

EDITORIAL

Dear Readers,

As we approach the last months of PiraT project, we will be continuing to work until March 2013 on our final book publication. Information about the final publication will be issued in a forthcoming newsletter. We have made an application for a follow-up project, and currently a decision is pending. This newsletter will cover the final PiraT conference, during which all PiraT partners discussed their final results with a high number of interested participants.

The lengthy pirate trial held in Hamburg, the verdict recently handed down and the ongoing concern of German shipping companies mean that piracy has been brought to the public's attention. The newsletter includes a comment on the Hamburg piracy trial.

The use of private maritime security companies at sea is still raising many questions. The emerging regulatory process was discussed during a joint IFSH-BLS workshop. Below, you will find a short report.

In the newsletter we present short summaries of the latest working papers that are freely available for download and refer to further project publications that might be of interest.

Your suggestions and feedback are as always, most welcome.

The PiraT Team



18. – 19. June 2012: Final PiraT Conference: Results and Recommendations

On 18 and 19 June 2012, in cooperation with the Hamburg Chamber of Commerce, the IFSH hosted the final conference for the PiraT project entitled 'Piracy and Terrorism as a Challenge for Maritime Trade Security – Conclusions and Recommendations'. Collaborators of the four sub-projects presented their results as part of the joint research venture, funded by the Federal Ministry of Education and Research, which lasted for a total duration of two years and nine months, ending in December 2012. More than 100 participants attended, including representatives of academia, public authorities and ministries, shipping and insurance companies, associations and trade unions as well as private security companies.





After the opening remarks by Ulrich Brehmer of the Hamburg Chamber of Commerce and Eckhard Curtius, a senior government official at the Federal Ministry of Education and Research, Dr Hans-Georg Ehrhart delivered an introductory presentation about the project and its partners. After having familiarized the audience with the current risk levels posed by piracy and maritime terrorism, Kerstin Petretto and Dr Patricia Schneider moderated the two panels that followed.



Dr Hella Engerer (DIW) and Max Gössler (DIW) outlined the global cost of piracy, and Germa-

ny's economic concerns. Not only did they present the results of the PiraT survey of German ship-owners and insurers, but also micro-theoretical analyses of piracy.

Prof. Dr Doris König (BLS) and Tim Salomon (BLS) summarized the national and international legal challenges, especially in light of the German development of an accreditation process for private security companies.



In the panel that followed, Prof. Dr Thorsten Blecker explained solutions offered by modern technology and guided conference participants through the ensuing discussion with Prof. Dr Boris Culik (PITAS), Nils Retkowski (Result Group), Friedrich Haas (AKE Germany), Moritz Fritsche (NSB Niederelbe Shipping Line), Stefan Jock (CASSIDIAN) and Arne von Spreckelsen (ver.di). The main focus of the debate centered on the tensions between the introduction of defence technology for vessels and work safety standards.



During the final panel, Dr Hans-Georg Ehrhart (IFH) presented courses of action for state actors related to security policy, whilst Heinz-Dieter Jopp (ISZA) offered the results of the future development analysis. A German strategy for maritime security and more transparency regarding the responsibilities of German authorities hence seems indispensable. In the case of Somalia, strategies should primarily be orientated on local contexts and necessities, whilst above all, cooperation with the coastal regions concerned should be accordingly accelerated. Prof. Dr Michael Brzoska (IFSH) moderated the final discussion.



The results of the project PiraT will be published in the form of further research papers (available free of charge on www.maritimesicherheit.eu) and by mid 2013 in a book entitled **Piracy and Maritime Terrorism as a Challenge to Germany's Maritime Trade Security: Politics, Law, Economy, Technology** (to be published by Nomos Verlag in German).

Piracy Court Proceedings, Tim René Salomon: „Long road to justice – The German piracy trial”, published: 31.10.2012,

published at:

<http://piracy-law.com/2012/10/21/long-road-to-justice-the-german-piracy-trial/>

After 105 days of trial and a duration of almost 2 years, Judge Dr. Steinmetz announced the verdict and penalties on Friday, the 19th of October 2012 for the Third Grand Penal Chamber of the Landgericht Hamburg. The ten accused were found guilty of two crimes, attack on maritime traffic (§ 316c German Criminal Code – StGB) and abduction for the purpose of blackmail (§ 239a StGB). The adults were sentenced to six to seven years, while the juveniles and accused which were under 21 years of age at the time of perpetration were handed a two year penalty and will walk free after having served their time already during the extended period of pre-trial detention. It may be of even greater surprise, although the author finds this aspect to be one of the great success stories of the trial, that the three young accused behaved exemplary in pre-trial detention during which they went to school and have, after their early release, continued going to school with one of the accused even delivering his last word in the proceeding partially in German.

