Heilala von Keyserlingk

Understanding Somali Piracy:
Beyond a State-Centric Approach

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List of Abbreviations

AMISOM	African Union Mission to Somalia
AU	African Union
AWACS	Airborne Warning and Control System
BBC	British Broadcasting Corporation
BICC	Bonn International Centre for Conversion
CTF 150/151	Combined Task Force 150/151
COMESA	Common Market for Eastern and Southern Africa
DfID	Department for International Development
EAC	East African Community
ECHR	European Convention on Human Rights
EEZ	Exclusive Economic Zone
ESDP	European Security and Defence Policy
EU	European Union
EU NAVFOR	European Naval Forces
FAO	Food and Agriculture Organisation
GDP	Gross Domestic Product
ICC	International Chamber of Commerce
ICG	International Crisis Group
IDP	Internally Displaced Person
IGAD	Inter-Governmental Authority on Development
IMB	International Maritime Bureau
IMF	International Monetary Fund
IMO	International Maritime Organisation
IOC	Indian Ocean Commission
IRTC	Internationally Recommended Transit Corridors
IUU	Illegal, Unreported and Unregulated
JWC	Joint War Committee
MNC	Multi-National Corporation
MoU	Memorandum of Understanding
MSC-HOA	Maritime Security Centre – Horn of Africa
MSPA	Maritime Security Patrol Area
NATO	North Atlantic Treaty Organisation
NAVCENT	United States Naval Forces Central Command
NIBR	Norwegian Institute for Urban and Regional Research
NM	Nautical Miles
NPG	New Political Geography
PRSP	Poverty Reduction Strategy Papers
PSC	Private Security Companies
RPG	Rocket-Propelled Grenade
SAP	Structural Adjustment Programme
SHADE	Shared Awareness and De-confliction
SUA	Safety of Maritime Navigation Convention
TFG	Transitional Federal Government
UAE	United Arab Emirates
UIC	Union of Islamic Courts
UK	United Kingdom
UN	United Nations
UNCAT	United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment

UNCLOS   United Nations Convention on the Law of the Sea
UNDP   United Nations Development Programme
UNEP   United Nations Environmental Programme
UNODC   United Nations Office for Drugs and Crime
UNSC   United Nations Security Council
US   United States
WFP   World Food Programme

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1.   Introduction

The rise of piracy off the coast of Somalia has garnered considerable international attention in recent years. Until recently, media coverage of this phenomenon has been sporadic in its intensity and heavy on speculation, fears and international concerns. With the successful pirating of the *Sirius Star*, a Saudi Arabian oil tanker, in November 2008, Somali piracy exploded into public consciousness. Not only has the issue of piracy led to extensive media coverage, but it has entered the realm of supranational politics, as evidenced by the many United Nations (UN) resolutions specifically addressing the countering of Somali piracy, and the deployment of national navies as escorts for commercial ships through what has become known as one of the world's busiest and most dangerous shipping lanes. However, despite a strong international naval presence, the practice of piracy has continued.

Against the backdrop of the Somali 'crisis' understanding piracy constitutes a difficult task. The absence of a functioning state is often used as an overarching explanation for Somalia's multiple crises of anarchy, civil war, poverty and now, piracy. In most of the literature, statelessness is regarded as the central and defining feature of piracy in the Gulf of Aden. State collapse and its corresponding features of lawlessness and armed conflict are often cited as the direct cause for the emergence, perpetuation, and continuation of Somali piracy (Pham, 2009b). As a result, the majority of policy recommendations regarding counter-piracy measures consider the rebuilding of the central state as the primary solution to the piracy problem. And yet, to date, most counter-piracy measures have taken the form of military action.

Somali piracy is borne out of a specific context and situation, emerging as a result of complex networks, systems, and relationships that transcend local, national, regional and international geographies. It is a local phenomenon that operates beyond traditional state boundaries, thereby transcending and impacting every level between the local and the supranational. It is embedded in global networks and enabled through transnational financial linkages; yet, the only response to it has been international military action sanctioned by a supra-national legal framework. It would seem that a straightforward state-based international relations theory is inadequate when attempting to analyse the problem of Somali piracy. Despite occupying the pole position on the failed states index (Foreign Policy, 2011) Somalia's apparent statelessness has made way for an extensive informal infrastructure and a complex array of systems and networks which allow the country to

move forward in novel and innovative ways. This implies that an approach that places more emphasis on actors and agency rather than on territorially-bound sovereignty is necessary.

This paper will argue that piracy in Somalia cannot be fully explained by the country's statelessness. The statement, 'anarchy on land, means piracy at sea' (Kaplan, 2009), though widely used and accepted, maintains the realist conception of sovereignty and political power. This continued preoccupation with Somalia's statelessness as a blanket explanation for all of the country's problems fails to account for the alternative sources and forms of power, control and authority that exist despite the absence of a central state. Understanding Somali piracy as a mere by-product of Somalia's statelessness is overly simplistic and analytically meaningless. Moving beyond the limitations and rigidity of a state-centric approach allows for a more comprehensive understanding and diagnosis of the issue of Somali piracy.

Examining Somali piracy from a New Political Geography (NPG) perspective places transnational linkages, networks and connectivity which enable such a phenomenon to emerge and thrive at the centre of its focus. This approach addresses the limitations and the rigidity of state-centric analyses by disentangling notions of sovereignty and authority from physical territory, acknowledging that power can move beyond the state to be captured by a variety of non-state actors. This paper will seek to explore how a continued emphasis on a state-centric approach not only leads to an incomplete analysis of Somali piracy, but provides an uneven basis for policy design and implementation. A misunderstanding of the piracy phenomenon will ultimately lead to misdirected policy-making, resulting in counter-measures that in no way address the root causes, or the networks and structures that support piracy. By attempting to delink the notion of statelessness from the issue of piracy, this paper will seek to identify the gaps in analysis by mapping out the framework within which Somali piracy takes place.

2   Beyond Sovereignty

The processes of contemporary globalisation have affected much change in the world today, particularly with regards to geography. Distance is losing significance and importance with advances in the communications and transport industries, causing Taylor et al to speculate about the "end of geography" (2001:213). According to Castells, these processes of globalisation have led us away from a world defined by the separation of

boundaries to one which is defined by interactions and connections (1996). In other words, it is no longer paramount to know on which side of the border what happens, but to know how certain actors are connected, how actions are carried out, and how certain linkages and relationships alter alongside changes in the global geopolitical order. Taylor et al note that while some geographies are being dismantled as a result of processes of contemporary globalisation, others are being produced (2001). This is of particular relevance in certain areas of the world, most notably Africa, where such processes are raising questions about notions of sovereignty, authority and legitimacy in the face of state weakness, collapse and failure.

The principle of sovereignty has long ruled traditional international relations (IR) theory as the central and defining feature of the state. However, processes of contemporary globalisation are challenging this principle, not so much weakening it as changing what it means. The increased influence being wielded by political elites, warlords and 'informal' traders points towards the fact that authority is increasingly being exercised beyond the purview of the national state. In some cases, the private sector has stepped in to provide services usually reserved for formal governments. In areas where the state is unwilling or unable to provide basic levels of rule of law, there has been a reversion towards customary law, private courts and an increased dependence on social ties. This has led to questions about what other forms of authority and governance exist in the absence of state legitimacy (Latham & Kassimir, 2001). Exercising authority and governance beyond the state in this manner illustrates that power and influence are not exclusively the domain of the state, indicating a change in what sovereignty means and a shift in where it resides. In other words, the territorially-bound state is no longer the only articulation of sovereignty and authority in today's world (Agnew, 2005).

The recognition of these changes has opened up IR theory to new ways of thinking about political space and power, and has introduced new areas for research and analysis beyond the epistemology of state-centrism (Engel & Nugent, 2009). "Thinking about political space forces us to reconsider the degree to which politics and territory continue to be related, possible shifts in that relationship and the sources of change, as well as the extent to which important aspects of global politics and governance transcend territory or are effectively de-territorialised" (Ferguson & Jones, 2003:1). Scholars have begun questioning "the territorial nation state as a pre-constituted geographical unit of analysis for social research"

(Brenner, 1999:40) and dismantling the premise that territorial sovereignty provides "a norm that legitimises central state authority" (Agnew, 2005:437). Agnew argues that the deficiency of traditional IR theory rests on three crucial assumptions: that political power is territorially-bound; that power relationships only exist as a "set of isolated individual relationship at a single geographical scale" (eg. state to state); and the homology that states are treated as moral equivalents to individual persons (2002:115; 2005). Barnett and Duvall also criticise the singular privileged form of power typically embodied by the modern, territorially-bound state, arguing instead for the recognition of multiple and alternate conceptions and forms of power (2005).

2.1 *New Political Geography*[1]

New Political Geography (NPG) is an approach which moves beyond state-based articulations of sovereignty and power, directing more focus towards "an analysis of networks and other lateral ties of connection and obligation" (Engel & Nugent, 2009:3). It allows for more focus on political forms that exist beyond the state-level, placing more emphasis on how cross-boundary interactions lead to the creation of international arenas and trans-local networks where political power is exercised (Latham, 2001). Somali piracy is not contained or limited within the territorial boundaries of Somalia. It makes use of local and regional ties, transnational financial and communications networks, and is influenced and affected by global flows. Despite increasing recognition of the changing nature of sovereignty, authority and territoriality, a state-centric approach dominates national policy-making not only in the way it is implemented, but in the way issues such as Somali piracy are problematised and understood.

At the centre of the NPG approach are the networks and linkages that connect various actors in a multitude of ways at different levels. In Somalia, the absence of a formal state structure has facilitated the strengthening and emergence of informal networks that pervade every aspect of Somali life and society. These networks, regardless of their size, purpose or

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[1] See Ferguson, Yale H. & Jones, R.J. Barry (Eds.), Political Space: Frontiers of Change and Governance in a Globalising World, Albany: State University of New York Press; Agnew, John. (2005) *Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics*, Annals of the Association of American Geographers, Vol 92, No 2, pp. 437-461.; Brenner, Neil. (1999) *Beyond State-Centrism? Space, Territoriality, and Geographical Scale in Globalisation Studies*, Theory and Society, Vol 28, pp. 39-78.; Engel, Ulf & Nugent, Paul (Eds.) (2010) Respacing Africa, Leiden/Boston: Brill; Engel, Ulf & Olsen, Gorm Rye (2010) *Authority, Sovereignty and Africa's Changing Regimes of Territorialisation*, Working Paper Series No.7, Graduate Centre for Humanities and Social Sciences, Research Academy Leipzig, Leipzig.

scope, have provided Somalis with the tools to overcome two decades of state collapse, conflict and poverty. Examining the various economic, political and social networks within Somalia can offer insights into the interactions amongst actors, groups or institutions. Powell defines a network as being a long-term and recurrent exchange in which notions of obligation and reputation play a significant role in the establishment and perpetuation of the exchange (1990). These patterns of exchange create a certain structural formality while retaining their overall informality, making them "more like a marriage than a one-night stand, but there is no marriage license, no common household, no pooling of assets" (Powell, 1990:301).

Within networks, the state is replaced by 'nodes' as the primary unit(s) of analysis. These 'nodes' represent diverse actors, from individuals to groups to institutions, at every thinkable level. The interactions between nodes make them interdependent, as opposed to independent, autonomous units, exposing them to structural limitations and opportunities resulting from the arrangements that bind them together. Focusing on the interactions between actors in certain relationships can show how power is distributed and how social and political action is influenced. In other words, networks are a mapping of social structure, offering an insight into agent motives and opportunities that allow us to claim an understanding of society.

Networks emerge in response to situations in which benefits and burdens can be shared as a result of complex patterns of exchange. In this sense, they are mutually supportive in that participating actors are engaged in reciprocal and preferential behaviour to produce a particular outcome. Powell notes that networks represent a particular form of collective action in which "cooperation can be sustained over the long-term as an effective arrangement" (1990:322). The pooling of resources allows for participants to realise greater gains than they would if they acted on their own. In terms of structure, networks are flat, lateral and often decentralised, as opposed to hierarchies, where resource and information flows move up and down. According to Milward & Raab, networks present a specific social structure that is "characterised by a dominance of informal communications relations, a horizontal pattern of relations and a decentralised pattern of actor's positions" (2005:6). The open-ended relational features of networks allows for a more effective transfer and transmission of resources and information. Economically speaking, such networks only make sense when all parties benefit from acting together and repeating these particular

patterns of exchange. As such, circumstance dictates the parameters of the exchange, with expectations changing accordingly (Powell, 1990). This adaptive quality makes networks 'lighter on their feet' with structures and behaviours changing or transforming in reaction to changes in their environment. This adaptability and flexibility has seen networks previously positioned as solutions for solving "non-routine, non-standardised, ill-structured, or wicked problems" (Milward & Raab, 2005:2-4), functioning as governance mechanisms in the face of issues beyond the range and capabilities of a single actor. This is particularly relevant in collapsed or failing states, in which informal structures emerge in order to cope with the absence of the state and its provisions (Milward & Raab, 2005:6).

However, the same features that position networks as effective problem-solvers, position them as potential problems as well. In recent years, network forms of organisation have shown a 'darker' side, lending their strengths to facilitate transnational organised crime. As Milward & Raab point out, networks "can harness information technology to enable less hierarchical, more network designs – enhancing their flexibility, responsiveness, and resilience" (2005:15). The inherent informality, dispersal and resilience of networks make it easier to operate beyond regulations and boundaries, exploit differences in national laws, and allow for continued operational capabilities despite disruptions (Williams, 2001).

