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Piracy Waters: Notes from the Field(s)

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Piracy not only endures as a blight on free navigation at sea; it has entered a golden age.² While the Somalia problem declined dramatically beginning in 2012, recent attacks indicate that the problem remains at a simmer. A new hotbed of violent sea attacks has emerged in the Gulf of Guinea – in step with the rise in successful oil and gas operations off the coast of Nigeria. In terms of violent offenses at sea, the waters of the Strait of Malacca remain the most dangerous on earth, recently intensifying in strength despite a strong naval presence. While there might be no end to the number of interesting conversations scholars could have about the international-law implications of fighting with pirates, the maritime lawyer is left having to give pragmatic and exceptionally consequential advice about preparing vessels or rigs for, or responding to, attacks by pirates. What measures should an operator take to ward off an attack? What pitfalls exist for the vessel or cargo interests after an attack has been successful?

In Part I, this paper briefly surveys recent trends in piracy worldwide, noting that it is steady or increasing in scope. With Part II, it considers various security practices used on ships, and notes that an entirely disarmed ship in pirate waters raises grave safety and liability concerns. Lastly, it describes steps for counsel to consider immediately after pirates have struck, including preparing for possible payment of a ransom.

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² James Anderson, *A Sea of Change Reforming the International Regime to Prevent, Suppress, and Prosecute Sea Piracy*, 44 J. MAR. L. & COM. 47 (2013) (“In fact, in terms of both the number of attacks and the value of assets seized and ransoms paid, this could very well be looked back upon as the Golden Age of piracy.”).

I. Recent Trends Worldwide

It may help briefly to survey the state of the things right now. Attacks are on the rise in several ocean areas. Global annual losses attributable to piracy are upwards of US \$16 billion.³ While attacks occur from the Yellow Sea to the northern coast of South America,⁴ I will discuss the three major trouble-spots of the Horn of Africa (Somalia), the Gulf of Guinea, and the Strait of Malacca and Southeast Asia, to give a sense of the scope of the persisting problem.

A. *Horn of Africa (Somalia)*

Piracy entered the mainstream of American culture with the 2012 movie “Captain Philips,” which was about Somali pirates capturing the U.S.-flagged containership *M/V Maersk Alabama* in April 2009. Several Houston firms were involved in litigation related to that attack.⁵ The episode hardly came out of a vacuum. Rather, it was set in the context of Somalia’s lack of political governance, coupled perhaps with problems stemming from illegal fishing in the traditional waters of Somali fishermen.⁶ Equipped with weapons and fishing vessels, and ungoverned, the coastal watermen turned their eyes toward deep-sea ships, beginning what became a massive illegal industry stretching nearly entirely across the Arabian Sea to India. As the problem grew, there were practically no naval escorts of merchant vessels, and little stomach from the U.S. Defense Department to stir the Somali hornet’s nest that had been the subject of another popular Hollywood movie some fifteen years prior.⁷

³ *Id.* at 64.

⁴ Interview with Captain Scott Putty, International Organization of Masters, Mates & Pilots, in Galveston, Tex. (Dec. 15, 2015) (describing his experience off Colombia, where three pirates boarded his ship, tied up the duty seafarer on deck, and broke into containers to steal cargo); David Gagne, *Venezuela Pirates Harassing Fishermen*, INSIGHT CRIME, July 8, 2015, <http://www.insightcrime.org/news-briefs/pirates-venezuela-insecurity-crime>.

⁵ See, e.g., *Hicks v. Waterman S.S. Corp.*, No. 09-1601, 2009 U.S. Dist. LEXIS 119690 (S.D. Tex. Sep. 16, 2009).

⁶ See SMALL ARMS SURVEY, SMALL ARMS SURVEY 2012: MOVING TARGETS 192-93 (2012) [hereinafter SMALL ARMS SURVEY]; Anderson, *supra* note 2, at 61-62.

⁷ “Black Hawk Down” was a film about the 1993 Battle of Mogadishu, in which 18 U.S. servicemembers were killed in a pitched battle with thousands of Somali militiamen.

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