

Curbing maritime piracy in Bangladesh

Shortcomings of international and national laws

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THE shippers, carriers and insurers of the vessels and cargoes have noted with great concern the existing upward trend in the maritime violence/ piracy incidents in and around our ports. Piracy seems to ebb and flow with the business cycles of the host economies. The Asian crisis, triggered by the free fall of the Thai baht in 1997-8, gave a boost to East Asian maritime robbers. So did the debt crises of Latin America a decade earlier. Still, increased patrols and international collaboration among law enforcement agencies dented the clear upward trend in maritime crime - even in the piracy capital, Indonesia. India and Iran - two emerging so-called "pirates safe harbor" destinations - have also tightened up sentencing and port inspections. Even the government in Myanmar has taken steps against compatriots with piratical predilections.

Pirates have been known to dump noxious cargo into the sea, or tie up the crew and let an oil tanker steam ahead, its navigational aides smashed, or tamper with substances dangerous to themselves and to others, or cast crew and passengers adrift in tiny rafts with little food and water. Many of the phantom ships that set off to sea with cargo and then disappear are sailed by crewmen with false passports and competency certificates. Pirates also enjoy the support of an insidious and vast network of suborned local administrators. Moreover, large tankers, container ships, and cargo vessels are largely computerized and their crew members few. "Flag of convenience" registration has assumed monstrous proportions, allowing ship owners and managers to conceal their identity effectively.

In the background of such piratical activities in other areas, we have a coastline about 140nm from Saint Martins Island to the

port of Chittagong and about 100nm from Fairway Buoy to Mongla Port. Commercial ships in our waters have always been particularly vulnerable to the maritime attacks that characterize theft/dacoity due to the shallow waterways, unguarded coastlines and lax policing. Ships are however allowed unloading of bulk cargo (rice/wheat/fertiliser/sugar etc) and oil/petroleum cargo anywhere within a stretch of 30 nm of the coastline i.e. from Kutubdia Island to Outer Anchorage at the sweet will of the master of the vessel. Although all such vessels are supposed to come and enter Chittagong port for unloading but due to quite high waiting time to get a berth in Chittagong port, vessels do unload their cargo mostly unguarded and unattended by even preventive officers due to rough seas and other causes.

While analysing the incidents of so-called reported piracy in our water, it has been found that no ships ever been hijacked or its crew thrown overboard by the pirates in an around the waters of Bangladesh. In most cases, thieves or dacoits have boarded the ships while at anchor and have run away with few feet of ropes or paint container that too in connivance with the ships crew. These unauthorised boardings could also have been minimised if the crew of the ships did not engage themselves with smuggling business or did not buy vegetables/meat/beef illegally from the small boat vendors plying in the area. Most reported incidents mention loss of stores and in some cases masters do make false report of loosing store in Chittagong or Mongla even though the crew must have sold them or smuggled out in some other ports. However, local villagers along the coasts of Chittagong / Cox's Bazaar mostly welcome such business and smuggling and provide the perpetrators with shelter and no social sanctions are in place for the traditional maritime bandits. Even the so called thieves use the coverage of license issued by the



Customs Authority for buying/selling old ships items to sell the stolen property form ships. In some reported cases, dacoits might have boarded the vessels with knife but ships authorities were late in raising alarm. Even if

the alarm is received, the coast guard cannot react immediately due to lack of high-powered fast boats/ships at their disposal. In this background we should examine the international and national laws we have to combat

such maritime robbery.

The definition of piracy contained in United Nation's Conference on the Laws of the Seas (UNCLOS), 1982 requires that a crime occur on the high seas in

