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SOMALI MARITIME PREDATION: TRADITIONAL PIRACY OR A NEW FORM OF TERRORISM?

Anamika Twyman-Ghoshal

Piracy off the coast of Somalia is different from other forms of piracy around the world. The Contemporary Maritime Piracy Database (CMPD) shows that Somali piracy takes place mainly in the high seas, occurs during the daylight hours, targets vessels in motion, and is more likely to be armed and threatening. Furthermore, rather than theft, the motivation is to hold the ship for ransom.¹ With the emergence of Somali piracy and its threat to international trade, there has been a suggestion by some that these piratical acts constitute maritime terrorism.² This argument is not new, in fact, it has been discussed in the past for the piracy in Southeast Asia and beyond.³ There are

¹ A. Twyman-Ghoshal and G. Pierce, 'The changing nature of contemporary maritime piracy: Results from the Contemporary Maritime Piracy Database 2001-2010', *British Journal of Criminology*, 2014, 54(4), 652-72.

² D.R. Burgess, 'The Dread Pirate Bin Laden: How thinking of terrorists as pirates can help win the war on terror', *Legal Affairs*, July/August 2005. Online. Available: https://www.legalaffairs.org/issues/July-August-2005/feature_burgess_julaug05.msp (24 May 2017)

³ R.C. Beckman, 'The piracy regime under UNCLOS: problems and prospects for cooperation', in R.C. Beckman and J.A. Roach (eds) *Piracy and International Maritime Crimes in ASEAN: Prospects for Cooperation*, Cheltenham: Edward Elgar, 2012, pp. 17-37; J. Chen, 'The emerging nexus between piracy and maritime terrorism in

suggestions that a coupling of the overlapping threats of piracy and terrorism would provide a more integrated and efficient enforcement strategy.⁴ The question posited here, is whether Somali piracy is in fact a form of maritime terrorism and if coupling these threats is a sound policy decision. The discussion will tackle arguments that have suggested that piracy and terrorism are fundamentally the same type of crime. The question is an important one, as the re-defining of piracy as terrorism or terrorism as piracy is more than mere semantics; it has a direct impact on the policies implemented to combat violence at sea.

The focus of this chapter is on Somali piracy, the reason for which is twofold. Firstly, as already mentioned, Somali piracy has a distinctive nature, in that it is not motivated by the appropriation of goods like many other piratical acts around the world, instead the

Southeast Asian waters: A case study of Gerakan Aceh Merdeka (GAM)' in P. Lehr (ed.) *Violence at Sea: Piracy in the Age of Global Terrorism*, London: Routledge, 2007; R. Snoddon, 'Piracy and maritime terrorism: Naval responses to existing and emerging threats to global seaborne economy' in (ed.) *Violence at sea: Piracy in the Age of Global Terrorism*, London: Routledge, 2007.

⁴ G.G. Ong, '*Ships can be dangerous too*': *Coupling Piracy and Maritime Terrorism in Southeast Asia's Maritime Security Framework*. Singapore: Institute of Southeast Asian Studies; Burgess, *Dread Pirate*; D.R. Burgess, *The World for Ransom*. Amherst, NY: Prometheus Books, 2010.

focus has been ransoming. Secondly, and perhaps even more significant, is that Somali piracy has generated previously unseen international community responses, some of which have piggy backed off counter-terrorism operations in the Horn of Africa. This reality means that in practical terms, Somali piracy has already been associated to terrorism.