While Somali piracy relies on specific networks in order to function, these networks are not 'directed' solely for the purpose of piracy. Rather, Somali piracy makes use of the networks already in place that act as informal governance mechanisms to cope with the absence of a functioning government. Drawing attention away from the territorially-bound state and focusing instead on the analysis of the networks and other lateral ties of connection and obligation, allows for a more comprehensive understanding of how transnational issues, such as Somali piracy, surface as a result of and are perpetuated by such networks and linkages. In other words, it is not Somalia's statelessness in itself which caused the emergence of piracy off Somalia's coast. Rather, Somalia's statelessness necessitated the strengthening of existing linkages as well as the establishment of new translocal networks and relationships reaching beyond the state, providing the base upon which piracy is built.

2.2. Somalia's Networks

In terms of a functioning infrastructure, the presence of the rule of law, the provision of basic services, and national security, little faith is placed in the structures that currently

exist in Somalia. This is in keeping with the stereotype that Somalia has been and remains in a state of anarchy, chaos and lawlessness since the early 1990s. Leeson points out that while "popular opinion sees government as universally superior to anarchy...there is a tendency to see only the 'failure' of a situation, possibly even ignoring the even worse state of affairs that preceded it" (2007:3). In fact, Somali society is a dense network of communication and cooperative relations, made up of a mixture of informal, sub-national polities which, to a certain extent, "deliver more effective public order than other neighbouring states" (Menkhaus, 2004: 20).

In Somalia, 'governance' is carried out through a combination of shari'a courts, customary law and local polities. Municipal authorities and shari'a courts provide a basic, if limited, rule of law while local polities – usually in partnership with foreign aid assistance – provide a degree of basic services. Customary law helps to regulate the protection and access to resources, and establishes rules regarding marriage, war and social contracts between clans (Leeson, 2007:25). Business partnerships create commercial ties which often transcend clan lines and conflict. According to Menkhaus, "these extensive mechanisms for managing conflict and providing a modest level of security are virtually invisible to external observers, whose sole preoccupation is often with the one structure which actually provides the least amount of rule of law to Somalis – the central state" (2004:28). He goes on to point out that for external actors, a functioning state is considered to be an essential pre-requisite for the security and development of a country. In a country in which the rule of law was never associated with a formal judiciary and police force, the state is seen by most Somalis as being not much more than an instrument of accumulation and domination (Menkhaus, 2004).

The Somali Clan System

Unlike most conflicts in Africa, the divisions within Somalia are not the result of clashing identities on the basis of ethnicity or religion. In this regard, Somalia is a relatively homogenous nation. Somalis stem from one ethnic group, share the same language, and the majority of the population share the Muslim faith. Divisions within Somalia are based on clans. As Metz points out, "genealogy constitutes the heart of the Somali social system. It is the basis of the collective Somali inclination toward internal fission and internecine conflict" (1992). Clans are the centre of all social, economic and political life in Somalia. It is evident in the structure of Somali politics, at the national and international level, with

clan obligations extending beyond Somalia's borders to include the Somali diaspora. The dominance of the Somali clan structure is evident in the fact that "most Somalis continue to give greater political and emotional allegiance to their lineages" (Metz, 1992).

With regards to Somali piracy "clan considerations will always be an underlying factor influencing group dynamics within various piracy groups" (Hansen, 2009:25). In general, piracy groups will be organised along clan lines ensuring loyalty through the obligation demanded by clan membership. However, clan considerations also influence piracy operation in terms of geography, protection and support. According to an interviewed pirate, "clan is crucial. Without it, you cannot organise anything." In terms of protection, the "pirates depend on the clans that defend them... Pirates are asked by their clans to pay *qaaraan*[2], and pirates usually pay. Hence, the clan defends them" (Hansen, 2009:26). In matters of conflict, pirates are expected to show loyalty to their sub-clans and are to avoid the capture of ships belonging to clan members.

The Somali Diaspora

The Somali diaspora plays a significant role, not only with regards to Somali piracy, but to the country as a whole. The diaspora contributes to Somali livelihoods in the form of remittances, humanitarian assistance, and by participating in recovery and reconstruction efforts. A 2010 estimate places the Somali population at approximately 9.3 million, with more than 1 million living outside the country. This roughly translates to about 15% of the population belonging to the Somali diaspora worldwide. Unlike other outward migration groups, the Somali diaspora remains "intimately connected with the homeland," with some with the right of abode elsewhere in the world frequently returning to live, work and invest in Somalia (Sheikh & Healy, 2009:6-7).

As a group, the Somali diaspora is "steadfast in providing help to the relatives left behind" whether in the form of financial support, political influence or sponsorship to enter the West. As Menkhaus puts it, "few countries in the world possess diasporas with as much economic and political importance to their homeland as does Somalia" (cited in Sheikh & Healy, 2009:18). With annual remittances estimated anywhere between USD$750 million

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[2] *Qaaraan* is defined as the 'collection of money or livestock for the needy.' This particular exchange may have contributed to and given weight to the idea of the 'Robin Hood pirate', stealing from the rich in order to give to the poor. While there is evidence to support that a portion of ransom payments do end up in the local economy, this 'generosity' on the part of pirates may in fact be due to the rules that govern the clan system.

and USD\$1 billion (Lindley, 2007), the diaspora is the country's largest source of hard currency, occupying a vital role in keeping the Somali economy afloat. Physical distance does not seem to have a diminishing effect on clan loyalties and familial obligations characteristic of Somali society. This is not only evident in the volume and regularity of remittances, but in the pervasiveness of the Somali identity which discourages cultural assimilation in host countries (Menkhaus, 2004). The result is strong, transnational linkages between Somalia and the rest of the world in the form of financial, communication and information networks.

Piracy's relationship to the Somali diaspora is varied. It ranges from no contact at all with pirate groups to strong connections with regards to finances, support and information. According to an interview conducted by the NIBR, "there are usually Somali diaspora involved in piracy in several functions: a) they provide satellite telecommunication systems and goggles; b) in rare cases they provide some money and encouragement; c) they participate in translating when negotiating for ransom" (Hansen, 2009:37). The Somali diaspora in general is relatively innocuous, but highly networked. Money and mutual responsibility span great physical distances through the networks, such as *hawala*, that connect the diaspora to Somalia.

Hawala & Xawilaad[3]

Connecting the Somali diaspora to family and obligations at home are *xawilaad*, remittance firms that function according to an informal system of value transfer run and used by Somalis for sending remittances and conducting business transactions (Horst, 2004). In Somalia, informal financial practices and traditions for "keeping money safe, making savings, obtaining credit and insurance, and sending money home" (Lindley, 2009:521) have been present throughout history, existing alongside a formal financial infrastructure. During the Barre regime, the formal financial infrastructure was regarded with mistrust and scepticism by the general population as a result of frequent bankruptcies and the fact that it served only a privileged few. After the collapse of the state, the Somali money transfers infrastructure underwent rapid growth and development, connecting "war-torn cities, refugee camps, and remote rural areas with the rest of the globe" (Lindley, 2009:520).

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[3] Hawala – the Arabic word for "transfer of debt" – is a paperless banking system based on mutual trust and obligation.

However, the boundaries that separate 'formal' from 'informal' activity are particularly fluid when that activity crosses national borders, legal jurisdictions and changes in regulation over time (Lindley, 2009). It is the 'fluid' nature of Somalia's money transfer infrastructure is often seen as being problematic given the potential it presents for criminal behaviour since transfers are largely untraceable and therefore difficult to regulate. With regards to Somali piracy, it is suspected that xawilaad are being used to funnel money inwards to finance piracy operations and direct ransom payments outwards. As it is with terrorism, the fear is that the informal nature of Somalia's financial infrastructure allows pirates and its supporters to operate with a great deal of freedom, perpetrating crime and 'getting away with it'. However, Lindley points out that "the bulk of the money transmitters' business deals in the steady rhythm of small family transfers...relieving suffering and furnishing livelihoods" (2009:528).

3.   From Traditional to Contemporary Piracy

3.1 Definitions

Piracy counts as one of the oldest professions in the world, dating as far back as the thirteenth century BC with its development paralleling the history of the trade of goods across water. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is more specific and defines maritime piracy as:

> *a) 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 boards such ship or aircraft;*
> >
> > *ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;*
>
> *b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;*
>
> *c) any act of inciting or of intentionally facilitating an act described in sub-paragraph a) or b)*

This definition uses the boundary between territorial waters and the high seas as the defining marker for what qualifies as sea-robbery or piracy, despite there being little

difference between the two with regards to motive, method or objective. The UNCLOS definition is considered to be relatively narrow in its definition since technically speaking, piracy can only occur beyond the narrow belt of water that reaches 12 nautical miles (nm) off any national coast. Under UNCLOS, any incidents that take place within territorial waters classify as sea-robbery and fall under domestic law and jurisdiction.

The International Maritime Bureau (IMB) offers a broader definition of maritime piracy which addresses the limitations of UNCLOS by not factoring in the division of the sea. It is the:

> *"act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act...Petty thefts are excluded, unless the thefts are armed."*

While the broader scope of this definition allows for more comprehensive monitoring and documenting of piratical attacks, it does not address the practical problem of prosecution stemming from differences between international and domestic law. The variation in domestic definitions of piracy between states further complicates matters when incidents occur within territorial waters of one state but against nationals of another state. Murphy notes that uniformity should not be limited to legal definitions of piracy, but that it must be accompanied by a uniformity of response (2009b).

3.2   Scope and Dimension of Maritime Piracy

Between 2002 and 2010, the International Maritime Bureau – International Chamber of Commerce (IMB-ICC) has reported a total of 3,070 actual and attempted piratical attacks worldwide (IMB-ICC, 2002-2010). However, due to degrees of reluctance by shipowners to report attacks, it is possible that this figure is actually much higher. Of this total, approximately 23% of these attacks have been attributed to Somali piracy. As the table below shows, current levels of piracy have been reached in the past. The major difference is that whereas Somali piracy accounted for roughly 5% of global piracy in 2003, Somali piracy is now credited with approximately 50% of all incidents worldwide over the last 2 years (439 out of 855). Other high-risk areas include Nigeria, Indonesia, Bangladesh and India.
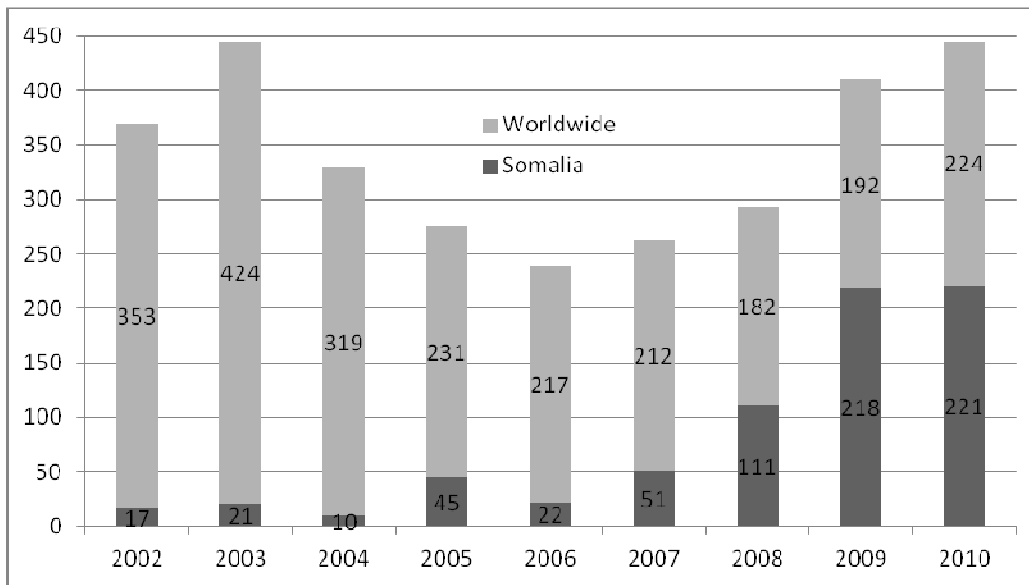
Table 1: The number of ships pirated annually worldwide and how many incidents are attributable to Somali piracy (Source: IMB-ICC annual reports, 2003 – 2010)

Somali piracy has garnered the most attention not only due to the exponential increase in attacks over the past eight years, but also because of increases in terms of operational capacity. Attacks attributable to Somali piracy currently include incidents off the coast of Somalia, the Gulf of Aden, the Red Sea, the Arabian Sea, the Indian Ocean, and off the coast of Oman. The increased ability to operate up to 500nm off the coast of Somalia not only expands the area vulnerable to piracy, but raises the number of potential targets and hostages. Last year, a total of 1016 crew members were taken hostage, with 13 injured and 8 killed. At the time of writing, the IMB-ICC's online Piracy Reporting Centre reported 23 vessels and 439 crew members were still being held hostage by Somali pirates.

Piracy is, at its very core and above all else, an economically driven phenomenon. This is not limited to those who participate in the practice of piracy, but extends to those who are targeted by piracy. It "stems from very material dreams. All affected parties are looking to make a living and constantly calculating the most efficient means to do so" (de Rugy, 2009). Leeson's study of piracy, from the eighteenth century till today, is based on Gary Becker's initial ideas on rational choice theory as applying to criminals. This shows pirates as rational economic actors fully capable of carrying out cost-benefit analyses and applying profit-maximising strategies, modifying and altering their behaviour accordingly (Leeson, 2009). In other words, legality aside, piracy is good business with a very specific business model. Piracy's objectives are no less economically motivated than those of the shipping

industry, applying similar strategies to minimise costs and maximise profits with regards to their own business. Arguments have been made that this rational economic thinking also extends to the responses of the shipping industry towards piracy so far. Namely, to pay out a ransom deemed 'appropriate' for the release of the ship and its crew. Some commentators have gone so far as to suggest that the ransoms paid are merely 'the price one pays' for doing business in the Gulf of Aden (Cox, 2009).

