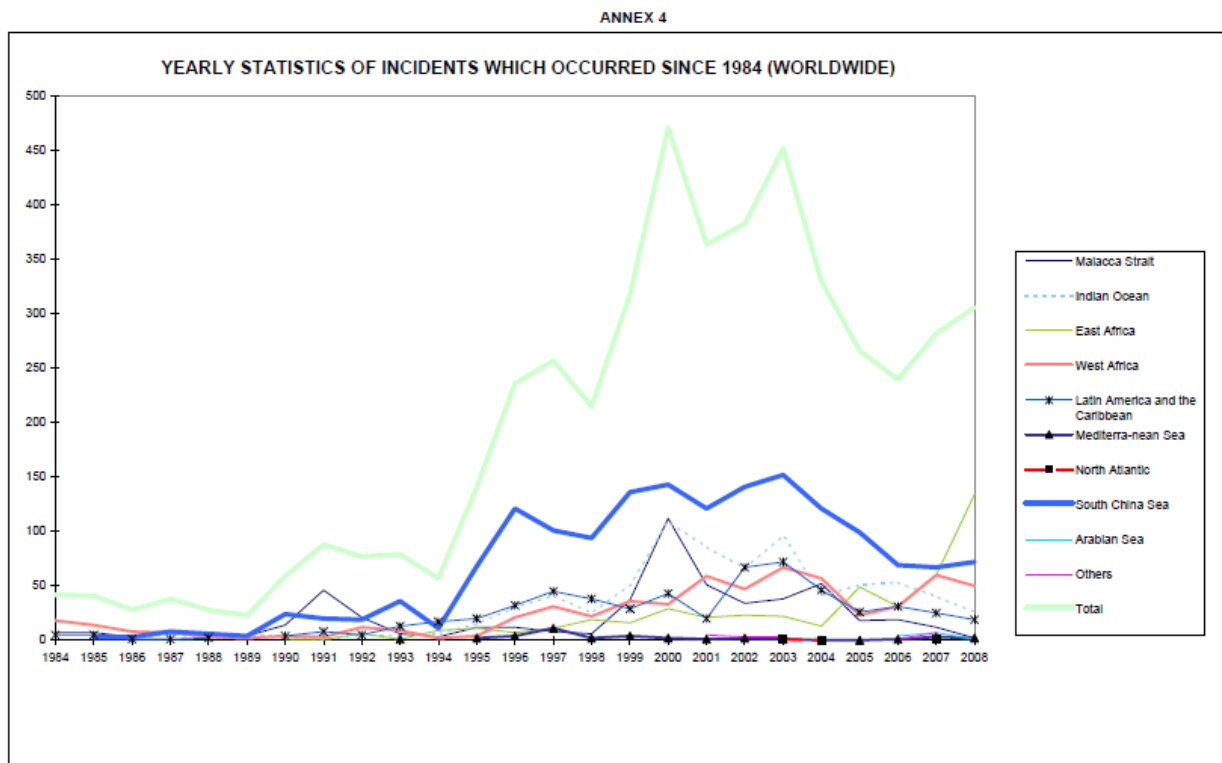

Figure 6: Yearly statistics on incidents of piracy compiled by the IMO[53]

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[53] IMO annual report 2008.

The many causes of piracy

There are many causes that led to piracy but one must bear in mind that probably none of these are a guarantee that piracy will actually occur. A causal relationship can be identified between trade and piracy. Piracy occurs where there is an opportunity to prey on trade. The amount of goods transported by sea has increased tremendously over the last few decades. In the Strait of Malacca up to 200 vessels a day navigate across the channel and obviously, this has made the area a continuing target for pirates. But there are other political, economical, socio-economic, geographical, and technological factors which prove recurring causes. I will discuss the most important factors below.

In many cases the lack of a strong government is a strong denominator. Recently in the case of Somalia - where a controlling government is non-existent - as well as in Nigeria in the early 1980s, the lack of a controlling authority is a principal cause. After a new military government took control in December 1983, a crackdown on piracy followed. Simultaneously, as mentioned earlier, the capacity of the port in Lagos was expanded resulting in fewer opportunities for pirates. Both factors resulted in a steep decline in piracy attacks. Another consistent factor is corruption. If there is no market for the stolen goods and no one who will look the other way when an entire vessel reaches its new port of destination, pirating becomes hardly lucrative. In her book, *Kaperbloed en Koopmansgeest*, Joke Korteweg interviewed the head mechanic on heavy duty vessels of shipping company Jumbo:

> "Corruption occurs around the globe. However, in some countries, corruption is more visible than in others. In Conakry, the port of Guinea in West Africa, I've seen port officials counting our money and dividing it into piles. One pile for him and another for so-and-so. They next day they demanded more money. In Nigeria, they are just as corrupt but you only have to pay once. Another example: in Indonesia the hawsers will be stolen overnight and these will then be offered for sale the next day, in the office of the port authority."[54]

The involvement of corruption does not confine itself to the harbour. In both China and Indonesia government officials have been suspected of carrying out piracy attacks themselves.

An obvious general cause of piracy is the state of the economy. Piracy in South East Asia increased after the economic crisis of 1998. Sceptics to this argument have pointed out that for the largest part of 1998, when the crisis was in full swing, piracy did not increase in Indonesia.[55] However, the indirect effects were very influential. Due to reduced financial assistance for

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[54] Joke E. Korteweg, *Kaperbloed en Koopmansgeest*, 285-286. [quotation translated by the author]
[55] Stefan Eklöf, *Pirates in Paradise*, 138.

patrolling the Indonesian waters piracy could increase. Furthermore, it probably takes times before one chooses to resort to piracy. In some cases, piracy has also served as a method of protest against a far and distant government failing to serve all of the population. As Thomas Kiefer pointed out, the Tausug – a Philippine ethnic minority – were highly reluctant to let their cultural practices subside in favour of a discriminatory government.[56]

Where poverty is widespread, piracy can become a welcome supplement to a meagre income. It is not surprising then that the previously mentioned seven areas that account for two thirds of the worldwide piracy attacks belong to the poorest countries in the world. However, one should be cautious to condemn all the poor to be potential pirates. Whereas there is certainly a truth to Villar's view that "Where poverty is endemic, the sight of products from the rich Western World is an enormous temptation"[57], his conclusion that the "standard of living generally correlates to the extent of piracy and robbery"[58] is a simplified version of reality. In many places poverty has not necessarily led to robbery or piracy. For example, to consider the acts of the pirates who preyed on the Vietnamese Boat People to be a natural reaction to an impoverished situation is surely besides the truth.

There are many more circumstances that have fed the occurrence of piracy. The geographical composition of Indonesia is highly favourable. Indonesia is the world's largest archipelago with over 13,000 islands and a combined coastline of more than 81,000 kilometres, providing an excellent hideout for pirates. This factor has changed little over the centuries. In the previous chapter we discussed that technological advancement led to a decrease in piracy. In some ways, for contemporary piracy the opposite is true. Over the last three decades, due to technological improvements large commercial vessels are being run by an ever decreasing crew, allowing for fewer pirates needed to take command of bigger vessels like the *Sirius Star*, a 330 m long oil tanker capable of carrying 2.2 million barrels of oil. The *Sirius Star* (figure 7 and 8) was in fact the largest ship to date hijacked by Somali pirates on 15 November 2008.

In the 1980s pirates off the coast of West Africa frequently attacked with multiple fishing boats and dozens of pirates. This has been reduced to groups of five to ten pirates. The availability of cheap outboard engines is another contributing factor. Many fishermen at day become pirates at night as we have seen in West Africa and the Gulf of Thailand. The pirates simply mount an outboard motor to an existing fishing boat or even canoe. No humble fisherman can afford a luxurious outboard engine. Either the engine is bought from previous

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[56] Thomas Kiefer, *The Tausug*.
[57] Roger Villar, *Piracy Today*, 11.
[58] Ibid, 37.

successful raids of a ship at anchor or there is involvement of organised crime, as we have seen in Southeast Asia.

Figure 7: The Sirius Star[59]

Figure 8: Most probably the Sirius Star under attack[60]

Whether it be fishermen or hardened criminals, the purpose of committing acts of piracy seems – superficially at least – to be the same. Both are interested in acquiring economic gain. This need not be the case. Acts of maritime terrorism, if interpreted as acts of piracy, are politically and not economically motivated. So far, the suicide attacks on both the *USS Cole* (2000) and the *Limburg* (2002) have been incidents and politically motivated piracy cannot be considered a trend.

Another cause of piracy might simply be related to a shift in operating territory by the pirates. This in turn might be caused by a change in government policy of one state, making it easier to venture to the territorial waters of other states. When piracy increased in the South Chinese Sea during the 1990s and captured vessels were taken to fishing ports on the Chinese coasts, this can be attributed to a more lenient attitude by Chinese local government towards piracy. Until the 1990s, pirates did not dare to venture into Chinese ports.

