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State Failure on the High Seas –
Reviewing the Somali Piracy
FOI Somalia Papers: Report 3

KARL SÖRENSON

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Sammanfattning

Denna rapport gör i huvudsak ett påstående: De somaliska piraterna kommer inte att kunna stoppas enbart med marina medel. Härtill finns det två anledningar. För det första är strukturen för allt systematiskt sjöröveri, till vilken det somaliska sjöröveriet bör räknas, sådan att det är svårt att stoppa det endast genom att försöka förhindra och försvåra för piraternas farkoster. Sjöröveri har alltid varit i behov av minst en säker hamn där den kan söka skydd, bunkra, och kanske viktigast av allt, lasta av och ta hand om bytet. För det andra gör den somaliska staten det svårt, med dess sönderfall i södern, osäkerhet i Puntland och relativa stabilitet i Somaliland, att på ett meningsfullt sätt komma åt grunden, eller incitamenten, till själva sjöröveriet. Den politiska situationen i Somalia är trängande och det är svårt att genomskåda kopplingarna mellan de olika regionerna och det komplexa somaliska klansystemet.

Nyckelord: Somalia, sjöröveri

Summary

This report makes one cardinal claim: Somali piracy will not successfully be fought by only employing naval means. The reason for this is two-fold. First, the inherent structure of any systematic piracy, to which the Somali piracy belongs, makes it difficult to stop the practice by merely focusing on impeding pirate vessels. Piracy has always been in need of at least one safe port, from where it can seek refuge, refit, and, most importantly, unload and trade the loot. Second, the state of Somalia, with its disintegration in the south, uncertainty in Puntland and relative stability in Somaliland, makes it difficult, but not impossible, to successfully target the roots, or incentives, of piracy. The political situation in Somalia is dire, and it is difficult to decipher the connections between the different regions and the complex clan system.

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Preface

What is Somalia? A failed state? The sum of an ancient clan-system? A safe haven for militant Islamists? A humanitarian disaster? The bases of operation for notorious pirates? Several states? A consequence of proxy wars? The many faces of Somalia seem to constantly elude the consciousness of the international community. And yet we cannot avoid Somalia, one minute threatening the fabric of world security, the next upsetting global trade.

When the Swedish Defence Research Agency's (FOI) Africa Group in September 2008 decided to address some of the issues associated with Somalia, it soon became apparent that no one model, narrative or description would suffice. The French philosopher Gilles Deleuze once rejected the hierarchical structure in favour of the non-structured organisation, consequently naming the book where he put forth his theory *Milles plateaux (A Thousand Plateaus)*. It is perhaps in the post hoc light of Deleuze that the four papers in FOI's Somali series best are to be understood. Instead of seeking unity in an explanatory model, four thesis-driven perspectives have been chosen: A historical investigation of the state of Somalia, by Peter Haldén, a descriptive report of the Somali Islamist networks, by Magnus Norell, an economic perspective on the Somali piracy, by Karl Sörenson, and a sequential analysis of the Ethiopian and Eritrean involvement in the Somalia conflict, by Mathias Krüger. Hence, instead of attempting to explain Somalia, this report series adds yet another plateau.

The FOI Somali papers were commissioned by the Ministry of Defence.

November 2008   *Karl Sörenson*

Editor of the FOI Somali Papers

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Acronyms

AIS	Automatic Identification System
AMISOM	African Union's Mission in Somalia
ARS	Alliance for the Re-Liberation of Somalia
CTF-150	Combined Task Force 150
IGAD	Inter-Governmental Authority on Development
IMB	International Maritime Bureau
IMF	International Monetary Fund
IRC	International Red Cross
MEND	Movement for the Emancipation of the Niger Delta
NAVCO	Naval Coordination Cell
NAVFOR	Naval Force
SCR	Security Council Resolution
TFG	Transitional Federal Government of Somalia
UIC	Union of Islamic Courts
UNCLOS	United Nations Convention on the Law of the Sea
UNOSOM	United Nations Operations in Somalia
WFP	World Food Program

1   Introduction

The Gulf of Aden and the water outside the Somali coast is one of the most heavily trafficked maritime areas in the world. Every year an estimated 16,000 vessels pass through the Red Sea and the Gulf of Aden, either inbound or out-bound for Suez Chanel.

In 2003, a new phenomenon occurred off the coast of Somalia and in the Gulf of Aden, ships and fishing vessels were being attacked by pirates. The frequency of this activity slowly increased. Shipping companies also started to become concerned when the pirates began to target commercial vessels. The past year has seen unprecedented high levels of pirate activity in the Gulf of Aden, with more than 80 recorded attacks on ships.

In response, the UN Security Council passed resolution 1816 and later in 2008 UNSCR 1838, which encourages the international community to actively partici-pate in the management of security in the Gulf of Aden and off the coast of Somalia. The resolutions also stipulate the legal framework for actively targeting the pirates. The *NATO Combined Task Force 150* (CTF-150), which originally was tasked to participate in the War on Terror, received an expanded mandate to assist ships passing through the Gulf of Aden against piracy. In 2007, France took the initiative to operation Alycon with the purpose to protect the *World Food Program's* (WFP) ships to Somalia. Operation Alycon will be replaced in December 2008 by the EU NAVFOR Somalia operation Atalanta.

However, the Somali piracy will not successfully be fought by only employing naval means. The reason for this is two-fold. First, the inherent structure of any systematic piracy, to which the Somali piracy belongs, makes it difficult to stop the practice by merely focusing on impeding pirate vessels. Piracy has always been in need of at least one safe port, from where it can seek refuge, refit, and, most importantly, unload and trade the loot. Historically, as well as today, piracy has only been permanently stopped when it has been approached from a multi-tude of angles. Its criminal structure must be undone, its sponsors brought to justice, its practice contained, in short, the incentives must be reversed. As long as piracy remains a lucrative business it will always exist. So, this report argues that it is more fruitful, but also intellectually more honest, to view piracy as a sort of organised criminality, rather than, as some do, as terrorism or simply let the analysis stop short after labelling the phenomena piracy.

Second, the state of Somalia, with its disintegration into chaos in the south, uncertainty in Puntland and relative stability in Somaliland, makes it difficult to successfully target the roots, or incentives, of piracy. The political situation in

Somalia is dire, and it is difficult to decipher the connections between the different regions and the complex clan system. If piracy is, indeed, best fought by a combination of means, it will require that some sort of action is also taken ashore. This does not necessarily mean the deployment of troops, but it will require that the international community put political pressure on the Transitional Federal Government (TFG) and that it engages with Somalia in the long term.

Although Somali piracy is a menace to the shipping industry and is upsetting the current international order, the group which loses the most from the pirate activity is the people of Somalia. The pirates' frequent attacks on the World Food Programme's (WFP) relief aid only add to the humanitarian crisis in Somalia. In addition, the vessels passing through the Gulf of Aden are often transporting highly sensitive goods, such as petroleum and chemicals. Given the current escalation in the use of violence, this is a serious threat to the environment in and around the Gulf.

1.1   Theory and Method

The report is written from rational choice perspective. This means that the actors described are assumed to behave (relatively) rationally given their preferences, and given their beliefs about how the world works. However, this does not mean that the report relies on the formal theory of expected utility maximisation; it keeps the reasoning on a more informal level. A rational actor, or agent, is understood as someone who chooses the action, among the agent's feasible actions, that serves the agent's aims best, given the agent's understanding of the situation. Hence, an agent's *incentives* are central to the reasoning of this report. An incentive can be understood as any motivation or rationale for a certain choice, i.e. it does not have to be a monetary reward but can equally well be a political or other value that the agent's wants to attain. Conversely, a *disincentive* is the rationale for not choosing a certain way. The author of this report has chosen this perspective because it makes it possible to fruitfully understand and predict the pirates' behaviour. Furthermore the literature concerning piracy, and especially organised crime, often takes an economic perspective, building on rational choice theory.

The report relies on academic literature and scientific journals. For the more recent developments, the report also uses newspaper articles, reports and memos.

Complementary to the written material on the subject, interviews have been conducted with analysts working within the shipping community – for a national navy or policy institute. These interviews were conducted in Oslo in September 2008 and in Stockholm and Karlskrona in October 2008.

1.2 Delimitations

In a sense, this report investigates the intersection of two very separate subjects, piracy and the security political situation in Somalia. Both are highly topical subjects, just as Somali piracy is, but it is only the latter that is this report's focal point. Much of a very interesting discourse concerning piracy is only briefly touched upon, simply to give the reader a short introduction to the piracy paradigm. Piracy in other places and in other times is mentioned, but rather as a contrast to the subject of our investigation. The part of the report that discusses historical acts of piracy is concerned, almost exclusively, with European pirates – this is a limitation of necessity rather then of choice. Literature and research concerning piracy emanating from other cultures is uncommon, and it has been beyond the time constraints of this report to explore this further.