While piracy as a practice may have undergone various changes over time, "the nature and purpose of piracy have not changed. The causal factors remain the same: the largely lawless space of the sea, favourable geography, weak or compliant states that provide sanctuary, corrupt officialdom that can benefit from and protect piracy, economic disruption that opens markets for stolen goods, and the promise of reward" (Murphy, 2009b:21). However, these aspects also hold true for 'other' pirates: those who seek to exploit territorial waters of states with weak maritime policing capabilities for their own financial gain (Murphy, 2009b; Schofield, 2009). This primarily takes the form of illegal, unreported and unregulated (IUU) fishing or the illegal dumping of toxic waste. Both these forms of 'other' piracy are prevalent in Somali waters.

4   The Somali Piracy Model

4.1 Situating Somalia

With roughly 3,300km, Somalia boasts Africa's longest stretch of coastline on the continent. Somalia's maritime jurisdiction is also one of the largest and most productive in the world. On top of the 12nm of territorial waters and its contiguous zone of an extra 12nm, Somalia's exclusive economic zone (EEZ) stretches out to the maximum 200nm into the Gulf of Aden. In terms of geographical significance, Somalia is located at the mouth of one of the world's most important maritime trade routes counting for 95% of all Far East trade to Europe, including 50% of the world's oil (Lennox, 2008). This shipping lane is also the world's busiest, with roughly 20,000 ships and vessels passing through it annually. Alone due to the high volumes of commercial traffic and the immediate proximity to a strategically significant maritime chokepoint, the Gulf of Aden qualifies as an area of concern with regards to contemporary piracy. However, it is not only Somalia's geography but its political and economic landscape that shapes the current piracy phenomenon.

Examining this landscape is the first step in delinking Somali piracy from the issue of statelessness, providing the framework within which Somali piracy is best understood.

The last forty years of Somalia's history have been marked by two decades of military dictatorship, the collapse of the state, and a devastating civil war exacerbated by drought and famine. Today, Somalia continues to be characterised by protracted state collapse, armed conflict and lawlessness. The terms 'failed state' or 'state collapse' are used in the literature to describe "a situation in which a central government has either lost control over a significant area of the country (territorial collapse) or has lost the ability or interest to exercise meaningful control over territory in which it has a physical presence (collapse of governing authority) – or both" (Menkhaus, 2004:17). With fourteen unsuccessful attempts at establishing a central authority and consistently ranking at the top of the failed state index (Foreign Policy, 2011) Somalia can be considered a failure among failed states. This string of attempts were not only unsuccessful in terms of establishing authority but were frequently the cause for renewed conflict and disruption. Menkhaus posits that these state-building experiences have led the Somali people to see the central state as a source of conflict through the creation of clear winners and losers, and not as the solution to the spectrum of Somalia's problems (2008).

Despite the lack of a functioning central authority, Somalia continues to function and even develop. International development indicators have shown slow but steady progress over the past two decades and have even surpassed pre-state levels (Leeson, 2007). The use of *shari'a* courts and *xeer* coupled with business partnerships and clan alliances have managed to provide a degree of rule of law and basic services. Despite the absence of a central bank or treasury, the Somali economy is doing well. Aside from foreign aid, cross-border trade, windfall from smuggling activities and an active private sector, the extensive Somali diaspora continues to pump money into the largely informal Somali economy (Leeson, 2007:23). Hassan and Chalmers estimate that remittances contribute between 20% and 50% of Somalia's GDP annually (2008). Somalia's densely networked society produces a mosaic of local politics and informal social pacts which provide an "impressive if fragile level of local governance" (Menkhaus, 2004:19) reiterating the statement that "it is not true that *any* government is superior to no government at all" (Leeson; 2007:3).

4.2 *Emergence and Evolution of Somali Piracy*

With the civil war and the subsequent collapse of the state following Barre's removal from power in 1991, Somalia's waters were exposed by the sudden decline in maritime surveillance and patrol. This decline led to Somalia's waters being targeted by foreign companies for the disposal of industrial, medical and nuclear waste (UNEP, 2005), and foreign fishing trawlers taking advantage of rich maritime resources. Local fishermen were crowded out and their livelihoods threatened. Illegal fishing increased, including violent assaults on Somali fishermen and their equipment (Lehr & Lehmann, 2007). Between 2003 and 2004, the UK Department for International Development (DfID) estimated that Somalia lost approximately \$100million to illegal shrimp and tuna fishing alone (cited in UNODC, 2010:196). In 2009, the Food and Agriculture Organisation (FAO) estimated that there were "700 foreign-owned vessels fully engaged in unlicensed fishing in Somali waters" (cited in Schofield, 2009:2) resulting in the loss of nearly 30% of Somalia's annual catch[4] (UNODC, 2010). Schofield notes that "foreign fishing vessels are in fact taking considerably more protein out of Somalia's waters than the international community is supplying to Somalia in the form of humanitarian food aid (2009:2).

With approximately 3.2million Somalis dependent on foreign aid, 1.6million of them internally displaced persons (IDPs)[5], the poverty and insecurity created and perpetuated by Somalia's protracted crises offer few perspectives for its people. This, coupled with anger stemming from the perceived "denial of entitled benefits" due to illegal fishing or the dumping of toxic waste, contributes to the social legitimacy of piracy amongst local communities (Hansen, 2009:7-8). While claims that Somali piracy is motivated by redistributionary ethics á la Robin Hood (Lennox, 2008) may serve psychological needs for self-justification on the part of pirates or may be attributed to the practice of paying *qaraan*, the "systematic plundering of Somalia's resources by foreign fishing fleets remains a potent underlying and motivating factor" (Schofield, 2009:2) for Somali piracy. However, the fact that the victims of piracy are no longer confined to foreign trawlers indicates that profit has become the ultimate objective. What began as a genuine grievance on the part of local fishermen and a defensive strategy to address IUU fishing has morphed into a purely profit-oriented enterprise (Menkhaus, 2009a).

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[4] The estimated value of illegal catches is anywhere between USD\$90million and USD\$300million annually.
[5] http://www.internal-displacement.org/countries/somalia

This shift did not however take place until 1994 with statistics showing a spike in incidents off the coast of Puntland. Between 1994 and 2000, Somali piracy showed a slow increase in the frequency of attacks, but "remained statistically small compared to data from states in the region that had state structures, such as Kenya, Eritrea and Yemen" (Hansen, 2009:23). During this time, piracy was, for the most part, confined to the self-governed entity of Puntland, an area that consists largely of fishing communities and hardest hit by IUU fishing and toxic dumping. It was only in 2004 that organised, profit-driven Somali piracy gained prominence. This 'Golden Age' of Somali piracy presented another major shift as it was primarily concentrated around the coastal towns of Harardheere and Hobyo in the Mudug region in Central Somalia. Shifting piracy into this region meant that it was relatively untouched by the fractions of the civil war, removing the need to share profits in order to curry political favour or to corrupt officials with bribes. Removing piracy from areas of conflict and political tension ensured that any financial gains made could be kept and reinvested into new pirate attacks. This new brand of piracy was based on economic rationale of cost-effectiveness, efficiency and maximising profits, expanded and intensified, peaking in 2005 (Hansen, 2009).

2006 showed a marked decline in piracy attacks off the coast of Somalia. This is directly attributable to the efforts made by the Union of Islamic Courts (UIC), who gained political control in 2006. Piracy was declared *haraam* – against Islam – and counter-measures were undertaken, such as launching attacks against pirate ports. The UIC managed to end piracy in central Somalia during its brief six-month rule. Concerns about the emergence of an Islamic state in Somalia, led to a US-backed invasion of Somalia by Ethiopian forces that removed the UIC from power. Immediately afterwards, piracy re-emerged in the region, exploding again in 2008. This latest piracy boom brought its own changes, altering patterns of pirate organisation and attack. Unlike the piracy of 2004-2005, piracy in 2008 fragmented into smaller, heterogeneous groups, ranging from small, subsistence groups to larger groups of up to 200 individuals (Hansen, 2009).

Today, Somali piracy accounts for approximately 50% of all recorded incidents of piracy worldwide. Reported figures suggest that all attempted and actual pirate attacks that are attributable to Somali piracy amount to roughly 1% of the 20,000 ships that transit the Gulf of Aden every year.

4.3 Somali Pirates

A study conducted in 2009 estimates that Somali pirates make up a heterogeneous group of roughly 2,000 individuals with varying motivations and profiles (Hansen, 2009). Gilpin identifies three distinct categories within Somali piracy: "battle hardened clan-based militia; youth looking for quick money; and forcibly recruited fishermen for their navigational skills" (2009:6). Despite variations in size, similarities do exist in terms of organisation within groups. "Each pirate group is usually a loose constellation around a pirate leader who is usually a veteran pirate, reinvesting funds into new pirate missions, who often functions as a fund-raiser" (Hansen, 2009:34).

Whether a pirate gang consists only of a father, son and a single skiff, or a larger, more organised group with a clear hierarchy, the principles of cost-effectiveness and efficiency guide the structure and strategy of a group. With the World Bank estimating that over 40% of Somalia's population lives in extreme poverty and 75% of all households exist on less than $2 a day (cited in Glipin, 2009:5), the economic motivation for practising piracy is strong. However, while poverty does not automatically create piracy, Murphy reminds us that economic dislocation such as that in Somalia is a significant contributing factor (2009b) presenting young Somalis with a "low-risk, high-paying job when compared to other lines of work they qualify for" (2009b:45).

Piracy typically targets cash, the cargo, ship supplies, equipment, personal possessions and valuables onboard for theft. Or, the intended target is the ship itself, which may either be sold on for profit or transformed into a 'phantom ship' to be used in smuggling operations. However, Somali piracy is unique in this point since it specifically targets the crew, hijacks them and demands a ransom for their release (Murphy, 2009b). As Menkhaus points out, there is no inclination on the part of the pirates to "offload a ship's contents, steal the vessels or use the captured ships for acts of terrorism" (2009:23), but "to exploit the difference between the marginal value placed on human life in Somalia and its value in the outside world" (Murphy, 2009a:2).

Gilpin writes that there are seven phases of piracy operations: reconnaissance and information-gathering; coordinated pursuit; boarding and takeover; steaming to a safe area; negotiations; payment and receipt of ransom; disembarkation and safe passage (2009). The first phase deals with one of the most difficult tasks a pirate faces: targeting. While there

are speculations about the use of ship ID systems, these are rarely used by Somali pirates. More common, although still rare, is the use of 'spotters' to help designate targets. These are individuals who are based in regional port areas such as Djibouti or Mombasa, and operate as intelligence gatherers, passing on information about ship cargo, crew members, and routes. Such practices, however, remain the exception and not the rule. Somali piracy in general continues to be a patrol-based venture, relying most on the 'luck of the draw' to target passing ships (Hansen, 2009:30-36). This is evidenced in the various attempted attacks on less than desirable targets, such as military ships part of the international patrol to curb the practice of piracy (BBC, 2009c). Ships most likely to be targeted continue to be those with low sides, slow speeds, low crew numbers, and a lack of adequate watch-keeping (Middleton, 2008).

A typical pirate attack is a relatively low-tech operation using small skiffs with powerful outboard engines and takes approximately 15 minutes to complete boarding. The short attack time as well as the speed and manoeuvrability of these skiffs are advantageous in comparison to the heavy, slow-moving vessels that are their targets. At its most basic level, piracy makes use of equipment primarily designed for coastal fishing and not for the capture of high-tech vessels on the high seas. Grappling hooks, aluminium ladders, ropes and fishing lines are the most rudimentary elements of a pirate's equipment kit. Despite the low-tech nature of pirate assault strategies, they do make limited use of certain technological resources to improve their chances of successfully targeting, boarding and hijacking a ship. Limitations aside, availability and access can be granted through favourable relationships with local businessmen or investors in the piracy business who purchase and supply equipment, such as night-vision goggles, GPS systems and satellite phones for use in attacks.

The most significant advance in the methodology of pirate attacks has been the introduction and use of 'mother ships' to increase their range of operation[6]. 'Mother ships' are larger vessels, usually fishing trawlers that are used as staging posts to allow for attacks further out at sea. These 'mother ships' minimise the frequency of trips onshore for restocking and refuelling, since most carry more than enough supplies for several attacks. This also allows

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[6] "...attacks have spread and taken place very far reaching up to off Kenya, off Tanzania, off Seychelles, off Madagascar, off Mozambique/Mozambique Channel and in the Indian Ocean and Arabian Sea off Oman and off west coast India and off western Maldives." http://www.icc-ccs.org/home/piracy-reporting-centre/prone-areas-and-warnings accessed on 14.06.2011

for significant increases in the duration and intensity of pirate campaigns. The use of 'mother ships' not only indicates a significant increase in the range of operation but it indicates a higher level of organisation and professionalization not previously seen in Somali piracy (Ashkenazi, 2010).