order to be punishable as piracy and the majority of maritime attacks in South Asia occur within the state's territorial waters. Under UNCLOS, only the states in whose territorial waters the attacks occurred would be permitted to prosecute the offenders. Assuming such a state is willing to act, its efforts would be limited by UNCLOS rules regarding "hot pursuit". UNCLOS provides that a state may commence pursuit of an offending ship within its territorial waters, and continue into international waters and the right of hot pursuit ends as soon as the fleeing ship enters its own or a third state's territorial waters. The requirement that an attack be motivated by private and material ends and that perpetrators stage an attack from one vessel against the crew or passengers of another vessel in order for the attack to qualify as piracy. Thus, an attack on a ship committed by its crew, its passengers, or stowaways likely would be excluded even though the social and economic harm would be identical to an attack that satisfied all of the UNCLOS elements. The Rome Convention 1988 was meant to fill these gaps left by the UNCLOS and covers acts occurring in territorial waters and acts motivated for political ends, as well as eliminating the two-vessel requirement. The unwillingness to participate in the Rome Convention deprives us of an important legal framework for dealing with the acts of maritime violence that do not fall within the UNCLOS definition of piracy. Even though a party may be obligated by the terms of the Rome Convention to act in response to an offense, the Convention does not provide for any sanctions against parties who fail to fulfill their treaty obligations. To date, there has been number of attempt by the International Maritime Organization (IMO), the UN body, to promulgate security guidelines for the ports themselves which is called International Ship and Port Facility Security Measures since 2004. A major obstacle is that the United Nations IMO totally

depends on the willingness of a state party to carry out the instructions and is not able to ensure an effective protection of the marine environment.

Major difficulties in combating robbery in our ports are that there are no national laws to apprehend and try the possible looters of the ship as committing piracy. Normal cases of stealing or dacoity are applicable for lodging a case. In the absence of ships' evidence (as the ships normally leave our waters after about 3-10 days), these cases are hardly pursued by anyone and the trend does not reduce by anyway. Since International and local laws are not adequate to curb the menace, it is all the more important to have strict policing to ensure safety of ships coming to our port. The first possible option to combat maritime piracy is the urgency for new national law in line with the model law and the Rome convention. Existing system of policing by the coast guard and police must be improved. They should be given additional ship/vessel/equipment to carry out surveillance. Then social motivation along the coastal belts highlighting the ill effects of piracy is having on our sea commerce and image of the country, must be done. If need be, the counted few people who are involved with this type of acts, which is known to the local police may be provided with alternative means of livelihood.

Vessels should also be fitted with the SHIPLOC, an anti-piracy inexpensive tracking system that reports to ship owners the position of their vessels via a satellite network several times a day. With the SHIPLOC system it can be tracked anywhere using a satellite to track the signal of the transmitter. The cost of the system is approximately 150 US dollars per year. Anti-piracy training and operational security awareness should be made mandatory for vessel owners and vessel crew. By continuing to develop close cooperation with local law enforcement agencies and giving them intelligence of better quality,

they'll be able to move aggressively and make arrests. In the meantime, hard intelligence about any instance of piracy, no matter how minor, is the best weapon in the fight to make safer the dangerous waters of the ports.

Standard Operating Procedure supported by the proactive involvement of the crew to DETECT and DETER attackers will dramatically increase the operational security of any vessel. The adversaries rely on three heavy fundamentals when attacking a vessel-- Surprise, Speed, and Violence. When you take away the element of surprise, the adversary loses their biggest advantage. The ability to DETECT and DETER should also be coupled with the ability to RESPOND and the RESPONSE is normally a function of a government agency. Another way of decreasing maritime crime is through increased patrols by the coast guard in the territorial waters and by the police on the shores where our anchorages are established. A regional approach remains consistent with the purposes of UNCLOS, which permits two or more parties to conclude agreements and would make it easier to enforce the treaty obligations between the states. Although UNCLOS requires that states cooperate to the fullest extent possible in order to repress piracy, the large number of party states makes it difficult to ensure that all states are meeting their obligations.

Maritime piracy has become a serious danger to the shipping industry, exporters and importers, the insurance industry, banks and seafarers. Public awareness of the present and potential danger of maritime piracy to human society, national economies and international trade will certainly encourage the relevant government to move in the direction of making new laws and developing an effective system to combat maritime piracy.

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Different aspects of national security

BARRISTER HARUN UR RASHID

MANY strategists believe that the biggest threat is not from war or launching of missiles at each other but from terrorists including suicide bombers, organised criminals, narco-traffickers with sophisticated methods.

The Islamic militants are reportedly spread over 60 countries and motivated by their own extreme twisted ideology and misinterpretation of Islam. Threat from non-state actors has emerged in the world scene, not imagined or conceived in the UN Charter. The activities of non-state actors in the commission of terrorist acts have transformed the concept of national security.

