MILITARISED RESPONSES TO TRANSNATIONAL ORGANISED CRIME

the war on crime

Edited by
Tuesday Reitano,
Lucia Bird Ruiz-Benitez de Lugo &
Sasha Jesperson

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Assessing Militarised Responses to Transnational Organised Crime

Sasha Jesperson

Organised crime continues to plague society. Although we know much more about it, how it functions, who is involved and why it persists, we are still no closer towards eradicating it. Policymakers are beginning to understand that any response needs to be multifaceted, dynamic and persistent; however, they continue to search for an elusive silver bullet. Despite the growing diversity of our organised crime–response toolbox, military solutions continue to be widely prioritised. Perhaps it is the quick wins, the direct pursuit of criminals or the outright show of force that creates the impression that action is being taken. Nevertheless, these responses are not always the most suitable.

Across all four areas of criminal activities that are explored in this book, military activity is considered a key element of the response. This was certainly the case in the response to Somali piracy, where the lack of a functioning state provided the opportunity to use force in a way that has not been possible in the Gulf of Guinea, or other areas plagued by pirates. Poaching in the Horn of Africa has also spawned a range of organisations ready to use

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military techniques against organised crime. Vetpaw[1] is only one amongst the most notorious of a plethora of organisations launched by retired members of the armed forces. The International Anti-Poaching Foundation was founded by ex-special operations military sniper Damien Mander. Maisha Consulting, an Israeli security company that specialises in wildlife protection includes many former soldiers in its ranks, primarily special forces and intelligence.

The other two areas considered in this book—drug trafficking and migration—are not immune to military responses. As the Health Poverty Action chapter points out, the extreme end of the 'war on drugs' has seen CIA operatives and heavily militarised civilian forces engaging in covert operations to stop drugs entering the US. Borrowing from piracy, in particular the success of operation ATALANTA, naval capacities have become a key part of the European response to migration, aiming to deter people smugglers in the Mediterranean.

Of course, not all military actions are unhelpful. For example, the Royal Lancers Counter Poaching Coordination Team, part of the British Army, shaped the role of armed forces in anti-poaching operations by developing a strategic understanding of how herds moved in order to pre-empt and cut off poacher movements. Like any response to organised crime, the role and impact of military responses is mixed and requires a deeper assessment to understand what it can offer and how they might interlink with other approaches.

That is what this volume seeks to do. It is the culmination of a series of workshops jointly organised by the Global Initiative against Transnational Organized Crime and the Royal United Services Institute to discuss and debate militarised approaches to crime. Each workshop focused on a different form of criminality. Although we are witnessing increasing crossover between crime types—for example, the Akasha family in Kenya is linked to the heroin trade as well as ivory smuggling—responses still tend to focus primarily on one crime type. Such crossover does mean that responses, although focussed on a specific illicit market or activity, encounter or hinder a range of activity. An EU-funded project under the Cocaine Route Programme, AIRCOP, established Joint Airport Interdiction Taskforces in South American, Caribbean and West African airports. These taskforces seized cash, wildlife products and falsified medicines, although the primary aim is to interdict drug traffickers.

The workshops brought together a range of perspectives from academics, practitioners and policymakers, those in support of military responses and those opposed, those who have been directly involved in

military action, those that have evaluated it, and those that have proposed alternative solutions.

In this volume, we have maintained the balance between these perspectives in order to draw out the nuances of the debate and understand what military approaches can contribute towards organised crime responses, but also where it can undermine them. The evidence on which organised crime analyses are based, while growing, remains thin, particularly when it comes to evaluating specific responses. This volume begins to fill that gap, as many chapters are based on empirical evidence.

What Is a Militarised Response?

At the outset, it is necessary to define the contours of this debate, in particular, what a militarised approach entails and how it comes about. As I have written elsewhere,[2] militarised approaches are at one end of a spectrum that extends to people-centred development approaches. In light of the discussions around comprehensive approaches, responses to organised crime should sit near the centre of this spectrum. They should constitute a mix of security responses that combine intelligence, law enforcement, and the direct pursuit of criminals with development strategies that engage with the factors that make a country vulnerable to organised crime.

Even in countries where different programmes are underway across this spectrum they rarely interact or work in collaboration. Development actors are beginning to focus directly on organised crime. For instance, the German development agency, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), is supporting the fight against poaching in Africa and targeting illegal trade chains in Asia. However, other programmes that have a direct impact on organised crime, such as livelihood programming, are often not considered part of the response to organised crime. Rather development is primarily viewed in terms of how it is affected by organised crime, or, as in Health Poverty Action's chapter, how military responses to organised crime affect development. Many chapters in this volume conclude that development should play a more prominent role, most notably Rivzi's contribution, which argues that migration is merely a symptom of conditions in source countries—an area where development can have a significant impact.

While development may be a recommendation of some chapters, the focus remains on the other half of the spectrum. On the security side,

there is also great diversity. At the far end of the spectrum is direct military involvement. After the war in Bosnia, organised crime was a major problem. When the violence ended, the criminal actors who had played a key role during the war were eager to sustain their illicit activity bolstered by the legitimacy they had gained by facilitating a steady supply of food, fuel, weapons and even jeans in wartime. The EU took over from UN and NATO forces in post-conflict reconstruction with two missions, the EU Police Mission (EUPM), launched in 2003, and EU Force Althea (EUFOR), launched in 2004. EUFOR was a military mission deployed to oversee the military implementation of the Dayton Peace Agreement. In order to address organised crime EUFOR launched operations to directly pursue criminals, often independent of Bosnian police or military forces who were viewed by many as collaborating with criminals.

EUPM had a different approach. European law enforcement officers were co-located with their Bosnian counterparts. The mission led the security sector reform process, and in its final two phases, from 2009 to 2012, corruption and organised crime was the sole focus. Although the process was highly politicised and controversial, EUPM worked in partnership with local forces. In seeking to address organised crime, EUPM personnel worked with these forces on cases to identify knowledge and capacity gaps and trained them accordingly. Although EUPM was a security focused response, it was far removed from the direct military approach of EUFOR. It employed a partnership model and engaged in capacity building, shifting much closer to the middle of the spectrum.

The contributions in this volume engage with responses at different points along this spectrum. The civilian forces referred to by Erickson, Health Poverty Action and McDermott, although not military per se, can still be located towards the security end of this spectrum, as can the naval forces discussed by Forbes and Shortland in Somalia, and Roberts in the Mediterranean. Although not a direct focus, the activities of organisations like Vetpaw, referred to by Maguire, also fit here. They share a focus on direct action, and a disregard of local capacity or institutions, as well as for human rights, sustainability, or even in some instances, due process.

However, not all military action exists at the hard end of the spectrum. Some military engagement employs similar strategies to EUPM, working in partnership with local actors and seeking to build capacity to ensure long-term engagement on organised crime threats. This form of

engagement is discussed in Ralby's chapter, which focuses on piracy in West Africa. Ralby refers to military action in the region as 'cooperation' rather than direct engagement.

Other contributions focus specifically on law enforcement of the type pursued by EUPM, such as Sellar's chapter. Such an approach is posited as an alternative to direct military engagement, particularly as it focuses on ensuring adequate legislation is in place to prosecute individuals involved in organised crime. Shortland highlights the essential role this plays—unless these factors are addressed crime is likely to return once international military attention wanes. This has been widely recognised, although not adequately accounted for in the context of drug trafficking. Effective military or law enforcement action has created a balloon effect where criminal activity is pushed elsewhere. This is cited as the reason West Africa became a transit hub for cocaine originating in South America destined for the European market in the 2000s, with increased attention in that region reopening the Caribbean route in the mid-2010s.[3]

Shortland argues the same is true for the Horn of Africa. Although the military response to piracy is recognised as a success, it merely deterred pirates while the risk was too high. All the conditions that allowed piracy to flourish in coastal communities remain in place today. Waning international attention could result in a resurgence of piracy in the region.

Ungoverned Spaces

Perhaps the greatest determinant of whether a response will be positioned at the hard end of the spectrum is the level of governance in the region. When military forces were deployed in Bosnia, there were limited governance structures in place. While the High Representative sought to rebuild these structures, EUFOR, operating in a governance vacuum, appeared vindicated in its direct pursuit of organised criminals. In contrast, as EUPM was deployed to restore the security sector, it played a key role in reconstituting police and ensuring they were equipped to pursue organised criminals, arguably having a more sustainable impact.

Similarly, as Forbes and Ralby point out, Somalia's statelessness effectively gave the international community, endorsed by UN Security Council resolutions, carte blanche in their response to piracy in the Gulf of Aden. In contrast, a similar strategy is not possible in the Gulf of Guinea.

Although there are still a number of fragile states in the region, they are able to develop their own maritime strategy, even if assisted by internationals. There are also strong states, such as Nigeria, Ghana, Togo and Cote d'Ivoire that are playing a key role in the region, supported by the Economic Community of West African States (ECOWAS). Nigeria even has a law preventing internationals from being armed on vessels in Nigerian waters.

However, assumptions on governance are not always well-founded, and in these cases military action can be more damaging than helpful. Von Hoesslin and Bird, for example, discuss how private security employees often engage in pre-emptive attacks, expecting to be operating in an empty environment where the normal rules that regulate military action do not apply. The result can be violations of human rights and international law, as well as escalating violence by initiating an arms race with groups benefiting from criminal activity. This makes it clear that many factors need to be considered before deciding which mechanisms to deploy to respond to organised crime.

Book Structure

In the next chapter, Shaw considers the trends, rationales and justifications of militarised responses. This chapter provides an overview and background to the evolution of militarised responses to organised crime, beginning with the war on drugs in the 1970s and continuing into other forms of illicit activity from wildlife crime to migration to piracy. It provides the context for the subsequent debates regarding the role of militarisation.

The first section focuses on the illegal wildlife trade. As violent criminal networks have become increasingly involved in the trafficking of wildlife, pushing iconic species to the brink of extinction, the argument for militarised responses has become increasingly vocal, both to protect the remaining wildlife, and to address the threat posed by poachers. This is resulting in an arms race between poachers and rangers, with a consequential rising death toll. This section focuses on outlining the effective use of military or security-based strategies to counter wildlife crime within a policy framework which combines other strategies, including criminal justice and community development responses.

Humphrys opens this section with a discussion on the underpinnings of the response to the illegal wildlife trade, and the politicisation of the military response. Rademeyer and Maguire's chapters draw on empirical

research of particular regions affected by the illegal wildlife trade where military strategies have been employed—Southern Africa and Kenya, respectively—to highlight the flaws of a purely militarised response. Sellar concludes the section by exploring the commonly subordinated role of law enforcement, encouraging increased cooperation between military, police, and speciality wildlife protection bodies.

In the section on piracy we explore this phenomenon in its various manifestations across the globe, highlighting differences and identifying parallels. The naval response to Somali piracy is typically portrayed as one of the key success stories of militarised approaches, and is now being proposed in other theatres across the world, as well as for other crimes. A review of the spectrum of responses, from the deployment of navies and armed contractors to protect shipping lanes, and the impact these had on piracy allows for a greater understanding of best practice, and permits a stringent analysis of the scope for possible replication.

Forbes examines the successes of the military response in Somalia, emphasising that it was only one element of the wider response. Ralby draws on the lessons from Somalia and considers how the response on the opposite side of the continent has been managed. Von Hoesslin and Bird contrast the mode and mechanics of Somalian and South-East Asian piracy to highlight how the response to the former may not be merely transferred onto another. Finally, Shortland reflects on how many lessons from the Somalian experience have been ignored going forward, raising the spectre not only of renewed piracy in this region, but missing an opportunity to hone piracy responses globally.

Although migration is a multi-faceted problem with a wide range of push and pull factors, responses to the current migration crisis in the Mediterranean have relied heavily on military strategies, including increased naval patrols and the interdiction of boats. The result is the criminalisation of migrants rather than the criminal actors facilitating their transit, with implications for human rights. These strategies respond to the final stage of the supply chain, with little impact on migration flows.

Rivzi opens this section by contextualising the role of smugglers as a product of a new migration paradigm. Reitano follows by looking at the nature of the smuggling market, how it is structured and functions and how a security first, militarised response will make the smugglers richer, more professional and increasingly criminalised, adversely affecting the balance of power between migrant and smuggler. Roberts engages with the European response to migration in the Mediterranean, debunking

some of the popular misconceptions that undermine our ability to effectively respond. Erickson focusses on migration into the US from Latin America, and specifically on the role of US Customs and Border Protection, a quasi-paramilitary police.

The 'war on drugs' has been widely discredited for its focus on lower level operatives which engender more clandestine trafficking methods, overburdened criminal justice systems and spiralling levels of violence and corruption. Yet, many governments continue to turn to military strategies to respond to the drugs trade, in particular, in times of crisis. In 2014, Bolivia and Honduras implemented legislation that allowed the military to shoot down aeroplanes suspected of drug trafficking. In contrast, some governments are beginning to reject the traditional 'war on drugs' rhetoric and engage with alternative strategies drawing on development, public health and rule of law.

McDermott outlines the seminal case-study of the implementation of the 'war on drugs', detailing the past and present of the Latin American drug trafficking trade and responses to it, engaging with how the 'war on drugs' has been enacted in practice. Collins provides a history and background to the drug wars, culminating in the UN General Assembly Special Session in 2016, concluding that the current 'flexible' policy outlook is to be lauded, and that it has created an opportunity for regulatory experimentation. Health Poverty Action focuses on how damaging the war on drugs has been for development. Jesperson completes this section by questioning how effective the increasingly common security alternative is.

Pulling together the themes that emerge from these chapters, Reitano finishes the volume by drawing out the lessons to be learnt in crafting responses to organised crime. Although this volume does seek to shed further light on the factors that must be considered in devising responses to organised crime, and concludes that any response needs to be multifaceted and context specific, it offers no silver bullet. Instead it highlights the range of unintended consequences of militarised approaches, complementing such analyses with a discussion of what other tools, from development, civil society and law enforcement can offer.

Notes

1. Veterans empowered to protect African wildlife deployed army veterans to train and support wildlife rangers.
2. Sasha Jesperson (2016), '*Rethinking the Security-Development Nexus: Organised crime in post-conflict states*', London, Routledge.
3. See for example J. Cockayne (2011), 'State fragility, organised crime and peacebuilding: towards a more strategic approach', *NOREF*; *The Economist* (2014), 'Full Circle: An Old Route Regains Popularity with Drugs Gangs'.

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Soldiers in a Storm: Why and How Do Responses to Illicit Economies Get Militarised?

Mark Shaw

INTRODUCTION

It is now commonly agreed that globalisation has created a plethora of evolving illicit markets and a network of trafficking and smuggling routes and organisations that feed them.[1] The illicit trade in drugs is perhaps the longest standing and the most widely known, but a read of any news source highlights developments in several other illicit markets. Arguably the two most prominent and relatively recent additions on the global stage are the smuggling and trafficking of people and the illicit exploitation and movement of environmental commodities such as rhino horn or elephant ivory. While both of these illicit markets have long flourished, what makes them topical now is the degree to which they have increased in scale and scope, and the extent to which they are extensively covered by the global news media. Pictures of packed boats of migrants floating in the Mediterranean, or of slaughtered rhinos with

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a bloody stump where their horn once was, are iconic images that have come to define what has been termed 'deviant globalisation'.[2]

What has seldom been analysed in any systematic way is the degree to which different policy responses may demonstrate parallels and contrasts across and between different illicit markets. The case of the legalisation of illicit commodities to reduce the profits available to organised criminal groups illustrates how responses in the context of different markets are often diametrically opposed. Vocal civil society groups argue for the decriminalisation of drugs as the key policy step in reducing the scale of the illicit market and diminishing the profits for organised crime. In contrast, equally vocal voices urge the banning of environmental products to prevent their exploitation and sale in order to reduce the profits for questionable and/or illegal business operators. This demonstrates how fragmented and often contradictory the discussion of illicit markets remains when the same sets of economic principles are arguably present in all of them.

These contradictions reflect the fact that responding effectively to illicit markets, with their complex and generally hidden equations of supply and demand, is a challenging process: there are no quick fixes and, as many experts have pointed out, what is required is a package of demand reduction, economic incentives, law enforcement and political initiatives. Calibrating and financing such solutions in a context where global policy makers have many other issues on their agenda is a difficult task to say the least. Policy responses to illicit markets are clearly challenging, and to date no single solution in any market has proved entirely successful. Indeed, some analysts have suggested that there may be no solution and illicit markets can only ever be 'managed'. The public and policy makers remain largely ignorant as to how illicit markets operate or what can be done to stem them. Consequently, and in part also due to the failure of any single approach to present a holistic solution, illicit markets typically invite simplistic responses. Politicians and populace repeatedly declare that 'something must be done', while usually meaning that something must be *seen* to be done.

Conceptualising Militarisation

Given the paucity of real success when it comes to stemming illicit markets, an important initial point to make about military-style responses is that they are in large part a result of the perceived (or actual) failure

of other strategies. Police and other state agencies across the spectrum are under increasing pressure to devise effective responses. A difficult feat when criminal markets, and the powerful pull they exert, constitute a key and largely unresolved policy question. Militarised responses occur because states perceive their options to be limited, in contexts where public and often international pressure to take action is great.

Many governments forced to implement policy responses to the emerging array of illicit markets have, by default, opted for militarised solutions. However, defining a 'militarised solution' in this context is difficult. Does it include cases where politicians or policy makers talk tough, evoking the metaphor of 'war', as was the case in the so-called 'war on drugs'? Is a situation militarised when civilian agencies, like forest or environmental departments, adopt tactics and operational styles that are military or paramilitary in nature, reflected in dress, weapons issued, or how they operate? Or, can militarisation only be said to have occurred when there are 'boots on the ground', soldiers, airmen or sailors deployed to respond to a crisis arising from an illicit market? The latter is currently the case in several places: soldiers have been deployed in game parks across Africa, navies patrol the seas to prevent migrant smuggling (and to rescue migrants) and the crime of piracy, and paramilitary style forces are deployed to guard borders to prevent an array of different types of smuggling.

Militarisation of responses across different markets suggests that a similar set of calculations may occur in different places and in diverse illicit markets. If these factors can be identified, it may make our discussion of militarisation clearer, and may also answer the question why militarisation may be short-lived in some cases, developing into a different approach or ceasing altogether, or may deepen or be sustained in others. A key error of previous analysis of militarisation is that analysts are often too willing to take things at face value. Much of what has been written about the militarisation of responses to poaching, for example, draws on public statements, without closer analysis of military or security actors, or interviews with them. A more holistic approach is required, including better research on the security actors themselves and their motivations.

'Militarisation' should be understood to constitute a series of actions along a spectrum, a response which may change over time. But, how to conceptualise this process? First, we can seek to identify a series of common features that are acting together or separately constitute a model around which a better analytical understanding of militarisation in the response to

illicit markets and associated organised-crime can be built. The purpose of this chapter, which provides the background to the other cases presented in the book, is to propose such an approach.

MODEL MILITARISATION

The challenge facing the analysis in this area, as stated earlier, is that scholars often reach kneejerk conclusions about 'militarisation' without examining the data. That is not to say that militarisation does not occur, but that the process in which it does tends to be more contested and messy than is typically portrayed. It is a key to distinguish between three crucial sets of information which determine why and how militarisation occurs, and whether it is a phenomenon that is likely to be sustained or short-lived.

These three factors can be summarised very broadly under three simple monikers: 'war talk', 'strategic timing' and 'institutional interest'. The intersection between them is illustrated in the Fig. 2.1. Each is discussed in turn.

War Talk

Making war is generally accompanied by strong rhetoric, in part to identify and demonise 'the enemy', but also to mobilise or respond to popular sentiment. This is no different in the case of militarised responses to illicit markets and organised crime. Further, as in the case of war between states, bellicose talk may not lead to violence. It may instead be a response to popular sentiment that 'something should be done'.

It is, therefore, unsurprising that analysts typically focus on the use of 'war talk' in the context of militarised policy responses to illicit markets and organised crime. Part of the reason for doing so is that the research is relatively easy as quotes can be culled between newspapers and official speeches. However, although military discourse, including the use of the phrase 'war', may become widely used, it may not translate into militarisation—although it may reinforce this process later on.

It is a key to note that talk of 'war' may be as much a political as a practical response, at least initially. The 'war on drugs' did not per se mean the use of military resources, instead it heralded a tougher approach was to be adopted. In South Africa for example, rhetoric around the 'war on rhino poaching' has been interpreted by some analysts as suggesting
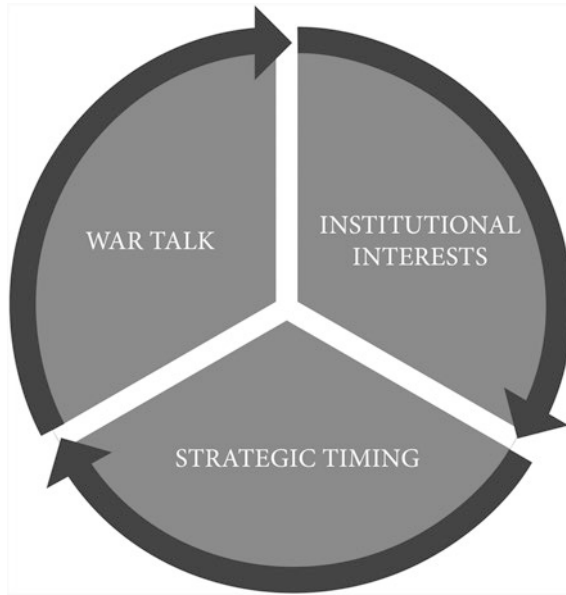
Fig. 2.1 Elements that interact to promote and sustain militarised responses to illicit markets and organised crime

that the response has become militarised or 'securitized' by the state.[3] The issue will always be one of degree however. As illustrated in later chapters there is evidence of this, mainly by militarising the role of conservation staffs themselves. In this and other cases, however, it is important to determine what the military intervention actually means on the ground and what role military personnel play. To take just one obvious example: soldiers deployed to guard a border have quite different implications to their use in 'hunting down' poachers.

In short, the use of strong language around 'war' and 'tougher responses' may not mean that those responses are either planned for or resourced on the ground. Nevertheless, it seems clear that 'war talk' often engenders a wider militarisation of responses. This is either because the 'talk of war' provides space within the relevant bureaucracies for planning more militarised options, or because the 'war talk' is a genuine public precursor to a process of internal militarisation that may have been underway for some time.

Analysing 'war talk' is therefore a key. In its more subtle forms it begins with words or phrases such as 'fight', 'combat' or 'destroy'. It evolves into discussions and statements which suggest 'war has been declared' on the relevant target: drug trafficking, rhino poaching, illegal migrancy or other illicit markets. The institutionalisation of 'war talk' is perhaps most clearly demonstrated by the use of the vocabulary of war in government policy or strategy documents.

'War talk' regardless of whether it engenders any significant levels of militarisation, causes human rights concerns to be downgraded or ignored, both by the institutions charged with protecting them and the political class. For example, while the degree to which the response in the Kruger National Park to rhino poaching has been militarised may be questioned, bellicose rhetoric has arguably led to a downgrading of human rights concerns that would be a prerequisite in the context of ordinary policing. For instance, once a poacher has been killed there are no formalised systems of investigation, something that would be a requirement in the context of democratic policing systems.

Finally, 'war talk' is hard to back down from, at least without a clear explanation of why it has not worked. Consequently, while it may be toned down, 'war talk' more often escalates over time.

Strategic Timing

Greater militarisation is almost always justified by the argument that the issue to be addressed is 'urgent'. A failure to act is portrayed as dramatically increasing the nature of the threat in the long-term. While military planners and strategists have long noted the linkage between military, political and developmental initiatives, particularly in counter-insurgency doctrine, such linkages are often hard to forge in the short term when action is demanded.

When 'urgency' is underscored, it is an obvious choice to deploy military resources as they are the arm of the state designed for rapid response. Arguments for the use of the military tend to suggest that militarised responses constitute a stop-gap measure until long-term political or developmental responses can be implemented. This underlying principle is not new in military planning and doctrine, and is an established strategic principle of counter-insurgency warfare.[4]

When approaches to illicit markets are seen through a military or security lens, it is common to believe that military action must be

accompanied by policy that focuses on 'winning hearts and minds'. Alternatively, military minds themselves perceive such conflicts to require primarily 'political solutions', while military force is needed to ensure a stronger negotiating position. However, counter-insurgency doctrine is not a perfect fit for responses to illicit markets. A key flaw in the 'stop-gap' approach is that developmental and political responses to illicit markets remain weakly developed—'buying time' must mean ensuring that other alternatives are developed in the interim.

However, justifying the use of military resources does require an acknowledgement that other responses are likely to fail, at least in the short-term. For example, in the case of combating piracy off the coast of Somalia, developmental and community-based responses were predominantly seen as too long-term (and thus difficult to raise funds for) when military and later militarised private security responses were shown to be effective. The arguments surrounding the response to piracy were clearly driven by 'urgency' as ships continued to be hijacked and their crews kidnapped without an effective response being instigated. In this case, as in others, developmental responses were considered insufficiently immediate, and too difficult to implement, to be effective.[5]

The military nonetheless argue that they 'buy time' for other actors to respond. Consequently, militarisation is often sold as a strategic intervention at a particular point in the policy cycle. However, rather than being implemented within strict time limits, such interventions are often extended. Ironically, this occurs both when military solutions are working and when they are not. In the latter case, arguments that insufficient resources have been deployed create greater 'urgency' to do more.

In the case of piracy, more militarised responses were successful in reducing the volume of incidents. In this context, discussion of developmental and community-based responses in this context, although necessary to show that a wide-set of alternatives were being considered, were arguably merely symbolic, with few resources (despite elaborate costed plans) supporting them.

However, the success of militarised responses to piracy should be regarded as the exception. More commonly the deployment of military resources and strategies has not halted illicit markets, rather it has created new complexities, including the thorny issue of collateral damage and human rights abuse. The latter may be managed and mitigated in military-style engagements which show success relatively quickly, but are difficult to sustain in the long-term.

Equally, 'urgently required' militarised interventions may have unintended consequences. For example, while ultimately not implemented, the proposal to bomb smugglers' boats along the Libyan coast would likely have caused wider collateral damage, which could have included fuelling anti-western sentiment in an already fraught political context.

Institutional Interests

A similarly murky question to consider is the degree to which militaries may seek out a role for themselves. In the case of piracy, for example, faced with the cutting of naval budgets, some evidence suggests that navies quickly identified anti-piracy work as an area to justify continued funds. Indeed, those close to the naval response to piracy emphasised to the author that navies, struggling to demonstrate their relevance, were eager to engage in the fight against this threat.[6] Budgets and political influence were at stake that may have had little to do with piracy.

Cynically it is possible to view military involvement as the exercise of bureaucratic interests seeking to attract a greater portion of the national budget by showing that they make useful peacetime contributions. Institutional interests are, therefore, likely to play a role in determining how military and security agencies may respond to illicit markets, including trafficking, smuggling and piracy.

However, academic researchers have sometimes been too hasty to identify military institutional interests as driving responses to illicit markets. In the case of trafficking, this is illustrated by several analyses suggesting that the South African government's deployment of the military in the Kruger Park in response to rhino trafficking was partly driven by apartheid-era military and counter-insurgency interests. The latter conclusion is questionable. For their part, the military have appeared reluctant to take on wider duties given peacekeeping commitments, performing poorly at the limited border control task they were assigned, and lacked any recent counter-insurgency training and experience.[7]

The role of institutional interest is clearly typically a nuanced question, with different actors within relevant institutions often expressing different views. Despite evidence that institutional interests in the military, or certain units in the military, may influence institutional responses, it is risky to conclude that such interests inevitably drive militarisation. All may not be what it seems: some security interests may be opposed to militarisation, others view it as an opportunity for the military to

demonstrate its usefulness, while others may covet other benefits, including those linked to sustaining or protecting the illicit market itself. The latter is illustrated in the role of the military and the security establishment in wildlife areas in Zimbabwe. Here it appears that security actors interest in managing the illicit trade is based on a desire to reap illegal profits, rather than ending the trade itself.

It is also a key to consider the degree to which militarised deployments build or reinforce long-term interests in sustaining the conflicts they seek to address. The wide literature on war and conflict does suggest that bureaucratic interests within security establishments may act both to sustain conflict, and to construct wider military-industrial complexes[8] with strong links to private sector interests. In the modern age of warfare, where the private sector and the technologies it produces and sells are increasingly critical to national responses, such a coalescence of institutional interests is a strong possibility. For example, it is said to have occurred in the context of the role of private security companies in responding to illicit environmental poaching, although evidence of direct links between current military interests and companies in the environmental sector require more investigation.

Analysing institutional interests within the security sector can be difficult. Security institutions seldom speak with one voice. Different actors within them may have different interests. Increasingly, in some contexts security actors may be beneficiaries of the very illicit markets that they claim to be acting against.

Constrained Militarisation

The militarisation of responses to illicit trafficking and illicit markets more broadly is a feature of these three overlapping factors—war talk, strategic timing and institutional interests. Acting alone they may provide some opening for the growing militarisation of responses. However, acting together they suggest a deeper and more sustained process of militarisation in which each element reinforces the others. So, actions in one area impact on developments in the others, creating a cycle of increasing militarisation which may be hard to reverse. The use of war rhetoric provides the justification for military actors to seek greater involvement, either on the grounds of 'buying time' or 'securing the future for development', concepts drawn from counter to insurgency doctrine. Complex and sometimes contradictory institutional interests may shape and sustain

the security response. Such interests will impact on how 'war talk' evolves and how the strategic timing of military-style policies and deployments are extended.

The importance of building better analytical frameworks to understand processes of militarisation and securitisation of the response to illicit markets is undoubtedly key. In the absence of an effective set of tools to respond to them, illicit markets will continue to grow. In this process, there will be a place for militarised responses. However, better methods of determining clear goals for such responses are required, together with an understanding of their inherent limitations and an analysis of the drivers behind security actors as the providers of solutions in a conflicted policy arena. The result must be the promotion of a wide-set of more coherently linked responses beyond a simple knee-jerk policy that seeks to deploy troops to solve challenges, often distorting the discussion of more viable alternatives in the long-term.

NOTES

1. This is the general consensus of both the academic and policy literature, although there is far less agreement as to what proportion of global GDP is derived from illicit economies. For an overview of different illicit markets, see United Nations Office on Drugs and Crime (UNODC) (2010), *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, United Nations, Vienna. One of the most accessible and important studies of the growth of global illicit activities remains M. Naím (2005) *Illicit: How Smugglers, Traffickers and Copycats are hijacking the global economy*, New York: Doubleday.
2. This neat term was first used by Nils Gilman. See N. Gilman, J. Goldhammer and S. Weber (eds) (2011), *Deviant Globalization: Black Market Economy in the 21st Century*, New York: Bloomsbury.
3. A good example is J. Humpreys and MLR Smith, 'The 'rhinofication' of South African security'', *International Affairs*, Vol 90, No 4, July 2014.
4. The literature on counter-insurgency warfare is extensive. A good introduction with reference to recent conflicts is D. Kilcullen (2010) *Counter insurgency*, New York: Oxford University Press.
5. Based on the authors own experience of engagements with donors and other stakeholders in Somalia and Kenya during the period in which more effective responses to piracy where being debated.

6. Of course this would have varied between navies, but certainly was a consideration for some. Interview, ex-naval officer and now UN official, Nairobi, July 2012.
7. M. Shaw and J. Rademeyer, 'A Flawed War: Rethinking 'green militarization' in the Kruger National Park', *Politikon*, Vol 43, No 2, 2016, pp. 173–192.
8. A military-industrial complex is an informal alliance between a nation's military and the defence industry which supplies it, together a vested interest which seeks to influence policy.

Author Biography

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Wildlife Crime

Militarised Responses to the Illegal Wildlife Trade

Jasper Humphreys and M.L.R. Smith

There is a unique strategic conundrum at the heart of the protection of wildlife and the interdiction of illegal wildlife trafficking (IWT): to survive wildlife needs the altruistic engagement of humans to combat the actions of other human beings for its ultimate defence. Part of this protection includes the controversial use of force, sometimes referred to as 'militarisation'.

As the volume of IWT, either dead or alive, has risen to be the fourth highest illegal trade classification, worth between $10–20 billion per annum, the phrase 'militarisation' is increasingly applied to describe counter-measures. While 'militarisation' generally implies the use of force, it spans a wide terrain from the actual deployment of violence through the use of guns to conceptual critiques of counter-poaching, such as 'green militarisation' and 'green violence', which carry a negative connotation.[1]

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Here, the suspicion is that militarised responses to IWT might have a negative impact on communities because there is a failure to distinguish between poaching for profit and poaching for subsistence. Although IWT includes luxury products such as crocodile-skin boots, pashminas, shark-fins and turtle eggs, as well as the 'grey' area of wildlife traded for 'canned' hunting, it is also a source of food, clothing or medicine for millions of people, the majority from the poorest communities in the world. Furthermore, for some communities IWT constitutes a key source of income, either to just make ends meet or as a business that pays handsomely.

Conversely, with the global proliferation of small arms, poachers can easily obtain rifles and AK 47's for hunting and self-protection. One account of the overlap between the drugs trade and turtle egg raiding in Mexico describes how hundreds of *hueveros* (egg snatchers) arrived on the beach with machetes and guns blazing.[2]

There are a number of IWT source countries in which the rangers either do not carry weapons, such as in Colombia, or where the rangers are virtually non-existent, such as in Central America. However, an overview of today's 'militarised' counter-poaching clearly demonstrates that the main focus is inexorably on central and sub-Saharan Africa. This is hardly surprising given that Africa hosts the largest proportion of the world's megafauna which attracts the most aggressive poaching and 'militarised' counter-measures.

Although IWT affects a wide range of species, the main focus of 'militarised' counter-poaching is on high-profile species such as elephants, rhinos, lions, tigers and snow leopards.

These are not, however, the only casualties of IWT. The death-toll of environmental activists fighting vested interests is rising alarmingly, and park rangers are no exception (related reasons, facts and figures are discussed in an accompanying chapter by Julian Rademeyer).[3]

However, to bracket park rangers and private firms specialising in conservation security with environmental activists taking on commercial interests runs into a maze of conceptual and definitional issues. These issues run a gamut from the 'identity' politics linked to history and culture, to the fundamental issues relating to basic livelihoods, namely land-ownership, food and water provision which are intrinsically linked with poaching and IWT.

Historically, poaching and the wildlife trade have evolved in the context of incremental land enclosure and criminalisation, which intersects with a range of motivations such as subsistence, financial gain, and

resistance to wildlife protection laws. All these issues flow from the never ending legal conflict surrounding ownership of both wildlife and the land on which it lives that began with Roman law concerning *res nullius* (nobody's property) versus *res publicae* (the property of everyone).

In a definitional sense there is a difference between poaching and trafficking, even though both form a distinct part of a distributive chain and rely on stealth and evasion as opposed to confrontation (unless under attack). Trafficking is the loose generic term for the illegal transportation and distribution of wildlife, while poaching refers to the action of taking wildlife that is under private or state custody. In the case of creatures from the Earth's oceans, legally regarded as 'mare nostrum' (everyone's sea)—apart from territorial waters—protection is in theory provided by United Nations World Charter for Nature.

The 'militarisation' and 'securitisation' of IWT is sometimes referred to as a 'war' on behalf of wildlife, an image with deep historical roots. Nick Steele, a legendary former South African conservationist and pioneer of the modern 'conservancy' model of farms/ranches that combine husbandry of wildlife and cattle, developed the 'Farm Patrol Plan' during Apartheid, in which he persuaded the (white) ranchers to join forces in para-military style to protect their farms from poaching and political turmoil. Steele thereby entwined 'militarised' conservation with broader national security in a manner which is echoed in today's rhino and ivory 'wars' in South Africa and Kenya, respectively.[4]

Today, conflict and crime are increasingly prevalent in wildlife conservation as poachers and traffickers exploit 'ungoverned spaces', especially in Africa. For example, the heavy infiltration of Kenya's numerous 'badlands' border areas has led to a surge of 'weaponisation' in the country's wildlife protection, a trend replicated in South Africa. Additionally, these conflicts have been fuelled by the circulation of vast numbers of small arms in Africa that have been part of the reason why US Africom has stealthily assembled a chain of small and low-visibility 'lily-pad' bases to prosecute pursue a 'shadow' war, and the British Army is using Kenyan 'conservancies' for training purposes.[5,6]

'Militarised' counter-poaching is, therefore, impacting on national security in Kenya and South Africa, through either the use of state resources such as the police and armed forces, or the increasing proliferation of private security firms in the industry.

General 'militarisation' is thus overlapping with counter-poaching 'militarisation', fuelling the rise of the tendentious terrorism-wildlife narrative, promoted by President Obama and Hillary Clinton when

she was United States Secretary of State and echoed around the world. Suggestions that Al Shabaab were directly involved in the ivory trade have been effectively dismissed, suggests that both the Lord's Resistance Army (LRA) and the 'janjaweed' are terror organisations with a political agenda as opposed to being cut-throat criminals.[7, 8, 9]

Clearly, warfare itself is one of the reasons wildlife is becoming critically endangered. A report by Conservation International, a leading US-based conservation organisation, showed that 80% of the armed conflicts between 1950 and 2000 occurred in areas designated as biodiversity 'hotspots' containing particularly diverse ranges of flora and fauna.[10]

While war is a killer for wildlife, it is also tempting to view IWT counter-measures as a specialist form of counter-insurgency. 'Militarised' counter-poaching and counter-insurgency can seem mirror-images of each other, sharing a heightened rhetoric and the idea of winning 'hearts and minds', christened as 'armed social work' by counter-insurgency specialist, David Kilcullen.[11]

The dynamics of poaching and 'lootable' wildlife resources have become entwined with the ever-growing 'shadow' economy of transnational criminal networks, especially in countries and areas that have been 'wasted'. These 'wastelands' can either occur through conflict, such as in central Africa, or severe deprivation, as in parts of Mexico and much of Central America. In these 'wastelands' the absence of an effective and centralised authority makes them, in the view of political geographer Derek Gregory, 'pre-constituted as fallen, violated and damaged, always and everywhere potential targets for a colonising capitalist modernity'. Furthermore, the state's monopoly of violence may have collapsed, leading Chojnacki to identify a position where 'non-state actors (warlords, local and ethnic militia) are able to establish alternative, territorially restricted forms of centralised violence'.[12,13]

The area where 'militarised' counter-poaching and militant conservation mingle, notably in the Sea Shepherd marine conservation organisation and its opposition to whaling, raises thorny issues of moral and legal ambiguity surrounding the use of force in the form of 'eco-terrorism'. Furthermore, 'militarised' counter-poaching broadly follows trends in late-modern warfare that conforms to 'man-hunting' that target individuals or groups, typically demonstrated in the rise of drone usage. These have been labelled by Derek Gregory, as 'the individuation of warfare', characterising 'man-hunting' as 'a new form of networked (para) military violence'. In various ways the essential 'hunting' element within

counter-poaching has, therefore, been 'legitimised' by developments in modern military tactics as well as relentless media coverage.[14]

The words 'militarisation' and 'securitisation' are used interchangeably to describe the application of force, however, there is a difference: 'militarisation' reflects the political process by which a society prepares itself for conflicts that is led by the armed forces; 'securitisation', on the other hand, is the process whereby society in general adopts a range of security measures for its protection.

Clearly, there is a difference in emphasis between 'militarisation' and 'securitisation' which reflects the degree of responsibility for initiating violence or conflict. Taking the case of Sea Shepherd, the organisation is pursuing a strategy of 'militarisation' to 'securitise' the oceans for marine life. This contrast was even clearer in the royal hunting 'chases' of England up until only 200 years ago. These 'chases' were zones of exclusion reserved for the monarchs and their friends for hunting—mostly deer—'securitised' by draconian laws that were upheld by a 'militarisation' of rangers and wardens, a structure that continued when Britain's 'landed gentry' expanded.[15]

The idea of someone quietly infiltrating privately owned land, whether to take wildlife or rob, is an atavistic provocation for protection and the use of force, whether or not the facts actually support the reaction. In early eighteenth century Britain social instability prompted a crime-wave, including poaching on private estates. The subsequent vicious reaction of the 'landed gentry', give full reactionary rein by the draconian Black Act that rapidly became law, demonstrated poaching's link with the idea of property, and its power as catalyst of 'militarisation' as a riposte, including 'shoot-to-kill'.[16]

Critics of 'militarisation' in wildlife protection argue that the use of force is synonymous with coercion and violence, and that 'militarised' counter-poaching can be prioritised to the detriment of community-based natural resource management (CBNRM) while creating a 'war' narrative. This implies that force is being applied within a militaristic dynamic of 'weaponising' counter-poaching that works hand-in-hand with social exclusion.[17]

From these various perspectives a 'militarisation matrix' merges those factors in wildlife conservation with land ownership and socio-economic issues as well as intangible cultural and historical elements. Alongside these are the market forces that have transformed a handful of high-value species into 'commodities', due to either to their importance to

tourism, their desirability as body parts, or both. Here, it is important to remember that a sizeable proportion of the wildlife in prime safari fee-paying South Africa and Kenya live on private land, making the struggle between poachers and land-owners at heart a 'commodity conflict'.

These landowners are Africa's 'landed gentry' who in the past relied on agriculture, especially cattle ranching, as their main revenue stream. However, with globalised competition for their products, and climate change eroding the soil, income streams have been increasingly repositioned to focus on tourism based on the luxury safari 'experience'.

For this 'militarisation' acts not only as protection against poachers but, just as importantly, against rising levels of crime. Robbery in a safari camp is not only bad for business but it also inevitably conveys a generalised message of ineffective policing and insecurity.

Combating poaching and IWT is increasingly attracting high-level political attention. The year 2013 marked a watershed, starting with the London Conference on the Illegal Wildlife Trade, whose lack of concrete financial commitments was superseded in July by President Obama signing an executive order authorising $10 million dollars to be spent on various counter-poaching initiatives.[18]

'Militarisation' is a 'hard power' strategy to protect these valuable 'commodities', but it is expensive. In general, wildlife protection terms this means that the greater the price-tag on an animal, the more protection it is likely to receive. For example, $330 million was earmarked for the Global Tiger Initiative following a summit in St. Petersburg hosted by Vladimir Putin in 2010]. At the other end of the scale, the Brazilian three-toed sloth which lives in the forests of eastern Brazil is all but ignored as its numbers and habitat disappears, with various species such as the pangolin and turtle in the mid-range of getting some protection but certainly not enough.[19]

Furthermore, there are large numbers of former military personnel who bring their particular expertise honed in Afghanistan and elsewhere to wildlife protection and conservation. Nir Kalron, a former Israeli paratrooper who runs the Maisha Consulting wildlife security business, talks about the transition from the Israeli Defence Forces to conservation as 'one of natural continuity: the standards and ethical code I was taught in special operations teams and the sense of fighting for just causes were and still are the core values that guide me'.[20]

When looking at 'militarisation' and counter-poaching there are several key conceptual conundrums. First, should IWT be viewed as a crime

and dealt with normal legal processes, or as a war and insurgency waged against the state that might entail kinetic engagements beyond the strictly judicial?

Poaching can involve the penetration of poachers from outside the country, arguably suggesting that the problem should be framed in the warlike discourse of external threat. However the problem is also internal, as poaching involves the loss of and damage to property, which in the case of the rhino and elephant, is an extremely valuable resource both in wildlife and commercial terms. Clearly, this registers a criminal dimension that seemingly calls for traditional policing, rather than military methods.

There is often confusion surrounding the essence of 'militarisation'—the application of force. In *The Utility of Force*, General Rupert Smith notes a 'deep and abiding confusion between *deploying* force and *employing* force. In many cases forces have been deployed and then force has not been employed'.[21]

Though frequently considered synonymous with military power and organised violence, force is just one element of any strategy where there is a clash of wills and interests. While force can be applied mentally, in its physical form it can be understood in a variety of ways: as a revelation of strength and power or as an act of compulsion in a demonstration of influence which can be deployed just as much in a diplomatic context as in a violent setting.

The incredibly high value of rhinos and other mega-fauna means their targeting can be categorised as 'mega-poaching'. A supra category separate from other wildlife, their value is driven by strong and rising demand from the Far East for body parts, which has increased the involvement of sophisticated crime syndicates. The rest of poaching can be broadly defined into two main categories governed by historical definitions and perceptions of legal and illegal hunting. The first category, 'subsistence' poaching, meets the needs of local communities and frequently relies on traps and snares because the target is often small game. The second category is 'commercial' poaching, operated by organised groups that target valuable species, such as rhinos and elephants. These commercial poachers use different technologies to hunt, ranging from differing calibers of firearms, to GPS and mobile phones.

In simple terms, poaching can be defined as the hunting of any animal not permitted by the state or private owner. However, in practice, poaching is anything but simple. As a commercial enterprise poaching involves

many people, organisations and networks. Various categories tend to be thrown together under the heading 'poachers'. However, there is a large difference between the 'shooter', who might receive just a few hundred dollars for a successful kill, and those further up the 'supply-chain' receiving thousands of dollars.

However, the lines between different poaching identities are eroding: for instance, there is now a version of 'subsistence' poaching that overlaps with commercial poaching in response to the global demand for bush-meat that is more and more accessible as roads and transportation networks expand into terrain previously considered impenetrable.

Poaching is typically not socially threatening, has no implicit intention to murder, rape or kidnap, and does not involve any other human-centric crime. Consequently the poacher might be viewed by some sections of society, especially the poor, not as a criminal but as an opportunist driven by a normal human desire for economic survival. From that perspective, counter-poaching risks being viewed as an exercise in para-military 'pacification' supporting the interests of a minority, as in South Africa and Kenya where the safari tourism industry is dominated by the white population.

The arguments about 'green violence' and 'green militarisation' stem from fresh questioning around the phrase 'environmental security'. Originally anchored in the work of the Toronto Group and Thomas Homer-Dixon into the links between natural resources and conflict, 'environmental security' gave rise to phrases like 'resource wars' and 'greed versus grievance'.[22]

Subsequently, the focus has turned to who and what was being secured. In conservation terms this re-evaluation process started to incorporate thinking about intervention, which led Australian 'green' philosopher Robyn Eckersley to ask: 'might the wilful or reckless perpetration of mass extinctions and massive ecosystem destruction be regarded as "crimes against nature" such as to support a new form of ecological intervention and an international environmental court? If the international community condemns genocide, might it one day be ready to condemn ecocide'?[23] The rising concern regarding wildlife protection and illegal trafficking coincides with the evolution of wider social and political ideas within the international system. The Cold War 'high politics' of superpower summitry, détente, and arms control have been replaced not only by the problems of insurgency and fundamentalist terrorism, but also by issues like the environment, biodiversity, climate change, and population growth.

The rising interest in the environment has connected with broader ideas of the responsibility of humans for animal protection, meaning awareness surrounding wildlife protection has dramatically increased since the first conservation treaty to regulate salmon fishing on the Rhine was signed in 1889.

In recent years there has been a marked increase in activity to halt IWT through 'soft' power diplomacy and the threat of sanctions aimed at protecting the environment through a range of treaties and international declarations. There is even a move to create a global environmental legal enforcement framework led by the Rome-based International Court of the Environment Foundation.

The Convention on International Trade and Endangered Species of Wild Fauna and Flora (CITES) is the corner-stone of 'soft' power-control of the wildlife trade. Established in 1973 and now celebrating nearly 200 signatories, CITES aims 'to ensure that international trade in specimens of wild animals and plants does not threaten their survival'.[24]

However, CITES demonstrates the weaknesses of the 'soft power' approach as it not only relies solely on goodwill and co-operation among signatories, but it also lacks the means of enforcing compliance in the face of mounting and complex threats to animals which either did not exist or were unknown when CITES was originally established.

Furthermore, it seems a paradox that in Colombia, a country with a long history of civil wars and extreme violence, the rangers opted for 'soft power' by refusing to carry arms for fear of attracting unwanted aggression.

As an example of 'hard power', in the 1980s Botswana initiated counter-poaching operations against well-armed criminal gangs taking advantage of regional conflict and instability to boost sales of ivory and rhino horn to the Persian Gulf and Far East.[25]

The Botswana Defence Forces (BDF) was given an explicit mission to protect the country's wildlife, gradually evolving an effective counter-poaching strategy using small-unit foot patrols of skilled trackers from Botswana's hunter-gatherer society supported by helicopter-borne rapid reaction forces.

Within months dozens of poachers had been killed or captured, and poaching dramatically declined. The Botswanan anti-poaching effort was not only characterised by good organisation and well-trained troops, but by strong political support organised by Lieutenant General Ian Khama, former head of the BDF and current president of Botswana.[26]

While 'militarisation' is a strategy of counter-measures to combat a particular problem, in Africa these measures are deeply connected with commercial pressures that have evolved since the 'white man' started colonising the continent.

The European colonisers introduced game laws to stop indigenous hunting, with The Dutch East India Company (VOC) bringing in the first game legislation in South Africa as early as 1657. By the mid-nineteenth century both the Orange Free State and the South African Republic (ZAR) had also introduced game laws.[27]

With growing concern about the decline in wildlife populations, a split began to emerge at the end of the century between the 'preservationist' supporters, who wanted to preserve wildlife for sport, and the 'conservationists' who wanted to conserve wildlife for its own sake.[28]

This struggle gave rise in Britain to the well-connected Society for the Preservation of the Fauna of the Empire (SPFE), which organised the ground-breaking 1900 Convention for the Preservation of Wild Animals, Birds and Fish in Africa signed in London. This was followed in 1933 by the Agreement for the Protection of the Fauna and Flora of Africa.[29]

The London Convention was broadly a 'preservationist' document, while the Agreement was 'conservationist'. The former ushered in 'reserves' as areas for game management and hunting to the exclusion of humans, while the second initiated 'national parks' that encouraged visitors with no hunting allowed.[30]

Overall, the legislation handed over the administration and enforcement of wildlife management to white settlers or the colonial authorities. In economic terms it turned wildlife from a direct resource for trade and food into one based on sport and tourism, thereby stopping indigenous Africans from hunting.

This process not only had a highly negative impact by transforming indigenous hunting into poaching, but was also another way for white settlers to 'securitise' the land, which over time became inalienable. Simultaneously, this established a 'code' that entrenched western attitudes and etiquette in hunting as appropriate and correct.

To analyse the pathways of 'militarised' responses to IWT, three examples will be investigated: first, the 'landed gentry' of Kenya; second, the 'protector-fire-fighter' in Central African Republic (CAR); and third, 'shoot to kill' in Botswana and in India's northeastern region of Assam.

The 'Landed Gentry' of Kenya

Within the 'landed gentry' of sub-Saharan Africa today the management and conservation of wildlife, with its closely linked tourism industry, is not only tied to the ownership and 'securitisation' of their farms and ranches but also forms a key element of their self-definition.

However, this process effectively 'balkanises' large parcels of land, creating resentment that feeds into a perpetual loop of 'militarisation' between the land owners, pastoralists and poachers. A 2011 survey demonstrated that in Kenya, 80% of which is arid or semi-arid, 40% of Laikipia County, heartland of Kenya's 'landed gentry' and totalling almost one million acres, was owned by just 48 large ranches, including some well-known names such as Ol Pejeta, Lewa, and Solio.[31]

The protection of these valuable land-holdings in Kenya, complete with luxury safari camps and wildlife, has become increasingly 'militarised' in step with rising levels of poaching and insecurity both internally and externally.

'Militarised' counter-poaching has not only created islands of 'securitisation', within these islands the effective administration of law and order has become privately controlled in deed if not in name.

In Kenya's rural areas such as Laikipia, the security void threatening both humans and wildlife is filled by the Kenya Police Reserves (KPR), an auxiliary force separate from the Kenya Police Service which consists of unpaid volunteers operating within their own areas. KPRs are provided with arms by the state to support the police where the police presence is low.[32]

However, the KPR is largely ineffective, as a report in 2013 noted: 'resources are often lacking for the training, payment, and proper supervision of KPRs, allowing indiscipline to flourish and leading people to turn to the private sector or other grassroots militias for protection'.[33]

Increasingly, as the number of 'conservancies' have proliferated they have co-opted the KPRs, with their legally accredited guns and ammunition, further 'militarising' Laikipia. The 2013 report noted that 1137 KPR's were registered as working at conservancies, with 158 at Ol Pejeta and 204 at Lewa. In additional, 279 guns were registered, again a sizeable number accredited to Ol Pejeta and Lewa.[34]

Therefore, through the 'militarisation' process, state security resources have been diverted to support the 'landed gentry's' conservancies, which, in the cases of Lewa and Ol Pejeta, have also been hosting British

Army training exercises. In this way Kenya's conservancies are becoming increasingly interlinked with national security, as envisaged by Nick Steele's earlier 'Farm Patrol Plan'.[35]

In the absence of proper police training, KPRs have been trained by both the Kenya Wildlife Service at its Manyani headquarters and British ex-soldiers who served in Afghanistan at Lewa. The 2013 report noted that 'there is no control over the doctrine, mandate, and methods being taught, and military training methods do not necessarily translate into adequate training for a policing or conservancy role. Furthermore, it is unclear who authorizes and arranges this training' (these issues are discussed in greater detail in the accompanying chapter, 'Kenya's "war on poaching": militarised solutions to a militarised problem?').[36]

The Protector-Fire-Fighter

In May 2013, the world recoiled at images of the mass slaughter of twenty-six elephants in Dzanga Bai, a favoured and world-famous forest elephant watering-hole in Central African Republic's (CAR) Dzangha Sangha national park. The event coincided with a surge of vicious factionalism between the mostly Muslim Seleka and Christian Anti-Balaka militias in the country; just months after the former had seized power in the capital Bangui.[37]

Since its opening in the late 1980s, Dzangha Sangha has been managed by the World Wildlife Fund (WWF), headquartered in the village of Bayanga. Fears that war and anarchy would cause fragile wildlife populations to crash seemed confirmed after Seleka forces looted the WWF headquarters in April 2013, followed a month later by the Dzanga Bai elephant massacre carried out by Sudanese rebels associated with Darfuri poachers.

To say the organisation of counter-poaching in a post-conflict zone such as CAR is exceedingly difficult and complex is an under-statement. For example, insurgents controlled border-crossings with enough firepower to hold back the troops of the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) while simultaneously trafficking diamonds, timber and ivory. Furthermore, weapon seizures in eastern Cameroon, along with the advent of entrepreneurs exploiting loopholes in elephant hunting permits, supported evidence that proxies operated in CAR on behalf of national officials and armed groups.[38]

Poaching in Dzanga Sangha ranges from subsistence internal bush meat hunting and opportunistic elephant poaching, to organised cross-border ivory harvesting. Meanwhile, the roots of poaching in CAR are familiar: abject poverty and weapons proliferation, compounded by years of political instability and underdevelopment.[39]

Providing overall security in Dzanga Sangha is not WWF's mission, but in practice it gets drawn into complex capacity reinforcement roles as any serious attempt at combating organised poaching will call on intelligence gathering, technological expertise and para-military know-how.

Circumstantial evidence shows that the extent to which the economics of conflict can be controlled through counter-poaching in CAR depends upon the precise role of ivory relative to other natural resources in funding armed groups. Here the ever-expanding demand for bush-meat that absorbs all wildlife like an out-of-control forest-fire makes the likelihood of a 'silent forest' across central Africa in the not too distant future all too realistic.[40]

Shoot to Kill, Botswana

The Botswana Defence Force's (BDF) 'hard power' counter-poaching strategy of the 1980s has evolved into an opaquely unofficial but operational 'shoot-to-kill' policy in a country that is constitutionally democratic but heavily influenced by the descendants of Botswana's first president, Sir Seretse Khama.

'Shoot-to-kill' has been endorsed by the colourful environment, wildlife and tourism minister, Tshekedi Khama, brother of Botswana's President Ian Khama. Khama told British filmmaker Tom Hardy, while making a documentary called *The Poaching Wars*: 'it's a culture; we have to kill the supply to starve the culture. That is one of the reasons why, in Botswana, with our anti-poaching unit, we don't necessarily interrogate the poacher. That is a position we adopted to send a clear message to say, if you want to come and poach in Botswana, one of the possibilities is that you may not go back to your country alive'.[41]

The hard-line policy on poaching is a reflection of Botswana's shrinking economy, which faces a decline in revenue from diamonds, its main industry. Tourism, the second-highest revenue earner, contributes 15% of the country's gross domestic product and provides thousands of formal and informal jobs.[42]

The Kavango-Zambezi Transfrontier Conservation Area, comprising the area where the borders of Angola, Botswana, Namibia, Zambia and Zimbabwe meet, has 200,000 elephants, more than anywhere else in the world.[43]

While the 'militarisation' of Botswana's counter-poaching is deeply layered, including the involvement of the feared Directorate of Intelligence and Security Services, Botswana's counter-poaching has brought it into conflict with its neighbours, with claims that the BDF has illegally entered Namibia.[44]

Shoot to Kill, Assam, India

In Assam's Kaziranga National Park, the local population is bearing the brunt of a 'shoot-to-kill' policy, say human rights activists and local politicians.

The park has two-thirds of the world's one-horned rhinos, as well as the highest density of tigers in any protected area in the world, together with a sizeable elephant population. Its 1200 guards have largely kept poaching under control: between 2005 and 2012, 134 rhinos were shot, while 66 suspected poachers were killed and 500 arrested.[45]

While the guards say they are 'outgunned' by the poachers' modern fire-arms, their immunity from prosecution in any poaching-related matter, as well as a cash bonus related to killing or wounding poachers, has raised significant concern. However, Bishan Singh Bonal, a former director of Kaziranga Park, characterises the situation as a 'war' between forest guards and poachers, stating: 'if they see our guards they fire to kill, so we have no option but to retaliate'.[46]

Does Militarisation Work?

First, the increasing privatisation of counter-poaching inevitably leads to a loosening of controls by state authorities, which in turn sees the criminal-model being gradually superseded by the counter-insurgency model, with its looser legal interpretations.

Second, the trend of wildlife conservation aligning itself with broader national and international security issues in the name of 'securitisation' could spawn a dangerous unintended consequence: the legitimisation of wildlife officers as 'targets' in the eyes of subversive elements.

Third, while 'shoot-to-kill' sends an unambiguous message, it also runs the risk of creating the perception that authorities care more about wildlife than humans. Connected to that, in a classic analysis of 'social bandits', the historian Eric Hobsbawm said that poachers were often seen as 'men to be admired, helped and supported'. He pointed to the case of Mathias Klostermayr, an eighteenth-century 'social bandit' in Bavaria who terrorised hunters, game-keepers and anyone associated with game. For Hobsbawm, while Klostermayr's poaching was 'an activity peasant always regarded as legitimate, he was admired and helped'.[47]

Fourth, the strategic conundrum of crime versus insurgency in the context of counter-poaching is echoed in the fact that while wildlife populations are often regional, their conservation is nationally and internationally organised. Given the relative impotence of organisations tasked with halting IWT, it is only an over-arching, universal body with real power that can effect change: the United Nations. Here, the Central African Republic (CAR) can—for once—provide a positive example: in March and June of 2015, MINUSCA troops were used as partners by WWF-Dzanga Sangha to perform anti-poaching operations, contributing to patrols, seizures and arrests. Taking this further, bodies including the International Crisis Group have called on the UN, specialised organisations, regional states and the CAR government to create a cell within MINUSCA to fight against diamonds, gold, ivory trafficking—and 'militarised' poaching.[48]

In conclusion, Clausewitz's famous dictum of war being an extension of politics equally applies to counter-poaching, in that it is governed by the political and social resources harnessed to the issue. 'Militarisation' is just one of the many tactical options available in the counter-poaching process. As such it does not reside in a conceptual or intellectual vacuum, but rather is driven by the power (or lack of) the political and social forces identified by Clausewitz. Any judgement on the success or failure of 'militarisation' is, therefore, purely subjective.[49]

NOTES

1. C. Nellemann et al. (2014), 'The Environmental Crime Crisis: Threats to Sustainable Development From Illegal Exploitation and Trade in Wildlife and Forest Resources', *UNEP & INTERPOL Rapid Response Assessment*, United Nations Environment Programme and GRID-Arendal, p. 13.

2. I. Burrell (2013), 'Turtle conservationist shot dead 'by poachers' on Costa Rica beach', *The Independent*.

3. Global Witness, Deadly Environment, www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment; accessed 10th of September 2016.

4. M. Draper (1998), 'Zen and the art of garden province maintenance: the soft intimacy of hard Men in the wilderness of KwaZulu-Natal, South Africa 1952–1997', *Journal of South African Studies*, 24: 4, 1998, p. 821.

5. D. Vine (2015), 'American military extends its reach worldwide', Investigative Reporting Workshop, http://investigativereportingworkshop.org/investigations/lily-pads/story/lily-pads/, accessed 21st of June 2016.

6. J. Letai (2011), Land Deals In Kenya: The Genesis of Land Deals in Kenya and its Implication on Pastoral Livelihoods—A Case Study of Laikipia District, *International Conference of Global Land Grabbing*.

7. J. Zients and C. Goldfuss (2015), US takes new steps to combat wildlife trafficking, White House Blog, https://www.whitehouse.gov/blog/2015/08/05/us-takes-new-steps-combat-wildlife-trafficking, accessed 10th of June 2016.

8. 'Secretary Clinton hosts wildlife trafficking and conservation', U.S. Department of State http://www.state.gov/r/pa/prs/ps/2012/11/200355.htm, accessed on the 2nd of June 2016.

9. T. Maguire and C. Haenlein (2015), 'An Illusion of Complicity: Terrorism and the Illegal Ivory Trade in East Africa', *RUSI Occasional Paper*.

10. T. Hanson et al. (2008), 'Warfare in Biodiversity Hotspots', *Conservation Biology 23 (3)*, pp. 578–587.

11. D. Kilcullen (2006), "Twenty-Eight Articles: Fundamentals of Company Level Counterinsurgency," *Small Wars Journal*, p. 5.

12. G. Derek (2010), 'War and Peace', *Transactions of the Institute of British Geographers*, 35, p. 166.

13. S. Chojnacki (2006), 'Anything new or more of the same? Wars and military interventions in the international systems, 1946–2003' *Global Security*, pp. 39–40.

14. D. Gregory (2013), 'The individuation of warfare', *Geographical Imaginations*.

15. E.P. Thompson (1977), *Whigs and Hunters: The Origins of the Black Act*, (London: Penguin Books).

16. Ibid.

17. R. Duffy (2015), 'Responsibility to protect? Ecocide, interventionism and saving biodiversity', *paper given at Political Studies Association Conference*, p. 12.

18. Executive Order—combating wildlife trafficking (2016), https://www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking, accessed 25th of May 2016.
19. Global Tiger Initiative (2010), 'As tiger summit closes in St. Petersburg, conservationists jubilant, cautiously optimistic on wild tigers' future', http://globaltigerinitiative.org/news/2010/12/as-tiger-summit-closes-in-st-petersburg-conservationists-jubilant-cautiously-optimistic-on-wild-tigers-future/, accessed 25th of May 2016.
20. N. Kalron (2015), 'Role of the Private Sector', *The Cipher Brief*.
21. R. Smith (2006), *The utility of force: the art of war in the modern world*, (London: Penguin), p. 4.
22. T. Homer-Dixon (1999), *Environment, scarcity, and violence*, (Princeton, NJ: Princeton University Press).
23. R. Eckersley (2007), 'Ecological intervention: prospects and limits', *Ethics and International Affairs*, 21: 3, p. 293.
24. Cites, https://www.cites.org, accessed on the 1st of May 2016.
25. D. Henk (2006), 'Biodiversity and the military in Botswana', *Armed Forces and Society*, 32: 2, pp. 278–279.
26. Ibid.
27. J. M. MacKenzie (1997), *The Empire of Nature: hunting, conservation and British imperialism*, (Manchester: Manchester University Press), p. 116.
28. Ibid.
29. Ibid.
30. Ibid.
31. J. Letai (2011), Land Deals In Kenya: The Genesis of Land Deals in Kenya and its Implicationon Pastoral Livelihoods—A Case Study of Laikipia District, *International Conference of Global Land Grabbing*.
32. K. Mkutu and G. Wandera, (2013) Policing the periphery: opportunities and challenges for Kenya Police Reserves, *Small Arms Survey Working Paper*.
33. Ibid.
34. Ibid.
35. J. Letai (2011), Land Deals In Kenya: The Genesis of Land Deals in Kenya and its Implicationon Pastoral Livelihoods—A Case Study of Laikipia District, *International Conference of Global Land Grabbing*.
36. K. Mkutu and G. Wandera (2013), 'Policing the Periphery', *Small Arms Survey*.
37. H. Osborne (2013), 'Elephant Herd Massacred in Central African Republic National Park', *International Business Times*, in 'Illegal Wildlife Trade and Conflict' (2016), *RUSI Whitehall Paper*.
38. Ibid.
39. Ibid.

40. Ibid.
41. J. Konopo, N. Ntibinyane and T. Mongudhi (2016) 'Botswana's "shoot to kill policy" against suspected poachers', *Mail and Guardian Centre for Investigative Journalism.*
42. Ibid.
43. Ibid.
44. Ibid.
45. J. Vidal (2016), 'Conservationists divided on royal visit to controversial Indian wildlife reserve', *The Guardian,* https://www.theguardian.com/environment/2016/apr/13/conservationists-divided-royal-visit-kaziranga-prince-william-kate-duchess-of-cambridge, accessed 25th May 2016.
46. Sanctuary Asia Magazine (2015), Vol. XXXV (4).
47. E. J. Hobsbawm (1965), *Primitive rebels: studies in archaic forms of social movement in the 19th and 20th centuries,* (New York: Norton), p. 169.
48. 'Illegal Wildlife Trade and Conflict' (2016), *RUSI Whitehall Paper.*
49. C. von Clausewitz (1976), *On War*, ed. and trans. M. Howard and P. Paret. Princeton, (NJ: Princeton University Press), Chapter One, Section 24, p. 87.

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Before graduating in 2010 with a War Studies BA, Jasper, aged 55, was a journalist for over thirty years, most recently on the London Evening Standard. During those years he travelled extensively, especially in southern Africa; here he not only saw the effects of conflict first-hand but developed a great interest in wildlife conservation and is currently writing a book that combines the fauna and history of the Northern Cape region of South Africa.

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An Unwinnable War: Rhino Poaching in the Kruger

Julian Rademeyer

A helicopter dips low over dense brush in the south of the Kruger National Park. On the ground below, an anti-poaching team and dogs fan out, moving slowly forward as they track a gang of poachers. The sun glints on an upraised rifle barrel. A shot rings out. Then another and another as the poachers frantically fire at the helicopter.

It was the third armed 'contact' that day. The pilot took evasive action and the helicopter was not hit despite at least five shots being fired at it. The poachers were quickly apprehended. Three firearms and a quantity of ammunition were seized.

South Africa's Department of Environmental Affairs described the 25 May 2016 incident—the second time a helicopter had been fired upon in the park—as a 'dramatic escalation in our fight against rhino poaching'

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and praised the pilots, the country's national parks authority, SANParks, and the police for 'sterling work in averting a catastrophe'.[1]

Two months later SANParks announced that 40 mm under-barrel grenade launchers would be fitted to assault rifles used by rangers pursuing poachers. They would be equipped with 'non-lethal' ammunition including stun and smoke grenades which could be used to '[stop] poachers hiding in the bush and will prevent the necessity of rangers exposing themselves and going into thick bushes after poachers'.[2]

The Kruger National Park is the epicentre of a complex and intensifying 'war on poaching'. South Africa is home to more than 70% of the world's last remaining wild rhinos and 79% of Africa's: an estimated 18,413 white rhinos and 1893 black rhinos.[3, 4] It is one of the country's greatest conservation success stories and one that is dangerously close to coming undone.

Between January 2006 and April 2016 at least 5460 rhinos were killed in South Africa, accounting for about 84% of Africa's total rhino poaching losses.[5] Roughly 60% of all poaching incidents in South Africa over the past 7 years have occurred in the Kruger National Park. Kruger has a population of around 8875 southern white rhino and 384 southeastern black rhinos, approximately 48.2 and 7.3% of the world's white and black rhinos, respectively.[6] Most are clustered in an 'Intensive Protection Zone (IPZ)' in the south of the park. The park has lost more than 3189 rhinos in the past decade and the population now appears to be declining despite a marginal drop in poaching figures recorded in 2015.[7] An academic paper has warned that if poaching rates continue at levels experienced in 2013 (when 598 rhinos were reported killed, now superseded by 1175 deaths in 2015), the park's white rhinos population will 'plummet to [between] 2879 and 3263 individuals … by 2018'.[8]

In 2015, officials recorded a 43% increase in poacher activity on the previous year.[9] They reported approximately 2466 'incursions'—evidenced by fresh spoor, shots heard and poacher sightings—and 137 armed 'contacts' between poachers and rangers, compared to 111 'contacts' and 202 arrests in 2014.[10] Kruger National Park officials conservatively estimate that at least 7500 poachers entered the park in 2015, compared to 4300 in 2014.[11] There were an estimated 1038 incursions in the first four months of 2016, compared to 808 in the same period in 2015.[12] Despite this, official statistics state that the park lost 826 rhinos in 2015—three fewer than the previous year—and 458 in the first eight months of 2016, compared to 557 over the same period in 2015.[13, 14, 15] However,

poaching incidents in a number of South Africa's provinces increased in 2016. At least 95 rhinos were killed by poachers in Kwazulu-Natal province in the first 8 months of 2016, a reported 20% increase on the same period in 2015.[16]

The crown jewel in South Africa's conservation strategies, the Kruger National Park, is the size of Israel or Wales, covering an area of 19,485 km². Insiders often refer to it dryly as the 'Republic of Kruger'. From the roads that snake past waterholes teeming with wildlife it is difficult to comprehend how vast the park is, and how challenging the environment can be to investigators and anti-poaching teams. Ken Maggs, the park's head ranger, states: 'To bring it home to people, I fly them to a rhino carcass. Then we get back into a helicopter and climb to 1500 feet or 2000 feet. The horizon gets rounder and the sky darkens and you see the vastness … The carcass below and the people around the crime scene become pinpricks and then vanish into the bush as you climb. There are no witnesses around, not a house in sight where you can question anyone. You are relying on spoor left by the poachers and any other physical evidence that you can find.'[17]

A 'Priority Crime'

Julius Malema, the leader of the Economic Freedom Fighters—a party he formed together with a number of disgruntled former African National Congress Youth League members who broke away from the governing party—has argued that for white people, 'black people are of a much lower worth than the rhinos'.[18] In response, South Africa's Minister of Environment, Edna Molewa has countered that 'it is clear the important issue of rhino conservation cuts across race and class. Rhino poaching has been declared a national priority crime and the success of any strategy rests on bringing all South Africans on board'.[19]

While Molewa is correct that on paper rhino poaching has been designated a 'priority crime', the history of conservation in the country and 'the wider challenges of economic and policy development in the country', mean the issue is 'nowhere near the top of the policy agenda'.[20] For the Government, and for most South Africans, there are far greater priorities: rising levels of violent crime, a stagnant economy, widespread unemployment, simmering racial tensions, entrenched corruption and dysfunctional police, defence, intelligence and prosecutions structures, to name but a few.

If budgets are an indicator of the importance of a portfolio, then environmental and conservation concerns are among the least of the Government's worries. South Africa's Department of Environmental Affairs was allocated a budget of just R5.9-billion for the 2015/2016 financial year, less than 1% of the national Government total.[21] By comparison, the defence and public safety budget is R172-billion. Only about R730-million of the environmental budget has been assigned to biodiversity and conservation expenditure, with R2786-million allocated to SANParks which administers 21 national parks, including the Kruger National Park.[22]

As the numbers of poaching incidents and incursions have increased, so the response has become increasingly militarised. In December 2012, SANParks appointed a retired army major-general, Johan Jooste, as head of 'Special Projects'. A 35-year veteran of the South African Defence Force (SADF) and its post-1994 incarnation, the South African National Defence Force (SANDF), Jooste was tasked with developing and implementing an anti-poaching strategy in the Kruger. 'Our approach was quite fragmented at the time,' says Maggs, who worked in the park for over 20 years leading anti-poaching teams and managing the SANParks Environmental Crime Investigations (ECI) unit, '[Jooste] brought his knowledge, experience and strategic thinking. He adapted military doctrine that could be applied practically in our situation'.[23]

In his first statement after his appointment, Jooste clearly outlined his position: 'The battle lines have been drawn and it is up to my team and me to forcefully push back the frontiers of poaching. It is a fact that South Africa, a sovereign country, is under attack from armed foreign nationals. This should be seen as a declaration of war … We are going to take the war to these armed bandits and we aim to win it'.[24]

This bellicose rhetoric is typical of statements by many SANParks and government officials in recent years. In 2010 the SANParks CEO at the time, David Mabunda, warned that 'we will fight fire with fire'.[25] In 2012 Fundisile Mketeni, the former deputy director-general for biodiversity and conservation in the Department of Environmental Affairs, declared: 'We are now at war'.[26] Ike Phaahla, a SANParks spokesman referred to the poaching crisis in 2013 as a 'military incursion'.[27] Finally, until mid-2016, the Environment Minister, Edna Molewa, peppered speeches with references to the 'war on poaching', telling journalists on one occasion: 'We see it as a war and will fight it as such'.[28]

But strip away the public bluster and more nuanced views begin to emerge. Mketeni, now the CEO of SANParks, says that national parks 'have always been militarised to some degree'.[29] The Kruger National Park's strategic position along South Africa's eastern border with Mozambique and a portion of the northern border with Zimbabwe has meant that it has long had military significance. In the Apartheid years, South African Defence Force (SADF) soldiers were sent there for training, and the park was used to covertly supply materiel to Mozambique's Renamo rebel movement during the civil war with Frelimo.[30] 'Kruger rangers were trained militaristically anyway because of the border environment,' Mketeni says. 'Most rangers there [in the 1980s] were soldiers or had been soldiers.'

'We militarise our staff, not because we want it, but it is a part of the job,' says Mketeni. 'If you are a lifesaver, we must train you how to swim. For me, when a ranger is lost, I want to be able to go and look at the family and say, "He was ready for this. He died ready for this." I don't want to be in a position where I gave him a pen when I knew that he needed a rifle'.[31]

'It is a fallacy to think we get any joy or satisfaction out of this conflict,' says Jooste. 'It is a war of attrition. We are forced into it to buy time. But victory will not occur in the bush. You can do what you will and you can save a lot of rhinos but you're not going to win. The high demand for rhino horn means poaching cannot be defeated with force on force. The only thing that can make a difference is taking on the crime networks. Victory will only occur in the courts'.[32]

A key factor in the militarisation of the ranger corps is the void in which SANParks have operated for many years with little or no support from police and army.

On the frontlines of the Kruger's 'war on poaching' are around 400 field rangers, 22 section rangers and 15 special rangers.[33] This equates to roughly one ranger for every 47 km^2, and only if they worked 24 h a day, 7 days a week. In reality, less than half that number are deployed at any given time. The rangers are supported by a dozen investigators, four helicopter pilots, a fixed-wing pilot and three Bantam microlight pilots.