The causes mentioned above vary from local to global. Some causes are similar while others differ substantially. The existence of opportunity is one of the most prominent causes but not a guarantee that piracy will occur. Neither is poverty nor a weak government. Most of these causes are closely related and enhance each other's effects. For example, when the state of the economy

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[59] www.guardian.co.uk/world/2008/nov/18/somalia-oil

[60] www.cartoonstock.com/newscartoons/cartoonview.asp?catref=knin454

is deteriorating the government's influence will diminish as well. Officials will display a greater tendency towards corrupt activities, leaving the local population even more deprived and inclined towards committing acts of piracy.

2.3 Conclusion

Contemporary piracy, it must be noted, has many similarities to the previously discussed old pirating ways. Rape, murder and abduction have continued to be a trademark of the pirates. Although pistols have been replaced by assault rifles and stockings by shorts and flip-flops, certain characteristics have remained the same. It should be stressed that what has been presented in the previous sections fails to provide a comprehensive summary of the ins and outs of contemporary piracy. The main reason for this is that academic research on the subject is virtually non-existent. A possible reason for this is that 'contemporary piracy' as such is a questionable subject, as is proven by the many different forms and causes of piracy presented above. This, however, is not an excuse for scholars to see piracy as a phenomenon confined to certain regions without making an inventory of piracy on a global scale.

The overview presented in this chapter is by no means exhaustive. There are many places which have seen piracy attacks or attempted attacks that have not been reviewed, like the Mediterranean and Black Seas. In the previous sections, only the areas which are 'most affected', i.e. five attacks or more, following the definition of the IMO have been included.[61] Piracy has occurred worldwide and yet, only a few nations account for the majority of attacks. According to the Annual report 2007 of the Piracy Reporting Centre, two thirds of the worldwide piracy attacks occurred in only seven locations. These are Tanzania, Somalia, the Gulf of Aden/Red Sea, Bangladesh, India, Indonesia, and Nigeria. Of these locations, the latter two countries account for more than one third of the worldwide accounts in 2007.[62] In 2008 Somalia took the lead.

In the case of Indonesia, this is hardly surprising since it is about the same size as Europe and consists of thousands of small islands. Favourable geographical features still contribute to the cause of piracy, as they did for many centuries. An effective government can minimize this advantage. The presence of an ill-functioning government is therefore the most important denominator inspiring many other causes. But a failing government is by no means a guarantee

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[61] IMO annual report 2008.

[62] ICC International Maritime Bureau, *Piracy and armed robbery against ships – annual report 2007*, January 2008.

for the manifestation of piracy. Interestingly, whereas the increase of technological innovation has led in previous centuries to a decrease in piracy, for the period of contemporary piracy, it might just have seen piracy increase instead of decrease. The volatile fluctuation in increasing or decreasing numbers has shown that piracy is highly influenced by temporary influences like an economic crisis, an exodus of boat refugees or a change in government. The actual presence and increase of piracy is due to various local and global causes.

Whether or not contemporary piracy should be viewed as an inclusive concept, involving all worldwide attacks of piracy probably depends on the point of view that is taken. The argument in favour of an inclusive view, that piracy involves the same methods, is only partly true, as new methods have evolved. Although pirates have proven to shift territories whenever the need arises, they are still bound by regional operation territories. Are robbers who attack yachts which lay anchored in port in any way comparable to those who operate from mother ships to take the crew of 300,000 tonnes oil tankers hostage in order to receive 3 million dollar in ransom?

This leads to the conclusion that the proposed dramatic increase in piracy should be severely questioned. Firstly, because the many different forms and causes of contemporary piracy cannot easily be added up to a single phenomenon. Secondly, because the increase over the last two years is by no means unprecedented. Considering the whole period 1975 – 2009, there were many years in which piracy increased just as much in other regions of the world. Or, in other years, it decreased just as dramatically as it had increased. Finally, what happened on many occasions is that the total number of piracy levelled out because an increase in one area was mitigated by the decrease in another.

Consider the following statement by a Dutch observer (2003): "Until recently, safety at sea was measured solely by the condition of the vessels and the amount of bad weather; nowadays more and more sailors have been exposed to piracy attacks."[63] The phrase 'more and more sailors' is misleading since it implies an exponential increase. The observers continue: "Ten incident reports a week is not out of the ordinary"[64]. If this were true, this would have meant that at least 520 incidents of piracy occurred each year. As the IMO has shown, this has not been the case in 2003. Overstating the facts is probably due to the appeal that piracy still has on our imagination. But the opposite has also been observed. At the same time, other experts in the field concluded: "Everyone exposed to the term 'pirate' immediately thinks of romantic images

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[63] M.P.C. Scheepmaker, 'Voorwoord', *Justitiële verkenningen,* 29-2 (2003), 5-9, 5. [quotation translated by the author]
[64] Ibid.

and this might be the reason that piracy as a crime is not being taken seriously."[65] In the following chapter, the response and perception on piracy by the United Nations will be reviewed.

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[65] H. van der Bunt & E. Pladdet, 'Geweld op zee – Een verkenning naar de aard en omvang van zeepiraterij', *Justitiële verkenningen,* 29-2 (2003), 29-43, 29. [quotation translated by the author]

III The UN responds to piracy

"If this means that, as a term, 'piracy' comes to mean all those malpractices afloat not otherwise specifically defined, then so be it."[66]

Eric Ellen

In the introduction it was mentioned that the international community has mounted an extraordinary response to piracy off the coast of Somalia. The United Nations has taken a leading role in this response. It is therefore of considerable interest to analyse previous responses to piracy by the United Nations. The choice has been made to divide this response into three categories of which the first two are dealt with in this chapter. It will be analysed how the UN has tried to establish a regulatory framework and how it has fared in establishing an inventory of attacks. How action was taken against piracy will be the subject of the next chapter. Through analysis of each of these responses, an answer can be given to the question whether the perception on piracy has changed. Firstly the institution called the United Nations will be discussed.

3.1 The United Nations

After two World Wars and Europe in ruins the call for international peace and security was louder than ever before. The United Nations were founded in 1946 in order to transcend national boundaries and ambitions. What made the UN's design special was the utopian dream mixed with rational beliefs:

> "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."[67]

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[66] Eric Ellen, 'Contemporary Piracy', 123.
[67] UN, *Charter of the United Nations and Statute of the International Court of Justice*, (New York 1985), preamble.

These ambitions are still shared by those working for the United Nations today. The UN acts as an umbrella organisation for its member states. It has six principle organs of which the General Assembly (GA) and the Security Council (SC) are considered the most important. The Secretary General of the United Nations is head of the secretariat which technically makes him chief administrative officer but in reality the spokesperson for the whole of the UN. The UN further consists of specialised organisations. Examples are the United Nations High Commissioner for the Refugees (UNHCR), and the International Maritime Organization (IMO). These organisations have a specific field of interest and operations, in this case: 'refugees worldwide' and 'safety at sea'.

The United Nations operate in a world which in political terms is dominated by the nation-state. In theory, states retain sovereignty; the government in charge can determine its own rules. In reality, sovereignty is far from absolute. One highly respected critic even refers to sovereignty as "Organised Hypocrisy"[68] The success of intergovernmental agencies like the United Nations depends on states signing multilateral agreements in which they suspend part of this sovereignty. The creation of the United Nations is an example.

There are numerous ways in which the United Nations exercises influence. Through the General Assembly it produces recommendations that are supposed to reflect the will of the international community. The General Assembly also votes on which nations may occupy the non-permanent positions on the Security Council. Unlike the decisions made by the General Assembly, those made by the Security Council are binding. The Security Council consists of fifteen members. Ten of them are elected and five permanent[69], the latter of which have been granted a veto on proposed resolutions. The Security Council bears "primary responsibility for the maintenance of international peace and security"[70]. This it hopes to achieve by adopting resolutions which can be of intruding character to the sovereignty of nation-states in order to persuade nations to act in a responsible way as perceived by the Security Council. To declare sanctions like arms and trade embargoes or the deployment of peacekeeping forces are favourable tools. If the recipient state does not agree and there is a perceived threat to international peace and security, the Security Council may invoke Chapter VII and permit the deployment of UN peacekeeping forces. In total, sixty-three peace keeping operations have been established of which sixteen are still active.[71]

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[68] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (New Jersey: Princeton University Press 1999)
[69] China, France, Russian Federation, United Kingdom of Great Britain and Northern Ireland and the United States of America
[70] UN, *Charter of the United Nations* (New York 1985), article 24.
[71] UN, Department of Public Information, *United Nations Peacekeeping Operations*: DPI/1634/Rev.9730, April 2009.

In order to limit these drastic measures, the specialised organisations that are part of the UN are constantly devising methods to ensure multilateral co-operation. The International Law Commission functions as an advisory body to the Sixth Committee, which in turn is responsible for legal issues brought forward in the General Assembly. It has been instrumental in facilitating important treaties dealing with responsibility of states and signing away with part of their sovereignty. Due to its efforts the International Criminal Court (ICC) was created in 2002. The Commission has also assisted other specialised organisation like the previously mentioned UNHCR and IMO in developing treaty proposals.

