THE CASE "SOMALIAN PIRACY" COULD BE SOLVED

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It is time for new strategies, order and measures. There is a need for urgent, adequate, flexible reactions and realistic steps by states and international organizations against the mimicry of international terrorism. Men presently live stressfully due to a minefield of crises - oil or natural gas, financial, global warming theory, constant activities by Al-Qaida and related groups.

Lately, quite acutely was raised the level of concerns, a result of incursions by modern sea highjackers – "Somali pirates". One of the most heavily concentrated, direct shipping routes *Suez - Red Sea - Gulf of Aden - Indian Ocean* is blockaded. Trough this important sea route annually pass 15-20 000 vessels, including more than 30% of the world's oil. The shorelines of this strategic shipping route are entangled on one hand with the volatile oil-rich Arabian Peninsula and on the other hand with a 3230 km Somalia's coastline, a country with uncertain statehood. We are living in a global financial crisis, when every penny counts, where ship-owners are incurring millions of dollars of losses in one incredibly "thin" Shipping Market. Only in 2008 "ransoms" vary from 500,000 to 2 million dollars per ship! Accumulated millions of dollars by the sea pirates/terrorists is hardly to believe that serve only for their daily lifestyles and expensive whims. These funds are accumulated and will appear in the global market of terrorism as a resource for the great players and could serve for their next global aim. Hardly, yesterdays fishermen, sailors and petty officers of one disintegrated African country are the brains behind the well and highly technologically organized "Somalian pirates"? At some point, someone has "invested" in them….

History and reality

Sea piracy is not a current phenomenon - according to historians it is more than 2000 years old. Its beneficiaries were Alexander the Great, Caesar and fleets of the number of ancient empires or states. **Julius Caesar paid ransom, but then retaliated**. Along with the "discovery" of the "New World" during the Great Geographical Discoveries together with new land was born and the legendary piracy.

In more recent times, critical few areas of the World Ocean where sea pirates operated were - the narrow Malacca Strait in the Indian Ocean between Indonesia and Malaysia, the Caribbean region in the Atlantic (now somewhat under control). The ancestors of today's "heroes" - Somali pirates began with stealing of fish catches or small fishing boats, until the time when „smart" criminal managers did switch and upgraded them to kidnapping of merchant ships. This is not "patented" exclusively by Somalis. The history of racketeering, kidnapping, attacks, and piracy and in general - global terror is not from "yesterday" … and coming to a conclusion that *Humankind is better to rearrange the rules*.

Somalia – a country or a dangerous territory

Today's country system - Somalia existing rather formally, although it gained it's independence since 1960 and is a member of the UN and the African Union (successor to the Organization of African Unity). Until 1991 the country was governed by socialist-leaning dictator, followed by a military coup, somewhat like a democracy and a total collapse of the country until today's model - complete anarchy and remote "ruling" by the government from a neighboring state!

Followed the "usual" transition from "socialism" to a market economy oriented "democracy" - chaos in the country and with Islamic character. In reality, the country is ruled by a union of tribal sheiks led by Sharif Sheikh Ahmed, having control only of part in the capital city – Mogadishu in one part and on the other by supporters to Al Qaeda Islamic extremists.

Therefore, until the armed conflict and chaos in the "country" has ended, solving the problem "Somali pirates" by that country (Somalia) cannot be expected, and a solution has been "waiting" for more than 19 years. The African Union and UN are "searching for" ways out, but clumsily and without much success.

Somalia today represents uncontrolled territory, serving as a base for drug dealers, weapons merchants, terrorists and sea pirates.

Chaotic "defense" of victims

What is the response by the victims until now? Criminal attacks by the pirates are not as of yesterday. Ships and crews are passing through with concerns and fear in the "region", because they know that in practice they are helpless to armed aggression and uncontrolled behavior by the bandits. Obviously occasional rescue attempts "separately" is naive and ineffective.

Spain reacted first by urging the international community to organize against the Somali pirates. The Defense Minister of Spain requested organizing international naval forces to be deployed in that crisis region. Followed the reaction of individual European countries, who expressed willingness to participate in military operations by sea and air. Germany, France, Portugal, Sweden, Belgium, Holland, Britain and Lithuania expressed their willingness to participate in operations for securing ships passing through dangerous areas. U.S. and Russia were involved through diplomatic and other channels as well as with the presence and participation in policing the areas. Followed swift successful operations by different countries, USA, Russia, France and others.