Between 100 and 150 soldiers are deployed in the Kruger to 'safeguard' South Africa's porous border with Mozambique which runs along the park's eastern boundary. Although Molewa—the environment minister—has praised the soldiers for their 'invaluable support',[34]

their efforts have been largely ineffective, as evidenced by the large number of poachers entering the park. With the exception of a small Air Force component and Special Forces operators, the military plays little part in counter-poaching efforts and are derided as 'more of a liability than an asset'.[35]

Tales of soldiers getting drunk, being abusive to park staff and even bringing prostitutes into the park for wild parties on the border are legion. 'The soldiers don't have the training, they don't like being in the bush because they are scared of the animals, they don't want to go on patrols and they're ill-disciplined,' says one ranger. 'When they do go on patrol they usually stick to the boundary or walk along the road for 2 km and back'.[36]

Part of the problem is attributed to a lack of counter-insurgency training to prepare soldiers for operations in the bush. The apartheid-era defence force conducted brutal counter-insurgency campaigns during the 'bush wars' of the 1970s and 1980s. As a result, following South Africa's first democratic elections in 1994, the new SA National Defence Force largely abandoned counter-insurgency (COIN) training. 'COIN was seen as a taboo topic,' wrote Major CS van der Spuy in a 2013 issue of the South African Army Journal, 'something that was associated with the Apartheid regime'.[37] Consequently, COIN doctrine and strategy has not been updated since 1998 and specialist training has been discontinued.

Aside from disciplinary infractions, soldiers have also been implicated in poaching. In a presentation to the parliamentary portfolio committee on police in September 2015, the Directorate for Priority Crime Investigation (DPCI) expressed concern that: 'Corrupt officials among parks personnel, [the South African Police Service (SAPS), SANDF and border agencies assist syndicates to locate rhinos and provide forewarning of police operations and deployments'.[38] In one high-profile case, a former SANDF soldier was accused of killing at least six rhinos with high-powered rifles fitted with silencers. He was arrested after a shootout with rangers.[39]

These incidents reflect a broader crisis within the SANDF. The 2014 South African Defence Review found that the SANDF 'is in a critical state of decline' and warned that '[l]eft unchecked, and at present funding levels, this decline will severely compromise and further fragment the defence capability'.[40]

Community Engagement: A Social History

The Kruger, like many national parks in South Africa and across the African continent, occupies an uncomfortable and deeply polarised historical and political space. It is a past that continues to resonate strongly.[41] The park formally came into existence in 1926 with the merger of the Sabi and Shingwedzi Game Reserves and the promulgation of a National Parks Act which 'took wildlife conservation out of the hands of sportsmen and old-style game wardens and projected it into the mainstream of South African politics'.

'Those politics were distinctly white,' writes Jane Carruthers in *The Kruger National Park: A social and political history* (*1995*), 'and the socio-political culture of South African national parks was consequently shaped by white interests…[N]ational parks offered a new and more universal symbol, and one which has become increasingly meaningful to the South African white public'.[42]

For black South Africans, however, the park came to epitomise racial discrimination, exclusion and white political and economic domination. Local black communities were treated as poachers and "hounded from the national park boundaries".[43]

Until the late 1980s, black South Africans were largely excluded from the park. A tented camp—called Balule—was established for Africans in 1932 but its very structure was designed to discourage. Conditions were 'spartan' compared to the facilities at Skukuza and other camps designated for whites. There was no shop, fuel station or reception. 'It was this kind of discriminatory action which has deepened the wedge between white and African experiences within the 'wild animal elysium', the wonderland of South Africa'.[44]

Today, two decades after South Africa's first non-racial, democratic elections and the end of Apartheid, the history of racial discrimination and the perception of national parks as playgrounds for affluent whites continues to be bedevil conservation efforts. In 2003, black domestic visitors constituted circa 3% of the total number of domestic visitors to national parks operated by SANParks. By the 2014/2015 financial year, that number had risen to 25.9%.

Until recently, the Kruger faced one of the largest land claims ever brought within South Africa's land restitution programme. Sixteen land claims relating to an estimated 33% of the park were lodged with the

country's Land Claims Commission. Shortly before the country's 2016 local government elections, six communities received a settlement from the government of R84-million (circa $6.2-million) in respect of land claims they had submitted.[45]

Against the backdrop of rising poaching figures, 'community engagement' has become a key focal point in conservation strategies, and the South African government—through its People and Parks programme—is attempting 'to address issues at the interface between conservation and communities' and give poor black communities surrounding protected areas greater access, participation and benefits.[46] However, the past continues to shape the future.

'People must remember the history of this country when we talk about communities,' says Mketeni, the SANParks CEO. 'Because of [that] history, black people do not care about wildlife. They do not have a feeling for conservation because it was introduced in a bad way. There was a history of evictions, a history of not being allowed to visit the parks. It is a bad history for them'.[47]

The Human Cost

Aside from the loss of wildlife, there is an appalling human cost to the 'poaching war'. At least 150 to 200 suspected poachers are believed to have been shot and killed in armed 'contacts' with rangers in the Kruger between 2010 and July 2015.[48] Many others have been wounded.

The victims are not only poachers—at least seven SANDF soldiers, two field rangers and a policeman have lost their lives since 2012. Five soldiers were killed in a helicopter crash. In April 2012 a ranger and a policeman were killed in the so-called 'blue-on-blue' incident.[49] In May 2013 a ranger was accidentally shot in the stomach and wounded by a soldier while out on patrol.[50] In March 2016 a field ranger was shot and wounded during a contact that left one suspected poacher dead.[51]

In order of significance, a SANParks 'risk mitigation strategy' lists a ranger being convicted of murder or culpable homicide of a poacher, and a ranger being killed in a shoot-out, as its greatest risk factors.[52] 'If a ranger is convicted, that day this war will stop,' says General Jooste.[53]

In the so-called 'poaching villages' in and around Mozambique's *Parque Nacional de Limpopo* which, together with the Kruger forms the Limpopo Transfrontier Park, there is deep-seated anger at the deaths and arrests of suspected poachers. Albert Valoi lives in the village of

Mavodze. His son Toti was shot dead by rangers during a 'contact' with a group of poachers in June 2015. 'South Africa is killing, not arresting,' Valoi said, holding his up son's identity card and death certificate. 'Why was an animal's life worth more than my son's?'[54]

The dead are often buried as heroes in dusty graves scattered with some of their favourite possessions and covered with thorny 'sekelbos' to keep predators at bay. Stories are told about their exploits and songs are written about them. One, by a Mozambican DJ, is popular in clubs and bars in the border areas. He names SANParks rangers and officials and asks: 'What is wrong with you? Our children are dying. You are killing our people.'[55]

'The hatred, the anger worries me,' Mketeni says. 'The anger directed at our rangers. But what do you expect our rangers to do when they come across armed poachers at night? I do not think they want to die first.'[56]

At a parliamentary portfolio committee meeting in September 2015, the then South African Police National Commissioner Riyah Phiyega said accusations by Mozambican authorities that South Africa was 'killing its citizens' in the park were having a detrimental impact on bilateral relations. According to minutes of the meeting, Lieutenant-General Vinesh Moonoo—head of detectives in the SA Police service—echoed Phiyega's comments, remarking that while 'good strides had been made in Mozambique' there were accusations that South Africa viewed rhinos as more valuable than Mozambique's citizens.[57]

The exact numbers of suspected poachers killed in the Kruger remains shrouded in secrecy. 'It is a very sensitive issue,' South Africa's national police spokesman, Vish Naidoo, said when asked for information about inquests and the identities of suspected poachers killed in the park. 'I can ask SANParks, the NPA or the police, but they won't give it to me.'[58]

'SANParks does not make statistics available relating to the numbers of poachers killed during engagements in the Kruger National Park,' a SANParks spokesman, Paul Daphne, wrote in response to emailed questions.[59] 'Our rangers are under instruction to act with restraint and within the prescribed rules of engagement when confronting poachers in the park. This having been said our rangers operate under extremely difficult conditions, often having to confront armed poachers at night in dense bush. The first objective of any engagement with armed poachers is to effect an arrest, but the lives of our rangers are constantly under threat when attempting to do this, and they are mandated to defend themselves when they are under threat.'

Proportional Response

Poaching gangs enter the park in groups of three or four, usually at night with the moon behind them to light their way. One man will carry a rifle fitted with a silencer, a second an axe or machete and a third will have a few supplies—two one litre Coca Cola bottles filled with water from a river, a few tins of fish, and perhaps a loaf of bread crammed into a garishly coloured backpack. Sometimes one of them will be armed with an AK-47 assault rifle in case they come across rangers or soldiers. In most cases they carry mobile telephones, but no radios or night vision equipment. They hunt in jeans and t-shirts. Some are barefoot or wear running shoes and sandals instead of boots. 'If people think of a poacher in most cases they probably think of some sort of Special Forces guy,' says Maggs, the Kruger's head ranger. 'The opposite is true'.[60]

Usually, the men wait until daybreak before they look for a kill. 'They are not very successful at hunting at night, especially if they have silencers,' says Maggs. 'With a silencer, you lose your front sight. Lot of animals are being wounded and we suspect it is a combination of silencers and being forced to hunt at night. You cannot track at night and if you do get a rhino it will almost be accidental unless they know of a particular pan and go and lie there and wait for the rhino to come and drink'.

At any time, there are between five and 15 groups of poachers in the park. 'The poaching is relentless,' says Maggs. 'It does not stop, rain or shine. They keep moving from area to area. They will always go where the rhino are. Their primary objective is to hunt and kill a rhino, get the horns and get out. So, if it goes quiet in particular area, one of the first questions you ask yourself is whether there are any rhino left there? If your anti-poaching teams manage to dominate a particular area that will have a displacement effect. If poachers find rhinos and do not come across rangers or see any counter-measures, other groups will soon saturate the area. You'll have four or five groups hunting. That happens regularly'.[61]

It is dangerous work, but there is good money to be made. The fees that the poachers earn vary considerably, from as little as $500 or $600 up to $20,000, according to unpublished SANParks data. How much they are paid usually depends on their role. A 'shooter', for instance, will earn several times more than a 'water carrier'. Prices have increased dramatically since 2008, according to the information gathered during interrogations of suspected poachers arrested in national parks. Then, a water carrier could

expect to receive anywhere between $200 and $600, while the shooter could be awarded close to $2000. By 2012, water carriers were being paid between $500 and $2000, with the gunmen taking home $1500–$6000 for a set of horns. In early 2014, some shooters were said to be earning between $2200 and $21,300. Then, in mid-2014, the pay scales changed. Growing numbers of poachers began demanding payment based on the weight of the horns they supplied, with water carriers receiving around $1500 a kilogram and the shooters taking home upwards of $5000 a kilogram.[62]

The past 3 years have seen other shifts. As efforts to stop poachers crossing from Mozambique into the Kruger intensified, so the incursions shifted to the west. In 2013, roughly 75–80% of all poaching incidents in the park could be attributed to poachers crossing the park's eastern border with Mozambique. By 2014, the entry points had evolved. Rather than basing themselves in the sparsely populated villages and towns along the Kruger's eastern border, poaching gangs began moving their bases of operation to South Africa. About two million people live along the Kruger's western boundary. For the poachers it was the perfect place to disappear. It also gave them easier access to the rhino populations in the south of the park. In 2013, as many as 80% of poaching incidents were attributed to poachers crossing from Mozambique. By mid-2014, that had fallen to around 60%.[63]

Today, the majority of poaching incidents are believed to emanate from within South Africa. According to the DPCI, gangs of poachers 'enter through the western border with the assistance of South African citizens who know the areas'. To avoid army patrols, some poachers cross legally from Mozambique and 'then stay with relatives or accomplices [in South Africa] before entering the park'.[64] The majority are believed to be Mozambican nationals, but many of them have acquired South African identity documents.[65]

In recent years, there has also been an increase in the so-called 'drop-off' incidents involving poachers who enter the park posing as tourists. Rifles are hidden in engine blocks or custom built secret compartments behind seats and in trunks. Once the gang spot a rhino, the shooter is dropped off and his accomplices drive away. They return to pick him up once a kill has been made and then drive out the way they came.

More than 1700 suspected poachers and rhino horn smugglers have been arrested in South Africa since 2010.[66] In most cases, they are low-level 'foot-soldiers', drawn from the local communities that fringe the park: cannon-fodder for the poaching networks and transnational

criminal networks that are dispensable and easily replaceable. Few inroads have been made in disrupting criminal networks whose tentacles span the globe. The names of notorious global drug trafficking kingpins like Pablo Escobar and 'El Chapo' Guzman have become part of popular culture. The same cannot be said of the wildlife trafficking kingpins driving the slaughter in Africa. To date, few have been identified. They remain in the shadows, untouchable and protected by powerful political and business interests in countries like Vietnam, China and Laos.

An Unwinnable War

Killing and jailing poachers is likely to have little if any effect. Without assisting the often impoverished communities that surround national parks, and their support and inclusion in conservation strategies, the slaughter will continue. The 'war on poaching' is increasingly understood as an unwinnable war. Reducing a complex struggle against transnational criminal syndicates to a 'war' between poachers and rangers over-simplifies an extraordinarily difficult challenge that requires much greater global and regional co-operation. Furthermore, it is exacerbating social fractures in South Africa that will have ramifications long after the fight to save the rhino has been won or lost.

The networks that traffic rhino horn and other wildlife products are ruthlessly efficient, imaginative, endlessly adaptive and free of the strictures imposed by legal jurisdictions, bureaucratic regulations and international boundaries. They are everything that the government bureaucracies and law enforcement agencies trying to stop them are not. Disrupting them requires a radical rethink of often reactive and fragmented national and international law enforcement efforts and a concerted effort to uplift and include communities living in and around national parks in conservation and law enforcement efforts. It also requires a realisation that rhino poaching and wildlife trafficking cannot simply be defeated by guns and helicopters. It is also not purely a 'green issue' to be dealt with by game rangers, conservationists and environmental agencies. They have neither the mandate, expertise nor the necessary political power to address transnational organised crime. Time is of the essence and the onslaught on wildlife and the environment is only worsening. If iconic species like rhinos and elephants cannot be protected, then what can we really protect?

Notes

1. Department of Environmental Affairs (2016), 'Dramatic Escalation in Fight against Poaching as Suspected Poachers Fire on SANPARKS Helicopter', https://www.environment.gov.za/mediarelease/dramaticescalationinfightagainstpoaching, accessed 20th September 2016.
2. K. Ngoepe (2016), 'Kruger Rangers Receive Specialised Grenade Launcher to Fight Poachers', http://www.news24.com/SouthAfrica/News/kruger-rangers-receive-specialised-grenade-launcher-to-fight-poachers-20160722, accessed 20th September 2016.
3. IUCN Species Survival Commission's African Rhino Specialist Group (AfRSG).
4. Department of Environmental Affairs poaching statistics for 2006–2015.
5. IUCN Species Survival Commission's African Rhino Specialist Group.
6. Email correspondence with Richard Emslie, IUCN AfRSG Scientific Officer.
7. IUCN (2016), 'IUCN Reports Deepening Rhino Poaching Crisis in Africa', http://www.iucn.ora/content/iucn-reports-deepenina-rhino-poachina-crisis-africa, accessed 20th September 2016.
8. S. M. Ferreira, C. Greaver, G. A. Knight, M. H. Knight, I. Smit, and D. Pienaar (2015), "Disruption of Rhino Demography by Poachers May Lead to Population Declines in Kruger National Park, South Africa." PLoS ONE 10(6): eOl27783. doi: 10.1371/journal.pone.0127783, http://iournals.plos.org/piosone/article?icl=10.1371/iournal.pone.0127783, accessed 20th September 2016.
9. Source: SANParks.
10. Department of Environmental Affairs (2016), "Minister Edna Molewa Highlights Progress in the Fight against Rhino Poaching", https://www.environment.gov.za/mediarelease/molewa_highlightsprogress_onrhinopoaching, accessed 20th September 2016.
11. Source: SANParks.
12. Department of Environmental Affairs (2016), "Minister Edna Molewa Joined by Security Cluster Ministers Highlights Progress in the Fight against Rhino Poaching", https://www.environment.gov.za/mediarelease/molewa_onprogresagainst_rhinopoaching, accessed 20th September 2016.
13. Source: SANParks.
14. Department of Environmental Affairs (2016), "Minister Edna Molewa Joined by Security Cluster Ministers Highlights Progress in the Fight against Rhino Poaching", https://www.environment.gov.za/mediarelease/molewa_onprogresagainst_rhinopoaching, accessed 20th September 2016.

15. Department of Environmental Affairs (2016), "Minister Edna Molewa Joined by Security Cluster Ministers Highlights Progress in the Fight against Rhino Poaching", https://www.environment.gov.za/mediare-lease/molewa_onprogresagainst_rhinopoaching, accessed 20th September 2016.

16. IOL (2016) "Rhino Poachers Shift Focus to KZN", http://www.iol.co.za/news/south-africa/kwazulu-natal/rhino-poachers-shift-focus-to-kzn-2064551, accessed 20th September 2016.

17. Interview. Ken Maggs. 8 July 2015.

18. J. Malema (2016), "Why Do White People Despise Blacks?" *Sunday Times*, http://www.timeslive.co.za/sundaytimes/opinion/2016/01/10/Why-do-white-people-despise-blacks, accessed 20th September 2016.

19. E. Molewa (2016), "No, Julius - Saving Rhinos Is Not Just a 'White Thing.'" *Sunday Times*, http://www.timeslive.co.za/sundaytimes/opinion/2016/02/07/No-Julius---saving-rhinos-is-not-just-a-white-thing, accessed 20th September 2016.

20. M. Shaw and J. Rademeyer (2016), 'A Flawed War: Rethinking 'Green Militarisation' in the Kruger National Park', *Politikon*, DOI:10.1080/02589346.2016.1201379, http://www.tandfonline.com/doi/full/10.1080/02589346.2016.1201379, accessed 20th September 2016.

21. "2016 Budget Estimates of National Expenditure: Environmental Affairs," February 24, 2016.

22. "2016 Budget—Estimates of National Expenditure: Environmental Affairs," February 24, 2016. http://www.treasury.gov.za/documents/national%20budget/2016/enebooklets/Vote%2027%20Environmental%20Affairs.pdf, accessed 20th September 2016.

23. Interview. Ken Maggs. 8 July 2015.

24. SANParks. (2012), "Media Release: SANParks Enlists Retired Army General to Command Anti-Poaching." *South African National Parks*.

25. D. Smith (2010), "South Africa Wages War on Ruthless Rhinoceros Poachers." *The Guardian*, http://www.theguardian.com/environment/2010/nov/16/south-africa-war-on-poachers, accessed 20th September 2016.

26. BuaNews (2012), "Govt, Rhino Owners to Meet on Poaching", http://www.southafrica.info/about/sustainable/poaching-310512.htm#.V1PmTVfN5j4, accessed 20th September 2016.

27. Global Post (2013), South Africa Sics Drones on Rhino Poachers", http://www.globalpost.com/dispatch/news/regions/africa/south-africa/130110/rhino-poaching-rhinoceros-horns-vietnam, accessed 20th September 2016.

28. R. Munusamy (2013), "Rhino Poaching: It's War!| Daily Maverick." *Daily Maverick*, http://www.dailymaverick.co.za/article/2013-03-01-rhino-poaching-its-war/#.V1PmS1fN5j4, accessed 20th September 2016.
29. Interview. Fundisile Mketeni. November 2015.
30. J. Cock, D.Fig, David (2000).'From colonial to community based conservation: Environmental justice and the national parks of South Africa', *Society in transition*, 31 (1), pp. 22–35.
31. Interview. Fundisile Mketeni. November 2015.
32. Ibid.
33. Major-General J. Jooste (2015). "Media Briefing on Rhino Poaching in the Kruger National Park".
34. Department of Environmental Affairs (2016), "Minister Edna Molewa Joined by Security Cluster Ministers Highlights Progress in the Fight against Rhino Poaching", https://www.environment.gov.za/mediarelease/molewa_onprogresagainst_rhinopoaching, accessed 20th September 2016.
35. Interview. Ranger, July 2015.
36. Interview. Ranger, July 2015.
37. Major C. S. van der Spuy (2012) "Lessons Learned from African Insurgencies: Implications for South African Army Intelligence", http://www.army.mil.za/publications/journal/2014_publish/SA%20Army%20Journal%20Edition%208.pdf, accessed 20th September 2016.
38. Directorate for Priority Crime Investigation (2015), "Presentation to the Portfolio Committee on Police. Rhino Threat", http://pmg.org.za/files/150909DPCI_KNP.pdf, accessed 20th September 2016.
39. News24 (2016), "'Rangers Framed Me for Kruger Rhino Poaching,' Soldier Tells Court," http://www.news24.com/SouthAfrica/News/rangers-framed-me-for-kruger-rhino-poaching-soldier-tells-court-20160329, accessed 20th September 2016.
40. Defence Review Committee (2014), "South African Defence Review 2014", http://www.gov.za/sites/www.gov.za/files/dfencereview_2014.pdf, accessed 20th September 2016.
41. M. Shaw and J. Rademeyer (2016): A Flawed War: Rethinking 'Green Militarisation' in the Kruger National Park, Politikon, DOI:10.1080/02589346.2016.1201379, http://www.tandfonline.com/doi/full/10.1080/02589346.2016.1201379.
42. J. Carruthers(1995), *Kruger National Park: A social and political history*, (Pietermaritzburg: University Of KwaZulu-Natal Press).
43. J. Carruthers(1995), *Kruger National Park: A social and political history*, (Pietermaritzburg: University Of KwaZulu-Natal Press).

44. J. Carruthers(1995), *Kruger National Park: A social and political history*, (Pietermaritzburg: University Of KwaZulu-Natal Press).

45. TMG Digital (2016), "Government Settles Kruger Park Land Claims." *Times LIVE*, http://www.timeslive.co.za/politics/2016/05/21/Government-settles-Kruger-Park-land-claims, accessed 20th September 2016.

46. Department of Environmental Affairs, "People and Parks Programme." Accessed September 12, 2016. https://www.environment.gov.za/projectsprogrammes/peopleparks.

47. Interview. Fundisile Mketeni. November 2015.

48. M. Hübschle (2015), *A Game of Horns: Transnational Flows of Rhino Horn*. PhD thesis, Universität zu Köln. http://kups.ub.uni-koeln.de/6685/, accessed 20th September 2016.

49. SAPA (2012), "Ranger, Cop Killed in Kruger Shooting." *IOL*, http://www.iol.co.za/news/crime-courts/ranger-cop-killed-in-kruger-shooting-1285717, accessed 20th September 2016.

50. A. Crawford, "Rhino Wars: Ranger Shot On Anti-Poaching Raid." *Sky News*, http://news.sky.com/story/1569048/rhino-wars-ranger-shot-on-anti-poaching-raid, accessed 20th September 2016.

51. C. Bernardo (2016), "KNP Ranger Wounded in Shoot-out", *IOL*, http://www.iol.co.za/news/crime-courts/knp-ranger-wounded-in-shoot-out-1994469.

52. SANParks (2014), "Presentation: KNP Special Projects—Rhino poaching in context".

53. Interview, General J. Jooste, 2015.

54. Interview. Albert Valoi, 2015.

55. K. Serino (2015), "The Human Victims in the Fight over Rhino Poaching in Africa", http://america.aljazeera.com/multimedia/2015/1/the-human-cost-ofrhinopoaching.html, accessed 20th September 2016.

56. Interview. Fundisile Mketeni. November 2015.

57. Parliamentary Monitoring Group (2015), "SAPS 1st Quarter 2015/16 Performance; Kruger National Park: Progress Reports," https://pmg.org.za/committee-meeting/21488/, accessed 20th September 2016.

58. V Naidoo (2016).

59. Email from P. Daphne (2015).

60. Interview. K. Maggs. (2015).

61. Interview. K. Maggs. (July 2015).

62. Unpublished SANParks data.

63. Unpublished SANParks data.

64. Directorate for Priority Crime Investigation (2015), "Presentation to the Portfolio Committee on Police. Rhino Threat.", http://pmg.org.za/files/150909DPCI_KNP.pdf, accessed 20th September 2016.

65. Portfolio Committee on Police (2015), "Operation Rhino 6—Kruger National Park: Inputs on Rhino Poaching by Division Crime Intelligence".
66. SanParks, DPCI, Department of Environmental Affairs.

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In a career spanning two decades, he has reported from some of the world's most troubled countries including Somalia, Equatorial Guinea, Guinea, Niger, Togo, Belarus, Egypt, Syria and Lebanon.

In 2005 he won the Vodacom Journalist of the Year award for print news. He was a recipient of the 2009 Mondi Shanduka Newspaper Award for hard news. He has twice been a finalist for the Taco Kuiper Award, South Africa's leading investigative journalism prize. His work has also been published in Troublemakers: The Best of South Africa's Investigative Journalism.

Kenya's 'War on Poaching': Militarised Solutions to a Militarised Problem?

Thomas J. Maguire

In the last decade poaching of African elephants has surged and industrial-scale trafficking emerged. Estimates suggest that over 200,000 elephants have been slaughtered to feed the trade since 2009—a large proportion in East Africa.[1] Between 2008 and 2015, Kenya—both, one of Africa's primary remaining range states for rhino, especially elephants, and one of its primary trafficking hubs[2] to markets in East Asia—lost 1830 elephants out of a total population of 28,000–38,000 to poaching according to conservative estimates (Fig. 5.1). These losses have primarily taken place in the two rangelands mostly populated by elephants in Kenya: the Samburu-Laikipia ecosystem in the north (around 7000, or 18–25% of the total population); and the greater Tsavo ecosystem in the south (around 11,000, or 29–39%.).[3] During this surge there has been mounting evidence of links between the Illegal Wildlife Trade (IWT) and transnational organised crime and corruption, contributing to growing alarm over the involvement of armed non-state actors.[4] Concern has grown that both the challenges posed by poaching and trafficking in ivory and other wildlife contraband, and the counter-measures to these challenges have become increasingly 'militarised'.

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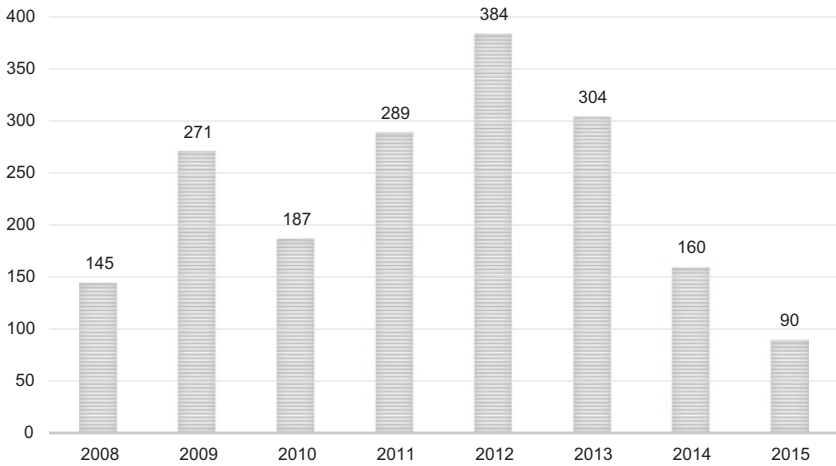
Fig. 5.1 Estimates for Elephants poached in Kenya, 2008–2015[5] (*Source* KWS)

Narratives and Definitions

Public discourse surrounding the poaching of elephants and their protection is peppered with militaristic terms, including 'war', 'insurgency', 'armed conflict' and a 'battle for Africa's elephants'.[6] This has established a simple binary of war-by-poachers/war-on-poachers that has influenced both the stages of trafficking chains mostly targeted with interventions (front-line poaching) and the mode of such interventions (instilling wildlife ranger services with paramilitary techniques, resources and values) (Fig 5.2).

At the most extreme end of these militarisation narratives is the widely spread 'ivory-terrorism nexus' discourse. Propagated by influential state figures, government agencies, NGOs, media outlets and researchers alike, this asserts that the practices of poaching and ivory trafficking and terrorism feed into each other, consequently labelling poachers terrorists.[7] Deftly tapping two hot-button issues, the image of terrorists decimating iconic land mammals elicits strong reactions. Three 'terrorist' groups are frequently cited as major drivers and beneficiaries from ivory in particular, either through engaging directly in poaching or acting as trafficking middlemen: the Lord's Resistance Army and Janjaweed in Central Africa, and Al-Shabaab in Somalia and Kenya.

Yet recent research has demonstrated that the narrative of such a prominent Al-Shabaab role in East Africa has been significantly exaggerated.[8] Ensuring accurate assessments of the nature of the challenges posed by poaching and trafficking is crucial, for it shapes the most appropriate counter-measures. The Al-Shabaab/ivory-terrorism nexus narrative, like broader war-by-poachers discourses, may encourage (and arguably already has) a bias towards front-line militarised responses and away from parallel priority areas, like front-line community engagement, criminal investigations into trafficking higher up the ivory value chain, and anti-corruption drives.[9]

Militarisation is not only articulated in a terrorism-ivory nexus context. It is more regularly deployed to describe a growing amplitude, variety and sophistication of the use of force by actors on both sides of the issue. It typically conjures images of heavily armed poachers engaging in running battles with outgunned but increasingly 'tooled up' wildlife rangers. Researchers have criticised war narratives as being used to justify highly repressive and coercive responses to poaching, with potential knock-on effects for local communities caught in the figurative and real cross-fire.[10]

However, militarisation constitutes only one dynamic in the current poaching and trafficking crisis. In isolation, it provides a crude understanding of the challenges associated with poaching networks and the counter-measures that have been deployed in response. A more nuanced appreciation must address the links between poaching and wider forms of criminality, the deployment of intelligence systems, and the development of community-based natural resource management. This chapter addresses these wider, linked phenomena in the context of debates over militarisation in Kenya.

POACHING AND IVORY TRAFFICKING IN KENYA: A MILITARISED THREAT?

It is important to assess who is doing the poaching in Kenya, why and whether they constitute a militarised threat in terms of their aims, organisation, methods, drivers and impact. To provide a more relative and contextual understanding, poaching should be compared with other forms of violence and criminality in Kenya. This helps determine whether the toolbox of militarised counter-insurgency responses that often comes

with 'poaching-as-insurgency' narratives is appropriate or effective for reducing the illegal ivory trade in Kenya.

Aims and Organisation

Poaching gangs represent armed non-state actors that engage in several tactics similar to guerrillas (such as violent harassment and surprise of their targets). However, the aims and organisation of poaching and ivory trafficking in Kenya as a whole do not represent a military movement or insurgency as classically conceived, despite what a small number of civil society actors in Kenya have argued.[11] A commonly referenced definition of 'insurgency' originates from the 2007 American *Counterinsurgency Field Manual FM 3–24:*

> an organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict…[in other words] an organized protracted politico-military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority while increasing insurgent control.[12]

This definition is by no means definitive, for there remains much debate regarding what constitutes insurgency and counter-insurgency that go beyond ultimate political goals and apparatus.[13] Nevertheless, this sets out several fundamental tenets common to a number of definitions and absent to poaching in Kenya. The actors involved are not striking at or seeking to overthrow a defined 'enemy' (for example, the Kenyan state) or to increase their territorial control. Nor does poaching represent a common over-arching strategy for achieving these goals or a tactic of warfare, that is, a tool for pursuing a broader war, unlike equivalent organised criminality in the war economies of countries like Afghanistan, Columbia and the Democratic Republic of Congo (DRC). Nor do these actors have a central organising—let alone political—apparatus established to coordinate the achievement of such goals.[14]

Instead, the initial stages in the Kenyan ivory trade's value chain of poaching and 'consolidation' of tusks involve relatively disaggregated networks. Local organised crime groups (OCGs) in towns such as Isiolo and Nanyuki around Samburu-Laikipia and Voi and Garsen around Tsavo have received contracts from a small number of more senior criminal 'middlemen' buyers in Kenya. These contracts mitigate the buyers'

risk and stipulate ivory quotas. Buyers use such stipulations to fulfil their own contractual obligations to East Asian transnational crime syndicates. Middlemen containerise consolidated ivory for international travel out of Nairobi and Mombasa and at other points for export from Tanzania, Uganda and the DRC. Local OCGs source ivory through a combination of hiring members of local communities around Kenya's rangelands[15] to form poaching gangs, ad hoc purchases from independent local poaching gangs, and sending their own gang members into rangelands to poach. Kenya's ivory trade, from poaching upwards, is loosely organised and enables several levels of criminal gangs and corrupt businessmen and politicians to make large profits, utilised both for personal benefit and to sustain other criminal activities.[16]

The underlying forces behind poaching and ivory trafficking are not focused on subverting state authority through military means. Instead, key drivers broadly constitute the endemic corruption of Kenyan politics, the ethnically fragmented nature of the Kenyan polity and society, high levels of socioeconomic marginalisation and the prevalence of small arms. An analysis of the methods, drivers and impacts of poaching further elucidates this point.

Fig. 5.2 East African Elephant Range (2012) (*Source* International Union for the Conservation of Nature (IUCN) Elephant Survey Map, accessible at: http://www.elephantdatabase.org)

Methods

Advocates of the militarisation narrative argue that poaching gangs have become increasingly armed in both quantity and quality of small arms, making them more deadly. This proliferation of weapons—not a phenomenon exclusive to poaching—was classed as 'one of Kenya's most pressing security challenges' by a 2014 Born Free Foundation and C4ADS report.[17] A 2012 assessment by the Small Arms Survey estimated 530,000–680,000 guns—from AK-47s to carbines like M-16s—lie in Kenyan civilian hands, clustered among northern pastoralist communities bordering Samburu-Laikipia and in the East bordering Somalia.[18] Many are smuggled across Kenya's porous borders with Uganda and the conflict-ridden Somalia and South Sudan. G-3 rifles and ammunition from Kenyan Police and Army stocks have also been used for the killing of policemen, firefights with wildlife rangers, and the poaching of elephants. This leakage reflects poor security and corruption within parts of Kenya's security sector.[19] Arms and ammunition have periodically gone missing from the British Army Training Unit in Kenya (BATUK) at Nanyuki, 200 km north of Nairobi bordering Samburu-Laikipia.[20] Kenya Police Service crime reports detailing firearm seizures add to this picture of large numbers of small arms available in and around Kenya's elephant rangelands and poaching hotspots (Rift Valley, Eastern and Coast).[21]

A 2012 Kenya Wildlife Service (KWS) survey on methods of elephant poaching further supports this image of easily available small arms in the North. In Samburu-Laikipia, 85% of elephants poached were killed by gunshots compared to 34% in Tsavo (arrows, poison and other means comprised the other methods). Compared to 74% and 17% respectively across the period of 2000–2010, this survey additionally suggests an increase in poachers' use of light arms.[22] From 2012–2014, however, annual KWS reports highlight mixed trends in dominant poaching methods. While they chart a continuing proliferation of light and more 'sophisticated' weapons (for example, with affixed scopes and night-vision equipment), they also underscore a concurrent pattern of quieter, cheaper and simpler methods such as arrows, traps and poison, favoured in order to avoid drawing the attention of patrolling rangers.[23] Consequently, while small arms have long been widely available to poaching gangs in Kenya, poaching methods have not become uniformly more militarised.

Drivers and Impacts

The degree of militarisation of poaching, and the scale of the problem this presents, can be further understood in the context of broader violence and conflict in Kenya. This broader issue forms both a driver of poaching, and a counterpoint for assessing its violent impacts beyond the immediate deaths of wildlife. These wider impacts, including wildlife ranger casualties, are often highlighted by advocates of the 'poaching-as-war' narrative as indicators of the security challenge posed by poaching and consequent forceful responses required.[24]

The casualties suffered by the Kenyan authorities at the hands of poachers are much lower than those in other African range states. Between 2007 and 2014, according to KWS publicly released figures, 17 rangers lost their lives to poachers. The majority—seven—died in 2010, after which the numbers have fallen to an average of two per annum. This pales in comparison to circa 150 ranger deaths reported since 2006 in the DRC's Virunga National Park alone.[25] Richard Vigne, head of Kenya's Ol Pejeta Conservancy in Laikipia County, contrasted this more violent situation in Central Africa to that in Kenya, noting that although poaching remains a danger to rangers, it is being conducted more surreptitiously, by smaller gangs, and targeting fewer animals at a time.[26]

Ranger death rate figures are also low when compared to casualties suffered by Kenyan authorities from inter-communal conflict and cattle-raiding in northern Kenya, and attacks by Al-Shabaab and affiliated Islamist violent extremists in the North-East, Coast and Nairobi. In one attack in May 2015, for example, suspected Al-Shabaab or Al-Shabaab-affiliated militants killed 25 Kenyan police officers in a patrol convoy in Garissa County in the North-East.[27] Inter-communal violence has proved equally if not more deadly.[28] In a single engagement in November 2012, cattle rustlers killed 40 police officers in Samburu. In late 2014 over 20 police officers were killed in two linked attacks in Turkana and Baringo counties, north-west Kenya, by Pokot militants fighting against Turkana communities in another cattle-rustling dispute.[29]

Many of the areas surrounding the Samburu-Laikipia rangelands suffer from inter-communal pastoralist violence over resource rights. Facilitated by the availability of light arms in the region, many turn to poaching during lean periods for pastoralists.[30] Between 15 January 1997 and 5 May 2016, 5082 documented incidents of political, ethnic,

religious, socioeconomic, environmental and criminal violence at the hands of state and non-state actors resulted in 8912 reported fatalities.[31] 5034 of these fatalities, or 57%, occurred since the start of 2007, when the present wave of poaching began to swell in Kenya.[32]

The majority of these conflict incidents and fatalities, alongside the highest number of small arms seizures, have occurred in the provinces surrounding Kenya's main elephant rangelands (Fig. 5.3). The proliferation of freely available arms in these counties (Fig. 5.4), and consequent use of gunshot as the primary method of poaching, in part explains the stark difference in violence rates between the Samburu-Laikipia counties (with the exception of Tana River) and those around Tsavo (Fig. 5.5).

Poaching in Kenya should be understood not as a unique and isolated phenomenon but as part of this wider violence and criminality. In June 2011 in Turkana near Kainuk, a Kenya Police Anti-Stock Theft Unit inspector and a KWS corporal were shot dead in a raid on the Lochakula security camp by more than 200 suspected cattle raiders from a Pokot ethnic militia.[33] Similarly, in 2014 an elite community conservancy ranger was shot and killed in an exchange of fire with heavily

	2011		2014	
PROVINCE	**Small Arms**	**Ammunition**	**Small Arms**	**Ammunition**
Nairobi	58	1,686	194	729
Rift Valley	37	264	47	345
North Eastern	36	9,196	31	1,925
Coast	27	695	28	1,036
Eastern	23	3,146	28	474
Nyanza	3	29	28	22
Central	11	81	23	52
Western	9	116	12	583
TOTAL	203	15,213	391	5,166

Fig. 5.3 Police recoveries of small arms and ammunition in Kenya (*Sources* The Kenya Police Service, 'Annual Crime Report for the Year 2011', p. 16; The Kenya Police Service, 'Annual Crime Report 2014', p. 7.)

Legend:
- Conflict Incidents 1997 -2006
- Conflict Incidents 2007 -2016
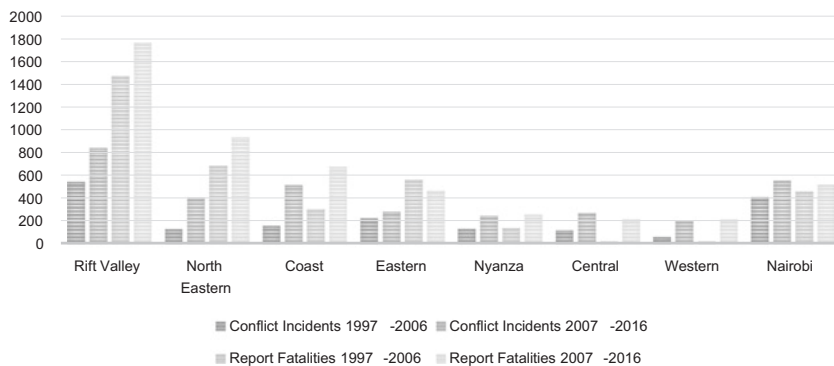- Report Fatalities 1997 -2006
- Report Fatalities 2007 -2016

Fig. 5.4 Conflict in Kenya's Provinces 1997–2016 (*Source* ACLED)

armed cattle raiders on the edge of Sera Community Conservancy north of Archer's Post.[34] Field interviews in northern Kenya and an analysis of programming reports by NGOs in the region such as the Northern Rangelands Trust (NRT) have revealed what these incidents indicated: a close nexus between wildlife poaching, cattle rustling, road banditry, and inter-communal conflict, with weapons and individuals rotating between all four.[35]

Economics drives recruitment to poaching gangs from local communities around Kenya's rangelands. Following the spike in ivory prices since the late 2000s, local OCGs offer Kenyan poachers on average around $40–60 per kilo. Given that two (on average) five kilo tusks from a single elephant are equivalent of several months' wages, some members of these rangeland communities have turned towards poaching.[36] The 2014 Economic Survey of rural poverty underscores this issue in and around Samburu-Laikipia and Tsavo: in Turkana County 88% of the population lives below the official poverty line of Ksh 1562 (around $15) per month, in Marsabit 76%, in Samburu 71%, in Isiolo 65%, in Tana River 76%, in Kwale 71%, in Kitui 60% and in Taita Taveta 50%.[37]

These broader and comparative perspectives have implications for what counter-measures are appropriate, proportionate and necessary. Interpreting the situation in a way that requires a 'war on poachers' is both reductionist in its inherent narrow focus on poaching in isolation, and inflammatory in its implications for militarised responses. It is to these responses in Kenya that this chapter now turns.

Samburu-Laikipia Ecosystem Counties	Conflict Incidents 1997-2006	Conflict Incidents 2007-2016	Reported Fatalities 1997-2006	Reported Fatalities 2007-2016
Turkana	145	129	721	723
Samburu	33	29	182	130
Baringo	16	58	21	123
Laikipia	41	58	50	80
Nakuru	110	209	224	297
Marsabit	107	75	387	250
Isiolo	60	52	105	110
Meru	15	31	5	21
Nyandarua	17	17	34	3
Nyeri	43	68	157	48
Greater Tsavo Ecosystem Counties	Conflict Incidents 1997-2006	Conflict Incidents 2007-2016	Reported Fatalities 1997-2006	Reported Fatalities 2007-2016
Tana River	40	53	160	216
Kwale	13	53	18	49
Kilifi	16	90	18	59
Taita-Taveta	12	44	1	6
Kitui	8	28	0	8
Makueni	5	6	10	1
Kajiado	16	34	19	39

Fig. 5.5 Violent conflict in and around the Samburu-Laikipia and Tsavo range-lands (*Source* ACLED)

Armed Anti-Poaching: Training and Equipping for Combat

The adoption of military approaches and values in poaching responses have a long history across Africa's range states.[38] Kenya is no different. Combat patrols have been used since the 1970s–1980s poaching wave. Special units of the Kenya Army and Police (such as the paramilitary General Service Unit (GSU)) conducted these patrols before the KWS took the lead following its 1990 inception. Armed police units of the GSU and Administration Police (AP, a paramilitary security outfit answerable to the Office of the President) continue to be involved, including through a central elite inter-agency Anti-Poaching Unit formed in 2013.[39]

Like other African wildlife services, KWS rangers in the field are organised on military lines and deployed with military kit (from fatigues, to berets, to rifles). Since its founding, the KWS Law Enforcement Academy (LEA) at Manyani in Tsavo West National Park has run paramilitary training courses alongside other specialised law enforcement programmes for over 1000 KWS rangers. Since the late 2000s, it has also acted as the centre for training increasing numbers of community rangers across Kenya's growing conservancy movement. Concurrently, since 2011, the service has been conducting an ongoing 'Force Modernisation Programme'. This has included procuring specialised security equipment, including drones, night-vision goggles, helicopters and satellite collars as well as more basic supplies like ammunition, rifles and vehicles.[40]

The KWS has also worked with foreign military partners to improve its combat tracking of poaching gangs, reinforcing its increasing paramilitary methods and values. The US Marine Corps has provided ranger training in 'detection and prevention techniques'. This is mirrored by a concurrent programme by the British parachute regiment and Welsh Guards, part of an established package of British security assistance dating back to Kenyan independence. Run through the BATUK at Nanyuki, this paramilitary training for 100 KWS law enforcement officers actively drew on the trainers' recent counter-insurgency experiences in Afghanistan. Additionally, since 2011 the US Embassy in Nairobi has conducted joint Rural Border Patrol courses for officers from the KWS, GSU and Rural Border Patrol Unit of the Kenya

Police, and Rapid Deployment Unit of the AP through the embassy's post-9/11 Anti-Terrorism Assistance Programme. Indicative of the growing broader functions of instruments of conservation, US officials involved considered the KWS to be an important lever for contributing to rural 'stability' in Kenya given its rangers' greater presence in remote countryside than other officers of the state such as the police.[41]

Non-state conservation entities in Samburu-Laikipia have engaged in similar combat-tracking capacity-building. By 2015, over 600 rangers from the 28 NRT-affiliated conservancies had been trained, equipped and deployed across a 25,000 km² area of land where few national parks or reserves exist and KWS presence is negligible. These rangers have been trained in both wildlife monitoring skills and paramilitary techniques by the KWS Law Enforcement Academy and three linked private security firms.[42] By 2015, nearly 200 of these rangers had been accorded Kenya Police Reserve (KPR) status, meaning they can carry government weapons on duty (Fig. 5.6).[43]

Area map of Northern Rangelands Trust community conservanices

Fig. 5.6 Area map of Northern Rangelands trust community conservancies (*Source* NRT, http://www.nrt-kenya.org/, accessed on 29 April 2016)

The NRT itself has developed three specialist overarching rapid response units explicitly intended to tackle overlapping and linked poaching, road banditry, livestock theft and inter-communal conflict. Called '9-1A', '9-1B' and '9-2' after their radio call signs, these 12-man teams have KPR status and have been recruited from the three main ethnic groups represented amongst the community conservancies. Using advanced training in weapons handling and combat operations from one of the private security firms, 51 Degrees, deploying more modern, higher calibre rifles than the armed conservancy rangers, and linked into a 24-hour operations room in Lewa, these three elite teams support conservancy rangers when poachers or cattle rustlers are located.[44] NRT managers have sought to implement a holistic approach to insecurity as a whole in order to avoid the 'balloon effect', whereby a crackdown on poachers merely pushes them into other forms of criminality.[45] Consequently, these elite ranger units and their community conservancy counterparts have a broader remit than just anti-poaching.

To better understand this paramilitary response, Kenya's local security culture must be considered. As Alice Hills, an expert on policing in Africa, has stressed, it is crucial to place regional analyses of police and security forces in an African context, where such forces tend to act more as channels of regime power and authority than in Western states.[46] Law enforcement and internal security have had paramilitary characteristics since the colonial era. Over decades this has led to a number of notable human rights violations across the country—in particular, in the North-East and Coast—and security 'blowback' from communities affected by repeated heavy-handed police action.[47] It is unsurprising, therefore, that as the KWS and conservancy rangers added security functions to their more traditional zoological conservation work, paramilitary characteristics have developed in parallel.[48]

The ultimate value of focussing on a primarily paramilitary, combat-tracking intervention to the detriment of additional complementary initiatives is questionable. The drivers of poaching in Kenya strongly suggest that simply improving wildlife rangers' armed ability to deter, capture or kill poachers will not have a significant long-term impact but instead maintain a low-level game of 'whack-a-mole'. While local communities continue to have scarce socioeconomic opportunities, little buy-in towards the value of elephants and rhino, intractable resource-based disputes, and deep-seated distrust of central state security representatives, local OCGs' high rewards for joining poaching gangs will mean an ongoing supply of willing poachers regardless of the sophistication of rangers' combat skills.[49]

Yet this paramilitary capacity building is not merely targeted at poaching. The KWS and community rangers are filling a vacuum of law enforcement and security provision created by the limited presence of the Kenya Police in rural areas, in particular in northern counties. This reflects broader issues surrounding the state capacity in countries like Kenya to govern, maintain law and order, provide security and, in this context, protect wildlife.[50] These rangers, thus, have developed broader functions aimed at achieving stabilisation of the Kenyan countryside. As explored further below, this holistic approach has in fact involved more than merely anti-poaching combat-tracking.

Intelligence and Surveillance

A significant amount of training and equipping is focussed on the wider security functions of the KWS and community rangers beyond armed combat-tracking. Surveillance and intelligence systems are being developed, both through new information technologies and the utilisation of existing ones in new ways. This includes Unmanned Aerial Vehicles (UAVs, or drones), camera traps, thermal imaging, real-time monitoring, GPS tracking, digital communications networks and big data, network and pattern analysis software across Africa. The KWS and non-state actors like the NRT have increasingly utilised such methods to support combat-tracking and disruption of local OCGs running poaching gangs. Some consider this to be yet another indicator of the militarisation of conservation and counter-measures to wildlife crime.[51]

Military approaches, in particular based on counter-insurgency experiences, are being drawn upon in deploying intelligence systems in Kenya. Again, however, describing this purely in terms of militarisation is too limited. While the integration of tactical intelligence work into armed ranger patrols does have many parallels with military intelligence approaches in combat environments, these technologies and processes are not inherently or uniquely 'military' in nature.[52] They are being deployed in parallel in a range of non-military environments, from policing and other branches of the security sector, to research, to conservation management more generally.

The limited numbers of rangers in Kenya's rangelands have very large areas to patrol, a fact which poaching gangs have historically exploited. As of 2014 in the Tsavo national parks, for example, 300 KWS rangers covered 22,000 km^2, 100 of whom had non-patrol functions.[53]

Deploying intelligence systems—such as through the KWS Intelligence Unit founded in 2011 with the assistance of foreign partners[54]—has helped reduce this asymmetry by increasing the chances and speed of detections of incursions. Yet these skills and resources can only go so far. Like with its combat-tracking, KWS' investigative jurisdiction is restricted to official protected areas. Its operations to infiltrate, disrupt, prevent and arrest trafficking networks can, therefore, go no further than when ivory is transported out of protected areas to local OCGs in nearby towns. Anything beyond this is the responsibility of the Kenya Police, Customs, Ports Authority and Airports Authority.

These KWS limitations have also shaped the deployment of intelligence capabilities outside of the protected areas. The NRT has formed its own intelligence capacity with British and American state and private support. Community rangers have been equipped with intelligence collation and reporting technologies for targeting not only poachers and ivory traffickers but also other linked forms of criminality and violence. This technology feeds into software in 'all-source' intelligence fusion cells at headquarters in Lewa Conservancy. There, a small number of analysts manage everything from HUMINT source reports from informants in local villages, to geospatial imagery intelligence of the terrain over which poachers and rangers are operating, to more sensitive mobile phone intercepts on suspect poachers and local ivory traders obtained from Kenyan telecommunications companies with the support of the Kenya Police and National Intelligence Service.[55] Conservancy rangers' ethnic profiles are key in leveraging their knowledge of community politics and customs and building trust with inhabitants to gain information on the often well-known local poachers. Trust is key in intelligence work for both practitioners and informants alike, and local communities in northern Kenya have long-standing experiences of repression by state security forces that have undermined such trust in 'outside' police and KWS rangers. This branch of the NRT's work has informed investigations higher-up trafficking chains through evidence shared with the KWS and Police.[56]

Several stakeholders supporting anti-poaching in Kenya have more actively drawn on military experience and values when advocating the utility of these intelligence systems. In particular, they have encouraged the use of counter-insurgency military intelligence tactics, techniques and procedures against poachers and low-level OCG traffickers.[57] In 2015, the KWS and the US-based NGO the International Fund for

Animal Welfare (IFAW) launched a new system named 'tenBoma', meaning 'Ten Houses'. Adapting a long-standing Kenyan community policing philosophy, tenBoma is building an intelligence fusion centre at the KWS regional headquarters in Voi to support operations across the Tsavo and Amboseli national parks through data pattern analysis of poaching. Like the NRT, this software draws on a range of intelligence sources, in particular grassroots information from within local communities.[58] In contrast to the NRT's community development strategic approach, tenBoma's stakeholders emphasise the input of American counter-insurgency experience, stating that 'these same techniques have been used by military intelligence units to predict and prevent terror attacks in Afghanistan and Iraq. They can be used to predict and prevent poaching.'[59] IFAW's lead project advisers, moreover, all have military intelligence and Special Forces backgrounds.[60] Military thinking from foreign conflict environments consequently suffuses the project.

New intelligence and surveillance technologies can be erroneously presented as a panacea to poaching. Many technologies represent significant investments for cash-strapped conservation authorities to purchase, manage and train their staff to use. Those experienced in anti-poaching in Kenya acknowledge that, while such technology can help, they are not a substitute for the basics: having a sufficient density of well trained, adequately equipped, well-looked-after and strongly motivated field rangers.[61] Nevertheless, massive amounts of data including names, phone numbers and routines of key individuals is often trapped at the park and conservancy level. Local NGOs and communities do not trust state agencies with this information for fear of corruption, often with good reason. Under the right circumstances they are willing to share information. Empowering communities and civil society organisations like the NRT to continue collecting intelligence under regulated conditions as a cooperative partner with state authorities may continue to be the only organic solution to the vacuum of state service and authority in Kenya's rural peripheries.[62]

Community Policing, Development, and Engaging From the Ground Up

These wider intelligence approaches supporting front-line anti-poaching reflect the growing consensus that armed ranger combat patrolling should be combined with programmes that tackle both drivers of

poaching and broader instability. Through the likes of the NRT, Tsavo Trust, and Tsavo Conservation Group, there is increasing support for more bottom-up community-based natural resource management schemes. Researchers and practitioners alike are championing this across Africa as a long-term solution that combines security, stabilisation, development and conservation goals.[63]

The NRT's approach focuses on promoting long-term human and wildlife security through local ownership and decision-making.[64] This has fostered greater community buy-in to wildlife protection. It also represents an extension of devolved, grassroots governance and civil society-building initiatives in Kenyan political reforms and development work over the past two decades. Three key inter-linked pillars of action have emerged from this, representing a more nuanced, holistic approach to counteracting poaching. First have been socioeconomic development programmes and land-reform initiatives. These have provided health clinics, schools and new channels for cattle sales to market, while promoting more sustainable resource use by both conservation and different ethnic groups of traditional pastoralists. These programmes have both fomented alternative livelihoods to poaching, and reduced deterioration of rangelands and resource conflict. Second, ethnic groups, some of which have historically been antagonistic, have formed 'peace teams' and grazing committees in pursuit of non-violent conflict resolution. This is closely linked to land reform and ranger security interventions, for cattle rustling has been the long-term source of inter-communal mistrust.[65]

Third is the work of the NRT and community rangers themselves, who hail from a representative slice of different ethnic communities. Through their multi-faceted work, including mitigating stock theft, road banditry and inter-communal conflict, they have 'become part community policemen, part wildlife guardians.'[66] Community policing of the kind being trialled across Kenya can be particularly effective in territories where violence, conflict and criminality is endemic, state capacity to achieve human security is weak, and trust in state agencies is low.[67] This leads to the NRT's conclusion that 'conservancies have essentially taken over a large component of law enforcement [from the state]'.[68]

Elephant mortality statistics provide some, albeit limited, quantitative insights into the potential effects of this grounded NRT approach. Since the 2012 peak of 103 elephant deaths by poaching across NRT conservancies, a significant year-on-year decline has occurred, reaching 20 as of 2015. This decline has been in line with national trends, however, the

rate of decline in NRT conservancies from 2012 to 2015 outstripped the average national rate (81% compared to 75%). Moreover, the Proportion of Illegally Killed Elephants (PIKE) dropped from a debilitating 81% in 2012 to concerning yet more sustainable levels of 43% in 2014 and 37% in 2015.[69] While several factors have likely contributed to these trends, NRT officials and community representatives have highlighted causal links between the conservancies' benefits and this decline.[70] Nevertheless, the risk of a balloon-effect remains a concern. Between 2012 and 2014, road banditry and stock theft incidents increased from 15 to 24 and 42 to 71, respectively, suggesting some former or would-be poachers are being displaced into alternative forms of criminality.[71] Moreover, in 2016 and the first half of 2017, spikes in armed violence have directly impacted conservancies and private ranches in Samburu-Laikipia. Driven by a combination of endemic drought in Kenya's northern counties, ongoing intercommunal conflict and local land-use politics in the lead up to national elections, nomadic cattle herders have moved south onto conservation land and targeted property, ranchers and conservationists.[72] This further underscores the need for holistic approaches to both security interventions and development programmes targeting the drivers of violence and criminality in Samburu-Laikipia and Kenya's other rangelands.

High-Level Investigations of Trafficking and Organised Crime

While programmatic responses focussing on alternatives to poaching in Kenya's rangelands are increasingly supplementing militarised responses, there remains a vacuum of inaction higher up the country's ivory trafficking chains. Mid- and high-level organised crime bosses and corrupt figures who enable the trade's scale and reach, enjoy widespread impunity. While rangers' efforts in the rangelands may stymie particular poaching ventures, such 'kingpins' are able to move into other criminal enterprises or to return to poaching in the future. As examined in other chapters in this book, this pattern is evident in the counter-measures taken against Somali Piracy, where low-level pirates were targeted through militarised means at sea, but higher-up OCG and corrupt enablers in Somalia remained untouched.[73] Lessons from global initiatives

against other forms of organised crime have been inadequately incorporated into tackling the illegal ivory trade in Kenya.[74]

There have been four main obstacles in investing more efforts into such counter-measures: (i) the weak capacity of Kenyan state agencies to conduct rigorous investigations that will stand up in court; (ii) poor inter-agency coordination; (iii) limited international cooperation between Kenyan agencies, equivalents in neighbouring countries like Tanzania, Western intelligence services with a local presence, and NGOs; and (iv) a lack of high-level political-will to tackle corruption. This is a problem that goes beyond the IWT to law enforcement and counter-terrorism in Kenya. Poor tradecraft among agencies limits their ability to conduct detailed interrogations, track the movements of suspects, and systematically collate and analyse multi-source intelligence and evidence.[75] Prosecutions are often poorly handled, and judges repeatedly fail to address wildlife crime seriously. Although some low-ranking organised crime figures have been jailed, it appears that cases against the few higher-level kingpins arrested for the first time since 2014—such as businessmen Feisal Mohamed Ali caught in Dar es Salaam and Abdurahman Mohammed Sheikh in Mombasa—will drag out for years.[76] Thus, while arrest rates for poaching and wildlife trafficking in Kenya have been increasing since the late 2013 introduction of the Wildlife Conservation and Management Act, prosecution and conviction rates remain poor.[77] This is true across many African range states.

Several initiatives have begun to address these problems. Ongoing capacity building of the KWS' intelligence and investigative functions focuses on building cases at the early stages of the trafficking chain between poachers and their initial OCG buyers.[78] International bodies such as INTERPOL, the UNODC and the World Customs Organisation are also working with other Kenyan stakeholder agencies to bolster higher-level co-operation frameworks. Plans are also developing for international inter-agency and multi-commodity (wildlife, heroin, people trafficking) Transnational Organised Crime Units in Kenya and Tanzania that can interface with foreign partner intelligence and law enforcement agencies.[79] These nascent initiatives, while still hampered by corruption and absent political-will to prosecute senior kingpins, demonstrate that Kenya's response to the IWT, while still front-line heavy, is beginning to move away from over-reliance on militarised counter-measures.

Conclusion

While Kenya's approach has been dominated by a militarised cast, to which the link to terror is of particular concern, there are commendable ongoing efforts by state and non-state actors alike to move towards a more holistic and integrated approach. It is key to supplement armed combat-tracking with intelligence collection and analysis from both grassroots and technical sources. This must be combined with community engagement programmes and the ability and will to investigate higher-level OCGs and corrupt figures. Integrating such counter-poaching and contraband trafficking measures with initiatives to undermine other forms of violence and criminality, whether they be cattle rustling, road banditry and inter-communal violence in Kenya's countryside or linked forms of organised criminal trafficking higher up, better engages with the aims, drivers and enablers of wildlife crime in Kenya. However, there remains the risk that those initiatives, on the front-line in particular, will draw too heavily on counter-insurgency experience and doctrine if community engagement continues to be dominated by security-based motivations. The broader context of widespread conflict, violence and prevalence of arms, and broader institutional problems associated with weak central states like Kenya poses a significant challenge to effective counter-poaching measures. Nuanced approaches that break the mould of traditional paramilitary responses represent the way forward.

Notes

1. V. Vira, T. Ewing and J. Miller (2014), 'Out of Africa: Mapping the Global Trade in Illicit Elephant Ivory', *Born Free USA/C4ADS*, p. 3.
2. Since 2009, around 43 tonnes of ivory from elephants poached in neighbouring states like Tanzania as well as Kenya has been traced back to Mombasa alone through seizures either in Mombasa itself or in ports further along the trafficking chain, making it the world's leading ivory port: Elephant Action League & Wildleaks (2015), 'Flash Mission Report: Port of Mombasa, Kenya', p. 1.
3. Other concentrations of elephants in Kenya include the Aberdares, Mara, and Amboseli: see Elephant Database (2013), 'Kenya: Provisional African Elephant Population Estimates', http://www.elephantdatabase.org/preview_report/2013_africa_final/Loxodonta_africana/2013/Africa/Eastern_Africa/Kenya, accessed 23 August 2015.

4. See, for example, International Federation for Animal Welfare (2013), 'Criminal Nature: The Global Security Implications of the Illegal Wildlife Trade', US Office of the Director of National Intelligence (2013), 'Wildlife Poaching Threatens Economic, Security Priorities in Africa'.

5. Kenya Wildlife Service (KWS) (2009), 'Annual Report 2009', pp. 24–26; KWS (2008), 'Annual Report 2008', pp. 27–29; KWS (2010), 'Annual Report 2010', pp. 15–19; KWS (2011), 'Annual Report 2011', pp. 1–2; KWS (2012), 'Annual Report 2012', pp. 15, 29–35; KWS (2013), 'Annual Report 2013', pp. 15–16; KWS (2014), 'Annual Report 2014', pp. 24–27, http://www.kws.go.ke/downloads. Figures for 2015 are yet to be released, but unofficial estimates put elephant poaching deaths at around 90: F. Keating (2016), 'World's largest ivory bonfire ignited by Kenya Wildlife Service at anti-poaching summit', *International Business Times.*

6. B. Christy (2012), 'The Battle for the Elephants', documentary film, *The National Geographic*, http://www.pbs.org/programs/battle-elephants/, date accessed 28th August 2016; A. Laing (2014), 'Treat poaching like act of war, conservationist tells Britain', *The Telegraph*; R Schiffman (2014), 'Ivory poaching funds most war and terrorism in Africa', *New Scientist*; British Army (2014), 'Welsh Guards wage war on poaching', http://www.army.mod.uk/news/26597.aspx, accessed on 28 April 2016; J. Vidal (2016_, 'On the frontline of Africa's wildlife wars', *The Guardian*; Veterans Empowered To Protect African Wildlife (VETPAW), 'VETPAW's Mission', http://vetpaw.org/mission/, accessed on 23 April 2016.

7. T. Maguire and C. Haenlein (2015), 'An Illusion of Complicity: Terrorism and the Illegal Ivory Trade in East Africa', *RUSI Occasional Paper.*

8. Ibid.

9. For how similarly mischaracterised narratives by popular advocacy groups adversely impacted international conflict reduction engagement in the Democratic Republic of Congo by focusing on the 'conflict mineral' trade, see S. Autesserre, 'Dangerous Tales: Dominant Narratives on the Congo and Their Unintended Consequences', *African Affairs* (Vol. 111, No. 443, 2012), pp. 202–222.

10. D. Brockington, *Fortress conservation: the preservation of the Mkomazi Game Reserve, Tanzania* (Oxford: James Currey, 2002); Rosaleen Duffy, 'Waging a war to save biodiversity: the rise of militarised conservation', *International Affairs*, 90, 4 (2014), pp. 819–834; Elizabeth Lunstrum, 'Green militarization: anti-poaching efforts and the spatial contours of Kruger National Park', *Annals of the Association of American*

Geographers, 104, 4 (2014), p. 817; Maguire and Haenlein, 'An Illusion of Complicity', pp. 38–40.

11. Several civil society organisations in Kenya have argued otherwise. The Tsavo Conservation Group's 'Stabilisation Through Conservation', http://www.tsavocon.org/stabilcon, accessed on 3 May 2016.

12. US Army and Marine Corps, *Counterinsurgency Field Manual: US Army Field Manual No. 3–24* (Chicago: University of Chicago Press, 2007), p. 2.

13. S. Metz, *Rethinking Insurgency* (Carlisle, PA: Strategic Studies Institute, US Army War College, 2007); P. B. Rich and I. Duyvesteyn, 'The study of insurgency and counterinsurgency', in P. B. Rich and I. Duyvesteyn (eds), *The Routledge Handbook of Insurgency and Counterinsurgency* (Abingdon, Oxon: London, 2012), pp. 11–14; R. J. Bunker, 'Changing Forms of Insurgency: Pirates, narco gangs and failed states', in P. B. Rich and I. Duyvesteyn, *Handbook of Insurgency*, pp. 45–53.

14. P. B. Rich and I. Duyvesteyn, 'The study of insurgency and counterinsurgency', pp. 11–14; A. Giustozzi, 'Insurgency in Afghanistan', in P. B. Rich and I. Duyvesteyn, *Handbook of Insurgency*, pp. 218–226; Bunker, 'Changing Forms of Insurgency', pp. 49–52.

15. Including the Borana, Oromo, Turkana, Samburu, Meru, Somali, Kikuyu, Orma, Pokomo and others.

16. K. Koross (2013), 'Kenya: Untouchable Lords of Poaching in Samburu', *The Star*; G. Johnson (2013), 'Kenyan Poachers Make a Killing in Ivory', *Al-Jazeera*; V Vira and T Ewing, 'Ivory's Curse: The Militarization and Professionalization of Poaching in Africa', *Born Free/C4ADS*, April 2014, pp. 15–17, 64–66; Vira, Ewing and Miller (2015), 'Out of Africa', pp. 15–16; interview with Western diplomats 3 and 4, Nairobi; interview with Western diplomats 3 and 4, Nairobi; interview with senior community conservancy manager, northern Kenya, 30 April 2015; interview with community conservancy senior security officer, northern Kenya, 30 April 2015; interview with wildlife crime research consultant, 8 July 2015.

17. Vira and Ewing, 'Ivory's Curse', p. 59.

18. A. del Frate, Anna, Kabuu, Eliud, Murray, Ryan, Nthiga, Eliud, & Wepundi, Manasseh (2012), 'Availability of Small Arms and Perceptions of Security in Kenya: An Assessment', *Small Arms Survey Special Report,* pp. 1–127, http://www.smallarmssurvey.org/fileadmin/docs/CSpecial-reports/SAS-SR16-Kenya.pdf, date accessed 28th August 2016.

19. In 2008 in Turkana North, a province bordering Samburu, the Small Arms Survey matched as much as 50% of circulating ammunition to types and numbers associated with the Kenyan Police: J. Bevan (2008), 'Blowback: Kenya's Illicit Ammunition Problem in Turkana North

District', *Small Arms Survey,* 22, pp. 1–108; Vira and Ewing, 'Ivory's Curse', pp. 59–60.

20. Interview with senior community conservancy manager, northern Kenya, 30 April 2015.

21. The Kenya Police Service (2011), 'Annual Crime Report for the Year 2011', p. 16, http://www.kenyapolice.go.ke/crime-statistics.html?download=10:crime-report-2011, accessed on 27 April 2016; The Kenya Police Service (2014), 'Annual Crime Report 2014', p. 7, http://www.kenyapolice.go.ke/crime-statistics.html?download=11:annualcrime-report-2014, accessed on 27 April 2016.

22. Vira and Ewing, 'Ivory's Curse', p. 60.

23. KWS (2012), 'Annual Report 2012', pp. 15, 29–35; KWS (2013, 'Annual Report 2013', pp. 15–16; KWS, 'Annual Report 2014', pp. 24–27, available at: http://www.kws.go.ke/downloads. date accessed 28th August 2016.

24. C. Lagrone and J. Busby (2015), 'Is Wildlife Trafficking a National Security Threat?', *New Security Beat* (Wilson Center), https://www.newsecuritybeat.org/2015/06/wildlife-trafficking-national-security-threat/, accessed on 23 April 2016; International Anti-Poaching Foundation (2016), 'About the IAPF', http://www.iapf.org/index.php/about, accessed on 23 April 2016; International Union for Conservation of Nature (IUCN) (2014), 'Rising murder toll of park rangers calls for tougher laws', http://www.iucn.org/?17196/Rising-murder-toll-of-park-rangers-calls-for-tougher-laws, accessed on 25 April 2016.

25. Survey of KWS annual reports 2008–2014; V. Hamilton (2013), 'Rangers in Kenya are outgunned in the new poaching arms race', *Public Radio International*, http://www.pri.org/stories/2013-10-08/rangers-kenya-are-outgunned-new-poaching-arms-race, accessed on 26 April 2015; International Union for Conservation of Nature (2014), 'Rising murder toll of park rangers calls for tougher laws'; Vidal, 'On the frontline of Africa's wildlife wars'.

26. Vidal, 'On the frontline of Africa's wildlife wars'.

27. AFP (2015), 'Al-Shabaab militants kill 25 policemen in Kenya', *The Telegraph*.

28. A 2013 report by the Armed Conflict Location and Event Dataset (ACLED) project found that the most active violent actors in Kenya since it started monitoring conflict incidents in the late 1990s have been communal militias: ACLED, 'Country Report: Kenya', December 2013, p. 5.

29. J. Kangogo (2014), 'Kenya: More Than 24 Police Officers Killed in Fresh Baringo Attacks', *The Star*, http://allafrica.com/stories/201411030188.html, accessed on 27 April 2016.

30. Truth, Justice and Reconciliation Commission, 'The Final Report of the Truth, Justice & Reconciliation Commission of Kenya', Vol. IIB, 3 May 2013, pp. 1–342; K. Menkhaus (2015), 'Conflict Assessment 2014: Northern Kenya and Somaliland' Danish Demining Group, pp. 16–53, 86–122; J. Galaty (2016), 'Boundary-Making and Pastoral Conflict along the Kenyan–Ethiopian Borderlands', *African Studies Review*, Vol. 59, pp. 97–122.

31. According to monitoring of conflict in Kenya by the Armed Conflict Location & Event Data Project (ACLED).

32. ACLED, 'Kenya Country File Version 6 (1997–2015)', dataset, http://www.acleddata.com/data/version-6-data-1997-2015, date accessed 28th August 2016; ACLED, 'Realtime 2016 All Africa File (2016)', dataset, http://www.acleddata.com/data/realtime-data-2016/, date accessed 28th August 2016. Under-reporting of such incidents and casualties in particular is well-established in Kenya, so these figures are by no means definitive: Pragya (2012), 'Conflict Assessment: Northern Kenya', p. 9.

33. The Kenya Police Service, 'Annual Crime Report for the Year 2011', p. 8.

34. NRT Kenya (2015), 'P2.1 Gabriel Ambush', audio file, n.d., https://soundcloud.com/nrt_kenya/p2-1-gabriel-ambush, accessed on 4 May 2016.

35. J. King and I. Craig (2015), 'Engaging Communities in Tackling Illegal Wildlife Trade: Case Study—Community Conservancies in Northern Kenya', Northern Rangelands Trust; I. Craig (2015), 'Update on NRT Anti-Poaching & Security Operations For Period of May 2014—March 2015', Northern Rangelands Trust, 27 February 2015; NRT, 'Peace Report: January—February 2016', http://www.nrt-kenya.org/programme-documents, accessed on 28 April 2016; interviews with members of the community conservancy, northern Kenya, 28 April 2015.

36. The CITES-agreed average weight for elephant tusks is 3.8 kg, others use 5 kg.

37. Vira and Ewing, 'Ivory's Curse', pp. 17–20, 62; Kenya National Bureau of Statistics, 'Economic Survey 2014', p. 294.

38. N. Peluso and W.J. Watts, *Violent environments* (Ithaca, NY: Cornell University Press, 2001); R. Neumann (2004), 'Moral and discursive geographies in the war for biodiversity in Africa', *Political Geography*, 23, 7, pp. 813–837.

39. (2013) 'Kenya Set to Launch Anti-Poaching Unit to Save Wildlife', *Xinhua*, http://newsroom.wildlifedirect.org/2013/08/06/kenya-set-to-launch-anti-poaching-unit-to-save-wildlife/, accessed on 24 April 2016.

40. KWS, 'Annual Report 2008', p. 36; KWS, 'Annual Report 2010', p. 12; KWS, 'Annual Report 2012', pp. 33–34; KWS, 'Annual Report 2014', pp. 24–29.

41. KWS, 'Annual Report 2010', p. 8; KWS, 'Annual Report 2011', p. 9; A. Vaughan (2013), 'British army joins fight against elephant and rhino poaching', *The Guardian*; British Army (2014), 'Welsh Guards Wage War on Poaching', *British Army News*, http://www.army.mod.uk/news/26597.aspx, accessed on 22 April 2016; correspondence with Regional Field Coordinator (Counterterrorism), US Embassy Nairobi, 17 Mar 2015.

42. 51 Degrees, based locally, run by Kenyan nationals and a former UK Special Air Service (SAS) officer, and focusing on combat tracking and intelligence; Kinetic Six, based in Hereford in the UK, also ran by former SAS personnel, and concentrating on digital communications systems for ranger patrols; and Mars Omega, a London-based specialist information-gathering consultancy back-stopping NRT's use of the firm's JIGSAW intelligence analysis software developed by former British Army Intelligence Corps officers.

43. Craig, 'Update on NRT Anti-Poaching & Security Operations'; USAID, 'Northern Rangelands Trust Support', https://www.usaid.gov/kenya/factsheets/northern-rangelands-trust-support, accessed on 4 May 2016; Kinetic Six, 'Wildlife Conservation', http://www.kinetic6.co.uk/wildlife-conservation/, accessed on 4 May 2016; interview with director of private security firm, Nairobi, 29 January 2015.

44. J. King and I. Craig (2015), 'Engaging Communities in Tackling Illegal Wildlife Trade: Case Study—Community Conservancies in Northern Kenya'; Craig, 'Update on NRT Anti-Poaching & Security Operations'; interview with director of private security firm, Nairobi, 29 January 2015; interview with community conservancy senior security officer, northern Kenya, 30 April 2015; interview with senior community conservancy manager, northern Kenya, 30 April 2015.

45. This has been noted in particular with regards to drug trafficking interdictions over many decades, including a growing heroin trade through East Africa from Iran and Pakistan due to interdictions in traditional routes to European markets through Eastern Europe: see V. Ruggiero (2010), 'Unintended consequences: changes in organised drug supply in the UK', *Trends in Organized Crime*, 13, 1, pp. 46–59; *The Economist* (2015), 'The Smack Track: East African States are Being Undermined by Heroin Smuggling'.