The functioning of the United Nations has changed significantly over time. A fundamental boost to the UN and the effectiveness of the Security Council was the end of the Cold War.[72] When the stalemate between the two superpowers ended the Council greatly increased its resolution output. Over time, new members have made the organisation more legitimate.[73] One of the most debated issues is the veto that is held by the permanent members of the Security Council. This is seen to reflect the balance of power as it stood in the aftermath of World War II, and not representative of the multipolar world we live in today. Thus the global nature of the United Nations is criticized. Whether or not the critics are right it is undeniable that the United Nations has been the most successful international political organisation to date in facilitating multilateral cooperation between states. Through the signing of treaties the UN has established a regulatory framework on the use of the seas and the criminalisation of piracy.

3.2 Establishing a regulatory framework

The most important and often cited convention on law of the Sea is the United Nations Conference on the Law of the Sea: UNCLOS III. It was held between 1973 and 1982 and came into effect in 1994. This treaty replaced UNCLOS I of 1956, and UNCLOS II of 1960. [74] The UNCLOS conferences were held because regulations had to be set on the use of the seas. Piracy was not of primary concern to the policymakers involved. When UNCLOS I was being discussed there were those who suggested to leave out the articles that condemned piracy because the "traditional forms of piracy were no longer problems and that these articles might

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[72] In effect, a change in attitude towards the UN was present before the breakdown of the Soviet empire, with the ascension of Michael Gorbachev to power in 1985.

[73] The amount of member states have expanded from 51 in 1946 to 192 in 2009

[74] UNCLOS II (1960) did not produce any results.

conflict with other conventions."[75] A more important issue was the establishment of rules on which nation had authority over which part of the ocean, who was allowed to drill for offshore resources, and what regulated the safe passage of vessels belonging to those nations that were landlocked. The UNCLOS treaties did contain articles on piracy and these are now fundamental in international law. According to UNCLOS III, piracy consists of any of the following acts:[76]

> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, as directed:
>> (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
>> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
> (b) 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;
> (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

This article teaches us a number of things on how piracy is regarded according to international law. First of all, the many acts of piracy that were discussed in the previous chapter are not considered as such by international law. Piracy according to article 101 only occurs 'outside the jurisdiction of any State', meaning on the high seas, not in the territorial waters of any state. The definition also assumes that piracy is 'committed for private ends', thus excluding politically motivated or perhaps even culturally sanctioned forms of piracy. The ones committing piracy are the 'crew or passengers of a private ship' thus excluding port officials and policemen.

That piracy can only occur on the high seas according to international law is widely accepted. But another interpretation is possible. Besides UNCLOS III there are other treaties in effect. In reaction to the previously mentioned hijacking of the *Achille Lauro*, the UN called for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) held in 1988. The SUA Convention which came into force in 1992, also addresses piracy. Article 3 of the SUA Convention states that piracy occurs where a person unlawfully and intentionally:

> "… commits, attempts to commit, threatens to commit, or abets the seizure or exercise of control over a ship by force or threat of force or any form of intimidation; or commits any of the following acts if it endangers or is likely to endanger the safe navigation of that ship: an act of violence against a person on board; destroying a ship or damaging a ship or its cargo; placing or causing to be placed on a ship a device or

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[75] Barry H. Dubner, *The Law of International Sea Piracy*, vol.2, Developments in International Law (The Hague: Martinus Hijhoff Publishers, 1980), 123.
[76] UNCLOS III (1982), article 101.

substance likely to destroy the ship or cause damage to the ship or its cargo; destroying or seriously damaging maritime navigational facilities or seriously interfering with their operation; or communicating information he knows to be false. It is also an offense to injure or kill any person in connection with the commission or attempted commission of any of the previous offenses."[77]

This has led Booth and Alterbrun to conclude: "Importantly, the SUA Convention does not contain the same jurisdictional limitation (high seas only) set forth in UNCLOS. Thus, it may be possible for a nation to capture and exercise jurisdiction over a pirate ship which is located in foreign territorial waters, or even ashore."[78] Currently this hardly seems a possibility. The sovereignty of nation-states is regarded as one of the basic principles of international law and along with the universal rights of man, taken as the fundamental principle of the charter that allowed the United Nations to come into being. Hence, the UNCLOS III definition of piracy prevails.

Providing information, advice and assistance to member states on the UNCLOS convention is being done by the Division for Ocean Affairs and the Law of the Sea (DOALOS) of the Office of Legal Affairs of the United Nations. If the need arises to revise UNCLOS III and call for UNCLOS IV, DOALOS will inform the General Assembly, which can then decide to call for a new conference. DOALAS reports yearly to the General Assembly. Regarding piracy the General Assembly report mentioned the following on 13 March 2009:

> "The General Assembly has consistently addressed piracy and armed robbery against ships in its annual resolutions on oceans and the law of the sea. Subsequent to the second meeting of the Consultative Process, it emphasized capacity-building; urged the adoption of measures, including for capacity-building, prevention, reporting and investigation and bringing alleged perpetrators to justice; encouraged a common approach to enforcement, investigation and prosecution; called for cooperation with IMO including by reporting on incidents and implementing IMO guidelines; and urged States to become parties to and implement the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation"[79]

It is important to note that international law has not been revised on the account of piracy and the suggestions mentioned above by the General Assembly are non-binding. This is not to say that specialised organisations under the UN umbrella are not involved in addressing the issue of piracy. The General Assembly also 'called for cooperation with IMO'. In fact, for the General Assembly, the main source of information on piracy is the IMO.

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[77] SUA (1988), article 3.
[78] F. Booth & L. Altenbrun 'Maritime and Port Security, Piracy, and Stowaways: Renewed Concerns over Old Problems' *Maritime Law Journal* 48 (2002-2003), 1-48, 42.
[79] UN, General Assembly, *Oceans and the law of the sea – Report of the Secretary-General*. A/64/66, 13 March 2009, 38.

The International Maritime Organization

The IMO was created in 1958 and its main responsibility is to ensure safety at sea. It facilitates the signing of treaties and hands out recommendations to governments, some of which tackle piracy. Although technically it is not responsible for the UNCLOS treaty, the IMO assisted in writing UNCLOS III in order to ensure it did not interfere with its regulations. Consequently, the IMO is also mentioned in the UNCLOS III treaty.[80]

The IMO's awareness of piracy was raised for the first time in September 1983. The government of Sweden informed the Maritime Safety Committee (MSC) – the IMO's most senior technical body – about the alarming rate with which piracy was increasing. This was mainly due to the increase in piracy off the coast of West Africa as described in chapter two. The MSC reacted by preparing a draft text, which after being discussed by the Assembly, was adopted on 17 November 1983 as resolution A.545(13). This resolution: "urges Governments concerned to take, as a matter of the highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery against ships in or adjacent to their waters, including strengthening of security matters."[81] Further more, it: "invites governments concerned and interested organisations to advice shipowners, ship operators, shipmasters and crews on measures to be taken to prevent acts of piracy and armed robbery and minimize the effects of such acts."[82]

From April 1984 onwards, "Piracy and armed robbery against ships" became a recurring item in the MSC's work programme which also meant – as will be discussed in the next section – that an inventory on the number of piracy attacks that occurred became standard practice. Besides charting the phenomena the IMO instructed a working group composed of experts from ten IMO member countries to analyse the problem of piracy in the Strait of Malacca. The report contained recommendations regarding safety precautions and enforcement arrangements appropriate for crew, shipowners and operators, and flag, coastal and port states.[83] It also specified the associated financial implications related to the above considerations. Although the area of focus was the Strait of Malacca, the intention was to provide solutions which could be implemented against piracy attacks worldwide.

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[80] IMO*, Implications of the United Nations Convention on the Law of the Sea for the International Maritime Organization*. LEG/MISC.6, 10 September 2008, 7.

[81] IMO, Assembly, *Resolution A.545(13) – Measures to prevent acts of piracy and armed robbery against ships*, 17 November 1983. Hereinafter referred to as Resolution … (…)

[82] Ibid.

[83] 'Flag state' refers to the authority of states that is held over commercial vessels registered under its flag. A 'Port state' refers to the authority over vessels by states other then flag states, in which territorial waters the vessels are present.

The report by the working group led to two circulars, distributed May 1993. Each of the documents aimed at a different audience. The first circular was titled: *Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships.*[84] In this circular, governments are urged to respond to piracy by submitting reports on piracy attacks, to develop action plans and are encouraged to apprehend and prosecute pirates. Additional suggestions are given on which governmental agency should be responsible for doing what and formats are presented in order to facilitate a uniform response by governments.

Interestingly, there is also a reference to the second circular: "While security forces can often advise on these measures, and flag States are required to take such measures as are necessary to ensure that owners and masters accept their responsibility, ultimately it is the responsibility of owners, masters and ship operators to take seamanlike precautions when their ships navigate in areas where the threat of piracy and armed robbery exists."[85] These 'seamanlike' precautions are described in *Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships*. Suggestions on precautions and responses vary from not having too much cash in the safe of a ship to the application of countermeasures when pirates actually attempt boarding. Each ship should be in possession of a security plan, and important areas like the bridge and engine room should be sufficiently locked and under guard. In response to an ever decreasing crew; crews are advised to enhance the capabilities of the watch as early detection of pirate activity is the most effective deterrent.[86]

Since 1993 these two circulars have been revised. Whereas the MSC/Circ.622 was updated only once (1999), the MSC/Circ.623 was updated as many as three times (1999, 2001 and 2002). The previous circulars were based on research done in the Malacca Strait and this had now been supplemented by the outcome of regional seminars in Brazil in 1998 and Singapore in 1999. When reviewing these revisions, it is surprising how many of the original recommendations are left unchanged. MSC/Circ.623 (1993) consist of sixty-seven recommendations, the revised MSC/Circ.623/Rev.1 (1999) only totals seventy-one, of which sixty-seven are exactly the same.[87] The difference between MSC/Circ.623/Rev.1 (1999) and MSC/Circ.623/Rev.3 (2002) is even less and consists exclusively of the following phrases:

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[84] IMO, *Piracy and armed robbery against ships – Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships*: MSC/Circ. 622, 22 June 1993. Hereinafter referred to as MSC/Circ.622 (1993).