Once a ship has been successfully seized, the pirates will then steer the captured vessel to pirate-friendly areas, such as the coastal villages of Eyl in Puntland or Hobyo and Harardheere in Central Somalia, for anchorage. While piracy in other parts of the world make use of favourable geography to hide away from maritime or aerial surveillance, Somalia's natural coastal terrain offers little cover in this regard. According to a report by the UNODC, captured vessels are rarely concealed from public sight with negotiations carried out with the ship visibly anchored off the Somali coast (2010). Negotiations are usually immediately initiated once direct contact with the ship's owner has been established either through the use of satellite telephones or the captured ship's communication equipment. On average, negotiations tend to last anywhere between two and six months (UNODC, 2010).

The use of third-party intermediaries for negotiating ransoms has become a standard feature of Somali piracy, with both sides making use of lawyers, advisors, negotiators and security experts. On the Somali side, it is rumoured that local businessmen or Somali diaspora offer their services to help broker a deal. On the side of the ship owners, third-party intermediaries are usually maritime lawyers, insurance companies, negotiators and security experts typically based overseas. Ransom demands typically start very high with no indication as to where the ultimate expectation of payment really lies. However, Menkhaus notes that the value of the ship and crew are usually much higher than the ransoms demanded (2009a). Since ship owners also prefer to keep the actual figures of ransom payments secret, this opens up the discussion on ransom demands and payments to speculation. For the year 2008, there are several estimates from various sources concerning the total amount paid in ransoms. For example, according to Menkhaus, an estimated USD$20-40million has been paid out in ransoms to Somali pirates in 2008 (2009a). Gilpin estimates that the amount in ransoms paid is much higher, between USD$50-130million for the same year (2009). Once an agreement has been reached on the amount of ransom to be paid, arrangements are made for the ransom to be delivered in exchange for the captured ship, cargo and crew. Ransoms are typically paid out in cash and delivered directly to the

pirates either as an air- or sea-drop by private security companies (PSC) contracted by shipping agents and their insurance companies. There have been instances where ransoms have been paid to "a trusted third-party representative outside Somalia" (UNODC, 2010:199).

Following a successful negotiation and upon receipt of the ransom payment, the ransom is then divided amongst the pirates before the captured ship is released back to its owner. According to interviews and anecdotal evidence, the division of the ransom is said to follow a particular breakdown (Hansen, 2009). Before any pirates are paid their share, the costs of the operation and other expenses are taken care of first. Then, 30% of the ransom is allocated for bribes and the first pirate to have boarded the ship is allotted a bonus. The remaining money is then divided between the 'attack' and the 'hold' team with the latter taking the smallest share (Hansen, 2009). Another breakdown suggests that the pirates involved in the actual hijacking receive only 30% of the actual ransom from which expenses incurred must also be paid. Armed groups, clan elders and local officials may claim 10% each. A financier may command up to 20% of the ransom as interest on the funds provided to operationalise the attack, while a full sponsor will claim up to 30%. (UNODC, 2010).

In terms of weaponry, Somali pirates tend to be armed with everything from knives to AK47s and rocket-propelled grenades (RPG). However, evidence suggests that pirate weaponry is primarily used to compel ships to slow speeds to enable boarding, and for frightening crew members into surrendering and maintaining control. Hostages are rarely directly harmed. First-hand reports from captains of seized ships have reported that it was clear that the pirates were "only out for the money" and that if the crew were to cause no trouble, then no harm would come to them (Cox, 2009). With over 1000 hostages taken last year alone, 13 injuries and 8 deaths were reported by the IMB-ICC. Given the consistency with which lethal weapons are employed as part of pirate attack strategy, these numbers are surprisingly low, especially when compared to other areas of concern, such as the Gulf of Guinea, where pirate attacks are consistently violent and aggressive.

There are two overlapping arguments that explain the relatively low levels of violence involved with Somali piracy. The first explanation is rooted in economic rationale. Evidence suggests that as piracy becomes more profitable, its overall lethality has

decreased. This is not only true for Somali piracy, but there is evidence for it in the piracy of the past. Leeson remarks that "since wantonly brutalising captives would have undermined their ability to make profits, eighteenth century pirates typically refrained from doing so. Some crews went as far as to enshrine rules prohibiting a prisoner mistreatment in their articles. The Somali pirates seem to have realised the benefits of such rules for their bottom-line as well. At least one Somali pirate 'code' regulating the treatment of prisoners has been found and several Somali pirates have claimed that it is a universal rule among them not to harm innocent sailors they overtake" (cited in de Rugy, 2009).

This leads directly into the second explanation for the seeming absence of violence in pirate attacks which has to do with the sociology of Somali pirates. According to Ashkenazi, the low levels of violence can be attributed to social rules of Somali culture and society that dictate the behaviour of the pirates (2010). A feature of Somali society is the *diya*[7]-paying group. This is an alliance built around related lineages that is traditionally cemented by an oral contract in which the rights and duties of the group's members are outlined. The most significant feature of these groups is the collective payment of blood-compensation, which highlights the way in which group members are united in joint responsibility towards outsiders. According to Lewis, "If one member of a *diya*-paying group is injured or killed by another group, or if his property is attacked, the wronged group is pledged to collective vengeance, or if reparation is made, to sharing compensation paid amongst all its male members. Conversely, if a person of a *diya*-paying group commits homicide or injury outside his group, all the other members are collectively responsible for his actions and jointly concerned in effecting reparation" (1994:20). If a group member incurs more blood debt than the group is able or willing to take on, that individual can be cast out of the group to fend for himself.

When applied within the context of piracy, it becomes clear that an unprovoked attack on hostages would, according to Somali social behaviour, incur a blood debt to the mutual responsibility groups of their victims. By avoiding harming hostages, pirates are also avoiding costing their own *diya*-paying group a blood debt that may or may not be too costly for them too bear[8]. Coupled with the increase in professionalization and the gradual

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[7] *Diya* is the Somali word for 'blood-wealth'.
[8] With the 2009 pirate attack on the MV Maersk Alabama and subsequent rescue operation, the US Navy attacked and killed three pirates injuring the social rules that dictate non-violence towards other mutual responsibility groups. Ashkenazi claims that US actions not only provoked a blood debt requiring repayment, but that this chain of events has subsequently lowered the bar on the use of violence on the side of Somali

erosion of the rules that govern social interaction, Ashkenazi predicts that there will be a definite increase in the use of violence in Somali piracy in the years to come (2010).

pirates. One could speculate that recent events, such as the deaths of four American hostages and two pirates onboard a captured private yacht in late February of 2011, may be a direct response to what happened on the Maersk Alambama. Until now, reports about what actually happened remain unclear, raising questions about whether the hostages were executed, shot as a result of an attempt to break free, or if was related to an accident (Straziuso & Muhamed, 2011).

5   The Industry of Somali Piracy

The networks that enable piracy in the Gulf of Aden have created a web of transnationally connected actors that reach far beyond the initial act of piracy. The tendency to consider Somali piracy as a phenomenon contained to the area in which it is practiced and its impact on those directly involved is misguided. Somali piracy extends much further beyond the Gulf of Aden, the pirates themselves, and the ships they target.

> "Different scales of interaction are linked in various ways, implying that there is a complex set of actors (state and non-state) who are embedded in different policy scales, which in turn blur the distinction between the international and the domestic" (Taylor and Söderbaum, in Engel and Nugent, 2010:52).

It has led to the creation of an industry that includes financiers, local support, and the diaspora on one side, and lawyers, insurance brokers, accountants, and security advisors on the other. Somali piracy has inadvertently become an industry that spans from Somalia and the Gulf of Aden, to London, Canada and the Middle East, with various actors playing their part and benefiting in different ways from it. The broad scope of these actors and the extent of piracy's impact on surrounding sectors and issues, reveals that Somali piracy has created a transnational and highly amorphous industry, making it a far more complex and expansive phenomenon than typically perceived.

The movement of people, pirates, victims, supporters and adversaries alike, all play a part in creating the networks within piracy exists and operates. Through these networks, information, money and new cultural practices flow back and forth, creating new interactive regions between Somalia, the region and the rest of the world. Howard states that such new regions are shaped to allow for economic survival in the face of the pressures of global change. Existing regions in which a living can still be made do not diminish, but continue to exist alongside newer configurations (Howard, 2010) straddling the divide between the state and society. This particular context is referred to by Söderbaum and Taylor as micro-regions, where varying degrees of agency are exercised, representing a diverse range of strategies used by a variety of actors to survive in a difficult and changing world (in Engel & Nugent, 2010).

Outlining the web of connected actors to the initial act of piracy reveals two halves which make up a whole. The industry of piracy radiates outwards from the centre – from the initial

act – and is split, more or less, down the middle, with a degree of overlap. On the side of the pirates are not only the actors and relationships that make piracy possible, but also includes those who inadvertently benefit from it or are affected by it in any way. This includes local sponsors and investors such as Somali businessmen, villagers who 'buy' into the piracy business, clan elders, and local populations exposed to piracy. On the side of the victims are the crew and their families, the shipping companies, the ship owners, and the unions. The areas which overlap are usually occupied by lawyers, insurance brokers, accountants, translators and negotiators who enable the flow of communication and money between both sides for a fee. This side of the industry is more concerned with the impact and the response to piracy in terms of negotiating, payment and delivery of ransoms. All actors involved are affected by the incidence of piracy and are exposed to different degrees of legality and criminality, direct and indirect involvement or support.

The extent of the Somali piracy industry is often discussed in terms of the 'costs' suffered by the maritime shipping industry, the global economy and the international community. This not only encompasses the financial burden piracy imposes, but the impact of piracy on individual lives, society, politics and the economy, at the micro and macro level. However, it is important to note that it is extremely difficult to disaggregate the specific impact of Somali piracy from other challenges facing the country and the region. While most of the literature focuses on the financial costs of piracy to the international community, the impact faced by Somali citizens and their communities is acknowledged, although seldom dealt with comprehensively. This is largely due to the fact that "there is no reliable reporting system with which to gauge the full impact of piracy" (Hurlburt, 2011:4), specifically its impact on the pirates themselves, Somali citizens and their communities. It also indicates the discrepancy of how piracy is prioritised within the international community as opposed to within Somalia itself. Hurlburt points out that what piracy means for Somalia is very different to what piracy means for seafarers, the international community and the maritime shipping industry (2011). Attributing any changes, negative or positive, to the political, economic or social situation of Somalia to piracy is difficult to prove, and remains a highly speculative affair. However, despite the fact that "there has been a lot of inventive reporting on very slim evidence" (Harper, BBC, 2009), such commentary does give an indication of how extensive and far-reaching the impact Somali piracy may be.

5.1 Piracy at the Local Level

The industry of Somali piracy begins with the payment of ransoms. Piracy has developed into a mini-economy, employing hundreds of people in north-eastern and central Somalia, in pursuit of a payout, all with a claim on a share of the ransom. However, the distribution of ransoms does not stop with the pirates or their financiers and supporters. It goes much further than that with money finding its way into local, regional and international economies. This 'trickle down' effect is widely acknowledged. Still, there is little agreement on how this source of cash is being distributed, what it is used for, and where it is ending up.

Involvement in piracy starts at the local level. Somali piracy is nothing without the structures and actors that support and encourage it. At the most basic level, some form of start capital is necessary in order to initiate a pirate attack or campaign. This can be anything from the existing ownership of a suitable skiff or boat to sponsorship from investors abroad. Once this start capital has been secured, piracy tends to be a self-financing activity, with the money gained from hijackings being reinvested into new attacks (Hansen, 2009). The continuation of piratical activity is enabled with the help of local and international investors and the integration of local coastal communities into the logistics supply stream. 'Shares' in pirate ventures are offered in exchange for the provision of food, arms, boats, equipment or money making a successful pirate attack a desirable outcome for more than just the pirates themselves (Hansen, 2009:37). The New York Times even reported the existence of a rudimentary stock exchange based in Harardheere, set up by piracy financiers in an attempt to manage their investments and as a strategy for winning support amongst local communities. According to interviews carried out, "the shares are open to all and everybody can take part, whether personally at sea or on land by providing cash, weapons or useful materials...we've made piracy a community activity" (New York Times, 2009).

Gilpin posits that a significant portion of ransom payments enter the Somali economy by way of payment for services, such as the purchase of consumer goods, real estate and cars, turning piracy centres into hubs of economic activity in the region (2009). While Gilpin admits that local businesses do benefit from the presence of piracy, he is concerned with the sustainability of piracy asset bubble and expenditure patterns. The development of the real estate industry along Somalia's coast seems to illustrate this concern. Between 2007 and

2008 there was a sharp rise in property prices in Eyl, a well-known piracy-hub that Gilpin attributes to the influx of ransom payments into the local economy (2009).

The increasing incidence of piracy in the Red Sea and the Gulf of Aden has also complicated the delivery of food supplies and aid to Somalia. Some of the earliest pirate attacks were committed against World Food Programme (WFP) boats making food aid deliveries by sea. With over 3million Somalis dependent on food aid and imports, any disruption to the deliveries has far-reaching consequences, threatening dwindling food stocks (Middleton, 2008). The resulting shortages of basic goods, such as flour, sugar and rice has triggered rapid food price inflation, heightening the potential for conflict and social unrest (Bowden, 2010). Despite the extent of piracy's impact, "it cannot be assumed that these costs are large enough to incentivise Somalis to root out piracy independently" (Hurlburt, 2011:24) since piracy is only one challenge amongst many that Somalis face.