Among the pirates victims are Saudi supertanker "Sirius star", the Ukrainian cargo ship "Faina", where for the release of the latter was held a successful intelligence-fighting operation with one fatality – the skipper of the Ukrainian ship. Among the long list of

detainees is the British vessel "Malaspina Castle" with the Captain and 15 Bulgarian sailors on board. Surmounted by good results was the action taken by the U.S. Navy, first by boarding on the captured American container carrier "Maersk Alabama". Initially the 20-member American crew was released in exchange for their captain who was detained as a hostage by the pirates. As a result of the operation by the U.S. Special Forces team, Master Richard Phillips was freed and in the process four of the pirates were killed and the fifth pirate was captured and due for trial in U.S. courts. Similar swift operation was performed by France. In early summer 2010 Russia also perform successful military operation. In each of the cases, approval for "sanctions" by the Presidents of the respective states. Recently was released Bulgarian tanker, intended for scrap – "Panega" and despite official contention by the shipowner there are speculations for paid substantial amount for ransom.

Initiatives to assist the „problem" also exist by the IMO (International Maritime Organization at the UN). The proposal is to establish a Regional Maritime Information Coordination Center dealing with the problem of maritime piracy.

A useful contribution in informational and professional plan has the International Maritime Bureau in London. As part of it was created Piracy Reporting Centre. As per latest data, according to a report brought before the International Chamber of Commerce, dramatically is increased the activity of Somali pirates, where during the first quarter of 2009 attacks on merchant ships have doubled in comparison with 2008.

The result of its "awakening", the international institutions, states and ship-owners were successful in deterring the some of the criminal aggressive acts by the "Somalian Pirates" during the last three or four years. Unfortunately, still lacks a clear strategy to eradicate the problem. Obviously, solving the problem in a "piecemeal" and in groups, under sporadic surges will not lead to its eradication. However there is a start and it is important to stop the problem before it is too late.

Regardless of the partial success and awakening of the institutions the problem with the "Somalian Pirates" is not resolved. Reactions by the victims leave impression of cabinet decisions and populist operations. There is no search for measures which will lock up the "box of evil". Missing are strategy and action.

ROAD FOR ACTION TO END THE PROBLEM

I. WHAT TELLS TODAY'S INTERNATIONAL LAW?

International legal options and practices:

International law has available serious international legal instruments and institutional capacity.

Competent and universal international institution is the United Nations. The main bodies that can be utilized to solve the problem are - the Security Council, Armed Forces, and why not if the crisis escalates - the General Assembly of the United Nations. UN Charter and UN Convention on the Law of the Sea of 1982 are a good legal basis for legal action. The Convention (art. 100-105) defines clearly what "piracy" is, which vessels are considered as "Pirate vessels" and which persons are "Pirates."

In June 2008 was adopted UN Resolution № 1816, allowing foreign warships in territorial waters of Somalia in connection with piracy actions. The mandate was extended on December 2, 2008 by Resolution № 1846 for another 6 months. This resolution caused some arguments in connection to treatment of piracy as "military action" under Chapter VII of Charter of UN and not as a "criminal offense" as it is under the contemporary international law. Both sides have rights, but the time today is for those who act, but for now the only one who acts is a "third party" - pirates.

On December 16, 2008 was adopted a new Resolution № 1851 by the Security Council in regards to conducting land military operations and air strikes against pirates strongholds. *There is no practical application yet to this Resolution!* It is obvious that no institution is ready to take a leadership position and to carry out the operation. And it is possible that there are no funds available for it?

Yet, during 1988 was adopted a Convention to counter Unlawful Acts for the Safety of sea vessels. There is also a Convention (1979) to combat hostage-taking. Obviously, these kind of international instruments are mostly theoretical material for reading and lack of application.

On October 14, 2008 the European Parliament made a proposal for Resolution on maritime piracy to the EU Council and the EU Commission. The European Commission reacted quickly and on December 8, 2008, EU foreign ministers approved the first naval operation to protect the ships passing through the Gulf of Aden. On December 15, 2008, Operation "Atalanta" became functional with 6 warships and 3 reconnaissance planes. Regretfully, the rules for actions and interpretations by individual countries and institutions differ. And all this in practice reduced the effectiveness of the operation. Mission "Atalanta" apparently has a symbolic and deterring presence, without any right for swift and successful action.

With all of the available arsenal of norms and institutions, and all of the useful measures taken by the Security Council in adopting three resolutions, the EU, USA, Russia and other countries, should be followed with an accounting for the achieved until now and to outline the path for action and eradication of the problem.

