Even though EU NAVFOR MSCHOA vessel participation is broadly stable, there are indications that armed guard usage is down, pending further validation. However, this does not mean that the piracy threat is eliminated in the Indian Ocean.

- While the current risk of piracy is lower than in the past, the threat has not been completely eradicated and it is important for stakeholders to remain vigilant and maintain effective implementation of BMP5 to ensure that there is not a resurgence.
- EU NAVFOR’s strategic review is in train and formal approval of the extension of Atalanta’s mandate for a further two years is expected. The question of an adjustment to include within that mandate other maritime crimes, such as weapons and narcotics, is being considered, with a formal decision to be made in the autumn.
- The piracy “end state” for the EU NAVAL FORCE is partly conditional upon the existence of an effective and sustainable Somali maritime law enforcement capability across all semi-autonomous states of Somalia and the Federal Government. This is not currently in place. In addition, the freedom of movement and activities of organized crime cartels and pirate kingpins within Somalia remain, as well as the opportunity that the crime of piracy can provide.
- The High Risk Area (HRA) is an area of risk from piracy off Somalia designated by the Industry Associations, which are signatories to BMP. The HRA is subject to periodic review and was last adjusted in 2019. EU NAVFOR provides threat assessments to Industry to inform vessel risk assessment. The current HRA is an important recognition of the ongoing existence of this threat which is articulated in the EU NAVFOR and CMF quarterly piracy threat assessment.
Additionally, other potential threats to shipping in the western Indian Ocean, such as Ansar al Sunna in Mozambique and Houthis in Yemen are being assessed, but at this stage, it is premature to confirm if there will be a consequence to maritime security and freedom of navigation for vessels in the region.

The regionally led response to piracy and maritime crime in the Gulf of Guinea

- The Yaoundé Code of Conduct is the outcome of the summit of Heads of States and Government of West and Central Africa on Maritime security in the Gulf of Guinea. It laid the foundation for a common regional strategy to repress piracy and other illicit activities committed at sea. The summit also resulted in the creation of the Interregional Coordination Centre (ICC) with the mandate to coordinate the Code of Conduct. As an international organization in charge of assessing the YCOC, ICC can only encourage signatories to implement. Implementation of YCOC recommendations is ultimately according to each country’s priorities: some have implemented most of the recommendations while others have yet to. Challenges exist (such as funding for implementation of the YCOC, and the question of how to make the YCOC a binding document for member states) but member states are doing their best to ensure implementation.

- ICC is at the strategic level of the Yaoundé architecture with a mandate to coordinate training and capacity building, improve information sharing and communication, and ensure cooperation with international organizations. One of the major pillars of ICC is capacity building for law enforcement agents, judges, magistrates, and prosecutors. The ICC has been able to provide workshops and seminars to strengthen stakeholder capacity across the region.

- Seafarers still experience some difficulties transiting the Gulf of Guinea maritime domain, but the Gulf of Guinea maritime security strategy is designed to protect seafarers. While there are efforts in place to safeguard the waters, it is suggested that the member states redouble commitments to the fight against piracy through implementation of all policies and agreements to achieve a crime-free maritime domain.

“One-size-fits-all” responses to piracy and armed robbery will not work

- There are some fundamental differences between piracy and armed robbery activity in East and West Africa. Somalia, which was and is a long way from self-governance in the maritime domain, and neighboring regional states lack the capacity to address the problem on their own, which is why EU NAVFOR was invited by the international community to assist through the UN Security Council. In West Africa (and Southeast Asia), there are several functioning governments in a relatively small geographic area and states are focused on regionally led solutions. There will also be notable differences in the availability of resources to combat this problem.

- For instance, although EU NAVFOR does not have a role to play in the Gulf of Guinea like it does in the Indian Ocean, certainly it is recognized that the EU NAVFOR experience in the Horn of Africa can be seen as a benchmark for other scenarios in the world. Deconfliction and shared awareness, automated risk assessment based on vessel registration, or coordination in complex environments including stakeholders different in nature could be some examples. In addition, support from international partners to build capacity of Gulf of Guinea countries to address the issues concerning maritime security, safety, governance, and development is essential.

Good piracy and armed robbery information exchange is a critical piece of the solution

- Information-sharing is essential between governments and between navies and the shipping industry, but an important caveat is that a good information-sharing network is built on a foundation of trust: navies must trust the value of the information coming from the shipping industry and shipping companies must trust that the
partnership will result in a response from navies (the reporting/response axis.) Otherwise, the shipping industry will not use reporting centers.

Multiagency, multilateral, and multi-sector cooperation cannot be underestimated

- Industry participation is essential. In the short term, adhering to Best Management Practices will help keep seafarers safer and incident reporting will help in the long-term for the community of stakeholders to identify patterns and implement more sweeping counterpiracy measures. There is also a sequential aspect, where the gradual building of trust between stakeholders will eventually allow for more robust cooperation.
- There must be regional ownership of maritime security efforts, but international support is critical to jumpstarting efforts in regions with fewer resources and capacity.
- Coordination between coastal countries and the maritime industry is critical. Building trust between these actors is key. The maritime industry funds information fusion centers out of the Gulf of Guinea to collect and disseminate information but rely on the response of Gulf of Guinea naval forces to address piracy.
- Legal finish is critical: arrests must lead to prosecutions, or else arrests merely become the cost of doing business for criminal groups.

