

**The United Nations Office of Drugs and Crime:**

**The Commission on Crime Prevention and Criminal Justice**

*Combating and Preventing Transnational Maritime Piracy*  
The College of St. Benilde

Article 101 of the United Nations Convention on the Law of the Sea defines piracy as “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft”<sup>20</sup>. Maritime Piracy is one of the original global crimes. However, until recently the thought of piracy on the scale that it had once occurred seemed absurd. Pirates were once thought to have gone all but extinct, not only in the developed world, but in every corner of a world where powerful navies control the open oceans and nation states control nearly every corner of the earth’s surface. Nations control nearly all of the world’s coastlines and the water off that coastline is their territorial waters and that state’s exclusive responsibility. It was believed that global satellites and smart weaponry and other modern technology would be sufficient to keep piracy at extremely low levels.

The International Maritime Bureau’s (IMB) Piracy Reporting Center reports that Maritime Piracy has been on the rise in recent years, but it was not until the pirates operating off the coast of Somalia caught the international media spotlight that the problem received serious attention.<sup>21</sup> The alarming numbers of ships of many nationalities that have been hijacked, including supertankers and cruise ships full of tourists, have drawn much attention from the international community. According to the IMB, the pirates exist as a major problem in three main areas: 1) The Gulf of Aden, near Somalia and the southern entrance to the Red Sea, 2) The

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<sup>20</sup> United Nations Convention on the Law of the Sea, 1994

<sup>21</sup> International Maritime Bureau (a division of the International Chamber of Commerce - ICC) <http://www.icc-ccs.org/>

Gulf of Guinea, near Nigeria and the Niger River Delta, and 3) The Malacca Strait between Indonesia and Malaysia. These areas have distinct features that allow piracy to flourish while it has been eradicated elsewhere. However, piracy can occur in any place at any time, as evidenced by the seizure of the Russian flagged *Arctic Sea* off the coast of Finland in August of 2009, the first act of piracy in European waters in well over 200 years.

The Gulf of Aden is a vital passage for shipping, especially for oil from the Persian Gulf and shipping from Asia to Europe, making it a vital waterway in the world economy.<sup>22</sup> About 11 percent of the world's seaborne petroleum passes through the Gulf of Aden on its way to the Suez Canal or to regional refineries.<sup>23</sup> It is here that the international community has chosen to deploy its resources to combat piracy directly. There are nearly 100 international naval vessels, including elements of the US Navy's 5<sup>th</sup> fleet, a NATO task force, and separate Russian, Indian and Chinese squadrons, present off the coast of Somalia to patrol the pirate-infested waters.

Most of the patrol vessels are concentrated in the Gulf of Aden, and as a result, the pirates have adapted, moving farther into the open seas. There was a lull in attacks in early 2009, but by April there had already been 60 attacks. In a weeklong period in early April, pirates seized six ships, including the first ship with an American crew. After a five-day standoff, U.S. Navy snipers shot and killed three pirates who were holding that ship's captain in a lifeboat. While he was rescued unharmed, this is one of the few examples where a crew was successfully rescued. The majority of ships are released after their owners and their insurance companies pay ransoms that go into the millions.

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<sup>22</sup> Importance of Gulf of Eden- [http://www.esa.int/esaEO/SEMWOXNFGLE\\_index\\_0.html](http://www.esa.int/esaEO/SEMWOXNFGLE_index_0.html)

<sup>23</sup> Measurement of the World's Seaborne Petroleum- <http://www.itopf.com/information-services/country-profiles/documents/redsea.pdf>

The Gulf of Guinea gets much less international attention when compared to the waters off Somalia, but it is one of the world's most lawless stretches of coastline.<sup>24</sup> From January to November of 2008 40 pirate attacks within the region have been recorded. And the conditions are not set to improve anytime soon. The pirates in this region are less successful because of both geography and economics. There are no geographic checkpoints, like the Gulf of Aden or Malacca strait, for the pirates to sit and wait for ships to pass through, most international ships can operate out of the pirates range in the deep ocean. However, the region is about to experience a rapid increase in oil production that will bring more vulnerable international shipping into the region.

The Malacca Strait is one of the most important, strategic shipping lanes in the world. It is the main shipping channel between the Indian Ocean and the Pacific Ocean. This is a connection to the major economies in Asia such as India, China, Japan, and South Korea. It is also the place where piracy persisted after it was eradicated almost everywhere else.<sup>25</sup> The problems there at one point got so bad that a ship not accompanied by private military contractors or a naval escort was an unacceptable endeavor for insurance companies or for sailors. The only alternative to using the strait is to add days to the transit to go around the affected areas.