46. A. Hills (2000), *Policing Africa: Internal Security and the Limits of Liberalization* (Boulder, CO: Lynne Rienner Publishers) pp. 6–8.

47. TJRC (2013), 'Report of the Truth, Justice and Reconciliation Commission', Vol. IIA, 3 May 2013 (especially pp. 34–71); Amnesty International (2013), *Police Reform in Kenya: 'A Drop in the Ocean'* (Amnesty International Publications); Human Rights Watch (2015), *Insult to Injury: The 2014 Lamu and Tana River Attacks and Kenya's Abusive Response.*

48. There have been isolated incidents of armed KWS excesses akin to those of the Police: H. Salesa (2015), 'Doyo accuses KWS of killing four in Isiolo', *The Star*, http://www.the-star.co.ke/news/2015/05/21/doyo-accuses-kws-of-killing-four-in-isiolo_c1139049, accessed on 29 April 2016.

49. A. Welz (2013), 'The war on African poaching: is militarisation doomed to fail?', The Guardian; Vira and Ewing, 'Ivory's Curse', p. 14; Lagrone and Busby (2015), 'Is Wildlife Trafficking a National Security Threat?', *New Security Beat*; *Small Arms Survey 2015: Weapons and the World* (Cambridge: Cambridge University Press, 2015), p. 7.

50. C. Nordstrom (2004), *The shadows of war: violence, power, and international profiteering in the twenty-first century* (Berkeley, CA: University of California Press); Duffy, 'Waging a war to save biodiversity', pp. 824–826.

51. Duffy, 'Waging a war to save biodiversity', pp. 826–827; R. Schroeder and J. Isaacs, 'Remote Control: Conservation Surveillance and Technologies of Power', *Geography Compass* (forthcoming).

52. Like intelligence supporting wildlife ranger patrols, military intelligence seeks to understand opponents in the 'battle-space' to include their organisational structure, leadership, equipment, operational propensity, and communications, and the terrain on which they operate that can both favour and restrict them and friendly forces. See J. Keegan (2004), *Intelligence In War: Knowledge of the Enemy from Napoleon to Al-Qaeda* (London: Pimlico,); J. Ferris, 'Netcentric warfare, C4ISR and information operations', in C. Andrew, R. J. Aldrich, and W. K. Wark (2009), *Secret Intelligence: A Reader* (Abingdon, Oxon: Routledge,), pp. 455–475.

53. Vira and Ewing, 'Ivory's Curse', p. 59.

54. KWS, 'Annual Report 2011', pp. 8–9.

55. Interview with Western diplomats 3 and 4, Nairobi, 27 January 2015; interview with director of private security firm, Nairobi, 29 January 2015; interview with community conservancy senior security officer, northern Kenya, 30 April 2015; interview with senior community conservancy manager, northern Kenya, 30 April 2015.

56. Northern Rangelands Trust, 'Security', http://www.nrt-kenya.org/security/, accessed on 3 May 2016; USAID, 'Northern Rangelands Trust Support'; King and Craig, 'Engaging Communities in Tackling

Illegal Wildlife Trade'; Craig, 'Update on NRT Anti-Poaching & Security Operations'; interview with senior community conservancy manager, northern Kenya, 30 April 2015.

57. T. M. Ford (2015), speech 'GEOINT Wildlife Security and Illicit Trafficking', GEOINT Symposium (2015); K. Quinn (2016), 'Intelligence and the Illegal Wildlife Trade: The IC and NGOs Form a Network to Fight Wildlife Crime', *Trajectory Magazine* (US Geospatial Intelligence Foundation), http://trajectorymagazine.com/got-geoint/item/2136-intelligence-and-the-illegal-wildlife-trade.html, accessed on 5 May 2016.

58. International Fund for Animal Welfare, 'IFAW tenBoma: the anti-poaching revolution', http://www.ifaw.org/sites/default/files/IFAW-tenBoma.pdf, accessed on 4 May 2016; International Fund for Animal Welfare, 'Operation tenBoma: Getting Left of Kill', short documentary film, 20 May 2016, https://www.youtube.com/watch?v=c663wLXCuX8, accessed on 20 May 2016.

59. International Fund for Animal Welfare, 'IFAW tenBoma: the anti-poaching revolution'.

60. Faye Cuevas, with 15 years' experience of counter-terrorism intelligence work including as an embedded adviser to Iraq's Special Operations Forces; Timothy Spalla, a former US Army intelligence officer; and Jeremy Caldwell, a former US Special Operations intelligence analyst.

61. Interview with director of private security firm, Nairobi, 29 January 2015; interview with senior community conservancy manager, northern Kenya, 30 April 2015. The challenge of still requiring personnel on the ground to make such technologies effective is well documented in regards to new technological approaches to warfare: see P. Rogers (2013), 'Security by remote control: can it work?', *RUSI Journal*, 158, 3, pp. 14–20.

62. For similar arguments regarding other African range state cases, see Corporal L.W. Townsend (2014), 'Intelligence and conservation: how does intelligence support counter-poaching operations in Sub-Saharan Africa?', unpublished MA thesis (Brunel University), pp. 23, 28, 60–61.

63. International Institute for Environment and Development (2015), 'Conservation, crime and communities: case studies of efforts to engage local communities in tackling illegal wildlife trade'; Keith Somerville (2015), blog post, 'Cosmetic trade bans and Western paternalism will not end poaching in Africa—community-based conservation will', *Commonwealth Opinion*, http://commonwealth-opinion.blogs.sas.ac.uk/2015/cosmetic-trade-bans-and-western-paternalism-will-not-end-poaching-in-africa-community-based-conservation-will/, accessed on 24 April 2016.

64. For more on this, see C. Haenlein and T. Maguire (2015), 'Countering Poaching and Wildlife Crime: Engaging from the Ground Up', *RUSI Newsbrief*, 35, 4, pp. 21–24.

65. King and Craig, 'Engaging Communities in Tackling Wildlife Crime'; Craig, 'Update on NRT Anti-Poaching & Security Operations'; NRT (2015), 'Peace', http://www.nrt-kenya.org/peace/, accessed on 2 May 2016; interview with senior community conservancy manager, northern Kenya.

66. Northern Rangeland Trust, 'Security'.

67. J. H. Skolnick and D. H. Bayley (1988), *Community Policing: Issues and Practices Around the World* (Washington, D.C: U.S. Dept. of Justice, National Institute of Justice, Office of Communication and Research Utilization); M. Ruteere and M. E. Pommerolle (2003), 'Democratizing Security or Decentralizing Repression? The ambiguities of community policing in Kenya', *African Affairs*, 102, 409, pp. 587–604; V. E. Kappeler and L. K. Gaines (2015), *Community Policing: A Contemporary Perspective*, 7th ed. (Abingdon, Oxon: Routledge).

68. King and Craig, 'Engaging Communities in Tackling Wildlife Crime'.

69. These calculations are based on the officially reported nationwide elephant poaching figures detailed in the KWS' annual reports from 2008 to 2014 cited above, the estimated figure cited above for 2015, and NRT's internal figures available in NRT Research and Monitoring Department (2016), 'Elephant Mortality in NRT Conservancies in 2015'.

70. Interview with senior community conservancy manager, northern Kenya, 30 April 2015.

71. Craig, 'Update on NRT Anti-Poaching & Security Operations'.

72. A. Cruise and B. van der Zee (2017), 'Armed herders invade Kenya's most important wildlife conservancy', *The Guardian*; J. Aglionby (2017), 'Rift Valley violence sparks fears ahead of Kenyan elections: Politicians accused of fomenting deadly "land invasions" to drive out opponents', *Financial Times*; D. Ole Kaelo (2017), 'Kenya: Conservancies Not Source of Raging Conflict in Laikipia', *Daily Nation*; Ludovica Iaccino (2017), 'What's Behind the Violence in Kenya's Laikipia Region?', *Newsweek*; (2017), *Cattle Barons: Political Violence, Land Invasions and Forced Displacement in Kenya's Laikipia County*, available at: https://www.slideshare.net/starwebmaster/is-laikipia-slipping-into-longterm-anarchy, accessed on 27 June 2017; (2017), 'Is rebellion the next phase of Laikipia violence?', *The Star*.

73. M. Bryden et al. (2011)., 'Report of the Monitoring Group on Somalia and Eritrea Pursuant to Security Council Resolution 1916 (2010)', S/2011/433, pp. 33–40; World Bank (2013), 'The Pirates of Somalia: Ending the Threat, Rebuilding a Nation', pp. 73–79; 'Somali pirates

are "not defeated but dormant," says Puntland's Minister for Maritime Transport', Defence IQ Press, 12 December 2014, http://www.defenceiq.com/naval-and-maritime-defence/articles/somali-pirates-are-not-defeated-but-dormant-says-p/, accessed on 24 April 2016; J. Hatcher (2015), 'Illegal overfishing and the return of Somalia's pirates', *Al Jazeera*.

74. This point is also made in Environmental Investigation Agency (2014), 'In Cold Blood: Combating Organised Wildlife Crime', p. 19.

75. INTERPOL (2014), 'Elephant Poaching and Ivory Trafficking in East Africa—Assessment for an Effective Law Enforcement Response'; interview with Western diplomats 3 and 4, Nairobi, 27 January 2015; interview with UNODC officials 1 and 2, Nairobi, 24 April 2015; authors' interview with INTERPOL officers 1 and 2, Nairobi, 1 May 2015.

76. H. Vogt (2015), 'Elephants in Danger: How Kenya's Port of Mombasa Became the World's Hub for Ivory Smuggling', *Wall Street Journal*; interview with INTERPOL officers 1 and 2, Nairobi, 1 May 2015; Skype interview with senior IWT monitoring official, southern Africa, 14 May 2015.

77. For more on this problem see P. Kahumbu et al. (2014), 'Scoping study on the prosecution of wildlife related crimes in Kenyan courts—January 2008 to June 2013' (Wildlife Direct).

78. The KWS launched East Africa's first wildlife forensic lab in Nairobi in 2015 (and only the second in Africa, after South Africa) to aid with DNA profiling for court cases: K. Njagi (2015), 'Kenya opens $100 m wildlife forensic lab to help prosecute poachers', *The Guardian*.

79. Interview with UNODC officials 1 and 2, Nairobi, 24 April 2015; interview with INTERPOL officers 1 and 2, Nairobi, 1 May 2015; interview with UNODC official 3, 20 May 2015.

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From 2014–2015, Tom was the John Garnett Visiting Fellow within the National Security & Resilience Studies programme at the Royal United Services Institute for Defence and Security Studies (RUSI), focusing on violent extremism and organised crime in East Africa. Tom has published work on a range of issues, from Cold War counter-subversion in Britain, to counter-insurgency intelligence and propaganda during the Malayan Emergency, to the evolving nature of the Somali terrorist organisation Al-Shabaab's funding, to linkages between ivory trafficking and threat financing in East Africa. His wider research interests include the roles of intelligence and propaganda in foreign policy and domestic security, strategic communications, counter-insurgency, violent extremism, and international security liaison.

'A Blunt Instrument': Addressing Criminal Networks with Military Responses, and the Impact on Law Enforcement and Intelligence

John M. Sellar

INTRODUCTION

Today's commercial level poaching of specifically targeted fauna incorporates careful planning and preparation, state of the art equipment and strategic collaboration between all those involved. The act of pulling a trigger is just the beginning to a long chain of law-breaking that can stretch from the savannahs of Africa to a traditional medicine practitioner or luxury apartment in the Orient. It is no mere coincidence that the term 'expedition' is often applied to both a poaching gang's intrusion across a nation's borders, and to an army's campaign. Each activity has all the hallmarks of a military operation.

Given modern poaching methods and its place as part of a criminal continuum rather than a standalone endeavour, poaching has inevitably

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become more militarised. In light of this, it is surely not unreasonable that nations' responses to poaching will, have, or should, also become more militarised? This chapter does not seek to answer that question but rather attempts to identify some of the ancillary and supplementary questions which must be considered before seeking to reach a conclusion. It also places special emphasis on the use of existing military forces, aside from any militarisation of 'civilian' personnel such as game scouts, rangers and forest guards, which is examined in more detail in Maguire's chapter in this volume.

CONSTITUTIONAL AND LEGAL ISSUES

The word 'military' has been defined as 'relating to or characteristic of armed forces'.[1] The task of the military has, traditionally, been viewed as being the defence of a country and its people, and the waging of war against the people of another state. However, despite the significant responsibility placed upon military personnel (be they army, navy or air force), the individual soldier in most nations has no particular constitutional position. He or she has no higher status, authority or power—in time of peace—than any other person. For example, a soldier witnessing a crime, has no legal basis for detaining the perpetrator other than the common law 'citizen's arrest' recognised by the majority of the world's legal systems (which is equally available to civilians).

Historically, guarding, protecting and supervising the security of national borders were typically tasks of the military. However, in many countries the role of the army in particular, but also the navy, has substantially reduced in this field over recent decades.

In Asia, for instance, securing the land borders of Bangladesh is the role of its Borders Guards,[2] while in nearby Nepal the task falls to the Armed Police Force.[3] Off America's coastlines, it will be the US Coast Guard that enjoys primacy and which regularly arrests fauna and flora poachers and smugglers. This agency is currently overseen by the Department of Homeland Security but its management and direction would transfer to the Department of Defence in time of war.

The constitutional separation of the military from politics and matters such as law enforcement has been seen as essential in most nations, especially those regarded as democracies. In others, however, there can be considerable blurring, deliberate or not. Indeed, a recent report by the Global Initiative,[4] and also described in Rademeyer's chapter in this

volume, specifically highlights the blurring which has occurred in South Africa, arguably resulting in the perception that the current response to poaching is being conducted by 'one organism' in a manner that civil liberty groups might find worrying. For the purposes of this discussion, however, the democratically accepted separation of military and civil 'powers' or 'authorities' will be used as the benchmark.

Most nations regard protecting their citizens, and the property of the state, as a matter for police authorities. Fauna and flora, and other natural resources which occur in the wild, are commonly considered property of the state. Despite the police being the principal crime deterrence, detection and investigation agency with regard to theft, in many countries it appears that poaching is not viewed as theft or other types of mainstream crime. Rather, it will be staff of game, wildlife, national parks or forest agencies that will typically be primarily responsible for preventing and responding to the 'stealing' of animal and plant species.

Few nations ignore the considerable potential that the military, with its human and logistical resources, command structure and expertise, has available to support the state, even in peacetime. Consequently, the concept of 'aid to the civil authorities' is well-recognised around the globe. Most countries, however, have taken care to clearly establish, either in law or via government policy, the circumstances under which such aid may be requested, deployed and managed. It is where such law or guidance is absent or unclear that potential problems exist.

Regardless of whether a country's approach to this subject is regulated by law or policy, typically the deployment of military personnel occurs at times of particular 'emergency', and in circumstances when the capacity or ability of the civil authorities has been, or is likely to be, outstripped by the demands placed upon them.

However, there is little, if any, evidence of relevant laws or policies that envisage military aid to civil powers focussed on combatting crime. During research, the author noted a policy-related US State Department document[5] that referred to crime. However, the document's main focus was international military education, foreign military financing, and training delivered by the US. In referring to crime, the Department suggested that military training, which might be conducted outside the US, could assist in combating transnational crime by bolstering nations' capacity to control their sovereign territory. It did not make a reference to US military forces directly combating transnational crime.

Issues of national security are deservedly raised when consider-ing what is happening day-to-day along South Africa's border with Mozambique. Poaching of elephants elsewhere in Africa often involves cross-border incursions too, with countries including Botswana, Chad, the Democratic Republic of the Congo, Kenya, the United Republic of Tanzania and Zimbabwe all experiencing regular instances of persons and gangs entering from neighbouring countries and further afield. If the military in such countries are the primary agency for border control, it may be right that they should react and respond. However, the common situation where soldiers patrol areas that are nowhere near the country's borders may fail to be justified by national security concerns.

Additionally, poaching incursions are not carried out with the intent to attack national sovereignty or destabilise a country. They certainly do not warrant characterisation as 'invasions'. They are intrusions for the purposes of crime, just as a burglar overcomes domestic security when breaking into a dwelling house.

To consider these constitutional and legal implications too closely may seem simply theoretical or legalistic. However, they are of considerable importance to the military. If the military are instructed to deploy in what could constitute an unlawful manner, subsequent actions are open to challenge in the courts. This risks placing military personnel, of all ranks, open to litigation.

Safeguarding the jurisdiction of the military acting in such contexts could be addressed by appointing 'Special Constables' or 'Deputies', which is permitted under many statutes governing the actions of the police. Military personnel could be sworn into such posts before being deployed on anti-poaching duties. Alternatively, wildlife legislation in many states establishes positions such as "Honorary Warden" which may be a preferable option.

However, merely handing out badges or warrant cards may come with its own disadvantages.

Strategic and Tactical Issues

If the military are allocated to undisputedly law enforcement functions a number of other matters need to be considered, including who will be in overall command. Even in times of war military commanders, while accepting that it will be their political masters who determine over-all direction, usually expect to decide how to conduct the war on the

ground, including decisions regarding the deployment of troops and equipment.

The author has experienced, on more than one occasion, situations where senior officials at army and wildlife headquarters are adamant that they collaborate and that decisions are taken jointly, while those patrolling in the field give a different version of events. This is not to say that joint strategy-setting cannot be achieved, but past experience shows it may not be an easy process.

Military personnel and their commanders bring particular skills to the table, or in this case jungle or forest, but lack key skills required to effectively execute the task. Perhaps to a lesser extent, the same may be said of wildlife personnel and their managers. A reluctance to acknowledge the lack of such skills, by either side, can cause myriad problems.

However, rather than become bogged down in debating whether it will be a soldier or a game warden who will know better how to conduct a range of operations, from patrolling a forest to tracking suspects following the discovery of a rhino carcase, it may be more useful to examine areas of strategic and tactical importance.

Since World War II the field of military intelligence has grown to be of considerable importance to any army, navy or air force. Intelligence is recognised as essential in determining overall strategies in any campaign and deciding the tactics to be employed. It would be highly unusual not to find an intelligence officer attached to any reasonably-sized company of soldiers today. However, not only is analysing, disseminating and using intelligence important to any military force, so is collecting it.

Currently, few wildlife authorities do not have some kind of intelligence section. Many, particularly in eastern[6] and southern[7] Africa, have significant numbers of staff devoted to the subject (a considerable number of which were trained by the British Army when intelligence sections were first established). Intelligence is the key to shaping both anti-poaching and policing strategies, and tactics.

Each of these organisations—military, wildlife and police—has different approaches to, expertise in, and experience of intelligence gathering, analysis and use. The military, for instance, may have access to technology, such as drones or aircraft, which enables it to gain an appreciation of its likely fields of battle and enemy troop deployments. In the context of poaching the 'field' could be the terrain inhabited by endangered species and the movements of poaching gangs, enabling them to deploy soldiers in ambush. Wildlife agencies are less likely to have such equipment but

are likely to have better knowledge of the terrain itself, how best to move around it and gain access to particular spots, the likely location of animals at any particular season of the year and how they may disperse, for example, if disturbed by the presence of humans. Meanwhile, the police may have access to electronic surveillance which facilitates highly proactive gathering of intelligence.

Similarly, each of the agencies will be individually better- or worse-placed to access and acquire 'human' intelligence. Of the three, the military are perhaps least, and wildlife agencies the most, likely to immediately have access to informants who can provide relevant information. Indeed, the wildlife agency is likely to have long-standing informants already established. Meanwhile, the police will tend to be best-placed to utilise informants with knowledge relating to the criminals, or criminal groups and networks, involved in the criminal chain that comes into play once a tusk or horn has been acquired by poachers. The police also has the greatest ability to access information about suspicious individuals or persons of interest, as it has the legal right to seek details held, not only by themselves (such as criminal records), but by a whole raft of government departments (including education, employment and housing records, social security and other welfare payments, details of family members and associates).

Depending upon the political situation in the region of the country in question, wildlife and police agencies may have more effective and long-standing relationships, liaison and regular information-exchanges with their counterparts in neighbouring states than the military.

With regard to technology, military and police agencies may already have in place computerised data-storage and crime- and intelligence-analysis software. Such capacity is less common in wildlife agencies. Even less frequently do the three agencies share common databases or have a free exchange of information.

The above few paragraphs clearly illustrate the significant deficiency of any national system that does not include the police in combating poaching. Yet this deficiency is far from rare.

In several nations visited by the author, there has been a notable and tangibly disadvantageous absence of free and regular exchange of information between military and wildlife bodies. In countries where corruption is relatively widespread, a reluctance to share information may be both understandable and, to a degree, justified. However, typically where

sharing does occur, it flows in one direction—invariably from the wildlife agency to the military.

It is questionable whether military analysts and intelligence officers have the necessary knowledge of wildlife and poaching-related issues and their context to best utilise such intelligence.

In addition, it has been the author's experience that one-way communication channels invariably prompt resentment among wildlife field staff, and particularly among wildlife intelligence section staff, who feel that their particular expertise is not wanted, understood or valued. Although it may be justified to share and disseminate intelligence on a need-to-know basis to a certain extent, it is sometimes the case that the wildlife agency will be totally excluded. Aside from the dispiriting and demotivating effect this can have upon those omitted, it often results in a slowing of information flows from wildlife to military.

Difficulties are also likely to be encountered in the acquisition phase of intelligence. As mentioned above, when the military are first deployed to anti-poaching duties, it is highly unlikely that they will have already established relevant human sources. In their desire to develop their own intelligence capabilities, it is inevitable that they will seek to recruit either individuals identical to those viewed by their wildlife colleagues as suitable or, worse, existing informants.

This approach is not only a duplication of effort but can result in two agencies making payments to the same informant for the same information. The recruitment process in reaching out to potential informants is one that the law enforcement community knows to be fraught with difficulties. For instance, it risks offending not just individuals, their families, friends and associates, but also whole communities or villages. If two agencies are engaged in such activities, the risk doubles. There is also a multiplied risk of poachers and criminals learning of intelligence-gathering and feeding false information, or placing 'double-agents' (not unknown where organised crime is concerned), into the process.

A critical consideration is whether there is any legal basis for military personnel to engage in informant recruitment and management at a national level. Its activities in relation to human intelligence are typically conducted abroad during periods when the army is engaged in formal 'military operations'.

It appears essential that the military has an intelligence gathering and analysis capability if it is to be engaged in combating poaching

on anything other than a short-term basis. Relevant personnel must be trained in both the relevant legal framework and any policies that may have been promulgated by the police, prosecution or judicial authorities. An independent oversight mechanism should also be put in place to monitor how the military are addressing this subject at strategic, tactical and operational levels. In addition, senior officials of the wildlife agency should receive regular briefings as to what intelligence is held by the military unless there are compelling reasons not to do so.

Many of the potentially negative aspects of deploying military forces may apply equally to conservancies or communities which begin to enforce laws in a standalone, 'private army' manner, as is currently occurring in parts of Kenya (further discussed in Maguire's chapter in this volume).

In the war against poachers, it is counterproductive to conduct parallel turf battles among the agencies which should be key allies in the conflict. It is vital that military and wildlife authorities recognise that each has a whole range of expertise not readily accessible by the other. Military skills cannot be acquired overnight by wildlife personnel and vice versa. The proficiencies of one must be recognised, understood and valued by the other. Initial awareness-raising sessions can achieve this while regular subsequent joint briefings, to all ranks and levels, can help bed-down, bolster and maintain mutual appreciation.

Strategies and tactics must be designed jointly, albeit in some cases implemented separately. There must be scope, and mechanisms, for the command structures of each body to question the actions of the other. Mandatory de-briefs following operations of significance, whether joint or not, should be held.

It is common for governments, ministers or politicians, to seek to appoint an individual with overall command and control. This might seem logical or even, depending upon national law or policy, unavoidable. However, history does not indicate it to be preferable. Best-practice suggests that a senior-level group or unit is best placed to agree strategies and tactics. Given that such a unit will need to be created, it may be advisable for military and wildlife officials to co-chair it. Alternatively, although likely to prove unpopular among military chiefs, overall command should rest with the wildlife authority in recognition of its legal primacy.

Can a Militarised Response Succeed?

There is no simple Yes or No answer to this question. South Africa makes no secret of the fact that it has drawn upon military strategies and tactics[8] in responding to the upsurge of rhino poaching which it has experienced since 2007. Had South Africa's anti-poaching efforts, already paramilitary in nature, not been further militarised, would the situation have been even worse today? It may well have been, but it is impossible to determine.

Critics of militarisation may point to Operation Tokomeza as an example of failure.[9, 10] In October 2013, responding to indications of significant increases in poaching and ivory trafficking, the Government of the United Republic of Tanzania launched a multi-agency campaign under the Kiswahili word for 'terminate'. It involved circa 2300 personnel from the national defence force, local police, special anti-poaching militias and wildlife rangers.

By the end of 2013, however, the President had cancelled the operation and one minister had resigned, while three others had been dismissed. Although the operation resulted in some seizures of ivory, it was quickly accompanied by allegations of murder, torture, beatings, rape and the slaughter of hundreds, if not thousands, of livestock owned by residents in areas where poaching was occurring. Overall, it appeared to be both a public- and community-relations disaster.

At the other end of the spectrum, Nepal's militarised approach to anti-poaching had, according to WWF representatives, led to zero poaching of rhinos in 2011 and zero poaching of rhinos, elephants and tigers in the 12 months leading up to February 2014.[11] In contrast, poaching peaked during the Maoist insurgency period in the late 1990s and early 2000s, when the Army took no part in anti-poaching duties. The phrase 'zero poaching' may, however, be misleading as although no carcases were discovered during the periods in question it is acknowledged that poachers continued to be detected.

Nepal's militarised anti-poaching strategy is remarkable. At any given time, over 7500 Nepalese Army troops are engaged in patrol duties throughout the country's main national parks and in several of its protected areas and reserves. This huge commitment reflects a deep-seated interest in conservation first shown by the kings of Nepal many decades ago. Although Army command staff look upon these duties as excellent

training for personnel, in general field craft and especially jungle warfare, it seems highly unlikely that many nations would be willing to follow this example. Such intensive reliance upon the military also has significant risks, as was demonstrated when soldiers were withdrawn to deal with insurgents.

Nepal may also have strayed towards some of the human rights abuse issues associated with Operation Tokomeza—one senior civilian anti-poaching official described witnessing the military use an interrogation method on a suspect that would, today, be described as 'waterboarding'.[12]

Nepal is unique, in that its wildlife legislation empowers a Chief Wildlife Warden to sit in judgement over persons accused of poaching, with the authority to impose prison terms of up to 14 years. Consequently, a level of deterrence exists in Nepal that would not be readily available in other nations.

Professionalise not Militarise?

A co-ordinated enforcement response is required to break the chain of criminality associated with fauna and flora trafficking. The first step ought to be one of in situ protection—whether one is guarding an elephant or a rosewood tree, once either is felled, by bullet or chainsaw, the initial battle has been lost. Consequently, anti-poaching must be as professional and cutting-edge as possible.

Anti-poaching personnel, civilian or military, must have the basic skills necessary for their work, be that in patrolling, tracking, ambushing or the other essentials needed to detect, intercept and detain their quarry. However, these skills must be tailored to current needs. Patrolling, for instance, must be with a purpose and not simply covering ground in a routine manner. In several national parks, patrols continue to be allocated 'beats' rather than being deployed specifically to locations of targeted species, or in response to intelligence indicating anticipated poaching activity.

In a number of locations no staff are kept in reserve, ready for rapid deployment to support patrols who detect incursions. It may be that where rapid deployment is required, military personnel prove invaluable in providing highly effective assistance to civilian anti-poaching personnel. Given that most armies have the ability to deploy troops via helicopter or fixed-wing aircraft with short landing and take-off capacity, it

should be possible to 'flood' an area with forces to reinforce civilian officials and, for instance, cut off or intercept the escape of poachers.

In various areas of the world, patrols do not have the benefit of effective communications, GPS, night vision, heat-seeking equipment or other technology that might deservedly be regarded as basic kit. Many do not have adequate camouflage clothing or reliable vehicles. A historical tendency for the donor community to provide a wide range of equipment, from basic to advanced, without taking sufficient account of subsequent needs with regard to training, maintenance, replacement or simple fuelling has done little to ameliorate the situation.

Similarly, donors (including major international, intergovernmental organisations), have sometimes engaged in inappropriate capacity-building, determined to deliver unnecessary skills sets to anti-poaching personnel, whilst ignoring other areas that would be of benefit.

For instance, game department or military troops will regularly engage in establishing and manning random or permanent road checkpoints (a practice which in a number of countries has a highly questionable, or non-existent legal basis). However, many of these officials have received scarce training in the competencies needed to conduct effective stop/searches. Such competencies, which may, therefore, be lacking, include how to identify the body language and other clues that guide customs and police officers in their everyday selection of persons to question or search, how to question those persons efficiently, how to examine identity or vehicle documents to detect fraud or forgery, how to search persons, vehicles, baggage and cargo or how to detect concealment of contraband.

This further illustrates the negative impacts of a lack of police engagement and involvement in current approaches. Deploying a police (or customs) officer alongside civilian or military personnel at roadblocks immediately brings critical expertise and legal powers. It also offers opportunities for detection of a range of other offences, including tax and duty evasion and other forms of contraband trafficking.

In addition, police agencies can offer significant support to anti-poaching operations in relation to: follow-up investigations; interviewing; surveillance; intelligence- and evidence-gathering and analysis; forensic science; money-laundering examinations; asset seizure and recovery; financial crime inquiries; and a whole raft of other law enforcement techniques. Further bodies, such as customs and revenue agencies, can provide supplementary specialised fields of expertise.

In order to make the response to poaching more professional it is key to view it as the first link in a criminal chain and consequently to combat it in a multi-agency manner. Yet, despite the undeniable efficacy of such an approach, few nations react accordingly.

CRIMINALISE NOT MILITARISE?

Perhaps more concerning than the militarisation of anti-poaching responses is the ongoing lack of criminalisation of poaching. As mentioned previously, the illicit harvesting of fauna and flora is regarded by many governments as a standalone problem, undeserving of the myriad of responses normally deployed by the state to deter, detect, investigate, prosecute and penalise most other forms of crime. In particular, the widespread absence of police authorities in the deterrence, detection and investigation phases is incomprehensible.

Several game, wildlife and forest departments are obliged to hand over arrested poachers and evidence to their police counterparts, to allow accused persons to be detained in police custody pending court appearance, and for a formal report prepared by the police to be delivered to prosecutors. However, this is regularly the limit of police involvement. Currently almost no Police Commissioner, or other senior police official, participates in the design or implementation of anti-poaching strategies, tactics or operations. Similarly, even fewer Directors General of Customs will be asked for input despite the crucial role their staff should play in intercepting wildlife-related contraband before it can be smuggled from the source nation.

A pervasive belief that the illicit acquisition of, and subsequent trade in, wildlife is an unlawful yet not criminal activity may explain why central governments appear to turn primarily to military forces to bolster anti-poaching efforts rather than their typically better-placed police counterparts.

Even in countries with established multi-agency wildlife enforcement networks it is not uncommon for each agency's operations to continue to operate in a silo, and for anti-poaching work to remain disconnected from other law enforcement activities.

Arguably equal blame can be placed on police policy-makers and managers who are ignoring the ample evidence that many organised crime networks that are currently profiting from fauna and flora trafficking are also profiting from other forms of illicit acquisition, and national or

international dealing of narcotics, firearms, humans, cultural items or counterfeit goods.

There will not, of course, be a one-size-fits-all answer. Each country will need to determine, having assessed the capacity and expertise of national agencies, how to structure its overall response. However, if one lesson may be learned from the majority of existing responses, it is that they are not succeeding.

A paramilitary response to the ongoing slaughter of endangered species, whether conducted by a ranger, warden, game scout, forest guard or soldier, may win vital battles against poachers but it will never win the war against wildlife crime. Until the response is criminalised, it seems likely that first act in the chain, the pulling of the trigger, will continue to be the only act punished, rendering the long chain of law-breaking that constitutes poaching never-ending.

Notes

1. Oxford Dictionaries (2016) 'Military', http://www.oxforddictionaries.com/definition/english/military, accessed 27 July 2016.
2. Border Guard Bangladesh (2016), http://www.bgb.gov.bd/, accessed 27 July 2016.
3. Armed Police Force Nepal (2016), http://www.apf.gov.np/, accessed 27 July 2016.
4. The Global Initiative against Transnational Organized Crime (2016), *Tipping Point: Transnational organised crime and the 'war' on poaching,* http://globalinitiative.net/wp-content/uploads/2016/07/Global-Initiative-Tipping-Point-Part1-July-2016.pdf, accessed 25 July 2016.
5. US State Department, *Military Assistance: International Military Education and Training Foreign Military Financing Peacekeeping Operations,* http://www.state.gov/documents/organization/60649.pdf, accessed 20 July 2016.
6. An example of this is the Kenya Wildlife Service whose organization structure reveals significant intelligence involvement. Kenya Wildlife Service (2016) Organisational Structure, http://www.kws.go.ke/about-us/organisational-structure, accessed 27 July 2016.
7. An example of this is the South African National Parks service, which includes a Corporate Investigation Services Unit. Further information: South African National Parks (2016) SANParks Corporate Investigation Services (CIS), http://www.sanparks.org/conservation/investigations/, accessed 27 July 2016.

8. An interview with Kruger's anti-poaching chief General Johan Jooste illustrates this. In: Year in the Wild South Africa & Transfrontier Parks (2014) 'Full interview with Kruger's anti-poaching chief General Johan Jooste', http://www.yearinthewild.com/full-interview-with-krugers-anti-poaching-chief-general-johan-jooste/, accessed 27 July 2016.

9. AllAfrica (2013) 'Tanzania: Putting "Operation Tokomeza" in Its Perspective', http://allafrica.com/stories/201312230129.html, accessed 27 July 2016.

10. The following press articles illustrate the flaws in this approach: (i) M. Kizito (2016), *Anti-Poaching Operation Spreads Terror in Tanzania,* Inter Press Service News Agency, 3 August 2016, http://www.ipsnews.net/2014/01/anti-poaching-operation-spread-terror-tanzania/, accessed 10 August 2016; and (ii) E. Kabendera, *A villager's life is 'terminated', but the killing and poaching goes on,* The Independent, 3 December 2013, http://www.independent.co.uk/voices/comment/a-villager-s-life-is-terminated-but-the-killing-and-the-poaching-goes-on-8981110.html, date accessed 10 August 2016.

11. WWF (2015) 'How Nepal Got to Zero Poaching', http://www.worldwildlife.org/stories/how-nepal-got-to-zero-poaching, accessed 27 July 2016.

12. K.J. Kumar (2012) 'Four Years for the Rhino: An Experience of Antipoaching Operations', Save the Rhino Foundation Nepal.

Author Biography

John M. Sellar OBE FRGS was engaged in law enforcement for almost four decades, initially in the Scottish Police Service and then the United Nations. As a Detective, he investigated murders and other serious crime but also dealt with human rights abuse in Scotland's maximum security prison. Before transferring to the UN, he was Officer-in-Charge of a police area where royal security and anti-terrorism matters featured significantly.

In 1997, John moved to Switzerland, handling anti-smuggling, fraud and organised crime issues for the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), ultimately becoming Chief of Enforcement. During 14 years with CITES he conducted 234 missions to 66 countries, assessing enforcement in the field and designing strategies to tackle wildlife trafficking. He was instrumental in establishing the International Consortium on Combating Wildlife Crime in 2010, a partnership of CITES, INTERPOL, the UN Office on Drugs and Crime, the World Bank and the World Customs Organization. He has lectured extensively worldwide and his book, *The UN's Lone Ranger: Combating International Wildlife Crime*, was published in January 2014.

He formally retired in 2011 but remains active in both a voluntary and consultancy manner, sits on the International Association of Chiefs of Police Environmental Crimes Committee and is a Senior Advisor to the Global Initiative against Transnational Organised Crime.

In June 2013, in recognition of his UN activities, he was appointed by the Queen as an Officer of the Order of the British Empire.

Piracy

Replicating Success? A Military Response to Maritime Piracy, the Somalia Experience

Glen Forbes

INTRODUCTION

Maritime piracy—the plundering, hijacking, or detention of a ship in international waters—is a crime that is centuries old. The recent spike in pirate activity in the Gulf of Aden focused the world's attention once more on the problem of assuring safe passage for vessels, their crew and their cargo. The international naval response to the activities of the Somali pirates is seen as one of the big success stories of international cooperation and militarised responses to maritime crime. Consequently, it has been proposed as a model for emulation in a number of other situations.

In this context, this article seeks to demonstrate that, while the naval patrol was important, it was only one element of an integrated response which almost entirely eradicated Somali piracy. Alone it would not have created the same results. Furthermore, unique political and geographic circumstances made military intervention possible and effective in the Somali case, but limits its applicability in other circumstances, such as in

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West Africa, South East Asia and against human smuggling. Finally, it is a key to note that the core objective of the operation was to guarantee safe passage for shipping, not to directly attack the pirates themselves.

The Problem

Incidents of piracy committed by Somali pirates have been recorded since 1994, but in 2008 Somali piracy moved from being a 'domestic nuisance' to a 'sophisticated and well-organized crime'.[1] The International Maritime Bureau (IMB) reported that eight ships had been hijacked in the Gulf of Aden between 20 July and 25 August 2008, and the UN Security Council resolution 1816 formally stated that piracy was exacerbating 'the situation in Somalia which continues to constitute a threat to international peace and security in the region.'[2]

By the following year Somali piracy rates had exploded—in 2010, Somali piracy accounted for 219 of the 465 incidents across the globe, further increasing to 237 of 439 global incidents by 2011. However, such a resurgence was short-lived. As more effective measures took hold, 2012 saw a dramatic decrease in Somali piracy, and consequently in incidents of piracy worldwide as Somali pirates accounted for 75 of 297 incidents recorded. This trend continued and by 2013, Somali piracy constituted 15 of the 264 global incidents, a reflection of the degree of success in containing Somalia-based piracy which continues to the present day (Fig. 7.1).

Unlike South-East Asian piracy, which traditionally dominates piracy statistics and has as its objective cargo theft, Somali piracy is predicated on the capture and ransom of a ship and crew as a package. Although it had its origins in attacks on illegal fishing vessels, claiming modest ransoms (the average ransom in 2005 was $150,000), the model generated increasingly large sums of money and attracted the participation of sophisticated and well-organised criminal bands. By 2011, the average ransom had risen to $5 million. According to the UK-led International Piracy Ransoms Task force, between 2008 and 2012 an estimated $300 million in total had been paid to Somali pirates.[3] However, the overall economic cost of Somali piracy was far greater than the quantum of ransoms paid. The World Bank estimated that because a significant share of global trade flows passed through the affected maritime region, the disruption to world trade had a cost of circa US$18 billion.[4] Not
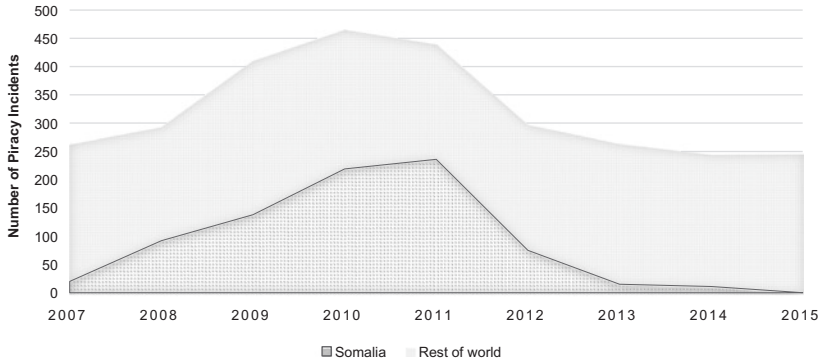
Fig. 7.1 Global instances of piracy 2007–2015. *Source* IMB Piracy Reporting Centre

since World War II, had world trade faced a more dramatic threat than that posed by Somali piracy in the Gulf of Aden.

Typically the world responds to piracy by urging the littoral states to take action, and by offering assistance, be it financial and or military, to support such action. However, since the fall of Siad Barre's dictatorship in 1991, Somalia had experienced near-anarchy. Many areas lacked any form of local policing or prosecution and there was little or no government control over ports and coastal areas. Apart from the brief rule of the Supreme Council of Islamic Courts in 2006, during which they declared piracy to be against Islam, engendering a dramatic drop in piracy incidents, pirates were able to operate with impunity. In light of Somalia's statelessness, the international community was forced to take direct action to curb the growing menace of the Somali pirates.

The International Response

In May 2007, Josette Sheeran, the Executive Director of the United Nation's World Food Programme (WFP), appealed for 'high-level international action to stamp out piracy in the waters off Somalia', stating that 'unless action is taken now, not only will our supply lines be out, but also those of other aid agencies working in various parts of Somalia.'[5] WPF then suspended food deliveries by sea to Somalia in 2005 when two WFP vessels were hijacked. By 2007, drought in the Horn of Africa,

combined with the Somalian conflict, led to more than 17 million people in chronic need of assistance.[6] In November 2007, under the UN Security Resolution 1772, France initiated Operation Alcyon[7] whereby it supplied French naval vessels to escort and protect WFP ships providing food aid to the area. Nevertheless, the number of Somali people requiring humanitarian and emergency livelihood support almost doubled during 2008, increasing by 77%. From 1.8 million in January to over 3.2 million by July. The quantum of the UN consolidated appeal for Somalia rose from $662 million in 2008 to $900 million for 2009, reflecting a spike in commodity and delivery costs for Somalia, as well as a significant increase in the number of people in need.[8]

In 2008, two further hijackings persuaded President Sarkozy of France that further action was required: a pirate attack on the Jordan-registered MV Victoria, which was carrying humanitarian supplies to Somalia, and the hijacking of the French luxury yacht, Le Ponant, seized by Somali pirates as it transited through the Gulf of Aden. France, supported by the US, sponsored the United Nations Security Council to adopt resolution UNSCR 1816 in June 2008, permitting foreign warships to operate in Somalia's territorial waters and to use 'all necessary means' to secure the safety of vessels transiting the zone. This was the first UN Security Council resolution on piracy.

What followed was the largest and most widespread deployment in the history of international navies on a single mission. Over 22 countries were initially involved, either acting individually or through three coalitions: the European Union Naval Force (EUNAVFOR) through Operation Atalanta, the Standing Naval Group of the North Atlantic Treaty Organization (NATO) through Operation Ocean Shield, and the USA established Combined Task Force 151.

The EU's military response, Operation Atalanta, first instigated in 2008 after 10 weeks of planning under Common Security and Defence Policy (CSDP), was the most high-profile and far-reaching of the missions. It was unprecedented in the scope of its operation and the degree of co-operation it engendered. It brought together many troop-contributing nations, many of whom had not previously worked together, under a new naval task force. In part this was facilitated by increased collaboration, led by Atalanta Command, between European Union Military Staff (EUMS) and the NATO task force, the US-led coalition forces under Combined Maritime Forces (CMF) and independent navies such as the Russian, Chinese, Indian and Malaysian.

More broadly Atalanta fomented co-operation in wider counter-piracy efforts between military, diplomatic, NGO, and relevant law enforcement authorities, expanding the reach of military involvement. As part of this, Atalanta command devised and co-chaired meetings of The Shared Awareness and Deconfliction (SHADE) initiative which sought to coordinate and de-conflict activities between the countries and coalitions involved in military counter-piracy operations in the Gulf of Aden and the western Indian Ocean. Atalanta command were also a key driving force in encouraging disparate governments and organisations to enter into agreements to enable the sharing of equipment and databases, without which extensive co-operation would have been rendered impossible.

Atalanta also initiated Group Transits for shipping through a newly implemented International Recommended Transit Corridor (IRTC) in the Gulf of Aden, drawing on support from other authorities in order to provide the breadth of cover required. Group Transits proved successful, and 2010 statistics showed that there had been no successful attacks on ships adhering to the Group Transit times and speeds.[9] Furthermore, Atalanta was key in launching and continuing to support Best Management Practice (BMP) in conjunction with shipping industry bodies and associations, empowering the maritime industry to better protect themselves from attack.

Finally Atalanta supported the UN Contact group on its formation in 2009,[10] bringing together countries industry groups and organisations with an interest in combatting Somali piracy.

Together these constituted a truly unprecedented string of actions and achievements, which ultimately acted as the foundation for the militarisation of counter-piracy operations, and the approach to future maritime mission strategy in crisis management. The extent to which Operation Atalanta drove the EU to adopt many of the maritime strategies and procedures still prevalent today, and continues to shape EU maritime policy, is often underestimated.

Was the Military Response a Success?

The multinational naval counter-piracy mission of Somalia achieved unprecedented success. However, this was in large part due to the innovative cooperation between navies and organisations that would not normally communicate, let alone collaborate.

Data unanimously suggests that the results achieved have had a lasting impact. The last successful Somali pirate attack on a major commercial vessel was on 10 May 2012, and there were no hijacking attempts by Somali pirates in 2015.

The overall result of the international effort to counter Somali piracy was highly effective, however, it is worth highlighting certain areas that were particularly successful, and others that were less so.

Group Transit & The IRTC

The introduction of the 'Group Transit' concept as a maritime alternative to the traditional convoy system was the key diversion from established strategy in the protection of commercial shipping. The IRTC was established to provide merchant vessels with a protected route on entering the High Risk Area (HRA) of the Gulf of Aden. By registering vessels' movements with the EUNAVFOR ops centre, MSCHOA, prior to the journey through the HRA, a list of vulnerable shipping was compiled to assist in maximizing the focus of protection by warships and patrol aircraft but also allowing vessels to benefit from enhanced mutual protection. This information would then be shared between the various naval authorities providing support. The IRTC facilitated 'Group Transits' where vessels could be grouped together by speed for maximum protection. Transits were conducted both West to East and East to West of the Gulf of Aden at carefully chosen timings and at designated locations. The geographic structure of the Gulf of Aden enabled the success of this strategy which would have been inappropriate to a basin, as opposed to a channel, structure (Fig. 7.2).

In 2011, an estimated $1.27 billion was attributed to counter-piracy military operations in the region. In 2012 this dropped to $1.09 billion, and further to $999 million in 2013, constituting a decrease of 8.4%. By 2015, the total cost of naval asset deployment had plummeted to an estimated $299 million. Although it is likely these estimates of total cost are not entirely accurate as the majority of expenditures relating to the deployment of national vessels are borne by the donor country,[11] it is clear that costs decreased steadily throughout the operation. This is in part due to a drop in days on station, together with fewer assets deployed and a shift toward non-Western, independent deployers which lowered naval expenditures.
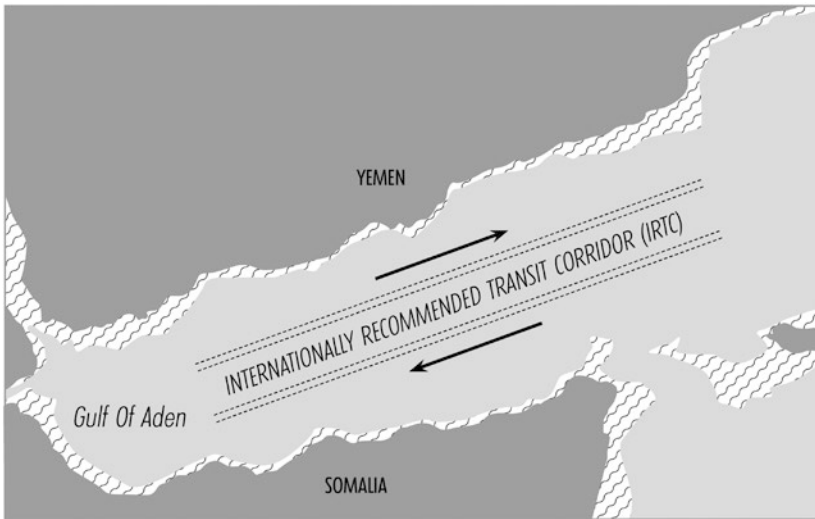
Fig. 7.2 The Gulf of Aden Transit Corridor. *Source* adapted from UK Hydrographic Office—anti piracy chart Q6099

The IRTC ensured no pirate attack has been successful in the Gulf of Aden since September 2008. Mark Brownrigg, Director General of the Chamber of Shipping, stated that the Gulf of Aden '...is far less hostile since the group transit system was established through that corridor. From the industry, both UK and international, we would say that that has most emphatically made a difference (Fig. 7.3).'[12]

However, as more naval assets were committed to combating increased piracy in the Gulf of Aden, Somali pirates expanded their geographic reach beyond the 200 nm limit initially assessed to be the HRA in the Northwest Indian Ocean, forcing the HRA to be rapidly altered to 600 nm. Somali pirates began to use hijacked fishing vessels and merchant ships as motherships to launch skiffs to attack unsuspecting vessels sailing further out on the high seas. Worryingly, the crew on the hijacked 'motherships' were forced to sail the ship at the behest of the pirates, but in some cases, they were also paraded as a 'human shield' should a warship approach during transit back towards the Somali coast, before finally being held for ransom.

North Western most
Attack
11 Aug 2011
MV CARAVOS HORIZON
(Attack)

North Eastern most Attack
20 Jan 2011
MV STAR OF ABU DHABI
(Attacked)

HARADEERE

1,475 nm

1,450 nm

1,750 nm

Southernmost Attack
28 Dec 2010
FV VEGA 5
(Pirated)

Easternmost Attack
5 Dec 2010
MV JAHAN MONI
(Pirated)

2005 -165 NM OFF COAST   2007 -200 NM OFF COAST   2009 -1,200 NM OFF COAST

2006 -200 NM OFF COAST   2008 -445 NM OFF COAST   2010 -1,500+ NM OFF COAST

2011 -EXPANSION INTO RED SEA

Fig. 7.3 Expansion of pirate operations 2005–2011. *Source* EUNAVFOR

The implementation of an IRTC in the Indian Ocean was completely unworkable due to the huge distances involved and the lack of naval assets required to cover such a range—the 'tyranny of distance', as the EUNAVFOR Op Cdr later called it.[13] Major General 'Buster' Howes, the EUNAVFOR Op Commander (Op Cdr) stated to a Parliamentary Foreign Affairs Committee in 2011, 'Are we able to police the entire area effectively? No, we are not. You have a map in front of you. The locus of a modern warship on the scale of that map and what it can actively survey and influence in an hour is about a pinprick. If it has a helicopter, it is about three times the size of a full stop. That gives you an idea of the scale.'[14] Consequently, although the IRTC and Group Transits proved successful within the Gulf of Aden, the strategic flexibility of Somali piracy quickly exposed the limitations of counter-piracy

mechanisms which relied on significant resource expenditure and very specific geographical conditions.

Command & Control

Establishing the Operation Atalanta task force command and control (C2) structure proved difficult, perhaps unsurprisingly given this was the European Union's very first maritime mission. Replicating it in other jurisdictions may prove equally, if not more, challenging, especially in regions where there are sovereign states that have some capacity to control their maritime waters, where regional geopolitics is contested, and where the financial and trade costs to stakeholders is less.

Operation Atalanta required building a C2 structure from the ground—or sea level—up, but also required a significant level of integration with not only NATO and CMF task forces, but communication with the non-coalition navies conducting counter-piracy patrols in the Horn of Africa. EUNAVFOR Communications and Information Systems (CIS) planners coordinated with other naval authorities to create the basic task force CIS infrastructure, incorporating measures to integrate with US- and NATO-supported systems wherever possible. Those nations not part of the NATO, or CMF, coalition were encouraged to sign bilateral agreements or Memoranda of Understanding (MoU) to permit them to utilise the most common of NATO CIS.

Involvement of Commercial Shipping and Yachting

In an unprecedented move, EUNAVFOR created an online tool to inform the shipping industry and yachting fraternity of their advice to mariners, which later became Best Management Practice, in consultation with shipping associations and representatives. This online tool, Maritime Security (Horn of Africa), or 'MSCHOA', was supported by a dedicated operations centre which enabled ships' Masters, CSOs and shipping companies to register the movement of their merchant vessel prior to its transit through the Gulf of Aden. Uniquely, MSCHOA also instigated an email alert system which informed vessels in the region of any reports of attacks by Somali pirates.

Common Information Sharing Capability

To facilitate coordination, a secure common information-sharing capability was deemed required. EUNAVFOR, therefore, designed an Internet-based communication system called Mercury. All ships engaged in counter-piracy operations have access to Mercury, allowing them to request information, or cooperation, from other ships, despite any icy diplomatic conditions which may exist between the two nations involved. Consequently, the Chinese People's Liberation Navy warships can discretely work together with US, German, or even Japanese warships. The commercial shipping picture, or 'white shipping' information (as opposed to grey ships of the navies), was shared with users via the Mercury system, reducing the burden on warship intelligence teams working in isolation.

UN Contact Group

The Contact Group on Piracy of the Coast of Somalia (CGPCS), established in conjunction with UN Security Council Resolution 1851 in 2008, greatly contributed to international cooperation to counter Somali piracy, in particular by advocating nations to focus on strategies beyond the purely military. By 2012, over 70 nations, together with international and maritime industry organisations, took part in five specialized working groups:

- Working Group 1: Military and Operational Coordination, Information Sharing, and Capacity Building, chaired by the United Kingdom, focuses on force generation, operational coordination and capacity-building;
- Working Group 2: Judicial Issues, chaired by Denmark, focuses on judicial mechanisms for deterring piracy;
- Working Group 3: Strengthening Shipping Self-Awareness and Other Capabilities, chaired by the United States, works closely with the commercial shipping industry to enhance awareness and improve capabilities;
- Working Group 4: Public Information, chaired by Egypt, seeks to make clear to the world, and especially to the Somali public, the damage being done by pirates; and

- Working Group 5: Financial Flows, newly established in June 2016, chaired by Italy, focuses on the illicit financial flows associated with piracy in order to disrupt the pirate enterprise ashore.

Working Groups 3 and 5 were particularly successful. Arguably, the best defence against piracy is often simply vigilance on the part of the maritime industry, and WG3 was instrumental in promoting the widespread adoption of Best Management Practices (BMPs). These include practical measures, such as proceeding at full speed through high-risk areas and employing physical barriers such as razor wire to make it more difficult for pirates to come aboard.

WG5 sought to target the financial networks behind the individual groups of Somali pirates. It identified that the arrest and prosecution of rank and file pirates caught at sea was insufficient to repress piracy in the long-term. Instead, it was necessary to prosecute the masterminds, or kingpins, and the funders. WG5, therefore, focused on financial networks ashore. The August 2012 trial of pirate negotiator Mohammad Saaili Shibin, who received ten concurrent and two consecutive life sentences from the US Federal Court for his part in the deaths of four US citizens on sailing yacht Quest, showed that pirate backers were reachable.

Private Security

The most noteworthy development, not endorsed by the naval authorities, was the employment of private armed security. This has been cited by some experts as the tipping point in quelling the threat of Somali piracy.

By mid-2011 it was estimated that 15–25% of merchant vessels passing through the Bab el-Mandeb strait carried armed security guards onboard. It proved a highly effective measure in deterring pirate attacks—no merchant vessel with armed security has ever been hijacked by pirates in the Horn of Africa region.

Private Maritime Security Companies (PMSC) flourished and, albeit to a lesser extent, continues to profit today. The perceived downside of armed security is the proliferation and carriage of weapons in the region. Floating armouries began to be placed in strategic points around the EUNAVFOR Area of Operation (AOO)—outside the territorial waters of regional States—to circumvent, as much as possible, the problem of carrying bonded weapons into ports in the Gulf region and beyond.

Furthermore, the lack of desire, or inability, to regulate the PMSC sector has resulted in the operators remaining outside of the anti-piracy naval authority fraternity, despite the acknowledged role of ship hardening measures as a key part of the protection of merchant shipping.

Rinse and Repeat

The success of the military operation against Somali Piracy has engendered a number of key questions. Is the counter-piracy model used in the context of Somali Piracy fit for other regions suffering from increased incidents of hijack for fuel cargo and/or hostage taking for ransom? Is information sharing the panacea for maritime situational awareness? Are the rules of engagement and rule of law equally applicable across each high-risk area? Can the 'three-legged milkstool' of naval patrol, BMP and private security deliver the same level of deterrent in any region?

A unique factor of the Somalia case was that foreign warships were authorised by the UN Security Council to operate in Somalia's territorial waters and to use 'all necessary means' to secure the safety of vessels transiting the zone. In other high-risk areas where sovereign waters may be encroached upon, it is almost impossible for foreign warships to act freely. The militarisation of counter-piracy operations has reaped numerous benefits in the Gulf of Aden, largely due to the absence of any form of law enforcement at sea and rule of law on land. Whether it has been successful in addressing the drivers of piracy in the region, which are to be found onshore, is less clear. However, a similar militarisation of counter-piracy responses in other high-risk areas is typically enacted without the level of multinational cooperation required to be truly effective. It is a debilitating hindrance to seek to implement a law enforcement operation with personnel untrained and inexperienced in evidence gathering, determining whether national or international laws apply and applying the laws of arrest and detention. Applying standardised law enforcement is the primary failing of militarised piracy responses. In contrast, the key strengths of such responses are an enhancement of situational awareness and cooperation, supported by boosting regional capacity building for self-determined political stability.

The use of private security would also be unlikely to succeed in other high-risk areas due to regulatory requirements, rules for the use of force and the international transport of weapons. BMP has been widely adopted by the shipping industry and is supported by naval authorities in

order to lower the risk of hijack. BMP, over and above any other of the tactics implemented, is the universal panacea.

South East Asia

In Southeast Asia, organisations have called for a regional BMP, encouraging the use of CCTV on board merchant vessels for look-out, as well as evidence gathering, the employment of a citadel as part of the hardening measures and the implementation of joint patrols for international navies. However, the deployment of private military security contractors has not been undertaken, particularly due to the complexities of entering into separate sovereign waters. Although the rule of law can be said to exist in the region, the structures in place to enable prosecution of piracy vary across these regional states. Recent discussions regarding the launch of joint patrols across international boundaries to secure regional waters have made some headway between Indonesia, Malaysia and Philippines. The US in particular has urged greater co-operation between these states by encouraging all to join the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). However, as further discussed in the chapter by Von Hoesslin and Bird in this section, ReCAAP has so far failed to co-ordinate diplomatic relations, suggesting the creation of a different body may be required.

West Africa

Turning the focus to West Africa, and especially the Gulf of Guinea, the industry co-authors of BMP 4 have similarly encouraged the implementation of best practice measures on ships. Furthermore, and similarly to SE Asian waters, the Gulf of Guinea states are sovereign with myriad levels of naval capacity. Whilst joint naval exercises are undertaken with non-West African navies, such as the USA, France, UK and Brazil, regional navies have yet to collaborate under a coherent strategy from ECOWAS (Economic Community of West African States) and MOWCA (Maritime Organization for West Africa), despite signing an MOU framework to promote regional maritime cooperation and a stable maritime environment as well as the peace, good order and prosperity of West and Central Africa in 2008. Moreover, particularly off the coast of Nigeria, patrols in the Gulf of Guinea have proven less effective, as

the kidnapping of seafarers from merchant vessels in these waters continues to rise. Niger Delta militants have been responsible for a number of such incidents, together with attacks on oil pipelines and facilities. Once again, as in SE Asian waters, private military security is not permitted if provided by foreign (non-Nigerian) companies and personnel. Whilst Nigerian marine police provide near shore security, and the Nigerian navy may provide armed security on request, there is no coastguard system in place and naval support cannot be guaranteed. Coordination between the naval entities is fragile. This is further exacerbated by the lack of transparency in the arrest and prosecution of pirates and thieves at sea in the regional courts. In this instance, the rule of law, whilst in place in each state, is not reflected in the laws on piracy at sea at the regional level. Consequently, situational awareness is fractured and, regardless of expensive satellite systems in Nigeria and Ghana, data is ineffectively shared. Co-operation is on a case-by-case basis, not a regular and organised process as demonstrated by SHADE meetings in support of Somali counter piracy operations.

Conclusion

While the naval patrols played a critical role in ensuring the continued flow of international trade, they were only one of a range of interventions that contributed to the perceived success of the counter-piracy mission in the Gulf of Aden. Furthermore, the militarised response to Somali piracy should be seen as a success in the impact it had on safeguarding the passage of merchant ships, rather than necessarily analysed as a true counter-piracy mission.

Naval efforts cannot be successful in isolation. The militarisation of counter-piracy measures effectively acts as a sticking plaster, the Band Aid if you will, providing short-term relief and enabling governments to demonstrate strength in support of the maritime trade industry, and to solicit international support in their efforts to remain in power, whilst protecting national interests overseas. Providing military assets is the simple measure, far easier than developing a cohesive foreign policy in what may be considered a troublesome region.

A comprehensive approach to countering piracy requires the international community and the regional states to cooperate. Though the latter benefit from the contributions of the former, only too often international aid is viewed as an infringement of the sovereignty of the recipient and

either rejected entirely, hindered in its application or given only token acceptance.

Any long-term and sustained reduction in piracy in the region must seek to target its drivers, including poverty and a lack of legal livelihood alternatives. As the chapter by Shortland later describes, the bedrock of the successful reduction of Somali piracy will, therefore, require onshore capacity building and the establishment and enhancement of the rule of law, both on land and at sea. This has yet to be enacted. Furthermore, the specific circumstances that engendered the success of militarisation in the context of Somali piracy needs to be highlighted in order to recognise the strategy's limitations in other contexts.

Notes

1. UN Monitoring Group on Somalia (2008), 'Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008) (S/201/91)'.
2. UN Security Council resolution 1816, regarding acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia.
3. International Piracy Ransoms Task Force (2012), Final Report.
4. World Bank (2013), 'Pirates of Somalia: Ending the Threat, Rebuilding a Nation', http://www.worldbank.org/africa/piratesofsomalia (accessed 29th August 2016).
5. World Food Programme (2007), 'New pirate attack on aid ship; WFP urges high-level international action against Somali piracy', https://www.wfp.org/news/news-release/new-pirate-attack-aid-ship-wfp-urges-high-level-international-action-against-somali-piracy, accessed 24th April 2016.
6. G. de Sousa (2009), 'Brief Remarks on the Current Humanitarian Situation in Somalia', *United Nations Office for the Co-ordination of Humanitarian Affairs*, http://www.europarl.europa.eu/document/activities/cont/200904/20090424ATT54410/20090424ATT54410EN.pdf, accessed 23rd August 2016.
7. UN Security Council (2007), 'Security Council Resolution 1772', http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap%20VII%20SRES%201772.pdf, accessed 20th May 2016.
8. UNOCHA (2009), Consolidated Appeal for Somalia 2009—United Nations Office for the Coordination of Humanitarian Affairs, http://www.unocha.org/cap/appeals/consolidated-appeal-somalia-2009; accessed 9 September 2016.

9. EU NAVFOR Somalia, August 2010, 'Gulf of Aden Internationally Recommended Transit Corridor & Group Transit Explanation'.

10. The CGPCS 1st Plenary, January 14, 2009, http://www.lessonsfrom-piracy.net/files/2015/03/Communique_1st_Plenary.pdf, accessed 12 September 2016.

11. The State of Maritime Piracy 2013 (2013), 'The Cost of Military Operations', http://www.oceanuslive.org/main/DownloadAsset.aspx?uid=797, accessed 12 September 2016.

12. Mark Brownrigg answer to Q16 of the House of Commons Foreign Affairs Committee on Piracy off the coast of Somalia, Tenth Report of Session 2010–2012.

13. House of Commons Foreign Affairs Committee (2012), '*Piracy off the coast of Somalia*', available at: http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf, accessed 19th June 2016.

14. Foreign Affairs Committee (Parliament UK) (2011), examination of a witness, 'Piracy off the Coast of Somalia', available at: http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/11062204.htm, accessed 29th August 2016.

Author Biography

Glen Forbes Glen Forbes served 34 years in the UK Royal Navy in many ranks and in missions such as UK's cruise missile facility, the Iraq war and Northern Ireland. Seconded to EUNAVFOR for Operation Atalanta off Somalia in 2008, he led a small but highly skilled team in providing complete communications networking for the EU's first-ever maritime operation. Setting up the Maritime Security Centre (Horn of Africa), supporting the international shipping community, he won a Safety at Sea award for management/operations and Lloyd's List award in 2009.

Leaving the Royal Navy in 2010, he co-founded ForbesWallace, a consultancy focused on maritime-based information sharing capability. One venture, OCEANUSLive, an online service supports seafaring, security communities and governing authorities by providing real-time information sharing on maritime security in high-risk areas. That too, was shortlisted in the Safety At Sea Awards in 2012.

Consulting for governments, including the FCO, and maritime authorities; he also writes and comments on maritime security issues for major media outlets. More recently acknowledged contribution to the highly successful book, 'Deep Sea and Foreign Going' by Rose George, and the Oceans Beyond Piracy

annual reports. Hugely experienced in training multinational naval communications teams in operations at sea, and as Head of Marine Development for SETEL Powerline for smartship and smart grid networking capability, Glen also studied law. He enjoys the challenge of combining such skills to enhance maritime situational awareness and is based in the Southwest UK.

Approaches to Piracy, Armed Robbery at Sea, and Other Maritime Crime in West and Central Africa

Ian Ralby

Military approaches to maritime crime and insecurity in West and Central Africa, particularly piracy and armed robbery at sea, can largely be grouped under the heading of 'cooperation'. The nature and nuances of that cooperation continues to evolve, becoming increasingly sophisticated and effective. While the complexity of the threat picture in the Gulf of Guinea continues to pose daunting challenges for regional states and international partners alike, the ongoing drive towards cooperation regimes has begun to yield promising results. This chapter examines the maritime security architecture in West and Central Africa, focusing on military-backed cooperation initiatives, and exploring both their goals and the gaps that remains to be filled. Ultimately, it argues that the military approaches to piracy and other maritime crime in West and Central Africa are focused on realising development through cooperation. Tangibly distinct from other counter-piracy efforts, this military undertaking in the Gulf of Guinea, therefore, has a chance to foster long-term peace, security, stability and prosperity.

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Significant increases in West and Central African maritime commerce have created opportunities for criminals to engage in a wide array of illicit activities that impede the security and stability of the region. Military efforts—both internal and external—have sought to bolster the national maritime security capacity and capability of the coastal states in order to allow them to address these criminal threats. It is generally recognised, however, that no single state, even with a dramatic increase in capacity and capability, would be able to provide an effective solution to the borderless nature of maritime crime. Consequently, the focus has turned to cooperation. On the other side of the continent, Somali piracy led to one of the most impressive examples of military cooperation in history. The European Union's Naval Force (EUNAVFOR) Operation Atalanta, NATO's Operation Ocean Shield, the Combined Maritime Force's (CMF) Combined Task Force (CTF) 151, and a series of individual states including Russia, China, India, and Iran, all came together to counter the threat of piracy in the Horn of Africa. Given legal constraints on naval activities in the territorial waters of the Gulf of Guinea, however, a traditional naval engagement by international forces—even in a gendarmerie function—is not possible. Consequently, the military approach along Africa's Atlantic coast has centred on strategic cooperation between states, and interagency cooperation within states. In both cases, particular emphasis has been placed on development as a principal security initiative. Instead of merely seeking to eradicate the negative aspects of transnational crime in the maritime space, this approach seeks to provide a legal, legitimate and sustainable alternative to criminality. This chapter examines the military cooperation regimes in West and Central Africa, highlighting both successes and challenges that still lie ahead.

This chapter will use the terms Gulf of Guinea, West Africa, and West and Central Africa interchangeably, and will define the region as including the 25 state signatories to the Yaoundé Code of Conduct.[1, 2]

THE MARITIME CONTEXT OF WEST AND CENTRAL AFRICA

As Forbes' chapter in this volume discusses, piracy in Africa has—for some years now—largely been associated with Somalia and the Gulf of Aden. However, the less well-known maritime insecurity challenges in West and Central Africa date back decades. The first resolution of the International Maritime Organization (IMO) that focused on piracy was aimed at Gulf of Guinea piracy in 1983.[3] The threat picture on the

western coast of Africa, however, has changed in recent years, becoming significantly more complex, particularly as the region's economic and energy significance has surged in the global marketplace. Nigeria has become one of the world's largest producers of oil and gas and its population is on track to become the third largest on earth in the coming decades.[4] Angola similarly emerged from years of brutal conflict to become so wealthy from its oil trade that it is the first former colony in Africa to provide financial assistance to its former colonial power, Portugal.[5] The cocoa belt of West Africa accounts for roughly 80% of the world's cocoa market,[6] and the region continues to produce globally significant amounts of cotton,[7] nuts, metals and minerals.[8] In addition to the maritime activity fuelled by trade in onshore resources and offshore oil, the Gulf of Guinea fishery is one of the world's most plentiful and valuable.[9]

Increased commerce in West and Central Africa has led to increased maritime activity, as most export and import in the region happens by sea, and only a small handful of ports[10] service the majority of the states, both coastal and landlocked, across the region.[11] To underscore the maritime significance of the import/export trade to those non-littoral countries, it is worth noting that landlocked states in West Africa contribute roughly 5% of the global cotton market, all of which is transported by sea, despite no direct maritime access.[12] In addition to these ports, roughly 3% of the global oil market was shipped from Nigeria, until a dramatic decrease in 2016, and 1% from Angola, with the other states of the region combining to contribute another 1% of the global oil trade.[13] Angola has now supplanted Nigeria as the top producer of oil in Africa.

The Threat Picture

While coastal states in West and Central Africa have begun to improve their national maritime security capacity and capability, their efforts have not kept up with the sharp spike in maritime economic activity. This disparity, as well as significant governance deficiencies, institutional ineffectiveness, conflict and post-conflict challenges, crippling poverty and economic inequality have created the ideal circumstances for opportunistic and organised criminals alike to take advantage of the high-value cargoes moving, virtually unprotected, through West African waters. In recent years, this has translated into a major rise in the prevalence of both piracy and armed robbery at sea in the region.[14] The East African

context has really only required a discussion of piracy, not armed robbery at sea, but in the Gulf of Guinea the latter is far more prevalent.

According to the United Nations Convention on the Law of the Sea (UNCLOS), to which all states in West and Central Africa are signatories, piracy is '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: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft …'.[15] A key element of the definition of piracy, therefore, is the locus of the activity. The high seas include the maritime zones beyond the territorial sea, which extends 12 nautical miles from the shore. While any 'acts of violence or detention, or any act of depredation…' against vessels are often referred to as piracy, from a technical legal standpoint, such activity, when perpetrated inside the territorial sea, is considered 'armed robbery at sea'.[16] Though conclusive statistics do not exist, it is unquestionable that the overwhelming majority of attacks in the Gulf of Guinea have occurred within the territorial sea.

In basic terms, the high seas comprise all maritime territory beyond the 12 mile territorial seas of coastal, island and archipelagic states. While there are some sovereign rights in the customs zone between 12 and 24 miles, and economic rights between 12 and 200 miles in the exclusive economic zone (EEZ), law enforcement on the high seas is the purview of all states. Since the majority of attacks in the Gulf of Guinea have occurred within the territorial seas of recognised sovereign states, only the given state in which the incident occurs has the legal jurisdiction to take action.[17] International interventions are, therefore, restricted by the interests and laws of the West African coastal states. This has made it difficult for foreign militaries to confront the issue directly.

The business model for piracy and armed robbery at sea in West Africa has been aimed largely at theft of cargo and quick ransoms.[18] Rather than lengthy negotiations for multi-million dollar ransoms, the West African hijackings tend to last a few weeks at most and usually not more than a few days. The ransom demands have usually been below the threshold of what ship owners would be inclined to report, and the hijackings frequently involve the theft of oil off tankers. Most Nigerian crude oil is particularly clean and is therefore easily refined in makeshift artisanal refineries, providing thieves with an opportunity to either sell the stolen crude at lower value or refine it to use domestically or sell for

a higher profit.[19] Piracy and armed robbery at sea in the Gulf of Guinea have therefore, been integral to the global illicit oil trade.

As a 2013 Chatham House Report states, oil theft models in West Africa are more 'cellular than hierarchical'.[20] There is not one criminal network, or a series of organised groups, that controls the activity. Rather, smaller criminal actors work together to form a patchwork of transnational crime through the Gulf of Guinea. Arguably the most successful cooperation regime in the region, therefore, has been the illicit enterprise focused on large-scale theft of oil through various modalities—piracy and armed robbery at sea being the most notorious. However, the business model seems to be shifting to focus on, or at least include, alternative criminal objectives.

In January 2016, a vessel was taken in Nigeria and held hostage. Instead of demanding money or stealing oil, the hijackers insisted upon the release of certain Biafran prisoners accused of terrorism.[21] The North vs. East vs. West conflict in Nigeria that climaxed in the Civil War of 1967–1970, in which several million people were killed, is resurfacing as economic challenges and security concerns are reemphasising societal fractures.[22] This recent case marked the first instance of hijacking for political rather than economic purposes, and it may be the start to a new model of piracy and armed robbery at sea. It also raises the spectre of maritime terrorism being added to the immediate threat picture in the Gulf of Guinea. The spread of ISIS, Al Qaeda in the Maghreb, the newly formed Jama'at Nusrat al-Islam wal-Muslimin (JNIM) and Nigeria's own Boko Haram all pose significant regional security challenges.[23] Though they have not visibly begun operating in the maritime context, they could easily add to the maritime threats, which ill-equipped forces across the region may need to address.

When discussing the threat picture, however, it is important to identify emerging trends, as the context continues to evolve. Following the decline in the price of crude oil, it is not surprising that the economic model for piracy and armed robbery at sea appears to be transitioning. As a 2016 Oceans Beyond Piracy Report notes, kidnap for ransom is on the rise in the Gulf of Guinea, focused primarily on commercial seafarers.[24] Additionally, attacks on ships are becoming more violent, often beginning with shots being fired at the bridge of the ship in order to intimidate the crew. Perhaps most significantly for the present analysis, they are also occurring farther and farther out, reaching 50–100 nautical miles from the coast.[25] As will be discussed below, these trends will need

to be addressed as the response to the criminal activity in the region continues to mature.

Increasingly creative and legally conscious criminal activity in the West African maritime space is further complicating the threat picture. The 2015 case of the THUNDER provides an excellent example of this phenomenon, albeit involving illegal, unregulated and unreported (IUU) fishing rather than piracy or armed robbery.[26] Sea Shepherd, an anti-IUU fishing NGO, keeps a list of their 'most-wanted' vessels that are known to engage in illicit fishing activities. One of the top six on that list, the THUNDER, had been at large for years, changing its name and flag at sea to avoid capture. Sea Shepherd, pursuing the vessel, found it fishing illegally for the high-value Patagonian toothfish in the southern Atlantic and began to interfere with its operations, going so far as to cut its nets. A long-distance chase ensued, travelling up the entire western coast of Africa.[27] When the vessel arrived in the waters of São Tomé and Príncipe in the heart of the Gulf of Guinea, in sight of the two Sea Shepherd vessels that were chasing it, the crew boarded lifeboats and sank the THUNDER with its cargo on board. They had actively chosen São Tomé and Príncipe as the country in which they wanted to be prosecuted; they felt it would give them the best chance of avoiding major penalties. In other words, this was a case of legal 'forum shopping'. Furthermore, they knew that under the Safety of Life at Sea (SOLAS) Convention,[28] the Sea Shepherd vessels would be legally required to assist them in distress once their vessel sank. This creative and sophisticated manipulation of both legal jurisdiction and maritime legislative structures highlights a trend that will make slow-moving state responses to criminal activity even less effective in coming years if new thinking is not successfully applied.

