PIRACY: THE CONTEXT FOR NEW ZEALAND AND ITS DEFENCE FORCE

Basil McMillan

Discussion Paper 02/99

Abstract

The paper offers an overview of the nature and degree of Piracy, as it affects New Zealand today. It explores how the New Zealand Defence Force might be able to contribute to its control. It identifies some benefits to New Zealand in helping to control Piracy. It finds that legal and policing issues need to be addressed first, and speculates on some possible funding sources.

About the Author

Basil McMillan is an Australian secondee to the New Zealand Ministry of Defence.

Centre for Strategic Studies
Victoria University of Wellington
1999

ISSN 1175-1347

Introduction

This paper explores one aspect of maritime security - the control of piracy and like activities (jointly termed "piracy" in this paper). It examines the magnitude of the piracy problem, its potential impact on New Zealand, and the New Zealand Defence Force's capacity to contribute to its control, assuming existing resources and improvements from modest additional expenditure. This is not a definitive policy paper, so much as an appreciation and exploration of options.

Pirates operate at many levels, ranging from individuals to international criminal organisations. It is of great concern in South East Asia, and other areas. There are international reporting and co-ordinating agencies, but currently little or no concerted action. A few private agencies offer support to individual ships and shipping lines, ranging from advice to embarked armed guards.

There is no mention of piracy in government Defence policy. However, our trade passing through areas with piracy could be affected – for example directly through losses, or indirectly through increased costs of insurance, route diversion, etc. There could also be benefits from positive action in this area, for example in enhancing the New Zealand external relations profile.

A Portrayal of Piracy

What is Piracy?

There are many ways of categorising piracy. This paper uses the three generic types listed below, and for reference denoted (a), (b), and (c). All three can involve physical violence up to murder (especially for types b and c). Although not mutually exclusive, they are arranged in order of increasing significance. The list is:

(a) Simple robbery of the crew and perhaps the vessel safe or strongroom, primarily for cash and easily removed valuables.

(b) Theft for illegal sale or similar purposes. Targets can be the cargo, sometimes the vessel and its fittings, and (rarely) the insurance money.

(c) Theft of the vessel for "phantom ship" purposes. That is, to masquerade as a legal ship and take on cargo in port, for later disposal illegally

Formal definitions of Piracy require that it take place in international waters, and involve illegal acts against the vessel, its occupants or its contents. In national waters such actions are essentially robbery at sea etc, and are subject to national law. Common usage includes both, however.

Where Does It Happen?

Piracy is a problem in many parts of the world. Commonly mentioned areas are:

- South East Asia - particularly the South China Seas and nearby waters, which produces around half of all reported attacks;
- Indian Ocean waters around Bangladesh, Sri Lanka, and Eastern Africa;
- West Africa;
- the Caribbean; and
- off Brazil.

Piracy in South East Asia is of particular concern to New Zealand, because of the amount of trade with the region. Instances there, in recent times, have involved pirates from at least Indonesia, China, Thailand, the Philippines, and Malaysia.

How Often Does It Happen?
Reports vary in detail, and only include officially reported cases. World-wide there were around 100 cases reported in 1994, rising to the low 200s in 1996, 1997, and 1998. Depending on the period examined, this could be an annual growth rate of 15% - 20%, although reportings have stabilised in the last three years. Of 1455 reports from 1984 to April 1999, around half were made after 1994.

Reported cases may be just the tip of the iceberg. There is evidence that many instances are unreported, because of:

- the potential for serious delays once local authorities are involved;
- a general feeling that nothing will be accomplished by reporting them; and
- a risk of increased insurance costs.

Thus the real extent of piracy appears to be unknown, and consequently its economic impact and risk cannot be quantified accurately.

How Is It Done In South East Asia?
Pirate vessels are often quite small – for example a fast motor boat. The methods used can be rudimentary. Typically the pirates make a covert boarding at night or in the early morning, and threaten the captain and/or crew with violence while taking control of the vessel. Commonly, access is over the stern by 6 to 10 men armed with knives, blades, and small-arms. Such intercepts are reported at as much as 70km from land, often in the quiet pre-dawn hours. The pirates may operate from nearby islands, and use fishing as a cover.

Corrupt local authorities may be involved. They can be the local police, militia, or even elements of the Defence forces. They provide a variety of resources, ranging from maps to vessels, and manpower, and from substantial delays in responding to alarm calls, to handling the cargo. Political connections may also be involved. Recently for example, it was reported that self-confessed pirates were repatriated from China to Indonesia within months of apprehension.

Attacks can also occur when the vessel is in port or at anchor. Type A piracy (theft of cash etc) is more likely in these cases.