### **International Response**

On November 20, 2008 The UN Security Council adopted a resolution, proposed by Great Britain, to introduce tougher sanctions against Somalia for failing to prevent piracy within

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<sup>24</sup> Guinea Gulf piracy needs International Response-  
<http://af.reuters.com/article/beninNews/idAFLT71743420081029>

<sup>25</sup> How to Defeat Pirates: Success in the Strait-  
<http://www.time.com/time/world/article/0,8599,1893032,00.html?xid=rss-topstories-cnnpartner>

their area.<sup>26</sup> Nevertheless, this resolution was never sufficient to combat piracy, especially in the Gulf of Aden where the number of attacked ships within the region has increased. A second resolution was introduced in the Security Council on December 17, 2008. Resolution 1851 would take anti-piracy measures to another step further by allowing for the first time international land and sea occupations in the pursuit of pirates.<sup>27</sup>

On January 14, 2009, the Contact Group on Piracy off the Coast of Somalia was created in New York. The contact group was formed as an international cooperation mechanism against piracy, as called for in U.N Security Council Resolution 1851. At present, there are 28 nations participating in the contact group representing all of the major powers in the world. There are also six other international organizations: the African Union, the Arab League, the European Union, the International Maritime Organization, the North Atlantic Treaty Organization, and the United Nations Secretariat taking part in this effort. The contact group emphasizes the primary role of Somalia in rooting out piracy and armed robbery at sea and the importance of assisting Somalia in strengthening its own operational capacity to fight piracy and bring to justice those involved in piracy.<sup>28</sup>

On January 29, 2009, the United Nations Crime and Justice Research Institute organized a meeting that fostered participation by different organizations including NATO, the European Union, and various navies and intelligence services, chaired by the Italian Navy. Moreover, this meeting was convened in order to discuss further participation by other government representatives as well as the private sector involved in the maritime business. International

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<sup>26</sup> UN Security Council – Contact Group on Piracy off the coast of Somalia-<http://www.un.org/Docs/sc/>

<sup>27</sup> Council on Foreign Relations-[http://www.cfr.org/publication/18376/combating\\_maritime\\_piracy.html](http://www.cfr.org/publication/18376/combating_maritime_piracy.html)

<sup>28</sup> The Contact Group on Piracy off the Coast of Somalia- <http://www.state.gov/r/pa/prs/ps/2009/05/123584.htm>

efforts are showing signs of life and heightened awareness. The increased risks of passage through the hotspots and the consequent increase in the insurance premiums paid by shipping companies threaten to make the rounding up of the piracy hotspots a less costly option. Also the financial resources the states intend to devote to protecting their own commercial interests may achieve better results if they are used to help address the situation in the pirates' country of origin. These instances are proof that piracy is a situation that nation states should involve themselves in and cooperate to rectify.

**Questions to consider:**

1. How can a discussion of an international counter-piracy front avoid the sensitive issue of jurisdiction in territorial waters?
2. Are there ways to improve the efficiency, responsiveness, and diversity of views within existing coalitions versus piracy?
3. What could be other possible ways to protect the ships entering into these pirate zones?
4. What could the international community do besides sanctioning countries involved in piracy?
5. Is there a role for private security firms to assist in ship protection or should that role be left up to state sanctioned navies?

*Countering the Financing of International Terrorism*  
The College of St. Benilde

Since the early 1960s, international terrorism has been a major concern to the international community. At this time member states of the United Nations started to develop legal instruments to fight against terrorism and serve as framework for international cooperation in countering the financing of terrorism. While the international community continues to take measures to avert terrorist acts through several conventions and UN resolutions, countering the financing of international terrorism is an aspect that needs further attention. Financing international terrorism should be curbed, as there is a direct correlation between the financial support that terrorists obtain and the frequency and seriousness of terrorist attacks that they carry out. The questions are who are the real enemies behind terrorism and how these terrorist groups manage to survive and continue to spread terrorism to different parts of the world.<sup>29</sup>

Financing international terrorism involves raising funds from both legitimate and criminal sources. Legitimate sources include personal donations and profits from businesses and charitable organizations. For example, Jean-Charles Bissard gave a statement to the Security Council in 2002. He stated that the Islamic rule of Zakat or almsgiving became a means through which al-Qaeda was able to raise finances for the infamous 9/11 attack on the US. News reports that date back until the late 90's showed Osama bin Laden urging Muslims to give their Zakat in support of the Taliban regime and the al-Qaeda. The Al-Qaeda network comprehensively utilized the loopholes in the Islamic laws to rely on funds diverted from the Zakat. Osama bin Laden, throughout the following years, made repeated calls for Muslims to donate through the

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<sup>29</sup> UNODC Terrorism- <http://www.unodc.org/unodc/en/terrorism/index.html>

Zakat system to his organization. Another method that terrorists commonly use is a network of financial shell companies and fake charities. A report by the Council on Foreign Relations on the Indonesian based terrorist group Jemaah Islamiyah, stated that relatives, family friends, or members of the terrorist group would scatter themselves at marketable areas such as Southeast Asia and set up legitimate businesses.<sup>30</sup> The profits are distributed across the terrorist network to fund their attacks.