While piracy and armed robbery at sea remains the subject of international attention, other maritime crime in the region plays an equally debilitating role. The trafficking of narcotics, weapons, humans, stolen resources (particularly oil), and other contraband (such as cigarettes), the dumping of sludge and other waste, and, most significantly, IUU fishing all pose enormous threats to the region.[29] Narcotic routes have moved drugs from South America through West Africa and into Europe for years. As the wealth of the region has increased, drugs have gradually entered local markets for domestic consumption in Africa.[30] Guinea Bissau has essentially become a narco-state,[31] and other states continue to feel significant consequences from the ongoing expansion of the drug

trade. These routes have expanded into other forms of trafficking and are becoming more sophisticated in evading poorly resourced and inconsistent law enforcement efforts.

The threat picture in the Gulf of Guinea, therefore, is both complex and dynamic. Criminals work together in effective ways, and take advantage of legal and institutional constraints on licit actors in order to pursue economic and other objectives. Before moving to discuss the military approaches to these threats, however, drawing a contrast to Somali piracy and counter-piracy helps illustrate why West and Central Africa require different and de novo mechanisms for addressing piracy and armed robbery at sea.

Contrasts to East Africa

Largely due to international efforts, there was not a single successful attack reported on a commercial vessel engaged in legitimate maritime commerce between May 2012 and March 2017 in the Northwest Indian Ocean.[32] While incidents in 2017 may suggest a resurgence of the problem, the nearly five year abatement of Somali piracy has to be heralded as a success. It would be an analytical fallacy, however, to assume that the tactics that have been successful in East Africa can be (or even should be) replicated in West Africa. While the UN Security Council, at the invitation of the Somali Government, provided unprecedented authority for international forces to operate in and secure Somalia's waters, no such opportunity exists in West Africa.[33] Somalia is a failed state, unable to legally establish and exert sovereign rights over its territorial waters.[34] Consequently, a series of UN Security Council Resolutions[35] have given the international community the opportunity to operate throughout Somalia's maritime territory, not just its EEZ. From an operational standpoint the high seas effectively start at the coastline, meaning there is nowhere that Somali pirates could escape international intervention, and no sovereign jurisdiction to constrain the international response.

This unique situation—as no other state, failed or otherwise, has invited the international community into its waters in such a way during peacetime—made Somali piracy a relatively easy scourge to address. A combination of military presence and armed guards on ships successfully stopped the problem of commercial ships being hijacked for ransom off Somalia. The cooperation between the navies of numerous countries—some of which rarely cooperate—provided an exceptional example of collective military action against a common threat. Additionally, the other

key success story in the Somali piracy intervention has been the use of private security companies in protecting commercial vessels from attacks. No ship has ever been successfully taken with private armed guards aboard. While the IMO has been impressively resolute in neither endorsing nor denouncing the use of armed guards, it has provided several sets of helpful guidance for ship owners who choose to protect their vessels with private teams.[36] In addition, the now defunct Security Association of the Maritime Industry (SAMI) helped lobby the IMO to support the development of an ISO Standard for armed guards on ships transiting the High Risk Area off Somalia, ISO 28007. However, neither the military presence nor the armed guards are viable approaches to deal with piracy and armed robbery at sea in West Africa.

As noted, the majority of attacks in the Gulf of Guinea occurs within the sovereign territorial seas of legitimate coastal states. Foreign militaries cannot enter those waters unless invited, and no state in the region has made such an invitation. Consequently, the two UN Security Council Resolutions issued thus far on piracy and armed robbery at sea in West Africa[37] have encouraged the states of the region to take action themselves. At the heart of that action has been the overarching notion of cooperation—the focus of this chapter. Additionally, unlike in the context of Somali piracy where private armed guards have been so effective, the coastal states of West Africa do not allow weapons in private hands within their territorial waters, negating that form of private response. Consequently, the 'successful' approaches to Somali piracy have relatively little bearing on confronting piracy and armed robbery at sea in West Africa. That does not mean, however, there are no takeaways from the Somali experience.

As Shortland discusses in her chapter in this volume, one of the lessons that will likely be the enduring and unfortunate legacy of the international efforts in East Africa is that piracy is a land-based problem with maritime symptoms. [38] Treating the symptoms on the water, no matter how effective, will not root-out the source of the problem. As the NATO Alliance Maritime Strategy states, '70% of the Earth is covered in water; 80% of the world's population lives within 100 miles of the coast; 90% of world trade happens by sea…'.[39] But an important statistic is missing: 100% of the world's population lives on land.[40] Therefore, any man-made maritime security problem is inherently tied to the land. As recent incidents off Somali suggest, a temporary cessation of attacks on ships does not mean that piracy has been 'solved', but merely mitigated. Even before the March 2017 hijackings, attacks by Somali pirates against fishing vessels engaged in illicit trafficking in the Northwest Indian Ocean indicated that

the criminal networks that perpetrated piracy a few years ago had merely become more sophisticated. In the more dynamic context of West Africa, international military involvement has taken a different set of approaches, focusing on developing strategic architecture, fostering operational cooperation, and enhancing the nexus between security and development.

The Strategic Architecture of Maritime Security Cooperation in the Gulf of Guinea

There are two primary ways to present the maritime security architecture of West and Central Africa—chronologically or as a series of layers. A time-based sequential presentation produces a remarkably confused and confusing picture of different strategies, instruments and institutions that do not appear to connect or work in conjunction with one another. The architecture, while now seemingly intentional, was not constructed in a systematic way. When viewed structurally rather than chronologically, however, it presents an increasingly coherent framework. Starting at the continent-wide level, a series of strategies cascade down to the inter-regional, regional, zonal and national levels. As internal and external military engagement on resolving piracy and armed robbery at sea has centred on these strategic initiatives, it is vital to understand how they all fit together before discussing the operational dynamics of the cooperation regimes.

Continental

Encompassing the entirety of the African continent—a landmass completely surrounded by water—is the African Union's (AU) Africa's Integrated Maritime Strategy (AIMS) 2050. Adopted on 31 January 2014, the AIMS 2050 'provides a broad framework for the protection and sustainable exploitation of the [African Maritime Domain] for wealth creation'.[41] The strategy 'is structured to address contending, emerging and future maritime challenges and opportunities in Africa, taking into account the interest of landly connected countries, with a clear focus on enhanced wealth creation from a sustainable governance of Africa's inland waters, oceans and seas'.[42] This strategy forms the umbrella framework under which all other African maritime strategies and initiatives should operate. At its heart is the notion that the coastal, island and archipelagic states of Africa, together with their landlocked neighbours, must work together to collectively secure the African maritime domain.

Regional and Inter-regional

As an immense continent with 54 countries and 1.2 billion people, Africa faces challenges when operating as a single unit. In response, states have grouped themselves by regions: North, West, Central, South, East and Indian Ocean. In West and Central Africa, the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS) are the most significant multilateral institutions, providing collective direction for their member states. In the maritime space, however, there are a number of other regional bodies, most notably the Gulf of Guinea Commission (GGC) and the Maritime Organization of West and Central Africa (MOWCA), with a maritime focus.

ECCAS was the first of the regional organisations to adopt a maritime strategy in 2008. While not a fully articulated strategy, the 2009 Kinshasa Protocol provides further in-depth strategic direction on maritime Security for Central African States in response to growing insecurity. Similarly, the GGC adopted its own maritime strategy in August 2013, supporting the principles of coordination to combat maritime security challenges in the Gulf of Guinea. ECOWAS adopted its own Integrated Maritime Strategy and Implementation Plan on 29 March 2014. In addition, both ECOWAS and ECCAS mandated regional coordination centres—the Regional Maritime Security Center of West Africa (CRESMAO) and the Regional Maritime Security Center of Central Africa (CRESMAC), respectively. Whereas CRESMAC is now operational, CRESMAO is still in process of being stood up. These regional strategies and mechanisms, however, sit in conjunction with an inter-regional initiative that now forms the backbone of the military approaches to maritime insecurity in West and Central Africa.

With the economic engine of the region threatened by maritime insecurity, and following the UN Security Council Resolutions mentioned above,[43] ECOWAS, ECCAS and the GGC brought together their 25 member states, along with international partners, to develop an instrument for inter-regional cooperation. The result was the 2013 Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa. Better known as either the Gulf of Guinea Code of Conduct or the Yaoundé Code of Conduct (named after the locus of its signing in Cameroon), this multilateral agreement has established the main architecture for maritime security cooperation from Senegal to Angola.

Signed by the heads of state of the signatory countries, the Code provides a clear indication of political will to cooperate between states to

address maritime crime.[44] Indeed, Art. 2 establishes that 'the Signatories intend to co-operate to the fullest possible extent in the repression of transnational organized crime in the maritime domain, maritime terrorism, IUU fishing and other illegal activities at sea with a view towards: (a) sharing and reporting relevant information; (b) interdicting ships and/or aircraft suspected of engaging in [maritime crime]; (c) ensuring that persons committing or attempting to commit [maritime crime] are apprehended and prosecuted; (d) facilitating proper care, treatment, and repatriation of seafarers, fishermen, other shipboard personnel and passengers subjected to [maritime crime], particularly those subjected to violence'.[45] Throughout the document, cooperation is emphasised, not just between signatories, but between states and other relevant stakeholders including flag states, the maritime industry and international partners such as the IMO. Particular focus is placed on efforts to address piracy and armed robbery at sea, integrating these efforts into the broader cooperative framework outlined by the Code.

Importantly, the Code and an accompanying Memorandum of Understanding between the states also mandated two long-term initiatives: (1) establishing the Interregional Coordination Center (CIC), a body with the express purpose of coordinating maritime security activity throughout West and Central Africa,[46] and (2) working to transform the voluntary Code of Conduct into a legally binding agreement, thereby further formalising the cooperation regime.[47] While both initiatives continue to prove challenging, progress has been made toward standing up the CIC and helping it meet its operational requirements, and discussions towards transforming the Code into a legally binding agreement are ongoing. In February 2017, the member states gave CIC a major boost by sending a new and highly qualified leadership team to make the institution an operational reality. Regional and foreign militaries have taken an interest in seeing both efforts meet fruition and are providing support to move the processes forward. In the meantime, considerable attention is being paid to establishing smaller maritime zones as the building blocks of cooperation between the regions.

Zonal

ECOWAS and ECCAS, in addition to establishing the region-wide coordination centers of CRESMAO and CRESMAC, have divided their member states into Zones A, D, E, F and G.[48] The aim is for each of

these Zones to establish a Maritime Operations Centre (MOC) and develop operational cooperation on the water between the member states (Fig. 8.1).

In 2009, Zone D took the lead on this initiative by establishing a Technical Accord that gave the four member states' navies and coast guards the authority to work together to effectuate maritime security.[49] Each state is individually limited in resources, but by sharing information, pooling assets and collaborating on a number of fronts, Zone D has demonstrated the possibility and benefits of operational cooperation. The MOC in Douala, Cameroon now serves as an example of how to coordinate operations between the forces of different coastal states. That said, the operations remain only thinly guided by the 2009 Technical Accord and by the broad principles of the Yaoundé Code of Conduct. Efforts are afoot, therefore, to formalise the operational agreements into a legally binding accord in order to pre-empt potential problems. A legally binding Zone D agreement can be expected in 2017 or early 2018 at the latest.

Though Zone F is in the process of establishing its MOC in Accra, Ghana, the only other Zone to have moved towards operationalisation is Zone E. Unlike the rather short Zone D Technical Accord, Zone E opted for an extensive legal agreement that addressed a wide variety of issues from vessel identification, to hot pursuit, to ship rider agreements and harmonisation of laws. While the agreement is impressive and a model for other Zones, and while a MOC has been established in Cotonou, Benin, the lack of actual operational cooperation undercuts the value of the agreement and stands in stark contrast to the less formal, more effective approach of Zone D.

National

Regardless of the myriad interstate initiatives[50], the fundamental success or failure of military approaches to maritime crime and insecurity in West and Central Africa falls upon the navies and coast guards of the region. International partners and particularly foreign militaries including those of the United States, France, and Portugal have continued to work with West and Central African states on capacity building for military capability, but have also taken new approaches to this military enhancement. US Africa Command (AFRICOM) and US Naval Forces Africa (NAVAF) engage in efforts like Obangame Express and Africa Partnership Stations,

Fig. 8.1 The maritime regional architecture in the Gulf of Guinea

while the French Navy runs ASECMAR, all of which seek to foster interstate cooperation on the water. Increasingly, however, those initiatives have identified the need for additional land-based efforts. Drawing in part on the experience with Somali piracy, militaries in the Gulf of Guinea and abroad recognise that in order to successfully address maritime crime and insecurity in the region it is necessary to bridge the littoral divide and adopt a more comprehensive approach.

Regional and foreign militaries, together with international organisations and other partners, are seeking to address regional maritime crime with three key land-based efforts: (1) the development and implementation of national maritime strategies; (2) the establishment of interagency/whole-of-government processes; and (3) justice sector enhancement. Not to be confused with naval strategies or maritime security strategies, a national maritime domain strategy seeks to improve collaboration between maritime actors within a state—military and civilian, public and private—to focus on creating and sustaining a secure and prosperous maritime environment. Focusing on three pillars—security, development and stewardship—this non-traditional military effort seeks to combine operational security matters with efforts to safeguard the marine environment and improve the quality of life on land. Food security, economic security, energy security, and environmental sustainability are all part of this effort. At its core, this initiative recognises that in order to successfully eradicate maritime crime, states must offer viable, more attractive alternatives to criminality. Maritime security, therefore, has become inextricably tied to development in the Gulf of Guinea. The main military approach to maritime security in the region can therefore, be characterised as development through cooperation.

To begin developing a national maritime strategy states must engage in a process that brings together all maritime stakeholders. In some instances, this may be the first time that all maritime agencies within a government have met. The benefit of ensuring all components of maritime governance work together seems obvious, but rarely does such interagency or whole-of-government cooperation occur—a problem not unique to the Gulf of Guinea. In formalising repeatable, documentable processes for applying collective effort to maritime matters, the states in West and Central Africa are beginning to see the value of interagency or whole-of-government operations for maritime security. Additionally, they are taking into account which non-state stakeholders—NGOs, fishing communities, and maritime trade associations, for example—might be helpful in achieving strategic

governance and security objectives. The United States, through AFRICOM and NAVAF, has particularly encouraged this collaborative approach as a vital component to addressing maritime crime. Among other benefits, the collaboration of entities with different expertise means that governments become more competent in responding to changes in the threat picture.

Finally, in recent years the militaries of the region and their partners have placed a heavy emphasis on justice sector enhancement. It is not possible to have 'rule of law' without law. Similarly, there is no benefit to enforcing bad law. Even when the laws are good and the law enforcement works, if the justice system is unable to prosecute and penalise criminals, the system fails. As noted, the navies and coast guards in the Gulf of Guinea have primarily a law enforcement function, rather than a principal focus on national defence. Consequently, their ability to interdict criminal activity, collect and preserve evidence, and assist in prosecution is entirely reliant on both good laws and a good judicial system. No amount of interdiction at sea will end maritime insecurity if there are no consequences for illicit behaviour. Militaries have worked to improve internal coordination on justice sector enhancement, and are now beginning to cooperate between states on harmonising certain laws. If in one state, a particular criminal action carries a maximum penalty of 6 months in prison, and in the neighbouring state, the same offence carries a penalty of 10 years in prison, it is not surprising that the crime will be more frequent in the former. The same is true for civil penalties. If stealing a certain amount of a particular fish from US waters carries a penalty of $1 million, but stealing the same amount of the same fish from West Africa carries a penalty of $50 or even $5,000 (when enforced) it should be no surprise that more illegal fishing occurs in West Africa than in the US. A key part of the military approach is therefore, to make the Gulf of Guinea a less attractive place to commit maritime crime.

SUCCESSES AND REMAINING GAPS

Both the challenge and the benefit to these efforts is that they are constantly being tested in the real-world. Results to date suggest they are starting to have effect. As noted, there seems to be a trend away from armed robbery at sea and towards piracy (that is, incidents occurring more than 12 nautical miles from the coast). This evolution in the security environment indicates that law enforcement efforts within 12 nautical miles have begun to interfere with the criminal business model,

making it worth operating farther from shore despite associated risks. While the decline in global oil price is likely to account for the transition to kidnap for ransom, part of that shift may also be due to more effective protection of tanker traffic. No case more effectively demonstrates the progress of military efforts in the region than the recovery of the hijacked M/T MAXIMUS in February 2016.

After the MAXIMUS was hijacked off Côte d'Ivoire, the Navies of Côte d'Ivoire, Ghana, Togo, Benin, Nigeria, São Tomé and Príncipe, France and the United States (which had been conducting a joint training mission with the Ghanaian Navy at the time) cooperated in the chase, which lasted more than a week.[51] Ultimately, two Nigerian Navy vessels interdicted the MAXIMUS in the EEZ of São Tomé and Príncipe. The pirates, when verbally engaged by the Nigerian Navy, responded by claiming erroneously that, as they were in international waters, they were protected by international law. After hours of failed negotiations, the Nigerian Navy stormed the vessel, killing one hijacker, taking the remaining six (all Nigerian nationals) into custody and freeing the crew.

The US was able to cooperate with the Ghanaian Navy to track the vessel across the Ghanaian EEZ, and then handed over the chase to the Togolese Navy. While they did not have the capacity to interdict, the Togolese tracked the vessel until it entered Benin's waters. The Benin Navy was unable to deploy assets to aid in the chase, but helped coordinate communication with the Nigerian Navy, leading ultimately to the successful interdiction. According to the Nigerian Navy, they obtained permission from São Tomé and Príncipe to operate in their EEZ before the interdiction. Consequently, the success of the cooperation and the eventual release of both the hostages and the vessel, together with the arrest of a number of the hijackers make this the best example to date of the principles of the Yaoundé Code of Conduct being realised.

Although the interdiction of the MAXIMUS largely constitutes a success story, it also highlights many remaining gaps. Zone F does not have a MOC and is not operational. While Zone E has the MOC in Cotonou, it is not operational on the water. Neither the Togolese nor the Beninois had the capacity to interdict the MAXIMUS, so could only track it. Furthermore, the fact that the interdiction was carried out by an ECOWAS Zone E country in ECCAS Zone D waters highlighted the need for cooperation between the various coordination regimes. Finally, the attempt by the pirates to deceive the Nigerian Navy on erroneous legal grounds indicates a need for legal clarity and rigor within each of

the coastal states, as well as involvement of trained operational maritime lawyers. In short, while the successes of the MAXIMUS case should be celebrated, there remains considerable work yet to be done.

Another area where further work is needed concerns the role of the private security industry. As armed transits of the High Risk Area off Somalia have declined, private maritime security companies have sought new markets elsewhere. Complex approaches of questionable efficacy have been piloted for both private and sovereign clients. Protection of ships, security for offshore oil infrastructure, and training and support for local maritime law enforcement agencies have been the main sources of business for the private maritime security industry. However, these activities are not adequately covered by the ISO 28007 standard or any other international oversight mechanism. Consequently, there is a danger that the private maritime security industry could be used to assist criminal efforts as much as to thwart them. No steps have yet been taken to address and regulate the industry in the Gulf of Guinea.

Finally, corruption constitutes one of the key ongoing barriers to successfully confronting maritime crime and insecurity in West and Central Africa. Regardless of the quality of the legal regime or strategic architecture, and despite improved efficiency of both maritime forces and national judicial systems, the success of these efforts can be jeopardised by corrupt practices that allow criminals to proceed with impunity. The more cooperative the regime, however, the more difficult it is to perpetrate corruption. Sustained efforts are, therefore, key to emphasising transparency in all aspects of maritime security.

Conclusion

In May 2016, the Nigerian Navy, the largest and most renowned of the naval forces in the region, marked its Diamond Jubilee with a series of events in Lagos and Abuja. Interestingly, for the principal celebration the Nigerians chose to host a high-level international conference on the theme of collaborating for maritime security. The Chiefs of the Naval Staff of most West and Central Africa states attended the conference, together with the Deputy Commander of US AFRICOM and representatives from other partner states. A decade ago, no structures for cooperation existed between states in West and Central Africa and few Navies or Coast Guards in the region interacted at all. It is, therefore, telling that today the Nigerian Navy would choose for its 60th Anniversary to be

surrounded by the senior leaders from all the neighbouring Navies and Coast Guards, as well as from international partners, to talk about further improving collaboration to address existing and emerging threats. Cooperation is unmistakably the fundamental military approach to maritime crime and insecurity in the region. While cooperation on the water is beginning to yield results, efforts to bridge the littoral divide and support sustainable economic development on land offer cause for even greater optimism. Thanks to the encouragement of foreign military partners, the navies and coast guards of West and Central Africa are adopting a development-oriented approach to maritime crime and insecurity, which differentiates it from previous efforts in other parts of the world, thereby targeting the full spectrum of causes and effects of this criminal activity. If states in the region, together with international assistance, are willing to stay the course, the current military approaches to piracy, armed robbery at sea and other maritime crime in West and Central Africa may prove the most effective long-term intervention in modern history.

NOTES

1. International Maritime Organization (2013), 'Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa' http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf, accessed 28 August 2016.
2. Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone and Togo.
3. Government of Sweden (1983), 'A.545(XIII) Measures to prevent and suppress piracy and armed robbery against ships. (Deriving from Sweden's submission to the Council in Document C50/25 and Maritime Safety Committee Meeting 48/23/4 regarding concerns about attacks on ships in West Africa)', IMO MCS 48/23/4.
4. United Nations (2015), 'World Population Prospects', http://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf, accessed 28 August 2016.

5. C. Gatinois (2014), 'Portugal Indebted to Angola After Economic Reversal of Fortune', *The Guardian*, 3 June 2014 http://www.the-guardian.com/world/2014/jun/03/portugal-economy-bailout-angola-invests, accessed 28 August 2016.

6. International Cocoa Organization (2011), 'Annual Report Rapport 2010–2011', p. 2.

7. Atlas of Regional Integration in West Africa-Cotton (2006), 'ECOWAS-SWAC/OECD', p. 1.

8. *Special Publication of the Mining Journal* (2010), 'Democratic Republic of Congo, for example, has the world's largest reserves of cobalt. The Democratic Republic of the Congo'.

9. National Geographic, Africa Resources: Economy and Environment, http://nationalgeographic.org/encyclopedia/africa-resources/, accessed 28 August 2016; Food and Agriculture Organization (2011), Review of the State of World Marine Fishery Resources, http://www.fao.org/docrep/015/i2389e/i2389e.pdf, accessed 28 August 2016.

10. In Abidjan, Côte d'Ivoire, Douala, Cameroon, Lomé, Togo, and Tema, Ghana.

11. K.D. Ali (2015), 'Maritime Security Cooperation in the Gulf of Guinea: Prospects and Challenges', p. 35.

12. Atlas of Regional Integration in West Africa-Cotton (2006), ECOWAS-SWAC/OECD, p. 1.

13. Oil and Gas in West Africa (2012), The West Africa Resource Watch, www.osiwa.org/attachment/22/oil%20and%20gas.pdf, accessed 28 August 2016.

14. C. Gaffey (2016), Why West Africa and Nigeria Have the World's Most Dangerous Seas, *Newsweek*, http://www.newsweek.com/why-west-africa-and-nigeria-have-worlds-deadliest-seas-455714, accessed 28 August 2016.

15. United Nations Convention on the Law of the Sea (UNCLOS), 1833 U.N.T.S. 397.

16. D. Guilfoyle (2009), *Shipping Interdiction and the Law of the Sea*, (New York, Cambridge University Press), pp. 254–259.

17. S. Starr (2014), 'Maritime Piracy on the Rise in West Africa', *Combating Terrorism Center*, https://www.ctc.usma.edu/posts/maritime-piracy-on-the-rise-in-west-africa, accessed 28 August 2016.

18. Maj. B. Abell (2014), 'West African Piracy: 7 Trends you Need to Know', http://gcaptain.com/west-african-piracy-7-trends-need-know/, accessed 28 August 2016.

19. Stakeholder Democracy (2013), 'Communities not Criminals: Illegal Refining in the Niger Delta', http://www.stakeholderdemocracy.org/

sdn-report-communities-not-criminals-illegal-oil-refining-in-the-niger-delta/, accessed 28 August 2016.

20. Chatham House (2013), 'Nigeria's Criminal Crude—International Options to Combat the Export of Stolen Oil', p. 6, https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Africa/0913pr_nigeriaoil.pdf, accessed 28 August 2016.

21. M. Fall & H. Umar (2016), 'Military officers say Nigerian separatists have hijacked a merchant ship and threaten to blow it up with its foreign crew if authorities do not release a detained leader agitating for a breakaway state of Biafra', *US News*, http://www.usnews.com/news/world/articles/2016-02-02/nigerian-separatists-hijack-ship-demand-release-of-leader, accessed 28 August 2016.

22. T. Alamu (2016), 'On Sovereignty and Restructuring', *The Nation*, http://thenationonlineng.net/on-sovereignty-and-restructuring/, accessed 28 August 2016.

23. J. Campbell (2015), 'ISIS, Al Qaeda, and Boko Haram: Faces of Terrorism', http://blogs.cfr.org/campbell/2015/11/23/isis-al-qaeda-and-boko-haram-faces-of-terrorism/.

24. Oceans Beyond Piracy (2016), 'Kidnap for Ransom Piracy Trending Higher in Gulf of Guinea', http://oceansbeyondpiracy.org/sites/default/files/attachments/2016%20GOG%20Trends.pdf, accessed 28 August 2016.

25. *Id*.

26. Sea Shepherd (2015), 'Poaching Vessel THUNDER Sinks Under Suspicious Circumstances', http://www.seashepherd.org/news-and-media/2015/04/06/poaching-vessel-thunder-sinks-in-suspicious-circumstances-1681), accessed 28 August 2016.

27. I. Urbina (2015), 'A Renegade Trawler, Hunted for 10,000 Miles By Vigilantes', *N.Y. Times*, http://www.nytimes.com/2015/07/28/world/a-renegade-trawler-hunted-for-10000-miles-by-vigilantes.html?_r=0, accessed 28 August 2016.

28. International Convention for the Safety of Life at Sea.

29. See generally, K. D. Ali (2015), 'Maritime Security Cooperation in the Gulf of Guinea: Prospects and Challenges', pp. 88–111.

30. United Nations Office on Drugs and Crime (2008), 'Drug Trafficking as a Security Threat in West Africa'.

31. G. Ferrett and E. Vulliamy (2008), 'How a Tiny West African Country Became the World's First Narco State', *The Guardian,* https://www.theguardian.com/world/2008/mar/09/drugstrade, accessed 28 August 2016.

32. A. Poulin (2016), 'How the World Overpowered Piracy in the Horn of Africa', *International Policy Digest*, 1 http://intpolicydigest.org/2016/01/16/how-the-world-overpowered-piracy-in-the-horn-of-africa/, accessed 28 August 2016.

33. K.D. Ali (2015), 'Maritime Security Cooperation in the Gulf of Guinea: Prospects and Challenges', pp. 121–122.

34. M. Silva (2010), Somalia: State Failure, Piracy and the Challenge of International Law, *50 Virginia Journal of Int'l Law*, 3, p. 555, http://www.vjil.org/assets/pdfs/vol50/issue3/VJIL-50.3-Silva-Essay.pdf, accessed 28 August 2016.

35. 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008), 1897 (2009), 1918 (2010), 1950 (2010), 1976 (2011), 2015 (2011), 2020 (2011), 2077 (2012) 2125 (2013), 2184 (2014), and 2246 (2015).

36. International Maritime Organisation, 'Private Armed Security' http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Pages/Private-Armed-Security.aspx, accessed 28 August 2016.

37. 2018 (2011) and 2039 (2012).

38. A. Malaquias (2016), 'The Emerging Maritime Security Cooperation Architecture in the Gulf of Guinea: An Independent Assessment', Paper Presented at the Nigerian Navy Diamond Jubilee.

39. Alliance Maritime Strategy, http://www.nato.int/cps/en/natohq/official_texts_75615.htm, accessed 28 August 2016.

40. I. Ralby (2014), 'Comprehensively Limited: NATO's Disconnected Approach to Maritime Security, War on the Rocks', http://warontherocks.com/2014/10/comprehensively-limited-natos-disconnected-approach-to-security/, accessed 28 August 2016.

41. 2050 Africa's Integrated Maritime Strategy, Executive Summary, available at http://cggrps.org/wp-content/uploads/2050-AIM-Strategy_EN.pdf, accessed 28 August 2016.

42. *Id*.

43. 2018 (2011) and 2039 (2012).

44. International Maritime Organization (2013), Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships, and Illicit Maritime Activity in West and Central Africa, http://www.imo.org/en/OurWork/Security/WestAfrica/Documents/code_of_conduct%20signed%20from%20ECOWAS%20site.pdf, accessed 28th August 2016. [Hereinafter Yaoundé Code of Conduct].

45. *Id*.

46. 'Memorandum of Understanding Among the Economic Community of Central African States (ECCAS), The Economic Community of West African States (ECOWAS) and The Gulf of Guinea Commission (GGC) on Maritime Safety and Security in Central and West Africa', 25 June 2013.

47. Yaoundé Code of Conduct, art. 17(a).

48. Zone A includes Angola, DRC and Congo; Zone D includes Cameroon, Equatorial Guinea, Gabon and São Tomé and Príncipe; Zone E includes Nigeria, Benin, Togo and Niger; Zone F includes Ghana, Côte d'Ivoire, Burkina Faso, Sierra Leone, Liberia and Guinea; and Zone G includes Cape Verde, Senegal, the Gambia, Guinea Bissau and Mali.

49. 2009 Accord Technique Entre la CEEAC et les Etats du Cameroun, du Gabon, de La Guinee—Equatoriale, et de Sao Tome et Principe sur la Mise en Place d'un Plan de Surveillance pour la Securisation Maritime du Golfe de Guinee, 'Zone D'.

50. Including AIMS 2050, the Yaoundé Code of Conduct and affiliated CIC, the ECOWAS, ECCAS, and GGC strategies, CRESMAO, CRESMAC and the various Zones.

51. Center for International Maritime Security, 'Coming of Age of the West African Navies', http://cimsec.org/coming-of-age-of-the-west-african-navies/22919, accessed 28 August 2016.

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South East Asia Piracy: Have We Learnt from Somali Counter-Piracy Operations?

Karsten von Hoesslin and Lucia Bird Ruiz-Benitez de Lugo

INTRODUCTION

The term 'piracy' tends to conjure images of men with cutlasses patrolling the seas of old, or perhaps images of the violent Somali pirates that dominated the headlines of 2008–2012. Few will turn their mind to South East (SE) Asia—yet here piracy and its domestic sibling, sea robbery, is a sophisticated and highly organised phenomenon which poses a significant, and current, threat across the region.

Once the headlines turned away from the surge of Somali piracy the prevailing view, amongst both the public and international organisations, was that piracy was a problem of the past. Furthermore, the international response to the Somali piracy crisis was lauded as an unmitigated success which formed an exemplar applicable to other models of piracy. However,

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not only is SE Asian piracy very much a current and escalating challenge, its unique structure renders the majority of Somali counter-piracy strategies both inappropriate and ineffective. A recent abatement in activity triggered by unfavourable economics offers a small window of opportunity to modify current approaches in order to successfully address this deep-rooted issue.

Piracy and sea robbery have long-formed part of the SE Asian cultural landscape—since the International Maritime Bureau (IMB)[1] started collecting reliable data in 1993, nearly 60% of all incidents reported globally have occurred in Asia, and a full two thirds of reported incidents in Asia occur within SE Asia. Indonesia alone accounts for 23% of global incidents, a dominance only threatened briefly by the Somalis during their heyday years of 2008–2012. The challenge of SE Asia piracy has failed to illicit widespread international attention, being, unlike Somali piracy, generally non-violent and viewed as a regional phenomenon of concern predominantly to Indonesia, Malaysia and Singapore (Fig. 9.1).
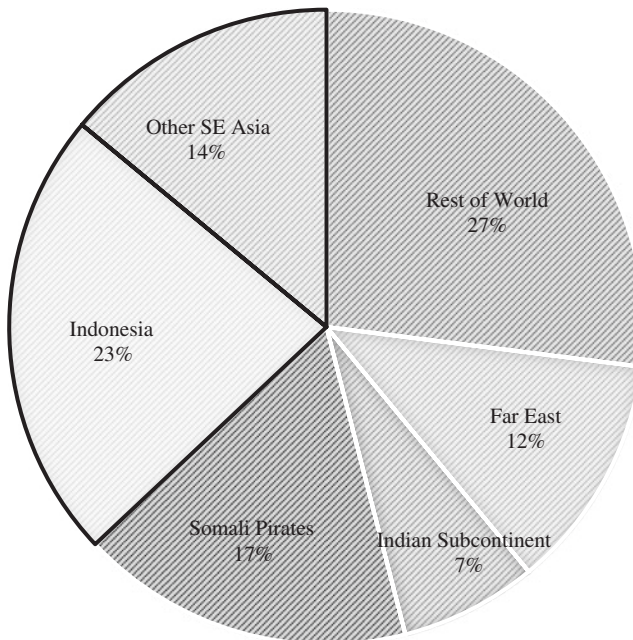
Fig. 9.1   Geographic distribution of global piracy incidents, 1993–2015 (*Source* IMB)

Indeed, SE Asian pirates themselves are quick to distinguish their actions from Somali or Nigerian hijackers through the use of differing terminology. When questioning SE Asian suspects who conduct 'bajak laut' (hijackings), the authors have found they quickly dilute the severity/significance of their behaviour by stressing it is far less severe than typical Somali hijackings, which they term 'true bajak laut'. Ironically, both suspects and certain governments attempt to distinguish their environments from Somali and West African hijacking modus operandi in order to feel less incriminated or less pressured to act immediately.

This chapter seeks to put SE Asian piracy in its historical context, to study the rise in piracy in SE Asia during the last 5 years, to examine the business model that has driven it, to analyse what the future holds and to suggest how piracy may best be contained by law enforcement as well as international organisations. This chapter urges immediate action, encouraging state actors and international organisations to take advantage of the opportunity offered by a temporary lull in SE Asian piracy triggered by unfavourable economics, in particular the low price of fuel, to re-evaluate appropriate response mechanisms.

This chapter considers the high profile, and largely military led, counter-piracy operations conducted across the coastline of Somalia, highlighting elements of the strategy utilised which yielded long-term successes, and those which acted merely as short-term, and easily reversible, mitigates. In addition, through an analysis of the structures of piracy typical to SE Asia, this chapter will demonstrate how it can be differentiated in form and context from Somali piracy, and what lessons can be learnt from the Somali anti-piracy campaign, building an even stronger argument for a de-militarised and intelligence focussed response.

Although the IMB's categorisation of a reported incident includes both acts of piracy and armed sea robbery occurring inside and outside of territorial waters, this chapter focuses on the more serious cases of piracy defined as the seizure of a ship by force or any act likely to endanger the ship, its crew or cargo—the usage defined in the Suppression of Unlawful Acts (SUA) Convention, as adopted in 1988 and amended in 2005.[2] This usage considers it irrelevant where the incident occurred, unlike Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS)[3], which specifies that piracy must occur outside of a state's territorial waters—whereas UNCLOS would classify the same incident occurring inside territorial waters as an act of armed sea robbery or theft. This chapter focuses specifically on piracy incidents that entail hijacking the vessel- specifically product tankers, for their liquid cargoes.

Background

Geography

Undoubtedly, the geography of SE Asia largely explains why piracy and armed robbery at sea is so prevalent in the region. Stretching from the westernmost corner of Malaysia to the tip of Indonesia's Bintan Island, the narrow, 800 km long Straits of Malacca and Singapore serve as a global shipping superhighway: each year more than 120,000 ships funnel slowly through these congested waters: pirates and thieves are never short of opportunities for plunder. An enormous number of islands, covered with dense mangroves, serve as hiding places and bases from which to sortie, and the distance from these island bases to the place of the crime is never long (Fig. 9.2).

In contrast, the Somalian coastal terrain is markedly bare. Although this encouraged the development of Somali on-land havens, it also facilitated effective naval patrolling, rendered difficult in the island studded waters of SE Asia.

The geography of the Somali and SE Asian coastlines can be further differentiated in terms of scale: the 3300 NM coastline between the Horn of Africa and the Cape of Good Hope pales in comparison to the
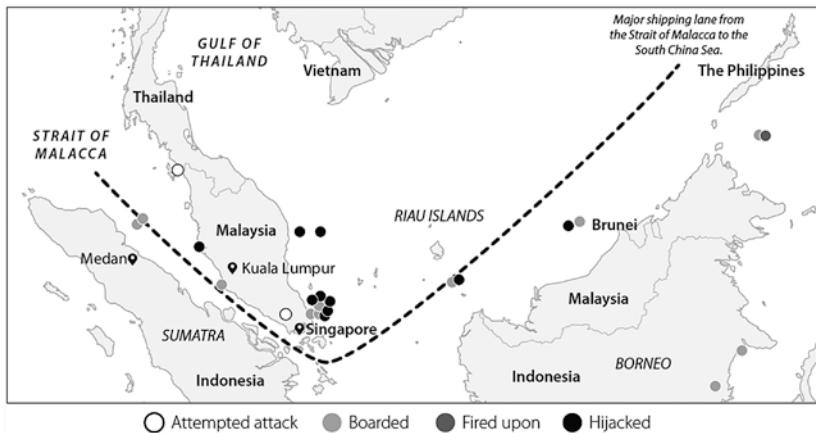
Fig. 9.2 All hijackings from 2012- present (*Source* Authors/Risk Intelligence)

geographical expanse of the SE Asian region. The coastline of Indonesia alone spans over 2800 NM. Heavy patrolling of Somali waters resulted in a decrease in successful hijackings (although not in attempted hijackings, suggesting patrols failed as a deterrent). The resources required to achieve a similar density of patrols across SE Asian waters suggest this to be an unviable option, despite it being largely territorial waters.

History of Piracy

Unlike piracy in Somalia, which is predominantly a twenty-first century phenomenon, piracy has a long history in SE Asia. During the nineteenth century, several colonial governments in SE Asia, but especially the Dutch, were confronted with piracy on a very large scale. There were specialized pirate communities dotted across islands in the region. Piracy was not simply an economic activity, it was also a traditional and prestigious way of life; whole communities were engaged in it, the elite financed the expeditions and the local people manned the vessels.

In the twentieth century, the activities of the pirates of SE Asia remained high, indeed, the frequency, violence employed and purpose (political kidnappings, predominantly by the Free Acer Movement, rather than theft for profit) of the incidents contributed to the decision of the Joint War Committee of the Lloyds Insurance Market to implement a War Risk Area in 2005; approximately doubling the cost of insurance, from 0.05 to 0.1% of the cargo value. However, activity decreasing sharply at the start of the twenty-first century, in part due to improved co-ordination between state actors in counter-piracy initiatives and the negotiation of a truce between the Indonesian Government and the Free Acer Movement. By 2009, it seemed, at least on the surface, that the threat of piracy in SE Asia was being successfully addressed.

There is a saying, attributed to Dr. Eric Frecon, author of 'Chez les pirates d'Indonésie' and an assistant professor at the French Naval Academy, that 'a pirate never dies, it merely sleeps.'[4] And this sleep proved a short one: by 2012, piracy incidents had climbed back above the 100 mark and by 2015 were again at historically high levels. To understand this rise in activity, it is necessary to analyse the factors that drive piracy in SE Asia (Fig. 9.3).
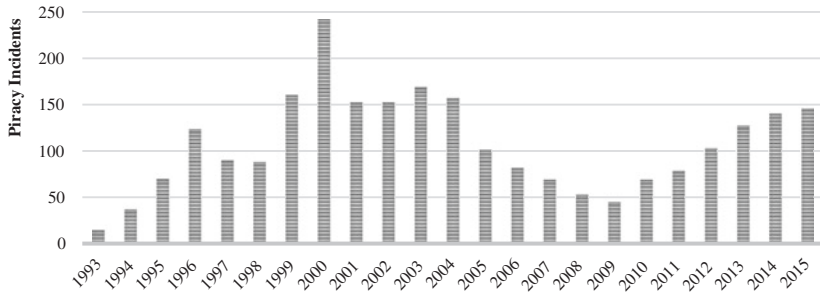
Fig. 9.3 Piracy incidents in SE Asia, 1993–2015 (*Source* IMB)

Analysing the Drivers of SE Asia Piracy

If the piracy model of the 1990s was demand driven, by the eagerness of Chinese buyers to purchase goods at below market prices, piracy of the 2000s was supply driven, due to the spectacular rise in the production of palm oil in SE Asia. Indonesia and Malaysia, where commercial planting only began in the 1960s, became far and away the largest producers of palm oil in the world.

Given that SE Asia hijacking mechanics are structured around the target product, principally crude palm oil (CPO), this triggered a surge in incidents. At any time there are some 20 barges on the water along the coasts of Indonesia and Malaysia and 18 pirate networks are in the business of stealing their cargoes.[5]

The mechanics of a spate of incidents reported between 2000 and 2005, the short time frames, significant targets and almost military precision of operations clearly demonstrated that the emergence of Indonesia and Malaysia as world class producers and exporters of palm oil had changed the piracy business: it was no longer the province of amateurs armed with knives opportunistically stealing the ship's stores and the crews' belongings, it had become a business for professionals.

Highly sophisticated criminal networks began to develop around CPO theft, with roots that penetrated equally far onto land, as well as at sea.

Modus Operandi

Although the players in SE Asia hijacking networks have always remained fluid and adapted to agency and industry initiatives, the modus operandi

of hijackings have generally remained unchanged[6] In a typical hijack of a CPO barge, the vessel is boarded by the pirate boarding team, the crew is taken hostage and the vessel sailed by the boarding team to a rendezvous point where an unregistered 'phantom' tanker takes on the cargo. The vessel and crew are typically released unharmed[7] after a specific amount of cargo is transferred from the victim ship, the pirate boarding team disembarks and the victim ship is released. On average, the entire incident lasts between 11 and 48 h.[8]

Unlike attacks along the coast of Somalia, which largely occur in the high seas at a significant distance from shore, attacks in SE Asia are typically close to land, often from anchored vessels or vessels moored in ports, strengthening the argument for a land-focused response.

Key Actors

Although significant attention is paid to the hijackers (the boarding team), they are in fact the lowest rung of the criminal enterprise. The enterprise is run by a 'big boss', who seeks an investor for the operation, employs a 'fixer' to locate a suitable victim (with the help of insiders), lines up a buyer prepared to 'launder' the stolen product, employs a boarding team leader who in turn will recruit and lead the pirates, hires a forger to produce phony documentation and charters 'go fast boats', tugs and phantom tankers as may be necessary.

Big bosses, investors and fixers typically reside in Indonesian or Malaysian cities, or in Singapore, making intelligence led operations crucial to the targeting of the funding behind piracy. Naval patrols typically only capture low level operators, from the boarding team and below.

Key to increasing prosecutions of high ranking pirates, historically extremely low (only a handful have been reported in Somalia), is building effective law enforcement structures. In Somalia extensive prosecutions of low-level operators captured at sea has had a negligible impact: it is estimated that at any one time there are between 1400 and 2000 active Somali pirates,[9] by 2012 there had been over 1000 prosecutions of low level pirates, with no significant effect.[10] Higher-ranking pirates must be targeted in order to effect a long-term de-stabilisation of the structures of piracy.

Significant corruption in the Indonesian judicial process plays a significant part in blocking such higher-ranking convictions—so long as the suspect does not give up the names of the higher tier players in the
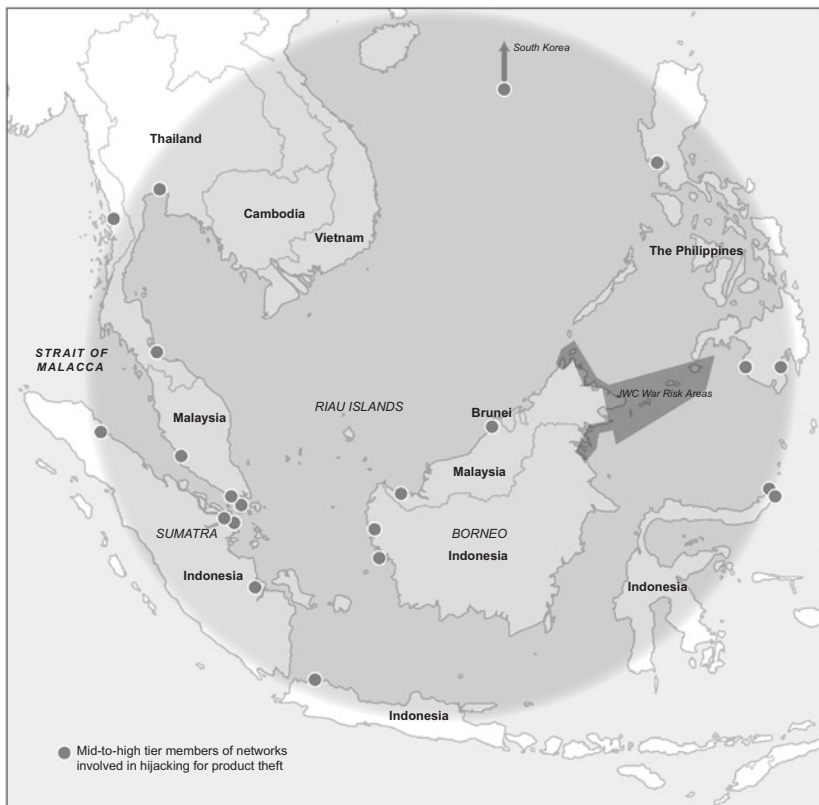
Fig. 9.4 Locations of mid- to high-level members of piracy operations (*Source* Author (Karsten von Hoesslin) /Risk Intelligence)

network, a fee will be paid to the police, judge, or public prosecutor to ensure that the suspect serves no more than 10% of their sentencing.[11] For example, suspects who are found guilty and receive a five-year prison term will be released within five months and during their time served, conditions are relatively positive compared to other criminals.[12]

Although levels of corruption differ between jurisdictions, corruption across SE Asia is a considerable problem that enables hijacking for product theft as well as other maritime crimes (Fig. 9.4).

Structure Post 2012

Since 2012, the structure of maritime criminal syndicates in SE Asia has typically become less formal. Instead of gangs, networks of specialists evolved whose allegiance to the more senior players was relatively fluid. A considerable degree of splintering occurred within the older syndicated structure of piracy and hijackings: the big bosses act more like investors than managers and the fixers became more independent, making deals directly with buyers and hiring groups of foot soldiers for the boarding teams rather than relying on boarding team leaders to do so.

The Economics of a Hijacking

In a standard CPO hijack, a team of 9 pirates led by a boarding team leader use a go-fast boat to approach and board a CPO barge or coastal vessel, take control and sail the vessel to rendezvous with a phantom tanker which ties up alongside. Some 4000 tons of cargo are pumped into the phantom tanker by STS (ship-to-ship transfer, using hoses).

If the hijack succeeds, the investor shares the profits with the big boss and the fixer. If it fails, the investor loses all the money he has advanced and the big boss forfeits the cost of any vessels hired.

Unlike Somali piracy, where the profitability of a hijacking is determined largely by the size of the ransom payable, the economics of hijacking for product theft depend on the CPO market price, which determines revenue if the hijacking succeeds, and the probability of success.

The profitability of CPO hijackings jumped from 2007 – average CPO prices from 2007 to 2012 were almost exactly double those during the previous seven years. Not surprisingly, the incentive of higher profitability increased the number of hijackings, particularly as the probability of failure did not increase—if anything, the MALSINDO[13] anti-piracy patrols diminished as incidents went unreported in an attempt to prevent insurance premiums rising, violence remained unusual and the focus of attention switched to the Somali pirates.

Although CPO prices dipped after 2011, hijacking profitability was sustained in 2012, 2013 and 2014 by unusual strength in gasoil prices, which went to parity with CPO prices in 2012 and were 17% higher in 2013 and 11% higher in 2014.

Gasoil is a product refined from petroleum, used typically in SE Asia as a fuel for diesel engines, both in ships and cars. As it can be transported and stored in the same manner as palm oil, the hijacking techniques are similar.

However, the level of risk increases significantly if a hijacking involves a petroleum product tanker as CPO barges trade regionally within Indonesian waters where incidents are seldom reported. Although CPO barges have increasingly hired special branch police to guard the vessels, it is relatively easy for the pirates to overpower them or simply pay them off. The wide-spread use of private security among vessels traversing Somali waters (between 25 and 40% of vessels employ private security provided by over 170 private security firms operating in the Indian Ocean)[14] has been praised as a cost-efficient and effective deterrent. However, a lack of government oversight and regulation means private security operates in a legal vacuum. It is widespread industry knowledge that private security employees typically implement a pre-emptive attack policy,[15] engendering numerous human rights and international law violations and propagating a narrative of violence. The shipping industry has emphasized that private security is a necessity that has been imposed on it by an inadequate response to global piracy.[16] The failure of private security as a long-term response in the context of Somali piracy should serve as a warning against increased reliance against SE Asian piracy.

Price signals, rather than the degree of risk involved in the hijacking, determine the targets of piracy. In 2012, just under half of the reported hijackings were for petroleum product, in 2013, 90%, in 2014 two-thirds and in 2015 80%. As petroleum product hijackings are generally reported (whilst CPO hijackings are kept quiet largely because it involves Indonesian-flagged vessels, Indonesian cargo owners, and the suspects are Indonesian), the numbers of reported hijackings surged. A total of 53 hijackings were reported between March 2012 and August 2015.[17]

The illicit fuel transfers involved in STS operations have caused many marine fuel and heavy fuel oil spills in the region. Referred to as bulong ('black balls' in Bahasa), the oil drifts south from the anchorages towards shore damaging everything in its path. In addition to destroying the coast, bulong damages the fishing community's boats and fishing equipment.

Between January and August 2014, incidents of armed robbery and petty theft surged off Berakit; 32 cases were documented in which vessels

at anchor approximately ten nautical miles off the coast were targeted by villagers in wooden boats who had taken to perampak (literally 'shopping' but basically petty theft, still classed as piracy) from those who had harmed their livelihood.[18]

Similarly, early stage Somali piracy has often been characterised as a retaliation to an upsurge in illegal foreign fishing off the Somali Coast. Together with damaging toxic waste dumping by vessels, this caused a depletion in local fishing stocks, driving fishermen to piracy.[19]

Indonesian fishermen are increasingly replacing traditional fishing methods with destructive techniques which yield greater catches for less effort but are harmful to the long-term productivity of fisheries.[20] Regulation and environmental management of aquatic ecosystems is nascent in the region, with corruption and lobbying by the commercial fishing industry slowing growth.[21]

The link between the weakening of the fishing industry, consequent lack of legal employment, and an increase in piracy is well documented. Meanwhile the increase in hijacking for product theft since 2012 has considerably boosted the number of incidents of petty theft and armed robbery in SE Asia. Control of fishing and prevention of pollution of the regional waters should therefore be seen as a primary element of long-term responses to piracy and other forms of crime it engenders.

Current Situation

Commodity prices, gasoil in particular, fell sharply during 2015. In the second half of 2015, only two hijackings for product theft were reported as gasoil prices fell to well below the levels that made hijacking cargoes an economic proposition. Unlike gasoil, CPO prices recovered sufficiently in the fourth quarter to justify cargo theft, particularly if the cargo was large enough to compensate for lower product realizations (Fig. 9.5).

It is key to stress that the recent decrease in reported hijackings for product theft is a market price phenomenon largely unaffected by international or regional counter-piracy efforts (although the Malaysian Maritime Enforcement Agency, the coast guard of Malaysia, has become extremely effective in their counter-piracy operations). The low prices of CPO and gasoil simply make it less economic to hijack due to the significant overhead and upfront investment costs demanded by the pirate boarding teams. For example, the authors have learned of numerous
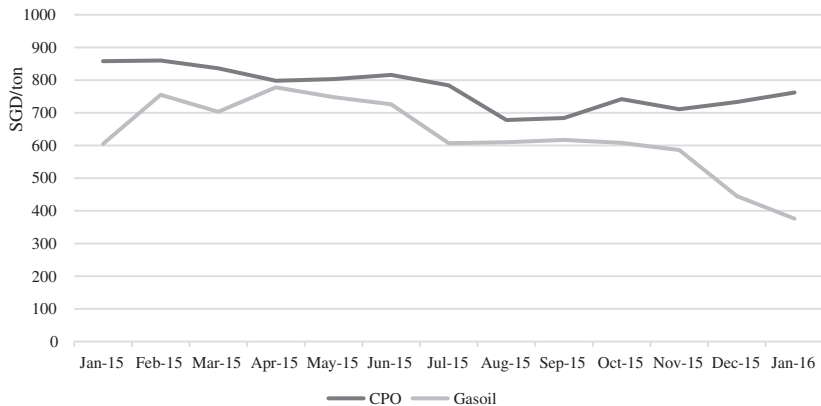
Fig. 9.5 Palm oil and gasoil prices, 2015–2016 (*Source* Index Mundi & X-Rates)

masters of regional product tankers, heavily indebted due to gambling and seeking to be paid as insiders, who are actively soliciting their cargoes to be hijacked but not finding interest due to current low rates of return. This may be expected to change when the price of product increases again.

Notwithstanding the recent lull, the many incidents of the previous three years have increased demands by shippers that regional navies bolster anti-piracy operations. Although the long-term effectiveness of such a response is highly questionable, authorities in Indonesia, Singapore and Malaysia say they are discussing this, but patrols in the South China Sea could be controversial while tensions are heightened by China's territorial claims, and the three South-East Asian countries have yet to resolve the 'hot pursuit' issue preventing navy boats from pursuing pirates who flee into neighbours' waters. Nor have they resolved how best to share information about the piracy networks; Malaysia and Indonesia seem unwilling to do anything that may expose blind spots in their intelligence gathering or corruption in their law enforcement agencies, even refusing to join ReCAAP.[22] Indonesia also believes that the big ports of Singapore and Malaysia benefit disproportionately from Indonesian navy efforts to monitor traffic in the shipping lanes without paying for the costs of the patrols.

These are issues which need to be resolved otherwise the economics of hijackings for product theft guarantee that as prices improve the problems will flare up once more.

Conclusion

Although fewer hijackings for product theft are expected in 2016 due to low product prices, it would be wrong to be complacent given the high levels of piracy experienced in SE Asia during the last few years. The projected lull in hijacking activity offers an opportunity for the short-comings that prevent a sustainable long-term response to be addressed. A similar opportunity offered by the drop in hijackings by Somali pirates since 2013 has not been fully capitalised upon: an adherence to the naval focussed status quo, rather than a focus on shore-based long-term solutions, may explain the continuing persistence and ongoing fear of resurgence.

The entrenched roots of SE Asian piracy characterise it as a primarily law enforcement issue. Similar to the drive in East Africa, where Interpol urged nation states to maintain intelligence on piracy and transnational criminal activity at a Law Enforcement Sensitive level so as to promote easier information sharing, this must be done in SE Asia. Another benefit to making piracy and transnational crimes predominantly a law enforce-ment sensitive issue is that it will assist in the link between marine polic-ing, land-based policing and the financial crimes-based task forces that 'follow the money'. In addition, law enforcement agencies, via Interpol, are better equipped in addressing the transnational challenges to mari-time organised crime as well as extraditions and cross-border informa-tion sharing. It would also be far easier for law enforcement agencies to build cross-border capacity build to boosting investigative, forensic and surveillance skills.

In order to implement a co-ordinated response ReCAAP should be replaced by a new organisation that embraces all littoral states and is mandated to work closely with both law enforcement and the International Maritime Bureau. In its ten years of existence, ReCAAP has been unable to harmonise diplomatic relations with the two most influ-ential littoral states, Malaysia and Indonesia, and has achieved little in terms of information sharing.

A new organisation with a law enforcement mandate that not only actively embraces Malaysian and Indonesian maritime interests includ-ing illegal migration, smuggling and illegal fishing, but also follows the SUA Convention on hijackings rather than downplays incidents for fear of diplomatic embarrassment, would help transition the current frag-mented short-term response to a holistic long-term strategy. A new

organisation cooperating closely with Interpol and the existing (and neutral) International Maritime Bureau could make a significant difference in preventing hijackings when their economics improve.

Interpol, which has increased its profile in connection to the hijacking for product theft cases, cannot share information with non-law enforcement entities nor accept intelligence from private entities, only with national law enforcement agencies. Unless a new organisation replaces ReCAAP, it would be logical for Interpol to work with the IMB to overcome this deficiency. The IMB is neutral, it does not have political linkages to regional governments, it has a good rapport with the shipping industry and accepts a broad definition of piracy and armed robbery. If in practice IMB were unable to fulfil this role, Interpol could create a specialist unit (similar to those focusing on East and West Africa) tasked with tackling maritime organised crime in SE Asia.

Addressing systemic product theft in a sustainable way will require comprehensive reforms to enhance port infrastructure and restructure maritime agencies in Indonesia and address corruption. Maritime agencies in Indonesia and across South East Asia must receive better pay in order to stamp out the tradition of 'moonlighting' within the police and navy. It has long been acceptable for personnel to work a second job or seek income outside of the services, namely because the pay scales are so poor. This form of corruption directly facilitates opportunities for organised crime. Indonesia's anti-corruption commission must also be restructured and greater efforts made to curb the bribing of judges and public prosecutors; pirate convictions mean very little if suspects routinely only serve ten per cent of their term. Indonesia must also strengthen its weapons possession laws and more importantly enforce them. In addition, there must be increased penalties for law enforcement personnel caught selling ammunition to criminals.

The pirates of SE Asia have responded to the steady increase in opportunities offered by the surge in palm oil production by becoming more professional, more organized and by developing extensive networks of corruption on land as well as at sea. A naval military focus on controlling piracy will therefore not be sufficient; it must be harnessed to an equivalent land-based law enforcement response. Although simply emulating Somali counter-piracy techniques may be tempting, it is likely to prove ultimately futile. Only a tailored response which respects the unique elements of SE Asian piracy has a chance of offering a long-term solution to this deep rooted problem.

Notes

1. The IMB is a specialised division of the International Chamber Of Commerce, the focal point in the fight against all types of maritime crime and malpractice.
2. International Maritime Organization (1998),'Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf'.
3. UNCLOS codifies customary international law on piracy and is binding on every state (unlike SUA, to which Indonesia, Malaysia and Thailand et al are not signatories).
4. Dr. E. Frecon (2015), Keynote speech at the Danish Maritime Days Symposium.
5. K. Von Hoesslin, Risk Intelligence SE Asia Hijacking Database, *Network Analysis.*
6. This is based on over a decade of infiltrating hijacking networks and securing primary intelligence from key players who have operated at various levels within the framework.
7. Though unnecessary violence is discouraged and punishable, there have been cases of violence. Most notable was the on-board fatality in the Vietnamese-flagged ASPHALT 2 case in December 2014 where a crew member was shot in the head and died of his wounds; other incidents involved the Mongolian-flagged JI XIANG where a crew member was shot in the neck as the pirates boarded the vessel, and during the ORKIM HARMONY hijacking on 11 June 2015 a crew member was shot in the buttocks. In these cases, the suspects responsible for the weapons discharge were under the influence of Shabu, a methamphetamine used by hijacking groups to stay alert prior to a boarding which can also make the user paranoid and easily agitated.
8. *ReCAAP* (2015), Special Report on Incidents of Siphoning of Fuel/Oil at Sea in Asia (Part II), p. 4.
9. Report of the Monitoring Group on Somalia & Eritrea (2013), S/2013/413.
10. J. Kraska and B. Wilson (2009),*Diplomatic Efforts Against the Gulf of Aden Pirates*, Harvard Int'l Review, http://hir.harvard.edu/diplomatic-efforts-against-the-gulf-of-aden-pirates/, date accessed 9 May 2016.
11. Author interviews with convicted suspects who have served only 10% of their sentence as well as with higher level network players who have admitted to bribing the public prosecutor, police and judge in cases namely in Pontinak. In order to protect his sources, the author cannot mention the specific cases, however, they occurred in both 2013 and 2014.

12. Ibid.
13. Malaysia, Singapore and Indonesia.
14. J. Brown (2012) *Pirates and privateers: Managing the Indian Ocean's Private Security Boom*, Lowy Institute Working Paper, http://www.lowyinstitute.org/publications/pirates-and-privateers-managing-indian-oceans-private-security-boom, date accessed 9 May 2016; and .Affi, Afyare A. Elmi, W. Andy Knight &S. Mohamed (2016) *Countering piracy through private security in the Horn of Africa: prospects and pitfalls*, Third. World Quarterly, 37:5, 934-950, http://www.tandfonline.com/doi/pdf/10.1080/01436597.2015.1114882, date accessed 9 May 2016.
15. Ibid.
16. Ibid.
17. It is believed that CPO barge hijackings are highly under-reported and two separate sources have claimed that within SE Asia there is a hijacking approximately every fortnight.
18. MaRisk by Risk Intelligence, http://www.marisk.dk, date accessed 9 May 2016.
19. In some cases, pirates informed the press that captured vessels would be released once it was established they were not illegally fishing in Somali waters. See: R. Ngowi (2006), 'Somali Pirates Hijack Ship, Sail into Lawless Country', Associated Press International.
20. UNEP, *Overfishing and other threats to Aquatic Living resources*, http://www.unep.org/dewa/giwa/publications/finalreport/overfishing.pdf, date accessed 29 April 2016.
21. UNEP, *Overfishing and other threats to Aquatic Living resources*, http://www.unep.org/dewa/giwa/publications/finalreport/overfishing.pdf, date accessed 29 April 2016.
22. Regional Agreement on Combating Piracy and Armed Robbery Against Ships in Asia. A multilateral agreement between 16 countries in Asia, concluded in November 2004 which includes the RECAAP Information Sharing Centre (ISC), an initiative for facilitating the dissemination of piracy-related information.

Authors' Biography

Karsten von Hoesslin is the Head Detective of Remote Operations Agency and the host of the National Geographic series Lawless Oceans. Karsten stems from an intelligence background and specialises in HUMINT infiltration and investigative methodologies which are derived from his PhD studies. He also holds a Masters in Strategic Studies and a BA in Political Science and History. Karsten is also a Response Consultant and commanded the marine component for the hostage rescue of the highest ransom case in Somali pirate history. He also has

ample experience in field operations in South East Asia where he tracks and locates hijacked vessels and criminal syndicates. As a Detective with the Remote Operations Agency, Karsten investigates cold cases ranging from homicide to environmental crimes in order to ensure that suspects can be brought to justice. Most recently, Karsten solved the infamous 'Murder at Sea' case which depicted a series of killings in a Youtube video that went viral.

Lucia Bird Ruiz-Benitez de Lugo is a Research Fellow at the Global Initiative against Transnational Organized Crime, and a fellow in the Oxford Policy Fellowship programme, consulting on law and policy for the Ministry of Finance in Ghana. Previously she pursued a career as a corporate lawyer at Slaughter and May, writing and researching for a number of legal publications.

Lucia holds an MA in English Literature and Language from the University of Oxford, and a Diploma in Law from BPP University. Lucia has applied technical legal drafting skills and a love of language to her writing and editing work in the field of organised crime.

Dangers of Success: The Economics of Somali Piracy

Anja Shortland

International naval cooperation off the Horn of Africa took place on an unprecedented scale. At its apex, 80 nations came together in various capacities in the 'Contact Group on Piracy' to rid the Gulf of Aden and the Somali Basin of the scourge of Somali piracy.[1] Initially, naval efforts had limited effect. Over time, they became more successful as the legal structures were developed to prosecute and imprison pirates at an acceptable cost and the private sector tightened up its own security measures and increasingly employed private security guards. The last merchant ship was taken by Somali pirates in May 2012.

This article discusses how militarisation became the dominant approach to combating Somali piracy. I argue that this only became possible when militarisation became a private/public partnership with shipowners making a significant investment into defending their assets for a sufficiently long period for naval support to arrive. This process was largely driven by the insurance industry. Ship-owners and governments had failed to contain the pirates' ransom expectations.[2] With spiralling ransoms, piracy became the most profitable pursuit for Somali men

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with maritime or martial experience, who formed ever larger numbers of pirate enterprises. Unless pirates' success rates could be driven down significantly, piracy would have become uninsurable. By successively tightening up best management practice ship-owners denied pirates easy targets. Yet the corner was only decisively turned with the advent of armed guards, whose presence on board remains a strong deterrent to potential pirates.

Thus, the deterrent effect comes at a significant cost. This cost is at least an order of magnitude larger than the alternative developmental approach proposed to resolve (rather than contain) Somali piracy. Ultimately Somali piracy was the symptom of a land-based problem which could only be solved on land.[3] The World Bank report in 2013 strongly advocated an approach focused on the poor coastal communities which, in the absence of other income streams, decided to shelter and supply pirates and thereby facilitated the crime.[4] Without the support of local and regional elites, pirates could not have spent months or years negotiating with ship-owners and driving up ransoms.

Where local communities had more attractive income generation options, they did not shelter pirates. Communities which participated in regional trade drove pirates away.[5] It therefore, appeared that there was a feasible land-based developmental alternative to the sea-based military containment policy. Unlike the traditional responses of the international community to Somali problems it did not focus on Mogadishu-centric state-building, but was intended to benefit poor coastal areas directly and recognised the local legitimacy of traditional clan elites. However, just as the developmental policy was being developed, piracy stopped, and with it the political urgency to tackle and resolve the underlying problems of coastal underdevelopment.

This chapter, therefore, argues that the militarisation of piracy has been 'too successful' in the sense that military success has prevented the implementation of a more holistic counter-piracy policy. Although a number of smaller development-focused initiatives have gone ahead to provide alternative employment and rehabilitate the fishing industry, none of these will provide a realistic alternative to the resumption of piracy when ship-owners relax their vigilance or navies return home.

THE ESCALATION OF SOMALI PIRACY

Sea-scavenging and piracy are long-established on the Somali coast, the Gulf of Aden being a natural choke point with high concentrations of shipping traffic.[6] When the Somali state collapsed in bitter civil war in 1991, so did the Somali coast guard and the regulation of fisheries. This in turn led to the privatisation of maritime security, with various clans issuing fishing licenses and offering private protection to foreign fishing vessels operating off the coast of Somalia. Due to a lack of coordination between clans fishermen were sometimes approached by more than one clan for protection money. As arguments escalated into violence, trawler crews started to arm themselves, thereby ceasing to be attractive targets for the self-appointed 'coast guards'.[7] By contrast, at this point foreign merchant vessels were not armed and could be taken with relative ease.

However, before 2007 piracy was rare and resolved cheaply and non-violently when it occurred. Ransoms were of the order of hundreds of thousands of dollars. During the brief rule of the Islamic Courts Union in 2006–2007 piracy stopped altogether as Islamist militias swept up the coast from central Somalia and attacked pirate strongholds (Fig. 10.1).[8]

During 2007–2008 however, the quality of piracy changed, with a number of myopic ship-owners paying surprisingly large ransoms to effect quick releases. This behaviour completely upset the equilibrium level
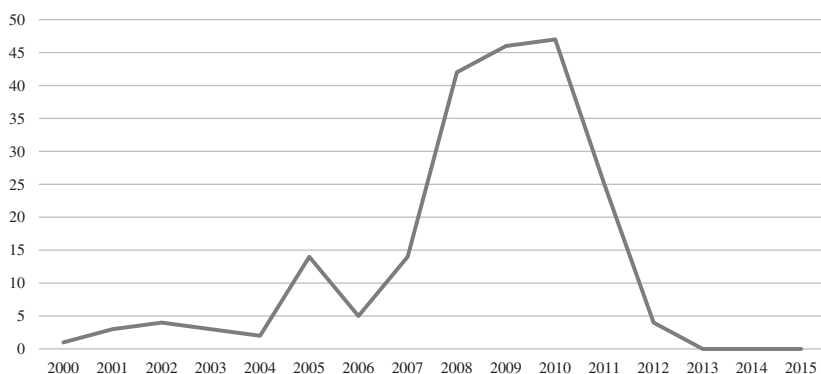
Fig. 10.1 Somali pirate hijacks 2000–2015. *Sources* EU NavFor (from 2008) and IMO (2000–2008)
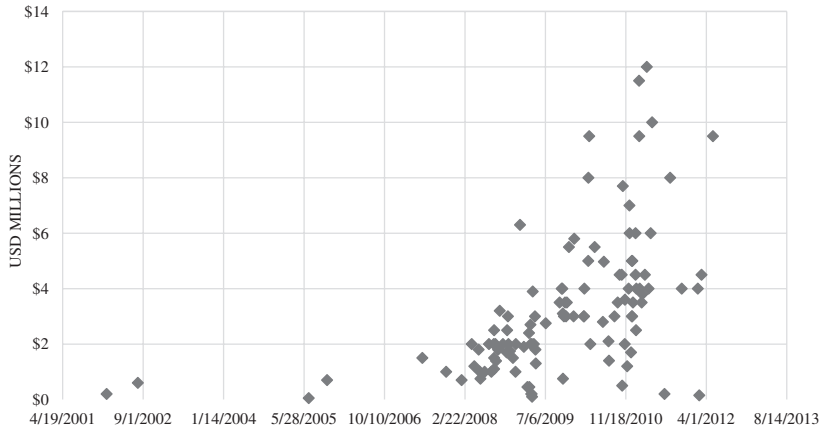
Fig. 10.2 Pirate ransoms in Somalia by attack date[10]

of piracy: with supernormal returns from pirate activity more and more underemployed young men decided to seek their fortunes on the high sea, founding or joining pirate ventures.[9] There was, therefore, a large increase in hijackings. Moreover, ransom expectations were no longer anchored and ransom demands escalated. When ship-owners—or governments—payed a premium ransom this was then taken as an informal guide for concurrent and future ransom settlements. Even patient ship-owners found it quite impossible to bargain pirates down from a previously set 'market price' for their particular ship type. As ever higher records were set, pirates, who were under no pressure to release ships decided to experiment with drawing out the negotiations, in the hope of receiving yet higher offers. Figure 10.2 displays the unstable path of ransoms. The explosion of piracy in 2007–2008 as well as the rising cost of resolving hijackings resulted in rapidly rising insurance premiums on the one hand and the lobbying of ship-owners for naval protection of this key shipping route.

However, if anything initial naval counter-piracy efforts were counterproductive. Concentrating shipping in a narrow, dogleg-shaped corridor, hugging the Yemeni coast with limited area protection (due to insufficient military assets) made piracy easier. This took the guesswork out of piracy—rather than waiting for a suitable target in a large area, all targets were concentrated in a narrow shipping lane.

Lookouts could be stationed on the Yemeni Coast to alert pirates to prime targets. Conveniently, the kink in the corridor required ships to slow down, which again facilitated pirate attacks. The internationally recommended transit corridor (IRTC) of 2008 remedied some of these issues by running straight through the centre of the Gulf of Aden.[11] As more naval assets were deployed, interception of pirates became more common. Yet it quickly became obvious that a 'catch and release' policy had next to no deterrent effect.[12]

Making Military Intervention Successful

The naval intervention had to resolve three key problems to become effective. First, navies needed to marshal sufficient resources to represent a credible threat of interdiction. No nation had sufficient interest in resolving the issue of Somali piracy single-handed; consequently, a coalition had to be built. Because of the strategic importance of the shipping routes and a gathering momentum for using Somali piracy as a test case for international naval cooperation, collective action problems were overcome.[13] The second challenge was to create an effective legal process for arresting, charging and prosecuting pirates and imprisoning those found guilty in conditions that did not violate their human rights and is in keeping with the standards to which the nations of the naval coalition aspire. At the same time, these nations had to avoid the possibility that being arrested for piracy would in itself become a route to a better life in a high-income economy. Building such institutions took time. Finally, regardless of how many naval assets were deployed, it was never possible to render immediate assistance to vessels transiting the Somali basin. Even in the Gulf of Aden ships' masters would need to fend off pirates for at least 20 min before relief could arrive. Once pirates held hostages, ship-owners preferred to go through the ransoming process rather than risk losing crew members and endangering ships and cargo.[14] The process of devising effective countermeasures and revising them in the light of pirate innovations in response to new best management practice took several years. It only stopped when insurers incentivised ship-owners to use private security solutions and private security companies put in place an infrastructure to legally and cost-effectively deliver armed guards to ships in the high-risk areas.

THE NAVAL COALITION

The multinational Combined Task Force 150 (CTF 150) had been conducting counter-piracy operations off the coast of Somali since 2006. Despite some successful interdictions, it became clear that this task force was insufficient to reverse the explosion of piracy in the Gulf of Aden in 2008, as Somali entrepreneurs began to realise the potential profitability of piracy operations. Ship-owners and insurers began to lobby for greater naval protection. In December 2008, the EU launched its first ever joint naval operation, Operation Atalanta. In January 2009, the Combined Task Force 151 was launched with a new UN Security Council mandate to conduct counter-piracy operations. In August 2009, NATO's Operation Ocean Shield was deployed with the US Navy in the lead. The challenge of making such a cooperative effort function well became almost an end in itself. In addition, the naval coalitions of traditional allies were soon joined by a number of countries which had not previously cooperated with the alliance, including former and potential future antagonists, such as Russia and China. Protocols for information-sharing needed to be developed, as well as institutions for preventing and resolving conflict between the various contributing parties.[15] As more and more naval vessels were deployed, the number of interceptions and disrupted pirate attacks rose—but still the overall number of attacks and pirate successes continued to increase throughout 2009 and into 2010.

THE LEGAL PROCESS

The objective of the coalition was that their mere presence off the Horn of Africa would act as a sufficient deterrent for potential pirates. Piracy is a criminal offence in international law and invokes the concept of universal jurisdiction. This allows—and indeed encourages—all states to prosecute pirates regardless of where the crime was carried out or the accused's nationality. In practice, however, there were a number of legal hurdles and initially the naval forces main activity was disrupting pirate groups.

First of all, to make a conviction possible, there needs to be proof of piracy. If pirate crews abandoned their attacks on encountering a naval vessel, dropped their weapons and ladders overboard and claimed to be fishing, trading, or trafficking there was nothing that could legally be

done other than releasing them back into their boats or onto a beach in Somalia. Arrest and prosecution were only possible if pirates were caught in the act of piracy, that is, on board a pirated vessel. Yet most ship-owners resisted any moves to try to liberate vessels under pirate control: ransoming was a lower risk option than shoot-outs with pirates using the crew as human shields.