What Is Attacked and What Happens?
Vessels attacked range from private yachts and fishing vessels, to large commercial traders and carriers. Pirates may sell vessel fittings locally, and may transfer cargo at sea, or in a convenient port. The port may be comparatively close (a few hours sailing), but large enough for individual movements to be unremarkable. However, journeys of thousands of kilometres do occur, particularly with type C (phantom ship) piracy. Disposal of cargoes and of vessels appears not be a difficult issue for pirates.

There are many variations – for example, the vessel may have identifying features altered (e.g. its name painted over), or it could be scuttled for insurance payments to an unscrupulous owner or shipper. The pirates may be members of the vessel passengers or crew, simply reporting their own attack, and then changing course and name. In type C piracy, there is speculation that cargoes are pre-ordered from unscrupulous large-scale consumers.

Lives are also at risk. Unless they have skills that are essential to operate the vessel, or it is type A piracy (theft of cash etc), crew members may be eliminated immediately.

Comment

In this context, prevention of piracy is difficult, and options for control are limited. The risk of such activity growing and spreading must be real, because of the criminal profits involved, and the low rate of successful policing. That is, when successful, the business of piracy is likely to continue to grow.

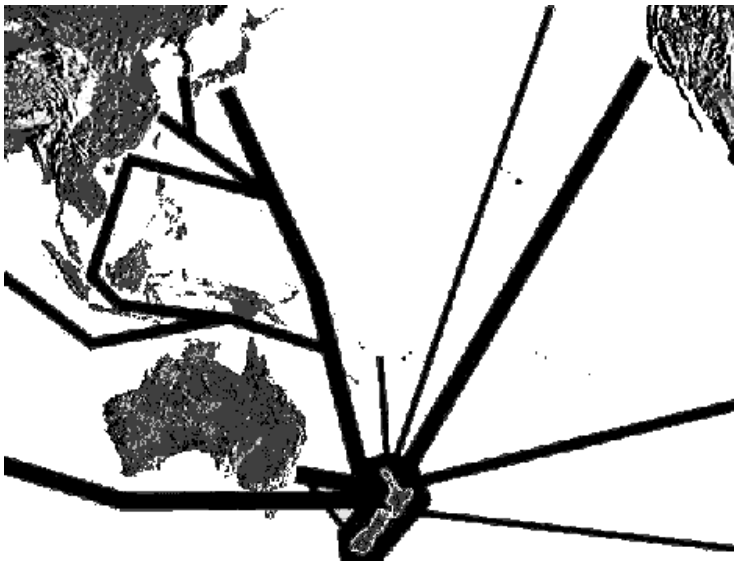
The recent economic crises of South East Asia have caused serious hardship for many - particularly Indonesians, and to a lesser extent Thais, Malaysians, and Chinese. Some may turn to piracy for their survival. Affluent Nations such as Japan and South Korea, and nations in the South Pacific have not been so seriously affected, and do not have a history of major involvement in piracy.

In the South West Pacific traffic density is low, and few nearby ports are busy enough to be capable of concealing and dealing with the stolen cargo and ships. Thus types B and C piracy seem less likely to become an issue. Nevertheless, trade routes important to New Zealand are already under threat, and any enlargement of the problem could make it an important issue.

Impact of Piracy on New Zealand

Figure 1 illustrates current Trade Routes and traffic. New Zealand trade under threat is mostly that traversing South East Asian waters - to ASEAN nations such as Indonesia, Malaysia and Singapore, as well as Taiwan and China plus Hong Kong. From 1995 to 1998, merchandise trade with these areas was 14-15% of all New Zealand imports and exports. For 1997/8 (to June), this was almost $NZ6.6B. Other areas at risk include waters near South Asian nations primarily in the Indian sub-continent, Africa (excluding South Africa), Brazil, and the Caribbean. Between them all, trade at risk, is possibly 17% of total trade.

Figure 1. Current Trade Routes and Traffic.



Thus the areas of most concern for New Zealand are those around South East Asia – particularly waters near Indonesia, the Philippines, South China, Malaysia, and Thailand. Direct routes to our major trading areas of Australia, North America, and Europe, do not seem to be at risk. Routes to Japan and South Korea in North Asia are well clear of these areas.

The possibility of type C piracy (phantom ships) affecting New Zealand is not related to the common areas for piracy, as a stolen ship can put in to any port. However, it seems a reasonable speculation that the typical cargo value and remoteness of New Zealand from its principal markets should imply a minimal risk for exports, but not imports necessarily.

Countering Piracy

Little can be accomplished with the use of resources within the sphere of criminal influence. However, pirates often have tacit support from elements within the local authorities. Control of such corruption is difficult, even in an affluent, fully democratic society. It is much harder in nations with a history of cronyism and local autocracy. Thus an international level of power is required, and probably for each of the classic triad of law, justice, and enforcement.