Locally, the presence of piracy is impacting Somali society along the coast in more ways than one. Somalia's impoverishment means that the ransom money trickling down into local economies not only transforms villages financially, but is creating social change. Intentionally or not, pirates have, in a sense, become political actors in their own right. The cash injections provided by pirates have led to further 'legitimisation' of piracy observed by the fact that Somali pirates do little to conceal their activities. Instead, hijacked ships are anchored at ports in full view, with pirates moving freely about town whilst they restock their ships (MSNBC, 2008) and employ the services of villagers. Successful pirates with money to spend have also led to an increase in bridal dowries in pirate-villages, as well as increasing their social status. Young Somali girls are said to be pinning their hopes on marrying a pirate in search of a better life (Ashur, 2011). The changing social status of pirates is leading to a reshuffling of traditional Somali social order. Beyond transforming Somali society and culture, piracy has a deeper impact at the macro-level, affecting food security and local and regional trade.

5.2 Regional Impact

Although pirates have their bases in Somalia, Somaliland, and Puntland, they operate in waters that they share with their neighbours, affecting change not only at home but throughout the region. Of all of Somalia's neighbours, Kenya is probably most affected by Somali piracy. With insurance costs rising and ships sometimes bypassing the ports of

Mombasa altogether, the Kenyan Shippers Council reports a loss of approximately USD$33.6 million loss every month as a result of piracy in the region. These costs are eventually passed onto Kenyan customers, potentially resulting in a 10% price inflation of imported goods (van der Linden, 2010). Piracy also places extra strain on Kenya in comparison to other neighbours since it is the closest country with the competence and the legislation to prosecute pirates (Middleton, 2008). The US and the UK both have Memorandum of Understandings (MoU) with Kenya that stipulate that suspected pirates be prosecuted in Kenya and subsequently placed in prison there. However, the limits of the Kenyan judicial system are rapidly being reached, prisons are already far too full and the tolerance of Kenyans is wearing thin.

Elsewhere in the region, Yemen, Dubai, Egypt and the Seychelles are also affected by the incidence of Somali piracy. Aside from a strong and present Somali diaspora in the region, there are indications that Somali pirates have been provided with intelligence, weapons and financial support (Middleton, 2008). Media reports claim that several Somali neighbours, such as Dubai and Kenya, are profiting from Somali piracy by acting as a key transit point for the laundering of ransom money. The effects of Somali piracy throughout the region are also more diffuse. The 'bad neighbourhood syndrome' resulting from piracy discourages investment and tourism, while altered trade routes, increased insurance premiums, and diverted trade contributes to the decline of economic growth. Egypt claims that Somali piracy has directly resulted in a drop in maritime traffic, causing a decrease in the country's revenue stemming from harbour and port fees (Gilpin, 2009). The Seychelles' fishing industry reported a loss of €28 million in revenue for 2009, citing piracy as the main cause for this decline (Bowden, 2010). Another regional concern is that piracy could precipitate an environmental catastrophe, resulting from confrontations at sea with vessels carrying oil or other hazardous material (Middleton, 2008). However, there is no concrete evidence that confirms Somali piracy as the sole reason for such changes.

5.3 International Involvement

The piracy industry reaches far beyond Somalia and the region, affecting lives, challenging national and international laws, and impacting sectors well past national borders. For pirates, the Somali diaspora is the most relevant at the international level. Ties to the diaspora are difficult to quantify or trace since they are, more often than not, based on familial obligations and clan networks that stretch overseas. Members of the Somali

diaspora are not only suspected of channelling money and information into Somalia in support of piracy, but of channelling ransom payments outwards through *xawilaad* (Ashkenazi, 2010). Informal money transfer systems make it difficult to track or trace any monies connected to the piracy industry. According to reports, members of the diaspora are called upon to translate or to help negotiate ransom deals between the pirates and the ship owners, acting as middlemen (Joffe-Walt, 2009). Some conduct pirate professional basis, acting as 'consultants' to pirate groups, often negotiating ransoms for several ships simultaneously (UN Monitoring Group, 2011).

Outside Somalia there is a network of law firms, insurers, negotiators and private security companies that bear the responsibility of securing the release of captured crews, cargo and vessels. For every service provided pertaining to piracy, fees are paid, making Somali piracy a highly lucrative industry for those doing the insuring, negotiating, advising, and delivering. This burgeoning industry however, has been heavily criticised in certain circles for 'cashing in' on the practice of piracy. This perspective sees the payment of ransoms as only encouraging Somali piracy further, placing more and more vessels at risk, and pushing up the price of ransoms demanded (Cox, 2009).

Somali piracy has a global impact, if only due to the location of shipping companies, the flags vessels carry, and the various nationalities of crew members. Embassies throughout the region are faced with a host of diplomatic difficulties stemming from Somali piracy (Menkhaus, 2004). The 'ransom business,' however, has its centre in London, if only due to an historic quirk that makes it the home of the world's maritime industry. With London as the centre of maritime dispute resolution worldwide, Simon Cox at the BBC points out that all contracts signed between ship owners, charterers, and so on, are all subject to English law (BBC4 Radio, 2009). Not only does this put London at the very centre of the Somali piracy ransom business, but it makes it extremely vulnerable to any changes made to the international legal framework dealing with piracy.

In 2010, the British government blocked a move to place sanctions against Somali pirates. At present, the payment of ransoms to pirates in the UK remains legal. The present system of paying out ransoms is preferred by ship-owners and seafarers as a system of 'doing business' and not waging war (Reynolds, 2010). Placing suspected pirate leaders on a UN sanctions list would effectively make the paying of ransoms illegal in the UK. While

sanctions do not explicitly outlaw the payment of ransoms, the uncertainty of where the money might ultimately end up makes their payment impossible in practice (Peel, 2010). The Financial Times reported that the London-based Chamber of Shipping stated that "to discontinue payments or make them illegal would jeopardise the safety of seafarers held captive" (Peel, 2010) not to mention, rendering those involved in the ransom business, liable. The consequences of such a move not only affect the hostages, but London's maritime industry as well, cutting the knees out from under a burgeoning and undoubtedly lucrative sector. It would also unequivocally change the rules of the game, ensuring more unpredictability and insecurity in an already complex situation.

Lawyers and insurers provide the framework within which shipping owners and companies are able to operate in an environment where pirate attacks are a potential threat. The rapid emergence and development of Somali piracy has garnered significant attention in these sectors, necessitating changes in contracts and insurance coverage, creating niche markets that target piracy. The reality of the 'ransom business' has also necessitated the services of negotiators, security advisors and private security companies that are tailored to address the specific demands and particularities of Somali piracy. In a way, Somali piracy has not only created a mini-economy within Somalia itself, but has extended internationally, creating opportunities and livelihoods for those reacting and responding to the practice of piracy.

5.4 Costs

Somali piracy not only incurs economic costs, but social and political costs as well. Beyond the direct financial costs of ransoms, insurance premiums, re-routing of ships, deterrence equipment, pirate prosecutions and international naval forces, there are also the secondary costs of piracy: the effects on regional trade, fishing and oil industries, food price inflation and reduced foreign revenue (Bowden, 2010). However, measuring or calculating these costs is an extremely difficult and complicated affair. Depending on how 'costs' are defined, there is a huge difference in opinion within the shipping industry and governments on what piracy actually costs. Adding to this ambiguity are limitations presented by the data, or lack of it, and less than comprehensive reporting on piracy. Bowden notes that while the IMB is widely considered to be the world's primary source of information on piracy, it is restrained by what is reported or documented. This means that the IMB has no information on unreported pirate attacks. Failure to report attacks occurs for a variety of reasons, political and commercial, with ship owners seeking to limit bad publicity or the

absence of the appropriate insurance coverage (Bowden, 2010). According to some observers, as many as 60% of all pirate attacks go unreported (Bowden, 2010).

Ransoms are the main motivation behind Somali piracy and are also responsible for the amount of attention and level of prominence Somali piracy has reached in the media and in public consciousness (Gilpin, 2009). However, the accessible data on ransom payments is deliberately vague, since publicly disclosing such information is not in the best interests of the shipping and insurance industries, and could potentially encourage further acts of piracy (Sanders et al., 2010:32). With the media reporting one record ransom deal after the other, the accuracy of such reports is questionable given the availability and accessibility of such data, and the reliability of sources. Sanders et al point out that the press "seldom specify whether the amounts are ransoms or total costs incurred, which include delivery costs (eg. private plane hire, helicopter delivery), negotiation management costs (eg. satellite calls or trauma consultants), repair costs and any other earning losses" (2010:32). Of these additional costs incurred, it is also not specified which of these costs are covered by the insurance companies. Bowden, for example, only incorporates the *excess* cost of ransoms into her calculations on the total global cost of piracy, since the actual ransom amount paid tends to be covered by insurance and therefore falls under the costs incurred by insurance premiums paid (2010).

Cox points out that piracy is to be seen as a 'business', and the demand and payment of ransoms is the largest aspect of this aspect (2009). On both sides it is a negotiation for money, with pirates seeking a maximum return and ship's owners looking to negotiate the best deal they possibly can. In this sense, ransom payments are actually viewed and treated as commercial transactions within the shipping industry. As a result, unlike hijacked planes or other kidnappings related to terrorism, pirate ransoms will always be paid (Cox, 2009). This 'willingness' on the part of owners and insurance companies to pay out ransoms to pirates is also due to the amounts demanded. According to Middleton, they are "prepared to pay these sums since they are relatively small compared with the value of a ship, let alone the life of crew members" (2008:5). Due to the frequency of pirate attacks and ransom negotiations, it would seem that a market price for ransoms has emerged (Cox, 2009). Menkhaus adds that "by ensuring ransom demands remain at relatively manageable levels, occasional payment of ransoms is less costly to shipping companies than any other alternatives" (2009b:9).

Despite the price of ransoms, "merchant ships continue to use the seas because it is the cheapest, most cost-effective means for transporting goods between Europe and Asia" (Schaefer, 2009:2). In comparison to the value of global maritime commerce, it has been argued that ransoms represent little more than a 'nuisance tax' for the global maritime industry. In Somalia, however, the ransoms are a transformative amount of money. With an estimated USD$40million paid out in ransoms in 2009, Menkhaus points out that this amount makes up only 3% of the USD$900million of humanitarian aid sought out by the UN for Somalia. USD$40million is also comparable to the annual budget of Somaliland (Menkhaus, 2009a:24). This money does not, however, remain in the hands of few pirates. A pirate's share of the ransom is very quickly divided up and distributed according to the obligations required of the close-knit family and clan structures of Somali society (Hansen, 2009:40). As a result, ransom money touches many more hands than are actually involved in the act of piracy.

The emergence and development of Somali piracy has resulted in significant changes for many industries, but none more so than in maritime insurance[9]. With regards to piracy, premiums typically depend on the speed of the ship, the height of its deck above sea level, and the measures taken to protect the vessel (Bandel & Crowley, 2010). Since Somali piracy began increasing in frequency, the fear has been that it could push insurance premiums through the roof. This fear has become reality with the decision by the Lloyd's Market Association Joint War Committee in May 2008 declaring the Gulf of Aden a war-risk area for ships. Since then, the war-risk premiums have gone up 300%, costing owners up to USD$150,000 per ship, per voyage (Bowden, 2010).

The increase in insurance rates and premiums has elicited various responses amongst observers. The greatest concern is that the increases in costs will ultimately be passed on to the consumer. However, there are some that see piracy-specific insurance premiums decreasing. Bowden claims that the increased frequency of piracy has boosted the insurance industry in such a way that competitors are now moving into the market. With more competitors entering the market, premiums could actually decrease as insurers realise that they can reduce rates and still make money (Bandel & Crowley, 2010). According to one marine underwriter at Lloyd's in London, "traditional carriers have been cutting each other

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[9] This paper focuses on the London Market.

so much to get the premium in that the price has fallen off the end of a cliff" (cited in Bowden, 2010:12).

The most critical response to the role of the maritime insurance industry in Somali piracy has come from those who believe that insurers are profiting from the ransom business. Spain has been a vocal opponent of the London maritime industry, claiming that it is profiting from crime (Cox, 2009) and encouraging piracy through the payment of ransoms. Pham writes that "one reason that cutting off ransom payments has not been much discussed as a possible measure... is that companies selling insurance to ship owners are quite comfortable with the status quo" (2009b). He argues that an added risk premium of USD$20,000 – USD$30,000 per voyage for ships transiting the Gulf of Aden, allows insurers to collect surcharges between USD$400-600 million annually. Basing his calculations on the amount of ransoms in 2008 totalling about USD$100 million[10], Pham concludes that insurers can "count on a windfall profit of between USD$300-500 million as long as the threat continues" (2009b).

Ransoms, increased insurance premiums, and fees are not the only costs that need to be taken into consideration. "Increased pirate activity creates a number of additional costs, which arise when stakeholders seek protection against the risk of piracy acts, risk-mitigation, or incur losses by piracy events" (Sanders et al, 2010:29). With piracy now a 'certainty' in the Gulf of Aden and surrounding waters, alternative transport routes are being sought out. However, re-routing ships not only adds on time and distance to every voyage, but carries with it other expenditures and losses for various stakeholders. Reduced transit activity automatically results in the reduction of earnings, taking a toll on local and regional economies as foreign currency earnings and GDP drop, and unemployment increases. Industries on both ends of the transport route are also negatively affected by price increases that are passed on as a result of longer in-transit and delivery times, and supply chains are disrupted (Sanders et al, 2010).