When pirates were caught red-handed, naval officers had to follow due legal process, giving pirates swift access to appropriate legal representation. If they were held too long, the legal process would fail on procedural grounds. Next came the problem that pirates would most likely be eligible for asylum if taken to Europe for prosecution. This risked making piracy particularly attractive: successful pirates would become well off in Somalia, failed pirates could start a new life abroad after a spell in prison. Therefore, creating a deterrent required building regional and local capacity to prosecute and imprison pirates.[16] Deterrence became more effective once pirates knew that they would return to Somalia having served or to serve their prison terms.

BEST MANAGEMENT PRACTICE AND PRIVATE SECURITY

When piracy was still relatively rare compared to the total shipping traffic in the Gulf of Aden and the ransoming progress smooth and inexpensive, insurers were happy to insure the risks without asking ship-owners to change their behavior. Naval officers complained that many ship-owners avoided making even small investments in barbed wire, water cannons or other forms of non-violent resistance.[17] However, rising ransoms unraveled the 'insured' hijack for ransom model. As negotiations dragged on, Somali piracy ceased to be a risk which ship-owners could simply insure and go about their business normally. Best Management Practice guidelines were successively tightened, as pirates responded to the latest innovations of ship-owners with their own counter-measures. What had started as a recommendation to increase alertness and put razor wire around ships to prevent boarding escalated to water-cannons and then 'citadels', where crews could seek safety until naval forces arrived (BMP4).[18] When pirates arrived with equipment to cut or blow open the citadels, or tried to smoke the crews out, the arms race found a natural conclusion with ship-owners employing armed guards for protection. So far no ship employing armed guards has been hijacked.

THE COST OF COUNTER-PIRACY

'Herd immunity' requires that a large number of ship-owners continue to make costly investments in the security of their ships and crew, and navies remain on patrol to arrest and prosecute pirates. There are many estimates of the cost of containing piracy off the Horn of Africa, which have spectacularly failed to converge. Oceans Beyond Piracy essentially takes an accounting approach, asking stakeholders to cost the additional financial burden created by piracy. The first 'Cost of Piracy' report in 2010 came up with a striking headline cost figure of 'up to US$12bn'. Although over time these estimates have decreased significantly, they still represent a large (though widely spread) cost to taxpayers and consumers of traded goods. Another approach was to calculate the additional cost associated with shipping goods through the high-risk area, comparing affected and unaffected routes during and outside the monsoon seasons where pirates tended to stay at home.[19] Besley et al.'s ballpark figure of a total cost in excess of $630 mn is far below the cost calculated by Oceans Beyond Piracy, but still significant.[20] The final approach to calculating the cost of piracy is exemplified by the World Bank report which imputed the cost of piracy from the amount of trade diversion in the high-risk area. This approach models piracy as a tax on trade, which has the effect of reducing trade and hence economic wellbeing. This approach therefore, not only counts the additional cost to trade which takes place but also considers the cost of trade which was stopped or diverted by piracy. At $18 bn the resulting cost estimates dwarf the others. Moreover, the report points out that the costs are disproportionately borne by the poor nations bordering the Indian Ocean, rather than rich nations transiting it.

On the one hand, the high cost of piracy and its very real effect on regional economic development have been used as a justification for the resources devoted to its containment. On the other hand, it is worth putting these figures into the context of the actual resource transfer to Somali pirates. From 2007 to 2013 the total ransom amount was in the region of $50 mn per annum, not billions.[21] This then poses the question of whether military containment is cost effective. Any economist would ask the question of whether there is scope for a deal with the beneficiaries of piracy in which some transfer of resources would be made in exchange for the cessation of piracy. One variant of this was the land-based approach suggested by the World Bank in 2013.[22]

A Land-Based Approach to Counter Piracy

The key to resolving piracy on land would be to identify the key stakeholders in the continuation of piracy and offer them an attractive alternative to piracy. Given the large gap between the costs of piracy to the international community and the benefits to pirates, there was scope for a trade which would have made everyone better off. Early research on the developmental effects of Somali piracy indicated that the poor coastal communities were not the key stakeholders and beneficiaries of piracy. There was limited evidence that the proceeds were spent on the coast but good evidence that political elites inland were taking large cuts of the pirate profits.[23] The reason regional elites were key to the success of piracy was that they could arrange the necessary security guarantees for pirates to anchor hijacked ships in plain view of the coast for however, long it took to negotiate a ransom, to travel long distances up and down the coast and in some cases use the vessels as motherships for further attacks out in the ocean. Shortland and Varese document the large transfers made to local elites.[24] World Bank also concluded that neither labour (the men in the attack crews or the guards of the hijacked ships) nor capital (the financiers funding pirate action groups) held the key to stopping piracy: both were ultimately easily replaceable and therefore, only earned a 'market wage' and a 'market interest rate'.[25]

Land-based campaigns to create alternative employment, while well intentioned, would to drastically raise the overall wage level across the entire economy to make it financially infeasible to recruit pirates.[26] Piracy was simply too profitable and wages too small a fraction of overall pirate costs for work schemes to make an appreciable difference to pirate recruitment. As Bueger so aptly puts it, these initiatives were 'a drop in the bucket' when it came to stopping piracy.[27] However, as piracy has been stopped, these initiatives do bring some relief to communities now deprived of a major source of income. A similar argument applies to the financiers. Campaigns to convince people that piracy was 'wrong', 'sinful' or 'shameful' changed the behaviour of some, while others demanded a slightly higher return on pirate activities to compensate them for the stigma attached to piracy. Pirates and their financiers stopped their activities because a vastly reduced success-rate made it impossible to profitably offer pirates a risk-adjusted return which would compensate them for the increased risk of undertaking piracy.

So what was the most cost-effective option for stopping piracy on land? Local elites had a choice of whether to provide protection to pirates and did so where pirates offered the most attractive source of revenue. Piracy certainly paid well: an initial anchorage fee, hiring guards from the local clan militia, the opportunity to tax supplies of food, khat and fuel needed during the ransom negotiations and a cut of the final ransom. The World Bank estimated that around 70% of the average ransom was paid to elite stakeholders on land.[28] Often these elites were in the regional centres rather than in the coastal areas. Hansen noted the clear connection between the pirate ventures in Eyl and the presidential campaign of Mohammed Farole.[29] However, the World Bank was somewhat vague on how exactly one would engage in a productive dialogue with local stakeholders without creating the impression that the international community was weak and would indirectly reward crime.

Not every community on the Somali coast sheltered pirates and some engaged in active counter-piracy efforts. Shortland and Varese analysed the pattern of which communities chose to harbour pirates over time and showed that as soon as a viable economic alternative—particularly integration into regional trade—presented itself, local elites drove off the pirates to different anchorages and in some cases even actively engaged pirates in combat on land or at sea.[30] This observation offered an opportunity to engage in developmental activities such as road building which would have integrated poor coastal communities into the regional economy. Connecting fishermen to inland markets, and inland producers and traders to foreign markets, created the conditions in which communities themselves chose to push out pirates, simply because pirates interfere with trade. Local elites are better off protecting and taxing a steady stream of trade than relying on unpredictable pirate pay-offs. Moreover, ransom payments were often associated with violence (in case of disagreement of how the ransom would be split) and 'vices' such as alcohol, drug-taking and prostitution. Some local residents complained about the inflationary consequences of well-off pirates in local markets, putting even basic staples beyond the reach of poorer families. Finally, locals feared air-raids and drone strikes by the foreign forces.

Taking the pirate dollars was therefore, never a politically costless option. Interestingly, President Farole of Puntland repeatedly asked international donors for a Tarmac road connection to his hometown of Eyl. This would have more than compensated his clan for giving up piracy at Eyl. However, there was little appetite for such a policy, as decision makers feared it would make piracy easier, rather than recognising

the potential transformative effect on Eyl's appetite for piracy. Therefore, the clan in Eyl had to make do with minor concessions. Still, the Eyl pirates left the anchorage so as not to embarrass their president and sought shelter elsewhere. It was a missed opportunity to test whether changing the incentives of local elites would encourage them to take action against pirates.

WAS MILITARISATION TOO EFFECTIVE?

Just as scholars and policy makers began to develop and debate long lasting solutions for land-based counter piracy, sea-based containment measures became fully effective. The last successful hijacking of a foreign merchant vessel took place in May 2012. Although a number of piracy attempts or suspicious approaches are reported every year, this lull in pirate activity has allowed the international community to take its eyes off Somalia once again. Although state-building continues with financial and military support for the government in Mogadishu, the backward coastal areas have once again slipped down the list of political priorities.

There is continued small-scale investment in the rehabilitation of fisheries and education campaigns trying to turn the local mood against piracy. But a recent mobile phone survey of local residents on behalf of international donors wishing to evaluate the effectiveness of these campaigns showed a striking result: although individuals did not personally support or plan to engage in piracy, a large majority thought that their local community probably would shelter pirates bringing in a hijacked ship. Neither have communities withdrawn tacit support for the former pirate groups holding a few remaining 'lost mariners' from developing countries for years on end. All of this evidence indicates that the current approach has not solved the underlying problem of coastal underdevelopment or reduced the appetite of local and regional elites to protect criminal activity that brings in revenues. In the absence of pirate revenues, illegal migration to Yemen has greatly increased and more heroin shipments are being intercepted on the Indian Ocean.

WILL MILITARISATION REMAIN EFFECTIVE?

In times of fiscal austerity, it has become more difficult to maintain the commitment to significant deployment of naval resources to the Horn of Africa. Although it is not well publicised, naval contingents have been quietly reduced. However, a complete drawdown is unlikely, as the

counter-piracy operation has become an important arena for practising international cooperation. Not only is Operation Atalanta the first joint naval EU mission, but the deployment of Chinese and Russian vessels alongside NATO and EU forces has been a most fruitful opportunity to meet and develop protocols for de-confliction and platforms for safely sharing information with potential future opponents.

On the other hand, ship-owners are questioning the need for deploying armed guards and there is a concern that at some stage in the future an opportunistic piracy attempt could find an undefended target. It then remains to be seen whether the old networks can be resurrected. But it is not unlikely that some poor communities will once again be tempted by the promise of the pirate dollars. Unless ship-owners maintain extreme ransom discipline in such a case, the cycle may restart, as the promise of riches lures underemployed young men into the shipping lanes once again. As a former pirate put it: 'We are still eyeing the waters. Chances will come. I'm very much in no doubt those good days will come back'.[31]

NOTES

1. T. Tardy (2014) 'Fighting piracy off the coast of Somalia Lessons learned from the Contact Group', EUISS report, http://www.lessonsfrompiracy.net/files/2014/11/EUISS-Report.pdf, date accessed 27 July 2016. http://www.lessonsfrompiracy.net/files/2014/11/EUISS-Report.pdf, date accessed 27 July 2016.
2. A. Shortland (2015) 'Can We Stop Talking about Somali Piracy Now?' *Peace Economics, Peace Science and Public Policy*. Vol 21:4 doi: 10.1515/peps-2015-0018.
3. S. Percy and A. Shortland (2013) 'The Business of Piracy in Somalia', *Journal of Strategic Studies*, 36/4, 541–578. And: S. Percy and A. Shortland (2013) 'Governance, naval intervention and piracy in Somalia', *Peace Economics, Peace Science And Public Policy*, 19/2, 275–283.
4. World Bank (2013) 'The Pirates of Somalia: ending the threat, rebuilding a nation', World Bank Policy Report.
5. A. Shortland and F. Varese (2015) 'State-building, Informal Governance and Organized Crime: The case of Somali Piracy'; forthcoming in *Political Studies*.
6. S. J. Hansen (2009) 'Piracy in the greater Gulf of Aden: Myths, Misconceptions and Remedies'. Norwegian Institute for Urban and Regional Research.

7. J. Dua (2013) 'A Sea of Trade and a Sea of Fish: Piracy and protection in the Western Indian ocean, *Journal of Eastern African Studies*, 7/2, 353–370. And: J. Dua and K. Menkhaus. (2012) 'The Context of Contemporary Piracy: The Case of Somalia', *Journal of International Criminal Justice*, 10/4, 749–766.

8. A. Shortland and S. V. Percy (2013) 'Governance, naval intervention and piracy in Somalia', *Peace Economics, Peace Science And Public Policy*, 19, 2, 275–283.

9. A. Shortland (2015) 'Can We Stop Talking about Somali Piracy Now?' *Peace Economics, Peace Science and Public Policy*. Vol 21:4 doi: 10.1515/peps-2015-0018.

10. O. De Groot, M. Rablen and A. Shortland (2012) 'Bargaining with Somali Pirates; Economics of Security', Working Paper #74, DIW Berlin.

11. A. Shortland and M. Vothknecht (2011) 'Combating 'Maritime Terrorism' in Somalia', *European Journal of Political Economy,* 27/1, 133–151.

12. S. Percy and A. Shortland (2013) 'The Business of Piracy in Somalia', *Journal of Strategic Studies*, 36/4, 541–578.

13. T. Tardy (2014) 'Fighting piracy off the coast of Somalia Lessons learned from the Contact Group', EUISS report, http://www.lessonsfrom-piracy.net/files/2014/11/EUISS-Report.pdf, date accessed 27 July 2016.

14. A. Shortland and M. Vothknecht (2011) 'Combating 'Maritime Terrorism' in Somalia', *European Journal of Political Economy*, 27/S1, 133–151.

15. C. Bueger (2013) 'Communities of security practice at work? The emerging African maritime security regime', *African Security* 6/3–4, 297–316. And C. Bueger (2015) 'Learning from piracy: Lessons for maritime security governance', *Global Affairs*, 1/1, 33–42.

16. D. Guilfoyle (2008) 'Piracy Off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts', *International and Comparative Law Quarterly,* 57/3, 690–699. And: D. Guilfoyle (2012) 'Prosecuting Somali Pirates: A Critical Evaluation of the Options', *Journal of International Criminal Justice*, 10/4, 767–796. Also: D. Guilfoyle (2013) *Modern Piracy: Legal Challenges and Responses*, Cheltenham: Edward Elgar.

17. S. Percy and A. Shortland (2013) 'The Business of Piracy in Somalia', *Journal of Strategic Studies*, 36/4, 541–578.

18. BMP 4 (2011) 'Best Management Practices for Protection against Somalia Based Piracy', http://www.mschoa.org/docs/publicdocuments/bmp4-low-res_sept_5_2011.pdf?sfvrsn=0, date accessed 26 July 2016.

19. A. Shortland and M. Vothknecht (2011) 'Combating 'Maritime Terrorism' in Somalia', *European Journal of Political Economy*, 27/S1, 133–151.

20. T. Besley, T. Fetzer and H. Mueller (2015) 'The Welfare Cost Of Lawlessness: Evidence From Somali Piracy', *Journal of the European Economic Association,* 13/2, 203–238.

21. World Bank (2013) 'The Pirates of Somalia: Ending the threat, rebuilding a nation', World Bank Policy Report.

22. World Bank (2013) *The Pirates of Somalia: Ending the threat, rebuilding a nation*, World Bank Policy Report.

23. A. Shortland (2012) 'Treasure Mapped: Using Satellite Imagery to Track the Developmental Effects of Somali Piracy', Chatham House, Africa Programme Paper: AFP PP 2012/01 01. And: S.J. Hansen (2009) *Piracy in the greater Gulf of Aden: Myths, Misconceptions and Remedies.* Norwegian Institute for Urban and Regional Research. Also: World Bank (2013) *The Pirates of Somalia: Ending the threat, rebuilding a nation*, World Bank Policy Report.

24. A. Shortland and F. Varese (2015) 'State-building, Informal Governance and Organized Crime: The case of Somali Piracy'; *Political Studies,* 64/4, 811–831.

25. World Bank (2013) *The Pirates of Somalia: Ending the threat, rebuilding a nation*, World Bank Policy Report.

26. World Bank (2013) 'The Pirates of Somalia: Ending the threat, rebuilding a nation', World Bank Policy Report.

27. C. Bueger (2012) 'A Drop in The Bucket: A review of onshore responses to Somali piracy', *WMU Journal of Maritime Affairs*, 11, 15–31.

28. World Bank (2013) 'The Pirates of Somalia: Ending the threat, rebuilding a nation', World Bank Policy Report.

29. S.J. Hansen (2009) 'Piracy in the greater Gulf of Aden: Myths, Misconceptions and Remedies', Norwegian Institute for Urban and Regional Research.

30. A. Shortland and F. Varese (2014) 'The Protector's Choice: An Application of Protection Theory to Somali Piracy', *British Journal of Criminology*, 54/5, 741–764.

31. Christian Science Monitor (13.07.2014) 'Captain Phillips strikes back: Off Horn of Africa, Pirates go bye-bye', http://www.csmonitor.com/World/Africa/2014/0713/Captain-Phillips-strikes-back-Off-Horn-of-Africa-pirates-go-bye-bye, date accessed 5 August 2016.

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Anja Shortland is a Reader in Political Economy in the Department of Political Economy at Kings College London. Her current research projects are in peace science and the economics of crime. Although largely based on data analysis, her work usually cuts across disciplinary boundaries adopting techniques and insights from sociology, engineering, geography, politics, international relations and economics.

Anja was an Engineering and Economics undergraduate at Oxford and then did her Masters and Ph.D. in International Relations at the LSE. Before coming to King's she worked as a lecturer in Economics at Leicester, a Reader in Economics at Brunel University and as a consultant to the World Bank.

Anja's research broadly falls into the areas of crime, conflict and security policy. She is particularly interested in maritime security, kidnap for ransom, war economies and informal modes of governance. She has published widely on the issue of maritime piracy and co-authored the 2013 World Bank Policy Report: "The Pirates of Somalia: Ending the Threat; Rebuilding a Nation."

Smuggling of Migrants

The New Migration Landscape: The Implications of a Militarised Response to Smuggling

Sumbul Rizvi

This article is based on a presentation provided by Ms. Rizvi at the seminar event titled 'Militarised Responses to Drug Trafficking and Human Smuggling' held by the Global Initiative against Transnational Organized Crime in Geneva on 11 February 2016.

The world is at a point where there have never before in recorded history been so many people forcibly displaced, and so many protracted conflicts that remain unresolved. According to data available to the UN High Commissioner for Refugees (UNHCR), as of mid-2015, almost 60 million people have been forcibly displaced. These figures include people who have been forcibly displaced for reasons of conflict and persecution both outside national borders, and within them. This data does not include people who have been displaced due to other causes, including natural disasters.

In an effort to manage the increasing movement of displaced and other persons, states and international organisations are increasingly relying upon militarised responses. This approach in the context of

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significantly increased levels of irregular movement is inherently faulty as it fails to implement a durable and realistic response to the contemporary refugee and migratory movements.

In the context of an increased focus on deterrence, the 'pull factor theory' is often cited in support of policy shifts away from opening state borders, including for search and rescue at sea. The pull factor theory suggests that these humanitarian responses will act as 'pull factors', increasing movement and exposing more persons to the dangers of irregular movement. To avoid this, states use harsh punitive border control strategies to deter irregular movement.

This approach is flawed because, in the first instance, the push factors prompting the flight of refugees are so severe, and people have shown the extent of the risks and sufferings that they are prepared to experience in order to achieve safety and protection. Secondly, the prevalence of militarised border control strategies to physically prevent migration and refugee flows has empowered smuggling organisations while making those undertaking these journeys more vulnerable. Targeting smugglers through militarised action targets the short term enablers of irregular mobility and human smuggling, and fails to address the root causes. Furthermore, far from being hindered by more restrictive borders, the smuggling industry benefits from them.

Policies focussed on the hardening of borders transform smuggling groups into vectors of global movement as their assistance becomes crucial to those trapped. States garner misconceived public support for militarised responses to a mere symptom, rather than the cause, of irregular movement. The critical needs of refugees become side-lined in public debate as the focus shifts from the irregular movement itself to the criminal organisations it benefits.

History too, has repeatedly demonstrated that deterrence based policies and militarised approaches are inadequate in providing long-term solutions. Nonetheless current trends suggest that the patterns of the past are being re-trodden rather than re-cast.

In order to address this, UNHCR proposes several solutions including the classic trio of voluntary return home, third country resettlement and local integration in countries of asylum. The further proposed solutions are complementary and offer an approach which prioritises the safeguarding of the rights of refugees and migrants in keeping with the commitments made by states towards refugee protection.

This chapter seeks to provide an overview of the scale of the current irregular movement phenomenon, and highlight the impunity of states and stakeholders in light of misguided, ineffective and repeatedly unlawful militarised responses. UNHCR therefore urges states to implement a tangible shift in policy, away from military short term tactics to a proactive and holistic strategy.

The World is Blowing Up

The current context concerns both what is in reality happening in the world due to persistent and intensifying wars and conflicts, and the development issues and lack of access to resources leading people to move. Large numbers of people move for this latter set of reasons, including extreme poverty or a paucity of resources such as education, health or others. They are not refugees as defined under international instruments. They instead fall within the broad-based category of migrants.

General assumptions are made—including by the media—that every person on the move is a migrant. This is both inappropriate and incorrect.

In order to offer refugees the necessary protections, and to understand the current global migration phenomenon, it is key to be able to make distinctions based on the cause of mobility in accordance with accepted principles of international law. To ensure this occurs it is crucial to use the correct lexicon.

The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees are very clear: a 'refugee' is a person outside his or her country of nationality or habitual residence fleeing persecution due to race, religion, nationality and/or membership of a particular social group or political opinion.

This definition has expanded over the years through case law and interpretation to include a wider ambit, for example, persons fleeing gang violence as potential 'members of a particular social group'. The Council of Europe has urged states to 'apply liberally the definition of 'refugee'.[1] Although courts typically interpret the term broadly, as the legal definition remains unchanged, states may also avail themselves of a narrower interpretation when convenient.

Migrants choose to move for a range of reasons, but not exclusively due to a direct threat of persecution or death in their home country. Therefore unlike refugees, there is little impediment to their return

home. Typically migrants move to find work or improve their job prospects, although education and family reunion are other common causes among the wealth of factors driving movement.

This distinction in terminology has important legal ramifications—refugees are afforded a specific legal status with accompanying protections due to their cause of flight and inability to return. A conflation of the terminology risks confusing the legal rights to which refugees are entitled, and, through misinformation, hardens public opinion and policy against all arrivals.

The blurring of definitions is particularly dangerous in the current political climate, where populist parties, which typically espouse an anti-migrant rhetoric, have made significant gains across Europe and globally. In the context of the EU migrant 'crisis', politicians have clashed over terminology, and have consistently and in the face of overwhelming evidence to the contrary argued that the majority of people (largely Syrian refugees) flooding their borders are 'economic migrants'.

Traditional public distaste for anti-refugee rhetoric is being eroded by politicians who normalise phraseology that would once have embarrassed voters. Similarly, while the left-leaning media have typically acted as a check on anti-immigrant political narratives, populist media amplifies and distorts xenophobic sentiment.[2] A recent article in UK tabloid '*The Sun*', the newspaper with the highest national circulation, was headlined 'Rescue boats? I'd use gunships to stop migrants'.[3]

In line with this, a recent report published by the Ethical Journalism Network into global media depictions of refugees and migrants found that, across the globe, a weakening media economy and political bias drove the news agenda, too often granting disproportionate airtime to political views that came close to hate-speech, stereotyping and social exclusion of refugees and migrants.[4] Such narratives simultaneously drive newspaper sales and anti-migrant sentiment in complete violation of all that is right legally and morally.

Amongst the large numbers of people arriving in Europe, there are both refugees and migrants. Their distinct positions, and consequently the diverging manners in which each case should be assessed, must be recognised. This will facilitate not only maintaining public sympathy for refugees, but will most importantly grant governments the necessary support to develop appropriate policies to tackle the influx in keeping with the causes of flight and protection needs.

The careful use of distinct terms does not merely concern semantics, but is key to trying to find solutions. To date, it is largely possible to chart the demographic, source countries and identities of migrants and refugees, however it has not yet been possible to identify, isolate, and tackle the underlying causes of movement, and solutions are elusive as a result.

Heights of Impunity

In part due to the conflation of refugee and migrant movement, commitments to refugee protection and humanitarian obligations that states have signed up for are being frequently disregarded. The main objective of the UN is being repeatedly ignored or superseded by different concerns and motivations; the laudable preamble of the Universal Declaration of Human Rights, formerly the cornerstone of legal curricula across universities, appears hypocritical when reviewed in the current context. Increasingly the intention of national Governments and other key international players to abide by these commitments, is being cast into doubt.

One of the key criticisms that many human rights actors have voiced over the years is that the 1951 Convention definition of refugee remains too narrow, qualifying only a small proportion of those on the move as needing real protection.

It is hard today, however, to find any developed country that is today fully respecting even this narrow definition. Violations of the 1951 Convention occur with impunity. Examples abound, including the crisis in the Bay of Bengal and Andaman Sea, the Australian push-backs of boats of asylum-seekers, the plight of the Syrian, the Iraqi, the Afghan, the Somali and innumerable other refugees in Europe, and the situation of extreme violence forcing children and women on the run from the Northern Triangle of the Americas and many others.

The widely-held belief amongst western states that they are immune from prosecution for even the most flagrant breaches of humanitarian obligations unfortunately appears to be largely well-founded. Despite calls for sanctions from a number of human rights organisations, many states have faced no penalty for their 'spectacular' failures in the context of refugee policies and treatment of asylum seekers, although technically some of these violations could invite international sanctions.

This highlights a structural lacuna of UN Conventions—UN bodies do not have sanctioning powers for breaches. The only complaint mechanism incorporated into the body of the Convention itself is the ability of one signatory state to bring a complaint against another. However, this mechanism is rarely, or never, in the interests of governments to utilise.

The precipitous increase of people on the move is causing policy chaos and multiplying cases where states are in breach of international obligations. This backdrop of breach foments an increasingly adversarial relationship between UN custodians and breaching states, pushing the latter to act unilaterally precisely where multi-faceted solutions are required, dooming responses to failure.

Evidence shows conflicts are increasingly protracted, and the resulting flow of refugees is therefore medium to long-term, with little viable possibility of voluntary repatriation in the near future. This 'crisis' is one of indeterminate, and likely substantial, duration. Short-sighted knee-jerk responses do little to ameliorate the current position, and likely worsen that of the future.

BLINKERED ACTIONS

States and stakeholders are contradicting each other in their policies and approaches. Asylum processes vary across domestic legal frameworks, and even the key protections set out in international law are being dangerously eroded and ignored in the current context of unprecedented flows.

The failure of Greece's asylum procedures dominated headlines in 2015, however circa 850,000 migrants and refugees arrived in Greece in 2015, equating almost 10% of the country's existing population of 11 million. Although Greece's asylum processes cannot be held up as a model, individual countries logically struggle to cope with influxes of this quantum within the framework of the current system, particularly where calls for help commonly go ignored. The critical need for timely assistance at the inception of a crisis is mostly disregarded causing the problems to multiply until it engulfs the entire region.

The cracks that have always existed in global migration policies are being blown apart by the scale of current migrant and refugee flows. It is not sufficient to heap opprobrium on failing states—the structures of mobility are changing, and the framework of policy needs a radical rethink with an acceptance of mixed movements of migrants and refugees as the norm.

The space for regular and legal migration is narrow, in many cases non-existent. The EU requires asylum-seekers to register their claim within its borders—external applications are not possible. The Dublin Regulation, although now increasingly recognised through its breach rather than its application, stipulates that asylum-seekers should pursue their claim in their EU state of arrival. EU asylum policies are not harmonised—there are substantial differences between the benefits offered to successful asylum-seekers across EU states, creating clear target countries for their movement. This was evidenced in the chain of Syrian refugees travelling to Germany, who refused to register in Greece as the Dublin Regulation dictates, and in the backlog of migrants and refugees in Calais, determined to reach the UK. Together these pincers of EU policy trap migrants and refugees into illegality, ensuring that travel into and across the EU's borders is, by definition, irregular.

Where states do not facilitate wide access to asylum, refugees are compelled to seek other modes of entering a country—increasingly this involves the use of people smugglers. Policy confusion acts as a further draw for smuggling groups, who are able to exploit loopholes to their advantage. The EU Commission estimates that 100% of refugees crossing EU borders have been smuggled into the EU.[5] Smuggling is becoming one of the most lucrative forms of transnational crime—estimated to be an industry worth between €3–6 billion in 2015 in the EU alone—and thus attracts increasingly organised criminal rings, with a consequent devaluation of the human rights of those smuggled.

The volatility of the socio-political situation across the MENA region in particular has increased the numbers of people 'dying' to cross the Mediterranean Sea, and allowed new players, lacking the necessary expertise but offering lower prices, to enter the smuggling market. This has squeezed profit margins and triggered an evolution in smuggling practices towards more reckless, resource-light mechanics which carry consequently higher risks of death.[6] Examples of smugglers providing overloaded and unseaworthy refugee vessels with insufficient fuel and supplies in the crossing of the Mediterranean abound.

It is astounding that people who flee war and persecution have to be compelled to further seek the assistance of unscrupulous smugglers in order to access safety and protection. The 1951 Convention prohibits the imposition of penalties for irregular entry by refugees. A number of EU states, including Hungary and Bulgaria, have sought to criminalise

refugees themselves and impose fines and detention sentences.[7] This flies in the face of prohibitions set out in international law.

The 'War on Smuggling'

This therefore begs the question, why must persons be compelled to elicit the support of smugglers to access asylum? Why cannot states, in the spirit of their refugee protection obligations, stretch out and grant them access to territory and to asylum? Many states nonetheless abide by the principles of refugee protection, allowing safe access of refugees to their territories. This is prevalent in the majority of states in the south, where the main refugee crises are situated. It is noted by UNHCR that 86% of the world's refugees reside in their regions of origin, despite acute challenges faced by under developed or developing states.

Access to the developed world is particularly risky and unpredictable, as has been evidenced in Europe. When there are no safe alternatives for persons needing to flee persecution, wars, violence, and death in order to access protection and safety, it is inevitable that they will seek shelter in a different country. Those that do embark on the journey face harsh deterrence measures. This is an overarching criticism of militarised responses to smuggling.

Yet governments are repeatedly turning towards military responses in the face of rising casualties of migration. We can chart a clear shift in the EU's approach to reducing casualties at sea and combatting smuggling: from saving lives (under the Mare Nostrum search and rescue operation), to border management (Triton) and finally to military action (EUNAVFOR MED, dubbed Operation Sophia).

The rhetoric of the EU and other nations regarding the effort to decrease smuggling has become increasingly militarised, echoing that of the 'War on Drugs' or the 'War on Terror', with governments promising to 'crack down' and 'combat' smuggling rings. Instead, states need to create safer complementary and legal pathways for refugees as alternatives to dangerous irregular movement. Without this migrants and refugees will continue to rely on smugglers, and the death toll will continue to rise.

Over 3500 people are known to have died at sea trying to reach the EU in 2015, marking an increase in deaths in the Aegean Sea as it became the principal sea channel into the EU, and the deadliest migrant crossing. Refugees were increasingly forced to take to sea following the

construction of a fence along the Greek-Turkish border, which triggered a spike in marine crossings. The numbers will keep rising because the situations from which people are seeking to escape are desperate.

Alternative Responses

A holistic approach which seeks to combat the root causes of such movements offers the sole appropriate response. UNHCR has traditionally worked on three durable solutions to irregular movement:

1. *Local integration in country of asylum*

Successful legal, economic and social integration of refugees into host countries where they can benefit from the protection of the host government.

Evidence is clear that many refugees, regardless of host country, are secondary or tertiary educated. Although Germany's welcoming migrant policy, and the ensuing flow of Syrians across its borders, has been largely depicted as a strain on its resources, some commentators have noted that Germany may well benefit from the influx of highly skilled refugees.

Europe has long been struggling with an ageing population; pension systems are creaking as the long-living many, rely on the working age few. The arrival of migrants and refugees has been an oft-mooted solution. A shift in narrative towards policies of welcoming migrants and refugees could recast the current 'crisis' as an opportunity.

2. *Voluntary return home*

The numbers of refugees safely returned to their country of origin, where they are granted national protection, can to some extent act as a metric of stability and safety in the source country. It is telling that refugee returns hit an all-time low in 2014, and estimated 2015 figures suggest the figures continue to decrease.[8] The reason is obvious as not only have the intensity of continuing conflicts increased, new conflicts have erupted and previously dormant conflicts reignited. It is impossible for the vast majority of refugees to consider returning home in the immediate future. Much needs to be done by the international community to resolve these situations for this durable solution to be a reality.

Although voluntary return home will continue to be a proposed durable solution, it is key to acknowledge that placing disproportionate

reliance on this mechanism, which engenders the least responsibility for third party states, is unrealistic. The bulk of refugees, at least in the medium term, will require a different solution.

3. *Third country Resettlement*

In contrast to plummeting refugee return levels, global resettlement needs are rocketing. They are projected by UNHCR to exceed one million in 2016,[9] representing a 50% increase since 2012 and a 22% increase in the last 12 months.[10] The dramatic upsurge in resettlement needs tracks the peak in mass displacement—with resettlement needs remaining at around 8% of the global refugee population throughout this period.[11]

This explosion in the global refugee population, and mirroring increase in resettlement needs can largely be attributed to the Syrian conflict. The increase in the global refugee population between 2011 and mid-2015, were Syria excluded, would have hovered at circa 5%;[12] instead it stands at 45%.[13] The 2016 projected resettlement needs for the MENA region are ten times higher than they were in 2014.[14]

This exodus places disproportionate strain on those countries least able to bear it. By mid-2015 ten countries hosted 57% of refugees.[15] Burden-sharing initiatives have been largely unsuccessful, laying an unbearable burden on the countries most lacking the resources necessary to provide for and integrate refugees. These are mostly countries bordering the conflicted state from which people are fleeing.

Syrian refugees now form 20% of the population of Lebanon,[16] an unsustainable proportion that has received little public notice, overshadowed as it has been by the challenges faced by Turkey, which, although it hosts the largest number of refugees, is proportionally less affected.[17] In contrast, by mid-2014 Europe hosted under 4% of the 2.8 million registered Syrian refugees. There are substantial grounds for complaints from Lebanon, Jordan, Iraq, Egypt and Turkey that Europe has abandoned them in the face of the overwhelming needs of the significant numbers of refugees arriving on their territories.

Although in the last 10 years the annual number of refugees UNHCR submits for resettlement has doubled,[18] the proportion of those successfully resettled remains low, standing at 1% of the global refugee population.[19] Participation in resettlement programmes is not obligatory under international refugee law and states' appetite for resettlement is anaemic, with certain notable exceptions including Germany. EU Member States

have repeatedly failed to meet the EU Commission's relocation targets. In 2011 UNHCR noted a sluggish response to its resettlement initiative in response to the growing needs of refugees fleeing Libya.[20] By January 2015 EU states had pledged just 4200 places for Syrian refugees, with successful relocations faltering in the hundreds,[21] falling far short of the Commission's target of 160,000.[22] Although there has been a significant increase—since 2013 around 180, 000 places have been made available to Syrian refugees[23]—these figures are largely attributable to a small number of states rather than to a cohesive effort.

Until resettlement states can be certain of adequate support from the international community, voluntary take-up of refugees will remain low and the resettlement burden will remain inappropriately concentrated. Resentment in countries which, by their geographic situation, become key hosts, will continue to grow, fuelling xenophobic sentiment. This effectively blocks the path to integration, trapping refugees into a position of economic dependency, rather than allowing them to benefit the host state by becoming active economic contributors. In order to tap resources on the scale required to make refugee protection in host states a viable long-term solution, it is necessary to ensure that appropriate, and ongoing, levels of international assistance are available. Ad hoc aid is insufficient and often tied to the fulfilment of specific conditions, a robust medium to long-term support strategy is required.

'Refugees are not the crisis, they are an outcome, a symptom of a significant crisis.'

UNHCR has published a list of proposed legal avenues to safety and admission in response to the increase in refugee movement, however to date these have not been implemented at the required scale and there is much that states need to do in order to fulfil their responsibilities towards refugee protection.

One of the key solutions suggested is family reunification; there are many refugees who reach the country of destination with only some members of their families, while others are left behind. It is those left behind who most often undertake hazardous sea crossings to try to join their family members because restrictions by states and non-state actors alike make it extremely difficult for families to be reunified through regular, safe channels.

Family reunification benefits not only refugees, but also the countries in which they are resettled, by lowering the long-term social costs of resettlement. Resettlement states should recognise such benefits and

adopt a proactive approach to family reunification, harmonising policies and procedures to complement and operate in parallel to regular legal immigration processes. In 2013 Switzerland and Ireland operated family reunification programmes for Syrians, both were limited in duration and have since terminated.[24]

Other major solutions that UNHCR has proposed include humanitarian admission and labour mobility schemes. The inalienable human rights of refugees must be respected: refugees have a right to live in dignity and a right to livelihoods which enable them to support their own families. It is key to emphasise that a significant proportion of refugees have marketable skills, and in most instances are able to work.

Labour mobility schemes would ensure safe movement of refugees, while supporting national economies. There is no substantiated reason why we wouldn't want to expand labour mobility schemes to include refugees. To the contrary, the EU's ageing population requires a substantial influx of workers to bolster its economies.

Although often a short-term response, the expedited nature of the humanitarian admission process renders it central in the strategic approach to integrating the vast influx of Syrian refugees, as demonstrated by Germany's continuing expansion of its humanitarian admission programme, which relies on both state and private funds. However, the EU Commission's December 2015 recommendation for a voluntary humanitarian admission scheme has, so far, prompted a disappointing response across EU Member States.

Similarly, emergency evacuations and academic scholarships are also key. The involvement of the private sector in humanitarian efforts can have a significant impact—as illustrated by the successful use of private sponsorship in Germany, which has resulted in over 20,000 admissions.[25] There have been a number of responses where states have considered such options, however to an insufficient extent.

Conclusion

Any state response to smuggling issues must be comprehensive and holistic, observing both its obligations and commitments and abiding by the 1951 Convention protecting refugees, to which states have signed up. States need to recognise smuggling as a mere symptom of the new modalities of international movement.

The real, underlying issue behind movement concerns root causes, which urgently need comprehensive approaches as a response. Since mid-2013 globally the number of people involved in irregular movement has surged. This can largely be attributed to the worsening conflict and persecutory situations of their home countries. A lack of legal avenues for refugee mobility mean that although people are no longer able to stay at home, neither are they able to move to safety, and integrate with dignity and respect in countries of asylum. An increase in anti-refugee sentiment as a backlash to the spike in numbers is likely to form a further impediment to successful integration.

In many instances the countries of asylum in the neighbourhood of the conflict are over-stretched and unable to cope. In the face of the current influx of Syrian refugees, Europe's' strategy has been largely, with key exceptions, one of regional containment, seeking to ensure that although the crisis was on the doorstep of the EU it remained outside its borders.

Host countries need support, as do the refugees who vote with their feet to find their own solutions. Ways of strengthening asylum policies should be examined more closely. But neither can we ignore a core issue, which is funding. A change of policy focus—from a desperate effort to keep refugees out to a genuine attempt to meet their needs could result in a redirection of available funds away, for example, from strengthened border control mechanisms and the maintenance of warships, towards temporary admission schemes.

The 10 Point Plan of Action on Refugee Protection in Mixed Migration that UNHCR launched in 2007, focussing on the role that UNHCR can play in implementing effective mechanisms to combat irregular movement, has already showed what states could and should do to prevent such crises from happening. It is now imperative that states bear their share of responsibility and play their role.

'The next quinquennial is unlikely to be better given the ongoing global conflicts.

The situation is poised to deteriorate further but positive change is possible. States have the power to contribute to a great part of that change. It is still not too late'.

NOTES

1. Council Recommendation 773 (1976) on the Situation of de facto Refugee, Parl. Assembly Council Eur., 27 ord.sess. (Jan. 16, 1976), at II((i).

2. In the UK, the two newspapers with the highest circulation are tabloids, with the most popular broadsheets winning less than half their readership, National Readership Survey (2015) http://www.nrs.co.uk/downloads/padd-files/pdf/nrs_padd_jan_15_dec_15_newsbrands.pdf, date accessed 5 April 2016.

3. Katie Hopkins (2015), 'I would use gunships to stop migrants', The Sun [Online], http://www.thesun.co.uk/sol/homepage/suncolumnists/katie-hopkins/6414865/Katie-Hopkins-I-would-use-gunships-to-stop-migrants.html, date accessed 5 April 2016.

4. Ethical Journalism Network (2015), Moving Stories, International Review of How Media Cover Migration, http://ethicaljournalismnetwork.org/assets/docs/054/198/8feb836-108e6c6.pdf, date accessed 10 April 2016.

5. European Commission (2015), DG Migration & Home Affairs, A study on smuggling of migrants, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/study_on_smuggling_of_migrants_final_report_master_091115_final_pdf.pdf, date accessed 9 April 2016.

6. Forensic Oceanography department at Forensic Architecture Agency at Goldsmiths (University of London) (2016), Death by Rescue: The lethal effects of the EU's policies of non-assistance at sea, https://deathbyrescue.org/report/narrative/, date accessed 11 May 2016.

7. Ataç, Ilker, Kron, Stefanie, Schilliger, Sarah, Schwiertz, Helge and Stierl, Maurice (2015), Struggles of Migration as invisible Politics, movements. Journal für kritische Migrations- und Grenzregimeforschung, 2015 1 (2).

8. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that 84,400 individuals were returned during the first half of 2015, 107,000 during the same period in 2014. The overall number of refugee returns in 2014 was 126,800 (the lowest in over 30 years). The UNHCR believes that current trends indicate that 2015 figures may even be lower. The Office of the United Nations High Commissioner for Refugees (2015), Mid-Year Trends 2015, http://www.unhcr.org/56701b969.html, date accessed 29th June 2016.

9. Ibid.

10. Ibid.

11. Ibid.

12. Ibid.

13. Ibid.
14. Ibid.
15. Ibid.
16. The Office of the United Nations High Commissioner for Refugees (2014), Resettlement and Other Forms of Legal Admission for Syrian Refugees, http://www.unhcr.org/52b2febafc5.pdf; Agence de France Presse, Reliefweb (2014), Germany Doubles Intake of Syrian Refugees to 20,000, http://reliefweb.int/report/germany/germany-doubles-intake-syrian-refugees-20000, date accessed 29th June 2016.
17. The Office of the United Nations High Commissioner for Refugees tracked 1.8 million registered Syrians in Turkey, 1.2 million in Lebanon and 628,800 in Jordan. Within the EU, Germany was hosting 66,000 Syrian refugees at mid-2015, up from 41,000 six months earlier. Statistics from the UNHCR Mid-Year Trends 2015. The Office of the United Nations High Commissioner for Refugees (2015), UNHCR Mid-Year Trends 2015, http://www.unhcr.ch/fileadmin/user_upload/dokumente/06_service/zahlen_und_statistik/Mid-Year_Trends_2015.pdf, date accessed 29th June 2016.
18. This is partly attributable to the use of simplified resettlement processes, innovative approaches to resettlement and increasing funds from resettlement states.
19. This is reflected in the number of registered refugees from Syria who have been resettled, which stands at circa 1%. The Refugee Studies Centre Forced Migration (2014), Policy Briefing 10, Protection in Europe for refugees from Syria, http://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb10-protection-europe-refugees-syria-2014.pdf, date accessed 29th June 2016.
20. United Nations General Assembly (2012), Progress report on resettlement, A/AC.96/1108. http://www.unhcr.org/503cce2e9.pdf, date accessed 29th June 2016.
21. The Office of the United Nations High Commissioner for Refugees (2014), Global Resettlement Statistical Report 2014, http://www.unhcr.org/52693bd09.html, date accessed 29th June 2016.
22. European Commission Press Release, 6 May 2016, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf, date accessed 29th June 2016.
23. The Office of the United Nations High Commissioner for Refugees, Resettlement and Other Forms of Legal Admission for Syrian Refugees, http://www.unhcr.org/52b2febafc5.pdf, date accessed 29th June 2016.
24. C. Orchard andA. Miller at the Refugee Studies Centre (2014), Protection in Europe for refugees from Syria, http://reliefweb.int/sites/

reliefweb.int/files/resources/pn-protection-europe-refugees-syria-2014.pdf, date accessed 29th June 2016.

25. The Office of the United Nations High Commissioner for Refugees, Resettlement and Other Forms of Legal Admission for Syrian Refugees, http://www.unhcr.org/52b2febafc5.pdf, date accessed 29th June 2016.

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Smugglers Inc.: The Illicit Industry in Human Migration

Tuesday Reitano

Mahmoud has been a smuggler for most of his adult life. He is Palestinian, originally from the Gaza strip, where he became involved in the smuggling of food supplies and people via the tunnels to Egypt. They formed a 40-ft deep maze of underground passages that ran along the border between the Gaza Strip and Egypt, which became a vital channel for importing food and supplies to the Palestinian people, and also weapons and contraband goods to maintain the Palestinian Islamic resistance movement, and to help ordinary citizens escape. Mahmoud insisted that, at the time, he only did runs with people and food supplies, but we have no way of verifying that. In 2012, Mahmoud moved to Turkey, where in the last 4 years he has been responsible for putting thousands, possibly tens of thousands, of people onto boats, and helping them cross the Aegean Sea to Europe. He considers his work humanitarian, saving lives and providing safe passage to refugees where few legitimate alternatives exist. With the Syrian crisis prompting an exodus of refugees, and legions of the poor, vulnerable and marginalised following

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in their wake, the demand for his services is manifold and in his whole life as a smuggler, Mahmoud has never been richer.[1]

Despite being a global phenomenon experiencing exponential growth—estimated to be the second largest illicit trade, worth an estimated 157 billion USD annually[2]—there is surprisingly little analysis on human smuggling. While it has been designated a transnational crime by virtue of a dedicated protocol in the UN Convention on Transnational Organised Crime (UNTOC), human smuggling tends to be the overlooked ugly sister to the global scourge of human trafficking (or modern slavery) to which reams of analysis and funding is dedicated, both to countering the crime and protecting its victims. Though the two terms are often used interchangeably, UNTOC defines smuggling as 'the illegal procurement in order to obtain, directly or indirectly, a financial or other material benefit from the illegal entry of a person into a state party of which the person is not a national or a permanent resident'.[3] The victim in the act of human smuggling is therefore the state, not the person who has been smuggled. While the smuggler is criminalised, the person who has been smuggled is not criminalised even, as in most cases, where they entered into the illegal arrangement consensually. By contrast, human trafficking is defined as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, or fraud or deception'.[4] With human trafficking, no movement is required, the crime is against the victim of trafficking, whose condition is both involuntary and exploitative.

The line between smuggling and trafficking can blur: migrants are often subject to significant abuse and exploitation at the hands of their smugglers on their migration journey, and arrangements that begin as a willing transaction between migrant and smuggler can end in trafficking. However, the majority of those who use a smuggler to move irregularly do so successfully and under the contract determined. Essentially, smuggling is a service industry, determined by the laws of supply and demand, and largely regulated by the dynamics of the market.

By and large, those charged with responding to human smuggling have failed to understand the commercial nature of smuggling. Smuggling is perceived as a transnational organised crime, and thus one which requires the typical response deployed against all forms of transnational crime, from drug trafficking to arms smuggling: law enforcement action designed to disrupt the business model of smugglers, and deterrence-based strategies that increase the risk to smugglers to ply their

trade. As subsequent chapters in this section of the book will demonstrate, this policy has resulted in high walls and militarised borders, the deployment of warships, armies and military police in the effort to prevent people crossing state lines and to arrest those who facilitate them. Unfortunately, as this chapter will explain, market forces dictate that a militarised response to smuggling will have precisely the opposite effect to the one intended: a militarised response empowers and enables exactly the industry it is trying to destroy.

Understanding the Smuggling Industry

The drive to move is an irrepressible human condition, whether driven by conflict, violence or persecution or by the equally potent desire to improve one's life opportunities. As Rivzi's opening chapter described, international migration is at an all-time high, yet the international system has yet to find a means by which to provide viable and sustainable opportunities to these mobile populations. Refugees and the internally displaced are increasingly finding themselves interminably mired in camps with inadequate levels of social services, protection or prospects for productive futures. The poor and the marginalised are growing as a greater portion of the world's population find themselves caught on the wrong side of the globalisation lottery, as both income and stability become increasingly unequally divided.[5] The result is that the demand to move has never been higher, but the available options provided legitimately fall far short of the need. In this situation, smugglers have become a safety valve to the endemic desire for mobility; they are a resilience mechanism for communities facing conflict, crisis, violence or chronic inequality.

The service that a smuggler provides is to help a migrant overcome a boundary or a barrier which they are challenged to cross for themselves. Where there are safe and legal routes to migration, a migrant could manage their own travel, or hire one of the many relocation consultants or recruitment agencies who assist to help people get jobs, plan trips and integrate into new places. Where no such legal option exists, and a migrant is travelling illegally or irregularly, it is the smuggler that provides that service. The barrier that demands the service of a smuggler could be physical, to help them cross a challenging piece of terrain such as a sea, a desert or a giant border fence; or they can be political, a heavily armed border, a violent conflict zone, high surveillance from an authoritarian state or an impenetrable visa regime; or they can even

be cultural, when an irregular migrant fears crossing territory where he doesn't speak the language or visually stands out from the locals. These challenges are not static, but can rise and fall, change and shift according to policies and the prevailing environment, and the market adapts accordingly. If a border becomes heavily militarised, if there is a law enforcement crackdown in one hub or a conflict intensifies, the market will adapt and smugglers will find new routes for their clients, and will raise the price to compensate for the increased risk. The higher the barriers and the more complex the routes, the higher the demand for smugglers becomes, the more specialised the smuggler needs to be and consequently the more they can charge.

Smugglers did not create the original demand for their services, but with a business model that offers significant economies of scale, they will go to considerable lengths to shape, expand and grow the market to increase their profits. There are broadly two typologies in the migration industry, the 'full-package' and the 'pay-as-you-go', which segment the market according to the purchasing power of the migrant. In the full package, migrants pay to have smugglers facilitate every aspect of their trip. This could include everything from transportation, to accommodation to fraudulent or illegally procured documentation, and may even include connections to the community on entry and support to integration such as finding a job and enrolment into schools. Here journeys are customised to specific migrants, but with prices ranging in the tens of thousands of dollars per person, it is an option open to only the most privileged few. The vast majority of irregular migrants will use the pay-as-you-go method, by which they make their journey in stages, negotiating with smugglers for shorter distances and to cross specific obstacles one leg at a time. Where the full package is the bespoke upper echelons of the business, pay-as-you-go is the mass transit side. Transport is provided on chartered buses, on the eponymous 4×4 or in the now iconic overloaded fishing vessels and rubber dinghies. Given that the most significant investment is the fixed cost for the means of transportation, and the variable costs per person only constitute the tiny incremental costs of water, food and perhaps bare-bones accommodation, the more people that can be crammed into each journey, the greater the profit margin per trip. As such, the market incentives for the pay-as-you-go smugglers are to transport as many people as possible, recruited through as wide a network of brokers as can feasibly be mobilised.

The smuggling industry is vast, and encompasses people of all walks of life, in a variety of different roles. To facilitate the full package requires a knowledge and understanding of international travel and access to counterfeiters or corrupt visa officials. As such, it often includes people who work legitimately in the travel or transport sector, on import/export or on international recruitment and who moonlight in smuggling to increase their profits. The pay-as-you-go market is populated by thousands of recruitment brokers, drivers, coordinators, people who provide food and lodging or ensure security. In all cases, the wheels of the industry are greased by countless state officials who are paid bribes to turn a blind eye, to usher migrants through when they should be stopping them, to provide samples of documentation that need to be replicated or to make an arrest or investigation magically disappear. There is no single portrait of a smuggler. It ranges from average citizens whose language skills and knowledge of the terrain make them natural and comfortable border crossers to aid workers whose regular contact and privileged access make it easy for them to recruit, to nomadic communities or roving militia groups who live along the main migrant trails. It also includes, of course, the organised crime groups who have developed a smuggling infrastructure predominantly focussed around other illicit commodities such as drugs and arms, who also smuggle migrants to swell profits.

On the whole, the relationship between the migrant and the smuggler is one based on considerable levels of trust. A migrant seeks a smuggler because they need help, and they are entrusting the smuggler with a most precious cargo: their own lives, those of their loved ones and their hopes of a better future. It is not an inconsiderable investment as, even under the pay-as-you-go model, a migration journey will cost a minimum of several hundred dollars, rising to several thousand where the journey is long, complicated and difficult. Consequently, despite being a transnational enterprise, smuggling is a quintessentially local affair. Smugglers often bear close resemblance to the people that they smuggle, sharing a language, a culture and ethnicity which are the bases upon which they communicate and build trust. Frequently, smugglers are former migrants themselves.

The industry has developed a number of safeguards to protect the migrant and offer guarantees of safe passage, and the most potent of these is a shared community, reputational risk and trusted third parties. For example, from their hometown a migrant will negotiate a journey with the local recruitment broker, an established figure who is well

known in the community and who has facilitated the travel of countless migrants before. While the smuggler begins the process of arranging the journey, and often fronting large portions of the cost of the journey himself, the money is paid to a designated money holder that everyone will know, and the money is not released until a migrant has safely arrived. The funds might be provided by the migrant themselves, their family either locally or in the Diaspora elsewhere. If the migrant fails to arrive for whatever reason, not only will the smuggler lose the money he will have paid upfront for the journey, the local recruitment broker will be held to account in the community, where he may be castigated, his reputation will suffer and thus his subsequent ability to recruit additional clients.

The Impact of Militarisation

Ethnographic studies in a variety of places have shown that the smuggling industry is neither inherently violent nor exploitative, yet in many contexts it has become characterised by chronic abuses. This transition to violence has often been catalysed by the policies taken by states to prevent irregular migration.

The chapters of Roberts and of Erickson will ably demonstrate that there are few measures that states are not prepared to take to prevent illegal migration. Erickson describes the situation of border control on the Southern border of the United States, where, over the last 10 years, the USA has spent well over $100 billion on countering illegal immigration and built a para-military border force comprised of 60,000 officers that operates a fleet of over 250 aircraft, including planes, helicopters and drones. Roberts highlights the multiple warships and naval missions deployed to prevent boat migrants in the Mediterranean and Aegean. One could also cite the Australian policy of off-shore detentions in punitive prison colonies, the practices of pushbacks deployed by the littoral nations in the Andaman Sea or the €6 billion Faustian pact that the EU entered with Turkey in March 2016 that has resulted in the deployment of the Turkish military on beaches, army roadblocks across the country and the closure and land-mining of the 1580-km Turkey–Syria border[6] as further examples of the limitless nature of deterrent-based and militarised policies.

Yet, as explained above, human smuggling is a market-driven industry governed by the laws of supply and demand. The more restrictive

the policy of states, the more challenging a border becomes to cross, the more militarised the levels of enforcement, the more necessary a smuggler becomes and the more risk-accepting, professional and corrupt that smuggler will need to be to perform his function successfully. Thus, in the contemporary context of inelastic levels of demand for movement, where the pool of smugglers willing and able to play the role in the heightened security environment has constricted, as the laws of economics dictate, prices begin to rise. For the remaining smugglers in the market, the illicit trade in migrant smuggling has just become more profitable. Therefore, militarisation has not only driven the arguably most benevolent actors out of the industry, but it has also made the industry more attractive to the most quintessentially profit-driven actors: organised crime.

Organised crime's involvement in the smuggling market is detrimental for all. With an industry that tends on the whole to mass movement (the pay-as-you-go model), and in a policy environment that is hostile to migration, this encourages the criminalisation of the migrant himself, and the industry shifts towards a sellers' market. In this context, with little recourse or protection available, the systems to protect the migrants break down and the migrants become commoditised. Community-based brokers have little control over the violent and criminal actors further down the route, and are unable to offer guarantees of safe passage. Money is demanded in advance, and thus the migrant has little with which to leverage the smuggler to treat them well. Instead, the smugglers can abuse and extort their charges using violence or threats of arrest.

In such an environment, instances of sexual exploitation, forced labour, forced prostitution and other violations of human rights abound, and the line between smuggling and trafficking becomes increasingly blurred. For example, as movement along the migration route across the Balkans surged in the autumn of 2015, Albanian-organised crime groups diverted from their traditional business lines of human trafficking, gun-running and drug smuggling towards facilitating irregular migration to Europe. Not only are they callous and lackadaisical towards human life, as the horrifying discovery of 74 people dead in a van in Austria illustrated,[7] but they have no compunction in exploiting the vulnerable. The Director of a Serbian NGO providing front-line support to migrants crossing the Balkans told me she receives migrants covered in cuts and bruises, having been beaten by police and smugglers alike. Worse yet,

she reported that every woman she saw who had come with a smuggler had been raped, including girls as young as 12.[8] In some cases, the violation was filmed so that it could be later sold on the internet as pornography, another illicit business in which the groups are actively involved.[9] In the United States, human smuggling has become interwoven and closely associated with the violent gangs trafficking cocaine and heroin from Latin America, using the same corrupt guards, and the network of sophisticated drug tunnels that permeate the US southern border. The drug cartels are said to 'rent' the tunnels to the human smugglers for a fee that is passed directly on to the migrant, and have been reported to demand as much as $5000 per head from the smugglers, with unquestionably credible death threats used to ensure payment.[10]

Organised crime's entry into a flourishing smuggling industry is not only a risk for migrants, but also for the states from which migrants are sourced, those through which they transit and the destination states where the migrants finally arrive. Evidence across the globe has shown that when smuggling is at its most benign, the actors facilitating irregular migration tend to herald from local communities, and they spend their profits from smuggling in the economy and invest in resilience activities such as housing, education, health and building legitimate business. But when organised crime enters the market, the profits of the industry are invested in growing the business (that is, buying more cars or boats, or recruiting more widely) increasing its profitability (by, for example, producing cheaper dinghies, fake life jackets) and laying a foundation of criminal infrastructure that can easily be adapted to other commodities. In the latter case, this takes the form of a wider network of corruption into higher levels of the state, and considerable investment into security, firearms and violent actors who can help protect the new booming trade from possible competition.

Rising levels of violence and conflict related to control over human smuggling routes have proven to be a critical destabiliser in a number of contexts, including most recently in Libya. In the post-revolution political transition in Libya, control of human smuggling routes has directly influenced the success of the political transition, and human smuggling itself has become highly militarised. Militia groups heavily involved in central state politicking in the divided national government have profited significantly from the coastal boat trade. Similarly, nomadic groups in the South have translated smuggling profits into territorial control, including over other trafficking routes and for the rights to 'protect' Libya's oilfields.

The detention and subsequent extortion of migrants have become a source of revenue for another set of militia groups and political interests.[11] The consequence for those migrating is clear: the commoditisation of migration, skyrocketing levels of abuse and violence and death rates in the thousands per year both off the coast and unseen on land. At the same time, the nation's stability and capacity for governance is irreparably eroded, increasing the likelihood of a prolonged and violent case of state failure.

It is here that the regrettable self-reinforcing negative spiral comes into play. As a militarised response to irregular migration and human smuggling is enacted, the smuggling industry shifts across the spectrum from a community mechanism to a corrupt, violent industry controlled by organised crime groups. With the involvement of organised crime, and the increasingly negative results that this implies, the use of typical strategies to counter organised crime is triggered by default. Law enforcement action is intensified, more walls are built, border guards deployed and detentions and prosecutions quickly follow. Barriers to migration are raised yet again, and the industry hardens still further into its criminalised form.

Even where a militarised response is successful in closing down one border crossing entirely, or isolating one state, if the prevailing demand for movement is not addressed, versatile networks quickly identify new destinations and create new routes. The onus for preventing migration becomes widely dispersed and pushed closer to source. What were previously transit states are then tasked with the counterproductive and often damaging responsibility of border control, and the challenge is spread across a broader swath of territory, increasing insecurity, violence, instability and the reach of criminality. Furthermore, repeatedly building barriers without providing any alternatives, or forcing the displaced into camps where their needs are partially and poorly met, creates large populations that can become a source of social unrest. They come to constitute a tinderbox of violent discontent and are a prime recruiting ground not only for smugglers and traffickers, but also for local militias, neighbouring conflicts and predatory terrorist groups.

What Are the Alternatives?

In the opening chapter to this section, Rivzi argued that we are in the midst of an irreversible paradigm shift in the global order, and that

people are voting with their feet to secure their places in a highly unequal, globalised world. She concluded that the international community has both failed to face this new reality, and is hesitant to explore a new set of options that would enable migrants and refugees to access better set of life chances. It is clear that until this is achieved, and safe and legitimate means for migration are more widely available, the likelihood of reducing the demand for the services of smugglers is slim.

If this is the case, then the objective of any policy to counter human smuggling should be aimed at reducing the market to its most benign form, where smugglers are a source of protection and resilience for their clients, where there is minimal violence, minimal abuse and the actors involved in the market remain an embedded part of their communities and societies. This is contrary to the types of policies currently deployed. Militarised, securitised strategies, whether they manifest themselves in the form of warships, border patrols or criminal investigations are symbolic gestures at best, and counterproductive measures with far-reaching negative repercussions at worst. These policies have forced smuggling to the other extreme, exacerbated crises and enhanced the market for smugglers.

The international community needs to shift towards a more predictive, proactive and preventative approach to human smuggling. One of the greatest challenges, which most inflames negative public rhetoric and prompts the militarised clamp downs, is the speed at which smugglers amplify migration markets, activating their networks to mobilise new clients. The movement of people is not something that should be catching the international community and the first-line responding agencies by surprise, creating the poorly managed and shameful displays that have characterised contemporary 'migration crises'. Instead, early warning systems need to be built into migration monitoring, with analysis that will indicate smuggling networks are gearing up, consolidating or shifting routes. Interviews with the displaced or the irregular migrant need to include questions that will provide market insights, including on prices being paid, the existence of safeguards in the system and the local control groups. This is by no means a difficult policy to implement.

The goal should be to reduce the need for smugglers, rather than heighten it. This means creating alternatives, rather than closing avenues. Building borders creates concentrations of people and intensifies zones of migratory pressure. A better approach would be to diffuse this to the maximum extent possible, promoting sub-regional opportunities for migration and encouraging proximitous states to offer more open

migration options. It is noticeable, for example, that in the ECOWAS zone, where there is a broad freedom of movement policy amongst the 15 member states, the vast majority of migration is inter-regional, and the smuggling market is low level, garnering minimal profits.[12] Funding spent on militarisation would be better spent on offering incentives and support to neighbouring states to provide progressive integration strategies for migrants and refugees.

Even without addressing the demand side of the equation, there is an urgent need for a new toolbox to be deployed to counter human smuggling, particularly in its most negative manifestations. Given the highly localised nature of smugglers and smuggling, these alternative solutions must necessarily be tailored to the local context and environment. They should include a close mapping of the political economy of the region in order to establish to whom and how the profits of the industry are directed. This requires ongoing monitoring of market conditions around the smuggling industry to identify outbreaks of violence and the consolidation of control. They then require finding means to address human smuggling within the context of the broader socio-political framework of the country. This would facilitate the identification of incentives that would shift the interests of groups away from enabling this form of illicit trade towards central state consolidation and development, even in the furthest borderlands.

Given the community nature of smuggling, one conclusion is clear: the debate around migration and smuggling and the locus of responses need to be shifted from the state level to a grassroots debate. Many of the states from which migrants and refugees are coming, and where the major smuggling hubs exist, are either mired in conflict and crisis, or are critically weak with minimal institutional capacity. In some cases, it is the states themselves that are responsible for the persecution or marginalisation that has prompted the displacement in the first place, which makes them far from perfect interlocutors. For example, negotiations around the Horn of Africa's Khartoum Process brings together the EU's 28 member states with 6 Horn of Africa states to address human trafficking, smuggling and irregular migration.[13] The negotiation process reveals that the nature of this dialogue consists of lengthy 'train and equip' shopping lists for state security institutions, with no agreement on monitoring its implementation or measuring its impact. Experts and human rights advocates have described the agreement as 'foxes guarding the henhouse',[14] which rewards the poor governance that is the root cause of migration.

With a 'business as usual' policy of border security and enforcement to counter irregular migration and the smugglers that facilitate it, loftier and more laudable goals of global security, development and human rights are sacrificed in the face of militarised migration management.

Notes

1. Mahmoud is a pseudonym for a smuggler interviewed in Alsancak, Izmir in May 2016 by my colleague, Mark Micallef, for a Global Initiative research project funded by the Institute for Security Studies and the Hanns Seidl Foundation. Many thanks to Mark for making the conversation possible.
2. UNEP-INTERPOL (2016). The rise of environmental crime. http://unep.org/documents/itw/environmental_crimes.pdf.
3. *Protocol against the Smuggling of Migrants by Land, Sea and Air,* supplementing the United Nations Convention against Transnational Organised Crime, art. 3(a).
4. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organised Crime, art. 3(a).
5. C. Horwood and T. Reitano (2016) 'A Perfect Storm? Forces shaping modern migration and displacement', *Regional Mixed Migration Secretariat* (*RMMS*).
6. T. Reitano and M. Micallef (2016) 'Breathing Space: The impact of the EU-Turkey deal on irregular migration to the EU', *Institute for Security Studies.*
7. L. Harding, 'Authorities fear that as many as 50 migrants dead in lorry left by Austrian motorway,' *The Guardian*, 28 August 2015: https://www.theguardian.com/world/2015/aug/27/migrants-found-dead-inside-lorry-in-austria.
8. For more information on the vulnerability of migrant women in transit in the Balkans, see Nobel Women's Initiative, *Women Refugees at Risk in Europe*, March 2016: http://www.atina.org.rs/en/new-report-women-refugees-risk-europe.
9. Drawn from a discussion in March 2016 in Berlin, also cited in P. Tinti and T. Reitano (2016) *Migrant, Refugee, Smuggler, Saviour*, London: Hurst Publishers.
10. For more information on migration in the Americas, Oscar Martinez's 2014 book *The Beast: Riding the rails and dodging the narcos*, London: Verso is unparalleled. This was also documented in Ioan Grillo's excellent account of the drug wars in Mexico, Ioan Grillo (2011) *El Narco: The Bloody Rise of the Mexican Drug Cartels,* London: Bloomsbury Press.

11. M. Shaw and F. Mangan (2014) *Illicit trafficking and Libya's transition: Profits and losses*, Washington DC: US Institute of Peace and M. Toaldo, 'Libya's migrant smuggling highway: lessons for Europe', London: European Council on Foreign Relations, 10 November 2015.

12. T. Reitano, 'Human Smuggling from Africa to Europe' in OECD/AfDB *Illicit Financial Flows: Criminal Economies in West Africa*, Paris: OECD, October 2017. The relative levels of migration within the region are difficult to measure, but some expert studies have suggested that as much as 90% of West African migration takes place within the ECOWAS zone.

13. 'Declaration of the Ministerial Conference of the Khartoum Process', Rome, 28 November 2014: http://italia2014.eu/media/3785/declaration-of-the-ministerial-conference-of-the-khartoum-process.pdf.

14. N. Grinstead, 'The Khartoum Process: shifting the burden:', The Hague: *Clingendael Institute*, 22 February 2016: https://www.clingendael.nl/publication/khartoum-process-shifting-burden.

Author Biography

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Tuesday was formerly the director of CT MORSE, an independent policy and monitoring unit for the EU's programmes in counter-terrorism, and for 12 years was a policy specialist in the UN System, including with the UN Development Programme (UNDP), the UN Development Group (UNDG) and the UN Office on Drugs and Crime (UNODC), as well as a number of years in a boutique consulting firm as an advisor on justice, security and governance issues.

Tuesday has authored numerous policy orientated and academic reports with leading institutions such as the UN, World Bank and OECD on topics ranging from organised crime's evolution and impact in Africa, human smuggling, illicit financial flows, and the nexus between crime, terrorism, security and development. She has co-authored a book on human smuggling, *Refugee, Migrant, Smuggler, Saviour* that was published by Hurst in September 2016.

The Militarisation of Migration: From Triton to Sofia: Assessing the Credibility of the EU's Naval Interventions Against Migrant Smuggling in the Mediterranean

Peter Roberts

INTRODUCTION

The European response to the 2015 influx of migrants was the commissioning of a naval force to conduct interdiction operations. Its aim, according to the European Union ('EU') foreign policy chief Frederica Mogherini, was to 'destroy the business model of smugglers'.[1] The objective of that policy later altered from destruction to disruption[2]: the reasons for this were never made clear. The naval force responsible for enacting this policy is known as European Naval Forces Mediterranean (EU NavFor Med), later renamed Operation *Sophia*, commanded in Rome by Rear Admiral Enrico Credendino. The mission was supposed to represent a more comprehensive EU approach to mass migration in the Central Mediterranean than its predecessors *Triton* (focussed predominantly on criminal groups ashore in Libya) and *Poseidon* (whose operations were largely conducted at sea off Greece and Albania). The *Sophia* mission

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commenced on 22 June 2015 and is lauded by its commanders as a success—Lieutenant General Wolfgang Wosolsobe, Director General, EU Military Staff, has cited lives saved and boats destroyed as indicators of the value that naval forces were having in combating people movement.[3] Yet, the International Organisation for Migration's (IOM) figures for arrivals between January and April 2016 show little change in the recorded people flows against the same period for previous years, and a consistently huge number of deaths at sea.[4] By any measure of effectiveness, the credibility of the EU naval force is, at best, questionable and, as argued here, was a flawed construct from its inception. Indeed, the policy of the EU and of individual states fails to tackle the core issues around migration: militarising the issue has, in many ways, exacerbated the challenge by giving a false sense of action, a perception of achievable solutions and measures of success not associated with the core problem. This chapter argues that such policies are based on an oversimplification of migration challenges and a belief that migration can be deterred by the use of military forces, yet without any associated punitive action. Such a basic failure—to correctly identify the problem—is resulting in a deeply flawed policy that dooms the primary mission of the military force to perpetual frustration and failure.

This chapter will briefly describe the EU military mission in the Mediterranean, together with its provenance, and examine the Aegean experience of migration in 2015 and 2016. The subsequent analysis will scrutinise the reasons for failure, current and future, exposing the flaws in the design of the mission. An examination of global experiences in migration highlights lessons that might have been transposed onto the European theatre but were not. The chapter analyses the core issues at the heart of migration to Europe and the reasons why a militarised response will not match the challenge, exposing deterrence as a flawed methodology to counter migrant flows. Finally, the chapter explains a potential future use of military forces, in response to changing popular and political demands. It concludes that the changes required for success are not scale, technology or resource, but rather lie in the way migration is understood, its causes and the European appetite for a lasting solution rather than knee-jerk responses to populist media coverage.

The Civil–Military Divide

It could be argued that European state bodies have significant cognitive biases relating to migration, and these have influenced policy and activity in a distinctly unhelpful manner. Western political orthodoxy appears

to understand decision-making by migrants within a popular 'push-pull' model which suggests that the decision of people making the journey to Europe is based both on their current circumstances in comparison to the attractiveness of Europe, and the ease of making the transit. Such orthodoxy has prompted decisions by governments that might otherwise appear strange, for example the withdrawal of the British government from the *Mare-Nostrum* (life-saving) mission in the Mediterranean because it 'create[d] an unintended "pull factor", encouraging more migrants to attempt the dangerous sea crossing and thereby leading to more tragic and unnecessary deaths'.[5] According to leading scholars, the dynamic is much more complex than the binary one that appears to underpin many of the recent policy debates in Europe.[6, 7, 8, 9] In contrast, the popular media continues to argue that the perception of rescue vessels just off shore has made smugglers richer and increased the number of migrants and the type of vessels they are willing to use, thereby increasing the risk to themselves. This is apparently because there exists an understanding that European naval vessels are stationed off the coast ready to transport migrants to Italy. That argument then goes on to purport that these factors changed the types of vessel being used for migration and smuggling between North Africa to Europe during 2015. There is some evidence to support this last point.[10]

There has, on occasion, been a shift in smuggling vessels on some vectors from those theoretically capable of making the passage across open seas (that is, larger wooden or metal fishing vessels) to those only able to get into open waters (for example, much smaller rigid inflatable boats without provision or fuel for a transit of several hundred miles). Yet, the evidence does not prove a connection between the types of vessels used and the causality for the shift. Just as it is possible to argue that migrants would accept passage in a small dingy because of the presence of European vessels just beyond the visible horizon, it is equally likely that migrants have been told that a smaller boat can make the transit but at a cheaper price, and that those migrants are willing to take such a risk. There is little evidence from Libya, or from those low-level criminals arrested in Italy related to smuggling operations, that the arrival of military forces has altered the business model of smugglers in any way, nor the decision-making calculations of fee-paying passengers. In either case, there is no doubt that the use of smaller boats increases the number of fatalities, particularly as the sea conditions between Africa and Europe are remarkably harsher than those between Turkey and Greece, and the distance much greater.

However, there is research that suggests an increased number of deaths can be attributed to migration when responsibility for life-saving is left to merchant vessels as part of their normal business and not assigned to search and rescue as a discrete mission. This evidence is not surprising if one considers the lessons of mass migration at sea from elsewhere. The two examples used by the Goldsmiths University, UNHCR and Médecins Sans Frontières (MSF) to illustrate how civilian vessels caused mass fatalities in 2015 are highly selective and need to be approached with a degree of caution in drawing policy recommendations.[11] This research highlights two case studies: one where a vessel carrying migrants capsized because it was approached by a merchant vessel; the second where a collision occurred between a large vessel and a small boat in the central Mediterranean. Both tragedies were largely predictable given the lack of guidance issued by EUNavFor, and the realities of ship design. US Coast Guard District Seven is the centre for counter migration operations from the Caribbean to the continental United States. Their guidance on approaching a boat filled with migrants is clear—use two smaller boats to approach the stricken vessel from either side. Such basic procedures prevent capsize situations because the passengers move towards both sides of the vessel rather than just one, preventing the change in stability caused by a large shift in weight to one side. Where a vessel is making passage between one port and another, it relies on automatic warning systems designed to detect other vessels, not smaller boats or individual people in the water. Furthermore, the efficient routing of ships does not bring vessels in close proximity to the coast, where migrants are likely to be in greatest danger or have the most urgent requirement for assistance, factors which may prompt a Captain to increase the number of human lookouts to supplement radar systems. Without radios to alert passing merchant vessels of their presence, it is tragic but unsurprising that collisions occurred. Drawing broad conclusions without understanding the context of the situation is extremely dangerous, particularly when such conclusions are based on highly selective examples. Any deduction that merchant ships conducting life-saving at sea, in accordance with legal obligations, increases overall fatalities at sea is highly dubious. Neither should such preconceptions detract from the opportunities for increasing European capacity for search and rescue by exploiting potential arrangements with private security companies that could provide suitably experienced crew and vessels for life-saving to the EU. There is no evidence that the EU policymakers undertook a serious

Libyan Coast
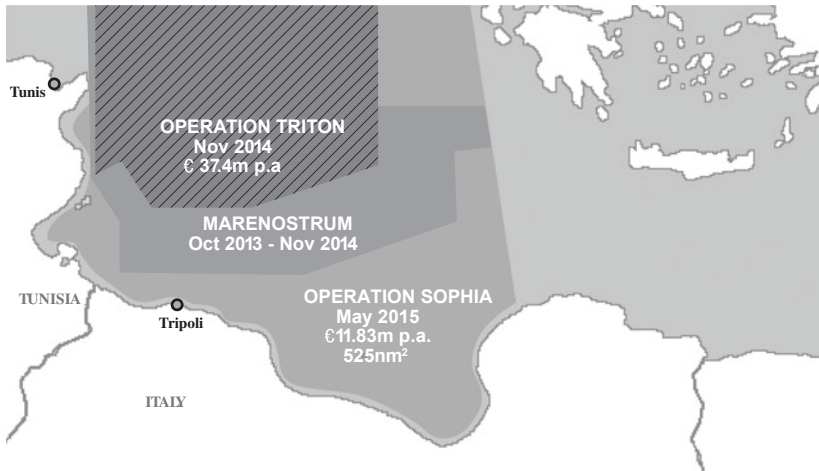
Fig. 13.1 Comparing operational coverage of Mare Nostrum, Triton and Sofia. *Source* Author

examination of the factors concerning migration, but rather provided a knee-jerk response to individual state interest and pressure. As a result, the primary element of the EU's plan, in the form of operation *Sophia*, has been to militarise the migration issue in the Mediterranean and the Aegean (Fig. 13.1).