[85] Ibid.

[86] IMO, *Piracy and armed robbery against ships – Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships*: MSC/Circ.623, 18 June 1993. Hereinafter referred to as MSC/Circ.623 (1993).

[87] Technically, there is also additional information presented in the appendixes of the revised circulars.

> "The ship may be able to send a covert piracy/terrorist alert to an RCC. However, aspirates/terrorists may be on board the ship and within audible range of the communication equipment, when the RCC sends an acknowledgement of receipt and attempts to establish communication, they could be alerted to the fact that a piracy/terrorist alert has been transmitted. This knowledge may serve to further endanger the lives of the crew on board the ship. RCCs and others should, therefore, be aware of the danger of unwillingly alerting the pirates/terrorists that a distress alert or other communication has been transmitted by the ship."[88]

In all three circulars the recommendations on behaviour of crews under siege discourage the use of violence. "In case of an assault do not attempt any heroic acts" is specifically mentioned in all revisions of MSC/Circ.623.[89] Meanwhile, the IMO tried to establish cooperation with other organisations in order to improve certain methods. On the fourth of November 1993, the general assembly of the IMO adopted resolution A.738(18), which stated:

> "[The Assembly] requested the Maritime Safety Committee to adopt a special signal for use by ships under attack or threat of attack. IMO, working in collaboration with the International Telecommunication Union (ITU) and the International Mobile Satellite Organization (Inmarsat) has included "Piracy/armed robbery attack" as a category of distress message which ships can now transmit through either their DSC (Digital Selective Calling) or Inmarsat equipment by pressing a button. The message can be received automatically by shore stations and ships in the vicinity."[90]

This resolution was improved upon due to advancements in technology. On February 1st 1999, the Global Maritime Distress and Safety System (GMDSS) was put into effect. This integrated communications system using satellite and terrestrial radiocommunications, was meant to ensure that ships in distress anywhere in the world could be aided. It was determined that all passenger ships and all cargo ships over 300 gross tonnage on international voyages had to carry specified satellite and radiocommunications equipment for sending and receiving distress alerts.[91] These regulations were put into place to ensure that whenever a ship was in distress effective communication methods could lead to an effective response. Interestingly, piracy was only part of the reasons why ships would need to call for assistance. A much bigger issue for the IMO was the possibility of accidents. The loss of lives as had occurred during the Herald of Free Enterprise disaster (1987) or the destruction of the environment and marine life as occurred during the oil spill with for example the Exxon Valdez (1989) were far bigger issues.

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[88] MSC/Circ.623/Rev.1 (1999), MSC/Circ.623/Rev.3 (2002).
[89] MSC/Circ.623 (1993), MSC/Circ.623/Rev.1 (1999), MSC/Circ.623/Rev.2 (2001), MSC/Circ.623/Rev.3 (2002).
[90] IMO, Assembly, *resolution A.738(18)* (1993).
[91] Technically, the GMDSS system was adopted by means of amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974. The amendments, contained in Chapter IV of SOLAS on Radiocommunications, were adopted in 1988 and entered into force on 1 February 1992 but provided for a phase-in period until 1 February 1999.

When piracy changed its nature, the recommendations by the IMO were amended. The hijacking of complete ships and renaming them had become increasingly common especially in the South Chinese Sea at the end of the 1990s. Considering international law, there are a number of complications. When the act of piracy has already occurred and the captured ship is sailing through territorial waters it cannot be stopped unless for very good reasons (of which piracy is one). Thus, authorities have to establish that a suspected ship has indeed been pirated and now operates under a new name. According to UNCLOS III, ships sailing through territorial waters are granted "right of passage"[92] and governments are reluctant to act on the suspicion of piracy alone, in case they are proven wrong. Initially, the investigation has to be conducted without stopping the ship. After confirmation that the ship is under the command of pirates other problems arise. The pirates who perpetrated the attack have most likely been replaced by other sailors. Before an investigation can be launched jurisdiction has to be appointed, which can be difficult as many nations can be involved. In *Guidelines on basic countermeasures against piracy and armed robbery*[93] the IMO specifically focused on recommendations concerning the hijacking of complete ships and its cargo. The document advises on the many bottlenecks that occur concerning the right of passage that ships retain when in territorial waters:

> "It is also always difficult to reach consensus on which states have jurisdiction over the case since international laws and domestic laws applicable to the case are dependent on various basic factors, such as venues of crimes, flag state, nationality of suspects, etc, and these factors can not be easily prioritized. Further, Authorities are usually faced with practical difficulties in obtaining the needed evidence and statements from other states."[94]

The IMO further updates the previously mentioned MSC/Circ.622/Rev.1 (1999), MSC/Circ.623/Rev.3 (2002) and resolution A.922(22) (2001) whenever the need arises. Currently, in response to the situation off the coast of Somalia, the IMO has announced to review and revise these circulars.

Whatever the outcome of these reviews, the IMO is bound by UNCLOS and therefore has limited manoeuvrability. For example, at the 85th session of the MSC (2008) the committee agreed that "there was a need for a full re-examination of the issue of the carriage of firearms or

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[92] UNCLOS III (1982).
[93] IMO, *Piracy and armed robbery against ships – Guidelines on basic countermeasures against piracy and armed robbery*: MSC 77/INF.5, 25 February 2003.
[94] Ibid, 4.

armed personnel on board merchant vessels"[95] While awaiting this renewed update MSC/Circ.623 (1993) and its revisions specifically advise against the use of firearms:

> "The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged. […] Carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. The use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he has acted in self defence."[96]

Essentially, the same reservations are still valid. Simply put: The carriage of firearms is against international law. Violence will only escalate. Firearms can be misused and finally: "accidents are inevitable".[97]

The United Nations has tried to implement a regulatory framework on the use of the seas and subsequently touched the issue of piracy. The difficulties of multilateral agreement on such a complicated matter is represented by the number of years it took to come to UNCLOS III, which was debated for nine years (1973- 1982) and came into effect ten years later (1994). Meanwhile, the recurrence of piracy did not lead to an alteration of international law. On a secondary level, shipping rules have been altered by the IMO due to piracy and the different forms in which it manifested itself. However, the IMO has shown that is has been concerned with many more issues, and that piracy has not been of great urgency. The ways in which recommendations by the IMO are limited by international law has been proven by the few alterations that the IMO has put into its recommendations to governments and shipowners. Besides establishing a regulatory framework, the UN has also tried to come to an inventory of pirate attacks.

3.3 Establishing an inventory of attacks

Captain Roger Villar wrote in 1985: "At present the World is not well organised enough to combat piracy and succeeds in stamping out only a few of these troubles. Indeed, in researching this book it has not even been possible to find one authority which has a complete list of attacks

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[95] IMO, *Piracy and armed robbery against ships – The carriage of firearms or armed personnel on board merchant vessels*: MSC 85/26, 23 March 2009.
[96] MSC/Circ.623 (1993), MSC/Circ.623/Rev.1 (1999), MSC/Circ.623/Rev.2 (2001), MSC/Circ.623/Rev.3 (2002).
[97] Ibid.

which have taken place and which can thus state clearly what is happening and what action needs to be taken."[98] Since then the United Nations, through the IMO, has made amends. In November 1983, the previously discussed resolution A.545(13), prepared by the IMO's MSC, contained an important note on how acts of piracy were to be inventoried. The resolution: "Requests governments concerned to inform the Organisation of any act of piracy or armed robbery committed against a ship flying the flag of their country, indicating the location and circumstances of the incident and the action taken by the coastal state."[99]

From this moment on, in theory, every act of piracy that was committed should have reached the MSC, submitted through member governments or international organisations in consultative status of the IMO. A summary of reports was to be compiled twice a year which would later be increased to a quarterly report, and still later summaries were issued on a monthly basis. Quarterly and annual summaries were also added to the format. Besides quantitative improvements, qualitative improvements were made as well. In 1986 the MSC decided that reports received on piracy attacks should be forwarded to the port or coastal states that it concerned, in order to receive further comments and advice on the actions that were to be undertaken.[100]

When piracy increased at the beginning of the 1990s, the IMO reacted by adopting further resolutions that were to increase the number of reports to the organisation. In 1991, the Assembly adopted resolution A.683(17). This resolution specifically appealed to flag states to report any incidents of piracy committed against vessels under their flag. It also repeated its statement that coastal states should increase their efforts to prevent and suppress acts of piracy committed in their waters.[101]