In the four hours of Steinmetz's announcement, he stressed numerous aspects of the trial, the acts committed and the political backgrounds and took the time to deliver his personal perception of what he termed an "absolutely exceptional proceeding". This exceptionality is clear to observers everywhere. It was Germany's first piracy trial in about 400 years, it was exceptional in the sense that so far no other trials in Germany are on the horizon on the subject matter, but it was also exceptional or better put notorious for its duration. The fact that it took two years

is indeed remarkable, when looking at the rather simple case at hand:

The MV Taipan was headed from Haifa, Israel to Mombasa, Kenya and avoided the vicinity of Somalia in order to be relatively safe from pirate attacks. 500 nm from the Somali coast in the middle of the Indian Ocean on the April, 5 2010 they sighted the dhow Hud Hud, a kidnapped vessel, which was first deemed harmless and the threat it posed became apparent only when it sent two skiffs towards the container vessel Taipan. The crew of the Taipan, which now travelled full speed, was sent to the safe room and the master and two crew-members remained on the bridge. When the skiffs closed in and machine gun fire hit the Taipan, the master ordered everyone in the ship's citadel. The pirates on the skiffs tried to climb on board, observed by a German maritime surveillance aircraft, and eventually succeeded. The individual role of each accused could not be ascertained with the necessary certainty, but it is documented that the pirates changed the vessel's course to Somalia and destroyed the GPS antenna to complicate the tracking of the Taipan. After the Taipan's master Eggers noticed this, he blacked out the vessel from the citadel to stop its travel, knowing that the Netherlands Navy frigate HNLMS Tromp was near, although the attack took place outside of the area under the EU ATALANTA mandate. During the following four hours the pirates unsuccessfully searched for the safe room until soldiers from the Netherlands Navy boarded the Taipan and apprehended ten suspects after a brief previous exchange of fire between the Tromp and the pirates. The suspects were then taken to Djibouti, flown to the Netherlands and were eventually extradited to Germany, where the prosecution was conducted.

What seems to be a rather clear cut case ended up to be a very challenging and long-lasting endeavor for the Hamburg court, which has led the trial with meticulous care. The applicability of German criminal law was

more or less uncomplicated, since it derives from the German flag of the Taipan (§ 4 StGB), the passive personality principle as two victims, the master Eggers and merchant seaman Preuß, were German nationals (§ 7 (2) StGB) and the universality principle, which German law applies to attacks on maritime traffic (§ 6 Nr. 3 StGB). The court could have mentioned § 3 StGB, the territoriality principle, as the blackmail was directed against a German-based company, which means that the result of the crime arguably should have occurred in Germany according to the intention of the offenders (§ 9 StGB). Also the Hamburg court is locally competent because of the Taipan's home port, Hamburg (§ 10 German Criminal Procedure Code – StPO), with the Grand Penal Chamber of the Landgericht being the proper instance because of the expected penalty above four years imprisonment.

At the start of the proceeding every accused was granted two lawyers to prepare and conduct their defense. The issues started early in the trial. Seeing that people under the age of fourteen cannot be held criminally liable in Germany, the court first had to conduct medical exams to verify the claims of some of the accused that they were below this threshold or were at least under 18 or 21 respectively, rendering the juvenile code applicable. Two expert witnesses were heard until this issue was resolved with the necessary certainty. Moreover, during the trial, witnesses were heard e.g. on the situation in Somalia and the causes of piracy, the responsible captain of the Netherlands Navy testified and the master of the Taipan as well as his second officer also gave evidence. Some of the accused chose to make statements themselves during various stages of the trial, some admitting their participation in the act, while incriminating others, some claiming that they were forced to partake in the attack or at least deceived into participation. While the court was unable to bring to the light how exactly the pirate group conducted the attack, the declarations by the

accused led to some insights into the act, although any allegations of force or deceit were held to have been unconvincing, since sufficient evidence pointed to the fact that all of the accused participated voluntarily. Consequently, the court saw an attack on maritime traffic and the abduction for purposes of blackmail as given in this case. The fact that the victims were in the safe room did not prevent the abduction from being successful in a legal sense, since the victims were in fact under the control of the pirates, who controlled the entire vessel.