To explore whether piracy and terrorism are in fact the same type of crime, this chapter begins with exploring what these two phenomena are and the underlying motivations of such acts. The discussion begins with the legal definition of piracy as encapsulated in the United Nations Convention of the Law of the Sea 1982 (UNCLOS) as well as the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA). The latter was created specifically as a response to an act of maritime terrorism, providing an opportunity to examine the value of bringing piracy and terrorism within one international legal instrument. The discussion will then look beyond the legal definition, cataloguing the various types of behaviours captured by the term piracy. Next the analysis turns towards the even more challenging task of defining terrorism by exploring its core features. To further explore the distinctions between terrorism and piracy, the argument is then explored through the lens of motivational typologies. Somali piracy is explored, looking specifically at the multivariate causes and motivations of piracy off the coast of Somalia. The chapter then examines reasons for the conflation of piracy with terrorism to identify whether it is problematic to applying

counter-terrorism strategies to maritime piracy. The chapter concludes with a discussion on why such a conflation is problem for maritime piracy and some viable alternatives.

Defining Maritime Piracy

Maritime piracy is one of the oldest international crimes. In the eighteenth century the crime of piracy was granted universal jurisdiction (*jure gentium*), allowing all nations jurisdiction over any pirate ships (even if a pirate ship was attacking a vessel of a different nation). This universal jurisdiction continued through the various iterations of international piracy law, from its inceptions in the Harvard Draft Convention on Piracy 1932, the Convention on the High Seas 1958 (Geneva Convention), and the current 1982 UNCLOS. It is important to note that at the time UNCLOS was drafted, there was little concern that piracy was a viable modern threat.⁵ In the 2000s the concern about international terrorism and the lack of a functioning central government in Somali brought a new level of response to piracy in the Gulf of Aden and the Indian Ocean. Those in the maritime industry saw this as a welcome change to the general apathy of the international community to piracy in the previous decades.⁶

⁵ J.L. Anderson, 'Piracy and world history: An economic perspective on maritime predation', *Journal of World History*, 1995, 6(2), 175-99.

⁶ A. Twyman-Ghoshal, *Understanding Contemporary Maritime Piracy*. Criminology and Justice Policy Doctoral Dissertations, Paper 7. Online. Available:

<http://iris.lib.neu.edu/criminology_diss/7/> (accessed 24 May 2017)

The UNCLOS definition of piracy is a facsimile of the Geneva Convention. Article 101 states:

- 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 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 subparagraph (a) or (b) of this article.

The limitations of the UNCLOS definition of piracy relate to three key elements of Article 101: that piracy needs to involve ship-to-ship conflict; that the act must occur in international waters, and; that it needs to be for private ends. The two-ship requirement

excludes internal seizures of ships, except in the case of mutiny of state-owned ships. The international waters requirement respects national sovereignty in territorial waters, limiting acts of piracy to the high seas and on the Exclusive Economic Zone (EEZ), an area 200 nautical miles (nm) from the coast of a sovereign state. Piracy-like acts committed in territorial waters are not included in the legal definition of piracy. From 2001-10, only twenty-three per cent of all the incidents recorded in the CMPD fell within the legal definition of piracy⁷. Most incidents occurred in territorial waters (50.8 per cent).⁸

⁷ Twyman-Ghoshal, *Understanding*, p.76-7

⁸ Recognizing the problem of excluding acts in territorial waters, the International Maritime Organization (IMO) adopted the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships in 1995. In 2009, it was updated to also limit armed robbery at sea to private ends, mirroring the UNCLOS clauses Armed robbery against ships is defined as,

any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea.

This resolution was aimed at encouraging the passing of domestic legislation to help anti-piracy efforts and to enhance cooperation. The resolution established a clear distinction between acts committed in the high seas and those in territorial waters.