Despite its efforts, the IMO had not been able to satisfy the shipping industry. As the shipping industry saw the threat of piracy increase, other initiatives were being deployed. The International Maritime Bureau (IMB), which is a specialised division of the International Chamber of Commerce (ICC) established the Piracy Reporting Centre (PRC) in 1992. The aim of the PRC was not only to come to a more complete inventory of piracy attacks, but to be the first point of contact for ships in distress. This was an important and different approach, which immediately led to success on behalf of the PRC. The IMO failed to provide this kind of service, and even today the PRC website reports: "Before 1992, shipmasters and ship operators had nowhere to turn to when their ships were attacked, robbed or hijacked either in port or out at

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[98] Roger Villar, *Piracy Today*, 13.
[99] IMO, Assembly, *Resolution A.545(13)* (1983).
[100] IMO, "Piracy and armed robbery at sea", *Focus on IMO* (2000), 2.
[101] IMO, Assembly, *Resolution A.683(17)* (1991).

sea."[102] Meanwhile, the IMO continued to urge member governments to provide it with information on piracy. Consider for example the opening statement of MSC/Circ.622/Rev.1 (1999):

> "Before embarking on any set of measures or recommendations, it is imperative for governmental or other agencies concerned to gather accurate statistics of the incidents of piracy and armed robbery against ships, to collate these statistics under both type and area and to assess the nature of the attacks with special emphasis on types of attack, accurate geographical location and modus operandi of the wrongdoers and to disseminate or publish these statistics to all interested parties in a format that is understandable and usable."[103]

The IMO still considered itself the main organisation for collection of data. In the same circular, it is evident that the focus is still on IMO as the main organisation for gathering information on piracy:

> "The recording and initial examination of reports is best done, wherever possible, by a central agency possessing the necessary skills and resources. In order to maintain the required credibility, both from Government and commercial sectors, such an agency must be accurate, authoritative, efficient and impartial in both its product and its dealings with others. It is judged that the organization best suited to this role is IMO itself, although the use of IMB's Piracy Reporting Centre in Kuala Lumpur, Malaysia, as a satellite for dissemination of information should also be considered."[104]

The IMO did react to the success of the PRC by calling on member states to develop Maritime Rescue Co-ordination Centres (MRCCs) which were to be "the first point of contact between the ship and coastal authorities concerned"[105]. However, the main point of contact remained the PRC. The gathered statistics went to the PRC, which had become the most important organisation for first contact and the primary institute for collection of piracy data. The data most recently available indicate that this trend hasn't changed. Out of a total of fifty-six incidents of piracy that occurred in April 2009, none were reported directly to the IMO, but all came via the PRC.[106]

These statistics, whether collected by the PRC or IMO are far from complete. There is a very simple reason for this. Both the IMO and PRC rely on local and national governments, shipowners and other individuals to feed them with information. And all three have different reasons for not wanting to pass the information on to these institutions. Local governments are

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[102] IMB-PRC, *IMB Piracy Reporting Centre* http://www.icc-ccs.org/index.php?option=com_content&view=article&id=30&Itemid=12 last updated: unknown, accessed: 11 June 2009.
[103] MSC/Circ.622/Rev.1 (1999)
[104] Ibid.
[105] IMO, Piracy and armed robbery against ships – directives for Maritime Rescue Co-ordination Centres (MRCCs): MSC/Circ.967, 6 June 2000, 1.
[106] IMO monthly report April 2009

involved in tolerating and encouraging the piracy attacks as has been the case in China in the 1990s. It is not hard to speculate that local government officials might even have been involved in the attacks themselves, after analysing that certain pirates knew the exact sailing patterns of the vessels they attacked. The central government might be reluctant to pass on the number of piracy attacks because it has a bad reflection on their competence to take action against piracy. Throughout the 1980s, most of the information came from a handful of flag states – notably West Germany, Greece and Japan.[107] Shipowners might have various reasons not to report the piracy attacks, most of which have to do with losing valuable time and money. This would happen when a ship is prohibited from moving along in case of an investigation. Moreover, the insurance company is likely to raise the fees after being informed of the pirate attack. The shipowners and captains might also be worried about their reputation. Furthermore, local victims of piracy like fishermen are often unaware of the possibility of reporting piracy attacks. And even if they are aware, there are often communication problems preventing them from seeking contact.

Defining piracy

Arguably, to come to a successful inventory of piracy attacks, one must first define the term. In the previous section, we have discussed the meaning of piracy under international law and concluded that many forms of piracy discussed in the previous chapter did not constitute piracy according to international law. Therefore, most scholars interpret the term piracy in a wider sense. Establishing a workable definition on piracy is more difficult than it seems and easily leads to failure. Roger Villar commented in *Piracy Today* (1985): "Many of these attacks do not constitute piracy within a precise legal sense as they have occurred within national territorial waters and should therefore strictly be defined as armed robbery. Nevertheless in this book the word piracy is used in its more widely understood meaning of armed attack at sea."[108] The author then continues to describe all kinds of forms of piracy including attacks that occurred when ships were anchored in port. Technically therefore, he fails to abide by his own rule of what constitutes piracy. Eric Ellen then falls for the same trap in his essay on *Contemporary Piracy* (1990). Ellen feels that too much debate has been on the definition of piracy, and too little on the consequences and states therefore: "If this means that, as a term, 'piracy' comes to mean all those malpractices afloat not otherwise specifically defined, then so be it."[109] He then continues

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[107] Stefan Eklöf, *Pirates in Paradise*, 91.
[108] Roger Villar, *Piracy Today*, 7.
[109] Eric Ellen, 'Contemporary Piracy', 123.

to describe all kinds of piracy that *were* 'otherwise specifically defined', as being robbery at sea, murder or rape to name but a few.

Definitions vary depending on the point of view of the person or organisation phrasing the definition. The IMO abides by the definition of piracy as presented in the UNCLOS III treaty. Since this definition only covers piracy in international waters the IMO has also included the term "armed robbery at sea"[110], since it was put on the agenda of the MSC in 1983. In 1998 the PRC proposed a definition of piracy "as an act of boarding any vessel with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act"[111] For the shipping industry it is less relevant where the act of piracy takes place as long as piracy attacks or attempts are being recorded. In 2000, the IMO distributed a code among member states for the investigation of piracy and armed robbery at sea. A precise definition of 'armed robbery against ships' is herein presented: "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 a ship, within a State's jurisdiction over such offences."[112] Together, piracy and armed robbery at sea account for all piracy attacks as well as attempts that are being recorded in statistical data. In order to ensure clarity, a further distinction was made by the IMO in 2002: "The Committee accordingly instructed the Secretariat to start classifying separately the incidents of piracy, armed robbery **at sea** and armed robbery **at port,** as well as attempted acts of armed robbery, in its monthly reports on acts of piracy and armed robbery against ships, with effect from 1 July 2002."[113]

One cannot deny that the United Nations, through the IMO, has tried to come to a more accurate inventory of piracy attacks. At the same time, it is also quite clear that is has not been very successful. The PRC, a non-governmental funded organisation has improved on the work of the IMO since 1992. There is one big difference between how the two organisations operate. Whereas the IMO can only request interested parties to share information, the PRC actually provides an incentive, a service; the PRC offers to be the first point of contact and therewith provides a much needed service to ships in distress. The mere fact that PRC has been able to outbid the IMO in this matter indicates that piracy as a concept was not of great importance to the IMO throughout the period of contemporary piracy. The increased efforts by the IMO to distinguish between different forms of piracy as described in the previous section

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[110] IMO, Assembly, *Resolution A.545(13)* (1983).
[111] Zou Keyuan, 'Seeking Effectiveness for the crackdown of Piracy at Sea', *Journal of International Affairs* 59-1 (2005) 117-135, 119-120.
[112] IMO, *Draft code of practice for the investigation of the crimes of piracy and armed robbery against ships*: MSC/Circ.984, 20 December 2000.
[113] IMO, *Adoption of Amendments to the guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18))*: MSC 75/24/Add.1, 24 May 2002.

also reveal another clue as to how piracy is perceived. Instead of summarizing every act of piracy under the heading 'piracy and armed robbery at sea', the further distinction to 'at sea', 'in port' and 'attempted' attacks indicates that the IMO is beginning to acknowledge that there are many different forms of piracy and simply summarising these acts under 'piracy and armed robbery at sea' does not cover the full extent of these acts. However, the response to piracy and possible change in perception on piracy is best viewed from the ways in which action has been taken against piracy; the subject of the next chapter.

3.4 Conclusion

In the previous sections the response to contemporary piracy by the United Nations has been discussed. It has been assumed that the perception on piracy can be identified from analysing three different responses of which two have been discussed; how the UN has tried to establish a regulatory framework and how it has come to an inventory of piracy attacks. This artificial divide of responses was felt necessary due to the complexity of the United Nations. It must be noted that these approaches often work simultaneously. Consider for example the IMO, which has both tried to engage itself in establishing a regulatory framework and in making an inventory of attacks. Now, an answer can be given to the question whether these responses to piracy have meant that the perception on piracy has changed, and if so, if this is justifiable.

