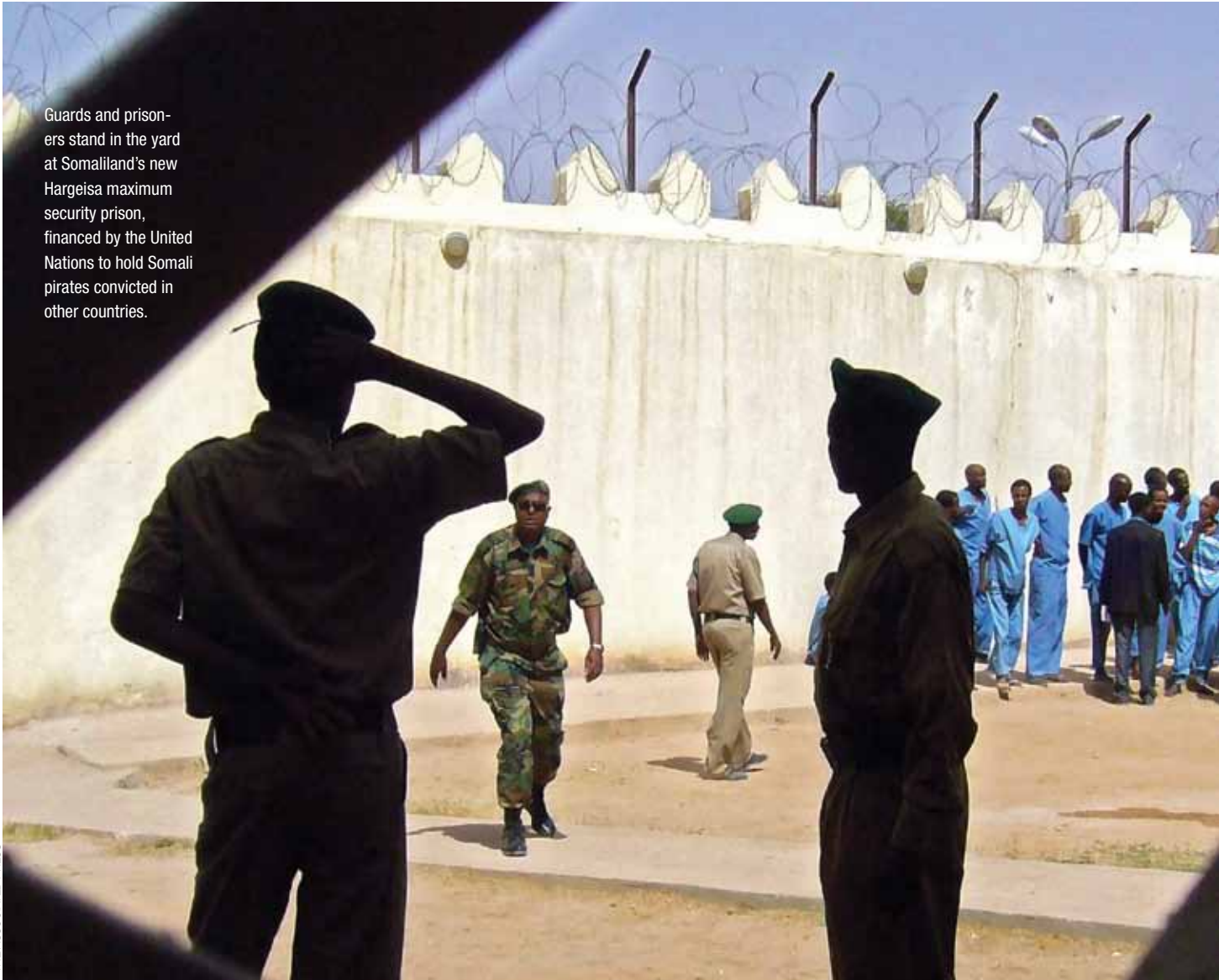


# IMPRISONING PIRATES

Guards and prisoners stand in the yard at Somaliland's new Hargeisa maximum security prison, financed by the United Nations to hold Somali pirates convicted in other countries.



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# A new prison in Somaliland could aid efforts to curtail sea raiding around the Horn of Africa

By per Concordiam Staff



A new maximum-security prison built to incarcerate pirates opened in March 2011 in the self-ruling enclave of Somaliland. Funded by the United Nations, the prison seeks to relieve the burden of incarceration from nations that prosecute Somali pirates, a prominent reason why partnering nations have been unwilling to prosecute. Piracy hurts the global economy by raising prices on goods, subsidizes extremist organizations and hinders famine relief directed at the pirates' fellow Somalis. International warships patrolling off the Horn of Africa have arrested thousands of pirates in the last few years; however, only about 10 percent have been prosecuted, perpetuating a cycle Navy officers call "catch and release" that frees pirates at sea to attack again. Ending catch and release sends a clear message that pirates will be prosecuted and raises the stakes of piracy, turning it from an occupation chosen for easy money and low risk to a dangerous livelihood that could result in life in prison.