This led the court to a possible penalty of 5-15 years imprisonment for the adults. In weighing the facts and background of the case to find a just penalty, the court stressed especially the danger of the act, the heavy weaponry used, the damage dealt to the vessel and the high criminal energy, but also the situation in Somalia under which the accused grew up, the fact that the accused were only small fish in a criminal network, the long pre-trial detention periods, the fact that there were no complaints against the accused during this detention and the short duration of the abduction. In doing so, it arrived at substantially shorter penalties than the state attorneys requested in this case.

In its concluding remarks, the court stressed that the trial was surely not able to prevent piracy or deter future perpetrators, but it also underlined that the trial was necessary with regard to the individual perpetrators and in order to communicate to the victims that the crime committed against them was punished. The duration of the trial was certainly longer than necessary. It was criticized by the court that the defense attorneys delayed the trial substantially, which is probably true. Although they merely used the means given to them by German criminal procedural law, some of their requests seemed far-fetched, e.g. the proposal for the court to travel to Somalia to see what life is like there, the proposition, the court should pay bribes in order to obtain

witness statements from Somalia, a challenge against the court for bias, because the proceedings started one hour later than originally announced one day, or even the request to lock the captain of the Netherlands Navy, the person responsible for freeing the Taipan, in coercive detention, because he did not give evidence with regard to classified matters.

What remains for the international community? Surely, piracy trials need not last two years to be fair, but this trial shows that granting an effective defense also means trials tend to last longer. Against this backdrop, the ongoing trials in Kenya and the Seychelles, which last only much shorter and which, in case of the Seychelles, have featured one defense attorney for up to 14 accused show what happens when no effective defense is guaranteed. A similarly dramatic contrast is to be found in the way the issue of age was handled in the German trial versus how it is handled in e.g. the Seychelles. While the court in Hamburg went to great lengths to estimate as precise as possible the age of the accused, in the Seychelles, age has up to now not even been a criterion which lead the courts to distinguish between adults and juveniles with regard to the applicable penalties. Expecting the same diligence, which was used in the German proceeding everywhere in the world, would probably be a rule-of-law-overkill, but to some extent the German trial has thrown into sharp relief the conduct of trials elsewhere in the world.

19. – 20. April 2012: Workshop in Hamburg: “Private Maritime Security Providers. Challenges from a practical, legal and political science perspective”



The IFSH, together with the Bucerius Law School (BLS), held a workshop between 19-20 April 2012 on the topic of “The use of Private Security Service Providers for Protection Against Dangers on the High Seas. Challenges from Practical, Legal and Political Science Perspectives” in Hamburg’s State and University Library. Participants included academics, and representatives from relevant authorities, ministries, shipping companies, insurers, associations, and security services. Hans-Georg Ehrhart, Patricia Schneider and Kerstin Petretto participated as panel chairs or as discussants, and led the workshop together with their BLS colleagues.



The workshop focused on the debate over using private security providers (PSPs) in high risk areas like the Horn of Africa and the Indian Ocean, and their possible regulation. Together with the Best Management Practices

of self-protection for merchant ships, along with military missions, private maritime security providers are becoming an integral component of the piracy defense strategy.



Industry related certification bodies are establishing measures of self-regulation. However, the International Code of Conduct for PSPs, introduced by Thomas Haueter (DCAF) and self-licensing practices, like SAMI, represented by Mark Hornung, cannot fully replace state regulation states. Adapting IMO guidelines, the German government is developing relevant approval mechanisms. Gert Jürgen Scholz (BMVBS) and Ernst Stöckl-Pukall (BMW) stressed the necessity of legal certainty for ship owners and insurers. Dr. Berthold Stoppelkamp (BDSW) emphasized that the German security industry is requesting a defined adequate legal framework for this more demanding field that ensures high quality standards for PSPs.