Meanwhile, criminal sources include smuggling of weapons and other goods, fraud, kidnapping and extortion. These sources are some of the common means through which terrorist groups gain funding. Because of their extensive underground network, terrorist groups have become mediums through which arms are smuggled to different parties. One such example is Nizar Rayyan, a Hamas leader based in Gaza. In 2007, he proudly revealed to the world how the group has been able to successfully build small arms and light weaponry and move them to and from the West Bank and Gaza Strip. Another common method is through kidnapping. The Philippines based terrorist group Abu-Sayyaf has relied on this method for much of its existence. In one of their most recent exploits, the group went on to kidnap Fr. Giancarlo Bossi, an Italian missionary and requested a hefty ransom for his release. According to the International Tribune, a ransom of \$1 million was paid for his release though the source of the ransom remains anonymous.

The problem of terrorist financing becomes complex as terrorists and terrorist organizations use different methods such as trade-based money laundering, fund-raising through charities, remittance systems such as the Hawala system, and the like to obtain financial resources to ensure their survival and launch attacks. Trade-based money laundering terrorists

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<sup>30</sup> A/60/288 The United Nations Global Counter-Terrorism Strategy (2006)



and terrorist organizations utilize front companies that would partake in trading commodities. These companies carry out fake transactions in order to transfer funds and disguise funding sources. Terrorist organizations also use charitable institutions and other non-governmental organization to raise and transmit money. The 9/11 Commission report said that in some cases entire charities from the top down may have had full knowledge of and even consented to the movement of money to al-Qaeda. In those cases, al-Qaeda operatives had control over the entire organization, including access to bank accounts. Funds raised would then be channeled to the target people in exchange for services or favors instead of to victims of poverty, war or other humanitarian crises for which the money was originally raised. As these illegitimate charities spring up, the question is how can we stop them? One way suggested by an ABC news report was to check out the charity by inquiring with the local government and a private watchdog group. Some countries require charities to register and provide basic information about their finances to operate legally in the state.

In addition, informal remittance systems, such as the Hawala, are also being used by terrorist organizations. In the Hawala system, the money goes through an informal channel for transferring funds from one location to another through service providers known as hawaladars, regardless of the nature of the transaction and the countries involved. This makes tracking difficult because these trust-based systems of money transfers are untraceable as they are characterized by unwritten credit arrangements and lack of a paper trail. Western countries have a different system when it comes to remittances and the check and balance involved is very tedious.

The UN General Assembly adopted resolution 51/210, Measures to Eliminate International Terrorism, on 17 December 1996, which called upon all States to take measures to

prevent and counteract the financing, whether direct or indirect, of terrorists and terrorist organizations.<sup>31</sup> In addition, the resolution also called upon member states to adopt regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds.

In addition, the United Nations Security Council passed Resolution 1373 on 28 September 2001, which called on all UN members to take action against those who commit terrorist acts and their supporters. This included criminalizing the financing of terrorism, prosecuting the violators, freezing the assets and funds of persons involved in terrorist acts, denying all forms of financial support to terrorists and information sharing among governments.<sup>32</sup> In addition, the UNSC resolution established the Counter-Terrorism Committee composed of all 15 Council members. The committee is mandated to monitor the implementation of resolution 1373 (2001).

Furthermore, in the UN General Assembly Resolution 60/288, The United Nations Global Counter-Terrorism Strategy (2006), the international community reiterated in the Annex the need to deny terrorists and terrorist organizations the access to financial resources which will help them carry out terrorist attacks. In addition, it called upon member states to take measures to avert financing of terrorism. The EU, for example, in a report by John Howell and Co. entitled: *INDEPENDENT SCRUTINY in Response to Recommendation 41 of the EU Counter Terrorist Financing Strategy presented on the European Council of December 2004* to take a full threat analysis within the EU region. In doing so they were able to satisfy themselves that its arrangements for preparing its own periodic and situational threat assessments provide sufficient

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<sup>31</sup> A/RES/51/210 -Measures to Eliminate International Terrorism (1996)

<sup>32</sup> United Nations Security Council Resolution 1373 (2001)

and necessary data as and when needed. Also, the EU has started financial investigations and analysis as a means to curbing terrorist financing.

Lastly, aside from measures taken by the United Nations, a Financial Action Task Force on Money Laundering was conceived in 1989 with the aim of combating not only money laundering but also terrorist financing. In 2001, the FATF made nine special recommendations to counter terrorist financing.<sup>33</sup> Special Recommendation 1 suggests states carry out important legislative and executive procedures as well as adopt measures needed to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.<sup>34</sup> Ratification of the Convention is necessary for it to come into effect. In this connection, the minimum number of ratifications needed (22) was reached on 10 March 2002. In addition, the FATF calls on states to implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, S/RES/1373(2001) in particular.