The recent incidents of violence by the banned Islamic outfits in Bangladesh pose a distinct threat to Bangladesh's security. The purpose is to destabilise the perception of security in the minds of people and in an atmosphere of fear, uncertainty and insecurity, weak government may find itself powerless to calm people. In such a vacuum, civil war is likely to occur, resulting in disastrous consequences.

Security within a state depends to a large extent how a state resolves its social-political problems. Security may face threats if elimination of poverty, greater participation of people in decision-making process, good governance and its transparency and accountability are not adequately addressed

For example, if Pakistan had not taken brutal military action on 25th March 1971 and agreed to the reasonable demands of Bangali people of autonomy on the basis of "Six Points Charter", many believe that history would have been different.

TRADITIONAL AND MODERN APPROACH

The traditional approach of security of a state rests on threats emanating from external sources. This approach has some limitations because it does not take into account the challenges from within the state, namely, political, economic and social. In other words, threats to a state may come from within itself, not from external sources only.

For example, the Soviet Union disintegrated not from war or external threat, but instead from wide-ranging factors of economic and political system within the Soviet Union, unleashed in 1985 by "glasnost" (openness) and "perestroika" (reforms) by Soviet leader Mikhail Gorbachev. Within five years, the Soviet Union collapsed.

The disintegration of the Soviet Union in

1990 demonstrates the relevance of modern approach of national security. The difference between the two approaches is that while the traditional approach is based on the assumption that security is to keep the external threats at bay, the modern approach is broader and includes socio-economic stability within the state.

NATIONAL SECURITY: ITS VARIOUS ASPECTS

National security is essentially related to the security of a state. It means that the territorial integrity and sovereignty of a state must be protected by all costs and by all means. State-security is a long-term health and viability of a state.

National Security includes well-being of a state in its entirety. Apart from the preservation of territorial integrity and sovereignty of a state, it includes preservation of social, cultural and economic security.

Social security means that society must be protected from external influences that are perceived as altering in an unacceptable way national identity, ideology, culture and economic system of society.

Cultural security includes preservation of mother language. Currently it also encompasses preservation of healthy environment and ecology within the given territorial boundary of a state. Culture is associated with natural topography. For example, the sources of 'Bhatiali' folk songs in Bangladesh derive from rivers that flow through the country and if rivers do not exist, there will be no navigation and 'Bhatiali' songs will gradually cease to exist.

Economic security refers to the soundness of fundamentals of national economy-macro and micro fiscal and monetary policies. This includes maximum utilisation of material and human resources in a state and the national wealth is to be distributed in such a manner that no section of community is left with endemic poverty. The gross income disparity among the nationals within a state may undermine physical security of a state.

Environmental security is to protect the natural environment (air, water and soil) from its degradations. Environmental security will be achieved in adoption of methods that balance the needs of current generation with those of future generations. It also includes prevention of hazards to environment from outside borders and setting up of industries that emit toxic and greenhouse gases in the atmosphere.

NATIONAL SECURITY: ITS CHANGING FACE

National security has undergone transformation and is to be understood in the light of the norms of the changing world. The current environment in world affairs is largely characterised by four developments:

- (a) Limits on exercise of sovereignty,
- (b) Inter-connectedness of states because of economic globalization and deregulation of national economy, based on high-tech information super-highway,
- (c) Emergence of non-state actors.

The days of unfettered sovereignty have gone. The exercise of sovereignty has been subject to international law. No state can treat its citizens as it chooses. Violation of fundamental human rights of its citizens is not merely a domestic matter but of international concern.

In 1999, NATO attacked former Yugoslavia for oppression of its nationals in Kosovo with the implied consent of the UN Security Council. Kosovo is currently being administered by the UN, pending its final status to be determined in future. Furthermore, national leaders who are alleged to be responsible for atrocities on its nationals are accountable.

For example, Chilean President General Augusto Pinochet is being pursued by lawyers in Chile to put him on trial on charges of torture and other international crimes during 1973-90. He has lost his immunity for prosecution and waits for trial, even he is now 90 years of age.