Shipowners are also beginning to invest more money in deterrence equipment and security measures to protect crew, cargo and vessel from pirate attacks. Costly, on-board deterrence

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[10] The total amount of ransoms paid annually is always an estimate, given the reluctance on the part of the shipping and insurance industries to divulge such information. These estimates also vary from analyst to analyst depending on what is factored into their calculations. The total amount of ransoms paid out annually is estimated to be anywhere between USD$40million and USD$100million.

equipment such as water cannons, fire hoses, flares and floodlight, electrical fences, and passive sonic defences (Lennox, 2008) are being increasingly employed although reliable data regarding price is not easily accessible partly due to the reluctance of shipowners to disclose such information (Bowden, 2010). Hiring teams of guards or private security companies does not come cheap, with one crossing ranging between USD$25,000 and USD$100,000 (Sanders et al, 2010). However, the most costly deterrence measure is the extensive naval presence in the Gulf of Aden and surrounding waters. With more than 43 vessels patrolling off the Horn of Africa and into the Indian Ocean, Bowden roughly calculates the total annual cost of this naval presence to be around USD$2billion (2010:16).

However, even when taking the direct and indirect costs of piracy into consideration, Gilpin points out that the numbers remain relatively insignificant. According to his calculations Somali piracy costs anywhere between USD$1 and 16 billion. This estimate represents less than 0.1% of the total world trade for one year (Gilpin, 2009:12). Murphy makes the same argument by insisting that such losses should be downgraded since "USD$16 billion in losses is a small sum in comparison to annual global maritime commerce, with a net worth of well over trillions of dollars" (2009). While this argument cannot be seen as a justification for piratical activity, the discrepancy between the financial losses incurred by piracy and the financial burden of the current military and naval response to piracy may indicate that the problem is nowhere near as big as the response might suggest.

6.   Responses to Somali Piracy

The frequency and intensity of piratical activity off the coast of Somalia over the course of the last few years has triggered a range of reactions and responses from various actors at every level. Somali piracy is unique in comparison to other brands of contemporary piracy, such as those in South East Asia or in the Gulf of Guinea. The relatively open and transparent way of operating, lower levels of violence, the high value placed on the lives of crew rather than the value of the ship or its cargo, and the networks that underpin it, are all reasons that make Somali piracy quite specific. With regards to response, these particularities not only affect the way in which Somali piracy needs to be understood, but also the way in which they affect measures that are designed to counter or combat piracy. The Somali context further complicates any kind of response. The current political situation in Somalia does nothing to detract from the complexity of the issue, with a struggling

transitional government that lacks legitimacy and authority, a powerful and influential business class, and militant Islamic political group, al-Shabaab. The deteriorating humanitarian situation in Somalia further adds to the complexity of the situation by making it impossible for the international community to 'ignore' Somalia and its crises. Even where Somalia is geographically positioned complicates the response to piracy. The region around the Gulf of Aden is considered to be problematic, particularly in the post-9/11 era with fears concerning terrorism, the rise of militant Islam, and the potential connections to piracy. Within the Somali context, Somali piracy becomes a melting pot of threats and risks with varying degrees of prioritisation for different stakeholders.

According to Knott, those currently spending money on discouraging or reacting against piracy are a large group made up of 30 nation states, the EU NAVFOR's Operation Atalanta, the Combined Task Force 151 (CTF 151), NATO's Operation Shield, other naval and military forces, shipowners, charterers, cargo owners, various classes of underwriters, several UN organisations, the criminal justice departments of prosecuting countries, other governmental departments, as well as people involved in seminars, think tanks and other professional bodies (2010). This range of stakeholders means that Somali piracy is not the same problem for everyone, making it difficult to align interests and coordinate response. Counter-piracy operations also tends to originate from the national or supra-national level and attempts to deal with piracy as a state-based issue. This approach not only ignores Somalia's current political situation, but ignores other non-state actors or stakeholders potentially capable of addressing the issue from within Somalia. Despite changes and alterations made to the international legal framework to enable an appropriate response, little use of it has been made to effectively curb piracy. While the aim of response should be "to discourage piracy by removing any need for it", it would seem that the majority of measures undertaken so far have been little more than just a reaction to piracy (Knott, 2010).

6.1   Local and National Responses to Piracy

At the local and national level, the prioritisation of piracy ranks fairly low on a long list of problems that plague Somalia. In comparison to Somalia's other 'crises' of armed conflict, poverty and famine, piracy is a much lesser problem to contend with. This is reflected, in part, in the various communiqués, reports and letters produced by international

organisations such as the UN and the EU, where Somalia's political and humanitarian situation receive a much higher priority than piracy.

With regards to local response, the reaction to the emergence and development of piratical activity off the coast is varied. The involvement of local communities in the business of piracy has resulted in varying degrees of support. In a country lacking in opportunities, piracy has, in certain areas and to a certain extent, provided employment, investment and development. The deterioration of Somalia's fishing industry brought on by unregulated and illegal fishing and dumping contributes to the justification and legitimisation of piracy amongst local populations. As a result, the prioritisation of piracy as a problem remains relatively low at the local level.

At the national level, the TFG's official position is to maintain a robust stance against piracy and the payment of ransoms. This position, however, has more to do with the TFG's desire to win the support and favour of the international community than a political commitment to countering piracy. The official position on piracy has also proven difficult to uphold as a result of the restricted capacities of the TFG. The TFG is further weakened by the discrepancy in legitimacy awarded it from the international community in comparison to local acceptance. While the TFG enjoys international support, it has a very weak standing amongst the Somali population. Its legitimacy stems solely from the UN mandate used to establish the TFG and its survival is fully dependant on the presence of AMISOM military forces within Somalia. The limited scope of the TFG's authority is illustrated by the fact that the capital, Mogadishu, is beyond its control. Coupled with the TFG's "lack of vision or cohesion, its endemic corruption and its failure to advance the political process," (UNSC, 2011a:16) the TFG is considered to be no more than another faction within Somalia (Murphy, 2011).

In comparison, the UIC and its military wing, al-Shabaab, are attributed with far more legitimacy at the national level than the TFG. Despite progress made under the UIC, it remains unrecognised internationally as it was formed in opposition to the TFG and is structured according to Islamic faith and law. While the TFG is dependent on external resources and protection, al-Shabaab is economically robust[11] and "controls the greater part of Somali territory between the Kenyan border and the southern parts of Mudug and

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[11] According to the 2011 Report of the Monitoring Group for Somalia and Eritrea, it is estimated that Al-Shabaab generates between USD$70-100million per year in revenue from taxation and extortion.

Galguduud regions" (UNSC, 2011a:11). During the UIC's six month rule of Somalia, al-Shabaab carried out the attacks on pirate dens and bases that led to the only successful disruption of piratical activity since its emergence in the region. "Compared to other strategies and institutions employed against piracy, the shari'a court alliance achieved staggering results, being one of the most efficient local remedies against piracy in Somalia so far" (Hansen, 2009:27). However, fears concerning the emergence of an Islamic state in Somalia have meant that external support has been reluctant.

The autonomous, coastal regions of Somaliland and Puntland have been most affected by Somali piracy and are in better positions to respond to it. According to the UN Monitoring Group for Somalia and Eritrea, Somaliland is stable and secure. Its nascent democratic institutions have been strengthened by the occurrence of elections, and its police, military and naval forces have ensured that its coastline is now pirate-free (UNSC, 2011a:16). In Puntland, authorities have been able to maintain relative peace and stability within its territory, although a combination of clan protection and police corruption has limited counter-piracy efforts. Puntland institutions are also limited in their geographical scope, making escapes easier. "Some pirates have clan backing, other pirates have relations with police, while a third group of pirates has neither...but they rather hide here and there" (Hansen, 2009:40). Reports suggest that Puntland has, more recently, taken a stronger stance, resulting in considerable gains made against piracy. Pressure from the authorities and local elders at the beginning of 2011 has resulted in pirates withdrawing from certain bases, moving southwards along the coast. While this relocation has meant a reduction in places of safe harbour and sanctuary for pirates in Puntland, it has had little impact on the frequency and intensity of piratical activity (UNSC, 2011a).

6.2 Regional Response

In January 2009, the IMO sponsored a meeting[12] in Djibouti that was attended by representatives of 17 regional governments to adopt a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Oceans and the Gulf of Aden. Signatories[13] of the Code of Conduct commit themselves towards "sharing and reporting relevant information through a system of national focal points and

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[12] Meeting minutes available at http://www.fco.gov.uk/resources/en/pdf/pdf9/piracy-djibouti-meeting
[13] Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia TFG, Tanzania, and Yemen signed the Djibouti Code of Conduct in January 2009.

information centres; interdicting ships suspected of engaging in acts of piracy or armed robbery against ships; ensuring that persons committing or attempting to commit acts of piracy...against ships are apprehended and prosecuted; and facilitating proper care, treatment, an repatriation for seafarers, fishermen, other shipboard personnel and passengers" (IMO, 2009:3).

Other regional organisations and economic communities, such as the African Union (AU), the East African Community (EAC), the Inter-Governmental Authority for Development (IGAD), the Common Market for Eastern and Southern Africa (COMESA), and the Indian Ocean Commission (IOC), are all involved in one way or another in countering Somali piracy. With the EU as a partner, COMESA, EAC, IGAD and IOC have agreed to strengthen bilateral, regional and international cooperation for comprehensively combating piracy and promoting maritime security through the establishment of a regional strategy (EU, 2010). The response of such regional organisations to the issue of Somali piracy seems focused on supporting and encouraging member states to adopt local legislation in accordance with the Djibouti Code of Conduct. More concrete anti-piracy measures have not been undertaken, although the AU's Mission in Somalia (AMISOM) is expected to address the issue of piracy in addition to its peacekeeping and peace-enforcing activities.

6.3   International Policy Response

The international legal framework that deals specifically with piracy is built around the 1982 United Nationals Convention on the Law of the Sea (UNCLOS) and the 1988 Suppression of Unlawful Acts against the Safety of Maritime Navigation Convention (SUA). Article 100 of UNCLOS stipulates that "all states shall cooperate to the fullest possible extent in the repression of piracy" (UN, 1982:60) This means that "any state having an opportunity of taking measures against piracy and failing to do so is in breach of its duty under international law" (Middleton, 2009:6) although there are few measures in place that are designed to monitor its implementation.

Piracy, according to the UNCLOS definition, is limited to attacks on the high seas, beyond the territorial boundaries of states. However, pirates attack the nationals of a variety of

states as well as the flag state [14] borne by the targeted ship. This requires not only international legislation to deal with the act of piracy itself, but domestic legislation to deal with the crime inflicted upon national citizens. The advent of Somali piracy has changed the international legal framework to enable a more comprehensive response, especially given the absence of a functioning government in Somalia, although the extent to which this framework has been effectively used is unclear.

In response to the rise of the Somali piracy phenomenon, the UN Security Council created a number of resolutions in 2008 addressing the issue and enabling anti-piracy missions to take place. The first of these resolutions, 1816, was established in June, authorising the entry into "the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea" including the use of "all necessary means" to do so (UNSC, S/Res/1816). In October, Resolution 1838 was created, calling upon states with military capabilities in the region to contribute to anti-piracy efforts (UNSC, S/Res/1838). Resolution 1846 was established in December 2008, extending the mandate of Resolution 1816 by another 12 months. It also included the authorisation to provide Somalia's TFG with technical assistance "to enhance the capacity of these States to ensure coastal and maritime security" (UNSC, S/Res/1846). December 2008 also saw the development of Resolution 1851, expanding the mandate of Resolution 1816 to include "all necessary measures that are appropriate *in Somalia* for the purpose of suppressing acts of piracy and armed robbery at sea" (UNSC, S/Res/1851). This is especially significant since it allows a state in pursuit of pirates to breach Somalia's territorial borders, albeit with prior notification and authorisation from the TFG. Following the UNSC Resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established at the beginning of 2009, with the goal of facilitating discussion and improving the coordination of actions among states and organisations combating piracy in the region. The Contact Group is meant to serve as "a point of contact between and among states, regional and international organisations on aspects of combating piracy and armed robbery at sea off Somalia's coast" (CGPCS, 2009).

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[14] A flag state of a commercial vessel is the state under whose laws the vessel is registered or licensed. The flag state has the authority and responsibility to enfore regulations over vessels registered under ist flag, including those relating to inspection, certification, and issuance of safety and pollution prevention documents. Flag registers in certain countries are open to ships with owners in other countries, which leads to a large discrepancy between fleet nationality by ownership and by flag state. The flag state is also firmly in control of criminal and disciplinary powers with the duty to enforce penal jurisdiction where there have been breaches of regulations that have led to incidents such as collision, stranding or pollution. http://www.seafarersrights.org/seafarers-subjects/flag-state-responsibilities-seafarers-rights/

With UNSC resolution 1851 encouraging regional law enforcement participation pertaining to the arrest, detention and prosecution of suspected pirates, the United Nations Office on Drugs and Crime (UNODC) has launched a project designed to facilitate regional arrangements and cooperation. The focus of the project is to provide judicial capacity building assistance to regional states and to facilitate 'shiprider' arrangements[15] intended to "address the logistical and legal challenges inherent in multilateral naval enforcement efforts in remote areas or where the capacity of regional governments down not allow for the provision of sufficient security" (Ploch et al., 2009:23). The UNODC is also engaged in helping signatories to the Djibouti Code of Conduct to revise their domestic laws to respond more effectively to the threat of marine piracy (Knott, 2010).

