

PERSPECTIVE

Crew-Napping: Perils on the High Seas

BY JAMES E. MERCANTE

Pirates are a popular subject of Halloween and movies (e.g., Jack Sparrow in "Pirates of the Caribbean"). But piracy is far from a source of entertainment on the high seas.

The "golden age of piracy" was during the 18th Century when Blackbeard, a notorious English pirate, ruled the Caribbean Sea and the western Atlantic. Blackbeard's weapon of choice was a simple sword or knife and before battle, as legend has it, he ignited matches woven into his enormous black beard to intimidate victims. In those days, the ship's treasure or her cargo were the target. Pirates today, however, are not interested in either ship or cargo because those have to be sold to turn into cash. Rather, the prize for today's pirate is ransom money in exchange for returning not just the ship and cargo intact, but the crew alive.

"Piracy" has been defined as "robbery, or forceable deprivations upon the sea." *United States v. Smith*, 18 U.S. 153, 161 (1820). "Depredation" is "the act of plundering, robbing, or pillaging." *Black's Law Dictionary* 397 (5th ed. 1979). Interestingly, the U.S. Court of Appeals for the Ninth Circuit held in 2008 that in practice "universal jurisdiction" applies to acts of piracy and thus no contact whatsoever is needed for an "offense against all nations." In a New York admiralty case, *New York Marine and Gen. Ins. Co. v. M.V. Rauten*, 1999 WL 76810 (SDNY 1999), Southern District Judge Denny Chin raised some interesting questions in denying summary judgment to a shipowner, to wit: What is, in this day and age, a "pirate?" When does a "thief" or "looter" become a "pirate?" Is a person a "pirate" if he or she does not use force or threat of force? and, may an act of piracy occur only on the "High Seas" or may it also occur within a country's territorial waters?

Pirates are busy in Indian Ocean waters off South Somalia. Somalia is presently the world's piracy hot spot since it has experienced chaos ashore and no effective government since the early 1990's. This busy shipping area connects Europe to Asia and the Middle East. Some 20,000 vessels a year transit these waters heading to and from the Suez. It has been a busy and profitable time for the pirates of the Somali Coast who just recently hijacked a South Korean bulk carrier, hijacked and released a South Korean cargo ship and a Thai ship, receiving ransom money in each case.

According to the International Maritime Bureau's (IMB) Piracy Reporting Centre, there has been a dramatic increase in attacks of piracy in 2008. This year alone there has been a total of 199 incidents reported to the IMB. Seventy three pirate attacks occurred in the Gulf of Aden between Yemen and North Somalia and about 29 ships have been hijacked. Somali pirates have taken 537 crew members hostage. Worse, the IMB states that only about 10 percent of all

pirate attacks are reported. IMB data also reveals that attacks in the Western Hemisphere are negligible.

The Associated Press reports that nearly a dozen ships and more than 200 crew remain in the hands of pirates, including the recently-hijacked Ukrainian arms ship, M/V FAINA, off the coast of Somalia, which prompted the U.S. Navy to dispatch a destroyer. Two of the pirates aboard M/V FAINA have been shot, but the others remain and the pirates are steadfast in their demand for a \$20 million ransom.

Pirates were no strangers to the founding fathers. Indeed, piracy is specifically referred to in Article I, Section 8, Clause 10 of the U.S. Constitution (the "Offense Clause") which empowers Congress to "define and punish Piracies and Felonies committed on the High Seas, and Offenses against the Law of Nations." Because the High Seas, by definition, lie outside United States jurisdiction, the Offense Clause grants Congress the authority to apply federal law to piracy beyond the borders of the United States. See, *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). As an example, U.S. Naval ships have gained permission to pursue pirates in foreign territorial waters to cut off their access to supplies (www.military.com, 12/18/07). Congress' statutory authority to define and punish "felonies on the High Seas," 18 U.S.C. §2280(a), proscribes felony offenses and expressly applies to international waters.

In exercising these new powers, in 1801, President Thomas Jefferson commenced the First Barbary War, a blockade to combat piracy off Tripoli, the north coast of Africa. This U.S. military victory is memorialized in the initial verse of the "Marine's Hymn" "From the Halls of Montezuma to the Shores of Tripoli."

Maritime commerce has always been somewhat of a hazardous business. The heavily-armed pirates of today do not sail around in leaky old schooners easy to outrun but, rather, these perils on the high seas now typically operate from a mothership where they station high-speed, high-tech motorboats to attack the nearest target that appears on radar. The weapon of choice is no longer a sword and an ignited beard but trained fighters armed with AK-47 assault rifles, sophisticated radar, satellite navigation and satellite phones.

Quietly paying the ransom money, as many shipowner's do, only perpetuates the cycle of violence. Today's pirates are a dangerous force to be reckoned with and unlike the Jack Sparrow protagonist in "Pirates of the Caribbean," these villains might not be box office heroes but subjects of "America's Most Wanted."

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