There are few signs in the early stages of pirate acts. Even in their vicinity, law enforcement vessels could be unaware of the activity. The time available to detect an act of piracy is also small – perhaps a few hours, while the time to react may be correspondingly small. Vessels failing to report, and unexpected course changes could be indicators, but detection in time to take action would be difficult. Even when detected, inspection of relevant vessels would be difficult and could be the trigger for violence against a hostage crew. This would require substantial assets in the locality, operating largely without the knowledge of local people and authorities. Nevertheless any increase in the chance of uncovering piracy increases the risks to all the criminals involved - from commission to disposal.

Piracy is often just one part of a criminal process. There needs to be an illicit market for a product, a suitable victim at a suitable location, the stolen property must be unloaded, moved to a disposal point, sold, and the proceeds distributed. Protection from action by authorities may be required, as well as organisation to bring it all together. All criminal participants must be rewarded in some way. Controlling elements of this chain will reduce the demand and rewards for piracy. This aspect is beyond the scope of this paper.

Legal and Other Powers

Before an enforcement system can operate, it needs a legal framework in place. This includes: rules of engagement; legality and supporting authority to allow opposed boarding in international waters; and opposed boarding by internationals in national waters. To be effective, it also requires an effective justice system, to determine the facts of each case, and administer adequate punishments.

There are international agreements against piracy, particularly including the UN convention on the High Seas of 1958. However, in general they only apply where the crime takes place on the high sea (i.e. outside territorial waters). These agreements allow international crime to be dealt with under national laws. Thus when a pirate ship is arrested, the laws and enforcement system of the nation of the arresting ship apply.

Enforcement requires a military or government owned force, capable of apprehending determined and violent people who have some support from local authorities. An additional police element would also be required to bridge the gap between apprehension and conviction.

More details of the legal, judicial, and police elements are beyond the scope of this paper.

Nature of Resources Required

Providing an effective response to calls for help is important. This includes both quick response, and a judicial and penal capacity to deal with the pirates and their sponsors. An international body with military resources would thus seem to be necessary, but requires adequate international backing. The capacity to deal with pirate-like activities in territorial waters should also be addressed.

Organisational

Anti-piracy management centres could be needed. Some naval staff would be useful, to co-ordinate military activities, and associated data. Also required would be staff experienced in New Zealand and international military and civilian law. An international piracy reporting centre exists in Malaysia, established in late 1992, and run by the International Maritime Bureau. However, it would need to be augmented in the event of more positive action.

Surveillance Related

Location of a suspect vessel is essential and cannot rely on vessel reporting or path prediction. This demands a surveillance rate sufficient to allow discrimination down to the point where boarding is a practical option. That is, boarding a small number of vessels to check their bona fides might be practical, but once the time required moves beyond a few hours, it is unrealistic. Employment of electronic transponders on commercial vessels might reduce workload in the long term, but currently a high rate of surveillance, both day and night is a prerequisite.

Presence
To make use of surveillance data, and to respond effectively to reports of piracy, a nearby surface presence is required. This implies a capacity to locate and intercept a suspect within a very few hours.

Boarding
Boarding demands a capacity to operate at the same speed as the suspect, to carry a boarding party, and to provide some protection during the boarding – i.e. helicopters and boarding craft.

Boarding craft are often small sea-worthy boats with good speed and manoeuvrability, operating from a larger vessel. Outboard motor boats are an example. Their advantages include cost and endurance. Their disadvantages include lack of surprise and risk of failure when boarding is opposed.

Use of helicopters is less common, but where the vessel size, threat, and deck configuration are suitable for safe landing of personnel, they can be effective. The most likely debarkation method would be rappelling. Helicopter advantages include the capacity to land personnel very quickly and at some distance from the parent ship, and their self-evident link with authority. Their disadvantages include:

- vulnerability to small-arms fire, particularly while embarking or debarking personnel;
- dangers inherent in the masts and rigging of a moving target catching rappelling ropes;
- dangers in landing personnel in difficult sea and wind conditions;
- limited capacity to provide support in an opposed boarding;
- limited capacity to provide support during a search;
- limited capacity to rescue personnel in a failed boarding; and
- very limited endurance.

A combination of helicopter and boarding craft could be effective, with the helicopter providing protection, and the craft providing the boarding crew. Range of operation would be correspondingly reduced.

Weapons
Penalties for piracy are generally very high, while the financial return on an act of piracy can also be very high. Thus, although pirates would wish to remain covert, they may be quite prepared to use weapons when discovered.