Since 2002, former Yugoslavia's President Slobodan Milosevic is being tried by an Ad-hoc UN International Criminal Tribunal in The Hague on charges of genocide and war crimes against his own people. Dictator Saddam Hussein faces a trial before the Iraqi Special Tribunal for his alleged crimes of brutal atrocities on his people.

CONCLUSION

The above overview provides a glimpse of the challenges of national security at the dawn of the 21st century. In essence, national security is a multifaceted concept and is to be addressed in many fronts.

Military power is one of the five identified domains on which national security is founded. The other four are political, economic, social and environmental threats. If any one of them is weak or fails miserably, national security is likely to be at stake.

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Iran's nuclear programme: Challenges and options

BERYL ANAND

THE 24 November IAEA meeting in Vienna did not refer Iran's case to the Security Council. But, the US has not ruled out military action against Iran. The lack of unanimity in referring Iran to the Security Council has highlighted that it is the US, along with Israel, which is obsessed with the Iranian nuclear programme.

Russia and China have the veto in the UN Security Council and can stop any resolution being adopted against Iran. In fact, China has invested millions of dollars in Iran to safeguard its energy security. Iran has reportedly bought 29 mobile air defence systems from Moscow in a deal worth more than \$700 million. Hence, the US is planning sanctions outside the ambit of the Security Council to scuttle Iran's trade with the European Union and Japan, Iran's major trading partners.

Iran says a planned meeting later this month with Britain, France and Germany would be crucial for negotiations on the crisis. The European Union should offer Iran greater incentives to give up its nuclear ambitions. What must Iran do to assure the international community about its nuclear weapons programme? What is the role of the IAEA vis-à-vis Iran? And what must the US do to make the region more stable?

Mohamed ElBaradei, head of the International Atomic Energy Agency (IAEA), urged the Americans to place US security assurances on the table with Iran as they had done in negotiations with North Korea. US security guarantees are crucial for Iran with American troops operating in two of its neighbours - Iraq and Afghanistan. Iran feels encircled by the American presence. The case against Iran's regime is hard to dismiss because it claims that its uranium-enrichment program is meant for producing electricity. The question is whether the program will be modified to prevent the making of bombs. Under the NPT, a country is allowed to enrich uranium to make fuel for nuclear power generation. Most countries get their fuel from a few suppliers under strict regulations. The key problem is that the same

technology can be used to enrich uranium further to make nuclear weapons. There are fears that Iran might do this, either in secret or by developing the technology under safeguards and then withdrawing from the treaty to make bombs openly.

The US has said publicly that it will not permit Iran to develop nuclear weapons. President Bush

have also assured the Israelis that the US will not give Iran any security guarantees in return for cooperation on the nuclear issue and that the US believes it is essential to keep the pressure on Iran until it provides full compliance with the demands of the international community. There are press reports that Israel, which bombed an Iraqi reactor in

Persian Gulf and Central Asia.

But, Iran fears continued isolation from the US and the international community. Iran's nuclear programme has been conditioned by a narrower but more pronounced set of threats. Historically, the need to negate the American and Iraqi threats has been Iran's primary motive after the Iran-Iraq war. Nuclear weapons



has said that he wants diplomacy to resolve this problem, but that nothing is ruled out. There are fears of a military crisis. The Israeli perceptions regarding the Iranian nuclear programme also matters alongside US concerns. Israel has been threatened by inflammatory speeches made by the Iranian president, Mahmoud Ahmadinejad, calling for its destruction. Israel has not ruled out an attack on Iran. Given Israel's geopolitical location and its small size the threats posed are understandable. American officials

1981, has begun planning a similar operation. Like the US, however, Israel says diplomacy has priority.

Washington fears that the potential for a nuclear breakout among other West Asian states would increase if Iran acquires a nuclear capability, which will add to the risks of such technologies reaching terrorists and thus creating a proliferation nightmare and making the region more volatile. Tehran's rapid progress on its ballistic missile programme is a major cause of concern now for the US, which has its bases in the

for Iran are a weapon of deterrence, not one of power projection. Consequently, political observers warn that Iran is not on the US list of direct targets, which enhances the strategic utility of nuclear weapons to Iran and validates its claim that the Islamic Republic requires this capability to ensure both regime survival and territorial integrity.

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