If one were only to look at the efforts by the UN to establish a regulatory framework, it seems that the perception on piracy has not changed significantly over the last thirty years. A lot of effort which went into establishing a regulatory framework on the use of the seas has not been inspired by attacks of piracy. The definition of piracy has not been altered since UNCLOS III. The IMO, the UN's primary organisation for ensuring safety at sea, has set regulations, amended treaties and provided guidance, but its manoeuvrability has been limited by international law. The regulations that the IMO sets are limited to the shipping industry and so it can only recommend that governments act on her suggestions. This largely explains why MSC/Circ.622 (1993) and MSC/Circ.623 (1993) have seen such little revision over the years. But even if the perception on piracy has changed, it would be difficult to analyse this from the point of view that international law should be altered considering that these developments take up so much time and effort.

The question if the perception on piracy as held by the UN has changed according to its efforts to establish an inventory of piracy attacks is tricky to answer. On the one hand the

increased efforts by the IMO (including for example the intensified dissemination of acquired data) suggest that the organisation has come to increasingly appreciate the concept. On the other hand, these initiatives have clearly not been successful enough, as is proven by the success of the PRC. The privately funded Piracy Reporting Centre has been considerably more successful than the IMO and has served since its establishment as the primary source of information on piracy attacks. This surely indicates that for the IMO, which concerns itself with safety at sea in general, piracy has not been of great importance, and that the perception on piracy has not changed significantly. Even after the recent surge in attention by the international community, the IMO has only reacted by indicating it would review the previous edition of MSC/Circ.622 and MSC/Circ.623. There is an interesting argument to be made considering the efforts by the IMO to further distinguish between not only 'piracy' and 'armed robbery against ships', but also attempted attacks, and attacks that occurred in territorial or international waters, or in port or at sea. These efforts indicate that piracy is increasingly viewed as a multifaceted phenomenon. One cannot simply speak of 'piracy attacks', but one has to distinguish between different types in order to make sense of the statistics.

Analysing the two categories of responses and the activities of the UN has so far revealed that the perception on piracy has not changed significantly. However, the most interesting response has yet to be analysed. How the United Nations have responded by taking action against piracy will be discussed in the next chapter.

IV The UN takes action against piracy

"But it would be wrong to limit our response simply to the piracy itself: we must remember that it is the symptom, not the cause, of a much deeper problem in Somalia."[114]

José Manuel Barroso

What remains to be analysed, is how the United Nations has taken action against piracy. The assumption is here, that the ways in which the UN has done so, is exemplary for the way that piracy is viewed. Thus a change in response is due to a change in the perception of piracy. There are numerous ways in which the United Nations can take action against piracy. Recent initiatives suggest that piracy is high on the agenda of the International Community in general and the United Nations in particular. The recent attention that the UN Security Council has given to piracy suggests that the phenomenon has now shifted from being tackled by less important UN organisations like the IMO to arguably the most important body of the UN: the Security Council. It remains to be analysed how the UN has responded throughout the period of contemporary piracy. Finally, the recent surge in responses by means of taking action against piracy can be put in perspective and an answer can be given to the question whether this is due to a change in perception on piracy.

4.1 Taking action against piracy

The UN was already involved in taking action against piracy when pirates terrorised the Vietnamese Boat People. The UN reacted by increasing the competence of the UNHCR. The UNHCR had been involved in helping refugees before the exodus of the Boat People. It is estimated that between 1965 and 1972 approximately 2.7 million people were displaced in the North of Vietnam.[115] They received food and other necessities. At first, rescue operations were

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[114] Jóse Manuel Barroso, *We will not end piracy on the high seas of Somalia unless we bring development to the towns and villages* http://www.europa-eu-un.org/articles/en/article_8658_en.htm last updated: 3 June 2009, accessed 11 June 2009.
[115] Mark Cutts (ed.), *The State of the World's Refugees 2000*, 81.

led by the UNHCR's field officer, Theodore Schweitzer. Between the last months of 1979 and the first months of 1982, Schweitzer rescued at least 1,250 refugees.[116] Meanwhile, the UNHCR started raising funds, and by June 1982 it started an official anti-pirating programme involving 3.6 million dollars. This money was spent in collaboration with the Thai government, which used it to intensify sea and air patrols. From 1984 onwards, this method was extended to involve land based operations as well: "Thai police units and harbour officials registered fishing boats, photographed crews, and conducted public awareness campaigns on the penalties for piracy."[117] Initially, the origin of the problem lay in the thousands of refugees that crossed the Gulf of Thailand in search for a better future. Piracy was a reaction to this refugee phenomenon and the United Nations responded by acting on what it primarily perceived to be a refugee problem.

The UN Security Council did not consider the piracy acts committed against the Vietnamese Boat people a threat to international peace and security and did not refer to the phenomenon in its resolutions. In fact, for the whole period of contemporary piracy the Security Council has refrained from adopting resolutions mentioning piracy until 2006.[118] This has also meant that no UN peacekeeping forces have been sent to combat piracy. This is not surprising as piracy has occurred mainly at sea and so far, all sixty-three UN peacekeeping operations have been deployed on land. This is not to say that peacekeeping operations have had no influence on piracy although the evidence for this is largely circumstantial. Piracy as is discussed in the previous chapter has manifested itself in states where the government is weak, where corruption is rampant, and where the economy is deteriorating. In these places, the poor are sometimes inclined to becoming pirates and organised crime operates at sea as well as on land. Not coincidentally, these are the same places where peacekeeping forces are being deployed.

When in December 1992 an agreement was reached between the government of Mozambique and the Resistência Nacional Moçambicana, the Security Council established ONUMOZ to monitor the ceasefire, demobilize the forces, and establish police neutrality. ONUMOZ retreated in 1994 when it completed its mandate. The Island state of Haiti has seen several peacekeeping operations since 1993: UNMIH September 1993–June 1996, UNSMIH July 1996–July 1997, UNTMIH August 1997–November 1997, MIPONUH December 1997–March 2000 and MINUSTAH June 2004–present. Although Mozambique and Haiti have not been identified as places where many contemporary incidents of piracy have occurred, it is safe to assume that at least armed robberies in port have taken place which can be considered acts of piracy. It follows that these peacekeeping operations – although equipped with different

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[116] Stefan Eklöf, *Pirates in Paradise*, 25.
[117] Mark Cutts (ed.), *The State of the World's Refugees 2000*, 87.
[118] S/RES/1676 (2006)

mandates and with different levels of success – have lessened attacks of piracy during their operations. In order to evaluate these indirect cases of taking action against piracy further research is needed, and this falls way beyond the scope of this thesis. What is important, however, is to notice that although piracy might have been combated through the use of UN peacekeeping forces, taking action against piracy was not the main concern. Both in Mozambique and Haïti, the unstable situation was seen as a threat to international peace and security. Acts of piracy were not.

There have been cases where the existence of piracy has been debated. In 1985 the *Achille Lauro* was seized by Palestinian terrorists and a 69 year old man in a wheelchair was pushed overboard in order to force the authorities to comply with the hostage takers wishes. Arguments that the hostage taking was an act of piracy are disputed by arguments that it is not.[119] Of interest here is not the outcome of the debate but the actual debate itself. Piracy in this case was seen as part of the larger problem of hostage taking and abduction. This is reflected by the resolution 579 (1985) adopted by the UN Security Council: "Considering that the taking of hostages and abductions are offences of grave concern to the international community, having severe adverse consequences for the rights of the victims and for the promotion of friendly relations and co-operation among States, [the council] Condemns unequivocally all acts of hostage taking and abduction;…"[120] The UN Security Council saw these proposed acts of piracy as part of a bigger problem; that of hostage taking and abduction.

4.2 Piracy off the coast of Somalia

For the period of contemporary piracy the United Nations has shown a tendency to view piracy as part of bigger issues. Piracy has been regarded as part of a refugee problem, as a form of hostage taking and abduction, or simply as a by-product of civil war. The recent change in attitude where the Security Council views piracy as a threat to international peace and security can therefore only be thoroughly understood in the context of the situation in Somalia, which has seen eruptions of civil war and the population on the brink of starvation ever since the end of a dictatorship in 1991.

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[119] For a Legal analysis of the hijacking, and the weighing of arguments for and against: Samuel P. Menefee, "Piracy, Terrorism and the Insurgent Passenger", in: *Maritime Terrorism and International Law*, ed. Natalino Ronzitti, vol. 6, International Studies on Terrorism (The Hague: Martinus Hijhoff Publishers, 1990), 59-61.

[120] S/RES/579 (1985), 25.

The first time the situation in Somalia was put on the agenda of the Security Council was 23 January 1992[121]. In this resolution the upheaval of violence was being condemned and the Council strongly urged for an immediate ceasefire by all parties. In the same resolution, the Council "decides, under Chapter VII of the Charter of the United Nations, that all states shall, for the purposes of establishing peace and stability in Somalia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia until the Council decides otherwise"[122] The appeal for either a ceasefire, an embargo on weapons deliveries, or both, would be repeated in numerous resolutions since.[123] Additionally, the Security Council authorised the deployment of peacekeeping forces in 1992 (UNISOM I) and 1993 (UNISOM II).[124] When Somali warlord Aideed saw the UN troops as a threat to his reign, he attacked the UN forces which resulted in dozens of Pakistani and American casualties. The images of dead American soldiers being dragged through the streets of Mogadishu will be long remembered. UNISOM II retreated in 1995.