Katja Keul (MP, Bündnis 90/Die Grünen) and Dr. Hans-Peter Uhl (MP, CSU) discussed the expected German approval mechanism and the protection of the state monopoly on the use of force with Dr. Elke Krahmann (Brunel University) during the concluding panel. Shipping industry representatives, Frank Leonhardt (Leonhardt & Blumberg) and Moritz Fritsche (NSB Niederelbe) highlighted their experiences with maritime security matters. Rear Admiral Thomas Jugel illustrated aspects of military cooperation with PSPs.

Questions pertaining to the criminal prosecution of captive pirates, the responsibilities of

ship captains, the transport and use of weapons, as well as the future development of the European Atalanta-Mission were intensely discussed.



14. June 2012: Workshop in Hamburg: "Specification of security solutions on board ships"

During the full-day workshop appropriate technological security solutions for ships against the threat of piracy and maritime terrorism were detailed. The solutions were prepared in teams consisting of representatives of trade management and logistics experts. Regarding different threat scenarios the participants from various divisions developed technological sets of measures for defense. The developed sets of measures were also checked for their effectiveness in order to adapt the solutions and identify further needs for research and development. During the final discussion it was revealed that the majority of the experts supposed that trained staff and the sensible use of, as well as the combination of, technologies could already reach a high level of security. Many experts were sceptical whether or not the use of new technologies achieves an actual increase in security.

New PiraT-Working Papers

The new PiraT-Working Papers are available at:

<http://www.maritimesecurity.eu/en/publikationen/workingpapers.html>

Hans-Georg Ehrhart, Heinz Dieter Jopp, Roland Kaestner, Kerstin Petretto, The Germany Fight against Piracy: State Structures, Actors, Deficits. PiraT Working Paper No. 19, Hamburg (available only in German)

The maritime area is of great relevance for the economic well being and the security of Germany as well as for the European Union (EU). As a trading nation, Germany is closely linked with the global economy. An interruption in the supply chains by crises and conflicts could have serious consequences for the economic welfare and the security of the country. Piracy threatens this security. Nowadays piracy is seen as such a big challenge that the United Nations Security Council deals with it in a variety of resolutions and allows coercive measures under Chapter VII of the Charter of the United Nations (UN). The international community and especially the EU have the objective to address the problem through short-term, as well as medium-to long-term measures. This requires a differentiated and coordinated approach at international, regional and national levels.

This working paper focuses on the question of how the relevant German actors ("stakeholders") assess the challenge of piracy, who has which responsibilities and how they coordinate their actions. Based on the theoretical and conceptual approach of the security governance, the actors, structures and practices of networked security will be identified and evaluated. Networked security as a political concept and practice of the federal government addresses a whole of government approach as well as the combination of state and

non-state actors with the aim to control complex security problems. Accordingly, in this paper, the role and interaction of state, society and public-private actors will be analyzed.

Piracy is a transnational organized form of criminality and a challenge that cannot be controlled by one country or one agency alone. There is need for joint international and national efforts - by government as well as by non-state actors. Despite the shortcomings it can be noted that the organization and measures for the protection of the German merchant fleet have been quite successful in the context of the national concern and the international jurisdiction. But the commitment of the Federal Government in the EU and in international institutions to combat piracy is limited. If there would be a stronger political will Germany could even perform a leading role in some areas.

Joint Project PiraT (Hrsg.) (2012): Indicators for risk assessment of piracy and maritime terrorism: problematization and results - Joint report by the academic partners of PiraT, PiraT Working Paper on Maritime Security No. 18, Hamburg (available only in German).

This publication is a result of the cooperation of twelve writers and five institutes who published the 18th PiraT Working Paper in September 2012. Jointly, the researchers from the IFSH, BLS, DIW, TUHH and ISZA identify indicators to assess the risks of maritime piracy and terrorism. Four aspects are emphasized: the indicators are different in the various fields (political science, law, business, engineering and future research) and qualitative factors play a bigger role in the social science as well as the legal discipline. Additionally, the indicators are strongly bound to context and therefore less suitable for a numerical calculation of risks, but they can nevertheless identify trends.

Blecker, Thorsten/ Will, Thomas/ Kretschmann, Lutz (2012): Indicators for risk assessment: ships' ability of self-protection in case of piracy or terrorist attacks. PiraT Working Paper on Maritime Security No. 17, Hamburg (available only in German).

