

EDITORIAL

Dear Readers,

During the past few months, the situation for seafarers has deteriorated drastically in the Indian Ocean. Pirates operating along the coasts of Somalia are currently holding approximately 700 people hostage, among them three children. They have become increasingly aggressive and do no longer even shy away from killing their hostages. It is therefore a vital necessity, now more than ever, to coordinate anti piracy measures, not just for safeguarding vessels, but also to counter the roots causes of this form of organized crime and to bring the perpetrators to justice.

The PiraT members of staff are working intensively from their respective areas of expertise to develop options for action, so that they can contribute to expanding and improving the international communities' existing efforts. In this newsletter, we would like to present you a small abstract of our multifaceted activities, amongst them the new release of two PiraT-Working Papers on Maritime Security as well as reports from various events that were carried out within the framework of our project.

Your suggestions and feedback are as always most welcome.

Sincerely,
Your PiraT Team

Private Security Companies and Somali Piracy

–New publication of PiraT Working paper No. 2–

In the context of the PiraT-Project, the project partner **Bucerius Law School** is examining the legal regime regarding piracy and maritime terrorism. A significant part of this analysis is the stocktaking of legal norms that have a connection to piracy and terrorism and the identification of a need for reform in the existing regulatory framework. With regard to this undertaking the Working Paper No 2 deals with the legal framework regarding private security companies on board merchant vessels. Private security companies are playing an increasing role in counter-piracy measures adopted by ship-owners all around the world. For vessels flying the US flag, employing guards in high-risk areas is a legal obligation. Also, in the USA, authors are repeatedly suggesting to issue letters of marque in order to enable private companies to deal with Somali pirates. In Germany, the discussion has focused on soldiers or police on board vessels passing through piracy-infested areas, as ship-owners proved reluctant to employ private companies. However, the adoption of such a strategy seems unlikely, due to limited personnel with the necessary training. After the recent failure of security concepts such as safe-rooms in the case of the *Beluga Nomination* and the escalation of violence in the case of the yacht *Quest*, private security agencies are more and more frequently used by German shipping companies. However, legal uncertainty has been a major factor in the discussions surrounding the debate on this topic and has even prompted ship-owners to deliberate flagging out their ships or not returning to the German flag in the first place. With regard to those uncertainties, some ship-

owners have claimed that Germany does not allow private security companies on board German-flagged vessels. Some have stated that guards will most likely provoke criminal liability, if they defend a vessel, while others have argued that private security agencies will themselves be qualified as pirates under international law. None of these statements has proven to be correct.

The growing confusion amongst ship-owners, with regard to the legal consequences of employing armed guards on board their vessels justifies a legal analysis, which is aimed at outlining the legal framework regulating activities of private security companies on vessels. Moreover, the analysis shows legal areas, which demand legislative reform and regulation. Apart from the legal issues surrounding the trend to employ private security companies, the factual problems need to be examined closely prior to perpetuating the strategy of employing armed guards. Fears of escalation of the piratical attacks are well-justified. If Somali pirates are confronted with an increasing number of armed vessels, they will need to adapt their tactics and e.g. attack with numerous skiffs. Such an escalation would bear considerable risks for the crew and vessel. Looking at the situation, it seems naïve to think that employing private security agencies is the solution to the piracy problem.

This analysis shows that, in addition to these factual issues, there are numerous legal downsides to employing private security companies. Apart from obvious problems with applicable flag state jurisdictions, coastal state jurisdictions may claim a right to regulate or even outlaw armed commercial vessels in their territorial waters. Port state jurisdictions could also decide to exercise their criminal law. When authorities find armed personnel on board of trade vessels within their ports, this could moreover be seen as breaching import regulations. Furthermore, violating a state's coast and/or port regulations may have serious consequences with regard to insurance cover. German law, however, has proven to be more open to employing private security companies than practitioners tend to think. The prerequisites of government authorization for maritime security companies are comparatively easy to fulfill. The law of arms allows for the carrying of certain weapons by private guards. Criminal law offers a wide-range of grounds for justification in cases of self-defense. Nevertheless, the downsides of employing private guards seem to outweigh the advantages by far.