The part of this report which concerns the state of Somalia suffers from the same problem; only certain angles of the security political situation in Somalia are brought to the reader's attention. Fortunately, the security situation in and around Somalia is extensively dealt with in a report series, to which this report belongs. The report *Somalia: State Failure or Nascent States-system* deals with the relationship between the state of Somalia and the Somali clans; the report *Islamist Networks in Somalia* covers the role of Islamism in Somalia, while the report *Power Play on the Horn: Impact of Ethiopia-Eritrea Relations on the Somalia Conflict* treats the foreign involvement by Ethiopia and Eritrea in Somalia. So, for the curious reader, ample analysis is within reach.

2 Background – The State of Somalia

The long decline in the domestic security situation in Somalia is reaching its most alarming level since the mid 1990s. The rebellion against the Siad Barre regime in 1991, which propelled Somalia into civil war, may best be character-ised by intense large-scale fighting pitting different clan groupings, mostly the Darod and the Hawiye, against each other. Several negotiation attempts were made, and two UN missions, *United Nations Operations in Somalia I* and *II* (UNOSOM), managed to partly contain the conflict, but ultimately failed in creating stability and peace. At the end of 1995, both the *International Red Cross* (IRC) and the UN had completely withdrawn from Somalia because of the volatile security situation.[1]

Between 1995 and 2005, the fighting continued, but was now more regional and contained to different factions within the clan communities. There are several factors, foreign as well as domestic, which contribute to the current situation in Somalia, but the two most recent developments might be said to contain elements of foreign involvement as well as domestic grievances; the emergence of the *Union of Islamic Courts* (UIC) and the Ethiopian intervention.[2]

After two years of peace talks in Kenya, the so-called *Transitional Federal Government* of Somalia (TFG) was established in October 2004.[3] The negotia-tions were led by the *Inter-Governmental Authority on Development* (IGAD) and aimed at reconciling the Ethiopian-backed *Somali Restoration and Reconcilia-tion Council* (SRRC) with the sitting TNG. The strong Ethiopian influence effectively excluded all Islamist groups from the formation of the TFG. The appointed president the time was Abdillahi Yusuf.[4]

In June 2006, the UIC quickly took power in Mogadishu. The UIC managed to consolidate its power in and around Mogadishu, but, in December 2006, the UIC were overthrown by a rapid military advance by Ethiopian and TFG allied forces. In 2007, a splinter group consisting of moderate Muslims from the UIC formed the *Alliance for the Re-Liberation of Somalia* (ARS). Although the remainder of the UIC has been considerably weakened by the Ethiopian and TFG advances,

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[1] Meredith, M. (2005) *The Fate of Africa – A History of Fifty Years of Independence*, New York: Public Affairs, p. 472.

[2] Menkhaus, K. (2003*) State Collapse in Somalia; Second Thoughts*, Review of African Political Economy no. 97, p. 407–420.

[3] ISS (13/11/2007) *Somalia: Have all the options run out?*, Situation Report, p. 2.

[4] ICG (10/08/2006) *Can the Somali Crisis Be Contained?*, no. 116, p. 3.

they still enjoy support from Eritrea, and held, in July, the villages Beletweyne and Wajid.[5]

At present, peace talks are being held between the TFG and ARS under the auspices of the AU and IGAD. In March 2007, the AU decided to send a peace support mission to bolster the security situation in Somalia. From the outset the *African Union's Mission in Somalia* (AMISOM) has had financial troubles and problems to allocate and deploy enough troops.[6]

2.1 Winners and Losers

In the security vacuum during the period 1995–2005, and the turbulence following the rise and fall of the UIC, certain groups have managed to strengthen their positions at the expense of others. The most clearly distinguishable actors who have strengthened their position are some of the Somali family clans.

In an article from 1991, Samuel M. Makinda argues that while many African countries are trying to build a *nation* out of different ethic groups, e.g. the Democratic Republic of Congo, Somalia is a nation trying to build a *state*. Somewhat simplified, the state might be understood as an association with sovereignty over a geographical area, whereas a nation is a cultural and social community. Somalis belong to one ethic group, speak the same language and most of them are Muslims. However, at least equal to the Somali nation in political magnitude is the Somali clan families. Social, economic and political life is traditionally formed around a clan. The six major clan families that make up approximately 75% of the Somali population are the Darod, Digil, Dir, Hawiye, Isaac and Rahanwein. The Darod clan has often been one of the more influential clans, and the fact that Yussef is of Darod lineage seems to have further positioned the Darod clan as one of the key clans in Somalia.[7]

If parts of the clan system have benefited from the war, one group that has clearly lost status and influence as a consequence of the destabilised security situation are the Somali civil society groups, i.e. NGOs, academics, women's groups, Somali media etc. The volatile security situation has made it difficult for

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[5] UNSCR (19/07/2008) *Report of the Secretary General on the Situation in Somalia*, S/2008/466.

[6] Hull, C. and Svensson, E. (2008) *African Union Mission in Somalia – Exemplifying African Union Peacekeeping Challenges*, Swedish Defence Research Agency, FOI--R-2596--SE, Stockholm, Sweden, p.28

[7] Makinda, S. M. (1991) *Politics and Clan Rivalry in Somalia*, Australian Journal of Political Science vol. 26 pp. 111.126, p. 112.

these groups to conduct any long-term activity, and, as a result, they have lost influence.[8]

In spite of the conceptual simplification of state and nation, it is by no means clear that Somalia should be understood as a nation either. The last two decades of regional division suggest that Somalia at best can be viewed as a confederate of different regions. Southern and central Somalia are economically shattered, and the constant fighting between the Islamists factions, different warlords, TFG-loyalists and Ethiopian forces has created an impossible humanitarian situation, with famine and displacement in its tracks. The majority of the 2.6 million people estimated of being in acute humanitarian assistance need are located in southern Somalia.[9]

Puntland is, by comparison, better off, but it grapples with high levels of criminality, which contributes to an instable situation. The military build up between Somaliland and Puntland, around the disputed area of Las Aanod, has further increased the lack of law enforcement capacity in Puntland. The situation in Somaliland continues to be relatively stable, but the build up around Las Aanod is straining the already hampered Somaliland economy.[10]

In general, not much is known about the Somali economy. Somalia has not had an official budget since 1988 and the *International Monetary Fund* (IMF) last official record of Somalia from 2006 simply states that security problems and inadequate information precludes a full assessment of the Somali economy.[11] E.g. the last known account of the Somali trade balance is from 1989 with an estimated trade deficit at USD 279 million.[12] Hence, the statistics available on the Somali economy is often backdated and incomplete, which might be well to bear in mind.

One type of actor that has strengthened its position over the last decade is the Somali entrepreneur. With the gradual disintegration of the Somali state economy, Somalia has become dependent on these actors. These economic actors control and operate services such as airports and seaports, run parts of the tele-communication network, supply electricity and deliver fresh water. In addition, they provide scarce goods through their logistical networks, effectively

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[8] ICG (04/05/2004) *Biting the Somali Bullet,* Africa Report no. 79, p. 16.
[9] UNSCR (19/07/2008) *Report of the Secretary General on the Situation in Somalia*, S/2008/466.
[10] Ibid.
[11] IMF (2006) *Review of the Fund's Strategy for Overdue Financial Obligations*, International Monetary Fund, p. 4
[12] Europa Regional Surveys of the World (2008) *Africa South of the Sahara 2008 – Somalia*, Routledge, London, UK p. 1064

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connecting Somalia, Puntland and Somaliland with Djibouti, Ogaden and north Kenya. [13]

One of the largest entrepreneurs was the al-Barakat money transferring company, which connected an estimated 1 million Somalis residing abroad with Somalia. Al-Barakat operated from 40 countries and it is estimated that the Somali diaspora remitted between USD 800 million and USD 1000 million annually, of which 50% is believed to have been used for domestic consumption. In 2001, the US closed the al-Barakat money transferring company for suspected links to Al-Qaeda and seized its assets. Up to its closure al-Barakat was Somalia's biggest employer controlling much of both Somalia's radio networks and telecommunications. Although al-Barakat was allowed to reopen in 2005, after being acquitted from the charges, it has lost much of its former influence to smaller regional actors, whom took over in the four year absence of al-Barakat. [14]

An interesting aspect is that these economic actors not only seem to transcend the clans and families, in terms of organisation, but they have also become an increasingly important political constituency. Since volatility often impedes business, many of the business communities maintain a military capability. In many areas, especially in Puntland, some of the business communities are militarily stronger than some of the clan factions. It is difficult to clearly distinguish between actors who essentially run legitimate businesses and those who operate illegally. This is mainly because many of these entrepreneurs do both. It is within this economical context that Somali piracy is situated. [15]

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[13] Menkhaus, K. (2007) *Governance without Government in Somalia,* International Security, vol. 31, no. 3, pp. 74–119, p. 89.
[14] Europa Regional Surveys of the World (2008) p. 1064
[15] ICG (04/05/2004) *Biting the Somali Bullet,* Africa Report no. 79, p. 17.

3 The Somali Pirates

Every year, an estimated 16,000 vessels pass through the Red Sea and the Gulf of Aden, making it one of the most heavily trafficked maritime paths in the world. Most of the major shipping companies own vessels passing through the Gulf, either inbound or outbound, for the Suez Canal. A good deal of the goods passing through are oil and petrol from the Middle East destined for Europe and North America and ships carrying chemical compounds needed for ratifying the crude oils, as well as merchandise, bound for the Middle East and Asia. In addition, fishing vessels from Denmark, Spain, South Korea and other nations traffic the waters to fish for the much sought after tuna.[16]

In 2003, a new phenomenon occurred off the coast of Somalia and in the Gulf of Aden, ships and fishing vessels were being attacked by pirates. The frequency of this activity slowly increased over the years, and many shipping companies started to become concerned by these attacks.

