

Responder Liability in Piracy Situations



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Can military forces responding to piracy be liable for the loss of innocent life? The U.S. Court of Appeals for the Fourth Circuit addressed this question on January 23, 2015.

The case arose out of the hijacking by Somali-based pirates of a Taiwanese fishing vessel in 2010. The pirates kept three hostages on board the vessel, including the Master of the vessel, and then used it as a “mothership” to launch attacks on commercial shipping.

Once located, the mothership was attacked by the *USS Stephen W Groves* on May 10, 2011. After the surrender of the pirates, it was found that the Master had been killed. Subsequently, the *Groves* sank the fishing vessel. The Master’s widow sued the United States, seeking damages for her husband’s death and the loss of the fishing vessel.

The case was dismissed in the federal district court on the basis that the suit presented a “nonjusticiable political question,” and that, even if it had proceeded, the plaintiff would not have succeeded because of sovereign immunity. The Fourth Circuit affirmed the dismissal, leaving little room for potential government liability in piracy response situations.

The Fourth Circuit reasoned that “this case presents a textbook example of a situation in which courts should not interfere,” that judges are not equipped to second-guess “small-bore tactical decisions,” and that the case involved the discretionary use of force, which was not judicially reviewable.

The Fourth Circuit also rejected the plaintiff’s argument that the attack was more in the nature of a police action rather than an act of war and that it should be judged on the basis of an excessive force standard that arguably applies to such actions.

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