Operation *Sophia*—Destroying the Business Model

The main task of the naval mission is the disruption (or destruction) of the business model of the traffickers. The original military plan for seaborne operations had three phases: surveillance, interdiction and network destruction. It has since added a fourth phase—disbandment after the year-long mandate expires. This is a simple, no-nonsense sequence of objectives. Understand the enemy (which boats they are using, where they come from and go to), interdict their means of profit (the boats), which in turn should remove their ability to make a profit. Ergo, according to the plan, a failure of the business model. The forces assigned to the EU for this mission have come from 12 states, each typically sending a single ship or aircraft for a period of time (some are on

task for a week, others are assigned to *Sophia* for several months). As the Press Office at EU NavForMed has highlighted, the anti-migrant military coalition is substantially larger than that.[12] Twenty-four states contribute people or intelligence to the mission, usually through the force headquarters in Rome. Ironically, for a force that is so short of deployable units, on some days the headquarters staff is almost as large as the force it is commanding.

The secondary aim of operation *Sophia* is to save lives at sea. Here, the challenge is simple—to have ships in the right place and time to pick up migrants before their boats sink and they drown—but the execution is complex as the lack of ships available to EU NavFor Med prevents ubiquitous coverage of the area. Whilst detecting ships that are sinking requires the marrying of surveillance and rescue capabilities, it does not require the exquisite technology of military aircraft and warships. High levels of technological integration within the force are not required and the life-saving role has been carried out with equal success by coast-guards and civilian ships. For this part of the mission, capacity, not technology, is the issue.

The military plan has involved flooding the areas around the Libyan coast with radar and planes in order to identify potential smugglers, board those vessels, remove the migrants, arrest the crew and impound or sink the boats when everyone has been removed. Yet, the wording of the *Sophia* resolution, and indeed the aspirations of the EU External Action Service, seeks permission to destroy vessels ashore in a similar model to that used in Somalia, that is before they were being used for illegal activity. It is unclear how this can be effected without putting people ashore in Libya, which falls outside the mission's remit. Without people on land making a full inspection of the vessels targeted, it is challenging, if not impossible, to ensure that below-decks are clear of people before destruction (presumably by aircraft or drones). Similarly, it appears untenable to suggest that criminal activity may be investigated, and police action taken to destroy the business model of the criminal groups from several hundred miles away. Even those with a basic understanding of naval operations—including UN Secretary-General Ki-moon—therefore see the flaws in the plan.[13]

Commentary on the mission from other experts has also highlighted that the current plan is unworkable, failing to address the core issue of migration whilst misleadingly suggesting to the public that the route will be full of terrorists and armed criminals.[14] There has also been a lack of

realistic alternative models or suggestions: a naval blockade of the entire Libyan coast—all 1100 miles of it—is one of the more unrealistic models to emerge.[15]

The Aegean Experience

In 2015, migration from Syria to Europe triggered a large surge of people moving across a new vector from Turkey to Greece and thence to mainland Europe. The numbers exceeded even those that had been moving from Libya to Italy, as did the number of deaths at sea: 806 migrants died at sea on the eastern sea route, compared to 2892 in the central Mediterranean. Reactions throughout that year saw a huge change in the migration debate and dynamic within Europe, but also spurred political responses that challenged several of the fundamental principles of the EU, specifically free movement of people under the Schengen Agreement. Angela Merkel, German Chancellor, made her bold '*No Limits*' statement in August 2015 which permitted all migrants free access into Germany and triggered a further increase in movement up the corridor through the Balkans.[16] Subsequent months saw the official figures of migrants moving through Greece increase dramatically: 54,899 (Jul 2015); 107,543 (August 2015); 147,123 (September 2015); to its height of 211,663 (October 2015).[17] States reacted fiercely, re-fortifying sovereign borders to prevent entry to their territory. In contrast, the response at sea was insignificant. The short distances involved in making the transit from Turkey to mainland Europe meant that vessels were notably smaller, disposable, more exposed and fragile. Journey times were shorter and the sea notably calmer than in the southern Mediterranean, factors that saw 845,852 migrants make the Eastern Mediterranean route crossing in 2015 compared to 153,052 in the central Mediterranean.

Whilst the EU remained paralysed by internal political struggles, no change was made to the Operation *Sophia* mandate and the focus of effort (the southern Mediterranean) remained, with forces assigned to these areas. NATO commenced its involvement on 11 February 2016, with an announcement that it would deploy vessels to the Aegean to monitor the situation but only in a surveillance capacity. SACEUR hinted at the possible expansion of that role to include counter migration activities immediately after the official announcement. Whilst not duplicating the EU force structure or mission, the intervention by NATO

was a tacit acknowledgement that the EU Naval Force Mediterranean was incapable of fulfilling its policy mission, both in terms of force structure, command and control and its ability to influence in the region. The deployment of *FGS Bonn*, *HMCS Fredericton, TCG Barbaros* and *HS Salamis* had little impact on the quantum or structure of movement between Turkey and Greece as the NATO mission was focussed on search and rescue, not interdiction and repatriation. However, flows almost immediately halted when the German government, and subsequently the EU, announced plans to place processing centres in Turkey and accept asylum applications from there alone. As word spread, the number of people making the transit across the Aegean fell dramatically and even reversed when the joint EU–Turkey statement was made on 18 March 2016 that introduced repatriation activities. This announcement saw migrant numbers on the Eastern route fall from 26,271 in March 2016 to just 3650 the following month.

The rapid deployment of naval vessels by NATO to the Aegean was therefore coincident with, rather than the cause of, this definitive change in people flows. The deployment did, however, serve to highlight several broader factors regarding the use of military forces in the face of security challenges: that military assets can be deployed to a region quickly and in a state fit for task (something that takes law enforcement agencies a period of some months to achieve, and even then such forces are often inappropriately equipped); that NATO commanders possess the mandate, forces and delegations necessary to meet contingent constabulary[18] operations without the lengthy delays associated with EU structures; and that military forces are able to rapidly assimilate information, make judgements and take independent actions appropriate to their delineated role, and can adhere to the boundaries they are given by their political masters. Such reasons continue to make the deployment of martial forces an important first response by leaders wishing to demonstrate an intent and ability to take action in the face of a problem or challenge. Yet, there are few outside NATO who believe the deployment of military forces to the Aegean contributed to the radical change in migration patterns on to Europe.

Operation *Sophia*: Intrinsically Flawed?

The raison d'être of Operation *Sophia* is simple and understandable. It was designed to achieve the mission that has been assigned to it (that is, the disruption of the business model of smugglers), and to exploit the

lessons of the previous EU maritime mission—Operation *Atalanta*, the anti-piracy mission in the Gulf of Aden. Yet, the mission, the plan, the force design and the implementation have serious flaws and cannot meet the mission objectives nor provide a solution to the problem.

1. *Basis for action*: Operation *Sophia* was the second EU common security and defence policy maritime operation and was based on the first such mission—the EU anti-piracy mission in the Gulf of Aden (Operation *Atalanta*), where activities included destruction of vessels ashore. The structure of the former was explicitly based on that of the latter, with Rear Admiral Enrico Credendino selected to lead both. However, Operation *Atalanta* was designed to counter the naval activities of Somali pirate groups against international shipping, including the hijacking of ships using small arms and rocket-propelled grenades. Due to the distances involved, the inherent level of violence and risk implicated the need to communicate and co-ordinate at sea over significant geographic areas and the need for a fast response, the EU anti-piracy mission was ascribed to military forces with a mandate to protect vital state interests. Yet, piracy posed a threat to security, peace and good order—indeed piracy incidents were a threat to life on numerous occasions. As such, the basis for action, Chap. 7 of the UN Charter, was clearly appropriate, and the implementation of the operation therefore lawful. Migration does not pose such threats and it would be a struggle for any Western institution to make the case that it did, despite statements made by Mogherini.[19] The UN has therefore struggled to find a credible legal basis for the proposed EU plan. The EU External Action service has also critiqued the efficacy, and indeed appropriateness, of utilising a military force to conduct an essentially law enforcement task on the basis of ill-defined, and arguably largely irrelevant, 'success' in the Gulf of Aden, and which ignores the inherent differentiation between the two missions.

2. *The plan*: There are a number of better precedents on which to base anti-migration operations at sea. Both the US Coast Guard and the Royal Australian Navy have significant experience in such operations: these organisations could therefore have provided useful and relevant advice both in terms of policy and tactics. These are examined in detail later, but it is clear at this stage that the basis

of those operations has been one of repatriation—not a goal within the EU plan. Nor does it appear there was a desire to seek wider experience outside EU member states. A blind reliance on the *Atalanta* experience is troubling because simply overlaying a military plan for counter-piracy operations on to a migration mission does not take account of the intrinsic difference at the core of each mission, nor of the suitability, and indeed ability, of military forces, versus law enforcement ones, to conduct it.

3. *Symptoms, not causes*: It is key to question what problem the *Sophia* operation is intended to address. Migrants in boats are symptoms not causes of the problem. Destroying Libyan fishing boats ashore, and thus any potential alternative source of income, is counter-productive. In all likelihood, it would drive migrants to make crossings in unstable, inflatable boats that can be hidden in the back of a car before use. These vessels already have a slim chance of making a successful crossing in calm seas, but they have no chance at all in harsher weather. Destroying vessels ashore could plausibly increase the death toll in the medium term. Sinking vessels that have been used for illegal activity at sea is, subject to certain conditions, permitted already without the need for a specific UN mandate. Such vessels can be sunk when they pose a 'hazard to navigation', an action in the gift of good mariners that is regularly undertaken by coalition nations in the Caribbean. The majority of migrants are not from Libya. Engagement with the root causes at the source of migration and nefarious activity would therefore be more successful in the longer term. This conclusion is clear from an analysis of the Aegean experience. Naval presence had no impact on migration numbers compared to the opening of processing centres in Turkey. Even then, there is broad acknowledgement that such political action did not address the fundamental cause of people movement.

4. *Geography*: The resolution upon which Operation *Sophia* was launched sought authorisation to conduct military operations ashore, in Libyan territorial seas and on the high seas. Such actions also need permissions from the Libyan national authority. However, it is unclear which fighting faction the EU would approach for such permissions. Consulting either would likely cause the other to draw conclusions of bias. Far from clarifying the EU position, such action would add complexity to an already uncertain and unstable region.

The reality of these problems is stark—the head of the Libyan Coastguard in Tripoli is unable to talk to coastguard vessels and personnel in other coastal towns since they are from different factions.[20] Such factors undermine attempts to bring Libyan authorities into EU NavForMed operations.

5. *Other priorities*: The Libyan coastline and search area are large. Whilst technically possible, covering such an extensive region requires a substantial number of ships and aeroplanes. However, navies are much smaller now than even a decade ago, and even an extremely technically advanced vessel cannot be conducting migration surveillance and response whilst countering Russian submarines in the Baltic, pirates in the Gulf of Aden or Iranian aggression in the Straits of Hormuz. In essence, in order to adequately support such a strategy, national politicians would need to prioritise this issue ahead of other security issues and allocate scarce military assets accordingly. In the face of revanchist Russian activity in the Black and Baltic Seas, as well as requirements to use naval forces to enable the removal of chemical and biological weapons from Syria, this has not happened.

Global Experience

Every successful at-sea counter migration policy to date has had the policy of repatriation at its core. For the EU this would be challenging since the vast majority of migrants come from across Africa, using Libya purely as a stepping stone on their journeys. But without accepting the possibility of repatriation, the EU is placing nations in an untenable situation: states will be forced to accept the inflow of people without having any power to dissuade other migrants from embarking upon their journey. Lessons from Australia and America show that repatriation to country of origin does have an impact on people flows—albeit that the impact is not immediate.

Enforced repatriation to the country of origin is not pleasant: mistakes are made and those with legitimate claims do get overlooked. Such a policy is often met with hostility from media and humanitarian organisations, damaging political reputations. The Australian government is often criticised for taking an extremely hard line over migrants. Indeed, the EU has itself offered criticism in the past and might appear to be hypocritical if it chose to implement such a policy of its own.

The current *Sophia* plan makes no allowance for repatriation, engendering a European policy that envisages a military force as a deterrent to halt the flow of smugglers, but lacks any punitive activity to impact the cause–effect decision-making of people making the journey. On the basis of that policy, the reality of any naval mission outcome looks likely to constitute an expanded search and rescue operation, rather than an effective interdiction of migration.

The other significant lesson that should have been drawn from wider experience is an understanding that prosecuting business models for people smuggling is not a military mission, but rather a law enforcement one. Criminal business models are not like legal commercial entities that can be traced and identified by over-the-horizon methods. They require the investigation of people higher up the chain than the fishermen in their employ who are likely to have little or no knowledge of the persons running the criminal network. Investigations into criminal groups, gangs and networks require a broad source base, not merely the individual smugglers picked up on arrival in Italian ports. Other attempts to tackle migration at sea have acknowledged the lack of military skills required, and indeed suitable, for this task. Even where organisations have included military forces to conduct the operation, they are headed by law enforcement agencies, not military leaders.[21] This alone changes the dynamic and focus of missions.[22] To its credit, the EU has acknowledged that *Sophia* is now only an element of a more comprehensive EU approach, but Mogherini and the EU External Affairs service have not integrated and adapted instructions to EU NavForMed to reflect this change. Police investigators from EUROPOL are unable to go ashore in Libya and can only conduct information sharing and financial investigations from the mainland. Their access and penetration into criminal networks are poor, hampered by the cost–benefit conundrum in Brussels that must balance the costs of protection for police personnel in North Africa against overall EUROPOL budget and the likelihood of success of such investigations.

The Crux of the Problem: Deterrence

Migration is a symptom of a wider issue—economic disparity. Some have argued that the movement of people is a delayed response to the globalisation of trade and industry, others that technology has changed aspirations for people in less prosperous nations by facilitating comparisons

with neighbours, as well as with their counterparts in significantly more prosperous nationals across the globe.[23] Consequently, taking preventative measures at sea will not stop the flow of people from their source location, whether they are moving for economic or security reasons. In militarising the policy response to migration, the EU is framing the maritime mission as an attempt to deter such movement; however, it is key to consider whether the concept of deterrence is even valid in the context of migration. Deterrence relies, critically, on the cost/risk–benefit calculation made in the minds of the deterree, not the deterrer,[24] that is changing the factors that impact the decision sufficiently to make migration less attractive than remaining in situ. Yet, the possible risks posed by the EU naval mission to any traveller are that instead of making the journey successfully with a smuggler, a naval ship will pick them up, give them first aid, water and food and land them into mainland Europe. The risk is not sufficient to change the risk–benefit analysis, making the deterrence theory, in this case, invalid. Even if the EU adopted a policy of enforced repatriation, the decision-making paradigm is unlikely to alter significantly, as EU law would prevent, for example, returning a refugee to a place where they might experience a contravention of human rights. For those who originate in Eritrea, Ethiopia or significant number of other source countries, such a dynamic is likely to take a long time to prove one way or another. Neither is enforced repatriation likely to deter those coming from many source countries, including Afghanistan and Iraq, where the security and economic situation in their originating homelands make remaining unattractive and enforced repatriation merely forces people to recommence the journey.[25]

A Future Migration-Related Military Role in Europe?

Finally, there is an increasing possibility that politicians may soon require militaries to respond to the migration crisis in Europe, but not in law enforcement roles. Instead, they may be required as a reaction to fear within states from a rising sense of unsustainable people movements. Alternatively, due to a reluctant acceptance in the West that it may need to act to reflect its own values on the disaster unfurling in Syria, the mass use of military forces to carve out a 'safe-haven' inside Syria remains a distinct possibility. This is not a small-scale, short-term task, but one that would require significant military capabilities, a robust mandate and strategic patience from policymakers. It would be a continental response

fitting of a continental challenge, but one that would have a significant economic and human cost.

CONCLUSIONS

The failures of European institutions and states to deliver a coherent and feasible strategy to counter the migration crisis in Europe will not end even if the mandate of the military forces changes to one focussed on life-saving, a reversion to the original *Triton* and *Poseidon* mandates, in turn the successors to the original *Mare Nostrum* mission. The scale of the movement of people in the coming years will not shrink; on the contrary, it is likely to increase. As such, growing the capacity for life-saving must be the key goal, and it is one that military and law enforcement forces cannot achieve alone. There is, however, assistance available. Commercial entities are capable and willing to provide additional capability to meet the demand, and these vessels need not be the expensive commercial vessels previously chartered by Operation *Sophia*'s commanders. Group One and Globalert, for example, are two providers who could provide low-cost capacity across a range of missions, from life-saving to surveillance and warning, that the current EU mandate requires. Neither are they expensive—the current budget provision from the EU could easily cover such costs, increase capacity and save thousands of lives whilst releasing state-owned assets for more pressing security concerns in other areas of Europe's borders.

The key changes required to find solutions to the European migration issue are not financial, nor do they relate to a reassessment of existing priorities. Instead, the requirement is for a different way of approaching the problem—one that accepts the need for a longer term view, acknowledges the complexity of the issue and adopts a broader aspiration than European institutions currently appear to have an appetite for.

German Chancellor Angela Merkel changed the dynamic for people arriving in Europe from Syria. The opening of offices in Turkey for those seeking to make European asylum applications has altered the process and geography of migration along the Asia to Europe vector. It could be argued that it has also undermined the business model of the criminal groups involved in people smuggling through the Balkans. Yet, there are also indications that the flows from North Africa, specifically through Libya and Egypt, are increasing. It remains unclear whether this shift in the flow of people is a response to the revised policy, or simply

an increase in seaborne traffic in response to calmer weather conditions. There are no European asylum application offices in North Africa. The EU is therefore continuing to fund and resource the operation *Sophia* mission as a deterrent on this migration vector. However, continuing to press the military for results against an undeliverable mission does a disservice to both martial personnel and all others involved in addressing the challenges engendered by an increase in migration.

NOTES

1. S. Peers (2015), 'Analysis: The EU's Planned War in Smugglers', *Statewatch No. 268* http://www.statewatch.org/analyses/no-268-eu-war-on-smugglers.pdf, date accessed 17 April 2016.

2. The Common Foreign and Security Policy (Council Decision) 2015/972 of 22.6.2015, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D0972&from=EN, date accessed 27 June 2016.

3. W. Wosolsobe, (Lieutenant General, Director General, European Union Military Staff) oral evidence to the House of Lords EU External Affairs Sub Committee in London on 4 March 2016, http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-external-affairs-subcommittee/news-parliament-2015/european-union-military-staff-evidence-session/, date accessed 11 April 2016.

4. International Organization for Migration (2016), http://www.iom.int/news/mediterranean-migrant-arrivals-2016-177-207-deaths-732, date accessed 18 April 2016.

5. Hansard (2014) Column WA41, response to question HL1977. Baroness Anelay speaking in the House of Lords, http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141015w0001.htm, date accessed 11 April 2016.

6. E. Thielemann (2004), 'Does policy matter? On governments' attempts to control unwanted migration', CCIS Working Paper 112. San Diego, CA: University of California.

7. H. de Haas and S. Vezzoli (2011), 'Leaving matters: The nature, evolution and effects of emigration policies', Project Paper 4. Oxford: DEMIG, University of Oxford.

8. H. de Haas, K. Natterand and S. Vezzoli (2014), 'Compiling and coding migration policies: Insights from the DEMIG POLICY database.' Working Paper. Oxford: IMI, University of Oxford.

9. Y. Markaki (2015), 'Why do international migrants come to the UK?' Election 2015 Briefing. Oxford: Migration Observatory, University of Oxford.

10. P. Kingsley (2015), 'Libya's people smugglers: inside the trade that sells refugees hopes of a better life' *The Guardian*, https://www.theguardian.com/world/2015/apr/24/libyas-people-smugglers-how-will-they-catch-us-theyll-soon-move-on, date accessed 28 June 2016.

11. C. Heller and L. Pezzani, 'Death by Rescue: The Lethal Effects of the EU's Policies of Non-Assistance', report produced by Forensic Oceanography/Forensic Architecture, Goldsmiths, University of London, within the Economic and Social Research Council (ESRC) supported 'Precarious Trajectories' research project: https://deathbyrescue.org.

12. EEAS (2016) 'Factsheet: European Union Naval Force—Mediterranean Operation Sophia', update 15 September 2016, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf, date accessed 24 September 2016.

13. J. Politiand and D. Robinson (2015), 'Ban Ki-moon attacks EU plans for strikes on Libyan smugglers' boats' *The Financial Times*, http://www.ft.com/cms/s/0/9955eaa2-edaf-11e4-a894-00144feab7de.html#axzz46AhYDxvL, date accessed 27 June 2016.

14. I. Krastev (2016) 'Fear and loathing of a world without borders', *The Financial Times*.

15. M. Giannangeli (2015), 'UK troops to smash migrants trade: Navy to stop flood of refugees from Libya' *Daily Expr*ess, http://www.express.co.uk/news/uk/577809/UK-troops-smash-migrants-trade-Royal-Marines-stop-flood-refugees-Libya, date accessed 27 June 2016.

16. De Spiegel (2015). 'Mother Angela: Merkel's Refugee Policy Divides Europe'.

17. The Office of the United Nations High Commissioner for Refugees (2016), 'Migrants/Refugees Emergency Response—Mediterranean' http://data.unhcr.org/mediterranean/country.php?id=83, date accessed 27 June 2016.

18. The differentiation between constabulary operations (policing actions undertaken by military forces where the legal mandate exists) and law enforcement (police actions undertaken by civil police authorities) is an important distinction for legal reasons as some states' naval forces do not have the legal authority to conduct civil policing roles which must be left to civil bodies. In the interests of consistency, this nuance is ignored for the remainder of the chapter, and the assumption is that sufficient mandates would be provided to the requisite forces to undertake law enforcement action.

19. P. Sherwell and N. Squires (2015), 'Migrant crisis is a security crisis says EU foreign policy chief' *Daily Telegraph,* http://www.telegraph.co.uk/

news/worldnews/europe/eu/11597651/Migrant-crisis-is-a-security-crisis-says-EU-foreign-policy-chief.html, date accessed 27 June 2016.
20. He also has a restaurant to run, which is the main source of his income.
21. For example, the Joint Inter Agency Task Force (South) in Key West, Florida, is commanded by a senior US Coast Guard officer, with a military deputy.
22. G. Demarest (1993), 'Expeditionary Police Service', Military Review, pp. 50–56, http://fmso.leavenworth.army.mil/documents/exped.htm, date accessed 27 June 2016.
23. I. Krastev (2016) op.cit.
24. E. Lieberman (1995), 'Deterrence theory', Institute for National Strategic Studies, National Defense University.
25. J. Hagen-Zanker and R. Mallett (2016), 'Journeys to Europe: The role of policy in migrant decision-making. Overseas Development Institute', London, http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10297.pdf, date accessed 11 April 2016.

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How US Customs and Border Protection Became the World's Largest Militarised Police Force

Brian Erickson

THE HUMAN COST OF MILITARY-STYLE POLICING AT THE US–MEXICO BORDER

Jorge, Jose Antonio and Maria don't know one another. They come from distinct backgrounds, but their stories intersect at the US–Mexico border and with the largest police force in the United States, and perhaps the world—US Customs and Border Protection (CBP).

Jorge grew up in a small, agricultural community located approximately 80 miles north of the US–Mexico border. When he wasn't excelling in school or playing football, Jorge found work processing green chile, a nationally sought delicacy famous to Hatch, New Mexico. Jorge enrolled in New Mexico State University (NMSU) and completed his master's degree in criminal justice in the spring of 2016.

Jorge shares a Hispanic or Latino identity with roughly 60% of the population in southern New Mexico. Like many young men of colour in the United States, Jorge rubs his arms as he explains how skin colour

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alone renders him suspicious in the eyes of law enforcement. His experience differs from that of other young men in a unique way, however. He grew up commuting to Las Cruces, New Mexico through one of hundreds of interior checkpoints operated by Border Patrol, the federal law enforcement agency within CBP responsible for enforcement between ports of entry.

On his way to school, the movies, work or even home, Jorge is forced to answer to armed federal agents. In practice, interior checkpoints serve as a de facto stop and frisk of border residents. Jorge recalls the fear and paternal instinct that set in the minute he recently defended his constitutional right to not consent to a search. As five armed agents descended upon his truck along a rural highway in New Mexico (where Jorge hadn't seen a vehicle pass by for minutes), Jorge instructed his younger cousin to keep his hands in sight and not move.

Jose Antonio, like Jorge, grew up in a border community. Unlike Jorge, however, Jose Antonio was a Mexican national living on the other side of the border in Nogales, Sonora. He loved his mother and looked up to his brother. In the early evening of October 10, 2012, Jose Antonio walked peacefully along Calle Internacional after a game of basketball with his girlfriend and friends. To his right stood a doctor's office, and on his left, the US–Mexico border wall towered above him. The border wall sits perched atop a 25-foot cliff and rises an additional 25 feet above the cliff.

Unbeknownst to Jose Antonio, Border Patrol agent Lonnie Swartz approached the border wall from the US side. In response to an alleged assault by rocks, referred to pejoratively by agents as a 'rocking', Agent Swartz unloaded his semi-automatic pistol, sending a barrage of bullets raining down on Calle Internacional.[1]

In El Salvador, the sound of gunfire rings all too familiar for Maria and her five daughters. Gripped by gang violence, Maria worries every time her 19-year-old daughter steps out the front door. Her maternal instinct tells her to flee this violence. Like many, she fears the dangerous trek north is the only way to live in relative peace and safety. A few weeks ago, gang members slaughtered 27 students at her daughter's school in Sonsonate on a day now referred to as 'Black Friday'. The same young men executed her neighbour for failing to pay their quota—a fee extorted from residents by criminal organisations. Now in her home, they hold her by the neck and promise to kidnap, rape and kill her eldest daughter if she too fails to pay.

With no confidence in police protection, Maria and her daughters set out for the US–Mexico border, where they hand themselves over to Border Patrol agents on July 14, 2014. In custody, her experience hardly resembles the vision she held of the United States as a nation of values and place of refuge. Her request for bread is met with an offer to lick the agent's boot. In tears, she retells her experience in Border Patrol short-term custody facilities, referred to widely as 'hieleras' (freezers in Spanish). The greatest pain, however, came when the US government decided to parole her with her four minor children to await their court date while detaining her 19-year-old daughter, the one she sought to save, in a privatised immigrant detention facility thousands of miles away.

Jorge, Jose Antonio and Maria's stories are not unique, but representative of the human cost exacted by CBP's military-style, discriminatory policing of the US–Mexico border. With 60,000 employees—roughly 44,000 armed federal agents—CBP self-proclaims to be the largest police force in the world.[2] Its air assets alone, including Predator drones brought home from wars in Afghanistan and Iraq, outpaces the entire air combat fleet of Brazil's armed services.[3]

Exactly how CBP became the United States' largest police force is not only instructive for other nations but of undeniable significance. CBP regularly travels the world, consulting on policing strategies and exporting their philosophy of paramilitary border control to agencies worldwide. Therefore, while focused on the US–Mexico border, a brief exploration of the recent history and US context that gave rise to these real-life anecdotes will serve to illuminate basic themes behind militarised approaches to border security and their implications for rights protections more broadly.

In short, the United States' predominant policy response to human migration over the past three decades has been one of enforcement-only strategies, which place their overarching faith in a single concept—*deterrence*. In a post-9/11 world, CBP's added national security mission justified Congressional and Presidential initiatives that pushed good government expectations of transparency, oversight or accountability to the wayside in the interest of doubling CBP in less than a decade. Finally, and most importantly, the unprecedented investment in militarising CBP occurred in southwest border communities where roughly 15 million Americans live, play and work. Border Patrol has become an occupying force that treats border residents with suspicion—especially those agents deem to look or sound foreign.

Discriminatory, Military-Style Policing of US Border Communities

When Valentin Tachiquin recounts the story of his daughter, Valeria Munique Tachiquin, he always starts the same way. In the angst of a silent congressional meeting room in Washington D.C. on November 5, 2015, Mr. Tachiquin's fist strikes the podium nine times. The jarring cracks reverberate violently within the room—one for every bullet Border Patrol Agent Justin Tackett sent piercing through his daughter's chest. In plain clothes, agent Tackett entered a suburban neighbourhood of Chula Vista, California to execute an arrest warrant for someone else, but instead confronted Valeria. As is common, Border Patrol's official account differed from eyewitness accounts, and the lack of a transparent investigation left many questions unanswered. A critical detail about Agent Tackett's background, however, once again stoked the fears of border residents. The Imperial County Sheriff's Department had previously relieved him of duty after determining he was unfit to carry a badge and a gun. Then, the Border Patrol hired him.[4]

In the same briefing, Jorge told the story of he and his younger cousin's detention at a Border Patrol checkpoint in rural New Mexico. Jorge didn't need his criminal justice degree to teach him what it's like to drive as a brown-skinned person in border communities. He commuted to NMSU through a Border Patrol interior checkpoint. Every time he approaches, he goes through the mental routine of thinking about how he's dressed, changing the radio station, sitting up straight and keeping his hands in sight. With tears in his eyes, he described the fear he feels for his life under the heavy hand of Border Patrol.[5]

Border Patrol operates interior checkpoints and conducts roving patrols that invade border communities far removed from the border. Border Patrol claims extraordinary authority within a 100-mile zone based on federal regulations developed without public scrutiny 60 years ago. Roughly two-thirds of the US population lives within this zone, which swallows entire states like Florida and Michigan and includes many of the US' major metropolitan areas.[6]

In *United States v. Martinez-Fuerte*, the Supreme Court held that immigration checkpoints were permissible only insofar as they involved a 'brief detention of travelers' during which all that is required of the vehicle's occupants is 'a response to a brief question or two and possibly the production of a document evidencing a right to be in the United

States'.[7] In practice, however, the checkpoints serve as a de facto 'stop and frisk' of border residents, causing irreparable harm to the quality of life of many who commute through checkpoints to school, work or the grocery store.[8] This includes communities like Arivaca, Arizona, where residents documented daily encounters at a checkpoint despite intimidation and harassment by Border Patrol.[9] Based on over 100 hours of observation and more than 2000 stops, residents found that Latino motorists were 26 times more likely to be asked to show identification and 20 times more likely to be detained for a secondary screening than white motorists.[10]

In May 2015, our office published an investigation detailing how Border Patrol agents in southern New Mexico abused innocent residents who were doing nothing more than going about their daily lives. Complainants stated that agents racially profiled them, making border communities less safe by sowing mistrust in the community and leaving some residents unwilling to come forward and report crimes to law enforcement.[11] About 90% of the abuses were reported by US citizens, 81% who self-identified as Latino or Hispanic.[12]

While CBP concentrates enforcement resources on the southern border with Mexico, the expansion of resources has caused similar consequences in northern border communities. A 2011 investigation by the American Civil Liberties Union (ACLU) found Border Patrol roving patrol stops in upstate New York that unfairly singled out residents of 'medium' or 'black' complexion resulted in deportation proceedings less than 1% of the time.[13] In the Sandusky Bay region of Ohio, 85% of Border Patrol arrests were of Latino or Hispanic residents who constituted only 3% of the population. In stark contrast and despite bordering Canada, Canadians comprised only 0.02% of those arrested.[14] In Washington state, Border Patrol agents on the Olympic Peninsula pulled over Ernest Grimes, a black correctional officer in uniform at the time and part-time police officer, to interrogate him regarding his immigration status with hands on their guns.[15]

In the context of a growing body of evidence of Border Patrol's biased policing, border communities were dismayed when, in December 2014, the US Department of Justice exempted 'CBP interdiction activities' in the 'vicinity of the border' from revised racial profiling guidance. In the words of then Attorney General Eric Holder, racial profiling is 'simply not good law enforcement'.[16] Beyond wasting limited agency resources to police based on bias and not evidence, racial

profiling offends values of fairness and justice. Military-style policing that discriminatorily views communities of colour as enemies has disastrous impacts on the role of police to protect and serve communities equally under the law.

Since January 2010, CBP officers and agents have killed at least 50 individuals in use of force incidents. These cases include at least 19 individuals who were US citizens, 9 individuals shot in response to alleged rock throwing and 6 individuals who were shot and killed while standing in Mexico—3 of whom were teenagers, ages 15, 16 and 17.[17]

In numerous cases, individuals were shot multiple times, including through the back. In the case of 16-year-old Jose Antonio Elena Rodriguez, Border Patrol agent Lonnie Swartz gunned down the teenager, who was peacefully walking down the street, through the border fence in Nogales, Sonora. Autopsy reports revealed Jose Antonio was struck by 10 bullets, virtually all of them from behind.[18] He was unarmed at the time, carrying only his mobile telephone. In September 2015, a grand jury indicted Agent Swartz—the first murder charges brought against an agent since 2007, and the only time an agent has been criminally charged in a cross-border shooting. The ACLU represents the family of Mr. Rodriguez in a pending civil case, which celebrated a strongly worded decision in support of holding US border agents accountable to constitutional limits curbing use of excessive force in cross-border shootings.

Also among the most well-known cases is that of Anastasio Hernandez Rojas who, by the coincidental existence of eyewitness video, was shown to be handcuffed and prostrate on the ground, contrary to the agency's incident reporting, when dozens of CBP officers beat and tased him to death. The San Diego coroner classified Mr. Hernandez's death as a homicide, noting in addition to a heart attack: 'several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine'.[19] Despite the incriminatory video and eyewitness reports, the Department of Justice closed their investigation into the death of Mr. Hernandez Rojas and declined to press any charges against federal officers.[20]

While the deadly and discriminatory effects of military-style policing of the US–Mexico border have become increasingly clear, the enforcement benefits have not. Border Patrol's sweeping interior enforcement activities do little to further border security goals. In *Record of Abuse*, the ACLU of Arizona found, via government documents obtained through a Freedom of Information Act request, that apprehensions at checkpoints in the Tucson sector accounted for 0.67% of total apprehensions.

In 2011, checkpoint arrests of US citizens in the Yuma sector outnumbered arrests of noncitizens by a factor of nearly eight. In stark contrast, civil rights complaints at some checkpoints far outnumbered arrests and also contradicted figures CBP reported to Congress regarding total, nationwide complaints for unconstitutional searches and seizures.[21] A 2009 report by the Government Accountability Office provided a rare government review of Border Patrol checkpoint operations and found significant gaps in data collection and other monitoring mechanisms.[22] Indeed, Border Patrol fails to collect and publicly report any data on stops or searches not resulting in arrest, making it impossible to measure the depth of the agency's racial profiling problems.

When asked, Border Patrol supervisors struggled to articulate legal requirements for checkpoint operations.[23] In the use of force context, a probe by the DHS Office of Inspector General found some Border Patrol agents 'do not understand use of force and the extent to which they may or may not use force'.[24] Yet, another independent review by a respected law enforcement think-tank in the United States, the Police Executive Research Forum (PERF), found that agents intentionally escalated situations to justify using deadly force and, at times, fired out of frustration.[25] Despite the alarming details revealed in individual cases and these outside reviews, a December 2013 *Arizona Republic* investigation found, 'In none of the 42 deaths [since 2005] is any agent or officer publicly known to have faced consequences—not from the Border Patrol, not from Customs and Border Protection or Homeland Security, not from the Department of Justice, and not, ultimately, from criminal or civil courts'.[26]

Former CBP Internal Affairs investigator James Tomsheck oversaw many of those investigations. He called at least a quarter of the 28 cases he reviewed 'highly suspect', and alleged Border Patrol officials changed or distorted facts to cover up wrongdoing and make fatal shootings look justified.[27] A former Baltimore police commissioner and official in the Justice Department called CBP's pattern of excessive force 'astonishing', and flagged the Border Patrol's policy of allowing use of deadly force against rock throwing unprecedented within any other law enforcement agency. If CBP were a state or local police force, in the opinion of retired FBI agent Ronald Hosko, the Department of Justice would have intervened long ago.[28]

However, CBP views itself as a paramilitary force that should play by different rules than those urged by police practices experts for state

and local law enforcement. The consequences of the agency's culture of abuse and rejection of constitutional policing principles are not limited to perpetrating human rights abuses, but undermine the enforcement mission used to justify its heavy-handed, military-style strategies. Understanding how CBP became a bloated, unaccountable police force requires analysis of the United States' guiding philosophy for regulating human migration.

The Effects of Deterrence-Based Enforcement Strategies

In the safety of a church-run shelter in Las Cruces, New Mexico, Maria told our office her experience of CBP's inhumane custody facilities. Hers was one of the many families from Central America who turned themselves in to border agents in the summer of 2014. That was before the Obama Administration made a dramatic shift towards locking up women and children. The Administration quickly increased its 96-family detention beds to over 3000, and filled them by implementing an unconstitutional no-release policy. This policy, however, was only the latest iteration of the United States' guiding philosophy to regulate human migration: deterrence.[29]

Since the late 1980s, the United States has relied heavily on enforcement-only responses to human migration. The philosophy of deterrence held that if crossing the US–Mexico border became more difficult, dangerous and ultimately deadly, people would stop. The consequent policy decisions failed to address the complexity behind peoples' decision to move, struggled to measure success in relation to recidivism and reaped immeasurable human costs and daunting economic ones.

As crossing a militarised border became increasingly risky and expensive, once circular forms of migration to meet labour needs converted into immigrant families setting down roots in US communities. The combination of the deep desire of many to reunite with family, and the risks associated with cross-border movement, has made the business of effecting this crossing a highly lucrative market for transnational criminal organisations.

Immigration law in the United States has remained largely stagnant since the last significant legalisation programme passed during the Reagan Administration in 1986. A decade later, The Illegal Immigration

Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) expanded the categories of immigrants, including those with lawful permanent resident status, who could be mandatorily detained and deported.[30] This change, which largely eliminated judicial discretion, created the means by which enforcement initiatives would lead to mass detention and deportation.

Indeed, while immigration reform movements in 2006–2007 and in 2013 ultimately waned, Congressional and Presidential appetites for increased border security remained steady. The move towards border militarisation, under the rubric of 'prevention through deterrence', began in 1993 with aptly named programmes: Operation Gatekeeper and Operation Hold the Line. Operation Hold the Line intensified enforcement resources in urban centres to move migration patterns into rural areas where apprehension would be easier. The programme hoped efforts to cross the border would subside in the face of treacherous terrain and extreme temperatures.[31]

The REAL ID Act of 2005 and Secure Fence Act of 2006 allowed for the construction of circa 650 miles of border walls and vehicle barriers (the REAL ID Act provided the Secretary of DHS with unprecedented power to waive 37 federal laws that protected sacred Native American burial sites and local environments).[32] Additionally, the Secure Fence Act mandated the deployment of scores of fixed and mobile camera systems, ground sensors and drones—many designed by private corporations for theatres of war—to the US–Mexico border to achieve operational control.[33]

The architects knew the design could prove deadly, and they were right. Militarisation of urban centres like El Paso, Texas and San Diego, California forced migration and smuggling networks into the vast Sonoran desert of Arizona, where temperatures peak near 120° Fahrenheit and plunge into the single digits during the winter. As enforcement resources expanded, so too did apprehensions, reaching peaks in the Tucson Border Patrol sector of Arizona in 2000. That year, agents border-wide made over 1.6 million arrests.[34] As the 2000s progressed, these figures began to run inversely. Enforcement resources continued to expand, while apprehensions—the primary figure used to measure efficacy—precipitously dropped. Migrant deaths, however, reached their peak in 2005, when at least 492 people died crossing the border, and remained steady at around 400 deaths per year until 2013.[35]

The border had become more deadly—a manufactured humanitarian crisis.[36]

The trends of the late 2000s are worth close examination and serve to predict the outcome of border militarisation. While enforcement can be credited with discouraging crossing attempts, expert analysis from the Pew Hispanic Research Center also attributed demographic shifts in Mexico, and the United States' economic downturns to the significant decrease in border crossings. By 2010, net migration from Mexico reached zero. Yet, of those forcefully removed from the United States, one in six stated they would attempt to return, and nearly a quarter had lived in the country for over a year.[37]

In 2005, the Border Patrol dramatically shifted its enforcement posture to criminalise migration. Initiated in the Del Rio Border Patrol sector of Texas, a zero-tolerance approach to migration, infamous in the Tucson sector as 'Operation Streamline', began to march men and women shackled hand to foot before federal judges for prosecution under 8 USC. § 1325 'illegal entry' and 8 USC. § 1326 'illegal re-entry'.[38] These two statutes had historically been used for the most serious offenders, but by 2013, federal judges like Robert Brack found themselves sentencing defendants with no prior criminal background, who would never have faced prosecution merely a few years earlier.[39] In the words of Judge Brack, Border Patrol's zero-tolerance shift towards Operation Streamline ran like 'a steamroller without anybody at the wheel'.[40]

By fiscal year 2013, these two crimes alone made up 53% of all federal prosecutions nationwide.[41] Pew Research Center attributed illegal re-entry prosecutions with 48% of the growth in total federal prosecutions in the United States.[42] Illegal entry, a misdemeanour, is punishable by up to 6 months in federal prison. Illegal re-entry, a felony, can result in sentences of up to 20 years when combined with previous felony convictions. In FY 2014, the average sentence for illegal re-entry reached 17 months.[43] Many of those convicted, who pose no risk to public safety and have only immigration-related convictions, serve lengthy sentences in often substandard Criminal Alien Requirement (CAR) facilities run by private prison companies.[44]

This highlights the significance of criminalisation in assessing the merits of border militarisation. Beyond offending notions of due process in courthouses where defendants are often arraigned, prosecuted and sentenced in a matter of seconds,[45] the United States' aggressive

criminalisation should be viewed as the latest form of deterrence-based strategies to discourage human migration. While the consequences for family unity stand in stark relief, measuring the true value of criminalisation on recidivism has remained elusive.

The Inspector General of DHS concluded in May 2015 that Border Patrol was 'not fully and accurately measuring Streamline's effect on deterring aliens from entering and re-entering the country illegally' and had no idea what the programme costs.[46] Anecdotally, the observed shift towards increasing numbers of illegal re-entry prosecutions and expanded sentences support what numerous academic experts have found: criminal prosecution has a dubious impact on one's decision to migrate, particularly those with family ties to US citizen children. The Migration Policy Institute expressed serious doubts that high consequence options like criminal prosecutions would deter future attempts, due in large part to demographics, finding that roughly half of unauthorised immigrants in the United States had US citizen children and 95% had another family member living in the United States.[47] A border-wide survey by the University of Arizona of 1200 individuals deported from the United States concluded criminalisation had 'no statistically significant difference' compared to the use of civil removal proceedings.[48]

The United States' enforcement-only posture has failed to fully address the complex factors affecting one's decision to move with increasingly punitive and deadly consequences. If the United States claims to be a nation of laws and of values, then how it chooses to treat immigrants should be a reflection of its values. Reforming the nation's immigration system to promote economic dignity and family unity should be prioritised over further, wasteful investment in military-style, enforcement-only approaches that fail to accurately account for their marginal impact on recidivism.

How CBP Became the Nation's Largest, Unaccountable Police Force

In the aftermath of the tragic events of 9/11, the dramatic increase of border security resources that began under a 'prevention through deterrence' strategy became increasingly layered with a national security lens which justified minimal public oversight or transparency. Despite the fact communities and migrants at the southwest border posed no national

security threat to the nation, the George W. Bush Administration clumped Border Patrol with 21 other federal agencies to form the Department of Homeland Security, engendering a clear philosophical shift.[49]

US Customs and Border Protection enjoyed a free-flowing deluge of resources and personnel. From a financial perspective, between fiscal years 2004 and 2015, the budget for CBP more than doubled to nearly $12.5 billion annually.[50] Spending on DHS oversight entities, including the Office of Inspector General and Office of Civil Rights and Civil Liberties, failed to match this unprecedented growth, and by 2011, DHS dedicated less than a fraction of 1% to oversight.[51]

In comparison, the jump in border and immigration enforcement funding more than quadrupled the growth of NASA's budget and marked an expenditure 10-fold than spent on the National Institutes of Health. By fiscal year 2012, US taxpayers spent more on immigration and border enforcement agencies (roughly $18 billion for both CBP and ICE) than on all other federal law enforcement—the FBI, DEA, ATF, US Marshals and Secret Service—*combined*.[52]

In total, CBP employees stand at a bloated 60,000, with 44,000 of them armed federal officers. This includes the Border Patrol. In less than a decade, Border Patrol doubled from roughly 10,000 agents in 2004 to 21,000 agents by 2011, a number that has remained relatively steady.[53] Border Patrol deploys 85% of that force to the US–Mexico border. If agents lined up equally from Brownsville to San Diego, they would stand in plain sight of one another (about 10 agents per linear mile).

The National Border Patrol Council (Border Patrol's labour union) recognised as early as 2008 the potentially dangerous consequences of a hiring surge in any law enforcement agency. [54] CBP cut corners to rapidly expand its force by decreasing hiring requirements and shortening the time new recruits spent at the Border Patrol Academy in Artesia, NM.[55] Over time, members of Congress became increasingly concerned with the failure to conduct background checks and polygraph tests on new recruits.[56] Then Acting Commissioner of CBP, Thomas Winkowski, testified before Congress in May 2012 that 138 CBP employees had been criminally indicted for corruption and another 2000 arrested for other criminal misconduct since 1 October 2004.[57]

An in-depth investigation by *Politico Magazine* in 2014 later revealed that CBP changed its definition of corruption in order to decrease figures reported to Congress. Investigating Border Patrol agents, in

fact, had become the top criminal priority for the Federal Bureau of Investigations (FBI) field office in McAllen, TX. *Politico* concluded that, on average, one CBP official was arrested for criminal misconduct every day between 2005 and 2012.[58]

One Border Patrol agent they failed to arrest was Esteban Manzanares. Despite the fact he had been suspected of corruption, inundated DHS oversight offices failed to launch an investigation. On 12 March 2014, Manzanares arrested a Honduran woman with her 14-year-old daughter and another teenage girl. After raping the mother and her daughter, whom he left for dead, he took the other girl back to his apartment where he stripped her naked and bound her hands and feet to a chair. When other agents found the mother and daughter and pieced together what had happened, they arrived at Manzanares' apartment where, having already raped the other girl, he took his own life.

In August 2014, former head of CBP Internal Affairs, James F. Tomsheck came forward as a whistle-blower. In an exclusive interview, Tomsheck stated he believed that thousands of employees hired by CBP during the agency's unprecedented post-9/11 expansion were potentially unfit to carry a badge and gun.[59] He also reported a spike in sexual assault cases between 2012 and 2014, a rate 'significantly higher than other law enforcement agencies'.[60]

Under increasing media scrutiny, the Obama Administration convened a CBP Integrity Advisory Panel (IAP), a 10-member committee charged with evaluating accountability and integrity initiatives within the agency. Co-chaired by the Commissioner of the New York Police Department, William Bratton, and former head of the Drug Enforcement Administration, Karen Tandy, the IAP included participation from former members of Congress and former CBP Commissioner Robert Bonner.

Alarmingly, the panel concluded that CBP lacked the authority and resources to investigate criminal misconduct by its own agents, requiring over double its current internal affairs investigators.[61] The nation's largest police force was found to be vulnerable to systemic corruption that undermined its ability to achieve its security mission.[62] The IAP found data suggesting arrests for corruption per capita at CBP significantly exceeded other federal law enforcement agencies. The lessons learned had a potentially global reach:

'As part of its international role, CBP is in the awkward position of teaching professionalism and integrity to foreign Customs and border

agencies around the world, including the need for a robust internal affairs capability, and yet CBP itself does not have an adequately staffed internal affairs and has not had one since the creation of CBP in March 2003'.[63]

The rush to militarise border communities sacrificed values of transparency and oversight, undermining the agency's security mission by creating a police force vulnerable to endemic corruption. CBP's failure to hold agents accountable for corruption also allowed widespread impunity for human rights abuses. Tasked with reviewing the agency's record on use of force, the IAP report reaffirmed what border communities already knew—Border Patrol agents who used excessive force got away with it.

Border Enforcement Must Reflect Our Values and Respect Communities

Ultimately, the deployment of military-style strategies in US–Mexico border communities runs counter to both US values and on-the-ground realities. Irresponsible rhetoric by policymakers to justify such investments overshadows and stunts the economic and cultural contributions of border communities to the US. Mexico is a top trading partner and destination for US exports,[64] and an estimated 1 in 24 jobs across the US relies on cross-border commerce.[65] Border communities enjoy historically low crime rates,[66] in line with studies that consistently show US communities with significant immigrant populations are among the safest in the nation.[67]

The United States' enforcement-only strategy downplays the role of economic forces and family unity that lead people to US borders hoping to return home or find help. Placing blind faith in deterrence alone not only made measuring recidivism itself difficult by not considering the complex factors impacting one's decision to move, but also carries the disastrous consequences of increased migrant deaths and expanded incarceration of immigrants who pose no risk to public safety or national security. The United States must implement a just and fair reform of its immigration system to meet these realities and uphold its moral obligation to protect human rights. Without these reforms, further proposals to militarise the border will make smuggling networks more profitable and crossings even more dangerous or deadly.

In the context of nationwide concern regarding police militarisation, and demand for greater transparency and accountability from law

enforcement, CBP's rejection of police reform dialogues rings hollow in US border communities. The movement for black lives and struggle for justice for Mike Brown, Tamir Rice or Eric Garner are shared by border communities, who remember Jose Antonio Elena Rodriguez, Valeria Munique Tachiquin and Anastasio Hernandez Rojas.

Border communities demand and expect Border Patrol to embrace stringent professional policing practices. Many of the practices disregarded by Border Patrol are the same ones the Obama Administration urged state and local police to adopt: strict prohibitions on racial profiling, data collection and public reporting on stops, searches, arrests and uses of force aggregated by demographics and transparent, uniform processes for accepting and investigating citizen complaints.[68] Ultimately, CBP's militarised policing strategies and accountability deficits not only harm citizens and people on the move at US borders, but people throughout the world in CBP's awkward position of consulting with other border security agencies while demonstrating an inability to police itself.

NOTES

1. American Civil Liberties Union (2015) Rodriguez v. Swartz, https:// www.aclu.org/cases/rodriguez-v-swartz, date accessed 25 July 2015.
2. US Customs and Border Protection (2016), Snapshot A summary of CBP facts and figures, https://www.cbp.gov/sites/default/files/assets/ documents/2016-Mar/CBP-Snapshot-031016-FY15.pdf, date accessed 25 July 2015.
3. Politico Magazine (2014) 'The Green Monster', http://www.politico.com/ magazine/story/2014/10/border-patrol-the-green-monster-112220_full. html#.V0Q8wJMrKRs, date accessed 25 July 2016.
4. San Diego Reader (2014) 'Excessive force in his history', http://www. sandiegoreader.com/news/2014/oct/16/stringers-border-patrol-valeria-alvarado-tackett/#, date accessed 26 July 2016.
5. American Civil Liberties Union (2016) 'Border Patrol Chief Must End Biased Policing to Restore Trust in Communities', https://www.aclu. org/blog/washington-markup/border-patrol-chief-must-end-biased-policing-restore-trust-communities.
6. American Civil Liberties Union 'Know your rights: The governemnt's 100-mile "border" zone—map', https://www.aclu.org/know-your-rights-governments-100-mile-border-zone-map, date accessed 25 July 2016.

7. American Civil Liberties Union Border Litigation Project (2014), http://www.acluaz.org/sites/default/files/documents/Border%20Patrol%20Checkpoint%20Fact%20Sheet_Updated%2011.20.2014.pdf, date accessed 25 July 2016.

8. Reason.com (2015) 'ACLU Describes a "Stop and Frisk" Policy for Americans Near the Border', http://reason.com/blog/2015/10/16/aclu-describes-a-stop-and-frisk-policy-f, date accessed 25 July 2016.

9. USA Today Network (2014) 'Border Patrol sued for harassing at Arivaca checkpoint', http://www.azcentral.com/story/news/politics/immigration/2014/11/20/border-patrol-aclu-lawsuit-arivaca-checkpoint-harassment/70021978/, accessed 25 July 2016.

10. PHP Arivaca (2014) Checkpoint Monitoring Report, http://phparivaca.org/?page_id=685, date accessed 26 July 2016.

11. Policy Link (2013) 'Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement', https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF, date accessed 26 July 2016.

12. American Civil Liberties Union (2015) 'Living in New Mesico's 100-mile zone', https://www.aclu-nm.org/wp-content/uploads/2015/05/ACLU-NM-GuiltyUntilProvenInnocentFinal5-15-2015-21.pdf?556820, date accessed 25 July 2016.

13. New York Civil Liberties Union (2011) 'What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices', http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf, date accessed 25 July 2016.

14. The Columbus Dispatch (2014) 'Alleging profiling, OSU students help sue Border Patrol', http://www.dispatch.com/content/stories/local/2014/11/18/OSU-students-help-sue-Border-Patrol.html, date accessed 25 July 2016.

15. American Civil Liberties Union of Washington State (2013) 'Settlement reins in border patrol stops on the Olympic Peninsula', https://aclu-wa.org/news/settlement-reins-border-patrol-stops-olympic-peninsula, date accessed 25 July 2016.

16. United States Department of Justice (2014) 'Guidance for Federal Law Enforcement Agencies regarding the use of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity', https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf, date accessed 25 July 2016.

17. These figures reflect tracking of media reports and CBP public statements by the ACLU of New Mexico Regional Center for Border Rights and are current as of publication of this chapter. For the latest figures and more background on individual cases, visit www.aclu-nm.org.

18. New York Times Magazine (2016) '10 Shots Across the Border', http://www.nytimes.com/2016/03/06/magazine/10-shots-across-the-border.html?_r=0, date accessed 25 July 2016.
19. PBS (2012) 'Crossing the line at the border', http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/, date accessed 25 July 2016.
20. United States Department of Justice (2015) 'Federal Officials Close the Investigation into the Death of Anastasio Hernandez-Rojas', https://www.justice.gov/opa/pr/federal-officials-close-investigation-death-anastasio-hernandez-rojas, date accessed 25 July 2016.
21. American Civil Liberties Union of Arizona (2015) 'Record of Abuse', http://www.acluaz.org/sites/default/files/documents/Record_of_Abuse_101515_0.pdf, date accessed 25 July 2016.
22. United States Government Accountability Office (2009) Report to Congressional Requesters, Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness, GAO-09-824, http://www.gao.gov/products/GAO-09-824, date accessed 25 July 2016.
23. The Atlantic Citylab (2015), 'Curbing the Unchecked Power of the U.S. Border Patrol', http://www.citylab.com/crime/2015/10/curbing-the-unchecked-power-of-the-us-border-patrol/413392/, date accessed 25 July 2016.
24. Bennett, Brian (September 2013), '*Many Border Agents Don't Understand Use-Of-Force Rules, Report Says*', *Los Angeles Times*, http://articles.latimes.com/2013/sep/18/nation/la-na-nn-border-patrol-use-of-force-20130918, date accessed 25 July 2016.
25. The Police Executive Research Forum (2013) 'Use of Force Review: Cases and Policies', https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf, date accessed 25 July 2016.
26. The USA Today Network (2013) 'Deadly border agent incidents cloaked in silence', http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html, date accessed 25 July 2016.
27. Reveal News (2014) 'Ousted chef accuses border agency of shooting cover-ups, corruption', https://www.revealnews.org/article-legacy/ousted-chief-accuses-border-agency-of-shooting-cover-ups-corruption/, date accessed 25 July 2016.
28. Reveal News (2016) 'Scathing report deems fatal Border Patrol shooting "highly predictable"', https://www.revealnews.org/article/scathing-report-deems-fatal-border-patrol-shooting-highly-predictable/, date accessed 26 July 2016.

29. American Civil Liberties Union (2015) Rilr v. Johnson, https://www.aclu.org/cases/rilr-v-johnson, date accessed 25 July 2016.

30. Detention Watch Network (2010) *Detention 101—A Community Resource on Anti-Deportation Education and Organizing*, http://immigrantdefenseproject.org/wp-content/uploads/2011/02/Deportation101-1-11HiRes.pdf, date accessed 30 May 2016.

31. United States General Accounting Office (1994) 'Report to the Chairman, Subcommittee on Information, Justice, transportation and Agriculture, Committee on Government Operations, House of Representatives', *Border Control Revised Strategy Is Showing Some Positive Results,* p. 16, http://www.gao.gov/archive/1995/gg9530.pdf, date accessed 25 July 2016.

32. Sierra Club, 'Real ID Waiver Authority Compromises Our Borderlands', http://vault.sierraclub.org/borderlands/realID.aspx, date accessed 23 May 2016.

33. United States Government Publishing Office, 109th Congress Public Law 367, https://www.gpo.gov/fdsys/pkg/PLAW-109publ367/html/PLAW-109publ367.htm, date accessed 25 July 2016.

34. CBP (2016) United States Border Patrol Southwest Border Sectors, https://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20-%20FY2015.pdf, accessed 25 July 2016.

35. Idem.

36. M. Jimenez (2009), *Humanitarian Crisis: Migrant deaths at the US-Mexico* Border, ACLU of San Diego and imperial counties and the Commission Nacialde Derechos Humanos, http://www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf, date accessed 25 July 2016. See also, The Huffington Post (2010) 'Thanks to Operation Gatekeeper, Death Toll Increases to Over 5000', http://www.huffingtonpost.com/mary-ann-west/thanks-to-operation-gatek_b_309744.html, date accessed 25 July 2016.

37. Pew Research Center (2012) Net Migration from Mexico Falls to Zero—and Perhaps Less, http://www.aclu.org/files/pdfs/immigrants/humanitariancrisisreport.pdf, date accessed 25 July 2016. See also, The Huffington Post (2010) 'Thanks to Operation Gatekeeper, Death Toll Increases to Over 5000', http://www.huffingtonpost.com/mary-ann-west/thanks-to-operation-gatek_b_309744.html, date accessed 25 July 2016.http://www.pewhispanic.org/files/2012/04/PHC-Net-Migration-from-Mexico-Falls-to-Zero.pdf, date accessed 25 July 2016.

38. Grassroots Leadership (2012) Operation Streamline: Costs and Consequences, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Sept2012_Report-final.pdf, date accessed 25 July 2016.

39. The Wall Street Journal (2013) Border Laws Put Judge on Map, http://www.wsj.com/articles/SB10001424127887323336104578499480108652610, date accessed 25 July 2016.

40. The Christian Science Monitor (2014) Behind the gavel of America's busiest judge, http://www.csmonitor.com/USA/Justice/2014/0831/Behind-the-gavel-of-America-s-busiest-judge, date accessed 25 July 2016.

41. American Civil Liberties Union (2015) Coalition letter to Attorney General from 171 organizations to end streamline prosecutions, https://www.aclu.org/letter/coalition-letter-attorney-general-171-organizations-end-streamline-prosecutions, date accessed 25 July 2016.

42. Pew Research Center (2014) The Rise of Federal Immigration Crimes, http://www.pewhispanic.org/2014/03/18/the-rise-of-federal-immigration-crimes/, date accessed 25 July 2016.

43. United States Sentencing Commission (2014) Quick Facts Illegal Reentry Offenses, http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_Illegal-Reentry_FY14.pdf, date accessed 25 July 2016.

44. American Civil Liberties Union (2014) Warehoused and forgotten—immigrants trapped in our shadow private prison system, https://www.aclu.org/warehoused-and-forgotten-immigrants-trapped-our-shadow-private-prison-system, date accessed 25 July 2016.

45. The New York Times (2014) 'Detainees Sentenced in Seconds in "Streamline" Justice on Border', http://www.nytimes.com/2014/02/12/us/split-second-justice-as-us-cracks-down-on-border-crossers.html, date accessed 25 July 2016.

46. United States Homeland Security (2015) Streamline: Measuring Its Effect on Illegal Border Crossing, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf, date accessed 25 July 2016.

47. Migration Policy Institute (2014) The Deportation Dilemma: Reconciling Tough and Humane Enforcement, http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement, date accessed 25 July 2016.

48. NPR (2013) Is Operation Streamline Worth Its Budget Being Tripled? http://www.npr.org/2013/09/05/219177459/is-operation-streamline-worth-its-budget-being-tripled, date accessed 25 July 2016.

49. United States Department of Homeland Security, https://www.dhs.gov/creation-department-homeland-security, date accessed 25 July 2016.

50. United States Department of Homeland Security (2005) Budget in Brief, p. 20, https://www.dhs.gov/xlibrary/assets/FY_2005_BIB_4.pdf, date accessed 25 July 2016; see also United States Department of Homeland Security (2015) Budget in Brief, p. 50, https://www.dhs.gov/sites/default/files/publications/FY15-BIB.pdf, date accessed 25 July 2016.

51. American Civil Liberties Union of Arizona (2013) 'An Agency Out of Control: Widespread Border Patrol Abuses in Southwest Border Communities', http://www.acluaz.org/sites/default/files/documents/ACLU%20Testimony%20-%20Redefining%20Border%20Security%20-%20 James%20Lyall%20-%20Sept%2013,%202013.pdf, date accessed 25 July 2016.

52. Migration Policy Institute (2013) 'US Spends More on Immigration Enforcement than on FBI, DEA, Secret Service & All Other Federal Criminal Law Enforcement Agencies Combined', http://www.migration policy.org/news/us-spends-more-immigration-enforcement-fbi-dea-secret-service-all-other-federal-criminal-law, date accessed 25 July 2016.

53. CBP (2015) United States Border Patrol, https://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2015.pdf, date accessed 25 July 2016.

54. Soboco (2008) 'Border patrol hiring, training and infrastructure issues', http://soboco.org/wp-content/uploads/2013/06/NBPC-report-on-Border-Patrol-Hiring-Training-and-Infrastructure-Issues-June-2008.pdf, date accessed 25 July 2016.

55. Tuscon Citizen (2007) 'Border Patrol hiring push raises concerns of lower standards', http://tucsoncitizen.com/morgue/2007/04/23/49173-border-patrol-hiring-push-raises-concerns-of-lower-standards/, date accessed 26 July 2016.

56. The Hill (2011) 'Corruption a problem at Customs and Border Protection, agency head says', http://thehill.com/blogs/blog-briefing-room/news/165925-corruption-a-problem-at-customs-and-border-protection-agency-head-says, date accessed 25 July 2016.

57. United States Department of Homeland Security () Written testimony of U.S. Customs and Border Protection Acting Deputy Commissioner Thomas Winkowski for a House Committee on Homeland Security, Subcommittee on Oversight, Investigations, and Management hearing titled "Department of Homeland Security: An Examination of Ethical Standards"', https://www.dhs.gov/news/2012/05/17/written-testimony-us-customs-and-border-protection-house-homeland-security, date accessed 25 July 2016.

58. Politico Magazine (2014) 'The Green Monster', http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220_full.html#.V0Q8wJMrKRs, date accessed 25 July 2016.

59. Reveal News (2014) 'Ousted chief accuses border agency of shooting cover-ups, corruption', https://www.revealnews.org/article-legacy/ousted-chief-accuses-border-agency-of-shooting-cover-ups-corruption,, date accessed 25 July 2016.

60. CBS Evening News (2015) '"Disturbing" sex abuse within agency that patrols U.S. border, says former top official', http://www.cbsnews.com/news/u-s-border-patrol-has-a-sex-abuse-problem-says-whistleblower/, date accessed 25 July 2016.
61. Homeland Security Advisory Council (2015) Interim Report of the CBP Integrity Advisory Panel, https://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf, date accessed 25 July 2016.
62. Homeland Security Advisory Council (2015) Final Report of the CBP Integrity Advisory Panel https://www.dhs.gov/sites/default/files/publications/HSAC%20CBP%20IAP_Final%20Report_FINAL%20(accessible)_0.pdf, date accessed 25 July 2016.
63. Homeland Security Advisory Council (2015) Interim Report of the CBP Integrity Advisory Panel, p. 6, https://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf, date accessed 25 July 2016.
64. Office of the United States Trade Representative—Mexico, https://ustr.gov/countries-regions/americas/mexico, date accessed 26 July 2016.
65. American Society—Council of the Americas (2013) 'Get the Facts: Our Border & the Economy, http://www.as-coa.org/articles/get-facts-five-reasons-why-us-mexico-border-critical-economy, date accessed 25 July 2016.
66. The Texas Tribune (2016) 'Border Communities Have Lower Crime Rates', https://www.texastribune.org/2016/02/23/border-communities-have-lower-crime-rates/, date accessed 25 July 2016.
67. The Wall Street Journal (2015) 'The Mythical Connection Between Immigrants and Crime', http://www.wsj.com/articles/the-mythical-connection-between-immigrants-and-crime-1436916798, date accessed 25 July 2016.
68. President's Task Force on 21st Century Policing (2015) 'Final Report of the President's Task Force on 21st Century Policing, http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf, date accessed 25 July 2016.

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Brian began his career with the Latin America Working Group in Washington, DC, where he helped coordinate efforts among organisations located both inside and outside of "the beltway" to push reforms in US foreign and domestic policies impacting Mexico and US–Mexico border communities. Brian holds dual B.A. degrees in Spanish and Global Studies, with a concentration in Development and Social Justice, from Pacific Lutheran University in Tacoma, WA.

Drug Trafficking

Militarisation of the Drug War in Latin America: A Policy Cycle Set to Continue?

Jeremy McDermott

Introduction

Military deployment and coups were a constant in Latin America during the Cold War. The military have played an outsize role in the regional drug war, with often impulsive deployments of soldiers against drug cartels. There is perhaps no better part of the world to study the 'war on drugs', which will be discussed throughout this section, along with its dramatic failures.

The result in Latin America has been an increase in homicide rates and abuses of human rights, transforming the region into the world's murder capital. Yet, Latin American transnational organised crime has extraordinary military capacity, often outgunning the police forces lined

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up against it. Surely there is a role for the military in the fight against the principal threat to national and citizen security in the region?

Over the past two decades, Latin American militaries have taken on greater domestic security roles, assuming functions typically reserved for police forces. This has largely been in response to the inability of regional police forces to contain and confront transnational, as well as national, organised crime groups. Many police forces in the region are institutionally weak and heavily corrupted. Under-resourced and poorly trained, they are unable to keep up with evolving threats to citizen security. Furthermore, typically underpaid, they are vulnerable to being co-opted by organised crime due to the massive economic resources at its disposal. The army, on the other hand, has historically been one of the most respected institutions in the region. That perception is changing. Transnational organised crime (TOC) seeks to corrupt any organ deployed against it. The military has proved no exception.

THE DEVELOPMENT OF TRANSNATIONAL ORGANISED CRIME IN LATIN AMERICA

Since the 1980s, powerful drug trafficking cartels have developed across Latin America, fed by the enormous profits that cocaine, and to a lesser extent, heroin and marijuana have generated. Colombia, followed by Peru and Bolivia, is the principal coca-growing and cocaine-producing nations. Mexico currently produces some 40 tonnes of heroin for the United States market, although its marijuana production has suffered as the US legalises production in certain states.

In the context of drug trafficking TOC, the Colombians were the pioneers, industrialising the cocaine trade and earning billions of dollars which they used to bribe politicians, generals and even entire neighbourhoods. The Medellin Cartel and its successors, the paramilitary United Self-Defence Forces of Colombia (AUC), were able to field hundreds, and in the case of the AUC thousands, of heavily armed fighters with military training. This was in part because the AUC systematically recruited former members of the security forces.

Pablo Escobar hired Israeli mercenaries and members of the Basque Separatist group ETA to train his cadres of killers, the infamous 'sicarios'. He declared war on the state and ordered the assassination of ministers, presidential candidates and judges, as well as offering a bounty for

each policeman murdered. Escobar arguably won this war against the state when in 1991 the Constituent Assembly banned extradition, with Escobar turning himself into the authorities only hours after the vote. The AUC demobilised following a peace agreement with the government hammered out between 2003 and 2006. Prior to this, it boasted over 30,000 fighters and almost as many weapons, with which it controlled around a quarter of Colombia, earned billions of dollars and stacked the country's congress with their candidates.

The sworn political enemies of elements of the Medellín Cartel and the AUC were the armies of Marxist rebels, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). The rebels became drug trade rivals and for many years the state was little more than a spectator as the AUC and FARC fought for control of the drug trade across the country.

Other rebel armies in Latin America have become deeply involved in the drug trade, in particular the brutal Shining Path (Sendero Luminoso) in Peru and more recently the Army of the Paraguayan People (Ejército del Pueblo Paraguayo—EPP). In Mexico, the desertion of Special Forces to the drug cartels saw TOC in this crucial drug production and transit nation take a quantum leap in military capacity and sophistication.

Latin America TOC, often allied with insurgents or elements of the security forces, has been able to deploy military capacity beyond that available to the state, overwhelming many fragile nations clambering out of civil conflict. It has threatened all organs of the state, but particularly those tasked with fighting it head on: the police and judiciary.

Governments, many of them at the helm of still immature and fragile democracies, have found themselves under siege and facing epidemics of violence. State resources have proved little competition for the budgets available to Latin American TOC. Struggling police forces and inefficient judicial systems have been intimidated, corrupted or simply overwhelmed. As a result, many presidents in the region turned to the one institution capable of dealing with, and dealing out, violence, an institution often seen domestically as significantly less corrupt than the police and far more popular: the military. The aim, often encouraged and in part funded by the United States, has been to contain violence and dismantle TOC through repression and the vaunted 'kingpin strategy' of targeting cartel leadership.

The War on Drugs

Since 1971 and Richard Nixon's launch of the 'War of Drugs', Washington has spent billions trying to reduce drug supply and dismantle Latin American TOC. After the 11 September 2001 attacks on the US, the line between counternarcotics and counterterrorism became blurred and, particularly in Colombia via Plan Colombia,[1] huge sums of money were invested in the military, as well as the police and judiciary, in the name of the War on Drugs. More recently, Mexico has experienced the same via the Merida Initiative,[2] and Central America with the Central America Regional Security Initiative (CARSI). The US has historically been less concerned about the implications of supporting the use of military might against drug cartels than challenging the cartels head on.

This paper considers the situation in the two criminal poles of the region, Colombia and Mexico, together with certain other nations where the military are intimately bound up in the War on Drugs and TOC.

Colombia

This battered Andean nation is home to the founders of the cocaine trade and some of the most powerful criminal syndicates across the globe over the last 40 years. The key factor which precipitated the involvement of the military in the War on Drugs is that this struggle became indivisible with the five-decade long civil conflict which ravaged Colombia.

Colombia was a relatively late arrival to the cultivation of coca crops. Whereas Bolivia and Peru have a coca tradition stretching back centuries, with legal crops and the widespread practice of chewing the leaves to alleviate working at high altitudes, Colombia only began sowing coca in significant quantities in the late 1980s, and only then to feed the cocaine industry. Under the Medellín Cartel, drug traffickers promoted the sowing of coca, firstly in the eastern plains. By the late 1990s, the Colombians were the foremost coca growers and cocaine producers in the world, a title they still hold today.

By the 1990s, the FARC rebels had identified coca crops as a key tool in their struggle to overthrow the state and impose a Marxist regime. These crops would not only print the money to fund the revolution, they also provided the guerrillas with an immediate support base, the 'cocaleros' or coca growers, poor farmers who perceived the FARC to be the protectors of their livelihood. The FARC also acted as the government

in situ across half of the country where there was little to no state presence. The 'raspachines', or the coca harvesters, a mobile population that followed the coca crops and inevitably encountered the FARC, further inflated FARC ranks.

By the end of the 1990s, the possibility of a FARC victory on the national battlefield was very real as the rebels shifted away from a traditional guerrilla war to one of positions, ready to cut the country in half and encircle the major cities. The US, awash in cocaine and still intensely concerned about the possibility of another Communist regime in its backyard, decided to intercede in the form of Plan Colombia. This was designed to attack the drug problem at source with the massive eradication of coca crops through the indiscriminate spraying of glyphosate chemicals (Horsfield discusses the far-reaching social and development consequences of this strategy in her chapter in this section). Initially, President Bill Clinton granted the majority of the aid to the Colombian National Police; however, the focus quickly turned to the army as the US began to deploy military trainers and established an army Anti-Narcotics Brigade, transported in a large fleet of donated Vietnam-era, Huey helicopters.

The FARC and the ELN were placed on the US list of terrorist organisations in 1997, to be joined in 2001 by the AUC. Consequently, after 9/11 in particular, any pretence of keeping counternarcotics and counterterrorism aid separate in Colombia disappeared. US aid became the cornerstone of the Colombian State's successful strategy to beat back the FARC on the battlefield and prevent a drug-fuelled insurgency from taking power. The War on Drugs and Colombia's civil conflict became one and the same. It also became fully militarised.

President Andres Pastrana (1998–2002), elected on the back of a promise to negotiate peace with the FARC, began to reinforce the military with US help as he saw his peace efforts thwarted by rebel leadership that believed it could overthrow the state by military means. Then, in 2002, Alvaro Uribe, whose father had been killed by the FARC in a botched kidnapping attempt, was elected president, pledging to defeat the FARC by military means. Pastrana handed Uribe a reinvigorated military which he used with relish, cheered on by the US as the aid continued to flow.

All actors in the Colombian civil conflict, legal and illegal, have been guilty of the systematic abuse of human rights; however, the military contributed more than its fair share, particularly after 1999. Institutional

links between elements of the military and the AUC were merely one manifestation of this. The military repeatedly shared intelligence on guerrilla sympathisers and allowed paramilitaries to pass through checkpoints and perform massacres. In the June 1997 massacre of Mapiripan (in Meta department), one emblematic case among many, the paramilitaries arrived by air, passing freely through both the airport and checkpoints manned by the security forces. At least 30 people were murdered. Victims were cut open and thrown into the River Guaviare, their bodies disappearing forever. This complicity between military and rebels formed a pattern repeated across the country, claiming thousands of victims.