These limitations of the legal definition of piracy already undermine its potential benefit of being linked to terrorism; a terrorist attack has to occur in international waters and from a second vessel to fall under UNCLOS. However, it is the private ends requirement that is most problematic. UNCLOS itself does not provide guidance on what private ends are, therefore it is necessary to look at the history of UNCLOS to identify the aim of this exclusion. According to Joseph Bingham, who prepared the *Comment to the Harvard Draft Convention on Piracy* (which formed the basis for the Geneva Convention and, therefore, UNCLOS), the private ends requirement excluded ‘all cases of wrongful attacks on persons or property for political ends, whether they are made on behalf of states or of recognized belligerent organizations, or of unorganized revolutionary bands’.⁹ In 1955, the International Law Commission (part of the UN General Assembly that is mandated with the development of international law) reiterated this stating that ‘the draft convention excludes from its definition of piracy all cases of wrongful attacks on persons or property for political ends, whether they are made on behalf of states, or of recognized belligerent organizations, or of unrecognized revolutionary bands’.¹⁰

Although the behaviors were given distinct labels, the guidelines for investigation, cooperation, and information sharing remained the same.

⁹ J. Bingham, ‘Part IV- Piracy’, *American Journal of International Law*, 1932, 26, p.786.

¹⁰ International Law Commission, *Yearbook of the International Law Commission*,

Although from the above discussion it seems clear that the aim of the private ends requirements was to distinguish piracy from acts for political ends, there have been arguments that the private ends limitation in the Geneva Convention was a departure from the customary international law on piracy.¹¹ The suggestion was that the Geneva Convention limited the scope of the customary law of piracy, that traditionally did include acts closely associated with states and with groups organised along political lines.¹² These changes in piracy law reflected political and economic developments of the time, providing enhanced consideration for the sovereignty of states. These claims have been developed by some to suggest that the aim of the Geneva Convention was to exclude public ends rather than political ends, therefore excluding only state acts and that of recognized belligerent organizations not of terrorist groups.¹³ Elaborating on this argument Menefee has suggested that since UNCLOS does not expressly exclude

Volume I. Summary Records of the Seventh Session, 2 May – 8 July 1955. New York: United Nations, p.40. Online. Available: http://legal.un.org/ilc/publications/yearbooks/english/ilc_1955_v1.pdf, (accessed 24 May 2017)

¹¹ C.H. Crockett, 'Toward a Revision of the International Law of Piracy', *DePaul Law Review*, 1976, 26(1), 78-100.

¹² Ibid.

¹³ Beckman, 'Piracy regime'.

terrorism, it is not a public end.¹⁴ Menefee argues that neither the Geneva Convention nor UNCLOS expressly stipulates that terrorist organizations are political entities.¹⁵ The argument suggests that the aim of the commission was only to distinguish piracy from acts committed by the state, not from acts committed by sub-national groups. Burgess develops this argument further, suggesting that terrorism should be considered a category of piracy.¹⁶

The legal case history on piracy suggests otherwise. In 1985, four members of the Palestinian Liberation Front (PLF), who were posing as passengers aboard the cruise ship *Achille Lauro*, seized the ship while en route from Alexandria to Port Said. The demand was for 50 Palestinian prisoners in Israel to be released in exchange for the cruise ship passengers, who were being held as hostages. When these demands were not met, an elderly wheelchair-bound US national was shot and thrown overboard. UNCLOS was deemed not applicable to the case: the incident was an internal seizure and it did not constitute mutiny. Perhaps even more salient is that the case was deemed not to meet the private ends requirement.¹⁷

¹⁴ S.P. Menefee, 'Piracy, Terrorism and the Insurgent Passenger', in N.Ronzitti (ed.) *Maritime Terrorism and International Law*, Boston: Martinus Nijhoff, 1990, pp.43-68.

¹⁵ Ibid.

¹⁶ Burgess, *World*.

¹⁷ M. Halberstam, M. 'Terrorism on the high seas: The Achille Lauro, piracy and the IMO

The case prompted the drafting of a new international convention, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) 1988, often known as the maritime terrorism convention. SUA did not have a two-ship requirement, the location at sea of the incident was irrelevant, and it was not concerned with the motivation of perpetrators.¹⁸ To bypass the limitations of UNCLOS, SUA did not mention terrorism or piracy, instead its ambit was intentional acts of violence taking place within a ship that endanger the safe navigation of the vessel, irrespective of purpose or motivation (see SUA, Article 3). In 2008, the Security Council Resolution 1846 confirmed that both piracy and armed robbery against ships qualify under SUA.