Security experts agree that part of the solution to curbing piracy off the coast of Somalia lies in prosecution. In March and April of 2010, 275 pirates were captured by European Union naval forces, but only 40 were prosecuted, leaving hundreds of these high-seas robbers unpunished. Navy officers say it's one reason why pirating in the region persists. Catch and release was never a viable long-term solution, security expert John Pike said in a Voice of America article published in June 2010. "I think if pirates felt they would face serious penalties, either very long jail time or something worse, they would rethink whether this was a good line of work for them to be in," Pike said. Countries have been reluctant to

prosecute because of the expense associated with incarcerating non-nationals in their prisons and out of fear that, upon release, the pirates would seek asylum and become de facto refugees.

## PIRACY CONTINUES TO RISE

Pirate attacks in the Gulf of Aden and the Indian Ocean continue to rise. The number of attacks and hijackings increased in the first three months of 2011 to a record high of 77, up from only 26 in the same period of 2010, Reuters reported in May 2011. Ransoms to free the ships and their crews in 2010 grew to total about \$238 million, with one \$9.5 million payoff for the release of a South Korean oil tanker in November 2010. Even if pirates seize a small number of ships, the multitude of hostages on board can guarantee plenty of ransom money.

Pirates have expanded their area of attack in the last couple of years to cover the northern part of the Indian Ocean and the Arabian Sea. They increase operational range by using open skiffs about 6 to 8 meters long and dedicating one as a refueling vessel. Some use a mother ship and tow four to eight skiffs for actual attacks. Until recently, piracy declined during the rainy season from May to September and November to February, but increasingly they have become less deterred by the weather and continue to attack through monsoon season.

## THE IMPACT OF PIRACY

Evidence is mounting that some pirate ransoms are going into the pockets of the Islamic extremist group al-Shabab. John Steed, military advisor to the UN on counterpiracy, told Reuters in a July 2011 article that "links between armed pirate gangs and Somalia's al Qaeda-affiliated rebels were gradually firming." Detained pirates told Alan Cole, a UN Office on Drugs and Crime (UNODC) piracy expert, "that some level of cooperation with al-Shabab is necessary to run a criminal enterprise." Vice Adm. Mark Fox of the U.S. Navy suspects pirates and members of al-Shabab even share training camps, *The Wall Street Journal* reported in January 2011.

Prices of imported and exported goods have risen as a result of sharp increases in maritime insurance rates and additional fuel costs

incurred to reroute ships around dangerous pirate waters. Low- and slow-moving ships, which are at the greatest risk for pirate attack, are choosing to avoid risk zones altogether. They bypass the Suez Canal, the most direct route, in favor of the longer but safer path around South Africa's Cape of Good Hope. It can add about 2,700 miles (about 4,345 kilometers) to a ship's journey, but it is cheaper than paying ransom and putting the crew in danger.

Somali piracy is hindering efforts to save people from starvation and is delaying food aid delivery to Somalia. "Some has to be flown in, which has an impact on cost, or it has to go to ports like Mombasa, Kenya, and then driven over land, which takes time," Mthuli Ncube, African Development Bank's chief economist told the newspaper the *Guardian*. The UN estimates that 11 million east Africans need food aid and about 2.8 million need immediate life-saving assistance.

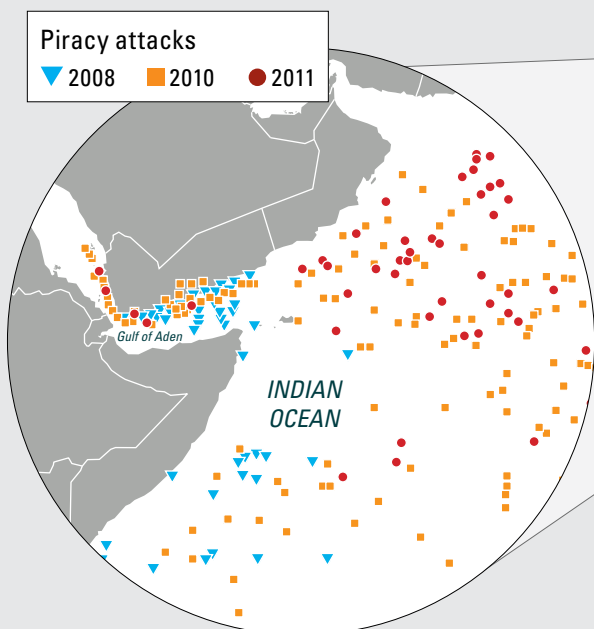
### CHALLENGES FOR CONVICTION

Many of the Somali pirates brought to court do not know what a trial or court is. For most, it is the first time they have seen a functional government and justice system. Some are under 18, but determining age is difficult because they usually do not have documentation.

If they are younger than 13, they are legally considered incapable of committing a crime, but proving this is difficult. Courts try to determine age by skeletal X-rays and examination of cartilage at the ends of long bones that disappears during adolescence. Malnourishment and hard labor at an early age complicate the analysis. Much weighs on the outcome of scientific experts. If pirates are older than 13, they can be sentenced to long prison terms, even life behind bars if they attempted to murder or killed a hostage. Two Somali men are examples of that. Ali Abdi Mohamed and Burhan Abdirahman Yusuf were sentenced in August 2011 to life in prison for commandeering a yacht that ultimately led to the death of two American couples.