II. WHAT SHOULD BE DONE AND HOW TO PROCEED WITH CAPTURED "SEA PIRATES"?

Pragmatic actions by the Shipowners

Hiring of additional team (observers) on each vessel in the respective (dangerous) region, constant readiness of fire-fighting systems (water guns) and arming the crew on watch with weapons equipped with cartridges with neurological-paralytic effect;

Stable constant radio telephone and mobile connection with the Shipowner, Atalanta mission and patrolling naval units of individual countries;

Readiness for the quick evacuation of the crew "below deck" (but not in one fixed room) and coordinated with military air or naval units;

Upon a decision by a Captain for defense with the available power of water guns and their sweeping and overwhelming force, as well as the use of weapons with nerve paralytic effect, the pirates may be overwhelmed and detained;

Upon a successful action by the crew the pirates to be formally "arrested" and detained on board until their delivery following instructions from the authorities of the "flag country" and with responsibilities for the crew for the pirates wellbeing.

Actions according to the "law of the flag"

Each "sea pirate" who is detained as a result of a successful action against illegal intrusion or attempt to do so, to a ship by any company or country should be convicted according to the "law of the flag", under which the ship is flying.

It is quite strange the "shyness" of states to implement their laws against sea robbers in the open seas when they were directly jeopardizing their sovereignty.

Jurisdiction under the flown (state) flag over the ship is exclusive and extends throughout the entire ship.

Right for the crew of the attacked vessel to pursue and apprehend the attackers in order to seek criminal liability under the "law of the flag."

In U.S. the Constitution gives Congress authority to exalted acts of piracy as "serious crime" committed on the high seas (Art. 1, Par. 8, item 10 "to define and punish piracy and other crimes on the high seas, as well as offenses of international law"). It is referred about the raising of the principles for action of the law "exterritoriality" for certain categories of offenses. The majority of states in their criminal legislation have wide capabilities to redress the "sea pirates", when in breach of the inviolability of their territory (the ship) and their laws.

III. WHAT CAN BE DONE BY UN, WHY NOT TOGETHER WITH NATO!

In the adjacent waters to Somalia, today it is a question for intense acute local problem, but if we take a look of the Worlds ocean map with the active points of the maritime piracy we will see a vast geographical area. Huge amounts harvested by "pirates", apparently are not serving them alone. **Today's "maritime piracy" about which we still know very little, tomorrow it could regenerate into a new, flexible and successful variety-clone of World terrorism. Visible are all signs of international terrorism -** *an organized armed violence against civilians (professionals and shipowners), seizure of ships and hostages with a goal for huge ransom (for now) and the presence of "invisible" information coordination center abroad.*

UN in its capacity as a unique and universal World organization is on the verge of building a New World Legal Order. Today's model and structure clearly make it slow and not so effective. But this is a process. Today's crisis with maritime piracy should be solved now. What kind of action is useful to be taken:

1. Adoption of a Resolution of the UNSC, as a continuation of the so far adopted ones - to conduct peace support operations around the Gulf of Aden and North-Western part of the Indian Ocean, together with specialized combat units of NATO (after coordination and contacting) and with participation (resources) of other states interested in solving the problem and specialized international organizations, under UN command;

2. Adoption of a resolution of the UNSC, which allows for declaring of "naval blockade" according to Art. 42 of UN Chapter of the Ports, who sheltered combat units of pirates and captured ships and crews;

3. Implementing limited "coercive measures" under Chapter VII of UN Charter to Ports used for "base" of sea pirates, like Ale and others along the coast of Somalia;

4. To be conducted intensive diplomatic contacts by the United Nations with the African Union and the Administration of Senegal, presented at the UN, asking for full cooperation and unconditional assistance and in accordance with Art. 43 of UN Charter;

5. International commercial shipping organizations, insurers and P & I Clubs to build funds to collect funds to combat sea-piracy, which could be available for goals by UN operations in this connection, thereby alleviating the Organization budget;

6. International organizations and countries that have information satellites in Earth orbit, passing over the areas of maritime pirates to provide a photo and related information about the coordinates of pirates and the hijacked vessels;

Today, civilized nations, and statesmen are worried whether there is a legal basis for comparing "sea pirates" with terrorists.

The concern is ungrounded, and already cost a lot of money to shipowners and endangering the lives of kidnapped crews.

Exactly, the United Nations in the 70's of last century, described the hijacking of airplane as "air piracy", and even once the Roman jurist Cicero defines piracy as "a crime against civilization" then his colleague in recent times from England - Edward Coke defined it as hostis humani generis - enemies of the human race.

Humankind should not make any more compromises with organized examples of violence and terrorism wherever it is - sea, sky and land, but in recent times perhaps and in the space.

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