Despite the efforts of the drafters of SUA, the new convention has been applied sparingly. The problem with this convention is that it only allows state parties to exert jurisdiction on incidents against their own ships or nationals. In 2005, the Convention was revised by the Protocol of 2005 to the Convention for the Suppression of Unlawful

Convention on Maritime Safety', *American Journal of International Law*, 1988, 82(2), 269-310.

¹⁸ E. Barrios, 'Casting a Wider Net: Addressing the Maritime Piracy Problem in Southeast Asia', *Boston College International and Comparative Law Review*, 2005, 28(1), 149-163.

Acts against the Safety of Maritime Navigation (SUA Protocol) which, amongst other clauses, permitted consensual boarding (Article 8bis) of a vessel under the flag of a member state. As of April 2017, there are 41 states that have ratified the SUA Protocol. The original 1988 SUA Convention has overcome some of the difficulties presented by UNCLOS and already has 166 signatories. However, a key impediment to the use of SUA and the SUA Protocol has been that it requires the act to 'endanger the safety of maritime navigation' and therefore is not applicable to many criminal offences at sea.¹⁹ Fundamentally, SUA failed because it does not provide for universal jurisdiction (*jure gentium*) as was established for maritime piracy. For SUA to function it needs, like other international instruments, to be signed and ratified, something that several coastal countries have not done, including Somalia.

The newer SUA and SUA Protocol can apply to both maritime piracy and terrorism. This is established due to the larger scope and applicability of the convention rather than a suggestion that piracy is a form of terrorism or vice versa. To further explore the relationship between piracy and terrorism it is important to understand the various manifestations of piracy. This is salient to the present discussion since it may be that some forms of piracy are more appropriate to link to terrorism than others.

¹⁹ Murphy, M, *Contemporary Piracy and Maritime Terrorism: The Threat to International Security*, London: Routledge, 2007.

Defining Terrorism

The quest for a definition of terrorism is an even thornier issue than the definition of piracy. Despite the League of Nations proposing a definition in 1937, there is no international consensus on a legal definition of terrorism.²⁰ Terrorism dates to early civilizations, used as a tool by governments, sub-national groups, and individuals to coerce social change.²¹ Fundamentally, the acts that constitute terrorism include a spectrum of criminal activities, including property damage, kidnappings, assaults, or sabotage. However, the label of *terrorism* is applied selectively depending on the social context--the criminal activities themselves do not constitute terrorism per se.

²⁰ A.P. Schmid, 'The Definition of Terrorism', in A. Schmidt (ed.) *The Routledge Handbook of Terrorism Research*, Abington: Routledge, 2011, pp.39-98; A.P. Schmid, A.P., *Political Terrorism: A Research Guide to Concepts, Theories, Databases and Literature*, New Brunswick: Transaction Books, 1983.

²¹ W.C. Mullins and Q.C. Thurman, 'The Etiology of Terrorism: Identifying, Defining, and Studying Terrorism', in B. Forst, J.R. Greene and J.P. Lynch (eds.) *Criminologists on Terrorism and Homeland Security*, Cambridge: Cambridge University Press, 2011, pp. 40-65

The issue is not a paucity of definitions of terrorism. In fact, an analysis of existing definitions identified over two hundred.²² The problem is the lack of consensus over what exactly constitutes terrorism and that there are various *terrorisms*.²³ *Terrorisms* include nuances such as domestic and international, state and subnational, all of which carry their own complexities and constructions. Considering the political nature of the phenomenon, achieving consensus remains unlikely.²⁴ This is exemplified by the efforts to enact a Comprehensive Convention on International Terrorism which has been under negotiations since 1996 when the United Nations (UN) General Assembly created an Ad Hoc Committee on Terrorism (Resolution 51/210) with the intent to criminalize all forms of international terrorism. To date, the negotiations have not resulted in passing a convention, faltering largely due to disagreement among the state parties on the definition of terrorism.