Piracy – Gulf of Aden and the Coast off Somalia

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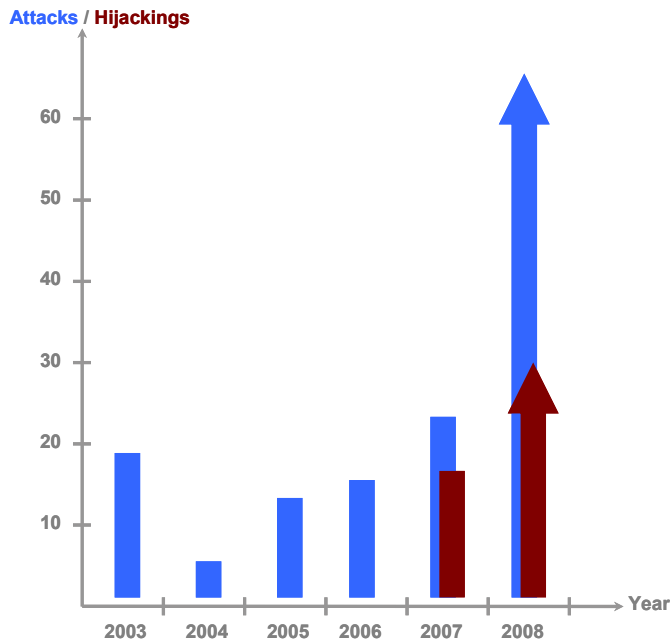
[16] Middleton, R. (2008) *Piracy in Somalia – Threatening Global Trade, Feeding Local Wars*, Chatham House Briefing Paper, AFP BP 08/02.

The statistics show that the piracy attacks in the Gulf of Aden and off the coast of Somalia are not accidental. In response to the pirates' deeds, the past year has also seen extensive activity within the international community. The CTF-150 shifted its attention from the War on Terror, its original mission, to protect the ships passing through the Gulf of Aden. In September 2008, the EU decided to also participate in the bolstering of security in the Gulf of Aden. The EU Naval Force (NAVFOR, previously known as EU Naval Coordination Cell (NAVCO)) Somalia operation Atalanta replaces the current operation Alycon, which was launched in 2007 to provide close escort to the WFP aid deliveries. A prerequisite for the NATO and EU participation was the UNSCR 1816, passed in the summer of 2008, which encourages the international community to actively participate in the security management in the Gulf of Aden and off the coast of Somalia. The resolution also stipulates the legal framework for actively targeting the pirates. A further step to target the piracy was taken in October 2008 when the Security Council passed resolution 1838, which clearly stipulates a Chapter VII mandate for the area of the Gulf of Aden.[17]

Who are then the Somali pirates? Are they organised? And, what is the nature of their threat? To shed some light on these issues, it is this report's intent to first go through some of the most noticeable traits of Somali piracy. The behaviour, armament, modus operandi and organisation of the pirates off the coast of Somalia and the Gulf of Aden might illuminate not only the modus operandi of Somali piracy but also the incentives governing this behaviour.

3.1 The Behaviour of the Somali Pirates

"On 14 May 2007 an UAE-owned general cargo ship Ibn Younus was attacked in position 01:19.2N – 048:51.92E, 180 nautical miles off Somalia.

Pirates, armed with machine guns and rocket launchers, approached the general cargo ship underway from her port quarter. The pirates ordered the ship to stop and started firing towards the bridge. The duty officer raised the emergency alarm. The master activated the Ship Security Alarm System and started taking evasive action manoeuvres to prevent the boarding of the pirates. The master had to fire rocket-parachute distress signals on the pirate boat when he was preparing to fire a rocket-propelled grenade. The ship was hit and the accommodation caught fire. The crew took preventive measures to stop the fire from spreading, and

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[17] UNSCR 1816 (02/06/2008) S/RES/1816 (2008).

finally managed to extinguish the fire. There was extensive damage to the accommodation.

The master continuously manoeuvred the vessel to prevent the pirates from boarding. The attack lasted for one hour before the pirates aborted the attack.

The Piracy Boarding Centre relayed a message to the coalition navy for assistance."[18]

The report of the attacked vessel, *Ibn Younus*, is not unlike the 30-odd other pirate attacks that were reported during 2007. However, not all had such a narrow escape as *Ibn Younus*, as indicated by this report from 2008:

"26.09.2008: 0920 UTC: Posn: 13:32N – 048:26E, Gulf of Aden. Armed pirates fired upon a chemical tanker underway. The tanker sent mayday messages via VHF channel. The pirates boarded and hijacked the tanker. Further details awaited."[19]

As indicated by the reports from above, there is a pattern or a modus operandi of the pirates emerging, and a read through the IMB's recordings strengthen this: 2–4 small high-speed boats, or skiffs, with a crew of 3–6 individuals on each boat approach the ship, often one skiff take the lead and act as a spotter. The pirates then attempt a boarding and, if successful, more pirates are picked up under way to better control any hostages. The hijacked ship is then taken to a safe harbour on the Puntland south-eastern shore, beyond the control of the reach of the international naval forces or out of reach of the few coastguards that Somalia can muster. Some of the known villages used by the pirates are Eyl, El-hur, Haradhare and Hobyo. A ransom for the crew is eventually negotiated and exchanged.[20]

Although the Somali pirates, for the past five years, have been operating according to the same principles, the technique of hijacking seems to have evolved. The first ships boarded were Spanish and Danish fishing trawlers that were fishing tuna close to the Somali coast. The Somali fishermen seem to have disproved of the unwarranted competition, and they boarded a ship claiming that, due to the lack of a coastguard, they had to enforce the territorial waters themselves.[21]

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[18] ICC International Maritime Bureau *Piracy and Armed Robbery Against Ships – Annual Report 1 January – 31 December 2007.*
[19] ICC IMB homepage
[20] BBC (18/09/2008) *Life in Somalia's pirate town*, http://news.bbc.co.uk/2/hi/africa/7623329.stm
[21] Murphy, M. N. (2007) *Contemporary Piracy and Maritime Terrorism – the threat to international security*, Adelphi Series, ISS, p. 30.

Whether it was the simplicity of boarding a vessel or the lack of a coastguard that they were trying to make up for, or perhaps a combination of the two, is difficult to say. Some have even suggested that these early boardings were carried out by individuals trained by private security companies hired by the international community to train the embryo to the Somali coastguard.[22] One group of Somali pirates, maybe the most infamous, also called themselves the *Somali Marines*, to emphasise the nature of their work. The Somali Marines operated between 2004 and 2006, but, since then, they seem to have vanished as a group. The clear and successful development of the Somali-hijacking technique is however evident.[23]

The method employed is plain to see, but, over the past three years, some changes have occurred which not only show that Somali piracy can be hampered in its practice, but also that they themselves are willing to change their behaviour to improve their success rate.

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[22] Interview with Shipping Company security officer, 17/09/2008.
[23] Middleton, R. (2008*) Piracy in Somalia – Threatening Global Trade, Feeding Local Wars*, Chatham House Briefing Paper, AFP BP 08/02.

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3.2 Armament and Modus Operandi

The Somali pirates are comparably well armed. The standard equipment is the AK-47 Kalashnikov automatic rifle and the RPG-7, rocket-propelled grenade launcher. Both these types of weapons are easily obtained in the war stricken Somalia. The Somali pirates must also be counted as a group who are prone to using violence. Although, well-armed and aggressive, the Somali pirates have so far exercised little lethal force.[24]

So far, Somali piracy activity has almost exclusively been about hijacking ships in order to extort as much money as possible. In contrast, the pirates in the Malacca Straits have often given up their price as soon as they have taken easily accessible valuables, which without difficulties can be sold. As mentioned, the Somali acts of piracy have been recorded all along its eastern and northern coasts, with exception of Somaliland. Since 2004, most of the piracy activity seems to originate from the region of Puntland, i.e. the tip of the horn of Africa (see map), and Eyl seems to have grown in importance as a hub for anchoring ships that are taken hostage.[25]

It has also been recorded that many pirates while on a hijacked merchant vessel repeatedly have altered the position of where to anchor the ship, after receiving new information from someone ashore, as in the case with Lehman Timber. This suggests that some pirate groups have a sufficient network and organisation both to know where safe harbours are to be found and that they have the possibility to control several harbours.[26]

In an attempt to avoid the increasing number of pirate attacks, which spiked after the UIC fell in December 2006, the shipping companies recommended that their ships should keep a distance of 200 nautical miles (nm) from the coast of Somalia.[27] The warning seems only to have slightly improved the situation, as the number of attempted boardings continued to increase.[28] The reason that the Somali pirates were not affected by the new shipping standards, although their small speedboats might have had difficulties reaching beyond 200 nm, is likely to be due to the fact that they quickly attained larger mother ships. The yacht-like ships can carry 5–10 skiff boats and have a much longer endurance. Two yacht-

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[24] Murphy, M. N. (2007) *Contemporary Piracy and Maritime Terrorism – the threat to international security*, Adelphi Series, ISS, p. 30.