Piracy and maritime terrorism pose a threat to maritime security. While the impact on the economy is still marginal, the financial risk for the individual vessel owner can be significant (Mildner & Groß 2010, S.27). This induces the need for a thorough risk management process.

After identifying and evaluating risks with regard to their extent, suitable strategies of how to cope with them are developed. Possible strategies include the avoidance of a risk by the adjustment of shipping routes, the transfer through a suitable insurance or the reduction with an implementation of technological measures that decrease the vessel's vulnerability.

In this paper a methodology is developed that enables the evaluation of a vessel's vulnerability towards a specific threat scenario. It is argued, that a vessel's vulnerability is characterized by its ability to (1) detect, (2) delay and (3) respond to an attack. Within the developed concept each of these characteristics is illustrated by a specific indicator. Together they form the vulnerability-indicator.

The developed concept allows the measurement of a vessel's vulnerability according to a number of different dimensions. Thus, it contributes to the determination of the magnitude of risk associated with a specific threat scenario. By revealing potential weaknesses regarding certain threat scenarios, it also facilitates the implementation of technological and operational measures that efficiently reduce the likelihood of a successful attack on the vessel.

Endler, Johannes/ Engerer, Hella/ Gössler, Max/ Pfeiffer, Phillip (2012): Economic Aspects of Piracy and maritime Terrorism – Literatursurvey. PiraT Working papers on Maritime Security No. 16, Hamburg (available only in German).

The literature review aims to summarize the current state of scientific economic research on piracy and maritime terrorism. The review refers to economic articles from ISI web of science and RePEc. In detail, it presents literature on definitions and concepts, causes of piracy, risk analyses and existing hazards, costs and effects, the maritime insurance sector and on measures to combat piracy and maritime terrorism. Finally open research questions are identified. So far, most authors analyze the existing problems in Somalia, the Gulf of Aden and South-East-Asia. Most studies are descriptive. Only few authors use advanced methods. Thus, the review shows that further research is needed to investigate the economic behavior of the actors involved and to focus on the macro-economic impact on growth and trade of the respective countries.

Jopp, Heinz-Dieter/ Kaestner, Roland (2012): A global analysis of possible politically and economically motivated acts of maritime violence in the next twenty years. PiraT Working Paper No. 15, Hamburg (available only in German).

This working paper seeks to examine the occurrence of future phenomena of politically and economically motivated acts of maritime violence over the next twenty years, and to establish a trend and scenario analysis so as to achieve this. To achieve this, nine scenarios concerning the international system have been developed where differences and variable trends offer some new insight and opportunities in how maritime violence could develop over time. These scenarios are not pre-

dictive in a strict sense, but rather they provide a way to focus attention and better understand when and where hazards to maritime trade caused by piracy and maritime terrorism could develop, based on the scenarios.

The results of this historical case study have shown that maritime piracy is caused by various factors. These comprise political, economical and social factors which either support or hamper the politically and economically motivated acts of maritime violence (in form of piracy acts and acts of terrorism). There are seldom single factors that play a role, but rather a mix of the three. They do not repeat themselves, but rather take on different forms. The possible configurations are the basis of the impact analysis in the scenarios, so as to allow for the description of the possible future developments of secondary factors of risk models in the various scenarios.

The contemporary perception of maritime armed groups presents a particular problem. However, the perception of this phenomenon according to international law varies between legally allowed and forbidden forms of maritime violence. As long as wars were conducted by state and non-state actors, using armed robbery and haul as a means could hardly be distinguished from the outlawed phenomena of piracy and maritime terrorism. Whether the acts were legal or not were instead a matter of interpretation of specific contemporary social, economic and political circumstances. However international law changes according to new legal and political policies, and it depends on whether actors are able or unable to influence such developments. However, international legal valuations also change with respect to their often legitimizing political interpretation by different actors. The latter so mainly because of their political and physical weakness that cause them to participate in these 'outlaw' forms of violence against the system, and thus change it. Therefore different types of non-state actors (economic lead-