²² A. Silke, *Terrorism Research: Trends, Achievements and Failures*, London: Frank Cass, 2003.

²³ T. Bjorgo, 'Introduction', in T. Bjorgo (ed.) *Root Causes of Terrorism: Myths, Reality and Ways Forward*, Abington: Routledge, 2005.

²⁴ C.A.J. Coady, 'Terrorism, Just War and Supreme Emergency', in M.O'Keefe and C.A.J. Coady (eds.), *Terrorism and Justice Moral Argument in a Threatened World*, Victoria: Melbourne University Press, 2003, pp. 8-21.

Sovereign nations more readily define terrorism in light of their own national priorities. In fact, many states rely on identifying specific groups as terrorist organizations as a concrete way of capturing terrorism.²⁵ These lists are unique to each country and are updated to reflect political contexts and societal perceptions, illustrating the subjective nature of these designations. In the United States (US), it was only after the 9/11 attacks that federal terrorism legislation was enacted, nonetheless limited to defining international terrorism (previously any acts of terrorism were prosecuted as the underlying crimes using conventional law).²⁶ Paragraph 2331, Title 18 of the United States Code defines international terrorism as:

violent acts or acts dangerous to human life that are a violation of the criminal laws of the US or of any state, or that would be a criminal violation if committed within the jurisdiction of the US or of any state [that] appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily outside the territorial jurisdiction of the US, or transcend national boundaries.

²⁵ C. Townshend, *Terrorism: A Very Short Introduction*, Oxford: Oxford University Press, 2011.

²⁶ Mullins and Thurman, 'Etiology'.

In the US there are a series of legal definitions of terrorism; the US State Department, Federal Bureau of Investigation, and US Department of Defence all have their own. A problem with governmental definitions is that these usually exclude state terrorism. The term terrorism is intended to stigmatize and de-legitimize the individual or group at which it is directed, the power differential provides governments the ability to exclude themselves from the definition. This reflects an important consideration in defining terrorism, that there are two approaches to studying terrorism: a so called 'literal' approach, where the aim is to objectively assess the incident; and a 'propagandistic' approach, where political and ideological interest's bias research.²⁷ It is important to avoid such bias to ensure that the essence of terrorism is discovered.

Turning towards academic definitions of terrorism may help avoid bias. An early attempt at a definition suggests that terrorism is 'a symbolic act designed to influence political behaviour by extranormal means entailing the use or threat of violence'.²⁸ Other definitions, such as Combs's, suggests that terrorism requires actual violence, a threat

²⁷ N. Chomsky, *Pirates and Emperors, Old and New: International Terrorism in the Real World*, Chicago: Haymarket Books, 2002; R. Rubenstein, *Alchemists of Revolution: Terrorism in the Modern World*, New York: Basic Books, 1987.

²⁸ T.P. Thornton, 'Terror as a weapon of political agitation', in H. Eckstein (ed.), *Internal War: Problems and Approaches*, New York: Free Press, 1964, p.73.

is insufficient.²⁹ Sobel's definition suggests that terrorism is perpetrated solely by clandestine groups, therefore excluding terrorism perpetrated by states.³⁰ Krieger's definition, which also limits terrorism to non-governmental groups, expands terrorism motivations to subnational, national, or international.³¹ Poland adds that terrorism is premeditated and deliberate, targets innocent victims, and is intended to create fear.³²

This brief review of existing definitions identifies various nuances in the concept, but the analysis also helps identify commonalities. From an analysis of over a hundred terrorism definitions, Schmid identified that the use or threat of violence, political motivation, and generating fear are the most common overlapping factors.³³ Whitaker who combined the various definitions, found that terrorism includes: illegal force, political motivation, innocent targets, and a strategy to produce fear.³⁴ These definitions

²⁹ C.C. Combs, *Terrorism in The Twenty-First Century*, Upper Saddle River: Prentice Hall, 2000.