Recommendation 2 was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and money laundering, another objective of Special Recommendation 2 is to emphasize this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. Under the recommendation, the basis for criminalizing terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism. Recommendation 3 implies the need for states to adopt legislative and executive measures that will strengthen their capacity to freeze and confiscate the funds or assets of terrorists, terrorist organizations, and

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<sup>33</sup> The Interpretative Notes to the Special Recommendations (SR) on Terrorist Financing (TF)- <http://www.fatf-gafi.org>

<sup>34</sup> United Nations International Convention for the Suppression of the Financing of Terrorism (1999)

other actors that finance terrorist acts. According to the FATF, this should be done in relation to S/RES/1267(1999) and S/RES/1373(2001). The FATF believes that both freezing and confiscating terrorist assets are necessary to incapacitate terrorists and terrorist organizations as well as prevent future terrorist attacks. While ownership of frozen funds and other assets is maintained by the original owner, the FATF suggests that state authorities, through freezing mechanisms, shall have the capacity to stop the usage, transfer, movement, and disposition of such funds and assets at the time of freezing. Meanwhile, confiscating terrorist funds and assets involves transferring the ownership of the said funds and assets to the State.

Recommendation 4 directs itself to a more domestic issue. It states that “if financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.” Since transparency has been an issue for most financial institutions, the responsibility is left to the individuals who work, invest, or give services to these institutions to flush out the their scheme and bring them to justice.

Through Special Recommendation 5, the FATF emphasizes the importance of international cooperation in countering the financing of terrorism. Recognizing that countering the financing of terrorism is a transnational problem, the FATF suggests that states must create mechanisms, such as treaties and other forms of arrangement, which will enable them to conduct information exchange on terrorist financing. In addition, the FATF insists that states should deny safe haven to those who finance terrorism as well as that these individuals be extradited when necessary.

As was mentioned above, money transfer systems have shown themselves vulnerable to illegal acts such as money laundering and terrorist financing purposes. The objective of Special Recommendation 6 is to increase the transparency of payment flows by ensuring that authorities impose consistent anti-money laundering and counter-terrorist financing measures on all forms of remittance systems, particularly those traditionally operating outside the usual financial sector and not currently subject to the FATF Recommendations. This Recommendation highlights the need to bring all remittance services, whether formal or informal, within the field of certain minimum legal and regulatory requirements in accordance with the relevant FATF suggestions.<sup>35</sup> Recommendation 7 has the objective of averting terrorists and other criminals from having easy access to wire transfers for moving their funds and for detecting such misuse when it occurs. Moreover, it aims to ensure that basic information on the sender of wire transfers is immediately available.

The ongoing international campaign against terrorist financing has unfortunately demonstrated that terrorists and terrorist organizations exploit the Non-Profit Organizations sector to raise funds, provide logistics, encourage terrorist recruitment or otherwise support terrorist organizations and operations. The objective of Special Recommendation 8 is to ensure that NPOs are not taken advantaged by terrorist organizations: “to pose as legitimate entities; to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or to conceal or obscure the clandestine diversion of funds intended for legitimate purposes but diverted for terrorist purposes.”<sup>36</sup> Special Recommendation 9 was developed with the purpose of guaranteeing that terrorists and other criminals cannot

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<sup>35</sup> Financial Action Task Force- <http://www.fatf-gafi.org/vvv>

<sup>36</sup> EU Counter Terrorism- [http://ec.europa.eu/justice\\_home/fsj/terrorism/prevention/](http://ec.europa.eu/justice_home/fsj/terrorism/prevention/)

finance their activities or launder the profits of their crimes through the physical cross-border transportation of currency and bearer negotiable instruments. Specifically, it aims to ensure that countries have measures: “to detect the physical cross-border transportation of currency and bearer negotiable instruments, to stop or restrain currency and bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, to stop or restrain currency or bearer negotiable instruments that are falsely declared or disclosed, to apply appropriate sanctions for making a false declaration or disclosure, and to enable confiscation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering. Countries should implement Special Recommendation IX subject to strict safeguards to ensure proper use of information and without restricting either trade between countries or the freedom of capital movements in any way.”

**Questions for consideration:**

1. With varying definitions of terrorism, how can states agree on a set of guidelines that will determine if an actor/s is/are already financing international terrorism?
2. What measures should be taken in order to track the methods used in financing terrorism such as the trade-based money laundering and informal remittance systems?
3. How will the UNODC ensure cooperation on information sharing and harmonization of the domestic laws (on financing terrorism) of states?