More recently, Colombia has suffered the sinister scandal of the 'false positives'. Between 2002 and 2008, at least 4000 civilians were murdered by members of the security forces, the vast majority soldiers.[3] Elements of the military seized victims, dressed them to look like rebels, then killed them to gain promotions, days off and other privileges. This was not an isolated practice. The Attorney General's office is currently investigating over 5000 cases across the country.[4] In some cases, young men were lured with promises of employment, only to be executed by members of the army constitutionally tasked with protecting them. The young men were then displayed as grotesque trophies to gain privilege in a warped system that measured success by the number of body bags filled.

Today, as the FARC leave the criminal stage after negotiating a peace agreement with the government, the role of the Colombian military in rural security is largely unchanged. It even retains the right to bomb TOC structures as it did the FARC. However, the military is now acutely conscious of human rights scrutiny, and all fatalities occurring in any operation are investigated.

Mexico

In 2006, President Felipe Calderon decided to eradicate the drug cartels. This was a significant departure from the policy of previous administrations which had allowed the cartels to flourish largely unchecked. Indeed, a number of previous governments had happily co-existed with the cartels, gratefully accepting their money and perceiving the drug issue to be a 'gringo' (US) problem. By the time Calderon decided to challenge the cartels, they were hugely powerful and had successfully corrupted many organs of the state.

The municipal and state police forces had long ago been corrupted by organised crime, together with large segments of the local justice and political establishments. As in the case of Colombia, TOC structures in Mexico had extremely high level of military capacity, arguably exceeding those of the existing police forces.

The militarisation of the Mexican Cartels was due in no small part to the 1997 defection of 31 members of the Mexican Army's elite Airborne Special Forces Group, the now infamous 'Zetas',[5] to the Gulf Cartel. The Zetas were recruited by Gulf Cartel boss, Osiel Cardenas Guillen, as a Praetorian Guard.[6] They were highly disciplined and brought a tactical and operational sophistication, together with a proficiency in using high-powered weapons, previously unseen in Mexico's criminal underworld.[7] This was matched by savage brutality manifested in the group's routine use of sadistic methods to torture and kill their rivals.[8] These highly trained and well-equipped soldiers began to cut a swathe through the opposition, forcing other cartels to become similarly sophisticated or face extinction.

Jerry Brewer, a Washington, D.C.-based security consultant, identifies a 2005 gun battle in Nuevo Laredo, Mexico, as a turning point for the country's policing strategy. 'It was the first time we saw the sophistication of the weapons the cartels have. They had all types of artillery: rocket launchers, AK-47s, grenades. It was warlike', Brewer says, 'no police was ever designed … to face that kind of force'.[9]

Calderon turned to the only institutional body capable of facing this disciplined and widespread savagery, the military. His first major act after taking office was to deploy 6500 soldiers to his home state of Michoacán. By the end of 2007, Calderon had sent soldiers to a number of cities including Acapulco and Tijuana, deploying circa 50,000 troops in the 'war against drugs'.[10] The military performed a variety of tasks, from the eradication of drug crops to patrolling urban areas. The US supported this by default, pumping in $2.3 billion from 2008 via the Mérida Initiative. This included providing aircraft and technology for the security forces, as well as training and anti-corruption initiatives.[11] The US Drug Enforcement Administration (DEA) still prefers to work with the Marines, one of the few elements of the Mexican security forces in which it trusts.

Yet, systemic human rights abuses quickly came to light. The US withheld part of its funding in 2015 due to Mexico's failure to meet its human rights goals.[12] A portion of the 2016 funds have been withheld on the same grounds. The human rights record of Mexico's

military worsened dramatically during the Calderon years. The number of complaints filed with Mexico's National Human Rights Commission (CNDH) against the National Defence Ministry (SEDENA) jumped from 182 in 2006–1800 by 2009, decreasing to 1626 by 2011.[13] Army personnel, together with agents from all branches of the police forces, were implicated in extra-judicial killings and forced disappearances.[14]

An additional consequence of the drug war and the deployment of the military was the doubling of Mexico's homicide rate under Calderon. As cartel leaders were eliminated under the 'kingpin' strategy, new criminal turf battles arose between rival groups, either through succession conflicts or due to the inevitable fragmentation of leaderless cartels into increasingly ruthless splinter groups.

Commentators identified 'a causal effect between the deployment of joint military operations and the rise in the murder rate' in states where joint operations took place between 2007 and 2010.[15] Data suggest the deployment of the military to combat Mexico's drug traffickers triggered almost 7000 homicides in 2008 and 2009.[16] In Ciudad Juarez, one of the world's most violent cities during those years, leaked cables suggest that the army was as corrupt as the police, and that soldiers may have partnered with former Zeta cartel members. Violence initially dropped when the army was deployed to Ciudad Juarez in March 2008, but then rose quickly: 'the cable asserts that the military in Juarez, despite being deployed to crack down on the drug trade, rarely faced the cartels head on, and may have even encouraged violent gunfights between the city's rival drug trafficking organizations'.[17] Calderon saw the military as a short-term option, a commonly deployed tactical decision considered in Shaw's introduction, and simultaneously sought to build up the Federal Police to provide them with the tools to challenge the cartels.

Calderon's photogenic successor, Enrique Peña Nieto, chose to follow a similar approach in his fight against TOC. He announced in 2012 that while he would continue to rely on the military, the priority would be to reduce violence and increase public security rather than confront the cartels.[18] However, his administration has continued to pursue drug bosses and he proudly announced in July 2016 that security efforts had resulted in the arrest of 100 of 122 of the country's most dangerous criminals.[19]

Peña Nieto decided the Federal Police would not be able to fulfil the required role and created the gendarmerie, a militarised police force under civilian orders intended to replace the Mexican military in its prominent role in the drug war. Many of the agents on the new

force—constituted of 5000 officers instead of the initially proposed 40,000—were transferred from either the armed forces or the already highly militarised Federal Police. This arguably undermines the idea that the gendarmerie would mark a new untainted beginning in militarised forces on Mexico's streets. However, in 2014, government spending on military equipment spiked to over $1 billion, and soldiers remain on the streets.[20]

Although an aggressive approach to organised crime remains popular with the Mexican public, which has backed the use of the army in domestic security,[21] there is evidence that public trust in the military is being eroded.[22] Two emblematic incidents have contributed to this erosion of confidence and undermined the administration of Peña Nieto. The first took place on 30 June 2014 in Tlatlaya, a town in the state of Mexico where 22 people were killed by soldiers, 15 of them allegedly summarily executed.[23] Mexico's Secretary of Defence (SEDENA) initially tried to cover up the events, claiming that the victims, allegedly kidnappers, had been killed in a confrontation with the army after opening fire first. An investigation by Mexico's National Human Rights Commission found otherwise, and revealed that the crime scene was altered to support the state story.

The second incident has proved even more controversial. On 26 September 2014, 43 students from a rural teachers' college in Ayotzinapa, Guerrero were abducted and likely murdered in the city of Iguala. Municipal and state police were instrumental in their abduction, and subsequent investigations have suggested that the Federal Police and Army share the blame. They, at the very least, stood by and did nothing although it is likely they also have assisted in disposing of the bodies.

In 2013, there were 1505 reported cases of torture or abuse by security officials, a 600% increase from 2003 figures.[24] More recent figures show complaints have now decreased. However, Tlatlaya and the mass abduction of the students happened after 2013, suggesting official statistics are far from accurate.[25]

The commander of Mexico's armed forces has himself expressed discomfort at the current role of the military, saying it was a mistake to deploy the armed forces in the fight against drug trafficking, but that if the army didn't do it no one else would.[26]

The Tlatlaya and Ayotzinapa tragedies highlight a flagrant disregard for human rights and lack of transparency among Mexico's security forces. They further show that the current security climate in many

parts of Mexico, created by a decade-long militarised drug war, has engendered what has been described as a 'criminal insurgency' that has mutated and atomised, but not disappeared or been significantly weakened.[27]

OTHER LESSONS FROM LATIN AMERICA

Colombia and Mexico may be the regional centres of TOC, but similar levels of violence and corruption have developed in many transit nations for cocaine shipments. The most dangerous part of the region, where government institutions have proven themselves particularly fragile, is the Northern Triangle, formed of El Salvador, Honduras and Guatemala. Here, the brutal Mara street gangs dominate the organised crime landscape. While they have been more involved in extortion and street-level drug distribution, they have provided services to TOC, and a number of the more powerful individual gangs, or 'clicas', have made the leap to TOC. Total gang membership in the Northern Triangle is estimated to be as high as 85,000.[28]

The government response in El Salvador has centred on militarised security policies with telling titles, for example 'Iron Fist' (Mano Dura), which became 'Super Iron Fist' (Super Mano Dura). The policy has been one of incarcerating young men, often on the basis of their tattoos alone. This has simply filled the prisons and, inevitably, swelled Mara ranks. Under the current administration of President Salvador Sánchez Ceren, the number of military personnel assuming public security roles has reached its peak. According to Defence Minister David Munguía Payés, there is currently the largest number of soldiers deployed on the streets since the country's civil war ended with the Peace Accords in 1992.[29]

By 2015, this had resulted in El Salvador overtaking Honduras as the nation with the highest homicide rates in the world. The fight against TOC now resembles a low-intensity war, with more than two attacks a day by gang members against security forces in the 8 months of 2015.[30] Death squads, common during the civil war and typically formed of active or retired military personnel, have re-emerged, now targeting gang members rather than leftist sympathisers. In parallel, the number of soldiers accused of human rights violations and extra-judicial killings continues to increase.[31]

In Venezuela the situation is vastly different, and arguably even more disturbing. Not only has the military been deployed extensively in the War on Drugs, but it now forms the core of the very organised crime

power it is intended to combat. Circa 200 tonnes of Colombian cocaine bound for the US and Europe transits through Venezuela. At the heart of this drug trafficking industry lies the so-called 'Cartel of the Suns' (Cartel de los Soles).[32] Named after the golden stars worn by the generals of the National Guard on their epaulettes, these corrupt elements of the military now dominate the drug trade throughout the country, working with Colombian and Mexican TOC.[33] The human rights record of the Venezuela military, now more concerned with political repression than the War on Drugs, is among the worst in the region.[34]

In the last decade, consumption of cocaine and its derivatives has increased across Latin America, in both these transit states and in producer countries. This has in part been fuelled by TOC paying its transporters and local subcontractors in product not money. The criminal structures therefore push the drug onto their local markets. This has led not only to an increase in drug-related violence, but a strengthening of criminal structures in transit nations. One of the most notable examples of this is Brazil, now the second biggest market for cocaine and its derivatives in the world after the US,[35] and home to power criminal structures like the First Capital Command which has itself made the leap into TOC.

Latin America Moving Forward

Organised crime and the drug trade today affect almost all the region's inhabitants. The non-governmental organisation Mexican Citizens' Council for Public Security and Criminal Justice identified the most violent cities on the planet: 41 out of 50 of these cities were in Latin America.[36] While this violence has many generators, the drug trade plays a central role. Colombia and Mexico retain the most sophisticated and militarised TOC structures; however, other powerful criminal networks are developing in different parts of the region, particularly Central America and Venezuela.

Even as Colombia implements a peace deal with the FARC, the military seeks a role in the fight against TOC. Numbering almost 300,000, the military is aware that it cannot maintain these numbers in a post-conflict environment. A role fighting TOC might allow it to retain much of its current strength. The military has already won the right to conduct aerial bombardments of TOC structures, demonstrating some success in carving out its niche going forward.[37] As of 2016, Colombia's police force does not have the capacity to provide security in much of rural

Colombia, especially in areas where the Marxist rebels have traditionally held sway, arguably reinforcing the need for military involvement.

New recruits to the War on Drugs, like President Mauricio Macri of Argentina, continue to adopt a militarised approach. Macri has signed agreements with the US and Israel[38] and studied the Mexican model in crafting a security strategy to address the increasing consumption of drugs and the growing presence of TOC in Argentina, also an important cocaine transit nation.

The US continues to encourage the deployment of the military against TOC. In August 2016, Admiral Kurt Tidd of US Southern Command addressed representatives of the armed forces from around Latin America in Uruguay. He discussed the changing role of the military in the region.

'We're no longer simply dealing with conventional conflicts that displace millions of people and destabilize entire regions', Tidd said, 'we're also facing complex, networked threats like transregional crime and violent extremism that transcend borders and boundaries'.[39]

Tidd praised the role of armed forces in facing the current security challenges of a 'global security environment [that] is the most complex, volatile, and unpredictable in at least the last half-century'.

CONCLUSION

The War on Drugs in Latin America, and the role played by the military within it, has drawn almost unanimous criticism. Although often backed by popular support, the use of the armed forces in the fight against crime has led to increases in violence and human rights abuses by the armed forces, without inflicting any permanent damage to TOC.

It is easy to understand why so many presidents have turned to the military, and in the short term it has often been successful in reducing crime levels in parts of certain countries in the region. However, in the long term, the deployment of the military cannot be said to have had a beneficial effect. Soldiers are trained to eliminate an enemy, not arrest him, prepare a case against him and then bring him to trial. Reliance on the military can create a cycle of dependency for police institutions and inhibit the political willpower to make the necessary investments in building strong judicial institutions. It also sends a message to the public that the government is resorting to extreme measures in order to try to gain control of the rising organised crime.

Turning to the military is a tacit acceptance by the authorities that other security forces are not capable of combating TOC, 'an admission that all other government institutions have failed', according to Adam Isacson at the Washington Office on Latin America (WOLA).[40]

There is little evidence for the widespread belief in Latin America that the military is more resistant to corruption than the police. Organised crime corrupts those institutions tasked to fight it: the police, the prosecutors, the judges and the prison directors, usually in that order. TOC seeks to corrupt the military as soon as it plays an active role against it, as spectacularly illustrated in Mexico in 1997 when the government put its own anti-drug czar General Jesus Gutierrez Rebollo behind bars for 40 years for working with the Juárez drug cartel.

There is some evidence to suggest that the deployment of the military prompts TOC to mutate to adapt to changing government security strategy, and become more lethal, and more clandestine, becoming increasingly elusive targets for a military trained to combat conventional enemies. This has the effect of provoking further human rights abuses as frustrated soldiers become targets of TOC without being provided with the training or tools to effectively tackle it. Without addressing the underlying causes of violence related to organised crime—inequality, poverty and the demand for illicit substances—violence has increased when the military has been deployed in Latin America.[41]

Governments considering deploying the military in order to improve public security must instead seek to reform their police forces and judiciary, whose failure leads authorities to turn to the armed forces in the first place. A widespread tactic has been to create militarised police units. The Colombian Anti-narcotics Police, Carabineros and Jungla commandos are often indistinguishable from military units in their equipment and training. Similarly, Honduras created a military police force in 2013 [the Military Police of Public Order (PMOP)], in part to overcome the problems of corruption and inefficiency within its existing police force.[42] In Mexico, President Enrique Peña Nieto created the gendarmerie, formed of men and women with military training but under civilian control.[43] Creating such police forces, and arming them so they are capable of confronting weapons and tactics employed by organised criminal groups, presents an option worthy of consideration. However, without high levels of training, professionalism, good pay and strict civilian oversight, these units, like their military counterparts, are vulnerable to corruption and capable of systematic human rights abuses.

As noted by Shaw in the introduction, one possible short-term compromise is to deploy the military where TOC outguns the police, but under police command. The military are then envisaged to withdraw as soon as the police are able to carry out their constitutionally mandated tasks without support. Yet, across most of Latin America, the rivalry between the police and the army makes this almost impossible.

Latin America is peppered with weak and fragile states, and even some failed states like Venezuela. Within these governments there are few if any institutions strong enough to take on TOC effectively. In these cases, resorting to the use of the military therefore becomes not only a political quick fix, but the only option to show any kind of short-term improvement in the domestic security situation. In Mexico, the use of the armed forces in the fight against organised crime was intended to be temporary while the country cleaned up its police. However, 10 years later, the military continues to be a fundamental part of the fight against organised crime while police reform remains sluggish.

Many governments are under siege by TOC, suffering the highest homicide rates in the world and seeking to combat endemic criminality with the scarce resources they are able to deploy. This imbalance of resources between state and TOC will ensure that the militarisation of the War on Drugs and TOC will remain a staple feature of the security dynamics in Latin America for years to come. The failure of this 'war' in the region may, however, have provided some lessons for countering the drug trade in other regions, encouraging more development-centric responses, as discussed by Horsfield and Jesperson later in this section.

Notes

1. For more information on 'Plan Colombia', please see the information provided by the Embassy of the United States, Bogota, Colombia, http://bogota.usembassy.gov/plancolombia.html, accessed 20 September 2016.
2. Seelke, Clare Ribando and Finklea, Kristin, 'U.S.-Mexican Security Cooperation: The Merida Initiative and Beyond', 22 February 2016, http://fas.org/sgp/crs/row/R41349.pdf, accessed 21 August 2016.
3. For a detailed account of the false positives scandal see Human Rights Watch report 'On Their Watch,' June 2015, https://www.hrw.org/report/2015/06/24/their-watch/evidence-senior-army-officers-responsibility-false-positive-killings, accessed July 2016.

4. El Espectador, 'Más de 5.000 agentes del Estado son investigados por 'falsos positivos', 25 June 2015, http://www.elespectador.com/noticias/judicial/mas-de-5000-agentes-del-estado-son-investigados-falsos-articulo-568401, accessed August 2016.

5. The Zetas reportedly derived their name from the military radio call sign for Arturo Guzman Decenas, the group's first commander, who went by Z1. The letter 'Z' in Spanish is pronounced *zeta* (zay-tuh).

6. By the 2000s, the Gulf Cartel was posting recruitment flyers and banners around Mexico urging soldiers to defect. 'Former soldiers sought to form armed group; good pay, 500 dollars,' some fliers read, telling potential recruits to 'join the ranks of the Gulf Cartel. We offer benefits, life insurance, a house for your family and children. Stop living in the slums and riding the bus. A new car or truck, your choice.' C. Hawley 'Mexico Cartels Post 'help Wanted' Ads.' USA Today, 24 April 2008, http://usatoday30.usatoday.com/news/world/2008-04-24-mexicocartels_N.htm, accessed September 2016.

7. Grayson, George, 'Los Zetas: The Ruthless Army Spawned by a Mexican Drug Cartel.' *Foreign Policy Research Institute*. May 2008, http://www.fpri.org/article/2008/05/los-zetas-the-ruthless-army-spawned-by-a-mexican-drug-cartel/, accessed August 2016.

8. Grayson, 'Los Zetas: The Ruthless Army'.

9. Brodzinsky, Sibylla, 'The new 'police recruits' in Latin America: soldiers', *The Christian Science Monitor*, 8 February 2014, http://www.csmonitor.com/World/Americas/2014/0208/The-new-police-recruits-in-Latin-America-soldiers, accessed September 2016.

10. The Washington Post, 'Mexico's drug war is at a stalemate as Calderon's presidency ends', 27 November 2012, https://www.washingtonpost.com/world/the_americas/calderon-finishes-his-six-year-drug-war-at-stalemate/2012/11/26/82c90a94-31eb-11e2-92f0-496af208bf23_story.html, accessed July 2016.

11. US Department of State, 'Merida Initiative', http://www.state.gov/j/inl/merida/, accessed June 2016.

12. Stevens, Elijah, 'US Withholds Aid to Mexico Over Human Rights Concerns', InSight Crime, 20 October 2015, http://www.insightcrime.org/news-briefs/us-withholds-aid-mexico-over-human-rights-concerns, accessed July 2016.

13. Justice in Mexico, 'Armed with Impunity: Curbing Military Human Rights Abuses in Mexico', 12 July 2012, https://justiceinmexico.files.wordpress.com/2012/07/12_07_31_armed-with-impunity.pdf, accessed June 2016.

14. Human Rights Watch, 'Mexico: Crisis of Enforced Disappearances', 20 February 2013, https://www.hrw.org/news/2013/02/20/mexico-crisis-enforced-disappearances, accessed September 2016.

15. Woody, Christopher, 'We have seen a significant amount of deaths: Inside Latin America's brutal war on crime', Business Insider, 12 December 2015, http://www.businessinsider.com/militarised-police-violence-in-latin-america, accessed June 2016.

16. Ibid.

17. Ramsey, Geoffrey, 'Cable Suggests Mexican Army May Have Worked with Juarez Paramilitary Group', InSight Crime, 28 March 2011, http://www.insightcrime.org/news-analysis/cable-suggests-mexican-army-worked-with-juarez-paramilitary-group, accessed August 2016.

18. Kane, Michael, 'Peña Nieto Discusses Proposed Security Force', InSight Crime, 19 July 2012, http://www.insightcrime.org/news-briefs/pena-nieto-discusses-proposed-security-force, accessed July 2016.

19. Bonello, Deborah, 'Mexico President Claims Homicide Drop Despite Uptick in Killings', InSight Crime, 14 July 2016, http://www.insightcrime.org/news-briefs/mexico-president-claims-homicide-drop-despite-uptick-in-killings, accessed August 2016.

20. Gagne, David, 'New Strategy, Familiar Result: Militarisation in Mexico', InSight Crime, 25 March 2015, http://www.insightcrime.com/news-analysis/new-strategy-familiar-result-militarisation-in-mexico, accessed July 2016.

21. Corcoran, Patrick, 'What to Keep, What to Throw Away from Calderon Presidency', InSight Crime, 30 November 2012, http://www.insightcrime.org/news-analysis/what-to-keep-what-to-throw-away-from-calderon-presidency, accessed September 2016.

22. Arestegui, 'Disminuye la confianza de los mexicanos en el Ejército, la Marina y la PGR: INEGI', 25 August 2016, http://aristeguinoticias.com/0110/mexico/disminuye-la-confianza-de-los-mexicanos-en-el-ejercito-la-marina-y-la-pgr-inegi/, accessed August 2016.

23. Gagne, David, 'Mexican Govt Commission Confirms Army Massacre', InSight Crime, 22 October 2014, http://www.insightcrime.org/news-briefs/mexican-govt-confirms-massacre-army-tlatlaya, accessed August 2016.

24. Amnesty International, 'Torture in Mexico is out of control', https://www.amnesty.org/en/latest/campaigns/2015/10/stop-torture-mexico/, accessed August 2016.

25. Gagne, David, 'Reports of Army Human Rights Abuses Plummet in Mexico', InSight Crime, 23 February 2015, http://www.insightcrime.org/news-briefs/reports-of-army-human-rights-abuses-plummet-in-mexico, accessed September 2016.

26. Ditta, Elise, 'Use of Armed Forces in Drug War a 'Mistake' says Mexico Military Chief', InSight Crime, 16 March 2016, http://www.insight-crime.org/news-briefs/a-mistake-for-mexico-s-military-to-fight-drug-traffickers-secretary-of-defense, accessed July 2016.

27. Sullivan, John P., 'From Drug Wars to Criminal Insurgency: Mexican Cartels, Criminal Enclaves and Criminal Insurgency in Mexico and Central America', 3 May 2012, https://halshs.archives-ouvertes.fr/halshs-00694083/document, accessed July 2016.

28. Seelke, Clare Ribando,'Gangs in Central America', page 3, 20 February 2014, https://www.fas.org/sgp/crs/row/RL34112.pdf, accessed September 2016.

29. Rauda Zablah, Nelson, 'Los soldados, hartos, incumplen la orden de guardar silencio', El Faro, 28 September 2015, http://www.elfaro.net/es/201509/noticias/17397/Los-soldados-hartos-incumplen-la-orden-de-guardar-silencio.htm, accessed August 2016.

30. Gagne, David, 'Police-Gang Confrontations Happen Daily in El Salvador', InSight Crime, 27 September 2016, http://www.insightcrime.org/news-briefs/police-gang-confrontations-happen-daily-el-salvador, accessed June 2016.

31. Rodriguez, Carmen, 'Policías y militares acusados de ejecutar a pandilleros en El Salvador', 17 May 2016, http://www.cipamericas.org/es/archives/18730, accessed June 2016.

32. See profile of the Cartel of the Suns at: http://www.insightcrime.org/venezuela-organized-crime-news/cartel-de-los-soles.

33. Gagne, David, 'Venezuela Pilot's Arrest May Hold Clues to Cartel of the Suns', InSight Crime, 15 June 2016, http://www.insightcrime.org/news-briefs/venezuela-drug-pilot-may-be-clue-to-cartel-of-the-suns, accessed July 2016.

34. Human Rights Watch, Venezuela monitoring, https://www.hrw.org/world-report/2016/country-chapters/venezuela, accessed September 2016.

35. Brookings, 'Drugs and Drug Trafficking in Brazil: Trends and Policies,' July 2016, https://www.brookings.edu/wp-content/uploads/2016/07/Miraglia-Brazil-final.pdf, accessed August 2016.

36. See the entire report at: http://www.seguridadjusticiaypaz.org.mx/biblioteca/prensa/send/6-prensa/199-the-50-most-violent-cities-in-the-world-2014.

37. Tabory, Sam, 'Colombia Govt Reclassifies BACRIM, Paves Way for Airstrikes', InSight Crime, 9 May 2016, http://www.insightcrime.org/news-briefs/colombia-government-reclassifies-bacrim-airstrikes, accessed August 2016.

38. LaSusa, Mike, Argentina Militarizing Fight Against Crime with Help from USA, Israel', InSight Crime, 9 August 2016, http://www.insightcrime.

org/news-analysis/argentina-militarizing-fight-against-crime-with-help-from-us-israel, accessed September 2016.

39. SOUTHCOM, 'Adm. Tidd opening remarks at South American Defense Conference', 8 August 2016, http://www.southcom.mil/newsroom/Pages/Adm–Tidd-opening-remarks-at-South-American-Defense-Conference.aspx, accessed July 2016.

40. Woody, Christopher, "We have seen a significant amount of deaths': InSide Latin America's brutal war on crime', 12 December 2015 http://www.businessinsider.com/militarised-police-violence-in-latin-america accessed June 2016.

41. Pérez, Orlando J., 'Militarizing the Police Undermines Democratic Governance', Latin America Goes Global, 3 August 2015, http://latinamericagoesglobal.org/2015/08/militarizing-the-police-undermines-democratic-governance/, accessed August 2016.

42. Cawley, Marguerite, 'Honduras Gives Green Light to Military Police', InSight Crime, 23 August 2013, http://www.insightcrime.org/news-briefs/honduras-gives-green-light-to-military-police, accessed June 2016.

43. The Washington Office on Latin America (WOLA), 'Mexico's New Military Police Force: The continued Militarisation of Public Security in Mexico', 13 March 2013, http://www.wola.org/commentary/mexico_s_new_military_police_force_the_continued_militarisation_of_public_security_in_mex, Accessed For more information on 'Plan Colombia', please see the information provided by the Embassy of the United States, Bogota, Colombia, http://bogota.usembassy.gov/plancolombia.html, accessed 20 September 2016.

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Beyond UNGASS 2016: Drug Control Multilateralism and the End to the 'War on Drugs'

John Collins

Introduction

The failure of the so-called 'war on drugs' has become a truism of international policy discourses. The pursuit of a symmetrical, unconstrained and ultimately highly repressive and militarised 'war' strategy has not produced the desired results. Demand and supply have shifted but not diminished over the past few decades. Price has been largely falling and purity rising on an aggregate global level. Meanwhile, the militarised 'war' has fuelled incarceration, disease epidemics, human rights abuses and a contagion of violence, criminality and repressive policing and military policies across entire regions. The recognition of this reality has fuelled a tidal shift in global discourses, ultimately leading the most affected countries, including Colombia, Guatemala and Mexico, to call a UN General Assembly Special Session on Drugs (UNGASS) to discuss the current strategy in April 2016.

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UNGASS was never likely to lead to a radical shift in the global legal architecture, and has been perceived by many as a failure; however, it highlighted two key points. The first is that a new control system or 'regime' is emerging. Driving the change are local policy reforms, normative shifts, international legal reinterpretation and a more nuanced implementation of the international drug control system. The second is that reformist perceptions of the international 'regime' greatly misunderstand its 'core' character and legal purpose, mistakenly conflate the emergence of a militarised 'war on drugs' strategy as an inevitable outgrowth of the international legal architecture.

Consequently, the perception that rewriting current UN conventions is a necessary prerequisite for rolling back from this global strategy is incorrect. To help understand the changing international system or 'regime', this chapter examines the evolving relationship between national and international drug policies, and the evolution of the international control system up to and beyond UNGASS in April 2016.

As I have written elsewhere, UNGASS 2016 'represents the end point of the 'war on drugs' era'—an era which can be dated from roughly 1970 through to the late 2000s. Although the UNGASS 'outcome document' is not (nor was it ever likely to be) a reformist wish list, it represents a compromise framework for member states to wade through an incremental systemic reform process. This reform process is, and will continue, playing out in an organic and ad hoc manner—representative of the legion determinants of international drug control. This chapter will offer a discussion of the interests and trajectories and schools of thought determining the past, present and probable future for drug multilateralism beyond UNGASS 2016.

Towards an Interest-Based Understanding of Drug Diplomacy

As political scientist Ethan Nadelmann wrote in 1991, the norms of the international control 'regime' 'evolved and exist not only in the conventions and treatises of international law and the criminal laws of nation-states but also in the implicit rules and patterns that govern the behaviour of state and non-state actors as well as in the moral principles embraced by individuals'.[1] Nadelmann correctly highlights that international cooperation on the drugs regime emerged from the intersection

of many overlapping and shifting factors, each of which could alter the shape of cooperation.

Further, as international scholar Robert Keohane writes, 'institutions can be accounted for by examining the incentives facing the actors who created and maintain them. Institutions exist because they could have reasonably been expected to increase the welfare of their creators'.[2] An understanding of the successes and failures of reformist and status quo actors must be read through this prism.

The lead up to UNGASS 2016 was dominated by a reformist discourse highlighting the failures of the 'war on drugs'. However, UNGASS ultimately failed to live up to the hopeful predictions of many reformers. Some reformers tried to leverage areas of divergence (legal or political) as a wedge to force member states to reopen the international treaty system. In so doing, they ignored that the system is both sustained by, and reflects, overlapping national and international interests, and cannot be perceived merely as an exogenous determinant of them. The 'regime', many incorrectly argued, was the cause of bad national policies. Changing the 'regime' was therefore a precursor to moving beyond the 'war on drugs'. This flawed policy causality drove a rejection of legalistic compromises which could enable short-term pragmatic national reforms where political will existed.[3]

Status quo and prohibitionist actors, however, will feel equally unsettled by the rapidity of normative and political change. The system had previously avoided the intrusion of cross-thematic issues such as human rights and public health. As the prominence of these themes grows, and are overtly recognised by the outcome document,[4] the singular focus on prohibitionist market reduction that characterised the 'war on drugs' era will further its long slow fade into the background. A notable and vocal anti-reform bloc of member states can continue to punch above its diplomatic weight due to consensus-based rules which privilege intransigence over reform. But the tide appears in favour of liberal reforms.

Meanwhile, as Natasha Horsfield's contribution to this volume highlights, those advocating new models grounded in public health and human rights are increasingly faced with issues of implementation. Effectively, now that the war on drugs is ending, 'what comes next?' To answer that question requires a flexible overarching policy which encourages local experimentation to build an evidence base which can feed back up to international dissemination forums. Underpinning this policy 'flexibility' must be strict adherence to human rights, best practice public

health and market impact reduction policies. This chapter progresses by examining the historical and legal precedents and basis for this new era of experimentation.

UNDERSTANDING THE HISTORY OF DRUG MULTILATERALISM

Three schools of historical interpretation dominate policy discourses. The first is United Nations (UN) generated which seeks to justify the system and derive a clear linear trajectory from problem towards a rational and ever improving member state cooperation. Such cooperation is inevitably portrayed as 'a positive balance sheet'.[5] A second diametrically opposed stream paints the system as sheer international irrationality, driven by racism, moralism and malignant US leadership towards a 'prohibition regime' that is self-evidently flawed.[6] A third school perceives the system as a complex, rarely concrete and unfinished endeavour in international cooperation, one that lives as much in its implementation and interpretation as it does in its legal texts.[7]

The first and second schools dominate current policy discourses. What is seen in the dark is determined by where the light is shone. Policy analysts looked for the origins of current policy and read current debates backwards into discussions and decisions of the past. The result is that the regulatory underpinnings (i.e. 'the core') of the international control system are virtually ignored, while discussions fixate on the 'prohibitionist' aspects and their extreme implementation via the 'war on drugs'. Legal and regulatory ambiguities are analytically bridged through assumptions that 'these treaties are fundamentally about prohibition'.[8]

The international control system must be understood first and foremost as a system of international regulation which determines in a very broad manner how substances are produced, traded and consumed internationally. Like all regulatory systems, it has prohibited aspects, or at least attempts to define practices which should be prevented. The regulatory core has been the constant of international control since its inception in 1912 and institutionalisation in the 1925, 1931 and subsequent conventions and protocols. The prohibitionist aspects represented a shifting parameter determined by national politics, geopolitics, reigning cultural norms, perceptions of 'addiction' and 'treatment' and various other determinants.[9]

The distinction between the 'core' and 'peripheral' aspects of the conventions is of major significance for current policy discourses.

Two core tenets of US policy, outlined in the so-called 'Brownfield Doctrine', named after Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs, are to defend the 'core' of the drug conventions while allowing flexible interpretation of peripheral aspects. As he said: 'Things have changed since 1961. We must have enough flexibility to allow us to incorporate those changes into our policies … to tolerate different national drug policies, to accept the fact that some countries will have very strict drug approaches; other countries will legalize entire categories of drugs'.[10]

REGULATIONS AND PROHIBITIONS: THE KEY STRANDS OF INTERNATIONAL CONTROL[11]

International control efforts began in earnest around the turn of the twentieth century. The opium trade of the nineteenth century developed a reputation as exploitative and immoral, drawing fire from across the political spectrum, but particularly from missionaries and progressives. Both sought national and international regulations to lessen the trade and proliferate national prohibitions on certain types of use.

Opposing these drives were national and colonial interests, including concerns regarding the growth of illicit markets and the lack of regulatory structures or capacity in areas of weak governance; genuine concern for the wellbeing of 'addicted' populations; and economic interest, extending (decreasingly) to colonial revenue and (increasingly) to concerns for shares of the global drug manufacturing market.

From these competing concerns and interests emerged the key strands of international drug control: regulation and prohibition. The regulatory strand focused on an international 'management' approach to the drug issue. It recognised that although drugs could not be eradicated, their spillovers could be mitigated through regulatory strengthening and international dialogue and cooperation. The prohibitionist strand focused on moralistic or progressivist views that sought to cleanse society of drug production and use, including (eventually) all opium consumption. This understood the causality of social harm as beginning with drugs. Prohibiting ever more types of production and consumption was therefore viewed as the key to reducing their impact on society.

Both strands converged initially on the goal of lessening cross-border spillovers. In 1912, this meant ending the supply of drug commodities

to areas which had legally ceased their demand. Over time, this evolved into the impulse to create an 'ethical' licit market, thereby shrinking available supplies for the illicit market and channelling supplies to 'legitimate medical and scientific' use.[12] As this principle became internalised across the globe, efforts were made to regulate production and centralise it at the UN level during the 1940s, 1950s and 1960s.

Divergent member state interests posed an insurmountable obstacle to the codification of production limitation efforts. However, a closely monitored international market in 'licit' substances emerged. Many believed this would dry up the available supplies for the illicit market, leaving a minimal role for enforcement. This belief proved misguided. An illicit market accompanied growing international demand for various forms of consumption through the 1960s and beyond. Meanwhile, hubs of global insecurity emerged as key supply hubs, feeding emerging markets and ensuring the maturation of consumption patterns in many consumer countries.

The response was a renewed international push towards shrinking and repressing the illicit market, or at least creating a perception of doing so. This led to the unilateral US declaration of the 'war on drugs' in the 1970s. Thereafter, the international regime was shaped by a desire to shrink production and consumption, largely through repressive policing and enforcement measures, the costs and broad ineffectiveness of which have been extensively discussed elsewhere.

The international regulatory system was a tool in the growth of the global 'war on drugs', but hardly the only one. While a plurality of domestic responses to consumption emerged, producer and transit countries adopted uniform police responses, and implemented frameworks driven by consumer country agendas. It was only in the late 2000s that a number of producer and transit countries, particularly in Latin America, began to challenge the policy prescriptions. Meanwhile, consumer countries, witnessing maturation and decline of certain drug markets—opiates (Europe) and cocaine (the US)—have shifted further towards health and harm reduction models, while simultaneously seeking to extend prohibitions to New Psychoactive Substances (NPS).

The Emergence of the New Progressive Reform Era, 2008–2015

2008 can be seen as a global inflection point. US domestic politics drove away from the 'war on drugs', while cascading state fiscal crises challenged the prison epidemic. Political leaders, no longer fearing the 'soft on crime' label, increasingly classed the 'war on drugs' as ineffective and racist. Reform advocates spoke, for the first time, of having 'the wind at [their] backs'. At the international level, US leadership seemed uncertain as the Obama administration, who had previously described the 'war on drugs' as 'an utter failure', sought to repair regional relationships through a renewed emphasis on multilateral institutionalism.

Simultaneously, Latin America became vocal. In 2009, former leaders released the Latin American Commission report on Drugs and Democracy criticising the failures of past policies. In 2011, the first report of the Global Commission on Drug Policy called for 'not just alternatives to incarceration and greater emphasis on public health approaches to drug use, but also decriminalisation and experiments in legal regulation'.[13] Both reflected the tidal shift in elite opinion beyond the 'war on drugs' mentality.

Meanwhile, Mexico was descending into violence as a result of President Calderón's escalation of the drug war. Colombia was ascending from the violence of its darker days and willing, particularly under President Juan Manuel Santos, to challenge the key assumptions underpinning the supply-centric approach—likening it to cycling a stationary bike. As the cocaine commodity chain shifted further into Central America, states there, most notably Guatemala, called for a strategic re-evaluation. This disquiet soon emerged within regional forums. US Vice-President Joseph Biden broke with policy orthodoxy and referred to it as a 'totally legitimate debate', although initially stressing no change in the US position.[14] Biden's response and President Obama's subsequence support helped pave the way for an official regional dialogue.

Although soft on tangible suggestions, the 2013 report by Organization of American States (OAS), 'Scenarios for the Drug Problem in the Americas, 2013–2025', represented the first open discussion of the problems with current policies and potential alternatives. Uruguay contributed to this debate by announcing its intention to legalise cannabis as a crime reduction measure. The 2012 legalisation of cannabis in Colorado and Washington State caught US national elites

off guard. The US federal government faced a choice of allowing state experiments or expending federal resources to enforce unpopular federal laws in sovereign states that had legalised substances in contravention to the Controlled Substances Act—also raising questions about US compliance with the drug control treaties.

What followed shocked observers. In March 2014, Ambassador William Brownfield announced a new US diplomatic approach to drug policy, based on increased respect for national and local autonomy. Status quo advocates were blindsided by the lead nation publicly stepping back from enforcing the 'war on drugs' model. Reformist actors were initially cautiously welcoming. Some however rejected the framework, claiming it would undermine the case for treaty reform, paper over 'tensions' in the international system and undermine respect for international law.[15]

Others, myself included, argued strongly in favour of this 'Brownfield Doctrine' as 'a rational approach to a difficult question'.[16] To those favouring 'flexibilities' as an interim solution while an evidence base emerged, the US was showing leadership by providing an international strategic framework beyond marijuana legalisation. This framework accepted that 'some countries will have very strict drug approaches; other countries will legalize entire categories of drugs'.[17] As I argued elsewhere, the 'Brownfield Doctrine':

> derived from US constitutional principles around 'purposive' interpretations of legal texts…is based on four points:
>
> 1. Defend the integrity of the core of the conventions.
> 2. Allow flexible interpretation of treaties.
> 3. Allow different national/regional strategies.
> 4. Tackle organised crime.[18]

The Decline of the Reform Era, 2015–2016

Reformist rejection of the 'Brownfield Doctrine' was in part based on the belief that it would obviate the need for member states to reopen the conventions. This, however, was never a realistic political option. Even vanguard member states rejected treaty revisionism, privately highlighting that 'we examined the treaties and concluded that nothing in them requires a "war on drugs"'.[19] Reformists rejected a de facto victory

which enabled broad national-level reforms in the hope of initiating a long-term process of legal codification of these same goals. Political bets were placed on a chaotic UNGASS producing spontaneously positive outcomes based on the inescapable logic of reform necessity.

In the meantime, the initiative was lost. From a chaotic process, status quo actors regained control and reformist lobbying never reached the scale needed to become effective or self-sustaining. Reformist member states prevaricated and civil society struggled to progress beyond the anti-'war on drugs' narrative to a clear pragmatic vision. Instead, they fixated on an 'expert commission', hoping to highlight the tensions within the treaties and thereby push for treaty revisions.

Meanwhile, it became apparent that Asian nations sought continuity, and were not seriously considering or in some cases even aware of UNGASS. China's push to schedule Ketamine against WHO advice forced many into defensive action to ensure an essential anaesthetic was not unduly restricted for millions of people. Russia viscerally defended the status quo, while Europe sought to keep drug policy off its packed political agenda. The US, having stepped ahead of the curve and been burned by both status quo and reformist interests, stepped back partially, asserting drugs as a sovereign issue in moments of bluntness.[20]

The US solidified a national discourse focused on treatment and 'recovery', transmitting that narrative internationally. Marijuana legalisation had become a sovereign issue and generally remained far from official UN discourse. A new consensus around public health, access to medicines and the need for human rights, pervaded diplomatic language, but it was clear the international system had moved as far as was likely in a relatively short period. Stasis was certain to follow UNGASS.

As the 'outcome document' materialised and the likely contours of UNGASS became clear, some sought to unilaterally veto the process, but the dye was cast. Member states had expended significant diplomatic resources. Those at the vanguard initially sought to distance themselves from the outcome, but soon began to highlight the document as a major step forward, enabling an expansion of national experimentation through new treaty flexibilities. Others cast it as a human rights win.[21] Meanwhile, the process itself had driven a large normative shift within the international system.

A Revolution in Interpretive Scope for the Drug Treaties

Questions of where to draw the line between licit and illicit remain one of the unresolved tensions within the system since its genesis, one resolved by political consensus rather than legal codification. As Francisco Thoumi writes, 'despite the strong support to the limitation of drug uses to "medical and scientific purposes," they are not defined in the conventions and exclude any contribution of the social sciences'. Further, he writes:

> conventions generally define their most important terms carefully and in this respect the drug conventions are flawed because they fail to define their two most important concepts: "medical and scientific purposes". In legal parlance, they have a "legal void" or "legal gap".[22]

In the midst of this emerging legal debate on the boundaries of the conventions, a number of flexibility frameworks have emerged among member states.

Interim Frameworks for Flexibility on Regulated Markets

1. *Resource/Capacity Limitations: Selective Enforcement Model*

This framework derives from legal complications surrounding the enforcement of the treaties within a federal political system. The US remains the test case. The federal government, not individual states, is the signatory to the UN drug control treaties. The federal government has no constitutional authority to force states to implement the treaties, and can directly enforce the treaties in states only via federal resources.

The U.S. State Department has argued this would place an excessive burden on federal resources and therefore cannot be consonant with a realistic interpretation of the drug control treaties. Other federalist jurisdictions have faced similar issues. In Spain, a 2013 report by RAND highlights that:

> Following several Supreme Court rulings, the possession and consumption of cannabis is no longer considered a criminal offence, and the jurisprudence in the field has tended to interpret the existing legislation in a way that permits 'shared consumption' and cultivation for personal use when

grown in a private place…the Cannabis Social Club (CSC) movement has sought to explore this legal space, reasoning that if one is allowed to cultivate cannabis for personal use and if 'shared consumption' is allowed, then one should also be able to do this in a collective manner. In this context, hundreds of CSCs have been established over the past 15 years, but legal uncertainty around the issue of production continues.[23]

2. *Supremacy of Human Rights Treaties over Drug Control Treaties*

Human rights obligations are a part of the UN Charter. Obligations derived from the drug control treaties are subordinate to human rights obligations. As the UN Charter explicitly states, 'in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail. (21 Chap. XVI, Art 103).

In Uruguay, a systematic elaboration of this argument has shaped laws seeking to 'combat drug trafficking*'* while also 'defend[ing] the constitutionally protected right to freedom of our fellow citizens'.

Contemplating Shifts in Cost Displacement of Global Goods and Bads

As functionalist international relations theory would predict, the current international system constitutes a mechanism of cost displacement, interstate bargaining facilitation and cross-border contract enforcement. In the past it drove member states towards a singular and prohibitionist implementation. This was perceived to benefit consumer countries through reduced access and consumption, but these benefits derived from major displaced costs, particularly those displaced on producer and transit countries.

As Jonathan Caulkins writes, '[p]rohibition is extraordinarily expensive on multiple dimensions, including budgetary costs, enrichment of criminal gangs and deprivation of liberty'. He has attempted to quantify the possible benefits accruing to the US as a consumer country through an improvement in quality-adjusted life-years resulting from reduced drug dependence issues. Under this calculation he suggests 'prohibition may prevent enough drug dependence to warrant spending as much as $112 billion per year'. However, he acknowledges these potential benefits do not apply to producer or transit countries.[24]

Those advocating prohibition's continuation judge the benefits of (probable) decreased consumption to outweigh the costs, especially if it can be implemented in a more 'rational' manner. As Jonathan Caulkins writes: 'The goal of prohibition is not and should not be to eradicate the corresponding markets completely; that is not realistic. Rather, the goal should be to drive the activity underground, making it less efficient or, equivalently, driving up the cost of providing the good or service'.[25] The result is a more minimalist form of prohibition. Caulkins and Reuter suggested in 2006 that 'the United States could cut sanctioning by 50% across the board and suffer only a very modest increase in use and dependence, even though eliminating prohibition altogether would lead to a doubling or tripling of dependence'.[26]

In more recent work, Peter Reuter and Harold Pollack have highlighted an absence of evidence that additional spending on prohibition above a certain point increases drug prices at the margins. Additional marginal spending on prohibition's enforcement therefore has no impact on drug consumption.[27] This complements a vibrant public health literature which, as Natasha Horsfield's contribution highlights, demonstrates the concrete negative impact repressive prohibitionist policies have on health outcomes such as HIV transmission, access to treatment and broader human rights determinants.[28]

The case for a drastically more minimalist conception of prohibition is justified by the available evidence and therefore constitutes a rational direction for policy. Political economy approaches further highlight the desirability of a shift towards 'Focused-deterrence strategies, selective targeting and sequential interdiction efforts [which] are often more promising law enforcement alternatives than flow-suppression or zero tolerance approaches'.[29] As Mark Shaw wrote in 2016:

> Evidence and experience has shown that a broader set of harms that are resulting from the growth of criminal networks, including prolific violence in certain states, are only exacerbated by hard line criminal justice and militarised approaches. If the full harms of drug trafficking and use are to be addressed, then a broader understanding of harm reduction must be introduced.[30]

Others argue this should be accompanied by greater regulatory experimentation in order to empirically determine the benefits of prohibition relative to alternatives. Further, they highlight that to shift policies at a

global scale will require member states to shift policies on a local scale, which will require large investments of political capital and research and innovation.[31] As Mark Kleiman and Jeremy Ziskind wrote in 2014:

> The places that legalise cannabis first will provide – at some risk to their own populations – an external benefit to the rest of the world in the form of knowledge, however the experiments turn out…as the pioneering jurisdictions take adequate measures to prevent "exports".[32]

Member states risk that deregulation in one state will increase illicit flows to their state. The great scientific experiment underway is whether that is the case. If not, then the purpose of the system—to prevent unregulated cross-border flows—remains intact, albeit through a different conception of national regulations. In the case of cannabis, it is demonstrably clear that marginal increases in prohibition will not bring about further reductions in consumption. Consequently, regulation in the absence of alternatives (as European powers did for opium consumption in pre-World War II Asia) is permitted as a pragmatic policy response in line with the 'object and purpose' of the conventions, even if not in line with their previous implementation.

Conclusion: Leave UNGASS Behind—From Symmetric to Asymmetric Reforms

Many key member states now openly reject the 'war on drugs strategy'. The head of the US Office of National Drug Control Policy Michael Botticelli described the 'war on drugs' as 'all wrong' and is at pains to highlight tactical changes producing a broader strategic shift away from the 'war' strategy.[33] This does not negate the need for broad tactical disagreements and highlighting hypocrisies, such as the US ceasing the war on drugs at home while pushing many of the same interventions overseas. Similarly, voices, including the President of the United States, are right to highlight that their 'war on drugs' is being ended as perceptions of the median 'user' have shifted away from being black and poor to being white and middle class.[34]

The trends in policy nevertheless seem relatively clear in a number of areas. A greater global divergence is evident in the response to drug use and dependence. More liberal national regimes are emerging in which governments decriminalise consumption and focus resources on public

health services. In other places, for example Russia and the Philippines, a repressive approach remains entrenched or is expanding. In these cases, human rights groups will find the most likely bulwark within the existing corpus of international human rights law. Any new obligations towards treating drug dependence would require universal acquiescence, including from these very same repressive states, meaning it is unlikely to materialise.

Meanwhile, legal regulatory experimentation is underway around cannabis, with the potential to apply this to other substances or parts of the commodity chain. For example, the regulation of certain uses of the coca leaf does not necessitate the legal regulation of its derivative cocaine. In this context, providing that countries experimenting with regulation take measures to prevent exports, the impact on surrounding jurisdictions will likely be mixed. It is clear that in a free movement system such as the US, unilateral legalisation of cannabis by single states will impact neighbouring ones through increased availability. However, one could as easily expect a simultaneous decrease in criminality. At the international level, the impacts are likely to be diminished through existing trading and border restrictions.

The trade in certain drugs (particularly the high quality/value/price market segment) will likely gravitate to jurisdictions which have legalised, for example Mexican cannabis cultivation collapsed post-US state legalisations. This will likely undermine the illicit industry. Actors in these areas may shift into other illicit activities, for example opium cultivation, extortion and other types of crime. Nevertheless, this will diminish the availability of illicit opportunities and profit-making potential. In areas which have specialised in certain illicit drug production, for example rural Afghanistan or Colombia, the shift to a legalised, concentrated and potentially mechanised market would likely wipe out their competitive advantage and could have further immiserating effects on poorer populations with minimal economic alternatives.

Regardless of legal regulation, the continued decriminalisation of the illicit drug trade in the Americas now seems possible. As this chapter highlights, current evidence suggests a low risk of decriminalisation of use causing increased consumption. Further, supply side enforcement efforts are likely drastically over prioritised relative to their marginal impact on prices, particularly in mature markets. A trend towards reducing enforcement intensity seems unlikely to fuel increased criminality or the supply of illicit drugs. While decriminalisation does not necessarily

entail legal regulation, it should remove certain drug users from the criminal justice system, alleviating incarceration pressures in a region where financial constraints on public services provision are high.

The focus should be on determining where criminalisation is required to keep the market from becoming commercialised and how minimal necessary enforcement can be kept. None of the above options will remove criminality from the trade, whether more stringent enforcement or legal regulation, particularly in areas of weak governance. The key policy goal in the immediate term should be a move towards a demilitarised approach, thereby minimising the criminal and broader impacts of drug markets.

Meanwhile, the case for symmetric reforms of the international system has become less and less potent as a new pluralistic conception emerged.

Although uneven application of international regulations can result in a 'race to the bottom', the current scope and scale of regulatory experimentation is insufficient to justify this as a mitigating concern. Jonathan Caulkins coined the predicted immediate impact on global markets of one country's legalisation of a commercial cocaine or heroin industry as the 'grand fracture'.[35] The onset of such a 'grand fracture' would raise such concerns but is unforeseeable at present. Local jurisdictions will have to balance the desirability of unilaterally decreased penalties or increased regulation, with the possibility of prevalence of those activities increasing and centralising in their jurisdictions. For example, while unilateral non-enforcement of cocaine transit prohibitions in a Central American nation such as Guatemala will likely have minimal impacts on retail prices or consumption patterns in New York City, it will have significant political economy impacts within Guatemala which need to be taken into account. The lessons of attempted legalisation of the cannabis trade will provide important datasets for beginning to evaluate these policy options, hence the value of an era of small-scale, incremental regulatory experimentation.

The immediate years in the aftermath of the UNGASS 2016 should be characterised by a drive to innovation. Successes will likely drive implementation. What seems likely is that international drug policy in the coming years will be determined by local, national and regional actions, and the UN will carve out a new role in espousing a global public good through drug policy. In the past, this public good was viewed in terms of a singular focus on prohibition. Now political and funding constraints will force the drug policy arms of the UN to assume a reactive

role, avoiding political dispute and chasing areas of consensus, evidence and funding. Meanwhile, other, previously silent, UN bodies will likely encroach on traditional UN Commission on Narcotic Drugs (CND) and UN Office on Drugs and Crime (UNODC) territory. These will likely include UN Development Programme, UN Human Rights Council, UNAIDS and UN Women.

Similarly, reformist civil societies will contend not with an intransigent and singular global 'regime', but the political calculations of local actors. The outcome of the UNGASS 2016 process has been a repatriation of some policy sovereignty to regional and national levels. At the international level, language continues to be watered down to enable an ever widening spectrum of policies. Within that widening, political battles will continue to attempt to set the boundaries of policy, likely underpinned by a greater pull towards the public health and human rights end of the spectrum.

NOTES

1. E.A. Nadelmann (1990), 'Global Prohibition Regimes: The Evolution of Norms in International Society', Int Organ; 44(4): 479–526.
2. A. Hasenclever, P. Mayer, V. Rittberger (1997), Theories of International Regimes, (Cambridge: Cambridge University Press).
3. M. Jelsma (2016), 'UNGASS 2016: Watershed event or wasted opportunity?', Transnational Institute.
4. R. Lines, D. Barrett (2016), 'The Human Rights Win at UNGASS on Drugs That no one is Talking About and How We Can Use it', https://hrcessex.wordpress.com/2016/05/09/the-human-rights-win-at-the-ungass-on-drugs-that-no-one-is-talking-about-and-how-we-can-use-it/, accessed 20th September 2016.
5. UNODC (2008), A Century of International Drug Control, (Vienna: United Nations).
6. M. Jelsma, D.R. Bewley-Taylor (2012), The UN Drug Control Conventions: The Limits of Latitude [Internet]. Transnational Institute and International Drug Policy Consortium; (Series on Legislative Reform of Drug Policies). Report No.: 18.
7. J. Collins (2015), Regulations and prohibitions: Anglo-American relations and international drug control, 1939–1964, (London: London School of Economics and Political Science); and D. Courtwright (2012), A Short History of Drug Policy or Why We Make War on Some Drugs but not on Others', Governing the Global Drug Wars, (London: LSE IDEAS).

W.B. McAllister (2000), Drug Diplomacy in the Twentieth Century: an International History, (London: Routledge); and W.B. McAllister (2000), Drug Diplomacy in the Twentieth Century: an International History, (London: Routledge).

8. Expressed by a number of policy actors in public and private discussions.

9. J. Collins (2015), Development First: Multilateralism in the Post-'War on Drugs', After the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE IDEAS).

10. William R. Brownfield. Trends in Global Drug Policy [Internet]. 2014 Oct 9; New York City. Available from: http://fpc.state.gov/232813.htm.

11. J. Collins (2015), Regulations and prohibitions: Anglo-American relations and international drug control, 1939–1964, (London: London School of Economics and Political Science).

12. W.B. McAllister (2012), 'Reflections on a Century of International Drug Control', Governing the Global Drug Wars, (London: LSE IDEAS).

13. The Global Commission on Drug Policy (2011), War on Drugs, available from: http://www.globalcommissionondrugs.org/reports/war-on-drugs/, accessed 20th September 2016.

14. A. Williams, N. Cattan (2012), 'Biden Says Drug Legalization Debate Is' Totally Legitimate', Bloomberg News, available from: http://www.bloomberg.com/news/articles/2012-03-05/biden-visits-mexico-honduras-amid-calls-to-debate-drug-strategy, accessed 20th September 2016.

15. D. Barrett, D. Bewley-Taylor, M. Jelsma (214), 'Fatal Attraction: Brownfield's Flexibility Doctrine and Global Drug Policy Reform', Huffington Post Politics UK, available from: http://www.huffingtonpost.co.uk/damon-barett/drug-policy-reform_b_6158144.html, accessed 20th September 2016.

16. J. Collins (2014), 'The State Department's move to a more flexible diplomatic policy on drugs is a rational approach to a difficult question', USAPP.

17. W.R. Brownfield (2014), Trends in Global Drug Policy, http://fpc.state.gov/232813.htm, accessed 20th September 2016.

18. J. Collins (2014), 'The State Department's move to a more flexible diplomatic policy on drugs is a rational approach to a difficult question', USAPP.

19. Private Discussions.

20. Centre for International and Strategic Studies (2015), What's Happening in U.S. Drug Policy at Home and Abroad? available from: http://csis.org/event/whats-happening-us-drug-policy-home-and-abroad, accessed 6th February 2015.

21. R. Lines, D. Barrett (2016), 'The Human Rights Win at UNGASS on Drugs That no one is Talking About and How We Can Use it', https://

hrcessex.wordpress.com/2016/05/09/the-human-rights-win-at-the-ungass-on-drugs-that-no-one-is-talking-about-and-how-we-can-use-it/, accessed 20th September 2016.

22. F.E. Thoumi (2016), 'Re-examining the "Medical and Scientific" Basis for Interpreting the Drug Treaties: Does the "Regime" Have Any Clothes?', After the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE IDEAS).

23. B. Kilmer, K. Kruithof, M. Pardal, J.P. Caulkins, J. Rubin (2013), 'Multinational Overview of Cannabis Production Regimes'. RAND Europe.

24. J.P. Caulkins (2014), 'Effects of Prohibition, Enforcement and Interdiction on Drug Use', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy [Internet]. (London: LSE IDEAS). 2014.

25. J.P. Caulkins (2014), 'Effects of Prohibition, Enforcement and Interdiction on Drug Use', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy [Internet]. (London: LSE IDEAS). 2014.

26. J.P. Caulkins (2014), 'Effects of Prohibition, Enforcement and Interdiction on Drug Use', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy [Internet] (London: LSE IDEAS); and J.P. Caulkins, P. Reuter (2006), Reorienting U.S. Drug Policy', Issues Sci Technol, XXIII(1): 79–85.

27. H. Pollack, P. Reuter (2014), Does Tougher Enforcement Make Drugs more Expensive? Addiction; 109(12): 1959–1966.

28. J. Csete, A. Kamarulzaman, M. Kazatchkine, F. Altice, M. Balicki, J. Buxton, et al. (2016), 'Public health and international drug policy' The Lancet.

29. V. Felbab-Brown (2014), 'Improving Supply-Side Policies: Smarter Eradication. Interdiction and Alternative Livelihoods—and the Possibility of Licensing', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE).

30. M. Shaw, 'UNGASS 2016: The Focus on "Harm Reduction" is Making us Blind to Reducing the Broader Harms of Organised Crime', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE).

31. J. Collins (2015), Development First: Multilateralism in the Post-'War on Drugs', After the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE IDEAS).

32. M.A.R. Kleiman, J.A. Ziskind (2014), 'Lawful Access to Cannabis: Gains, Losses and Design Criteria', Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy, (London: LSE).

33. S. Pelley (2015), 'A New Direction on Drugs', 60 min, http://www.cbsnews.com/news/60-minutes-a-new-direction-on-drugs/, accessed 20th September 2016.
34. B. Obama (2016), 'President Obama Speaks at the National Rx Drug Abuse & Heroin Summit'.
35. J. Caulkins, (2016), 'After the Grand Fracture: Scenarios for the Collapse of the International Drug Control Regime', Brookings, https://www.brookings.edu/wp-content/uploads/2016/07/Caulkinsfinal.pdf, accessed 20th September 2016.

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The Development Impacts of the 'War on Drugs'

Health Poverty Action

THE MILITARISATION OF THE 'WAR ON DRUGS'—THE SHARP EDGE OF THE PROHIBITION WEDGE

The 'war on drugs' has been a disaster for development in almost every sense. Prohibition, and the militarisation of drug law enforcement as the most extreme display of this policy approach, have fuelled violence and instability, displaced vulnerable populations, enhanced state corruption and diminished accountability, destroyed livelihoods and diverted finite financial resources away from pubic services in countries in the Global South, all to the detriment of human development.

The militarised and enforcement-led approach to prohibition, dubbed the 'war on drugs', has dominated global drug control policy since it was first coined under US President Nixon in 1971.[1] In this time, the securitisation of drugs as a 'threat', led by the US,[2] has facilitated the militarisation of anti-drug programmes in reaction to unsuccessful efforts by traditional drug law enforcement.[3]

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The international focus on supply side anti-production and anti-trafficking strategies has also placed developing countries on the front line of this 'war'. Militarisation, through the deployment of armed forces in counter-narcotics operations and the use of military equipment, training and tactics by police and domestic drug enforcement agencies,[4] has not only failed to achieve its intended results of reducing drug supply and demand, but has also aggravated the already damaging effects of the drugs trade for development in fragile and under-resourced countries.[5]

The use of militarised methods by police and other civilian forces, as well as the use of joint military and police forces in counter-narcotics operations,[6] blurs the line between traditional law enforcement and explicitly militarised responses, making it difficult in some areas to clearly distinguish between the two. In this way the militarisation of the 'war on drugs' can be seen as the sharp end of the prohibition wedge, with militarised responses and their development impacts comprising the extreme end of the spectrum of international prohibitionist drug policy. This blurring of boundaries is, to a certain extent, also reflected in literature on the issue. Consequently, whilst this chapter will focus on examples of the most clearly militarised responses in the 'war on drugs', there are unavoidably areas where it refers to, or gives examples of, enforcement more generally. Nevertheless in other ways, particularly the expansion of military forces deployed to undertake anti-drugs operations, the extent of militarisation is clear. In 2003, the Colombian Uribe Government committed to expanding security forces from 250,000 (comprising 150,000 military and 100,000 police) to 850,000 over a 4 year period.[7] In Mexico, in its first three years in power the Calderón administration expended circa US$9 billion per year to deploy 45,000 military personnel to fight drug trafficking and nearly triple the federal police force from 9000 in 2006 to 26,000 in 2009,[8] with arguably devastating consequences.

Additionally, although the failings of the 'war on drugs' are well documented, and analysis of the implications of these failings from a development perspective is a fast growing area of enquiry, research and analysis focused specifically on the development impacts of militarised drug control policy is more limited.[9] This raises some challenges for drawing

on a strong body of evidence specific to development impacts in areas affected by the militarisation of the 'war on drugs' or providing analysis which takes account of the specific nuances of development impacts in local contexts, but also raises important questions about why such little research has been conducted in this area, and whether this has been shaped by prevailing interests in maintaining the status quo. This chapter aims in part to contribute to filling this gap, by summarising and drawing on existing research and evidence to set out an overview of the harmful impacts of the militarisation of the 'war on drugs' for development in countries in Latin America and across the Global South, proposing recommendations for development-focused policy alternatives. This is intended to stimulate further exploration of this important area in order to strengthen the existing evidence for reform.

Violence and Insecurity

'A militarised response to drug trafficking can actually increase violence'
   —West Africa Commission on Drugs[10]

The militarisation of the 'war on drugs' has exacerbated violence and insecurity associated with the drugs trade in many areas of Latin America in particular. The policy approach of 'fighting' the 'war on drugs' in its most literal sense has fuelled violence in several ways. Military style operations to disrupt the drugs trade and remove key players in drug trafficking networks have worsened the violence associated with the drugs trade by creating power vacuums that spur violent competition. According to the United Nations Office of Drugs and Crime (UNODC), deadly violence connected to the drugs trade is primarily stimulated by changes in the drugs market.[11] The Transnational Institute notes that "high homicide rates [in Central America's northern triangle] are… [in part] fuelled by police and military interventions that destabilize DTOs [drug trafficking organisations] and illicit markets, with increased competition and clashes as a result."[12] Direct clashes between drug cartels and state forces resulting from the increased militarised response have also contributed to burgeoning levels of violence, as in Mexico and elsewhere, drug gangs have reacted violently to the government's armed response to combat their activities.[13]

Militarising the 'war on drugs' has also increased the availability of weapons and trained security personnel. Co-option and coercion of some military and police personnel and the proliferation of arms associated with militarisation, mean that the ready availability of weapons and trained security personnel intended to fight the drugs trade also benefits drug gangs who see them as assets.[14] In Guatemala, reported cases of weapons being stolen from the military and turning up at locations associated with drug trafficking organisations, point to the apparent flow of arms from some elements within the military to criminal groups associated with the drugs trade.[15] In Mexico, high rates of desertion from underpaid army roles also play into the hands of drug cartels. During President Calderon's office (2006–2012), over 56,000 Mexican soldiers, 28% of its forces, reportedly deserted the army.[16] These army deserters are targeted directly by drug cartels, even through public recruitment adverts, such as banners hung beside main roads offering a salary, food and family medical care.[17]

Whilst it is very difficult to identify and isolate the specific causes of violence in areas affected by drug production and trafficking, according to Metaal and Velde, it appears that dramatically high murder rates in central America are attributable at least in part to "criminal organisations …vehemently fight[ing] for control of territory and markets."[18] This is a result of challenges and changes to the status quo of the drugs trade (partially caused by increased counter-narcotic operations), in addition to direct clashes between drug trafficking organisations and enforcement agencies.[19] Mexican government statistics that show the murder rate more than doubled during the 2007–2012 intensive 'war on drugs', in comparison to the preceding 6 years, are indicative of this.[20] The Mexican government and others have reportedly estimated that over 80,000 Mexicans have lost their lives since the 'war on drugs' began in 2006, with an additional 27,000 disappeared.[21]

An extreme increase in violence alongside an increased military response is also reflected in high homicide rates in other countries on the front line of the 'war on drugs'. The homicide rate in Honduras in 2011 was the highest in the world at 92 per 100,000, increasing 161% from 2005.[22] This overlapped with a 186% increase in military spending from 2006 to 2015.[23] Similar patterns of violence and high homicide rates accompanying a militarised response to the drugs trade can also be seen in places such as Brazil and Colombia.[24] A particular surge in violence in

the Northern Triangle has meant that Guatemala and El Salvador have in recent years experienced higher murder rates than during each of their civil wars.[25] The development impacts of violence are well documented. On a macro level drug-related violence restricts economic development and contributes to political instability.[26] At a personal and community level, civilians, including children, are caught up and lose their lives in this violence, but also experience increased unemployment and poverty as public spaces, interactions and community engagement become restricted by drug related violence.[27] Restrictions on public movement and community engagement also have negative impacts on access to healthcare services and education, particularly if the need to travel long distances to access such services carries with it a greater a risk of being caught up in violence.

The use of militarisation in fighting the 'war on drugs' has also contributed to human rights violations. In Thailand, the government's 2003 campaign to counter drug trafficking reportedly involved a 'shoot to kill' policy and the apparent endorsement of violence against those suspected of dealing drugs, contributing to the deaths of over 2500 people in a period of three months, as well as thousands of arbitrary arrests and blacklisting of individuals.[28] Many of those killed were later found to have had no links to drug trafficking,[29] and the culture of fear surrounding the Thai campaign had the additional impact of pushing people who used drugs away from health services, including HIV prevention services.[30] The involvement of the military in law enforcement to fight the 'war on drugs' has also been linked to rights violations in multiple countries across the Americas, with reports alleging extrajudicial killings, disappearances, sexual violence, violence, torture and arbitrary detention involving elements of government security forces.[31]

As has often been the case in militarised environments, there is also a strong link between increased militarisation in the 'war on drugs' and increased violence against women. The Mesoamerican Working Group reported that the increased use of armed forces to fight the 'war on drugs' in parts of Mesoamerica was accompanied by increased femicides, gender based violence, rape and other forms of sexual violence, including abuses where members of state forces were reportedly implicated or complicit.[32] In addition to the direct physical, psychological and social impacts on the women who experience this violence, their families and communities; the threat of gender based violence, either directly by state

actors or as a result of violence exacerbated by the 'war on drugs', may also act as an additional barrier to community engagement and restrict women's access to social services, or act as a determining factor in a woman's forced displacement.[33]

FORCED ERADICATION

Forced eradication is a key supply side method used in the 'war on drugs', aimed at destroying the plants used to produce drugs (i.e. cannabis, coca bush and opium poppy), in order to supress the drugs market 'at source'. Forced eradication campaigns are often militarised through the presence of the military or armed police accompanying those carrying out manual forced eradication,[34] and can have a significant impact on livelihoods and instability in poor rural communities where illicit crop cultivation largely takes place.

As Buxton describes in her research paper 'Drugs and Development: The Great Disconnect'[35] and elsewhere, many of those who grow or engage in the cultivation of illicit crops live in situations of multidimensional poverty, are land, food and cash poor and lack suitable opportunities for feasible licit agricultural or other livelihoods. Drug crops prosper in marginal environments, requiring little financial investment or technical maintenance with pesticides or irrigation, are non-perishable and easily transportable (given traders will often come to the farmer to purchase their crop), and benefit from a large, stable and sustained market.[36] As a result, says Buxton, although failing to address the structures of marginalisation, drug crop cultivation can be an essential strategy to mitigate food or income insecurity in situations of isolation, insecurity and scarcity, particularly in the remote politically and economically marginalised rural areas where these crops are largely grown.[37] For example, Mansfield and Paine's research in Afghanistan found that the opium poppy offers land poor farmers access to land as sharecroppers or tenants, supplying income from the poppy but also the means to grow subsistence food crops and pay for health and education that would otherwise be largely unavailable.[38] For displaced or travelling communities, drug crops can also offer vital employment due to the labour intensity and regularity of their harvest cycle.[39]

The precarious socio-economic situation of many of these communities, and their reliance on cultivation as a livelihood safeguard, sharpens the impact of militarised forced eradication campaigns. The forcible

destruction of crops and cultivation bans, particularly in the absence of viable sustainable development initiatives, pushes already vulnerable cultivators further into poverty and insecurity. Farthing and Khol's research found that militarised forced eradication in the Chapare region of Bolivia, coupled with a lack of development support, led to severe economic insecurity for 50,000 families by 2000.[40] A UNODC study in Wa region in Myanmar also found that "where local authorities enforced an opium ban in 2005, farmers lost up to 70% of their cash income".[41] For those farmers lacking "opportunities to invest in alternative income generation activities … their living conditions … worsened, which is reflected in a lack of food and the inability to purchase basic household items. This increase[ed] their vulnerability, which [was] manifested in a deteriorating health status and by increasing school drop-outs as farmers [could] no longer afford school fees for their children".[42] Chouvy also found the negative impacts of forced eradication to be more acute when crops are destroyed immediately before the harvest, when farmers not only lose a crop in which they have invested labour and other resources, but often having sold their crop in advance, are indebted with no alternative means of repayment.[43] The only way of raising the required funds is therefore further drug crop cultivation which, in comparison to other crops, produces far faster and more valuable yields. These impacts of forced eradication exacerbate poverty in poor, marginalised communities, creating a cycle whereby, as Youngers and Walsh point out, small-scale farmers' dependence on cultivating drug crops is reinforced as a consequence of the income shocks caused by forced eradication, further reinforcing the cycle of poverty.[44]

Since it is often women who carry out the drug crop cultivation in many communities, forced eradication has the added impact of reinforcing gender inequalities already aggravated by unequal access to land, education and employment, impacting the security of female headed households more severely.[45] This may leave women particularly vulnerable to engaging in risky alternative activities for survival, for example forced eradication has been reported in some areas as leading to increases in female sex work and the trafficking of women and children.[46]

As militarised eradication relies on force, it can often lead to or fuel existing violence,[47] particularly where the threat to farmers' already insecure livelihoods exacerbates existing tensions.[48] This has been the case in violent conflicts in some key cultivating areas of Latin America and South and South East Asia.[49] In Bolivia's Chapare region, forced eradication campaigns

carried out by security forces in the late 1990s corresponded with prolonged violence, including the deaths of over two hundred people in a series of protests against eradication between 1999 and 2002.[50] As in other areas, the involvement of the military in eradication has also led to reported incidents of human rights abuses. In Colombia, farmers have reported allegations including theft of food and valuable personal possessions, threats and physical aggression and the destruction of property, including a home being burned, by soldiers carrying out forced eradication campaigns.[51] This additional loss of assets only worsens the ability of poor farmers to recover from the livelihood loss experienced as a result of forced eradication.

Displacement

Drug related violence exacerbated by the militarisation of the 'war on drugs' has driven forced displacement in many areas. In Mexico, violence linked to the 'war on drugs' has displaced people both on a gradual scale and in instances of mass displacement. 2000 people were reportedly displaced as the result of a single confrontation between two cartels in Michoacán in May 2011, and according to research from the Universidad Autónoma de Ciudad Juarez, approximately 220,000 people were displaced from Ciudad Juarez between 2007 and 2010 as a result of drug related violence.[52] The absence of official figures means that estimates of the overall scale of this displacement in Mexico are piecemeal, however one source (although unconfirmed) has estimated that 1.6 million people were internally displaced during the height of the Calderón administration's 'war on drugs' (2006–2011).[53] Internally Displaced Persons (IDPs) in Mexico have reported problems protecting their property, including their homes and land, loss of personal documentation preventing their access to social benefits, loss of livelihoods (for both farmers and small business owners), and further violence linked to the 'war on drugs' in their new location.[54] Displacement affects the poorest communities most severely as they lack the funds to establish livelihoods elsewhere when forced to flee violence or relocate, exacerbating poverty, food and land insecurity in particular.

In some areas, militarised forced eradication campaigns have also been accompanied by community displacement. In Colombia, where forced manual eradication has driven displacement in some areas, families internally displaced by eradication campaigns do not qualify for government assistance meaning they are not officially registered.[55] This artificially deflates official

figures. Despite the lack of official data on the total numbers displaced by forced eradication, Witness for Peace and Asociación Minga research found that in May 2006 alone, forced manual eradication operations displaced approximately 750 members of communities in Putumayo,[56] indicating forced eradication as a significant cause of internal displacement.