[25] BBC (18/09/2008) *Life in Somalia's pirate town*, http://news.bbc.co.uk/2/hi/africa/7623329.stm

[26] Scandinavian Shipping Gazette (26/09/2008) *A 54-day visit in hell*, p 28

[27] ICG (26/01/2007) *Somalia: The Tough Part is Ahead*, Africa Briefing no, 45, Nairobi/Brussels.

[28] ICC IMB *Annual Report 1 January – 31 December 2007.*

like ships, known to be operated by the Somali pirates, have been identified by the IMB.[29]

The techniques of trapping and luring ships, employed by the Somali pirates, also seem to have evolved. Commercial captains have reported that fake distress calls are frequently intercepted, clearly intended as bait. Similarly, manoeuvres to mimic the signature of NATO Forces have been noted, with the probable intent of tricking ships into thinking that certain positions are safe. The Somali Pirates also seem well-informed about the positions of their prey. At times, they have been very precise in knowing just where one ship will be. It has been suggested that they, on occasion, have managed to pay off or buy information regarding when and where a certain ship will pass the Gulf.[30]

3.3   Organisation of the Somali Pirates

The Somali pirates' methods and their willingness to adapt their tactics indicate that they can be well organised. The Somali Marines were an example of a group that operated on a more organised basis. Other pirates seem however be much less of a well organised entity and operate in a more ad hoc manner. Given the different level of sophistication in techniques used and the geographical spread of the attacks indicate that the Somali pirates are not one band or group which is acting according to one plan and following orders from a centralised leadership. The earlier achievements of the Somali pirates seem to have triggered an increase in deeds over the last three years. This escalation does not only apply to the increase of individuals willing to participate in acts of piracy, but also to communities along the Somali coast. It is therefore difficult to generalise the level of organisation amongst the Somali pirates since more and more people are turning to piracy or to piracy affiliated activities.

In 2007 the estimated turnover from piracy was around USD 30 million. Given that the Puntland's general economy only is estimated to something around USD 20 million, it is quite apparent that the piracy is vital for the Puntland economy. An interesting incident is that when the UIC took power in June 2006 the piracy activity dropped sharply. When the UIC fell in December the same year the piracy spiked, which indicate that many people are dependent on piracy as their main source of income.[31]

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[29] Ibid.
[30] Interview with Shipping Company security officer, 17/09/2008.
[31] For a more full discussion on the possible reasons for the decline in piracy in 2006, see Chapter 4.

The payoff for the individual pirate might differ, depending on the hierarchal structure of the group in question, and the extorted ransom. Some of the groups seem to award a set price given which role a pirate played in the hijacking, whereas other groups seem to be working on percentage. The structure also seems to be of a dynamic nature. Although, the boarding of a merchant vessel is made by a certain few, it seems possible to be added to the operation, and thus being entitled to a cut of the ransom, by for instance participating in the safe-keeping of a newly arrived hijacked vessel.[32]

Hence, the incentives for turning to piracy are higher than for any other business, and as a consequence more and more Somalis are turning to piracy or piracy associated activities. There are also a couple of factors which work in favour for anyone who whish to turn to piracy. Puntland is relatively calm compared to South and Central Somalia. This seems to be important for the piracy. The lengthy bargaining procedures demand a certain infrastructure: a safe harbour, accommodation for the hostages, reliable communication and a minimum level of logistics, which require a secure environment.

The majority of the 2,5 million Puntland inhabitants belong to the Harti clan, a sub clan to the Darod. An important resource for any group of the Somali pirates, regardless of organisational level, is the Somali Diaspora. An interesting aspect is the network provided by the clan. Often, a negotiated sum of money from a hijacked ship is directly delivered to the pirates, e.g. in the Eyl harbour, but, on several occasions, the handover has been made in a third country, such as Yemen or Kenya. A part of the ransom often goes to the Somali Diaspora, if this is a "share", for safekeeping or both, is not always clear.[33] There are also examples when Somali expatriates have been instrumental in getting telephone numbers to civil-servants to accommodate the bargaining procedure concerning a hijacked merchant vessel, as in the case with Danish tanker Danica White.[34]

So far the President of Puntland, Mohamud Muse Hersi, has not intervened against the piracy. If this is because Hersi is unwilling or if it simply is an effect of the Puntland militia's limited resources is unclear. It is not known whether Hersi himself is connected to the piracy, but it has been suggested that the president of Somalia, Yussuf, is receiving money from the piracy as a token of good will.[35]

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[32] Los Angeles Times (31/10/2008) *Somalia's pirate problem grows more rampant*, http://www.latimes.com/news/nationworld/world/la-fg-pirates31-2008oct31,0,649768.story

[33] Middleton, R. (2008*) Piracy in Somalia – Threatening Global Trade, Feeding Local Wars*, Chatham House Briefing Paper, AFP BP 08/02.

[34] Scandinavian Shipping Gazette (26/09/2008) *The chosen ones – ready for the hotspots*, p 30

[35] Middleton, R. (2008)

To better understand the nature of the Somali piracy, its incentives, strategy, political connections and its basis of organisation we will expand our analysis. By doing so we might shed some light on some of the more structurally complicated questions associated with piracy.

4 Crime and Piracy

4.1 Organised Crime?

The economist Thomas C. Schelling points out that there is a difference in "crime that is organised and organised crime".[36] As seen in the previous chapter, some of the Somali pirates have been well organised, whereas others have a more basic organisation which is only sufficient to attack a commercial vessel. We have also seen that parts of the Puntland community actively participate in the piracy. A minimum level of organisation is, of course, a necessary condition for any further systematic pirate activity. But is it organised crime?

The difference, according to Schelling, is that organised crime is not just a group of organised criminals, but that an organisation which has become a part of the economical system it is working within. This definition, although not without its complications, is, in a sense, a philosophical version of the list of characteristics set forth by the EU.[37]

In 2001, the EU Commission and Europol agreed on a list of 11 characteristics of what the EU considered to be organised crime.[38] If a criminal activity is to be viewed as organised crime, it must fulfil at least six of the characteristics below, and all of the four in italics must be among the six:

1. *Collaboration of more than two people.*
2. Each with own appointed tasks.
3. *For a prolonged or indefinite period of time.*
4. Using some form of discipline or control.
5. *Suspected of the commission of serious criminal offences.*
6. Operating at an international level.
7. Using violence or other means suitable for intimidation.
8. Using commercial or businesslike structures.
9. Engaging in money laundering.
10. Exerting influence on politics, the media, public administration, judicial authorities or the economy.
11. *Determined by the pursuit of profit and/or power.*[39]

By this definition, Somali piracy can well be viewed as organised crime. As we saw in previous chapter the Somali pirates are principally motivated by the

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[36] Schelling, T. C. (1984) *Choice and Consequence*, Harvard University Press, USA, p. 159.
[37] Ibid.
[38] The list is an amendment to the definition stipulated by the EU in 1998.
[39] Wright, A. (2006) *Organised Crime*, William Publishing, USA, p. 9.

profits that can be made on hijacking merchant vessels (11). It is the possibility of profit that motivates the Somali piracy and in order to successfully conduct piracy several people needs to be involved, and as we have seen, in the case of Somali pirates this sometimes also implicates parts of a community (1). There are also different tasks for those concerned with the piracy, e.g. navigating, guarding, negotiating etc. (2), and although the level of organisation differ from group to group there is usually some sort of leadership that control an operation (4). This forth characteristic is also of principal interest, because historically pirates have often strived for some sort of flat organisation, with some sort of system of checks and balances.[40]

The Somali piracy has existed for an extended period of time and there are no indications that it will stop anytime soon. (3). The pirates also make good use of their international network, for intelligence, negotiations, handovers etc. (6) and they are well armed and violent (7). Hence, it is relatively clear that the Somali piracy satisfy the characteristics (1, 2, 3, 4, 6 and 7) with the possible exception of point (4) depending what is implied by "control" and "discipline".

Concerning three of the EU characteristics it is unclear how to best characterise the Somali piracy. It is not known whether the Somali pirates are engaged in money laundering (9) and the characteristics stipulating a business like organisa-tion (8) and the exercising of political or other influence (10) require further discussion.

The organisational structure of the Somali pirates are not business like per se, but since piracy have been a source of income over the last five years the piracy has integrated into the Puntland socio-economic structure, it is effectively difficult to separate it from the legal Puntland economy. This is of interest to our discussion since there is an additional characteristic which is omitted in the EU list, but is, by some, underlined as essential for organised crime, namely that it is *parasitical* on the community where it takes place, i.e. it provides goods which are in demand, like cigarettes (but without paying VAT) or illegal goods, like narcotics.

Piracy, in general, is not parasitical, in the above sense, but it is, rather, *comple-mentary* to the economical community it exists within. The Somali piracy situa-tion is no different. There is no part of the Somali economy that is being hurt by piracy activities; rather, it provides the society with an economic injection.