The most robust international response to Somali piracy has been the deployment of naval counter-piracy operations. The United States Naval Forces Central Command (NAVCENT) established the Combined Task Force 151 (CTF 151), a US-backed multinational task force which operates in the Gulf of Aden and off the eastern coast of Somalia covering an area of approximately 1.8million square kilometres. Its mandate is to monitor and patrol defined maritime corridors, such as the Maritime Security Patrol Area (MSPA) and the Internationally Recommended Transit Corridors (IRTC), designed "to de-conflict commercial transit traffic..., provide a measure of traffic separation, and allow maritime forces to conduct deterrent operations with a greater degree of flexibility" (Ploch et al., 2009:20). While the MSPA and IRTC do provide a certain degree of protection for merchant vessels, the corridors alone cannot bring about stability or security in the Gulf of Aden (Lennox, 2009).

NATO's Operation Ocean Shield and EU NAVFOR's Operation Atalanta were both established to enable the protection of merchant ships and humanitarian aid deliveries, as well as fulfilling monitoring and deterrence measures. Operation Ocean Shield also incorporates capacity building efforts with regional governments in its mission (Ploch et al, 2009). In addition, Operation Atalanta has the authority to "arrest, detain and transfer persons who are suspected of having committed or who have committed acts of piracy or an

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[15] 'Shipriders' are regional law enforcement personnel who are seconded to commercial vessels to carry out anti-piracy arrest and investigation functions, including granting authorisation to pursue pirates into territorial waters of the sending state.

armed robbery" and can "seize the vessels of pirates or the vessels captured following an act of piracy... as well as the goods on board" (EU, 2009).

Beyond the three major military deployments, there are a number of other countries that have also deployed naval forces to the region to participate in monitoring and anti-piracy operations. Russia, India, and China are the most prominent of such 'national escort systems'. While such national naval forces do not formally coordinate their activities with CTF 151, Operation Ocean Shield and Operation Atalanta, Ploch et al note that there are on-going communication efforts between them (2009).

While monitoring, patrolling and policing the waters affected by piracy can be carried out without much complication, the arrest, detention and prosecution of Somali pirates is another story entirely. Despite bolstering the international legal framework in such a way that better addresses the specific issue of Somali piracy, it seems that anti-piracy operations are "bedevilled by inhibitions caused by the law" (Reynolds, 2010) primarily stemming from the lack of uniformity between domestic and international legislation (Gilpin, 2009). These inhibitions have resulted in a series of incidents in which suspected pirates were not detained or captured pirates were released shortly thereafter, a tactic known as 'catch-and-release'. According to EU NAVFOR's spokesperson, Anders Killan, between March and April 2010, EU naval forces captured 275 suspected pirates, but then released 235 of them after disarming them (cited in Whitlock, 2010). Of the 40 suspected pirates, 10 were sent to Hamburg for trial, 11 to the Seychelles, and the remaining 19 were handed over to the Puntland authorities (Whitlock, 2010).

At present, the majority of suspected pirates who do make it to trial are being prosecuted in Kenya[16]. The increased frequency of piracy over the past few years has meant that the Kenyan judicial and penitentiary system has been placed under great strain. Tanzania, Mauritius, and the Seychelles are currently also accepting and prosecuting suspected pirates detained by EU naval units. Pirate trials have also taken place in Puntland, Somaliland and in Yemen. Prosecutions have also taken place in the US, France, Yemen, Germany, and the Netherlands, amongst others. However, Western countries remain reluctant to prosecute pirates at home given the complexities involved. The transfer of suspected pirates from the Gulf of Aden to Europe is marred by legal, logistical and financial burdens, and potentially

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[16] The UK, US, Canada, Denmark, China, India, Japan, EUNAVFOR and NATO have MoUs with Kenya regarding the prosecution and imprisonment of Somali pirates.

opens these countries up to unwelcome claims for asylum should the prosecution fail (Applebaum, 2010). Pirates are also learning how to use the international legal system in their favour. In one instance, pirates detained by German forces and subsequently handed over to Kenyan authorities filed a lawsuit against the German government on the grounds that they could not be guaranteed a fair trial in Mombasa, Kenya (Gebauer, 2009).

The arrest, prosecution and imprisonment of pirates fall under the 1984 UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the 1950 European Convention on Human Rights (ECHR). Whether or not the human rights of an alleged pirate are being protected rests on a number of factors, such as the effectiveness of the laws of the prosecuting country, the likelihood that suspects will receive a fair trial, or that any sentence will not include the possibility of capital punishment (Knott, 2010).

While the EHCR extends to arrangements made between Kenya and the UK, EU, NATO and other European countries with naval units in the Gulf of Aden, it does not extend to other arrangements made with other countries, such as Yemen. As such, the safeguards in place under the ECHR do not exist for certain situations. Russia, for example, has deployed naval vessels to the Gulf of Aden for the purposes of countering piracy, but does not have an arrangement with Kenya regarding the transfer and prosecution of Somali pirates. This has resulted in the transfer of pirates from Russian custody to the Yemeni authorities for prosecution (Knott, 2010). In May 2010, the Specialised Penal Court in Sana'a, Yemen, sentenced six pirates to death and another six to ten years imprisonment for the hijacking of an oil tanker (BBC, 2010a).

Legally speaking, navies are endowed with sufficient powers under international law to combat piracy as well as having the authorisation to use reasonable force in the capture and detention of pirates (Middleton, 2009). However, there have been few countries that have actually made use of these powers particularly with regards to pursuing or attacking pirates on Somali land. The US in particular, "worries how even surgical attacks against land targets might impact upon Somali political developments, affect negatively the war on terror, potentially put at risk the lives of detained crews, and dredge up memories of the ill-fated US intervention in Somalia in the early 1990s" (Spearin, 2009:5). Despite some successes, there is genuine concern that the use of lethal force in rescue operations exacerbates violence and endangers lives. Given the high levels of risk involved, and the

fact that such operations raise major questions of jurisdiction and international law, rescue attempts remain the exception rather than the rule.

Despite the allowances for the use of reasonable force as set out in the UNSC resolutions pertaining to Somali piracy, they are still to be interpreted in a way that is consistent with international law. This means that naval forces are also subject to Article 110 of UNCLOS, which requires naval ships to visit a suspected pirate vessel to determine whether it is actually involved in piracy before it can be fired upon (UN, 1982). Assertive action may only be taken without visiting the suspected pirate vessel if naval forces have directly witnessed piratical activity or are certain that a ship has been seized by pirates (Spearin, 2009).

6.4 Private Sector Response

The response from the shipping industry has largely been to accept piracy as 'the price of doing business' in the Gulf of Aden. Shipowners are more willing to negotiate and pay out ransoms since it is still the cheapest and most straightforward way of getting back crew, cargo and vessel. Shipowners are, however, employing measures designed to protect ship and crew against pirate attacks. Maritime organisations, such as the IMB, have outlined a multitude of measures that shipowners and captains can take to deter, avoid and delay pirate attacks (2011). The IMB has also established a 24-hour piracy reporting centre[17] based in Kuala Lumpur, Malaysia which provides commercial vessels with global piracy threat information. Most ships that fall victim to pirate attacks tend to be slow-moving, with low sideboards, and understaffed. As such, a number of counter-measures that address these characteristics have proven successful in avoiding or deterring attacks. The use of onboard water cannons, fire hoses, or passive sonic defences to ward off an impending attack is becoming more commonplace while evasive manoeuvring at speeds over 15 knots has proven to be a successful avoidance tactic.

Employing private security companies (PSC) offer shipowners a variety of services ranging from risk assessment and consulting, the provision of onboard armed guards or vessel escorts, to the recovery of hijacked vessels and the rescue of hostages (Liss, 2008). However, the use of PSCs is limited for a number of reasons. Private security remains a client-centred enterprise, not always in tune with the greater objective of state-based anti-

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[17]See http://www.icc-ccs.org/piracy-reporting-centre

piracy activities. Article 107 of UNCLOS stipulates that "a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect" (UN, 1982:62) limiting the operational capacity of PSCs. However, it is a question of accountability that raises the most concern with the use of PSCs. At present, there are no guidelines that dictate the use of private violence, those who wield it, and who bears the ultimate responsibility for any ramifications resulting from its use (Spearin, 2009).

The use of arms, by PSCs or by shipping crews, is mired in legal complications and raises serious concerns regarding the implications of violence. The IMB and the IMO both discourage the arming of merchant vessels in any way. Legally speaking, the issue is complicated by the overlapping areas of jurisdiction. The flag state of a ship has its own regulations regarding the permissibility of keeping arms onboard, as do regional states regarding armed vessels transiting territorial waters, and the varying port laws of countries where ships mean to dock. This, coupled with fears that arming crew members or employing armed guards may result in rising and uncontrolled violence, has resulted in most ships remaining unarmed (Spearin, 2009).

Best management practices, online information platforms, up-to-date warning systems, the creation of secure maritime corridors, the provision of methods to respond to the threat of pirate attacks, are available to all ships passing through the Gulf of Aden and the Red Sea. Additional anti-piracy initiatives include increased surveillance through the use of fixed wing aircraft for locating motherships, remotely piloted aircraft such as the ScanEagle drone, and the Airborne Warning and Control System (AWACS). While more attempted attacks are being recorded, fewer attacks are actually successful as a result of such measures. According to the NATO, those ships that do get hijacked "failed to follow advice on making ships hard to board, or to register their presence with international forces" (cited in Wright, 2010).
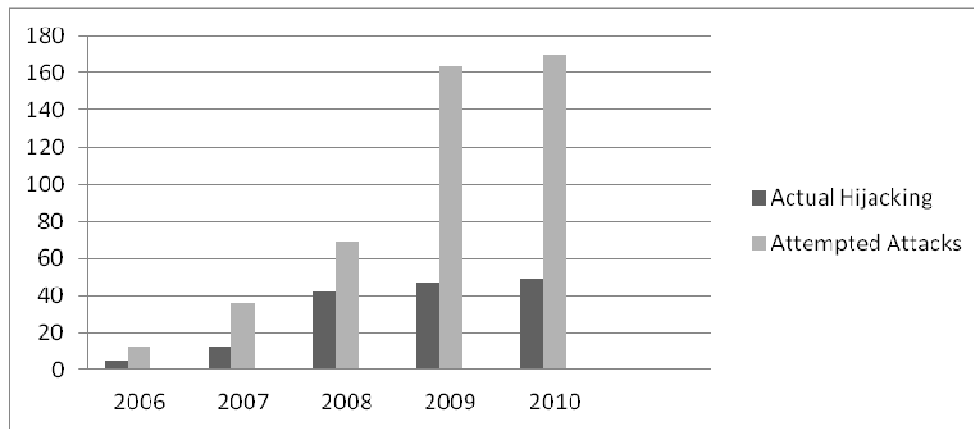
Table 2: Annual comparison of attempted and actual hijacking incidents attributable to Somali piracy, 2006-2010 (Source: ICC-CCS Annual Piracy Reports 2006 – 2010)

6.4 Evaluating the Current Response

Despite triggering a robust international policy response in the form of naval deployments and UNSC resolutions, Somali piracy is proving to be more difficult to combat than might be expected. This is not only due to the challenges presented by the complexity of the Somali situation and gaps in the international legal framework, but to the obstacles that develop as a result of the response itself. The most apparent difficulty in combating Somali piracy is a question of space. With incidents reported in the Gulf of Aden, the Red Sea, the Arabian Sea, and the Indian Ocean, the area affected by Somali piracy is vast. Despite the presence of naval forces from over 30 countries, it is impossible to provide transiting vessels with the adequate protection needed to shield them from piracy in an area spanning over several million square kilometres (Knott, 2010). The naval presence itself is adding to the problem of space. The concentration of military ships in the waters off the coast of Somalia has had a 'balloon' effect on the incidence of piracy, pushing it outwards into areas that can no longer be effectively patrolled. By making it difficult to operate in certain maritime corridors, particularly closer to shore, pirates have developed their methods to allow them to seek out targets further afield, expanding the total area affected by piracy. The current naval response is actually making the situation worse by inadvertently expanding the area affected by piracy and by 'pushing' pirates to evolve in ways that make it a more difficult and complex problem to respond to (UNSC, 2011a).

According to Ashkenazi at BICC, the current response to the Somali piracy situation is actually "fanning the flames of this development" by creating a situation in which pirates are being forced to develop their organisational and operational methods to ensure success.

He points out that when a small, local gang is forced to defend its economic activity by becoming more organised, it sometimes does so to a point that even when the pressure is removed, this activity will continue because it has become so profitable (Ashkenazi, 2010).

The establishment of resolutions and the deployment of multi-national naval fleets to the Gulf of Aden and surrounding waters suggests that the advanced phases of Somali piracy have created a threat significant enough to warrant an escalation in response from the international community. However, the nature of this response remains decidedly defensive and military in character. Naval action is presently focused on the deterrence and disruption of piratical activity rather than combating it. Spearin notes that international naval forces are "both overly-capable and less than adequate" for the fight against Somali pirates since most navies are designed to fight other navies, and not the small, quick skiffs used by pirates (2009:6). While a naval presence might create a temporary reduction in piratical activity, it, ultimately, changes very little, limiting the effectiveness of the overall anti-piracy effort. As Menkhaus puts it, the response so far is misplaced. The solution to piracy must be on-shore, not off-shore (2009b). Even so, warships fulfil a deterrence function against pirate attacks in the direct vicinity. However, with more and more attempts at pirating vessels being made, it is clear that the overall anti-piracy effectiveness of naval forces is limited. The IMB has already recorded a total of 188 piratical attacks with 24 hijackings attributable to Somali piracy this year[18].

