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Rationalising the use of the anti-money laundering regime in tackling Somalia's piracy for ransoms

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ABSTRACT

Piracy incidents in the Gulf of Aden during the period 2008–2012, perpetuated by Somalia pirates precipitated negative effects for the maritime industry. Ultimately it was regarded as a threat to peace and security by the international community. Relative peace and stability has since been restored to maritime affairs in the region. However, key stakeholders have cautioned that the resurgence of piracy is highly probable. Recurrence is feasible because the underlying factors such as economic hardship, political instability, latent piracy networks, and financing remain intact. Notably, on-going anti-piracy efforts have either not targeted the key beneficiaries, or been successful, since they are still enjoying the illicitly acquired benefits. Additionally they retain the ability to fund new piracy ventures. This article advocates for and justifies use of the anti-money laundering regime to target them. Utilising the AML regime would provide a targeted approach by taking away the illicit benefits gained from prior piracy ventures, albeit fraught with challenges. This would prevent the re-investment of previous piracy gains to fund future piracy ventures. Ultimately, this, together with the other measures, could potentially contribute towards a long term solution to Somalia piracy.

1. Introduction

Since the end of the Golden Age of piracy, in the eighteenth century, the crime had not attracted worldwide attention and scrutiny. However, its resurgence in the recent past has again refocused the world's attention on contemporary forms of piracy; Somalia's piracy for ransoms (PFR) is an example (Ghoshal, 2014; Nelson, 2012). It is acknowledged that piracy has become a financially lucrative criminal activity (Elmi et al., 2015; Simser, 2013; FATF, 2011). Its financial impact had grown as the number of PFR related incidents spread globally. Further, the escalation in ransom demands and payments for the release of vessels and hostages, creates a definite link to money flows related to both those who finance piracy and the proceeds of this criminal activity (FATF, 2011).¹ PFR orchestrated by Somalia pirates had become rampant along the Gulf of Aden from 2008 to 2012. Additional to the ransoms paid, piracy in this region had the effect of increasing insurance costs, costs of hiring additional personnel and security teams, decreasing regional trade, increasing the end cost of goods and reducing foreign revenue (Bowden and Basnet, 2012; Bellof, 2013; Odeke, 2011). Undoubtedly the most striking effect was the exorbitant amount paid to pirates as ransoms. On record, the highest individual ransom is USD 13.5 million, paid for the release of the Greek vessel, *Irene SL*. Cumulatively, an estimated USD 367.37 million was paid between 2010 and 2012 (Bellish, 2013). In combination, these effects led the United Nations Security Council to recognise and declare piracy a 'threat to international peace and security in the region.'² Subsequently various concerted

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¹ See also UN Doc. S/RES/2246(2015), 10 November 2015, § 3 at 6.

² SC. Res. 1816(2008), at 2, last preambular paragraph. This has been reiterated in SC. Res. 2246(2015), at 5, last preambular paragraph.

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efforts were employed to address the menace.

Law enforcement and socio-economic initiatives deployed included stepping up naval operations at sea, creation of an Internationally Recommended Transit Corridor (IRTC), use of armed guards on vessels, conducting anti-piracy campaigns and law implementation mechanisms (Gilmer, 2015; Collins, 2014; World Bank, 2013a). Notably, the signing of the Djibouti Code of Conduct by a number of countries and steered by the International Maritime Organisation, has also contributed to this decline. The code has facilitated information sharing, capacity building, update of national piracy legislation in the signatory states, and maritime situational awareness campaigns (Bueger and Saran, 2012). Likewise, the Global Maritime Crime Programme (GMCP) under the auspices of the United Nations Office on Drugs and Crime (UNODC), has enabled the development of maritime law enforcement capacity by states. This system has assisted in the handling of piracy cases by Somalia, Kenya, Mauritius Seychelles and Tanzania. Additionally, the Best Management Practices (BMP) initiative spearheaded by the Baltic and International Maritime Council (BIMCO), has supported the drafting of planning and operational practices for ships to use, in protecting themselves when transiting through piracy high risk areas. An analysis of these measures pointedly shows that emphasis has been on prosecution of pirates and naval interventions; all these referred to as crisis response and containment measures (Affi et al., 2015).