The academic literature on organised crime is extensive. It typically covers defi-nitions, organisation, hierarchies and counter measures. The rather individual character of piracy vis à vis organised crime in general is rarely covered in

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[40] This point will be further discussed in chapter 5.1 The Strategy of Piracy.

modern counter measures to organised crime. Thus to better understand piracy and its political consequences, we shall now turn to a more general discussion about piracy. This discussion will also help us in considering the 10th characteristic, namely whether piracy is politically motivated. As we shall see it can be argued that although the Somali piracy is not directly motivated politically, it is influencing politics to further its continuing practice.

4.2   Reviewing Piracy

As seen in the wording from the report extracts in Chapter 3, as well as in the present discussion in academia, the media and in the general debate, there seems to be a general consensus that the criminal activity off the coast of Somali and in the Gulf of Aden qualifies as piracy. This view has legal support in article Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS)[41] from 1982, it defines piracy as any of the following acts:

a)   *Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed –*

    i. on the high seas, against another ship or aircraft, or against persons or property on board a 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 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 subparagraph a) and b).*[42]

Although this definition, on occasion, has been subject to debate,[43] the hijacking of ships – berthed, at anchor, or at sea – is clearly an act of piracy. The Somali piracy situation is a violation of the UNCLOS, and UNCLOS is also referred to in Security Council Resolutions (SCR) 1816 and 1838. Piracy has, however, a number of features which might be overlooked if too much attention is paid to the above definition. A minimum level of scrutiny of what is meant by "piracy" quickly reveals that it is by no means self-evident.

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[41] This wording is almost identical to the previous law stipulated in the Geneva Convention of 1958.
[42] UN Convention Law of the Sea (1982).
[43] E.g. according to the UNCLOS definition of piracy, mutiny is not included.

4.3 A Brief History of Piracy

In the book *Mercenaries, Pirates and Sovereigns*, Janice E. Thomson argues that there is a distinction between 'pirates' and 'priveteers', where the latter is state commissioned private or commercial vessels intimately connected to the role of the state. As we shall see, Thomson's argument is important, not only because it widens the intellectual scope of the general discussion about pirates, but it also points to key factors associated with piracy which help us to understand the ramifications of the Somali piracy situation in particular.

One of the earliest recordings of piracy is by the Thracians who, during antiquity, used the island Lemnos, in the Greek archipelago, as a safe haven when targeting merchant ships. But, piracy has, in all likelihood, existed as long as the oceans have been used for trade and transport. The Thracians might have been the first recorded pirates, but, all over the globe, up to the present day, piracy has been a recurring phenomenon, mostly on a rather small scale, but, at times, reaching levels that also incited a response. During the 10th and 11th centuries, the Vikings, who primarily targeted coastal areas, prompted heavier coastal defences and the Cretan pirates impelled the Venetians to re-route and alert their merchant fleet.

The act of piracy, be it committed by Thracians, Vikings or Somalis, might, however, be difficult to separate from other forms of violence on the high seas. As we shall see, this is mainly due to the states' ambiguous attitude towards violence of the high seas, like in their frequent employment of privateers. To briefly expand on the distinction between pirates and privateers will help us to illuminate some of the many reasons why piracy exists, and why it so complicated to address.

Privateering, ie the commissioning of private vessels for state use, seems to have been first recorded in 13th-century Europe. Originally, privateering was a strict wartime practice employed by European states to muster vessels for the war effort. The use and legal status of privateers seems to have varied over time. On occasion, the right to privateering required that a percentage was paid to the state, but, often, privateers seem to have been allowed to keep all of their loot, eg in 1544 Henry VIII gave carte blanche to his privateers in his war against France. This sort of blanket authorisation of privateering seems to have been especially endorsed by the English, who also allowed their privateers to attack neutral vessels, unlike France which only allowed attacks on enemies of the state. England and France also seem to have been the two European states most eager to encourage the practice of privateering. This is partly due to the fact that, up until the beginning of the 17th century, Spain and Portugal were the dominant sea

nations. So, privateering was an efficient way for weaker states to quickly assemble and commission vessels for war.[44]

It was, however, not always easy for a ship under attack to know if the aggressor was a pirate or a privateer. Adding to the complexity of privateering was that, in peacetime, states occasionally issued so-called letters of marque to a limited group of merchant vessels. This essentially meant that if a vessel, which had been granted a letter of marque, was robbed of its cargo by another ship, the injured party had a "legal" right to, in return, board and claim the right to the cargo of any ship originating from the same port as the ship that had committed the act of piracy. Thomson points out that the practice, albeit strange in contemporary politics, partly reflects the lack of embassies and an international system to regulate property claims. According to Thomson, a letter of marque became a semi-legal way to settle such property dispute by a form of collective punishment. Therefore, parallel to the pirates' deeds, states themselves sponsored a rather similar practice in times of war as well as in times of peace.[45]

To further blur the pirate/privateer distinction, several states occasionally cut deals with pirates, i.e. without any legal clauses, paid pirates to protect their own ships, thus sparing their own vessels and possibly increasing the loss for competitors. The best-known example of this practise was different European states' arrangements with the Barbary Corsairs.[46]

Thomson highlights that, over time, the three originally quite distinct phenomena of piracy, privateering and the issuing of letters of marque became intertwined. The inherent ambiguities of the letter of marque seemed to have spurred its use, as ship owners over the years grew more ambitious in exercising their property claims on other ships. Privateering also ceased to be a mere wartime practice, and the two growing powers of Europe, Britain and France, came to rely on privateering to impede other states' trade and enrich themselves.[47]

In addition, the navies and coastguards, were, and are, not always discernible from commercial vessels. Although, coastguards and navies today are clearly distinguishable in the Western hemisphere, this is not absolutely certain in economically weaker parts of the world.

The use of privateers, at least in the historical sense, is long gone. But, it could be argued that when navies today commission commercial vessels, e.g. for logistics,

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[44] Thomson, J. E. (1994) *Mercenaries, Pirates and Sovereigns*, Princeton Publishing, USA, p. 24.
[45] Ibid. p. 22.
[46] Bouche, D. (1991) *Histoire de la colonisation française*, Fayard, Paris, p. 22.
[47] Thomson (1994) p. 24.

they are, in fact, using privateers. In the end, the original idea with privateers was to strengthen a state's navies in times of war.

Thomson's general argument is relevant to our discussion about the Somali pirates, since it highlights that it is a matter of degree, and not of kind, between the different practices of piracy and privateering. The decades of war have created a security situation which is almost void of state authority. However, one of the many attempts to assist Somalia in bolstering its domestic security structure was the creation of a coastguard (see Chapter 3). The training of an undisclosed number of coastguards seems to have contributed to the piracy situation in terms of knowledge in seamanship.

Furthermore, some of the first hijackings in the Somali waters were carried out by a group of pirates who referred to themselves as the "Somali Marines". Although this label never referred to any government-sanctioned group – it seems as though the acts were motivated by grievances among the Somali coastal population about the Spanish and Danish fishing vessels which, at times, have come quite close to the Somali shore.

Thomson's main focus is the role that states have played in the practice of piracy and together with the the organisation of pirates, the role of the state might be one of the most crucial elements if one wants to understand piracy.

5 Piracy and State Sponsorship

Historically, it is possible to distinguish three ways in which states have related to piracy: states like Jamaica, which were *too weak* to do anything against the piracy situation, states which were *allowing* piracy, like Algeria, and states which were directly *encouraging* piracy. Two important distinctions are needed to clarify the difference between the weak, the allowing and the encouraging state.

First, many states may be allowing piracy, e.g. besides being tolerated by the Ottoman Empire, France, as well as Britain, deals were struck with Algerian pirates, at different occasions, to weaken competing states trade. Second, the distinction is not exclusive, e.g. a state which was too weak to do anything about piracy, like Jamaica, was, in a sense, also allowing it, and, in the case of Jamaica, sometimes actively supported it when former pirates or privateers acted as governors. This is important because, when addressing the Somali piracy situation, it is essential to understand which role Somalia, and possibly other states, play.

Conversely, to have access to a state is essential for the pirate. To successfully board and take control of a ship seems never to have presented any real problems, but to remain in control, to the extent that the loot can be successfully dispersed, is another matter. Piracy is essentially an economic activity and it is therefore imperative for the pirates to have access to a market in order to transfer the value. This is especially important for the Somali pirates whose reliance of extortion require a place where they can conduct the negotiations without inter-ruption. Secure refuge is also best provided by a state. Therefore, for the indi-vidual pirate or privateer, it is essential to have access to a state.