Download at:

<http://www.maritimesecurity.eu/index.php?id=workingpapers&L=1>

Piracy and maritime terrorism:

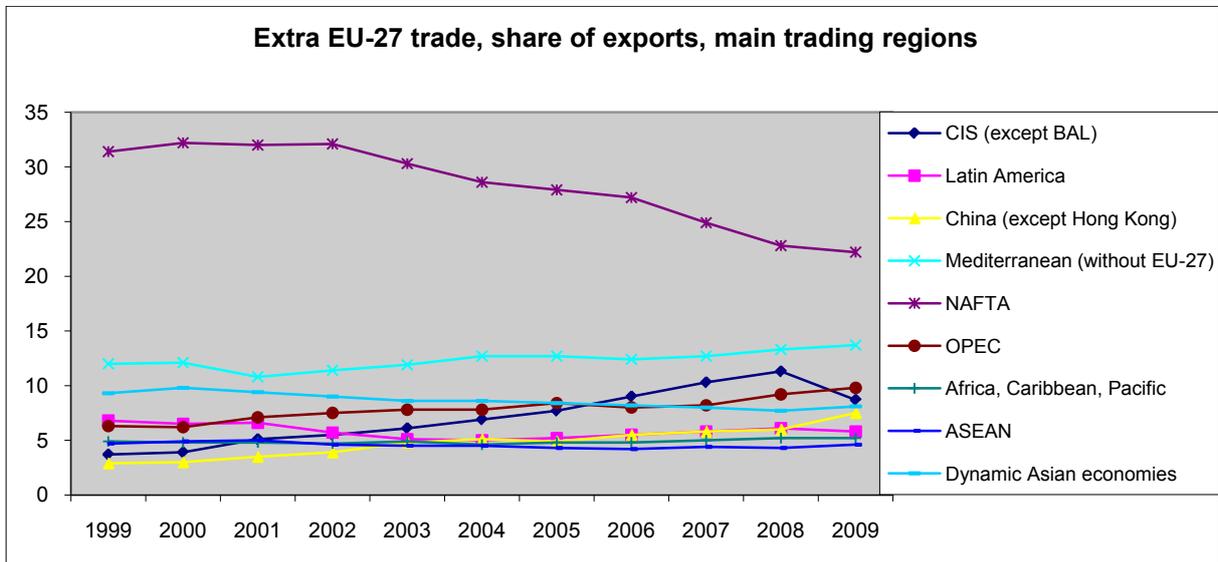
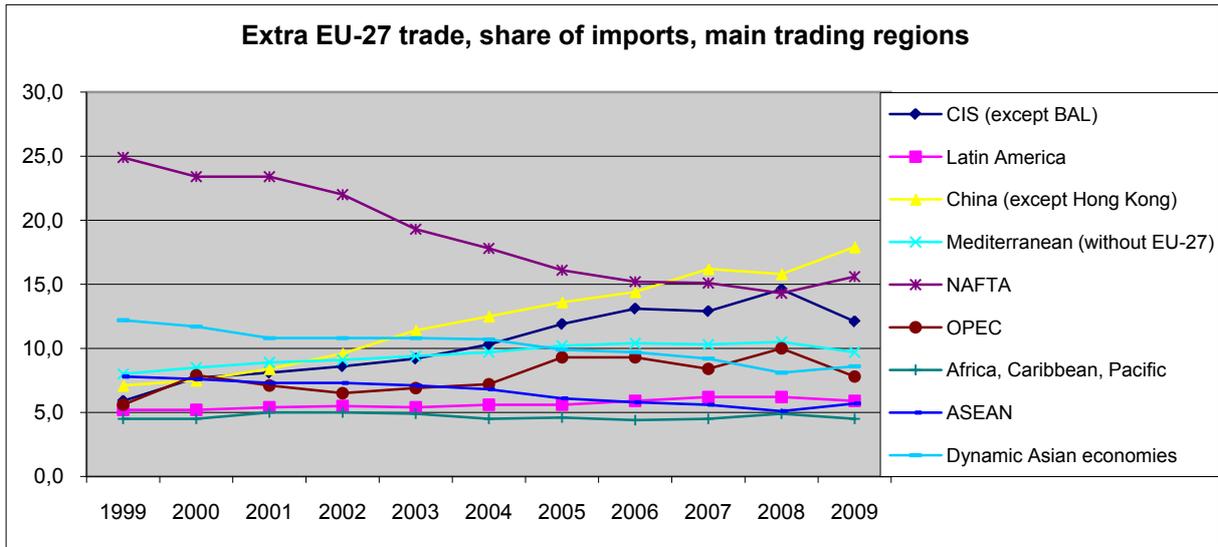
Development and importance of seaborne trade

– New Publication Working Paper No. 3–

Working paper No. 3 shows the development of seaborne trade and its importance for the world economy as well as for Europe and Germany. From this rough macroeconomic perspective, the danger of piracy and maritime terrorism is discussed.