³⁰ L.A. Sobel, *Political Terrorism*, New York: Facts on File Publications, 1975.

³¹ D.M. Krieger, 'What happens if? Terrorists, revolutionaries and nuclear weapons', *Annals of the American Academy of Political Sciences*, 1977, 430, 44-57.

³² J.M. Poland, *Understanding Terrorism: Groups, Strategies, Responses*, Upper Saddle River: Pearson, 2005.

³³ Schmid, *Political Terrorism*.

³⁴ D.J. Whitaker, *The Terrorism Reader*, New York: Routledge, 2001.

can be further distilled to distinguish the essence of terrorism from the underlying illegal acts. It is possible to further simplify the definition by eliminating elements that describe conventional crimes, such as violence or threat of violence, illegal force, innocent targets, and producing fear. This would mean terrorism is a form of communication, aimed at an audience broader than the direct victims, at the core of which is a political motive. Therefore, for piracy and terrorism to be used interchangeably, the question rests on motivation.

The Motivation Question

The question of motivation for deviance is critical to exploring the distinction between terrorism and piracy. For piracy, private ends are an essential component. For terrorism, a political motive is critical. In criminology, motivation is often divided into two types; expressive and instrumental. Instrumental crimes have been defined as acquisitive, behaviour which is aimed at acquiring some form of financial gain or social status.³⁵ The behaviour is planned, premeditated, and reasoned. Expressive crimes are affective

³⁵ K. Hayward, 'Situational Crime Prevention and its Discontents: Rational Choice Theory versus the 'Culture of Now'', *Social Policy and Administration*, 2007, 41(3), 232-50; T.D. Miethe and K.A. Drass, 'Exploring the Social Context of Instrumental and Expressive Homicides: An Application of Qualitative Comparative Analysis', *Journal of Quantitative Criminology*, 1999, 15(1), 1-21.

emotional outlets such as venting rage, anger, or frustration³⁶. These behaviours are spontaneous; in the heat of passion. Terrorism has been characterized as *related* to expressive crime.³⁷ Although terrorism is, at its core, an expression of emotions and heavy in symbolism, it is also a purposeful and planned form of communication.³⁸

It is therefore more useful to use a different lens to understand the motivations of piracy and terrorism. In one of the most well-known articles in sociology, Merton explores how structural contradictions caused by the incongruence of the goals set by society and the means to achieve these goals create strains and frustrations experienced by individuals.³⁹ Merton theorized that these conditions produced various types of

³⁶ Hayward, 'Situational Crime'; J.B. Mays, *Crime and Its Treatment*, London, Longman, 1970; V. Ceccato, 'Expressive Crimes in Post-Socialist States of Estonia, Latvia and Lithuania', *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 2008, 9(1), 2-30.

³⁷ P. Fussey, 'Understanding Terrorism through Criminology? Merging Crime Control and Counter-terrorism in the UK', in G. Lawson and A. Stedmon (eds), *Hostile Intent and Counter Terrorism: Human Factors Theory and Application*, Surrey: Ashgate Publishing, 2015.

³⁸ Coady, 'Terrorism, just war'.

³⁹ R.K. Merton, 'Social structure and anomie', *American Sociological Review*, 1938, 3(5), 672-682.

adaptations, thereby explaining the variance in human behaviour in the face of anomic conditions. The various adaptations are contingent on the internalization of the existing cultural goals and institutionalized means of achieving these. This theory is salient for the current discussion of motivation because amongst the five adaptations⁴⁰ noted by Merton, the two most relevant in discussions of deviance are rebellion and innovation. Innovation describes individual behaviour which strives to attain the goals of monetary gain and success set by society but rejects the institutionalized means of attaining these goals. Rebellion, on the other hand, is a rejection of both the goals espoused by society as well as the legitimate means of achieving such goals, instead those who rebel advocate for new goals using unorthodox means to achieve these.