Although the resolutions condemning the violence in Somalia continued, it would be a long while before piracy was treated as a separate issue. Already in resolution 794 (1992), the council was dismayed by the "attacks on aircraft and ships bringing in humanitarian relief supplies"[125], but piracy as such was not mentioned. The term piracy was then mentioned for the first time on the tenth of May 2006: "Concerned about the increasing incidents of piracy and armed robbery against ships in waters off the coast of Somalia, and its impact on security in Somalia."[126] From that moment onwards piracy received more attention from the Council.

By adopting resolution 1676 the Council reacted to incidents that occurred in 2005. The IMO's annual report – usually published in March the following year – revealed a sharp increase in attacks from 13 to 49.[127] But since the number of piracy attacks then dropped from 49 to 31 for the whole period of 2006 the topic of piracy was laid to rest until 2007. Resolution 1772 (20 August 2007) "encourages member states whose naval vessels and military aircrafts operate in international waters and airspace adjacent to the coast of Somalia to be vigilant to any incident of piracy therein and to take appropriate action to protect merchant shipping, in particular the transportation of humanitarian aid, against any such act, in line with relevant international law". Although the problem of piracy was hereby addressed, the attention given to piracy was

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[121] S/RES/733 (1992)
[122] Ibid, 55.
[123] For example: S/RES/837 (1993), S/RES/865 (1993), S/RES/923 (1994), S/RES/1356 (2001), S/RES/1558 (2004), S/RES/1630 (2005), S/RES/1724 (2006), S/RES/1766 (2007), S/RES/1814 (2008).
[124] S/RES/751 (1992), S/RES/814 (1993).
[125] S/RES/794 (1992), 2.
[126] S/RES/1676 (2006)
[127] IMO annual report 2005

minimal. Firstly, in resolution 1772, the Security Council is mainly concerned about the situation in Somalia as a whole, whereby piracy (paragraph eighteen out of twenty-two) is only mentioned superficially. Secondly, the Council only "encourages member states", in effect issuing a non-binding statement.

France and Denmark were the first to actually respond to the call and deployed warships to ensure the safety of both the WFP and commercial shipping. Their efforts were commemorated by the council when six months later, resolution 1801 (20 February 2008) was adopted. Interestingly, the mentioning of piracy had shifted to paragraph eight, but was still considered less important than the situation in Somalia itself. Consider paragraph six: "Underlining the importance of providing and maintaining stability and security throughout Somalia, and underscoring the importance of disarmament, demobilization and reintegration of militia and ex-combatants in Somalia"[128]

Between February and June 2008 a shift occurred in the perception on piracy. Once more the Security Council addressed the situation in Somalia, but this time the entire resolution was about piracy off the coast of Somalia. The Council also decided that states other than Somalia could enter Somali territorial waters in pursuit of pirates:

> "Decides that for a period of six months from the date of this resolution, States
> cooperating with the TFG in the fight against piracy and armed robbery at sea
> off the coast of Somalia, for which advance notification has been provided by the
> TFG to the Secretary-General, may:
> (a) Enter the territorial waters of Somalia for the purpose of repressing acts
> of piracy and armed robbery at sea, in a manner consistent with such action
> permitted on the high seas with respect to piracy under relevant international law;
> and
> (b) Use, within the territorial waters of Somalia, in a manner consistent with
> action permitted on the high seas with respect to piracy under relevant international
> law, all necessary means to repress acts of piracy and armed robbery"[129]

The Council did stress that if states were to enter Somali waters, it would only be 'for which advance notification has been provided", by the TFG (Transitional Federal Government).

Resolution 1838, adopted by the Security Council on 7 October 2008, continues to address solely the item of piracy off the coast of Somalia. It does express its concern on the use of heavy weaponry and 'mother ships', from which multiple attacks can be launched. It furthermore emphasizes its concern about the attacks on WFP ships carrying humanitarian aid to Somalia. Resolution 1846 (2 December 2008) is once again completely directed at piracy. It welcomes initiatives by various countries and NATO and the EU to combat piracy. In this

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[128] S/RES/1801 (2008)
[129] S/RES/1816 (2008)

resolution, the Council specifically refers to one of the fundamental causes of piracy in this area: "[The Council] expresses its concern over the finding contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy off the coast of Somalia"[130]. Besides focussing completely on piracy, resolution 1851 (2008) includes the Council's concern on the ineffective prosecution of pirates:

> "Noting with concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice, and reiterating that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation"[131]

This statement reaffirms that the prosecution of pirates is not a simple matter under international law. As discussed in section 3.2, determining jurisdiction and gathering evidence for the proposed crime is difficult and many countries – as the previous statement proves – are deterred by the unpredictable outcomes of such a trial. It is in this respect that the resolution provides an alternative solution:

> "[The Council] Invites all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention"[132]

In this proposal, the UNCLOS definition of piracy is being stretched as it were, involving not only the victim ship and pirate ship, but a third party which may involve itself in prosecuting the pirates.

These resolutions focused specifically on piracy and were alternated by resolutions concerning the situation in Somalia in general. Since the first resolution (1676) that specifically mentioned piracy on the 10th of May 2006 and the first resolution (1816) that was completely devoted to piracy on the 2nd of June 2008, no less than eight other resolutions were adopted on

[130] S/RES/1846 (2008)
[131] S/RES/1851 (2008)
[132] Ibid.

the situation in Somalia itself, and except for two of them (1772 and 1801) none of them explicitly mentioned piracy.[133]

The ways in which action has been taken against piracy leads to two opposing conclusions. The first conclusion is that the way piracy has been perceived over the last thirty years has definitely changed profoundly. The concept of piracy has changed from a refugee issue to a threat to international peace and security. Where previously piracy was seen as an element in the more serious problem of hostage taking and abduction, this is now the other way round. At the same time however – and this second conclusion has been overlooked by many observers keen to applaud the renewed attention that piracy has been given – piracy still is viewed as a problem in the context of the country or region where it has surfaced. Recent piracy off the coast off Somalia is viewed as part of the bigger problem of the threat that an unstable Somalia poses to international peace and security.

4.3 Conclusion

In the previous chapter it was proven that the ways in which the UN has been involved in establishing a regulatory framework and making an inventory of attacks of piracy revealed that the perception on piracy has not changed significantly for the period of contemporary piracy. The question if the perception on piracy by the UN has changed according to its efforts in taking action against piracy is not only the most important to answer, but also reveals the most interesting conclusions. The attitude towards contemporary piracy has changed. The simple fact that the Security Council has spent multiple resolutions on the issue of piracy indicates a shift in perception on the importance of the piracy phenomenon. As was proven in the previous chapter, the argument that this is due to the increase in piracy activity is simply not true. It is the recent surge in piracy *off the coast of Somalia* that has invoked the previously unseen reaction by the UN Security Council, and therefore cannot be considered a response to a surge in piracy in general.

Nevertheless, the response towards piracy by the UN Security Council is by all means unequalled, since previous surges in piracy have failed to invoke condemnation by the council. There is a reason why the Security Council has not involved itself in speaking out on piracy until 2006. Until recently piracy was seen as part of bigger issues and not seen as a threat to

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[133] S/RES/1724 (2006), S/RES/1725 (2006), S/RES/1744 (2007), S/RES/1766 (2007), S/RES/1811 (2008), S/RES/1814 (2008).

international peace and security. None of the UN peacekeeping forces have been deployed in order to combat piracy. In the case of the Vietnamese boat refugees, piracy initially was seen as part of the bigger problem of millions of refugees. But even the UNHCR at the time experienced a change in attitude towards piracy. It increasingly sought cooperation with local (Thai) authorities in order to effectively combat the phenomenon. Since however, the coordination of anti-piracy initiatives was in the hands of the UNHCR it is safe to say the UN viewed it as a refugee problem. Where piracy in case of the *Achille Lauro* was seen as part of the bigger issue of hostage taking and abduction, recently, the hostage taking and abduction are seen as part of the problem of piracy!

However, the fact that the Security Council had decided to address piracy as a threat to international peace and security did not restrain it from viewing piracy in the light of other concerns. For example, resolution 1844, adopted by the Council on 20 November 2008 places piracy in the role of facilitating breaches of the arms embargo: "expressing its [the Council] grave concern over the recent increase in acts of piracy and armed robbery at sea against vessels off the coast of Somalia, and noting the role piracy may play in financing embargo violations by armed groups"[134]. It is also true that for the whole period between 2006 and 2009 a total of seventeen resolutions were adopted on the situation in Somalia, ten of which do not address the problem of piracy.

Furthermore, the causes of the piracy phenomenon off the coast of Somalia can mainly be attributed to the situation in Somalia, this has been recognised by the Security Council in many resolutions, including – one of the most recent – resolution 1838 (7 October 2008): "[The Council] emphasizing that peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia"[135] And although, since resolution 1801 (20 February 2008) whole resolutions have been devoted to piracy, it is still piracy *off the coast of Somalia* which is perceived as the threat to international peace and security. Whereas previously, the council condemned worldwide 'hostage taking and abduction', or 'acts of terrorism', in the case of piracy, it is still 'piracy off the coast of Somalia' that is being addressed. This reveals that piracy is still viewed in the light of the situation in Somalia. The most recent resolution on piracy contains strong suggestions that it is not piracy that is the threat to international peace and security, but the effect of piracy on the situation in Somalia: "[the Council] determining that the incidents of piracy and armed robbery

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[134] S/RES/1844 (2008)
[135] S/RES/1838 (2008)

at sea in the waters off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region"[136].