Somali pirates are being convicted by courts around the world, but security experts say the number isn't high enough to become an effective deterrent. The idea of special international courts to try captured pirates has been introduced. The UN has supported this initiative and called for a courthouse in Somaliland and Puntland, two autonomous regions of Somalia. Jurisdiction has presented challenges. Jailed pirates have been released because courts say the crime occurred out of their jurisdiction. A January 2011 UN report suggested courts apply the principle of "universal jurisdiction"

Often ships will avoid the pirate-infested waters of the Gulf of Aden for a safer but longer route around Africa, adding approximately 2,700 miles to the journey.



Pirates off the Horn of Africa have expanded their area of attack to include the northern Indian Ocean.

to try detainees, as the Seychelles and Kenya do, and calls on nations to cooperate in gathering evidence and transferring suspects. Kenya and the Seychelles have prosecuted dozens of pirates but can't handle the entire load. Somaliland and Puntland have also been suggested as locations for the international pirate courts. "Tackling piracy should take place chiefly in Somalia," said Jack Lang, UN special advisor on legal issues related to piracy. Warships patrolling the waters of the Gulf of Aden and the Indian Ocean operate under the framework of the United Nations Convention on the Law of the Sea and Security Council resolutions. The Law of the Sea, signed in 1982 by 150 countries, says countries are allowed to seize and prosecute those committing piracy on the high seas. However, maritime law experts say it doesn't take into account failed states like Somalia, and question what happens when pirates act within territorial waters or neighboring waters and the nation is incapable of securing its territory.

Yemen, the United States, Germany, the Netherlands, and other countries have convicted pirates in their courts. When a ship sails, a crime committed against it is considered a crime against that country; the ship represents a floating part of that country. Prison sentences range from five years to life. The U.S. in particular has used stern prison sentences to dissuade pirates from attacking a U.S. vessel. "Today's sentences should send a clear message to those who attempt to engage in piracy: Armed attacks on U.S.-flagged vessels carry severe consequences in U.S. courts," Neil MacBride, U.S. Attorney for the Eastern District of Virginia, said in a Reuters 2011 article after five men were convicted for trying to attack an American warship off Africa in 2010.

### KEY INTERNATIONAL COOPERATION

Resource-sharing partnerships and international cooperation have reduced the number of successful attacks in the Gulf of Aden and surrounding Somali waters. NATO's Operation Ocean Shield, the EU's Naval Force Somalia-Operation Atalanta, and the multinational Task Force 151, are making strides to curtail Indian Ocean piracy. The UN, the EU, the Arab League and NATO have joined efforts to fight piracy, involving countries such as Pakistan, the United States, Somalia, Djibouti, Australia, China, South Korea, Egypt, Japan, Russia and Singapore.

Cooperation on the high seas has paid off. In 2004, the Malacca Straits near Indonesia suffered from the second highest number of pirate attacks in the world; today the problem has virtually vanished. Recognizing that piracy is transnational and difficult to defeat single-handedly, nations began sharing intelligence, policing their own territorial waters, and using airplanes to scout for pirates. The decision by the governments of Thailand, Malaysia, Indonesia and Singapore to share responsibility and pool resources has almost eradicated piracy in the Malacca Straits.



A Kenyan court in November 2010 ordered the release of nine suspected Somali pirates, saying Kenya lacks jurisdiction to try them for crimes committed outside its territory. Disputes over jurisdiction often prevent prosecution of pirates.

### NON-NATIONALS PRISON DILEMMA

While the Somaliland prison provides a cooperative solution, there are kinks that still need to be worked out. The prison serves as a model for the region, and its conditions are far better than other Somali prisons. It can accommodate 460 inmates, and in March 2011 already held 300 pirates. As of late 2011, the prison held only native Somalilanders convicted of piracy. Somali authorities are not yet willing to accept transfers of non-nationals. Piracy expert Roger Middleton of the British think tank Chatham House is optimistic that this will change: "[T]here is a fairly good chance that some kind of agreement can be reached, a bit like what happened with Kenya, to take some pirates even if they are 'foreign.'" Puntland has reached an agreement with the UN to accept pirates convicted abroad, but their prisons are full. Cole, the UNODC piracy expert, hopes Somaliland would agree to take overseas pirates as well.

Piracy experts look favorably upon the prison opening and believe it plays a critical role in tackling piracy. "The opening of Hargeisa Prison symbolizes a key action in helping to significantly boost anti-piracy efforts on a regional level and addresses concerns from neighboring countries over housing convicted pirates in their prisons," a March 2011 UNODC news release said. The Seychelles Ministry of Foreign Affairs affirms that "piracy must be addressed by assisting the Somali authorities in tackling piracy within their own country and in establishing the rule of law. Workable and reliable prison infrastructures within Somalia, exactly as the UNODC is doing, is part of this important process." □