Counter-strategies to piracy are meant to increase the expected punishment for participating in piracy, which should ultimately lead to deterrence. However, the legal and logistical complications involved with addressing Somali piracy severely limit the impact of such counter-strategies, providing little incentive to stop (Hansen, 2009:17). The inconsistencies of response when pirates are captured, coupled with the potentially high financial rewards, have done little to discourage the continuation of the practice. As Sörenson points out, "piracy is a profit-driven enterprise and until there are no more profits to be made, other economical enterprises become more lucrative, or the probability of success goes down so significantly that it is not worth the effort, the piracy attacks will continue to exist" (2008:35).

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[18] See http://www.icc-ccs.org/piracy-reporting-centre/piracynewsafigures Last updated on Sept 16, 2011

Scholars such as Hansen and Sörenson agree that bringing piracy to an end requires more than just a naval response (2009; 2008). Even if the legal complications that hinder the effectiveness of the naval response could be resolved, warships remain an incomplete solution to combating piracy successfully. It requires a solution that is land-based as well. Recommendations include development assistance and employment alternatives for Somalis, increased diplomatic efforts, further strengthening the global legislative framework, activating Somali civil society, and bolstering sub-regional capacities (Gilpin, 2009). With regards to piracy, Hansen points out that "local institutions in Somalia have shown themselves to be perfectly able to curtail piracy" by providing onshore security where the TFG could not (2009:42). The correlation between on-shore and off-shore security is significant for the response against piracy. This is particularly relevant for Somalia, since the absence of the state automatically leads to the assumption that on-shore security is non-existent. This state-centric approach, which places the TFG as Somalia's sole sovereign actor despite its lack of local legitimacy, is a major flaw in the international response towards Somali piracy. Presently, international forces coordinate solely with "a central Somali authority that has little relevance on the ground," ignoring other forces and actors within Somalia that hold more power, legitimacy and authority (Hansen, 2009:50). Despite this lack of local relevance "the international community continues to recognise [the central state] as the sole representative of the Somali people" (ICG, 2011:1) further limiting the potential for successfully addressing the issue of Somali piracy. Such a state-centric approach is blind to underlying informal networks and structures upon which piracy is built. Not only does it fail to acknowledge other sources of power and influence within Somalia itself, but fails to recognise the extent of the piracy industry beyond Somalia, ignoring transnational linkages and actors involved, resulting in a situation where only the symptomatic of the problem – the pirate attack – is acknowledged and addressed.

7.   Conclusion

Since 2007, when the waters off the coast of Somalia were designated as the area worst affected by piracy worldwide, discussions and debates ensued about how to best understand and resolve this phenomenon. While maritime piracy as an issue is nothing new, its occurrence in one of the world's busiest and most important sea routes, its perpetration by citizens of a politically weak and unstable country, and the payment of million dollar

ransoms for the release of crews taken hostage, is. The scale of this type of piracy in this particular area of the world not only triggers concerns for the shipping industry, but generates fears with regards to the stability of the global economy, international security, potential environmental catastrophes, and terrorism. It is not the emergence and manifestation of piracy off the coast of Somalia alone that prompts such fears, but the fact that this particular brand of piracy stems from a country marked by 20 years of state collapse, armed conflict and poverty.

In the same way that Somalia's other 'crises' of conflict and lawlessness have been explained by state collapse, piracy is being explained in the same way: as an expression of Somalia's statelessness. In December 2008, UN Secretary General Ban Ki-Moon addressed the issue of Somali piracy in front of the UN Security Council stating that "we must be mindful that piracy is a symptom of the state of anarchy which has persisted in [Somalia] for over 17 years.[19]" Murphy points out that the fortunes of piracy have always been inextricably linked and intertwined with the power, fortunes and policies of states. With regards to the power of states to control and combat piracy, he goes on to say that "power at sea is an adjunct to, or an extension of power on land," pointing to the centrality of the notion of power to piracy (Murphy, 2009b). This power is usually considered to be the purview of the state, illustrated by the statement: "anarchy on land means piracy at sea" (Kaplan, 2009). Despite the absence of a publicly recognised central authority, political disorder and lawlessness are inhibited by the existence of other sources of power and legitimacy in the form of local polities and informal social pacts.

Conventional international relations theory, with its state-centric focus, does not allow for all the layers that make up Somalia or the problems it is associated with to be peeled back properly. Somali piracy is unique – it stems from a very specific context and is enabled and perpetrated by a similarly unique framework of actors and structures. It is both offensive and defensive; a combination of coping mechanisms and exploitative practices. Somali piracy straddles almost every divide, impacting and being affected by a number of issues that are central to the 'problem' of Somalia, blurring the lines between legal and illegal activity, domestic and international forces, informal and formal sectors, the nation and the state.

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[19] http://www.un.org/apps/news/story.asp?NewsID=29334&Cr=somalia&Cr1=piracy accessed on 14.06.2011

The aim of this dissertation was to question the premise that Somalia's statelessness is the central and defining feature of Somali piracy. By reducing the problem of piracy solely to its relationship to the state, or lack thereof, implies that the only solution to piracy is by re-establishing the Somali state. With 14 failed attempts at rebuilding the state in the last 20 years, this is easier said than done. The problem of piracy must be tackled separately from the problem of Somalia's statelessness if a sustainable solution is to be found. In the case of Somalia, the question of where the responsibility for the piracy phenomenon lies is not an easy one to answer. In the eyes of the international community, the TFG is considered the legitimate ruling authority in Somalia, and therefore responsible for the problem of Somali piracy. The TFG, however, is institutionally weak, corrupt and lacking in local legitimacy and relevance, which severely limits its ability to respond to, let alone take responsibility for Somali piracy.

By employing a perspective that places transnational linkages, networks and connectivity at the centre of its focus, it becomes possible to understand Somali piracy as more than a simple expression of state collapse. Drawing attention away from the territorially-bound state and focusing attention on the analysis of the networks and other lateral ties of connection and obligation, allows for a more comprehensive understanding of how transnational issues, such as Somali piracy, surface as a result of and are perpetuated by such networks and linkages. In other words, it is not Somalia's statelessness in itself which caused the emergence of piracy off Somalia's coast. Rather, Somalia's statelessness necessitated the strengthening of existing linkages as well as the establishment of new translocal networks and relationships reaching beyond the state, providing the base upon which piracy is built.

The strength of Somali social ties is evident in the way such networks span over great physical distances. Somalia is a transnational community that exists in multiple localities. While Somalia, as a state, enjoys only a very fragile existence, the Somali nation is as strong as ever, existing within and beyond territorial boundaries. With the collapse of the state, networks such as the Somali diaspora, remittance firms, and clans have grown in importance and relevance as evidenced in the reversion towards customary law, private transactions, and the strength of social ties. The fluidity and flexibility of network structures present a better way for autonomous actors to find solutions to social, economic and political problem, representing a certain informal form of governance. This is particularly

relevant for collapsed or failing states, such as Somalia, in which informal structures emerge in order to cope with the absence of the state and its provisions (Milward & Raab, 2005). The inherent informality, dispersal and resilience of such networks make it easier for certain actors to operate beyond regulations and boundaries, exploit differences in national laws, and allow for continued operational capabilities despite disruptions.

Puchala writes that piracy is a system of relationships between perpetrators and abettors. To combat piracy, it becomes necessary to disrupt or destroy the systems that perpetuate them (2005). But the case of Somalia is unique. The systems and networks that perpetuate piracy are the very same systems which have allowed Somalis to overcome and survive the last 20 years of civil war, famine and poverty. Piracy is also inadvertently 'supported' by the shipping industry, with ship owners opting to negotiate with pirates and pay ransoms for the release of their ship, crew and cargo. The maritime industry is also involved in the sense that piracy has necessitated the creation and development of a sector that provides a range of services that deal specifically with piracy. By examining the transnational web of actors directly or indirectly involved in Somali piracy and the extent to which piracy touches upon and impacts other areas, such as insurance premiums, regional economies, tourism and fishing, or local and regional real estate prices, helps to reveal the extent of the 'industry'. By focusing attention on the costs incurred by piracy, it becomes apparent that there is a range of discrepancy in media reports, academic studies and government documents. While it is clear that the very nature of the piracy business means that the true extent of it cannot be known or precisely measured, such discrepancies indicate that current understandings of Somali piracy are incomplete. With regards to its scope, the costs it incurs, to the extent of its impact, Somali piracy is both over- and underestimated as an issue, raising the question of how appropriately or adequately piracy is addressed by responses and reactions.

At present, the response towards Somali piracy is decidedly militaristic, defensive, and short-term. However, as Cooke points out, "military force is a clumsy and often ineffective method of dealing with piracy" (2009). The predominantly military response, though robust, is plagued by inconsistencies, ambiguity and mismatched priorities. Additionally, it seems that military pressure is inadvertently displacing piracy into areas harder to patrol and is unintentionally improving the adaptability, versatility and resilience of pirate gangs (Abdi, 2011). However, one of the biggest drawbacks to the military response is that it is time-bound. Sooner or later, the multi-national naval fleets will be withdrawn from the Gulf

of Aden and other neighbouring waters, giving pirates the option to 'outwait' their opponents.

The international community's desire to find a swift and lasting solution to the Somali piracy problem is hindered by the hope that Somalia itself can untangle itself from its 'crises' and claim responsibility and take action against piracy. It has become apparent that despite the establishment of UN resolutions and the combined efforts of special task forces, contact groups, and agencies, it has not been able to establish a strategy and action plan that all affected parties are prepared to support. Despite calls for 'multi-pronged' approach that targets the root causes of piracy rather than just tackling the symptoms, the response towards piracy has maintained its military emphasis. Modest attempts have been made to train and equip Somali police and coastguard, and proposals have been made for the provision of technical assistance to rebuild local political, security, and judicial infrastructures. But progress in this regard has been slow. Abdi writes that the problem of piracy is, much like the issue of terrorism, becoming abstracted, de-contextualised and over-internationalised to a point where the concrete drivers of piracy are no longer being taken into consideration (2011). As a result, the response to piracy has largely avoided on-shore solutions and focused instead on countering piracy as and when it happens. In other words, the response to Somali piracy has been little more than a reaction to it, failing to address root causes.

Somalia is still undergoing processes of de-territorialisation, where political space is being redefined and political power is being redistributed. In this way, Somalia's sovereignty is still being contested and is currently found in the hands of many. Within this context, rebuilding and reinstating a central state in a country marked by two decades of collapse and conflict is by no means an easy task. With informal structures based on social ties and lateral forms of obligation replacing core state functions and provisions, Somalia presents a unique challenge to the state-building project. Clan structures have long influenced the way in which Somali society is organised, forming the basis for all social, political and economic relations in Somalia. The strength of these structures has ensured Somalia's survival as a nation in the face of state collapse. These same structures, however, hinder the establishment of a central state. As Metz points out, "lineage segmentation of the Somali variety...inherently mitigates against the evolution and endurance of a stable, centralised state. ...Institutional instability is actually woven into the fabric of Somali society" (1992).

Coupled with the observation that "the central Somali state has never been the source of the rule of law, but has instead been a catalyst for criminality, violence and communal tensions," it becomes clear that the establishment of a central Somali state has little value for the majority of the Somali population (Menkhaus, 2004:80).

With the media focusing its attention on the current humanitarian crisis, the violence in Mogadishu, and the dysfunction of the TFG, the tentative attempts of "tiny, self-governing clan-based polities...to restore stability and overcome the legacy of war and anarchy" have largely gone unnoticed (Abdi, 2011). By focusing on existing, strong and influential local institutions such as those in Somaliland or Puntland, and supporting emerging, local, clan-based polities, offers a solution to the problem of piracy that is not solely dependent on the resurrection of the Somali state (Hansen, 2009). With such institutions already enjoying local support and wielding a certain degree of control over the areas in which they operate, a solution that is based on existing sources of power and influence has a greater chance of effectively combating piracy than relying on the current TFG or waiting for the establishment of a new state. As Hansen puts it, "since it was probably the decline of local institutions that brought on the explosion in piracy, it would seem fitting that strengthening local institutions should end it" (2009:57).

The UNODC points out that in Somalia today, "becoming a pirate appears to be a rational vocational choice" (2010:200). Until these circumstances change, it seems unlikely that this trend will come to an end. However, the UNODC goes on to say that despite the various 'crises' of Somalia, "there may be scope for reducing piracy...without waiting until this embattled nation is returned to normalcy" (2010:200). The presence of strong local institutions, such as clan-based networks, xeer and shari'a courts, and the autonomous regions of Somaliland and Puntland, have shown that Somalia has survived despite two decades of statelessness. These alternative forms of authority and sovereignty have governed the country in the absence of a central state. Lindley writes that "beyond the piles of failed blueprints for change, life in the Somali regions goes on, witness to various forms of social, economic and political innovation and change. The international response to [Somali piracy]...demonstrates a deep ambivalence on the part of the international community to these processes" (2009:539).

Understanding Somali piracy as an issue beyond and separate from the issue of Somalia's statelessness is the first step in acknowledging alternate sources of power, legitimacy and control. Once this happens, international anti-piracy activities can be implemented and coordinated with those actors who are in a position to address the issue of piracy from within the country. Perceiving the issue of Somali piracy as only an extension of Somalia's statelessness fails to acknowledge the complexity, extent and diffusiveness of the situation. The involvement of transnational actors that actively and indirectly support the industry of piracy and the networks that underpin it are not adequately addressed by any response so far.

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