One could also argue that no matter how many times piracy is actually mentioned, what is important is that the Security Council has invoked extraordinary measures in response to piracy. As Dick Leurdijk has eloquently put it: "For the last one and a half years the Council has stretched the available manoeuvrability for the use of navy and air force."[137] On closer investigation however, these measures are less extraordinary than one might expect. In resolution 1816 (June 2008) the council decided that states could enter Somali waters and use "all necessary means" to repress piracy, however only in response to acts of piracy, and only "for which advance notification has been provided by the TFG"[138] In other words, states were allowed to enter Somali waters but only when given permission by Somalia, which in effect only invites change if the Somali government is willing to act on piracy. If for some reason, the Somali government might decide not to accept foreign assistance in chasing pirates, the fact of the matter remains that states other than Somalia are not granted permission to hunt down Somali pirates. The same can be said about the appeal of the Security Council to involve "shipriders"[139] and thus invoke some sort of third state jurisdiction. Before pirates are to be prosecuted in third party countries and shipriders are actually allowed to operate, multilateral agreements have to be established between states. Since the Security Council only 'invites' them to do so, and 'the advance consent of the TFG' must be given, the actual decision to do so is left to individual states.

There is one more important remark to be made about the nature of the Security Council resolutions. In paragraph 3.2 the attempts by the UN to establish or alter a regulatory framework were discussed. It is important to notice the following restraint by the Security Council regarding the influence its resolutions might have in altering the concepts of international law: "[The Council] Affirms that the authorization provided in this resolution applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of member states under international law, including any rights or obligations under the [UNCLOS] Convention, with respect to any other situation, and underscores in particular that it shall not be

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[136] S/RES/1851 (2008)

[137] Dick Leurdijk, 'Strijd tegen piraterij voor de kust van Somalië in nieuw vaarwater', *Internationale Spectator* 63-4 (2009), 218. [quotation translated by the author]

[138] S/RES/1816 (2008)

[139] S/RES/1851 (2008)

considered as establishing customary international law"[140] In effect, the Security Council herewith limits the scope of its resolutions to one country: Somalia.

Piracy off the coast of Somalia received far greater attention than any other contemporary form of piracy. But it is the attitude towards piracy off the coast of Somalia that has changed, not the attitude towards piracy in general. The recent initiatives by the Security Council can thus only be viewed in the context of the situation in Somalia and in that context, the response is not groundbreaking.

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[140] This is specifically mentioned in multiple resolutions, for example: S/RES/1816 (2008), S/RES/1838 (2008), and S/RES/1846 (2008).

Conclusion

Piracy has returned. The dreaded maritime marauders are once again swarming the seas, or so it seems. Pirates have been around for many centuries, but virtually disappeared at the beginning of the twentieth century. But by that time many centuries of storytelling left us with vivid impressions of these romanticized villains. As prejudice on pirates is hard to eradicate this context is not to be neglected. The history of contemporary piracy has taught us that since the 1980s piracy returned in fearful numbers. However, this has by no means occurred exponentially or even continuously. A dramatic increase did not occur because of two important reasons. A 'dramatic increase' assumes the same form of piracy and the same place of occurrence, and both of these are subject to extreme fluctuation. In fact, the recurrence of piracy has been observed to behave in such a conjectural way that even to speak of a concept as such is questionable.

At the same time, the same characteristics that were involved in ancient piracy still make up for today's incentive factors. Piracy and trade are intertwined and perhaps inseparable. Opportunity is a keyword and piracy has flourished where state authority was in decline. But although poverty has encouraged piracy, poor people are not necessarily destined to become pirates. The concept of contemporary piracy has involved rape and murder but it has also been limited to petty theft. It has involved the use of machetes, machineguns, grenade launchers and flip-flops. In other words, it has shown many different faces. This seriously begs the question if we should use the concept of contemporary piracy. One could quite plausibly argue that it is not global characteristics that bind the different attacks to a phenomenon but local circumstances that determine its occurrence and therefore its existence; thus to speak of piracy as a concept is intrinsically flawed. The Security Council therefore rightly addresses piracy off the coast of Somalia and warns not to consider its resolutions and decision as the establishment of customary international law.

For policymakers this debate on if and how to define the concept is fundamental in being able to decide how to respond. If local circumstances are the most important denominator, then to use the term piracy and to try to accumulate information on the concept as if it were a global reality merely leads to confusion. On the other hand, there are so many similarities between the different contemporary occurrences of piracy that to neglect these would be equally foolish. It was proven in this thesis that piracy off the coast of Somalia is in many ways not new. The vastness of the ocean provides the same safe passageway for pirates as in many other places. The inability of the Somali government to enforce on pirate activity has

seen precedents in many West African and South-East Asian states. Over the course of spring 2009 Somali pirates have shifted territory, like the Southeast Asian pirates before them. Organized crime, an important factor in piracy off the coast of Somalia, has been involved in many places before. From Thailand where the aim was to capture women to serve as prostitutes, to the Caribbean, where captured yachts served as means to transport drugs illegally into the United States.

In other ways, piracy off the coast of Somalia is different from previous forms of contemporary piracy. Although ships carrying humanitarian aid relief have been attacked before in the Gulf of Thailand, the intensity with which this has happened in the last two years was previously unseen. The same goes for hostages that are taken and held for ransom, a trend that we have noticed before at the end of the 1990s, but the enormous payouts to Somali pirates are new and a definite unparalleled encouragement.

The response to piracy off the coast of Somalia has been put into context of previous responses to contemporary piracy. Theoretically, piracy is a direct threat to the core values of the United Nations. Piracy is a direct violation of the sovereignty of states and in many cases, the Universal Declaration of Human Rights. This analysis has shown that for most of the period of contemporary piracy, the United Nations have responded marginally to the threat of piracy. This is partly explainable by pointing out the difficulties in amending existing regulations on the use and subsequent disuse (piracy) of the seas. At the same time, one might question the efforts by the IMO which has been surpassed by the privately funded PRC in its efforts to assemble statistics on piracy occurrences.

The recommendations that have been brought forward by the IMO in order to prevent or suppress acts of piracy have changed little since their first circulation to governments and shipowners in 1993. This is indicative of for the difficult position that the IMO is in. It has no enforcement operatives and is bound by international law. The attempts by the IMO to clarify the use of the terms piracy and armed robbery against ships, at sea as well as in port have undoubtedly resulted in a more thorough survey of piracy attacks that have taken place. However, the process is far from complete. If armed robbers attempt an attack against a ship in port, what is there to distinguish them from 'regular' armed robbers who operate in the same port area? In the first case it is proclaimed to be some sort of piracy, and in the latter case it is mere petty theft that is only of concern to local authorities. This reveals the difficulty of maintaining the concept of piracy, and the efforts to clarify on the different manifestations by the IMO indicate that this organization is moving away from an inclusive view on the concept.

The majority of piracy has occurred at open sea and in that respect the United Nations has been further limited in its manoeuvrability. Peacekeeping forces are ineffective in patrolling the oceans. If however, one assumes that the origin of pirate activity is at land, then peacekeeping forces will most certainly have lessened piracy occurrences. However, the evidence for this is largely circumstantial.

The previous deliberation provides multiple reasons on why and why not to use the concept of piracy. It is therefore not surprising that the UN Security Council did not deem the concept of piracy worthy of condemnation until May 2006. The reason for this was proven by the fact that until recently, contemporary piracy has been regarded as part of bigger threats to international peace and security. In this respect, piracy off the coast of Somalia has for a long time been seen as an important contributor to the violation of the arms embargo.

The recent attention in piracy off the coast of Somalia by the Security Council might lead some to conclude that piracy has been promoted to the position where it is seen as a principle threat to international peace and security. This is not the case. Reviewing the resolutions by the Security Council has revealed that although some resolutions are solely about piracy, it is still piracy *off the coast off Somalia* that is the main threat to international peace and security. This reveals an important clue on how to put the response by the United Nations in perspective. Piracy will disappear from the international agenda as soon as piracy off the coast of Somalia has been sufficiently deterred. That is, until the atrocities committed by future pirates reach epidemic proportions in a different part of the world, where due to local circumstances the same characteristics manifest themselves as with the current piracy off the coast of Somalia.

If and when piracy off the coast of Somalia will be effectively minimized depends on the speed of mounting resistance to the pirates. It seems but a remote possibility that this is attainable by battling the pirates at sea alone. Solutions to the dramatic situation on the Somali mainland will most likely have to be incorporated into a strategy to combat the piracy. Or, to put this into the right order: Solutions to the piracy problem off the coast of Somalia will have to be incorporated into a broader strategy to keep the situation in Somalia from retaining its threat to international peace and security. In other words, piracy is still being viewed as part of larger issues, and in this respect, the perceived recent change in perception towards piracy by the United Nations is a misconception.

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