5.1 The Strategy of Piracy

Piracy can be both a *means* and an *end*: a *means* for certain states to weaken adversaries and enrich themselves and/or an *end* for the individual pirate who could stand to profit a great deal from the profession. The Elizabethan Sea Dogs were a means for the English Crown to fight Spain and protect itself. Their subsequent effect in repelling the Spanish Armada, in 1588, also increased the English Crown's willingness to use privateers. But, for the pirates and the priva-teers themselves, it was clearly an end in itself. For privateers like Drake,

Raleigh, Cavendish and Cumberland, privateering was a way not only to enrich themselves, but also to make a career.[48]

The incentives for the pirate have always been about the potential riches. These incentives must be higher than the risk of being caught. It could also be argued that historically, at least in part, piracy was about an alternative lifestyle, with greater individual freedom compared to work as a regular sailor on a commercial ship or in a national navy. This has to be balanced with an efficient form of organisation that prevents internal predation, minimising conflicts within the crew while still maximising the profit. Historically, many pirates also created systems of checks and balances and a democratic system of how to divide the loot.[49]

Somali piracy does not seem to contain any such system. It does, however, provide a way to earn a living in a country deprived of employment opportunities. This might simply be enough. The low risk with which the Somali pirates seem to view their operations, is quite telling to their alternative livelihoods. The piracy offers an expansion of the choices available to the people of Puntland. Such an expansion of choice, which implicates a possibility to earnings incomparable to the alternative choices ashore, is the major reason for the existence of the Somali piracy.

However, for any state that is more actively sponsoring piracy, there is a clear risk in losing control over it. Although pirates and privateers are valuable in times of war and useful in tapping competing states' trade in peacetime, they may eventually become a liability. Interestingly the liability of being associated with piracy is only expressed in political disincentives, whereas the incentives are typically a combination of economical as well as political incentives. When England, during the reign of the Stuarts in 1604, sought a more stable peace with Spain, the privateers became an acute problem. Sir Walter Raleigh's sacking of San Thomé, in 1616, prompted the Spanish ambassador to demand compensation and the imminent execution of Raleigh. England abided, and Sir Walter Raleigh was condemned and executed in Whitehall, two years later.[50]

Hence, the unclear border between piracy and privateering has often been instrumental for states that suddenly needed to distance themselves from piracy. In the early 1600s, the reliance on privateering lessened – in England as well as in France. But it climaxed again during the Seven Years' War (1756–1763), and,

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[48] Herman, A. (2004) *To Rule the Waves – How the British Navy Shaped the Modern World*, Hodder, London, UK, p. 136-141

[49] Leeson, P. T. (2007) *An-*arrgh-*chy: The Law and Economics of Pirate Organization*, Journal of Political Economy, 2007, vol. 115, no. 6, p. 1051.

[50] Herman, A. (2004) p. 159

yet again, during the late 18th century and the Napoleonic Wars. Conversely, the rise in piracy increased in peacetime. Between the years 1690–1730, the piracy deeds peeked, most notably in the Caribbean, the Mediterranean and off the coast of Madagascar.[51]

In cases where the state was so weak that confrontation was not an option, as with Madagascar and Jamaica in the 18th century, the governments were eventually controlled directly by the pirates.[52]

The historical case which might be the most relevant to the discussion on Somali piracy is the Barbary Corsairs, who presented great difficulties in terms of government response. In the 18th and 19th centuries, many of the European states (England, France, Spain, Holland and Sweden) negotiated protection treaties with the Barbary Corsairs to have their ships spared. The treaties were, however, unreliable as they were sometimes simply ignored when another nation cut a better deal with Corsairs. The constant menace by the pirates caused many states to resort to violence. England, France, Holland and the USA all carried out punitive expeditions, at one point, to stop the piracy activity. But, it was not until France invaded Algeria in 1830 that the pirate activity was finally stamped out.[53]

William E. Hall points out that an important element in the distinction of piracy is to distinguish who ultimately bears responsibility for an act of piracy. According to Hall acts of piracy *"are done under the conditions which render it impossible or unfair to hold any state responsible for their commission"*.[54]

So, an important question is whether the Somali piracy activity are carried out under such conditions that it is impossible or unfair to hold Somalia, as a state, responsible.

5.2   Who's Controlling Who?

As mentioned in chapter 2, Somalia is grappling with one of the most dire and acute security situations in the world. Therefore, the question of whether it is impossible or unfair to hold Somalia responsible might not be readily answered. The lack of an efficient central Somali government might be enough to seek responsibility elsewhere. Nevertheless, the Somali government has, on occasion, engaged in the piracy question. One clear measure is the TFG's occasional

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[51] Talty, S. (2007) *Empire of Blue Water,* Crown Publishing Group, USA, p. 253–263.
[52] Ibid. p. 266–267.
[53] Bouche, D. (1991) *Histoire de la colonisation française*, Fayard, Paris, p. 22.
[54] Hall, W. E. (1924) *A Treatise On International Law*, 8th ed., ed. Higgins, P. H. Oxford, UK, p. 310.

allowance of foreign navy vessels to in "hot pursuit" follow suspected pirates over the Somali territorial water border.

If it is not reasonable to seek responsibility in the TFG, the next instance would be the Puntland authorities. It seems, however, that the piracy situation in Puntland has gown so strong that it is virtually impossible for the Puntland government to effectively exercise any authority over the pirates. As we have seen in our discussion, it is not unusual for a weak state to be unable to do anything about piracy. Further, for the weak state piracy easily becomes an important means of acquiring revenues. This creates a state dependency from the state on piracy, which means that the pirates do not necessarily have to exercise any direct control over the government in order to get the political protection they need.

So, to answer William E. Hall's question, it could be said that although it might not be *unfair* to hold parts of the Puntland and Somali regimes responsible, at least in part for the piracy the situation in Somalia render it quite *impossible* to hold them responsible.

5.3   Political Agenda?

The discussion above has already indicated that Somali piracy is a money-driven business, so well functioning that it has integrated into the socio-economic fabric of Puntland. So does such a constituency have a political agenda? The Nigerian *Movement for the Emancipation of the Niger Delta* (MEND) has conducted acts of piracy. But although MEND commits piracy deeds, it is also a political entity pursuing greater liberties for the people in the Niger Delta. The political ambitions of MEND also leave an imprint on their operational behaviour. MEND is known for sometimes boarding a ship and trying to negotiate political reform, rather than ransom.[55]

There is, however, no indication that the Somali pirates are pushing a political agenda of any kind, save perhaps for its potential deterrent against foreign fishing vessels. However, though this might have been the motivation at the outset, fishing vessels are no longer the primary target for Somali pirates.

It has been suggested that Somali piracy should be viewed as terrorism. If concepts like piracy and organised crime are complicated, the concept of terrorism is marred with conceptual difficulties and heavily affected by political opinions. It is, however, not unheard of with maritime terrorism. In October

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[55] Obi, C. I. (2008) *Nigeria's Niger Delta: Understanding the Complex Drivers of Conflict*, Nordic Africa Insitute

2000, the US Navy destroyer USS Cole was hit by a suicide bombing attack, and 17 American sailors lost their lives. Two years later, a French supertanker, the Limburg, was also attacked by a suicide bombing, killing one crewman. Al Qaeda claimed responsibility for the attacks.[56]

These attacks bear however no resemblance to the activity that the Somali pirates are conducting. It is also difficult to argue that Somali piracy is a method for terrorists to make money. Partly, this is because piracy at the level of sophistication of the Somali pirates employ is a full-time occupation. Second, Puntland is not infested with Jihadi-Islamists. The Darod sub-clan Harti is the dominant clan in Puntland, and the current president of Somalia, Yusuf, is also a Darod. It is, therefore, difficult to imagine that the TFG would completely ignore any Islamist terror groups operating and collecting money in their own heartland.

But, perhaps the principal argument against the view of Somali piracy as terrorism is that piracy is an annoyance for anyone committed to terrorism. Terrorists, at least the Jihadi-terrorism, are, to a large extent, dependent on clandestine transports. Operators as well as equipment are known to have been smuggled using maritime routs. The materials for the bombs used in the Nairobi and Dar-Es-Salaam bombings were supposedly transported, by ship, from the Middle East to Mombasa.[57] Considering the Somali pirates occasionally random targeting of ships passing through the Gulf of Aden, it is likely that Jihadi terrorists, if anything, view the Somali pirates with concern.

A possible future scenario is that some group with a political agenda and willingness to use force take up piracy as a mean to acquire funding. This is not uncommon, e.g. the German Red Army Fraction repeatedly robbed banks to finance their activities. In *A Law and Economics Perspective on Terrorism*, Garoupa, Klick and Parisi points out that the organisation of a terror group is not unlike that of organised crime as they share certain communalities; they both participate in legitimate market to improve their standing on the criminal market, they benefit from a state which cannot enforce property and contractual rights, and that they both have vertical hieratical structures.[58]

Although the Somali pirates have no clear political agenda, there is another aspect of the piracy which could be said to be political. Given the economic injection the piracy gives to the poor and underdeveloped region of Puntland, and the integration of the Somali pirates into the Puntland society, they have,

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[56] Burnett, J. S. (2003) *Dangerous Waters – Modern Piracy and Terror on the High Seas*, Plume, UK, p. 298–299.

[57] Ibid. 299.