With these two adaptations, Merton effectively distinguishes between what is also termed anti-social and social crime.⁴¹ Mirroring the innovation adaptation, anti-social crimes are manifested in acts where cultural goals are sought but alternative means of achieving these are utilized; these are creative solutions to a problem, a novel, possibly illegal or harmful, means of achieving society's goals. Anti-social crime embraces the prevailing social and political order and takes advantage of it. Social crime, coined by Hobsbawm, is defined as a 'challenge to the prevailing social and political order and its

⁴⁰ Conformity, Ritualism, Retreatism, Rebellion, and Innovation.

⁴¹ Ibid.

values' and mirrors Merton's rebellion adaptation.⁴² These are behaviours that do not conform to societal standards of conduct, either in terms of the ascribed cultural goals or the institutional means of achieving these, instead these are rejected and there is a campaign for change.

The analysis of motivation types provides a unique tool to understand piracy. Piracy, as per the legal definition in UNCLOS, is an instrumental, anti-social crime. The assumption is that piracy is motivated by a profit motivation. Within Merton's framework, the idea of piracy is to attain socially desirable goals through innovative means. Terrorism, on the other hand is a social crime, where the goal is to challenge the existing social and political order, it is a rejection of the goals and the means to achieving these goals. The question therefore, is whether piracy off the coast of Somalia is motivated by innovation (anti-social crime) or by rebellion (social crime)?

Motivation of Somali Piracy

As mentioned earlier, Somali piracy is different from other forms of piracy around the world in its manifestations and modus operandi.⁴³ This distinctiveness has elicited a

⁴² E. Hobsbawm, 'Social criminality: distinctions between socio-political and other forms of crime', *Bulletin of the Society for the Study of Labor History*, 1972, 25, p.5.

⁴³ Twyman-Ghoshal and Pierce, 'Changing nature'.

unique response, relying on the use of counter-terrorism forces for anti-piracy patrols.⁴⁴

To consider the suitability and effectiveness of these actions, it is important to comprehend what Somali piracy is, specifically: what motivates Somali piracy?

The first recorded incident of piracy off the coast of Somalia occurred on 12 January, 1991, with the attack on the MV Naviluck.⁴⁵ It is important to note that official piracy data fails to capture adequately victimization of fishing trawlers, trawlers tend not to report attacks and piracy reporting agencies were developed to assist merchant shipping.⁴⁶ Although it is entirely possible that there were earlier cases that were not recorded, Somalia certainly did not have a notable history of maritime banditry and that the start of attacks, at least on merchant vessels, remains a key marker.⁴⁷ For social scientists, this

⁴⁴ C. Singh and A. S. Bedi, 'War on piracy: The conflation of Somali piracy with terrorism in discourse, tactic, and law', *Security Dialogue*, 2016, 47(5), 440-458.

⁴⁵ Murphy, *Contemporary Piracy*.

⁴⁶ Young, *Contemporary Maritime in Southeast Asia*, Singapore: Institute of Southeast Asian Studies, 2011.

⁴⁷ A. Maouche, *Piracy along the Horn of Africa: An Analysis of the Phenomenon within Somalia*, Institute for Peace Research and Security Policy at the University of Hamburg (IFSH), 2011. Online. Available:

http://www.maritimesecurity.eu/fileadmin/content/news_events/workingpaper/PiraT_Arbeitspapier_Nr6_2011_Maouche.pdf (accessed 25 May 2017); A. Kulmiye, 'Militia vs.

provides a unique advantage, providing the analysis with a relatively clear point of onset.