Weapons reported in documented attacks include mortars, machine guns, and grenades. In South East Asia, they are normally limited to edged weapons and small arms.

Self protection is thus an issue, both for the boarding party, and for the supporting craft during approach and boarding. Some customs authorities have used riot control weapons to obtain compliance in opposed boarding. However, currently there may be legal impediments to their use by military forces.

Personnel and Skills
Personnel would be required to staff co-ordination centres, to operate as normal crews with their associated skills, and for boarding. To be fully effective, personnel would benefit from training in boarding and inspection techniques, as well as in local languages and possibly psychology. Overseas experience with control of fishing vessels indicates that a boarding party of at least five is necessary for mutual protection, and possibly more would be needed against pirates.

Involvement Potential for New Zealand and the Defence Force

New Zealand could consider involvement in piracy control with legal/political contributions and with military contributions. Legal matters and international agreements are principal issues and a concern. A related issue is management of anti-piracy activities. Without an adequate framework within which to operate, there seems little point in contemplating military activities beyond the protection of individual vessels.

Beyond New Zealand waters, New Zealand Defence Force capacity for piracy control operations is in its warships, embarked helicopters, and Orions. The support they could provide would be surveillance related, and boarding and inspection capacity. The support ship HMNZS ENDEAVOUR could also be used to extend surface vessel endurance without involving local authorities. The total effort required for piracy control is large, so only a contribution could be provided.

Legal
Legal and judicial systems must be in place before an enforcement process can operate. These systems can only arise if there is adequate international support and motivation. To heighten the New Zealand profile in international governance, government might choose to advance policies and systems aimed at controlling piracy. Involvement could be through active participation in proposing and promoting the necessary forums, debates, and actions. Apart from their identification, and some superficial comment, these matters are beyond the scope of this paper.

Orion Aircraft
The Orion maritime patrol aircraft is very effective at providing surface surveillance for many hours. Surveillance capability depends on the density and speed of shipping traffic, and the effect of islands. Availability and location of suitable airfields and ground support are also important, not only because of response and transit times, but also the risk of providing intelligence to the involved criminals.

Warships
Any class of ocean capable warship can provide local area surveillance (including re-location), shadowing, tracking, boarding, and inspection facilities. Such ships generally have limited endurance, and comparatively small surveillance coverage. Support from the HMNZS ENDEAVOUR could be required. Embarked helicopters should increase the range at which these activities could be done. Boarding and inspection could use a sea-boat.

New Zealand Defence Force Personnel
In addition to the normal crewing and management functions, personnel could be used to staff co-ordination and training centres.

Increasing Capability – Limited Additional Facilities and Low Cost Options
Increasing the range at which a vessel can be boarded in a set period should reduce the number of military vessels required. Thus there should be advantages in increasing the speed and range of sea-boats, and the associated deployment elements, such as speed of launch/recover, limiting sea conditions, and communications range.

Increasing the number of flying hours available from embarked aviation should improve local surveillance, re-location, and support of boarding. This can be done by increasing the number of embarked helicopter crews.

Benefits to New Zealand
Actions by New Zealand to help in the control of piracy would confer a number of advantages:

- Enhance world perception of New Zealand as a good citizen;
- Provide a medium for raising the New Zealand profile;
- Reduce transport costs for New Zealand trade goods (e.g. through insurance charges);
- Reduce the risk to New Zealand people travelling through the regions; and
- Reduce diplomatic and other activity spent on missing or abducted travellers and goods.

Other Issues

Co-operation from involved parties (ship crews, owners, and users, sovereign states, and insurers) would make management of piracy easier. In particular, electronic identification and tracking of vessels should reduce surveillance and re-location burdens. Some such data could be commercially or politically sensitive, so methods for dealing with sensitivities would be needed. This includes data control, to exclude corrupt local authorities.

Reporting methods that prevent crew members from being coerced into correct reporting would also be required.

Some funding for piracy control measures might be supported by or levied on the principal beneficiaries (e.g. insurers).

Conclusions

Piracy is not currently a major problem for New Zealand. Nevertheless, there is potential for it to have an increasing impact on a substantial fraction of trade costs.

There is little that the New Zealand Defence Force can offer at this time to support action against piracy in the high risk areas. However, New Zealand could help provide impetus toward a concerted international capacity to deal with piracy.

Legal matters, international agreements, and an international justice system are principal issues and a concern. A related issue is management of anti-piracy activities. Without an adequate framework within which to operate, there is little point in contemplating such actions, beyond the protection of individual vessels.

Piracy is often just one event in a criminal chain of acquisition, dispersal and disposal. Attacking that chain through detection and penalties along its whole length should help control piracy.