About 80 % of globally traded goods are transported by intercontinental seaways. Seaborne trade increased dynamically in the past.

Merely due to the international financial crisis, seaborne trade declined considerably, yet it was overcome in the meantime. For this reason, the security of sea routes remains an important issue for global seaborne trade in the future. This applies to Europe as a whole and to Germany as an important export nation.



External trade of the EU-27 countries (including Germany) concentrates on Europe. About two thirds of exports and imports of the EU-27 are traded with other European Union member countries. One third is traded with countries extra-EU 27, mostly by sea routes. Thereby, Asia has gained importance during the last ten years. Within Asia, China is the most important importer of EU-27 (see figure).

While the role of Asia has increased, the role of North America as the most important export region for EU-27 countries has declined. This change of trading partners has security implications. So far, the Atlantic sea route has been regarded as secure compared to the Europe-Asia route, which now gains importance.



Activities

Events of BLS

PiraT staff of the **Bucerius Law School** has contributed to several events and conferences with regard to maritime security.

Prof Dr. Doris König was co-organizer of the Sea Institute Conference on 'Institutions and Regions in Ocean Governance' at the International Tribunal of the Law of the Sea, in Hamburg, 5th-6th October 2010. A major part of the conference, where Prof Dr. König also delivered a speech, was dedicated to the issues of maritime security.

From 28th to 29th of October 2010, Prof Dr. König participated in a conference on 'Dimensions of Countering Piracy in the Indian Ocean - Possibilities and Perspectives', organized by the Hanns Seidel Foundation at the Banz Monastery and spoke about 'Somali Piracy and Criminal Prosecution'.

From 14th to 15th October 2010, Tim René Salomon participated in the 7th Security Policy Forum at the Institute for Civic Education, Haus Rissen, in Hamburg. The conference dealt with the question 'From German coasts to the Hindu Kush - is the legal framework in German politics still up to date?'.

On the 4th of March 2011 Mr. Salomon visited the Bucerius Maritime Executive Lectures, the topic being, "Piracy - Challenge for Shipping."

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Events of TUHH

On December 9th, 2010, the DVZ organized a conference on Airfreight Security at the Cologne Bonn Airport. As invited expert, Prof Dr. Thorsten Blecker spoke on 'Safe supply chain - wishful thinking or reality' in front of an audience of about 100 guests. Participants agreed on several points: firstly there is no guarantee for one hundred percent security, secondly the cargo needs to be secured already at the primary loading of the airplane, and thirdly, supply chain security has proved

its effectiveness in Airfreight business despite some remaining loopholes.

Furthermore the TUHH staff participated on the 8th International Conference on Service Oriented Computing (8th-10th December 2010). The focus of the conference taking place in San Francisco was, 'Service orientated Computing in Logistics'. With experts from all around the world, Mr. Will discussed the fields of application of service-oriented architecture (SOA) as mediate technology between new security technologies (RFID, Screen/Scanning etc.) and already existing systems in logistics and/or container handling.

Via several workings groups, TUHH moreover continuously maintains an intensive exchange with representatives of the maritime economy. Under the chairmanship of Prof. Dr. Thorsten Blecker the two working groups 'Future Logistics' and 'Supply Chain Security' deal with questions of security concerning maritime (container) logistics.

Events of the IFSH

Throughout the last months, the focal point for **PiraT** staff of IFSH has been to carry out a risk analysis for seaborne trade and explore deficits of existing political measures to contain maritime violence. In addition, intensive work was done with regard to the further development of the concept of security governance, constituting the scientific framework of the project **PiraT**.

In cooperation with the University of Hamburg, Dr. Hans-Georg Ehrhart organized a workshop on security governance in the EU. More than 30 international experts thereby discussed the challenges for the Common Foreign and Security Policy of the EU. In another workshop held together with the staff of the Institute for Strategic Future-Analysis of the Carl-Friedrich von Weizsäcker Stiftung, challenges with regard to the development of scenarios and the exploration of indicators for

maritime violence have been discussed intensively.