Undeniably application of these measures has borne some degree of success since there has been a sharp decline in reported piracy incidents from the region (ICC-IMB, 2017). Despite the decrease, warnings have been given on the potential re-emergence of piracy (ICC-IMB, 2017; United Nations, 2016a). This is premised on the existence of on-shore factors that initially encouraged the development of Somalia piracy and which have not been effectively addressed (United Nations, 2016a).

Accordingly, the aim of this article is to show the link between PFR and money laundering as a basis for using the offence of money laundering to address Somalia piracy. Moreover, consideration of criminology theories provides further justification for utilising anti-money laundering (AML) laws. To achieve this, the second section considers why it is necessary to find a long-term solution to Somalia piracy. Sections three and four rationalise the use of AML measures to address the problem, by examining the causes of Somalia piracy from a criminology perspective and as an organised crime problem respectively. Section five evaluates why utilising AML laws is beneficial and the attendant challenges.

2. The prospect of piracy's re-emergence

The Somalia population is still faced by socio-economic hardships including unemployment (United Nations, 2016a). For the unemployed an income generating opportunity is generally acceptable. At a governance level the Somalia government suffers a shortage of resources needed to deal with piracy. Specifically, the coastguard services which are mainly implemented at the regional levels, all face similar challenges; that of inadequate resources and equipment to fulfil their mandate (United Nations, 2016a). Thus, they rely on the presence of international navies to assist in patrol duties (United Nations, 2016a; Gebhard and Smith, 2015). Accordingly, it is mainly due to the presence of international navies patrolling the region that the decline is attributable. This is definitely a costly venture shouldered by the nations involved (United Nations, 2016a; Bellish, 2013). Consequently it is rational to conclude that these navies cannot provide patrol assistance indefinitely.

The establishment of political stability has been espoused as a prerequisite to dealing with the piracy. This has somewhat been achieved through the various peace negotiation initiatives; eventually leading to the creation of the Federal Government of Somalia (FGS). However, the FGS still does not exercise effective control over all regions of Somalia, as seen in the ongoing sporadic fighting in parts of the country (United Nations, 2016b; 2016c). Therefore, the government has to channel more resources to increase its capacity to address this problem. For example by hiring and training more police and military officers. This impacts piracy as it leads to insufficient deployment of coast guards to police coastal areas. Therefore, pirates still have an opportunity to carry out their activities. The FGS has categorically stated that addressing piracy is not a high priority in its agenda; of prime concern is defeating Al-Shabaab and building government institutions (Affi et al., 2015). Additionally, the FGS has felt side-lined by the international community and other actors in the implementation of current counter-piracy measures; hence the FGS perceived lack of cooperation. Moreover, the FGS holds that piracy is a global problem which should be dealt with by the international community (Affi et al., 2015). Nonetheless the FGS has stressed the need for a comprehensive approach to dealing with piracy (Affi et al., 2015).

The re-emergence of piracy is feasible considering that its infrastructure subsists; the pirate network and financing arrangements remain intact (United Nations, 2016a). Essentially, there is an available supply of young, unemployed Somali men willing to join the pirate networks. The financiers, who received the greatest benefit from previous piracy ventures are not only enjoying their illicit gains unperturbed,³ but retain the capacity to fund new ventures (Scott, 2014). Furthermore, some of the factors cited as contributing to the initial emergence of the piracy menace, have not been addressed. Specifically, the issue of illegal unreported and unregulated (IUU) fishing (United Nations, 2016a). Altogether, it can be inferred that the availability of funding coupled with the existence of a recruiting pool, the anticipated fatigue of international partners patrolling the regional waters, and the continuation of the initial grievances, makes the re-emergence of pirate operations possible.

Ultimately, these factors infer that the resurgence of Somalia piracy is not a fanciful idea. Therefore there is still need to identify and implement other long-term and sustainable measures to deal with PFR (United Nations, 2016a; Huggins and Hartnett, 2013). In this regard, a viable measure is removing the ability of financiers to fund piracy ventures. This is possible by utilising AML strategies, which would enable states at the domestic level to prevent the financing of piracy and laundering of its proceeds. The application of

³ Since 2005 to date, only two individuals considered middle level in the piracy business have been arrested. There have been no prosecutions of higher or top level pirate leaders, financiers or facilitators.

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