Democratic Accountability and Governance

The militarisation of the 'war on drugs' has impacted democratic accountability and governance across Latin America, West Africa and in countries in Central and Southeast Asia. This has been notable previously in parts of the Andean region[57] and more recently areas of Central America, where militarised anti-drug strategies, supported by US government funding, have helped to militarise governments.[58] This is particularly damaging for democratic accountability and human rights in countries where elements of the armed forces have a history of violent involvement in government and politics,[59] and where militarisation has helped to strengthen the power and capacity of security forces with a negative human rights record.[60] In the absence of safeguards or strong civilian oversight mechanisms the combination of increased autonomy for armed forces in counter-narcotics activities, and wider military involvement in law and order, has fomented an apparent culture of impunity for the military.[61] In addition to facilitating reported human rights abuses as already discussed, this has left elements within military and police forces susceptible to corruption.[62] Several reports reference the alleged cooperation or involvement of members of these forces in the drugs trade in parts of Central America and previously several Andean countries,[63] due in part to the extortionate funds available from the extreme profitability of the prohibited drugs trade. Additionally, heavy enforcement efforts to tackle drug trafficking from Latin America through the Caribbean have contributed in part to the diversion of trafficking routes through West Africa[64] in a phenomenon known as the 'balloon effect'.[65] Already weak governance systems and fragile state institutions in a number of countries in the region are further weakened by the reported corruption or collusion of politicians, military, police, justice and government personnel in drug trafficking up to the highest level, and in extreme cases the reported hijack of entire political processes.[66] Corruption is a significant issue for development, undermining institutional stability and state legitimacy and limiting state capacity for

providing basic public services,[67] which impacts disproportionately on the poor.[68] Actors engaged in forced eradication campaigns have also been linked to corruption, which reinforces the impact of such campaigns on the poorest households who lack the financial ability to pay bribes.[69]

As Buxton points out: 'The incorporation of the military into domestic political affairs through the "war on drugs" [is] negative for democracy as it [has] legitimized the deployment of the military in other areas of law enforcement, such as the maintenance of social order and, interlinked with this, the suppression of protest movements.'[70] In Central America's Northern Triangle, the 'war on drugs' has purportedly been used as a veil for the militarisation of law enforcement in other areas, with negative impacts for state accountability and freedom of speech.[71] In some cases, citizens and social movements actively opposing government reforms, mining and other extractive projects or seeking to defend their land rights have reportedly been subjected to killing, violence, arrest and intimidation.[72] Those challenging these policies are also in some cases labelled as terrorists or criminals.[73] This is reminiscent of a pattern previously seen in the Andean region, where those engaging in social protest to challenge the 'war on drugs' were labelled by the state as 'terrorist'.[74] The use of the militarisation of the 'war on drugs' to securitise and supress social protest in this way dramatically restricts the space available to civil society and citizens more broadly in which to hold their governments to account. In this way, as with the expanded autonomy of the armed forces, the militarised state born out of the 'war on drugs' becomes a significant barrier to state accountability on critical issues of national development and human rights.

Resource Diversion—The Opportunity Cost for Development

It is extremely difficult to estimate the quantity of funds spent directly on militarised counter-narcotics programmes worldwide each year, or indeed within many countries. This is largely due to a lack of transparency on drug law enforcement and/or specific military spending in many governments, together with a significant absence of economic analysis led by governments or intergovernmental organisations on the issue.[75] Taking into account these restraints, the Count the Costs initiative puts the total global cost of enforcing the 'war on drugs' at over $100 billion annually, at a conservative estimate.[76] While this estimate covers all drug

law enforcement, it gives an indication of the level of financial resources being directed to fighting the 'war on drugs', a significant proportion of which is likely to be spent on militarised responses.

The relative cost of fighting the 'war on drugs' is much higher for countries in the Global South on the front line of supply side interventions than for countries such as the US.[77] This is because developing countries have significantly fewer financial resources to both implement drug control policies, and fund social welfare and infrastructure projects that contribute to development. This means that higher spending on militarism to counter the drugs trade can directly divert national investment away from areas such as health, education or improved sanitation. Between 2003 and 2006 Colombia's Uribe Government increased defence spending from 3.6 to 6% of GDP, partially to fight the ongoing insurgency but also to militarily target its main financial resource: narcotic production and trafficking.[78] In contrast, Colombian public health expenditure in 2000 was only 5% of GDP.[79] It was estimated in 2014 that the ratio of Colombia's spending to fight the 'war on drugs' to its social spending was 3:1.[80] In Honduras, increased social spending and accelerated progress in social development indicators from 2006 to 2009, including a 20% decrease in extreme poverty, began to reverse following the 2009 coup, alongside a rapid decrease in social spending.[81] Extreme poverty increased by 26.3% from 2010 to 2012, with poverty rates reaching 66.5% in 2012.[82] Yet this period corresponded with a steady increase in military expenditure, and was followed by a 22% jump in military spending from 2012 to 2013.[83] Eventon notes that the Government's military spending continue to increase, while poverty and other human development indicators, including unemployment, have deteriorated[84], and this whilst social spending has steadily declined.[85] Honduras now has the highest police expenditure in the whole region, at 17% of GDP including military spending, while having the most unequal distribution of income and being the second poorest country in Central America.[86] As Eventon further points out, 'this prioritisation of spending occurs in a country where two-thirds of the population live in poverty, and where chronic malnutrition is considered to affect 31% of the population—in the most disadvantaged rural areas...53%.'[87]

While the highest financial cost of the 'war on drugs' seems to be borne by developing countries, vast amounts of resources from developed countries are transferred in the form of bilateral military aid, funding governments in the Global South to pursue militarisation. US

spending on overseas military support to fight the 'war on drugs' in Latin America has traditionally accounted for the vast majority of aid to the region, exceeding 80% during Plan Colombia (2000–2006) and just under that during the Mérida initiative in Mexico (2008–2010).[88] The allocation of such extensive military assistance to these countries to support the 'war on drugs' has been at the expense of funding focused on strengthening democratic institutions,[89] supporting infrastructure and the provision of social services; although there appear to be recent moves to improve resource allocation to these areas in apparent acknowledgement of a need to tackle the root causes of violence and crime.[90] Excessive US aid for militarised drug policy has also been a strong incentive for those countries receiving it to continue this approach,[91] even at the expense of prioritising the availability of domestic resources for human development.[92] However, some governments appear to be starting to recognise and reject this, at least in international rhetoric on the issue. At the recent United Nations General Assembly Special Session on the World Drug Problem (UNGASS) in April 2016, the Guatemalan President Jimmy Morales stated that 'Guatemala has fulfilled its international obligations' in the so called 'war on drugs' 'despite our very limited resources, and to the detriment of investment in health, education and development'.[93]

The opportunity costs for foreign aid and domestic resource mobilisation of this level of military spending on the 'war on drugs' are significant, not only for national development but for global development too. In September 2015 world leaders agreed on the Sustainable Development Goals, which set out an ambitious 17 Goal, 169 Target plan of action to be achieved by 2030. The UNCTAD has estimated that achieving this agenda will require investment of between $3.3 and $4.5 trillion annually in developing countries alone. Excluding the $1.4 trillion currently available, this leaves an average shortfall of $2.5 trillion which will need to be raised or redirected to development financing each year if the SDGs are to be achieved.[94] This might seem a disproportionately large amount compared to the $100 billion estimated expenditure on the 'war on drugs' overall (of which militarised responses will only account for a portion), however when specific areas of funding are considered, the opportunity cost for development of continued military and security spending on the 'war on drugs' seems frustratingly tangible.[95] In the period before the goals were finalised, the Overseas Development Institute (ODI) tentatively estimated that eliminating hunger and

achieving food security by 2025 (albeit earlier than the 2030 target finally agreed on in the SDGs) would cost an additional $50.2 billion annually.[96] They also estimated a required increase of $26.75 billion in spending per year to achieve universal access to water and sanitation and $37 billion a year to achieve universal health coverage.[97] Global spending to fund the militarisation of drug control is therefore roughly equivalent to the additional money needed to put all children through school or to provide every person with a safe toilet and clean drinking water. Aside from the many other social costs of the 'war on drugs' which could hold back progress on the 2030 Agenda, contrasting spending to existing funding gaps highlights the scale of the financial opportunity costs involved.[98]

Conclusions—Rethinking the Militarisation of the 'War on Drugs'

Overall there is little of positive note to take from the militarisation of the 'war on drugs' from a development perspective. These policies have worsened the violence associated with an already destructive illicit drugs trade, fuelled human rights abuses and displacement, destroyed livelihoods and undermined democratic accountability, and diverted scarce state resources away from social service provision, all to the disadvantage of human development in the communities on the front line of the drug war.[99] Genuine policy change which addresses these harms is long overdue. However, it is important to remember that militarisation does not exist in isolation from other policies utilised in the 'war on drugs'. It should be seen as the sharp end of the wedge of prohibition, the 'softer' policies of which (such as criminalisation and non-militarised forced eradication) have similarly caused multiple development harms. There is not space here to explore the huge debate over these wider negative impacts, or indeed how the prohibition model has led to the creation of a violent illicit drugs trade itself.[100] What is required in the context of the continued existence of a harmful illicit drugs market however, is to develop policy alternatives which reduce, rather than exacerbate, these harms as best possible for affected communities.[101] For the vast majority of these communities, the most effective approach to achieving this will be to focus on their context-specific development needs, ensuring drug policies which contribute to, rather than undermine, the achievement of peace, human security and positive sustainable development for the most vulnerable.[102]

There has been a growing recognition among the governments of those countries which have suffered the most from the negative impacts of militarised drug policy, particularly those in Latin America, that drug policy reform is necessary, not just for militarisation but for prohibition more generally. In this context some positive examples of development centric, community led policies have already emerged, notably Bolivia's community coca control programme, which focuses on decreasing the harms of militarised eradication strategies for coca growing communities, rather than specifically reducing drug trafficking.[103] The programme emphasises strong community participation, sustainable livelihoods and respect for human rights. By focusing on investment in public infrastructure, social services and community development whilst permitting farmers to grow a subsistence amount of coca leaf, this approach and its accompanying Development Plan have successfully limited the dependence of local communities on coca leaf cultivation whilst reducing violence and improving livelihoods and citizenship rights.[104] Although much of this success is context specific, even locally within the Bolivian context, this approach offers some important lessons for policy makers which they could adapt to their own particular realities.[105]

However, despite these calls for reform and examples of good practice, there remains a lack of detailed context-specific evidence in many circumstances to specifically evaluate many of the development impacts of the militarisation of the 'war on drugs', or indeed prohibition more widely. In some cases this appears to have been perpetuated in part by the political interests of both donor and developing countries at the forefront of this approach wishing to minimise the apparent negative consequences of the militarised focus of their drug war,[106] but is also a result of reliance on metrics to measure the 'success' of drug policies which are focused on processes rather than outcomes, such as impact on community welfare or development.[107] Comprehensive context-specific evidence will be essential to creating and implementing alternative, development-centric approaches to drug policy,[108] and developing and prioritising new indicators that measure the outcomes and impacts of drugs and drug policy on community welfare, reductions in violence and economic stability will be a centrally important part of this process.[109] This will be necessary not only to provide a strong case for reform for those countries still in support of a hard-line militarised (or prohibitionist) approach, but also to ensure that the development of new policies is strongly grounded in evidence of what most effectively reduces the harm associated with the illicit drugs trade and improves development outcomes for individual communities.[110]

For this to be achieved, concerted efforts will be required from reform-minded states to adopt such metrics and fund and facilitate research to generate this evidence. This must be combined with the strong involvement of new actors at local, national and international levels, principally the development community, in order to use their experience and expertise to inform drug policy with sustainable development at its core.[111] At an international level, this would include better alignment of drug policy with the Sustainable Development Goals, as well as greater inclusion of drug affected communities in national development strategies aimed at achieving these goals.[112] The former could be facilitated by expert monitoring of areas where drug policy is impacting progress to achieve the SDGs, and the proposal of concrete measures to increase coherence and communication between drug policy and development mechanisms within the UN system.[113] The latter requires greater implementation of development programmes in areas affected by the drugs trade, which have been largely neglected by mainstream development agencies to date.[114] At a local level, the strengthening of grassroots organisations to facilitate local community participation in policy making and implementation will also be key to achieving sustainable context specific development solutions for marginalised communities impacted by the failed 'war on drugs'.[115] This should be the central objective of all future drug policy in development contexts.

NOTES

1. J. Buxton (2015), 'Drugs and Development: The Great Disconnect'. *Policy Report 2*, Swansea University: Global Drug Policy Observatory.
2. J. Buxton, Ibid.
3. J. Buxton (2006), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.
4. J. Buxton, Ibid.
5. J. Buxton (2015), 'Drugs and Development: The Great Disconnect' *Policy Report 2*, Swansea University: Global Drug Policy Observatory.
6. The Mesoamerican Working Group (2013), 'Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators' The Mesoamerican Working Group, November 2013. New York: The Drug Policy Alliance.
7. J. Buxton (2015), 'Drugs and Development: The Great Disconnect'. *Policy Report 2*, Swansea University: Global Drug Policy Observatory.
8. P. Keefer, N. Loyaza and R. Soares (2010). 'Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs'. In Keefer,

Philip, and N. Loayza, eds. *Innocent Bystanders: Developing Countries and the War on Drugs*, Washington, DC: The World Bank.

9. Although not exclusively, some of the more significant leaders of research and analysis into the development impacts of the 'war on drugs', including militarised responses, are the Global Drug Policy Observatory based at Swansea University, Julia Buxton, and the Transnational Institute (TNI), whose research this chapter draws on extensively.

10. West African Commission on Drugs (2014), 'Not Just in Transit: Drugs, the State, and Society in West Africa' Dakar: West African Commission on Drugs.

11. P. Metaal and L.T. Velde (2014), 'Drugs and Violence in the Northern Triangle: Two Sides of the Same Coin?' Transnational Institute, [Online] https://www.tni.org/en/article/drugs-and-violence-northern-triangle; accessed 03 June 2016.

12. P. Metaal and L.T. Velde, Ibid.

13. Keefer, P, N Loyaza and R, Soares (2008). 'The Development Impact of the Illegality of the Drugs Trade', *World Bank Policy Research Working Paper* (4543). Washington, DC: The World Bank.

14. The Mesoamerican Working Group (2013), 'Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators', The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

15. The Mesoamerican working group, Ibid.
J. Lopez (2011), 'Guatemala's Crossroads: The Democratization of Violence and Second Chances' in C.J. Arnson and E.L. Olsen (Eds) *Organised Crime in Central America: The Northern Triangle*. Woodrow Wilson Center Reports on the Americas #29, Washington, DC: Woodrow Wilson Centre for International Scholars, Latin America Programme
M. Cawley (2014). 'How 1500 grenades disappeared from a military base in Guatemala.' *InSight Crime*. [Online], http://es.insightcrime. org/noticias-del-dia/como-desaparecieron-1-500-granadas-base-militar-guatemala, accessed 26th August;

16. F.S. Alarcón (2012), 'Más de 56 mil militares han desertado en el sexenio'. *Animal Politico* [Online], http://www.animalpolitico. com/2012/04/mas-de-56-militares-han-desertado-en-el-sexenio/ accessed 03 June 2016.

17. M. *Roig-Franzia (2008)* 'Mexican Drug Cartels Making Audacious Pitch for Recruits'. *The Washington Post* [Online], http://www. washingtonpost.com/wp-dyn/content/article/2008/05/06/ AR2008050602566.html. accessed 03 June 2016.

18. P. Metaal and L.T. Velde (2014), 'Drugs and Violence in the Northern Triangle: Two Sides of the Same Coin?' Transnational Institute,

[Online], https://www.tni.org/en/article/drugs-and-violence-northern-triangle; accessed 03 June 2016.

19. P. Metaal and L.T. Velde, Ibid.

20. The Mesoamerican Working Group (2013), '*Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators*'. The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

21. Mesoamerican working group, Ibid.

22. L.T. Velde (2012), 'The Northern Triangle's drugs-violence nexus: The role of the drugs trade in criminal violence and policy responses in Guatemala, El Salvador and Honduras'. *TNI Briefing Series, Drugs and Conflict Debate Papers, No. 19*, Amsterdam: Transnational Institute.

23. S. Perlo-Freeman, A. Fleurant, P. Wezeman and S. Wezeman (2016). 'Trends in World Military Expenditure, 2015'. *SIPRI Fact Sheet.* Stockholm International Peace Research Institute: Stockholm.

24. P. Keefer, N. Loyaza and R. Soares. (2008), *The Development Impact of the Illegality of the Drugs Trade.* World Bank Policy Research Working Paper (4543), Washington, DC: The World Bank.

25. L.T. Velde (2012), 'The Northern Triangle's drugs-violence nexus: The role of the drugs trade in criminal violence and policy responses in Guatemala, El Salvador and Honduras' *TNI Briefing Series, Drugs and Conflict Debate Papers, No. 19,* Amsterdam: Transnational Institute;
R. Planas (2016). 'How El Salvador Became the World's Most Violent Peacetime country.' The *Huffington Post*, 03 April 2016;
P. Gangopadhyay and M. Chatterji (2009). *Peace Science: Theory and Cases.* Emerald Group Publishing Limited: Bingley, UK.

26. P. Keefer, N. Loyaza and R. Soares. (2010), 'Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs'. In P. Keefer, N. Loyaza and R. Soares eds. *Innocent Bystanders: Developing Countries and the War on Drugs.* Washington, DC: The World Bank;
United Nations Office on Drugs and Crime. (2007). Crime, Violence and Development: Trends, Costs and Policy Options in the Caribbean. *UNODC and World Bank Report No. 37820*, Vienna: UNODC.

27. J. Buxton, (2006) *The Political Economy of Narcotics: Production, Consumption, and Global Markets.* London: Zed Books Ltd.

28. The Economist (2008). "Thailand's Drug Wars: Back on the offensive". January 24th 2008;
Human Rights Watch (2004). 'Thailand—not enough graves: the war on drugs, HIV/AIDS and violations of human rights' *Vol. 16, No. 8.* New York: Human Rights Watch.

29. The Economist (2008). "Thailand's Drug Wars: Back on the offensive". January 24th 2008

30. Human Rights Watch (2004), 'Thailand—not enough graves: the war on drugs, HIV/AIDS and violations of human right', *Vol. 16, No. 8*. New York: Human Rights Watch.

31. J. Buxton (2006) *The Political Economy of Narcotics: Production, Consumption, and Global Markets.* London: Zed Books Ltd;
The Mesoamerican Working Group (2013), *Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators.* The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance;
L. Carlsen (2012); R. Eventon (2015), 'Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'. *Policy Report 3.* Swansea University: Global Drug Policy Observatory.

32. The Mesoamerican Working Group (2013). *Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators.* The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

33. (Personal communication, May 24 2016).

34. Open Society Foundations (2010) 'Human Rights and Drug Control Policy'*: Briefings for the UN Commissioner on Narcotic Drug*s. OSF Public Health Programme. New York: Open Society Foundations.

35. J. Buxton (2015), 'Drugs and Development: The Great Disconnect' Policy Report 2, Swansea University: Global Drug Policy Observatory

36. J. Buxton (2015), Ibid.

37. J. Buxton (2015), Ibid.

38. D. Mansfield, and A. Paine (2005), 'Alternative Livelihoods: Substance or Slogan?' *AREU Briefing Paper*, Kabul: Afghanistan Research and Evaluation Unit.

39. J. Buxton (2015), 'Drugs and Development: The Great Disconnect' *Policy Report 2*, Swansea University: Global Drug Policy Observatory,

40. L. Farthing, B. Kohl (2005). 'Conflicting agendas: the politics of development aid in drug-producing areas'. *Development Policy Review* 23:2.

41. United Nations Office on Drugs and Crime (2007), *Opium Poppy Cultivation in South East Asia: Lao PDR, Myanmar and Thailand*, Vienna: United Nations Office on Drugs and Crime.

42. United Nations Office on Drugs and Crime (2007), Ibid.

43. P.A. Chouvy (2010), *Opium: Uncovering the Politics of the Poppy.* Cambridge, Massachusetts: Harvard University Press.

44. C.A. Youngers, and J.M. Walsh. (2010), *Development First, A More Humane and Promising Approach to Reducing Cultivation of Crops for Illicit Markets.* Washington, DC: Washington Office on Latin America (WOLA).

45. Health Poverty Action (2015), *Drug Policy and the Sustainable Development Goals: Why Drug Policy Reform is Essential to Achieving the Sustainable Development Goals*. London: Health Poverty Action.
46. L Farthing, B Kohl (2005), 'Conflicting agendas: the politics of development aid in drug-producing areas'. *Development Policy Review* 23:2.
    J. Buxton (2014), Lecture given at the Central European University.
47. P.A. Chouvy (2010), *Opium: Uncovering the Politics of the Poppy*. Cambridge Massachusetts: Harvard University Press.
48. J. Buxton (2015), 'Drugs and Development: The Great Disconnect'. *Policy Report 2*, Swansea University: Global Drug Policy Observatory.
49. T. Kramer, M. Jelsma, and T. Blickman (2009) 'Withdrawal Symptoms in the Golden Triangle: A Drugs Market in Disarray'. Amsterdam: Transnational Institute.
50. J. Buxton (2006), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.
51. Witness for Peace and Asociación Minga (2008), 'Forced Manual Eradication: The Wrong Solution to the Failed U.S. Counter-Narcotics Policy in Colombia'. Washington, DC: Witness for Peace.
52. Internal Displacement Monitoring Centre (2011), 'Mexico: Displacement due to criminal and communal violence', Geneva, Switzerland: Internal Displacement Monitoring Centre.
53. Internal Displacement Monitoring Centre, Ibid.
54. Internal Displacement Monitoring Centre, Ibid.
55. Witness for Peace and Asociación Minga (2008), 'Forced Manual Eradication: The Wrong Solution to the Failed U.S. Counter-Narcotics Policy in Colombia'. Washington, DC: Witness for Peace.
56. Witness for Peace and Asociación Minga, Ibid.
57. J. Buxton (2006), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.
58. R. Eventon (2015), 'Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'. *Policy Report 3*, Swansea University: Global Drug Policy Observatory.
59. J. Buxton (2000), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.
60. The Mesoamerican Working Group. *Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators*. The Mesoamerican Working Group, November 2013. New York: The Drug Policy Alliance.
61. J. Buxton (2006), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.
    J. Buxton (2015), Drugs and Development: The Great Disconnect. Policy Report 2, Swansea University: Global Drug Policy Observatory.

62. J. Buxton (2015), Ibid.

63. R. Espach, J. M. Quiñonez, D. Haering, and M. C. Girón. (2011), Criminal Organisations and Illicit Trafficking in Guatemala's Border Communities. CAN Analysis and Solutions, Washington DC: Wilson Centre.
R. Eventon (2015) *Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'*. Policy Report 3, Swansea University: Global Drug Policy Observatory.
P. Metaal and L.T. Velde (2014), '*Drugs and Violence in the Northern Triangle: Two Sides of the Same Coin?*' Transnational Institute [Online] https://www.tni.org/en/article/drugs-and-violence-northern-triangle, accessed 03 June 2016.

64. J. Csete, C, Sánchez (2013). 'Telling the story of drugs in West Africa: The newest front in a losing war? *Policy Briefing 1*, Swansea University: Global Drug Policy Observatory.

65. Count the Costs (2012), *The War on Drugs: Undermining international development and security, increasing conflict.* London: Count the Costs.

66. West African Commission on Drugs (2014), 'Not Just in Transit: Drugs, the State, and Society in West Africa', Dakar: West African Commission on Drugs, 2014;
A.O. Olukoshi (2013), 'Drug Trafficking and Its Impact on Governance in West Africa'. *WACD Background Paper No. 3.* Dakar: West African Commission on Drugs.

67. P. Keefer, N. Loyaza, and R. Soares (2010), 'Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs'. In Keefer, Philip, and Loayza, eds. *Innocent Bystanders: Developing Countries and the War on Drugs.* Washington, DC: The World Bank.

68. J. Buxton (2015), 'Drugs and Development: The Great Disconnect', *Policy Report 2*, Swansea University: Global Drug Policy Observatory.

69. D. Buddenberg, and W. A. Byrd (2006), eds. 'Afghanistan's Drug Industry: Structure, Functioning, Dynamics, and Implications for Counter-Narcotics Policy' Vienna: United Nations Office on Drugs and Crime.

70. J. Buxton (2000), *The Political Economy of Narcotics: Production, Consumption, and Global Markets.* London: Zed Books Ltd.

71. L.T. Velde (2012) 'The Northern Triangle's drugs-violence nexus: The role of the drugs trade in criminal violence and policy responses in Guatemala, El Salvador and Honduras' *TNI Briefing Series, Drugs and Conflict Debate Papers, No.19*, Amsterdam: Transnational Institute.

72. The Mesoamerican Working Group (2013), 'Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for

Legislators' The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

73. The Mesoamerican Working Group (2013), Ibid;
    International Service for Human Rights (2015). *The Situation of Human Rights Defenders Working on Issues of Business and Human Rights: Guatemala*. Human Rights Committee Briefing Paper—August 2015.

74. J. Buxton (2012), *The Political Economy of Narcotics: Production, Consumption, and Global Markets*. London: Zed Books Ltd.

75. Count the Costs. *The War on Drugs: Wasting Billions and Undermining Economies*. London: Count the Costs.

76. Count the Costs, Ibid.

77. P. Keefer, N. Loyaza and R. Soares (2010). 'Drug Prohibition and Developing Countries: Uncertain Benefits, Certain Costs'. In Keefer, Philip, and Loayza, eds. *Innocent Bystanders: Developing Countries and the War on Drugs*. Washington, DC: The World Bank.

78. Keefer, P, N Loyaza and R, Soares (2008) 'The Development Impact of the Illegality of the Drugs Trade' World Bank Policy Research Working Paper (4543), Washington, DC: The World Bank.

79. Keefer, P, N Loyaza and R, Soares (2008), Ibid.

80. J. Buxton (2015), 'Drugs and Development: The Great Disconnect' *Policy Report 2*, Swansea University: Global Drug Policy Observatory.

81. R. Eventon (2015).*Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'. Policy Report 3*, Swansea University: Global Drug Policy Observatory;
    J. Johnson, S. Lefebvre (2013). *Honduras Since the Coup: Economic and Social Outcomes*. Washington, DC: Centre for Economic and Policy Research.

82. R. Eventon, Ibid;
    J. Johnson, S. Lefebvre. Ibid.

83. E. Gonzalez, (2014). *Visual Breakdown: Military Spending in Latin America*. Americas Society/Council of the Americas. 24 July 2014, [Online], http://www.as-coa.org/articles/visual-breakdown-military-spending-latin-america, accessed 03 June 2016.

84. R. Eventon (2015). *Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'*. Policy Report 3, Swansea University: Global Drug Policy Observatory.

85. J. Johnson, S. Lefebvre (2013). *Honduras Since the Coup: Economic and Social Outcomes*, Washington, DC: Centre for Economic and Policy Research.

86. R. Eventon, Ross (2015). *Justifying Militarisation; 'Counter-Narcotics' and 'Counter Narco-Terrorism'. Policy Report 3*, Swansea University: Global Drug Policy Observatory.

87. Eventon, Ross. Ibid.

88. A. Isacson (2015), 'What's in the Billion-Dollar Aid Request for Central America?,' Washington DC: Washington Office on Latin America (WOLA).

89. J. Buxton (2015), 'Drugs and Development: The Great Disconnect' *Policy Report 2*, Swansea University: Global Drug Policy Observatory.

90. A. Isacson (2015), 'What's in the Billion-Dollar Aid Request for Central America?' Washington, DC: Washington Office on Latin America (WOLA).

91. The Mesoamerican Working Group (2013), 'Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators', The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

92. Health Poverty Action (2014). *Casualties of War: How the War on Drugs is harming the world's poorest*. London: Health Poverty Action.

93. Statement by J.M. Cabrera to the United Nations General Assembly (2016), http://statements.unmeetings.org/media2/7657334/guatemala.pdf, accessed 28th August 2016.

94. United Nations Conference on Trade and Development (2014), *World Investment Report 2014: Investing in the SDGs: An Action Plan*. New York and Geneva: United Nations.

95. See Health Poverty Action (2015) *Drug Policy and the Sustainable Development Goals*. London: Health Poverty Action.

96. R. Greenhill, and A. Ahmed (2013), *Paying for Progress: How Will Emerging Post-2015 Goals Be Financed In The New Aid Landscape?* London: Overseas Development Institute.

97. R. Greenhill, and A. Ahmed (2013), Ibid. This estimate covers childhood illnesses, immunisation, *maternal health, family planning, TB, malaria, HIV/AIDS, and health system strengthening, but has some limitations (such as the omission of non-communicable diseases)*.

98. See Health Poverty Action (2015). *Drug Policy and the Sustainable Development Goals*. London: Health Poverty Action.

99. Health Poverty Action (2014). *Casualties of War: How the War on Drugs is harming the world's poorest*. London: Health Poverty Action.

100. See Health Poverty Action (2014), Ibid.

101. Health Poverty Action (2014), Ibid.

102. See www.healthpovertyaction.org/rethinkdrugsand Health Poverty Action et al. (2016). *Drug Policy Reform is a Development Issue: We cannot achieve the Sustainable Development Goals unless we end the 'war*

on drugs'—Recommendations for the UNGASS 2016. London: Health Poverty Action (available online);

103. L.C, Farthing and K Ledebur (2015), '*Habeas Coca: Bolivia's Community Coca Control*'. Global Drug Policy Program: Open Society Foundations.

104. L.C, Farthing and K Ledebur, Ibid.

105. L.C, Farthing and K Ledebur, Ibid.

106. The Mesoamerican Working Group (2013), *Rethinking the Drug War in Central America and Mexico: Analysis and Recommendations for Legislators.* The Mesoamerican Working Group, November 2013, New York: The Drug Policy Alliance.

107. Count the Costs (2012), *The War on Drugs: Wasting Billions and Undermining Economies.* London: Count the Costs;
     D. Bewley-Taylor (2016), 'Towards metrics that measure outcomes that matter', Policy Brief 10, Swansea University: Global Drug Policy Observatory;
     International Centre for Science in Drug Policy (2016), 'Open letter: A call for a reprioritisation of metrics to evaluate illicit drug policy', [Onine] https://d3n8a8pro7vhmx.cloudfront.net/michaela/pages/61/attachments/original/1453256889/ICSDP_Open_Letter_EN_Web.pdf?1453256889, accessed 28th August 2016.

108. For more information see www.healthpovertyaction.org/rethinkdrugs

109. For more on the development of indicators see International Centre for Science in Drug Policy (2016), Open letter: A call for a reprioritisation of metrics to evaluate illicit drug policy.

110. See www.healthpovertyaction.org/rethinkdrugs

111. Health Poverty Action, Ibid.

112. Health Poverty Action et al. (2016). *Drug Policy Reform is a Development Issue: We cannot achieve the Sustainable Development Goals unless we end the 'war on drugs'—Recommendations for the UNGASS 2016.* London: Health Poverty Action (available online).

113. Health Poverty Action et al., Ibid.

114. Health Poverty Action advocates for development-sensitive, context-specific drug policies, including greater awareness and involvement of the development sector to support sustainable development solutions for marginalised communities in areas affected by the 'war on drugs' and the drugs trade. See www.healthpovertaction.org/rethinkdrugs for more information.

115. Health Poverty Action, Ibid.

Author Biography

Health Poverty Action is an international development NGO that views poverty and poor health as issues of social, political and economic justice. The organisation works with people who have been marginalised and forced into poverty to address structural barriers to health and justice, including the impact of punitive drug control policies on development and health. HPA has been working since 2014 to promote greater awareness and understanding of prohibitionist drug policy as a development issue, and developing collaborative responses to improve coherence between drug policy and development policy and programming to redress the harms of existing drug control for marginalised communities.

Responding to Drug Trafficking: A Question of Motives

Sasha Jesperson

In contrast to the history of the drug wars in Latin America, the response to organised crime in West Africa has been much less militaristic. In part, this is because organised crime in the region has been less violent. Furthermore, as organised crime has only recently been recognised as a threat in the region (although many note its existence since the 1950s[1]), the response has been informed by the failures of the 'war on drugs' in Latin America.

Despite this, the response has still been coercive. Cockayne argues that such a strategy arises when organised crime is understood as 'a political actor… to be contained through reactive bargaining and coercion' rather than a structural factor that requires transformation.[2] Many chapters in this volume have urged for a law enforcement response, as it represents a shift away from hard security approaches. But as Erickson displayed, there is a danger that this extends to militarism. This chapter engages with the risks of a law enforcement approach as a common security strategy to respond to organised crime in West Africa.

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Although military strategies continue to be employed, particularly in Latin America and the Caribbean, there has broadly been a shift towards law enforcement in response to drug trafficking. In the destination countries in Europe, drugs are a law enforcement concern—whether it is local-level street dealers or the shipment of large quantities into the country. Different agencies tend to be involved at different stages. In the UK, local-level drug dealing falls to local police forces, as does the involvement of local gangs. The movement of larger quantities between cities and significant problem areas or emerging trends fall to Regional Organised Crime Units, while shipments coming into the UK fall to national bodies such as Border Force and the National Crime Agency (NCA). The NCA also has a network of liaison officers posted overseas to collect intelligence on a wide range of criminal threats, including but not limited to drug trafficking, in order to develop an understanding of the drug trafficking routes, modalities and networks involved.

In order to take the pressure off borders in destination countries, numerous law enforcement agencies, together with many donors, have focused on upstream initiatives in source and transit countries. As a transit hub for cocaine traffickers, West Africa has become a significant focus for the EU and member states, including the UK. For example, UK Border Force instituted Westbridge, now known as Euroguard, where Border Force teams work in partnership with their counterparts in airports throughout West Africa to build capacity to interdict drugs before they reach Europe. This is in line with the approach taken by the EU Police Mission in Bosnia-Herzegovina discussed in the introduction, where international forces work in collaboration with local partners. Border Force has adopted such a partnership model: it deploys a team of UK officers to work alongside airport interdiction teams in airports in West Africa for 6 weeks, after which the West African teams travel to the UK to continue working alongside the same officers. This is supported by ongoing mentorship and the provision of necessary equipment afterwards.

The programme has been widely recognised as a success by international development actors and the Directorate for Development Cooperation (DG DEVCO) at the European Commission has adopted a similar approach. In 2009, the Cocaine Route Programme was launched to address drug trafficking from source countries in Latin America, to transit countries in the Caribbean and West Africa to destination countries in Europe. Since it commenced, nine projects have

been implemented to build the capacity of law enforcement in source and transit countries. Five of these projects have been active in West Africa. In parallel to Euroguard, the Airport Communication Project (AIRCOP) created Joint Airport Interdiction Taskforces (JAITFs) in 12 West African countries that bring together all agencies that play a role in trafficking prevention and detection, from customs to police to immigration, providing access to World Customs Organisation databases. The Seaport Cooperation Project (SEACOP) plays a similar role, creating Maritime Intelligence Units and Joint Maritime Coordination Units in ports. The West Africa Police Information System (WAPIS) has systematised the collection and recording of electronic police force data to be shared across the region via Interpol. Anti-Money Laundering—West Africa (AML-WA) conducted training and provided servers to financial intelligence units in the region to facilitate investigation and data sharing. CRIMJUST, which commenced in 2016, seeks to build the capacity of the judiciary and ensure adequate legislation is in place to respond to drug trafficking.

By engaging with countries along the entirety of the cocaine route, the Cocaine Route Programme seeks to address fragmented law enforcement responses that enable the balloon effect, limiting the ability of drug traffickers to find weak spots between source and destination through which to ship their product. Euroguard and the Cocaine Route Programme are just two of many programmes that aim to build capacity amongst law enforcement agencies working along known drug trafficking routes. For law enforcement agencies like UK Border Force, this is resource and strategy efficient as they are a law enforcement agency seeking to address drug trafficking further upstream. But the adoption of this approach by DG DEVCO highlights how capacity building of law enforcement has become the habitual mechanism to address drug trafficking.

In comparison to the heavily militarised responses to the drugs trade outlined by McDermott and Horsfield, this represents a significant step forward. This is equally true in responses to other forms of organised crime—Sellar has highlighted just how important law enforcement can be in the context of wildlife crime. However, as with other responses, capacity building of law enforcement is not a silver bullet. In isolation, it also has its drawbacks, which are outlined in this chapter.

Driven by Self-Interest

Capacity building strategies focus on working with local law enforcement to address organised crime in their own countries. In many West African countries, organised crime has not flourished in the same way as Colombia or Mexico for example. With the exception of a few countries, including Nigeria, Ghana, Guinea-Bissau and Mali, effective law enforcement can be a preventative strategy which deters organised crime groups from becoming active. However, it is a strategy based on the self-interest of donors or destination countries. In this regard, it is not too far removed from the US-led 'war on drugs', which sought to prevent drugs from entering the US.

Effectively, such an approach exports the border upstream in an attempt to stop drug trafficking before drugs reach their intended destination. For EU countries, this stems from arguments surrounding human security which posit that enhanced security in third countries will enhance security in Europe.[3] The widespread adoption of the security–development nexus also stands behind this approach.[4] Both of these elements—human security and the security–development nexus—underpin the EU's Instrument contributing to Stability and Peace (IcSP), which funds the projects discussed above. The IcSP focuses on addressing urgent security and development challenges in third countries in a comprehensive way. However, the emphasis on organised crime upstream derives from the EU Security Strategy (ESS), which considers Europe a prime target for organised crime, listing it as one of the five key threats to the EU. The prioritisation of organised crime within the ESS suggests that engagement beyond the EU focused on organised crime is designed to directly contribute to European security.

Self-interest has become even more explicit in the UK's aid strategy, released in 2015, which positions aid as a tool for achieving national security. The first strategic priority is 'strengthening global peace, security and governance'. In order to do this, 'the government will invest more to tackle the causes of instability, insecurity and conflict, and to tackle crime and corruption. This is fundamental to poverty reduction overseas, and will also strengthen our own national security at home'.[5] This approach tangibly emphasises donor security interests over local security interests.

This risks ignoring local domestic problems arising from drug trafficking. The West African Commission on Drugs highlighted in 2014

that drugs were not just in transit, domestic use had also increased.[6] The report was broadly supportive of law enforcement capacity building, but it argued that the emphasis should be on pursuing high-level traffickers rather than local users or sellers. International assistance on law enforcement ignores local drug use problems, primarily focusing on drugs destined to Europe. The Mano River region has a significant problem with the cultivation and regional trafficking of cannabis. While the skills and equipment brought by international organisations to respond to cocaine trafficking in this region could also be used to eradicate cannabis, such organisations have worked to ensure cocaine is a priority. The lack of government funding to support institutions like Transnational Organised Crime Units creates a reliance on international funding, undermining the government's power to set its own priorities. As Ayangafac and Cilliers (2011: 124) have acknowledged 'rather than focusing on improved security for the population, subsequent assistance provided is focused on bolstering measures and systems geared towards countering threats to Western interests/countries and the international system'.

The focus on donor priorities can also mean that funding and support may be discontinued once the threat ceases to be a priority, or if a different challenge becomes more pressing. In Mali, for instance, responses to cocaine trafficking are centred on Bamako airport. Despite rumours that large quantities are still transiting the north of the country, very little is being done. In part, this is because access to the North is difficult. However, this may also be due to the uneasy peace existing between different conflict actors who share the benefits of drug flows.[7] This suggests that the focus is on containment, a defensive approach that does not seek to overcome problems, but rather aims to ensure problems in fragile and conflict-affected states do not affect donor countries or international security. In Mali, controlling drug flows has become less of a priority, and the focus is on containing the conflict, which is thought to be more dangerous for international security, particularly given the links to violent extremist groups. The result is an approach that addresses the symptoms rather than the causes of problems in fragile and conflict-affected states. As a result, they will never be resolved, merely managed. Cockayne argues that the focus of these initiatives 'are not, as a rule, to transform local interdiction capacity, but rather to contain the impacts of criminal activity in that country on the interests of the home jurisdiction'.[8]

Exporting the border to West Africa assumes that the same strategies can be employed there as in European ports of entry. While this may be

the case for air and sea ports, there are large stretches of unmonitored coasts and many unsupported airstrips throughout the region. Furthermore, the radar capacity of most airports is limited and does not extend far beyond the immediate surroundings. As a result, the impact of upstream initiatives is necessarily limited. Nevertheless, police involvement in pursuing users and street dealers in many European countries has been deprioritised, as upstream engagement is seen as a more effective investment.

Not Context Specific

Capacity building has become a key element of development practice, based on a deep contextual understanding of a community's needs and existing capacities. Development actors deploy this in varying ways. Despite emerging as a form of people-centred, participatory development, capacity building has also been employed as a top-down process with a one-way transfer of knowledge, where development actors focus on retaining power, described by Eade as a 'neo-liberal "pull-yourself-up-by-your-bootstraps" kind of economic and political agenda'.[9]

This latter category is applicable to the law enforcement sector, which typically employs capacity building as a top-down, instrumental approach, often to ensure local forces are equipped to respond and address organised crime before it spills over into donor countries. Capacity building then becomes a technical tool to achieve the goals of donors. Local context and knowledge are subordinated to international priorities. As a result, it is stripped of the qualities that underpin it when employed as part of a people-centred approach to development.[10]

Within this framework, many capacity building programmes that focus on organised crime are not context specific. Rather, they take a blueprint approach and attempt to replicate strategies in multiple locations. The AIRCOP project mentioned above is just one example—it has established JAITFs across West Africa, Latin America and the Caribbean, where training and mentoring actions support the taskforces. Although it provides regionally specialised training, which engages with the regional context, they fail to engage with the specifics of each country context.

The establishment of taskforces and trainings does provide a base level of capacity that can be used in response to all forms of organised crime. This is evident in the results of the JAITFs. Although created as part of the EU's Cocaine Route Programme, the JAITF's seizures have included

a far wider range of contraband than just cocaine. Between 2011 and 2015, the JAITFs seized 1150 kg of cocaine, 781 kg of cannabis, 129 kg of heroin, 773 kg of methamphetamines, 9 kg of phenacetine, 579 kg of ephedrine, 508 kg of khat, 41 kg of tramadol, 461 kg of ivory, 1397 kg of counterfeit medicines, over 3 million US dollars in cash and 240,000 counterfeit US dollars. However, JAITFs have not been established across all key entry points. For example, in Nigeria, a JAITF was established at Murtala Muhammed International Airport (MMIA) in Lagos, but not at the airports in Abuja or Kano, which could result in a shift in criminal activity. In part, the decision to focus on MMIA in Lagos was in response to other donor activity in Abuja. However, this still leaves a gap in Kano.

In addition to a lack of context specificity, a problem with blueprint strategies is that they don't necessarily engage with the way organised crime manifests. As noted earlier, many projects in Mali are based in Bamako, even though much criminal activity continues in the north of the country. In these instances, it is unlikely that projects will have the desired effect of disrupting organised crime in a comprehensive way. This indicates that the shift towards law enforcement capacity building, while a step away from hard security responses, remains driven by donor interests and employs the minimum resources required to limit spill over into donor countries. While not as damaging as hard security responses, these strategies continue to have negative side effects.

Consequences

Balloon Effect

The 'balloon effect', where successful law enforcement activity pushes criminal groups into different regions, has been well documented. Indeed, it was the balloon effect that resulted in West Africa growing into a significant transit hub for cocaine trafficking. The West African route for cocaine was attractive for many reasons—its proximity to South America, weak governance and limited capacity to patrol borders and territorial waters. Effective strategies to deal with the flows from South America into North America further contributed to the rising prevalence of this route. Recent reports highlight that this shift has come 'full circle', as the route through the Caribbean into North America and Europe has regained its popularity with drug gangs after significant resources have been invested in building the capacity of law enforcement in West Africa.

Rather than shifting into new regions, or transporting their commodities along different routes, criminal groups are now diversifying into other commodities. This is not new. Early narco-traffickers in South America were initially engaged in the trade of numerous illicit goods. The specialisation in cocaine arose because the profits outstripped those of other commodities. A number of recent cases have highlighted the involvement of key organised criminals in several lucrative trades. For example, Feisal Ali Mohamed was arrested by Interpol in Dar es Salaam for dealing and possessing elephant ivory. However, he is also reportedly linked to the Akasha family, well-known drug traffickers in the region. This case contributes further to the growing recognition of the overlap between the illegal wildlife trade and the drugs trade across Africa. Organised crime groups are diversifying their interests to minimise risk.

The business-like nature of organised crime has long been recognised. For instance, the US bootlegging trade involved a complex business structure to create the product and bring it to market. In 1963, Thorsten Sellin was writing about organised crime as a business enterprise. As business has evolved, becoming more agile and dynamic, so too have organised crime groups. In most cases, they have needed to become even more agile and dynamic than legal businesses in order to stay ahead of law enforcement, leading some commentators to ask 'what business can learn from organised crime'.[11]

As part of this continual shift, organised crime groups are shifting into new commodities and new tactics, away from traditional high-risk activities to new areas, which may even encompass legal trades. Organised crime is frequently associated with high-value commodities. Drug trafficking, human trafficking, the illegal trade in firearms and the illegal wildlife trade dominate in terms of value. Although estimates vary, UNODC values the drugs trade at $320 billion, human trafficking profits at $32 billion, the firearms trade between $170 and 320 million and the wildlife trade at $75 million.[12] However, these trades rely on high-volume transfers, such as multi-tonne shipments of drugs, which are easier to detect.

Increasingly, organised crime networks are shifting to low-volume, high-frequency activity. As Edwards and Jeffray point out in their report on the illicit trade in tobacco, alcohol and pharmaceuticals in the UK, 'organised crime groups have begun to realise that law enforcement agencies find it much more difficult to respond to illicit trade when goods are broken down and transported in smaller consignments'.

These strategies have made the illicit trade in tobacco, alcohol and pharmaceuticals particularly lucrative because there is a 'lower risk of detection, and sanctions for offences are typically less severe'.[13] As a result, involvement in such low-volume trades has become a key strategy for minimising the risk associated with criminality.

An important feature in the illicit trade in tobacco, alcohol and pharmaceuticals is the difficulty in distinguishing it from legitimate commodities. In many instances, organised crime networks are merely engaging in tax evasion but with genuine legal products. This does not signify the damage is not serious—between 1994 and 2002, the Montenegrin economy was kept afloat through cigarette smuggling. Once they reach the end market, these goods cannot be separated from those imported officially. Illegal fishing takes a similar approach. Estimated to bring in between $10 and 23.5 billion from West Africa alone, fish are harvested without appropriate permits, by boats flying flags from states with inadequate regulation, and brought to fish markets with accreditation acquired by bribing enforcement officers. Once the fish reach market however, they cannot be separated from legally caught fish.

This shift towards licit commodities has raised concerns that organised crime networks will 'attempt to infiltrate industries depending on natural resources to act as brokers or agents in the trade'.[14] Water is one such resource that is increasingly scarce which organised crime networks are likely to steal or siphon. This is already beginning to occur in developing countries where water scarcity is a reality. In Kenyan slums, criminals have been behind the disconnection of water pipes to collect and sell water. In one of the largest slums, there are approximately 75 incidents of water theft reported each day.[15] Although this is currently opportunistic, it is likely to become increasingly organised and controlled. In 2008, rebel factions in Sudan stole drilling equipment that had been provided to the State Water Corporation by UNICEF.[16] This equipment, which was smuggled into Chad, provided criminal networks with the means to siphon water to sell on for a high price.

All of these commodities point to a shift away from traditional high-value commodities towards those that are less detectable. As they are not recognised criminal commodities, they also tend to have less severe penalties for those caught. As such, they represent a strategy to minimise the risk that criminal groups are exposed to—a different manifestation of the balloon effect.

When high-value commodities are too lucrative for organised crime networks to ignore, the groups seek to distance themselves from the actual transaction. Once again, this is not new. For decades, the higher levels of drug trafficking organisations have been far removed from the ground-level production and distribution of drugs, making them difficult to target in law enforcement operations. Mules are employed to move drugs, but if they are arrested, there is no direct link between them and the organised crime network that employed them.

Organised crime remains two steps ahead of responses. Criminals need to constantly adapt or risk being caught or overtaken by other groups. Innovation can be seen particularly clearly in the area of drug trafficking. Routes have shifted, with West Africa becoming a key transit region for cocaine in the early 2000s because of the increased attention of law enforcement in the Caribbean. Now routes have shifted again, extending across to East Africa and up to the Balkans. Similarly, heroin routes have also shifted into East Africa and across the Sahel rather than through the Balkans.

Methods of trafficking have also changed. Initially, light aircraft and yachts were used to move cocaine across the Atlantic. This has also shifted to the low-volume, high-frequency model discussed above. Organised crime networks are increasingly using mules to move drugs via air and strategies such as rip on/rip off to facilitate maritime transportation. Both of these methods rely on a much larger network. To ensure trafficking remains profitable, enough mules have to be on each plane to offset the number that will be caught and arrested, ensuring that many still get past customs. Rip-on/rip-off refers to the process where drugs are inserted into containers once they have passed customs, and removed at destination or in transit before they are checked. These strategies allow drug trafficking organisations to displace risk to the lower levels of the network. These practices indicate that rather than eradicating organised crime, law enforcement activity merely pushes it in different directions—whether into new commodities or new trafficking methods.

Avoids Structural Transformation

Displacement arises because law enforcement responses do not seek to achieve structural transformation of criminality or the conditions that foster it. This is particularly relevant in West Africa, where organised crime is often defined as merely another form of business activity. The

routes across the Sahel, for example, are long-standing trading routes. Those that ply the routes see nothing new in their current use for transporting cigarettes, drugs, arms and people.

Some commodities are viewed disapprovingly. For example, in Mali, drug trafficking is considered haram (forbidden), but many now consider it necessary for survival. Anderson points out that the distinction between acceptable and unacceptable trading in Mali is more a function of the manner in which it is effected—'smuggling can be haram or halal depending on the way it is carried out—the degree to which it is connected to the communities through which it passes is more important in judging its morality than the goods themselves'.[17] When drug traffickers invest profits into communities, its immorality fades. Similarly, when Ghanaian MP Eric Amoateng was returned to Accra in 2014 after being arrested in the US for heroin importation, he was welcomed by family, friends and political supporters, as drug money is seen to bring many benefits to communities.

In numerous West African littoral states, commodities that exploit local resources, such as timber, diamonds and other minerals, are viewed negatively. In contrast, cocaine, which is primarily transiting the region, is viewed as a lucrative business opportunity. When organised crime offers a survival strategy, or economic opportunities that are not available elsewhere, a reactive response that engages with criminality *post facto* through arrests and seizures does little to deter criminal groups.

As Shortland noted in relation to Somalian piracy, more focus is required on the structural factors that make a country or region conducive to organised crime. Similarly, Felbab-Brown calls for a multifaceted approach that addresses 'all the complex reasons that populations turn to illegality, including law enforcement deficiencies and physical insecurity, poor rule of law, suppression of human rights, economic poverty and social marginalisation'.[18] A security response, even one that prioritises law enforcement capacity building, cannot be effective in isolation.

Ignores Corruption

Perhaps the most dangerous consequence of a law enforcement response is the inadequate attention it gives to the role of corruption. Many West Africa states that are host to drug trafficking are weak, with inadequate oversight mechanisms. This makes them a target for drug trafficking. However, it creates additional challenges for donors investing

in capacity building. In Ghana, for instance, many donors are funding capacity building, including the EU, UK, US and others. However, law enforcement in Ghana is quite effective. The Narcotics Control Board (NACOB) in particular is well trained, with skilled officers that take pride in their work. However, the efficacy of their efforts is squandered by corruption higher up the chain. In late 2015, a two-year undercover investigation into judicial corruption was completed by a journalist, culminating in the release of a film that recorded many judges taking bribes. Despite an injunction to prevent screening of the film, an investigation into the allegations resulted in the suspension of 12 High Court and 22 lower court judges.[19] While this is a step in the right direction, it highlights the endemic nature of corruption in the country and the barriers to effective law enforcement activity.

Corruption is not limited to the elite level. At the airport in Accra, Ghana, the JAITF must monitor airport employees. In one case, 140,000 US dollars were discovered in a floor cleaner carried through the airport by the cleaning staff.[20] Within the context of Ghana, it is assumed that law enforcement themselves are not corrupt, but are working within a corrupt system. There are many examples where law enforcement is part of the problem, which further undermines capacity building. A DfID programme in Jamaica trained police and provided vehicles and other equipment. It was later discovered that police were accountable to criminal groups and used the skills and equipment to further these aims.[21] In these instances, developing the skills of police, gendarmerie, customs and other agencies merely creates better criminals.

Conclusion

As outlined in the introduction to this volume, responses to organised crime can be viewed along a spectrum. Now that many actors have become involved in combating organised crime, responses range from hard-edged military-focused initiatives to softer, development-focused activities. Law enforcement approaches fit somewhere in the middle. In some instances, such as those outlined by Erickson, law enforcement becomes a paramilitary force very similar to military approaches. In other instances, particularly when implemented by development actors, law enforcement initiatives take on a different aura. They include civil oversight bodies, there is a focus on partnerships, local ownership and building capacity to ensure local forces can set their own agenda.

Yet, these strategies are still closely aligned with military strategies that seek to pursue criminals through direct operations and then withdraw. The focus of law enforcement strategies is rarely on creating useful institutions that meet local needs—although in some cases this may be a valuable side effect. Instead, the focus remains on implementing the minimum resources required to stop crime spilling over to donor countries. Donors rarely engage with the local context, implementing blueprint strategies in beneficiary countries. However, as soon as organised crime is no longer a priority, or other concerns supersede it, activities will stop. Given the challenges posed by recent terrorist attacks in Belgium and France in 2015 and 2016, many Francophone police trainers were recalled from West Africa to their home countries. For strategies implemented by the US such a retreats can be even more dangerous. In many countries, US authorities have created vetted units that receive a salary uplift. When this is discontinued, there is a risk that officers will engage in corrupt practices in order to maintain their salary.

Clearly, the blame cannot be said to lie entirely with donors. Many beneficiary governments refuse to invest in structures created to address organised crime, such as inter-agency units, where there are only local concerns such as illegal, unregulated and unreported fishing or the cannabis trade, regardless of how destructive this may be to the local population and infrastructure. This affects the sustainability of these institutions as much, if not more so, than donor fatigue, as capacities are developed and then lost. However, recognising the risk that this may happen only highlights the importance of transformational strategies that engage with the factors that make a country conducive to organised crime.

Notes

1. See for example N. Carrier and G. Klantschnig (2012), *Africa and the War on Drugs*, (London: Zed Books).
2. J. Cockayne (2011), 'State Fragility, Organised Crime and Peacebuilding: Towards a More Strategic Approach', *NOREF*.
3. Human Security Study Group (2004), 'A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities', *London School of Economics*.
4. S. Jesperson (2016), *Rethinking the Security-Development Nexus: Organised Crime in Post-Conflict States*, (London: Routledge).

5. HM Treasury (2015), 'UK aid: tackling global challenges in the national interest', *UK Government*.

6. West Africa Commission on Drugs (2014), 'Not Just in Transit: Drugs, the State and Society in West Africa', *Kofi Annan Foundation*.

7. Interview (2016), Bamako.

8. J. Cockayne (2011), 'State Fragility, Organised Crime and Peacebuilding: Towards a More Strategic Approach', *NOREF*.

9. D. Eade (2007), 'Capacity Building: Who Builds Whose Capacity?', *Development in Practice,* 17(4–5), 630–639.

10. S. Jesperson (2016), *Rethinking the Security-Development Nexus: Organised Crime in Post-Conflict States*, (London: Routledge).

11. M. Goodman (2011), 'What Business Can Learn from organized Crime', Harvard Business Review, https://hbr.org/2011/11/what-business-can-learn-from-organized-crime, accessed 15th September 2016.

12. United Nations Office on Drugs and Crime, Transnational organized crime: the globalized illegal economy, https://www.unodc.org/toc/en/crimes/organized-crime.html, accessed 15th September 2016.

13. C. Edwards and C. Jeffray (2015), 'On Tap: Organised Crime and the Illicit Trade in Tobacco, Alcohol and Pharmaceuticals', *RUSI*.

14. Europol (2015), 'Exploring Tomorrow's Organised Crime, *Europol*.

15. G. Njero (2012), 'Kenya: Water Shortages Driving Growing Thefts, Conflict', *AlertNet*, http://allafrica.com/stories/201208070333.html, accessed 15th September 2016.

16. The Global Initiative (2014), 'Water, water everywhere? Charting the growth of organized water theft', *The Global Initiative*, http://globalinitiative.net/water-smuggling/, accessed 15th September 2016.

17. C. Anderson (2015), 'The Power of Drug Money in Mali', Christian Aid Occasional Paper, *Christian Aid*.

18. V. Felbab-Brown (2013), 'A State-building Approach to the Drug Trade Problem', *Brookings Institute*. http://www.brookings.edu/research/opinions/2013/07/18-state-building-drug-trade-problem-felbabbrown, accessed 15th September 2016.

19. BBC News (2015), 'Ghana suspends High Court judges after Anas Aremeyaw Anas' film', *BBC News,* http://www.bbc.co.uk/news/world-africa-34452768, accessed 15th September 2016.

20. Interview (2015), Accra.

21. US Agency for International Development (2013), 'The Development Response to Drug Trafficking in Africa: A Programming Guide', *USAID*.

Author Biography

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Sasha completed her Ph.D. at the London School of Economics. Her Ph.D. research examined international initiatives to address organised crime through peacebuilding missions under the framework of the security-development nexus, comparing examples from Sierra Leone and Bosnia. Sasha also completed an MSc in Human Rights at the London School of Economics and worked for Amnesty International for 3 years, primarily focused on human rights in conflict and post-conflict contexts.

Recent books include *Rethinking the Security-Development Nexus: Organised crime in post-conflict states* (Routledge) and *Conflict, Violent Extremism and Development: New Challenges, New Responses* (Palgrave Pivot).

Situating Militarisation as Part of an Integrated Response to Organised Crime

Tuesday Reitano

It is rare to examine the use of particular strategies and technical responses across different crime types. The discipline of organised crime remains caught in silos: those who work on wildlife crime, illegal fishing, the smuggling of migrants or cybercrime do not often consider that they might have something to learn from those who have spent decades fighting the trafficking of drugs or arms. The latter would certainly nary dream of consulting the former. Instead, in response to varied crimes across different contexts, we tend to see deployed a relatively formulaic set of instinctive responses, typically drawing exclusively from the security sector. As the various case studies and analysis presented in this volume have unquestionably shown, however, a far greater nuance is required, and there is considerable value to be gained from cross-referencing approaches to different forms of transnational crime and their application across the globe.

We have been fortunate to bring together a group of authors, each expert in their own field, to critically examine why and how a militarised response to organised crime is triggered, to assess the efficacy that the deployment of military assets has had in combating diverse illicit flows and to consider the impact of such an approach in a variety

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of ways—both the human or developmental impact and the impact on other actors, such as the civilian security sector. These are important questions because across all of the crime types, militarisation appears to remain both the first port of call and the last resort in the toolbox of responses to combat organised crime. Deploying blustery 'war talk' is used both as an offensive and defensive strategy, intended to inspire support from allies and fear in perpetrators. However, as our chapter authors repeatedly demonstrate in the wide variety of contexts that we have examined, it is a blunt instrument which, used in isolation, can cause more harm than good.

It is clear that we need to know far more about for what, when and where a militarised response and the deployment of military assets can have value.

Recent years have seen an important shift in our understanding of organised crime. The 2030 Agenda for Sustainable Development, the successor development framework to the Millennium Development Goals (MDG), promulgated by the 193 member states of the United Nations (UN) in September 2016, lays out a series of transformative goals and targets that are perceived to be central to achieving the UN's core goals of achieving peace, eradicating poverty and ensuring sustainable development for all peoples.[1] Countering organised crime is explicitly referenced as a critical target in Goal 16, but the repeated mentions across the document of organised crime's many manifestations—from forced labour to wildlife trafficking—evidence the fact that organised crime has become a multidimensional, far-reaching, pernicious threat. The Global Initiative against Transnational Organised Crime found that of the 169 targets included in that framework, 23 of them—12.5% of the total—will require directly addressing a criminal flow or network in order to be achieved.[2]

This places organised crime as a challenge that is central to the mandate of development actors, but not one that is exclusive to them. While it has been shown that security- or justice-led strategies will not be successful on their own—as the examples and analysis in this book have clearly confirmed—recent evidence shows that development-led strategies are similarly unlikely to be unilaterally successful. In fact, in seeking to find effective responses to organised crime, the emphasis must be on developing *integrated* approaches, neither security-led nor development-led nor the still worse outcome of scattershot and isolated initiatives,

but instead to develop a strategic approach that draws holistically from the toolbox of strategies and responses available to develop a cohesive and mutually reinforcing package of interventions. Only this is likely to achieve a long-term and sustainable solution to some of the most compelling global organised crime challenges, mitigating their impact on the world's most vulnerable and building resilience of individuals and communities to resist their influence in the future.

This concluding chapter, therefore, tries to summarise the vast experience and diverse perspectives of our authors in three areas: why and when a militarised response is triggered; where and how they can be effective; and finally what broader impacts need to be considered when a militarised response is deployed.

Bellicose Rhetoric Prompts Militarised Responses

Militarised responses have proven to be the preferred tool of politicians under pressure to be seen to deliver results against an organised crime whose costs have been too severe for their constituents to bear. Whether this is in response to the millions being lost to global trade through Somali pirates; or as a display of national might in response to the 'swarms' of migrants traversing Europe en masse; or as a tool used by the embattled African governments responding to international pressure to make every effort to protect the last of their iconic species, the deployment of military assets is an unquestionable, highly visible, sign that action is being taken. As Shaw points out in the keynote chapter, greater media coverage and the ease of social media advocacy have intensified and increased the frequency by which such public pressure is applied.

Counterfactually, it is worth asking how 'wars' against forms of organised crime come to be declared in the first place. They are not always the result of public pressure. Numerous examples over history, the 2016 elections in the Philippines and in the United States being cases in point have demonstrated that declaring a 'war on crime' is a strong platform for a politician: criminals are an easy point around which an electorate can unite, as it often speaks to their greatest insecurities. Once framed as a war, a military response then seems the default solution. It was climbing levels of violence and corruption resulting from drug trafficking in the Americas which prompted the original 'drug war', where armies were sent into civilian neighbourhoods to clear out crime

and to pound gang hierarchies. In Chap. 5, Maguire observed that the ratchetting up of arms in the efforts to prevent elephant poaching in East Africa came as a direct result of the fight against poaching being described as a war. This in turn was justified because the profits of trafficking in ivory were benefitting conflict actors and armed groups, some of which had been labelled terrorist. Where illicit flows are perceived to exacerbate insecurity, a more potent response seems to become justified, particularly where the notorious crime–terror 'nexus' is in play, as it came to be in many of the cases we have reviewed: drug trafficking and the Colombian FARC; the alleged profits gleaned by the Islamic State (ISIS) from human smuggling in Libya; and the assertions that Al-Shabaab and other groups benefitted from piracy, wildlife trafficking and other illicit flows. The rationale seems to be to fight fire with fire, but the result is a steady increase in the level of militarisation on both sides, rather than the calming or resolution of the situation.

The case of South East Asia piracy stands in stark contrast. Here, profits from organised crime flow into consolidated local power structures[3] and the level of violence is minimal. Consequently, these profit flows arguably stabilise existing structures rather than exacerbate insecurity, consequently failing to trigger war rhetoric and instead engendering endemic corruption. Similarly, in Chap. 14, Erickson described how militarising the United States' southern border resulted in chronic corruption, of state officials, law enforcement and border guards and increasingly the involvement of border guards themselves in facilitating the flows of illegal trade, from drugs, guns and people.

Responding to Threats and Understanding Impact

This is not to argue that the only benefit of militarisation is as a rhetorical flourish. One of the strengths of the military is its potent capacity to deploy quickly and forcibly. This can have an extraordinary impact in arresting a situation that is spiralling out of control, as it serves not only as a response to political pressure, but it also sends a strong deterrent message to the actors in a criminal market. However, the evidence from across the range of illicit markets would suggest that it is not a long-term solution. Organised crime groups adapt: they may suspend operations briefly in response to a military interruption, but that has typically proven to be a temporary measure used to re-assess the lay of the land. Organised crime groups are highly versatile, whether by diverting

routes to other territories less hostile, or changing their modus operandi to accommodate or even benefit from the presence of military actors. In Chap. 13, Roberts documented the last phenomenon in the case of human smuggling groups operating off Libya's coast, where groups quickly adapted their business model to the new increased reach of naval patrols by seeking to have migrants rescued rather than try to reach shore.

The careful examination by McDermott of Latin America's experience with the 'war on drugs' (Chap. 15) suggests that a militarised approach has had a diminishing return over time, to the extent that when militarisation is overly prolonged, it becomes not only counter-productive, but downright damaging and a source of insecurity in and of itself. War talk can lead to a downgrading of human rights concerns that would normally be a prerequisite in the context of ordinary policing or government action. When organised crime is uncontrolled or highly visible, states themselves have a tendency to lash out in violent ways which undermine the rule of law. In the case of responses to wildlife crime, in part 1 of the book, both Rademeyer and Maguire note that a militarised response came at the cost of human rights, priorities and social development for local communities.

Moreover, and perhaps most pertinently, there are few, if any, examples where states have managed to outgun organised crime. Instead, the results of long-term use of militarised approaches appear to be either dangerous levels of corruption and impunity, in some cases reaching the highest levels of state, or a situation of protracted violence akin to a low-level insurgency as criminal groups and gangs fight to protect their trafficking routes by continually undermining the state. These scenarios are visible across the globe. Instead, market-based solutions or political negotiations appear to present the long-term reduction and resolution to persistent criminal flows. As Collins describes in Chap. 16, the international debates surrounding drug policy have moved firmly away from war rhetoric towards the need to mitigate harm. Demand reduction and experimentation with legalisation have both become the preferred policy instruments for those wanting to take the 'heat' out of criminal markets in the Americas. A key challenge is that extensive use of bellicose language, and the portrayal of organised crime as an existential threat, widens the gulf of negotiation with those same groups at a later point, and makes alternative solutions more challenging to sell to the general public. McDermott noted that one of the challenges in negotiating peace

treaties with the Colombian FARC was the extent to which they had been long demonised as the enemy in a 50-year civil war.

MILITARISATION AS PANACEA

Arguably then, there is a need to consider more thoroughly and more broadly the nature of organised crime threats, both from the perspective of the nature of the threat itself, and the impacts that both threat and the responses can have, in order to move beyond the binary assumption that the deployment of military assets can be a panacea.

As an example of thinking which equates militarisation to solution, when I sat in the back of an EU meeting in Brussels in 2014, I was shocked to hear the representative of EU Navfor argue that the same approaches that had worked in the case of Somali piracy could be similarly successful in the Mediterranean to counter the Libyan people smugglers. It seemed to me quite astonishing that someone so intimately involved in the securing of shipping lanes in the Gulf of Aden could not see the stark difference between the two cases. As Forbes described in Chap. 7, the naval escort off the coast of Somalia was there to protect a convoy of ships, help them travel safely and deter attacks, but not to address the pirates themselves directly. In contrast, in the Mediterranean, the challenge was to prevent the traversing of smugglers' boats altogether, a fallacious mission, as Roberts points out in Chap. 13, and one that could only have been achieved on land by preventing them disembarking in the first place. As many of our authors thus concluded, just because a crime occurs on water does not mean deploying a navy is the right response.

While this is clearly an analytical failure, as Jesperson observes in Chap. 18, institutional interests within the military may prompt them to market themselves as the panacea for all criminal activities, and for law enforcement to emphasise the need to upgrade their own capacities to military-grade proportions. To counter this requires a significant improvement in the capacity of policymakers to identify and analyse the problem, and greater nuance must be introduced into the discussion. In the first instance, a distinction needs to be drawn between interventions that seek to directly intervene against or isolate the criminal market itself, versus those which seek to mitigate its impact. In the above example, efforts to counter migrant smuggling would fall in the first category, deploying naval escorts to prevent piracy attacks in the latter.

Harm as an Analytical Framework

This analytical framework should allow a credible multidimensional assessment of the threat posed by a particular form of organised crime, to where the damage is likely to accrue, and identify what aspect of the criminal enterprise triggers it. Health Poverty Action, in Chap. 17, on the development impacts of drug trafficking, argues that we need to take an intervention approach that focuses on mitigating the harm of organised crime. One of the principle strategies in countering drug trafficking is interdiction and seizure. Why? Because it prevents the product, which is perceived as inherently harmful, from getting to market. In the case of wildlife trafficking, however, interdiction is too late, the damage is already done.[4] No matter how voluminous a seizure of elephant tusks or rhino horns may be, this is a pyrrhic victory that does little good to global biodiversity goals or the magnificent animals already long slaughtered.

Prioritising harm as an analytical framework that could be used across the gamut of organised crime types can guide where the priority for intervention should be, as well as the type or sequencing of interventions that may be appropriate.

Of course, harm can be measured in multiple ways. In Chap. 3, Humphrys and Smith highlighted how the militarisation of wildlife protection has eroded important subsistence livelihood strategies for communities surrounding the parks, and led to the disenfranchisement of communities and eroded the legitimacy of the state to act. Jesperson notes that the upscaling of securitised responses to drug trafficking in West Africa was prompted not by priorities determined within the region, but by the downstream concerns of European destination drug markets.

A number of authors referenced the 'balloon effect', where strengthened enforcement in one jurisdiction leads simply to the displacement of criminal activities or illicit flows across other routes that offer less resistance. In Chap. 8, Ralby highlighted the response to piracy in the Gulf of Guinea as a good practice, in which deployment of military assets has been coupled with regional cooperation and capacity building across a number of West Africa's littoral states, not only negating the balloon effect, but also promoting a more cooperative platform for future preventive action. This stands in sharp contrast to the deployment of naval assets to counter human smuggling, as described by Reitano and Roberts in part 3, where an overly simplistic and largely misconceived view of the challenge actually widened the zone of smuggling and facilitated the

business model of smugglers. It has also concentrated on those routes in the countries with the weakest state institutions or most recalcitrant of governments to proactively manage either borders or human migration, thereby increasing the challenges of crafting a successful response.

Building Blocks of an Integrated Response

The use of a multidimensional framework which considers a broad spectrum of harms would also necessitate long-term planning, as well as bringing to the table a multitude of different actors. You cannot consider a problem from multiple perspectives, and assume a one size fits all solution. To identify and address the question of the multiple perspectives that need to be engaged in addressing transnational illicit flows and complex organised crime groups, it is therefore necessary to use multidimensional harm assessments and metrics, which could give a more nuanced and holistic picture. A 2017 OECD report that examines the impact of criminal economies in West Africa proposed five scales on which harm can be analysed: physical-; societal-; economic-; environmental-; and structural- or governance-related harms.[5] Having viewed the problem holistically and comprehensively would then underpin a prioritisation process, the according distribution of resources and which actors would need to be engaged in mounting a credible integrated response. Such a nuanced picture should devalue the strategic value of war talk.

In some cases, militarisation obscures the need to address the root causes of the criminal endeavour. Rivzi, in Chap. 11, argues that militarised responses have been used as a red herring that diverts attention away from recognising a fundamental and systemic shift in the world order. Similarly, Shortland's analysis in Chap. 10 suggests that the extended use of the military to deter Somali pirates has negated the development of longer term and more sustainable solutions. Both Sellar and Von Hoesslin and Bird, drawing from experiences in wildlife protection and Southeast Asia maritime product theft, argue that over-reliance on the military serves to disempower the civilian institutions that should have primacy in the fight against organised crime: law enforcement. The military furthermore is largely unsuited to perform the intelligence lead investigations that are required to uproot complex criminal networks. In all of these cases, therefore, a dependence has been created on the sustained use of military assets to keep the problem under control.

The over-reliance on military solutions comes with a cost. While militarisation may prove effective at reducing illicit flows or criminal

incidents, reliance on military power is costly to sustain both in financial and reputational terms. Once the immediate threat has been quelled, the flamboyant military deployment which so pleased the electorate as a response to the initial 'crisis' becomes questioned as a prohibitive expense that is diverting from society's other priorities. Thus, as a solution, militarisation has diminishing returns over time.

Shaw makes the point that militarised responses are sometimes deployed when development solutions are perceived as too slow or their benefits too ephemeral. This suggests, perhaps, that the role of militarisation should be to rapidly neutralise or subdue threats, and to create the breathing space for a range of other responses to address the conditions that allow organised crime to flourish, and the impact it has on individuals and communities.

Ultimately, however, what will be required is a package of solutions that encompass demand reduction activities, the use of market-based incentives and regulation that may adjust the cost–benefit analysis for criminal activities. This package must also include economic alternatives for the communities in which crime has flourished, enhanced capacity of law enforcement not only for the direct purposes of criminal interdiction, but also to uphold the rule of law and build community security and, in some cases, the extension of political initiatives to the groups involved. The latter cases, as was noted earlier, are particularly relevant where illicit flows are resourcing opposition or conflict actors to the central government. While these may be the cases where bellicose rhetoric is most often used, they are arguably the cases where they are most damaging to the fabric of society and of governance.

Conclusion

Concluding the volume, it becomes clear that militarised approaches can and do play an important role in countering organised crime, but that they are also a tool that can be misused.

One of the greatest risks from militarised approaches appears to come from 'war talk': when policymakers fall into the trap of using aggressive, overly securitised language both to define the challenge presented and to justify a securitised response. Not only can this result in a steady ratchetting up of the fire fight between the state and criminal groups, but it can also result in collateral damage to community interests, or in some cases to states themselves taking measures that compromise human rights and the rule of law.

War talk over-simplifies the problem, and while strategic use of military assets can create a breathing room for other initiatives to develop, by contrast, war talk closes down the space to analyse and respond to organised crime in a more nuanced way. Where the militarised response is successful, it is usually for only the duration that those military assets are deployed, and they are costly to sustain. Their cost and efficacy may obscure both funds and attention for the development of more sustainable options that address root causes of criminality. Furthermore, bellicose rhetoric creates a confrontational schism that becomes harder to bridge later with negotiation, demobilisation or integration strategies that are essential for that long-term resolution for damaging or violent criminal flows.

The conclusion therefore is for the urgent need to build awareness and capacity in policymakers to view organised crime as a nuanced threat—one that often has deep socio-economic roots and few easy solutions. Politicians need to move beyond the desire to use militarisation for quick fixes that suit electoral cycle politics (not only because it may come back to bite them harder), but to work maturely around a multidimensional harm reduction narrative that situates the use of military assets as one useful and strategic part of an integrated response. Those in civil society and in the media need to monitor more carefully the evolution of war talk, monitor and call out the institutional interests that may drive it and facilitate more open and inclusive analysis and debates surrounding the nature of the challenge.

NOTES

1. United Nations (2015) *Transforming our World*: *The 2030 Agenda for Sustainable Development*. New York: United Nations.
2. Global Initiative (2015) *Organised Crime*: *a cross-cutting threat to sustainable development*. Geneva: Global Initiative against Transnational Organised Crime.
3. While illicit flows always flow into local power structures to one extent or another, we draw the distinction here where that power is consolidated, rather than resourcing opposition groups or competing conflict actors.
4. Gosling, J. (2014) The Global Response to Organised Environmental Crime, Geneva: Global Initiative against Transnational Organised Crime.
5. AfDB/OECD (2016) *Illicit Financial Flows: Criminal Economies in West Africa*, Paris: OECD.

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Tuesday has authored numerous policy-orientated and academic reports with leading institutions such as the UN, World Bank and OECD on topics ranging from organised crime's evolution and impact in Africa, human smuggling, illicit financial flows, and the nexus between crime, terrorism, security and development. She has co-authored a book on human smuggling, *Refugee, Migrant, Smuggler, Saviour* that was published by Hurst in September 2016.

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