On the same subject, Dr. Patricia Schneider took part in a workshop last November at the Swedish Defense Research Agency (in cooperation with Adelphi/Berlin) in Stockholm. The goal here was to critically analyze and identify newly emerging threats facing the EU located at the intersection of Environment and Security. Thereby, the workshop made use of the methods of scenario building by the EU-funded project SECURNV (Assessment of Environmental Accident from a Security Perspective).

In January 2011, the U.S. based One Earth Future (OEF) Foundation hosted a diverse working group of maritime experts in London as part of its Oceans Beyond Piracy project, a collaborative effort that seeks to engage and mobilize maritime stakeholders affected by piracy. As invited member of the working group, Kerstin Petretto took part in the meeting. Also in January, Kerstin Petretto spoke about 'Pirates: Drivers or Brakemen in the process of statebuilding - or simple criminals?' at a three-day workshop on the handling of non-state actors of violence organized by the University of Osnabrück.

Finally, at the end of February, Kerstin Petretto was invited as expert to a meeting of the Committee on Transport, Building and Urban Development at the German Parliament to discuss pirate attacks on commercial vessels. Other invited experts were Ralf Nagel, Managing Director of the German Shipowners' Association (VDR) as well as Erhard Ott, member of the federal executive board of Ver.di.

Call for participation in a survey on maritime security!

The Federal Ministry of Education and Research funds the project **PiraT** aiming at collecting information on the actual threat placed through piracy and maritime terrorism, to calculate the costs for shipping, as well as evaluate possible strategies to counter piracy and maritime terrorism. As part of the project, an online survey of stakeholders concerned is being conducted, whereas shipping companies, insurers and captains are asked for their assessment.

If you are one of those stakeholders being affected by the risk of piracy and/or maritime terrorism, we would cordially ask you to register for our survey. Your insightful questions and comments are of great importance for us in order to develop precise analysis as well as courses of action. To answer all the questions will take about 10 minutes of your time. Please visit the following website to register for the online survey:

<http://www.maritimesecurity.eu/index.php?id=230&L=1>

Alternatively, you can also register by sending an Email directly to maritime-sicherheit@diw.de whereby stating whether you are a shipowner, insurer or captain.

The survey is carried out by the German Institute for Economic Research (DIW) and is used for scientific purposes only. All project parties ensure compliance with applicable laws on data privacy protection and data security, all acquired information will thus be handled strictly confidential. Third parties are under no circumstances included. The results of the survey will be published in anonymized and summarized form only.

New publications

Download at: <http://www.maritimesecurity.eu/index.php?publications>

Blecker, Thorsten / Will, Thomas (2010): **Der Einsatz privater Sicherheitsdienste zum Schutz vor Piraterie und maritimem Terrorismus - Die ökonomisch-logistische Sicht.** In: Stober, Rolf (Ed.), Der Schutz vor Piraterie und maritimem Terrorismus zwischen internationaler, nationaler und unternehmerischer Verantwortung: Brauchen wir zukünftig den Einsatz privater Sicherheitsdienste zum Schutz vor Piraterie? Köln: Heymann, pp. 53-68.

Engerer, Hella (2011): **Piraterie und maritimer Terrorismus: Entwicklung und Bedeutung des Seehandels,** PiraT Arbeitspapier zur Maritimen Sicherheit Nr. 3, Hamburg.

König, Doris / Salomon, Tim René (2011): **Private Sicherheitsdienste auf Handelsschiffen – Rechtliche Implikationen,** PiraT Arbeitspapier zur Maritimen Sicherheit Nr. 2, Hamburg.

Kolb, Andreas S. / Neumann, Thilo / Salomon, Tim René (2011): **Die Entführung deutscher Seeschiffe: Flaggenrecht, Strafanwendungsrecht und diplomatischer Schutz.** In: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV), Vol. 71 (forthcoming).

Petretto, Kerstin (2010): **Somalia und Piraterie: keine Lösung in Sicht, weder zu Wasser noch zu Land,** Hamburger Informationen zur Friedensforschung und Sicherheitspolitik, 49/2010.

Schneider, Patricia; Giglmaier, Fabian (2010): **Somalische Piraten in Hamburg vor Gericht: Strafverfolgung als Handlungsoption gegen Piraterie?** BOFAXE Nr. 363D, 9.12.2010.

Will, Thomas (2010): **RFID in Maritime Container Logistics - A Delphi Study on Participant Specific Benefits,** 1st ed., Hamburg: tredition

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