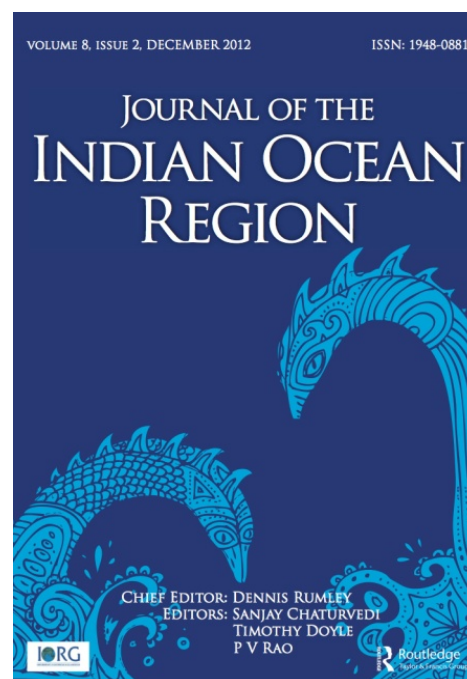
ers, traders, leaders of organized crime, warlords, tribal and clan leaders etc.) and their social and economic activities, transformed these non-state actors into political entities creating quasi real states. The disintegration of parts of the system of states and its restructuring are questioning both existing understandings of international treaties as well as creating non-state actors that rely on their own social and legal concepts.

Generally, one cannot doubt that such groups exist: one which organizes and finances maritime violence and the other who carries it out. The former are recruited from upper classes in society, the latter come from the lower underprivileged classes in society. Comparing criminal offences on land to those which occur at sea, maritime crime is more costly (using boats or ships) because it must be financed in advance. Theft and robbery ashore are often crimes of opportunity; at sea they have to be organized.

Therefore one can say that robbery at sea is a business. Privateering is a form of political relations either in times of war (limited war at sea) or in times of peace. This form would be named today as maritime terrorism. Piracy follows economic interests, terrorism follows political interests. However, sometimes these paths cross: Politicians desperate for enrichment or criminals looking for political influence.

The three main regions, Sub-Saharan Africa, South East Asia and South America and the adjacent oceans indicate different constellations as a prerequisite for political or economical motivated maritime violence. It might be necessary to establish a regional and local analysis of the situation in the coming two decades, as this could help gain more information about the characteristics of potential perpetrators. This could be of benefit as it would lead to an early warning alarm which could then lead to the most effective way to deal with the challenge ahead from a governmental perspective.

Special Issue on "Maritime Terrorism and Piracy in the Indian Ocean Region"



Dr. Patricia Schneider, IFSH, co-edited together with Professor Andrew C. Winner, U.S. Naval War College and Awet T. Weldemichael, Université Paris Diderot, a special issue on maritime terrorism and piracy in the Indian Ocean region which was published in the Journal of the Indian Ocean Region by Routledge. All articles are double-blind peer-reviewed by at least three evaluators. The special issue has its origins in a panel on maritime security that took place at the International Studies Association (ISA) Annual Convention in San Diego, California. The panel aimed to draw attention to the concept and phenomenon of maritime terrorism (with a focus on the Indian Ocean) and to review the international countermeasures and preparedness to overcome it. With the input from the panel and the insights from additional authors that contributed to the issue, it provides seven articles throwing light on the subjects of maritime terrorism and piracy from different perspectives that can be divided up into four cate-

gories: case studies of specific maritime challenges and national responses to them; an examination of the overarching issue of non-state actors and maritime security; the discussion of international legal and regulatory responses to maritime security issues in the Indian Ocean.

In the first category, Dr. Patricia Schneider analyses German regimes of maritime security governance in the Indian Ocean region. The German economy relies heavily on its international sea trade and Germany is home to the world's biggest container shipping companies. On one hand, authorities and stakeholders have been eager to improve risk assessment and implement international agreements. On the other hand, the different interests of ship-owners, seafarers and insurers, as well as a lack of agreement between the different ministries, are major challenges for German maritime security governance. Germany chooses to act within the international context concerning maritime security, but generally not in a leading role.

Contents: **Patricia Schneider, Awet T. Weldemichael, Andrew C. Winner: Editorial;** **Awet T. Weldemichael:** Maritime corporate terrorism and its consequences in the western Indian Ocean: Illegal fishing, waste dumping and piracy in twenty-first-century Somalia; **Annina Cristina Bürgin:** Spanish maritime security governance in the Indian Ocean Region; **Patricia Schneider:** German maritime security

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