On “root causes”

- Pirates are adaptable and as a result, counterpiracy strategies must consider the root causes. A comprehensive approach that links a military/naval response to development and building capacity is essential. The root causes lie onshore in every region impacted by piracy. Even in places where piracy has decreased considerably (Horn of Africa), the root causes remain fundamentally unchanged. Grievances may include exploitative foreign fishing practices or multinational corporations in coastal areas that contribute to environmental degradation and fail to hire locals.
- Piracy can be thought of as the culmination of intent, capability, and opportunity. Pirates in the Horn of Africa are lacking the opportunity, but should international navies leave, and security measures onboard vessels are neglected, a resurgence of piracy is likely.

Other Questions for the Panel

Indian Ocean

- How does the spread of Covid-19 influence the operations of navies and coast guards off the Gulf of Aden?

EU NAVFOR has had to adapt operations to the restrictions in place in countries and ports of call and there have been some changes to operations at sea, but those changes have not impeded our capacity to meet operational and strategic objectives. EU NAVFOR monitors and tracks changes in the PAST embarkation numbers on merchant vessels and there are indications that the numbers are decreasing due to COVID restrictions and the 2nd order effects of these restrictions. Further validation will be required to understand these effects.

UNCLOS/Rule of Law

- Is the UNCLOS definition of piracy still fit for purpose? Should it be more closely defined or widened to include other (non-financially inspired) types of violent attacks on ships?
UNCLOS contains the internationally accepted definition of, and authorization in relation to piracy and codifies the authorities necessary to cooperate in the fight against the crime. The signatories are required to domesticate the definition in their national legislation. The way the states incorporate the offense into their national law may vary but they are required domesticate the convention. It is therefore apt to state that the problem is not with the definition of piracy and armed robbery but rather, lack of domestication and enforcement by the signatories. It is my view that the definition of piracy contains the necessary elements that are required to establish the commission of the crime. It is therefore suggested that signatories to the convention should make efforts to domesticate the law and ensure strict compliance and enforcement.

(From Brian Wilson): I wrote the following in an article almost a decade ago and it remains accurate: “Maritime piracy is a violation of international law and a universal crime that imposes a duty on all states to cooperate in its repression…. [that said, prosecuting pirates for] seizing control of a ship and taking hostages… remains a particularly difficult operational and legal issue.”

UNCLOS contains the internationally recognized definition of piracy, consistent with customary international law, and includes an article on the duty to cooperate in the repression of piracy. Many, but not all, signatories define piracy in their national legislation. See also, the Suppression of Unlawful Acts against the Safety of Maritime Navigation Convention (SUA) (1988)(2005), drafted by member States at the International Maritime Organization (IMO). The SUA Convention (1988), which was developed following the Achille Lauro hijacking and murder, provides a framework for States to domestically prosecute, among other offenses, the seizure of a vessel and other acts that may be associated with piracy. The SUA Convention also requires member States to adopt implementing legislation, and has supported more than a dozen prosecutions across the globe since its entry into force.

As to whether the “UNCLOS definition of piracy still fit for purpose”, the short answer is yes, though like other areas of international law, it is not always a model of clarity. There is an entire book devoted to just defining terms in UNCLOS that are not defined in the Convention. The SUA Convention (1988), in part, addresses some of the challenges associated with prosecuting an act of piracy, such as the two-ship requirement and defining private ends (that said, neither the UNCLOS definition of piracy nor the SUA Convention have a requirement that the act be financially inspired). The issue of whether another definition of piracy is necessary to address contemporary activities has sparked academic and diplomatic discussion. These discussions highlighted that piracy is sufficiently defined in UNCLOS, that the SUA Convention (1988) includes provisions that are beneficial for member States in national-level prosecutions, and that the challenges involve more of a focus on implementing domestic authorities, capacity, capability, and national-level support.

Globally

- Should coastal countries lead counterpiracy processes at the UN?

All countries have an interest in countering piracy, as it impacts virtually every nation on earth. The United Nations Security Council has adopted approximately 20 Resolutions on piracy since 2008, directed the completion of dozens of studies, and held multiple discussions/debates. If the question is focused on whether coastal States have sufficient resources, or whether their capacity challenges are being addressed, I would invite your attention to the impressive work of the UNODC’s Global Maritime Crimes Programme as well as the UNSC Open Aria-Formula discussions on maritime security. If the question is whether coastal States should have an expanded role at the Security Council, transcripts of UNSC debates on counter piracy resolutions reflect robust discussions from a variety of affected States, including coastal States. That said, more can also always be done to improve maritime security. I don’t think there is one formula that must be followed in every venue, including who should
lead diplomatic, operational, or legal efforts, as the response to piracy involves different considerations in each affected geographic area.

Questions for Future Discussion

Latin America and the Caribbean

● The level of attacks in the Caribbean and off the coast of South America are not reducing and there seems to be a lack of leadership and coordination. What actions are being taken by the US to reduce maritime crime levels over and above the significant counter-narcotics operations conducted by the US in the region?