[58] Garoupa, N., Klick, J. & Parisi, F. (2006) *A Law and Economics Perspective on Terrorism*, in Public Choice (2006) 128:147-168, p.153

effectively, become a political actor. That the Somali pirates also exercise political influence in order to keep their business intact is supported by the claim that some of the piracy money goes to President Yussuf for his "good will".[59] Whether president Hersi of Puntland also is implicated is not clear. The inability of the Puntland militia to challenge the piracy might indicate that Hersi too is implicated, but it might simply bee that his militia is too weak. If it indeed is Hersi too is connected to the piracy, it would not be surprising, as indicated by our previous discussion; pirates operating in a weak society regularly integrate into political life in order to safeguard their business.[60]

An interesting question is to what extent the Somali pirates are, or could be, used as a political proxy for other actors. The case with the hostage-taken Ukrainian Faina ship, carrying weapons believed to be destined for South Sudan, is interesting. The Sudanese president Al-Bashir would, in all likelihood, be very interested that such a cargo never arrives at its destination.[61]

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[59] Middleton, R. (2008)
[60] Thomson (1994) p. 24.
[61] BBC (26/09/2008) *Somalia's pirates seize 33 tanks*,
  http://news.bbc.co.uk/2/hi/africa/7637257.stm

6　Ending or Containing Piracy

If the root causes to the Somali piracy are the poverty in combination with a weak state and a fragile society, it is clear that piracy is very difficult to root out once it has established itself. To reply with a naval presence might create a change in tactics and a temporary reduction in acts of piracy, but, ultimately, change very little. This is because piracy is a profit-generated 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.

The piracy has meant an expansion of the choices available to parts of the Puntland communities. Hence, to seriously address the piracy would mean that the choices available to the people of Puntland must be further expanded to include businesses which also offer an income. Since no legal business can possibly compete with the piracy concerning the direct earnings, the incentives for the piracy must be altered. There are a number of actions that can be taken to change these incentives for piracy to disincentives. Some of these are already being implemented and some are up for review. This section will deal briefly with the existing and potential counter-measures to piracy. These will be discussed on a tactical, operational and strategic level.

6.1　The Prey

As mentioned in the introduction, the Gulf of Aden and the Somali coast is one of the most heavily trafficked maritime parts in the world. An estimated 16,000 ships pass annually, and many of the major shipping companies have vessels passing through at one point or another. In addition, many fishing vessels also traffic the water to fish, especially tuna.

So, it is not surprising that most maritime nations are concerned with the Somali piracy. According to statistics, the flag states most affected by Somali piracy are Liberia and Panama. This is because most ships sail under these so-called flags of convenience, to avoid certain forms of taxation. However, by reviewing the IMB piracy statistics, with reference to the managing countries of the ships, a better representation of which states are actually concerned with Somali piracy can be obtained. Germany, Singapore and Greece are over represented in the statistics of Somali piracy.[62]

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[62] ICC IMB *Annual Report 1 January – 31 December 2007.*

This might have contributed to the difficulty the shipping industry have had in coordinating a response to the Somali piracy. A limited number of counter-measures are in place, but it is unclear as to what extent they actually work. Still, there are a number of countermeasures which can be utilised. According to the shipping companies, these are: The high freeboards and the high speed to make it more difficult for the pirates to board a ship. It has been suggested that a fire hose can be used to fend off attackers, but since this practise exposes the crewman operating it to hostile fire it is by some considered too dangerous. Flashlights, increased watch in combination with a constant update of the situation and sailing along the suggested coordinates increase the probability to avoid pirates and for the coalition forces to come to rescue. Captains are also encouraged to call in suspected pirate vessels. Some shipping companies also advocate that the Automatic Identification System (AIS) should be turned off when passing through the Gulf since its beacon can be used to track the location of a ship.

Most of the major shipping companies also entertain a non-violence policy, to reduce the risk of violent responses and long-term escalation. While exceptions exist, the majority of the attacked ships have refrained from returning fire, although some of them have been equipped to do so.

A combination that, at least in part, seems to be effective is the combination of high speed, high freeboards, increased watch and keeping to the suggested coordinates by the coalition forces. Even so, ships applying all of these means have still fallen prey to the Somali pirates.

6.2 Operational Aspects

There are a number of operational methods that governments have used in attempts to root out piracy. The only technique which seems to be 100% effective is to occupy the country from which the pirates operate. As mentioned, the French invasion of Algeria in 1830 effectively rooted out the notorious Barbary Corsairs. An occupation of Puntland is, however, not on the international community's political agenda.[63]

The AU intervention mission AMISOM that is currently being built up in Mogadishu would, hypothetically, be instrumental in impeding Somali piracy. However, AMISOM is grappling with economical difficulties and finding enough *troop contributing countries* (TCC), so far only Uganda and Burundi

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[63] See Chapter 5.

have sent troops.[64] Even if funds and troops could be allocated, it is unlikely that the priority would be Puntland, far away from the more acute problems in the south. This is unfortunate, since a land operation is probably the only way to really address the problem of piracy.

There are already two naval components on station, the CTF-150, and operation Alycon. When the WFP ship MV Rozen was hijacked, food destined for Somalia was kept on board for 100 days by the pirates. An additional WFP ship was hijacked only two moths later.[65] As a result, France took the initiative to operation Alycon, France, the Netherlands, Denmark, and lately, Canada has escorted the WFP ships in the hostile waters. Operation Alycon will be replaced by the EU NAVFOR Somalia operation Atalanta which is scheduled to commence in December 2008.[66]

It has been proposed that the WPF escorts should be expanded to general convoys of the ships passing through the Gulf of Aden. The idea of convoying merchant vessels has been proposed on several occasions, but it seems to be difficult to implement. Many of the larger shipping companies have vessels that travel at far greater speed than most of the smaller vessels. To slow down the bigger vessels is not an option, since they then would lose valuable time. In addition, the use of high speed is one of the few techniques that is known to be working to avoid being targeted by the pirates. A cluster of ships passing at low speed might also risk inspiring more piracy.

Surveying the Gulf of Aden and the Somali coast is a general problem for the warships on station, since their relative low number must cover a rather large area. A blockade of certain ports might also be difficult since the skiffs easily can be transported by lorry to a different harbour or simply be put out from an uncontrolled beach.

Deterring the Somali pirates seems to be difficult. Deterrence relies on the psychological factor that the threat is, or appears to be, credible. So far, the only deterring factor that has worked is close escort with navy vessels.

France is the only nation, to date, which has carried out a rescue operation. The hijacked cruiser Le Ponant, with a 30 hostages, was re-claimed and the hostages liberated by French forces. Although the operation was a success, it does not

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[64] UNSCR (19/07/2008) *Report of the Secretary General on the Situation in Somalia*, S/2008/466.
[65] BBC (13/10/2005) *Somalis Seek Help to Stop Pirates*,
   http://news.bbc.co.uk/2/hi/africa/4339344.stm
[66] Middleton, R. (2008*) Piracy in Somalia – Threatening Global Trade, Feeding Local Wars*,
   Chatham House Briefing Paper, AFP BP 08/02.

seem to have deterred the pirates, as the number of hijacked ships continued to rise during 2008.[67]

To increase the deterring effect of the naval presence, it would be possible to escalate by responding through the use of more force. But, this presupposes two things: first, that there is legal room for such use of force, and, second, that it does not, in turn, escalate the pirates' behaviour – which would involve a long-term risk. It is questionable whether the international community could afford an escalation of the situation. The Somali pirates are well armed and do not seem to hesitate to use violence, although they have avoided it if possible. Therefore, a departure from the more cautious approach may have tragic consequences.

The legal aspects have created some insecurity on how UNCLOS, UNSCR 1816 and 1838 relate to the penal laws of the TCC. In addition, most TCC's are reluctant to hand over captured pirates to the Puntland government since they fear that the Somali authority's treatment of apprehended pirates might not be in accordance with human rights. As a consequence the TCC have responded differently when pirates have been apprehended. The Danish Navy frigate which intercepted 10 Somali pirates decided to release them after confiscating their weapons, citing an unclear mandate. This can be compared with the French Navy, which brought the perpetrators from the Le Ponant hijacking to Paris to stand trial. Although the French rescue was made ashore while the Danes intercepted the pirates at sea, the states participating in the naval operation in the Gulf of Aden seem to view the mandate differently.[68]

A possibility, which, so far, has not been discussed, would be to single out the strongest pirate group and put them in charge of coastal security, a sort of coastal privateering party. This would have the added benefit of providing Somalia with a service that they need. If viewed as a serious option, it would require some additional training and approval by the TFG as a legitimate Somali coastguard. Historically, experiences have not been overly successful in employing this method, as some of the pirates operating now are suspected to once have received such training, and put it to a different use. But, as it is possibly the most cost-effective method of impeding the piracy attacks, it may be worth another try.

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[67] Le Figaro (11/04/2008) *L'armée française libère les otages du Ponant*, http://www.lefigaro.fr/international/2008/04/12/01003-20080412ARTFIG00187-l-armee-francaise-libere-les-otages-du-ponant.php

[68] Lloyd's List (25/09/2008) *Danish navy releases 10 Somali pirates*, http://www.lloydslist.com/ll/news/danish-navy-releases-10-somali-pirates/20017574257.htm

6.3   Economical Incentives

There are a number of economic variables effecting the current pirate situation around Somalia. Every year, an estimated 16,000 ships pass through the Gulf of Aden. In 2007, 17 of these 16,000 ships were boarded and hijacked passing through the Gulf or along the Somali coast.[69] This means that roughly only 1 of a 1000 ships is hijacked. Although it is not known exactly how much the shipping companies, via their insurance companies, have paid in ransom, the disclosed sums vary between USD 700,000 and USD 1.5 million. This would equal an annual net sum of something just short of USD 20 million, or about EUR15 million. In 2008, which has seen an increase in piracy, the sum might already be as high as USD 30 million.[70]

All major shipping companies insure their ships. Somewhat simplified, the insurance consists of three parts: the insurance of the ship, the insurance of the ship's cargo and an additional insurance, which is variable depending on where the boat is sailing. When passing through the Gulf of Aden, which is considered a high risk zone by the insurance companies, the premium increases. Most insurance companies are re-insured through other insurance companies, in order to spread the risk. Of course, an increase in pirate activity is also likely to increase the insurance premiums.[71]

USD 30 million is a lot of money, but, for the overall maritime insurance economy, it has little significance. It would take a dramatic increase in pirate activity to make the costs so high that it would be beneficial for the insurance companies to put such high premiums that it would be cheaper for the shipping companies to divert their ships and go around the African continent to get to Europe.

But, there are of course also psychological effects to take into consideration. Although the probability of being attacked by pirates in the Gulf of Aden is very low, a recent study estimates an increase in insurance and transport costs from a high risk levy of USD 500 to 20,000 per voyage through the Gulf of Aden. This would, according to the same survey, add up to a total of USD 400 million annually in added insurance costs. The incentives for using the Suez Channel would cease to dominate once the extra cost equals or is higher that the alterna-

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[69] ICC IMB *Annual Report 1 January – 31 December 2007.*

[70] Middleton, R. (2008*) Piracy in Somalia – Threatening Global Trade, Feeding Local War*",
Chatham House Briefing Paper, AFP BP 08/02.

[71] Interview with Insurance Company representative (09/11/2008).

tive cost of the extra days it takes to go around the African continent. Either way, the extra cost would in the end be passed on to the end consumer.[72]

Although Puntland is economically better off than the south of Somalia, the USD 30 million injection is a lot of money, regardless of how you look at it. As long as the ships are passing through the Gulf and the political instability persists, the incentives, in purely economic terms for the piracy, are significant.

The alternative cost to seriously impeding Somali piracy will require at least a naval response. However, in economic terms, a naval operation of the magnitude required is extremely costly. The cost for fuel, munitions, maintenance and crew rotations for a fleet, which must consist of at least 20 larger ships to make a real difference, would vastly exceed the ransoms now paid over the course of one year. These costs must, of course, be weighed against the costs of the insurance premiums, which should go down if the piracy attacks decrease.[73]

The drawback of naval operation directed against the Somali piracy is that is has little chance of obtaining any long-term effects in itself. As long as the incentives for the Somali pirates are not altered, it will, in all probability, reappear as soon as the pressure from the naval operation is withdrawn.

An alternative, or perhaps a complementary, approach might be to convince the insurance companies to stop paying the demanded ransoms. This would, of course, to a large extent, divert the governing incentives for the Somali pirates, but it would also involve a high risk. The pirates might, in return, choose an equally hard approach, which, inevitably, would be directed against the hostages. And, even if the insurance companies could be convinced that such a hard-line approach might be feasible, the shipping companies would have to be convinced. As indicated, they might not like to see their crews in jeopardy, nor the cargo that, in this case, would fall directly into the hands of the pirates. The value of the ship's cargo is also by comparison much greater than the ransoms that have, so far, been paid for one single ship.

A potentially feasible middle way would be if the insurance companies, collectively, could be persuaded to press the ransoms to a set minimum. This would not suffice to stop the piracy attacks, but, in combination with other counter-measures, it could prove effective.

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[72] BGN Risk (20/11/2008) *Ocean of Opportunity for Pirates*, http://www.bgn-risk.com/ocean_of_opportunity_for_pirates/88

[73] Only the Swedish contribution to the EU NAVFOR Somlalia operation Atalanta consisting of two corvettes on station for 90 days is estimated to cost around EUR 20 million.

Still, from an economic point of view, Somali piracy has still not reached such heights that it is making any serious economical damage to world trade. But, there are, of course, other matters to consider after having calculated the economic balance.

One issue, which reaches beyond the immediate economic incentives, is the fishing by foreign vessels off the coast of Somalia. The fishing is a crucial source of income for the Somalis inhabiting the coastal areas. It estimated that the fishing by foreign fishing vessels in Somalia waters and the close proximity accounts for USD 94 million annually. The underequipped Somali fishers cannot compete with the foreign vessels, and because of the lack of a Somali coast guard, other than the pirates, there is no one that can keep the unwarranted fishing at bay.[74]

Although illegal and unauthorised fishing is not only a particular Somali problem, because of the piracy it carries additional complications. The fishing is allegedly one of the reasons for the Somali piracy, and although many the vessels attacked today have nothing to do with fishing, fishermen are still routinely caught and either made to pay on the spot or taken for ransom. The Somali pirates might have lessened the extent of the illegal and unreported fishing, but the ransoms demanded, and "taxation" does not amount to levels which infringe or sufficiently deter the fishers compared to what they stand from continuing. Hence, an aspect of a legitimate Somali grievance still lingers.

6.4   Political Considerations

As indicated in previous sections there are a number of issues that must be considered on a political level if Somali piracy is to be brought to an end. A naval response is a start, but, if the piracy attacks are to be permanently stopped, it must be carried out by a combination of measures. The political aspects may be the most crucial, since the economic incentives for piracy activities to continue are overwhelmingly strong.

Certain states like France and the US have been quite active taking initiative in the UN and promoting active participation, whereas other states have been more reluctant to respond or, as in the case with Malaysia, who pulled out their naval assets, even responded negatively.[75] Since the shipping community is looking to

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[74] Marine Resource Assessment Group (2005) *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries*, MRAG, London, UK, p. 167

[75] Lloyd's List (21/10/2008) *Malaysia withdraw navy vessels from the Gulf of Ade"*, http://www.lloydslist.com/ll/news/malaysia-withdraws-navy-vessels-from-gulf-of-aden/20017582292.htm;jsessionid=4DC2E0416DF9C985C3219C1CBD5F2BF0

the political level to provide basic security the increase in attacks in combination with a perceived lack of response might send unfortunate signals to the shipping community who in turn might start to reroute their ships.

Furthermore, because the traffic that passes through the Gulf of Aden is so sensitive, it is not difficult to fathom what might happen with an oil tanker or vessel carrying chemical supplies that runs aground as a consequence of failed piracy attack. This happened to the 150,000-ton Japanese oil tanker Takayama, which, during the attack, was hit with an RPG and some oil spilled into the sea. The spill was contained, but this example underscores that more than economical values and human lives are endangered, since an environmental disaster in the Gulf of Aden would seriously aggravate an already inflamed situation.[76]

Although it is only a fraction of the 16,000 vessels that pass trough the Gulf of Aden that have been attacked the psychological impact of the piracy might cause additional damage to the shipping community. It is only the political response that has the potential to contain an overreaction from the shipping industry.

It is also only on a political level that it will be possible to address the fishing question. The international community might loose legitimacy if its naval response appears to be under the influence of states connected too the off coast fishing fleets.

Equally important is the situation in Somalia. Because of the famine and 2.6 million displaced persons, many Somalis depend on the food deliveries for their livelihood. The lack of security along the coast of Somalia seriously hampers the much-needed humanitarian aid.

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[76] IHT (21/04/2008) *Ship fires on Japanese oil tanker off Yemen*,
http://www.iht.com/articles/ap/2008/04/21/asia/AS-GEN-Japan-Yemen-Tanker-Attacked.php

7   Conclusion

The inherent structure of any systematic piracy, to which the Somali piracy belongs, makes it difficult, if not impossible, to stop the practice by merely focusing on impeding pirate vessels. Piracy has always been in need of at least one safe port, from where it can seek refuge, refit, and, most importantly, unload and trade the loot. Historically, as well as today, piracy has only been permanently stopped when it has been approached from a multitude of angles.

To approach the Somali piracy broadly, a number of tools are required. The focus of this report has been to describe the nature of the Somali piracy, it is therefore beyond the scope of this report to discuss possible responses to the piracy, but a few can be mentioned if a broad solution is indeed to be sought. The international community could stand to gain from systematically engage the shipping industry as well as the insurance companies to discuss a more synchronised response concerning passageways, information and investigate the possibility of a more unified ransom procedure. These measures might strengthen the response of business the piracy targets.

In addition, the fishing off the Somali coast by foreign vessels must be addressed by the international community. The credibility of the international community hinges on its legitimacy, which might be seriously harmed if this serious question is ignored.

What concerns the situation in Somalia, in particular in Puntland, a best reply is more difficult to envisage. To train and pay the Puntland militia in combination with putting political pressure on the TFG president Yussuf and President Hersi might be a first step to make the Somali piracy's environment less secure. Equally, a UNSCR that covers the coastal areas of Somalia might be instrumental if the international community would want to have the option to directly engage the pirates ashore. An additional alternative to consider is to single out the most organised pirate group and create a substantial Somali coast guard. This would ensure national ownership of the piracy question, increase the general knowledge of the business and make an important contribution to impeding the piracy. The idea might seem controversial, but given the extent of the Somali piracy, any future Somali coast guard will at least in part consist of some of the former pirates.

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