The natural place to start discussing Somalia is January 1991, when Siad Barre, the third President of Somalia, was ousted from government and the country was thrust into a protracted civil war. The Barre regime's collapse coincides with the MV Naviluck attack, suggesting Somali piracy has its roots in the social structure and culture of the time. However, it is important to note that the context for piracy is more complicated than simply the social upheaval caused by the collapse of the Barre regime. The onset

Trawlers: Who is the Villain?', *The East African Magazine*, 2001. Online. Available: <<http://www.ecop.info/e-news/e-news-01-07-9.htm> > (accessed 25 May 2017); C. Alessi and S. Hanson, *Combatting Maritime Piracy. Background*, Council on Foreign Relations, 2012. Online. Available: <<https://www.cfr.org/background/combating-maritime-piracy>> (accessed 25 May 2017); J. Bahadur, *The Pirates of Somalia: Inside their Hidden World*, New York: Pantheon Books, 2011.

of piracy can be traced to concrete policies of the Barre administration and strategies of the international community.

Somalia gained independence in 1960, previously being split between the colonial territories of the British East African Protectorate (currently Somaliland) and Africa Orientale Italiana (currently divided between Somalia, Djibouti, northern Kenya and eastern Ethiopia). After Siad Barre took power in a bloodless coup d'état in 1969, the country was restructured ideologically and culturally. Initially, the restructuring was aimed at creating a modern Islamic state that used socialism (through an allegiance with the Soviet Union) as a framework for social justice and unification across clan lines. This was coupled with ambitions to reintegrate Somalis into one nation. This resulted in a failed war to capture eastern Ethiopia (the Ogaden region in the east) primarily due to military support by the Soviet Union for the Ethiopian Mengistu regime, which was perceived as a perfidious gesture by the Barre regime. These events prompted Barre to restructure the country a second time, this time to a free market economy (allied with the US) with an emphasis on extensive militarization. By the time the Barre regime collapsed in 1991, the Somali population had been through repeated restructuring and gross human rights violation under an authoritarian regime, with contradictory messages that served to disembed social relations and cultural identities of Somalis. It is within this historical context that Somali piracy emerged.

An important policy of the Barre regime that has a direct impact on piracy occurred in 1974. As part of the early ambition to modernize and nationalize the country, Barre decided to stimulate the Somali fishing industry, capitalizing on the country's long coastline (3,300 km) and high levels of biodiversity in the northern parts of the country, especially off the Puntland coast.⁴⁸ To do this, the Coastal Development Project, a large-scale relocation program moved over 14,000 pastoralists to the northeast coast of Somalia (present day Puntland) into fishing cooperatives.⁴⁹ Somalia did not have a traditional fishing history; however it is estimated that by 1984 one million Somalis lived

⁴⁸ United Nations Environmental Programme (UNEP), *The State of the Environment in Somalia: A Desk Study*, 2005. Online. Available:

<http://postconflict.unep.ch/publications/dmb_somalia.pdf> (accessed 25 May 2017)

⁴⁹ H. Metz (ed.), *Somalia: A country Study*, Federal Research Division, Library of Congress, 1992. Online. Available:

<http://memory.loc.gov/master/frd/frdcstdy/so/somaliacountryst00metz_0/somaliacountryst00metz_0.pdf> (accessed 25 May 2017); A. Nur, 'Somalia putting heavy emphasis on its fisheries', *World Fisheries*, 1998, 37, 2-3; International Union for the Conservation of Nature (IUCN), *Country Environmental Profile for Somalia*, European Union External Action Service, 2006. Online. Available: <http://www.eeas.europa.eu/archives/delegations/somalia/documents/more_info/country_environmental_profile_somalia_en.pdf> (accessed 25 May 2017).

on the coast, ten per cent of whom were involved in artisanal fishing.⁵⁰ By 2000, Somalia was exporting US\$ 2.5 million worth of fish, a 464 per cent increase in 20 years.

When the central government failed in 1991, the coastline of Somalia was left unprotected. This attracted fishing fleets from around the world to engage in illegal, unregulated, and unreported fishing (IUU).

The invading ships, as they are locally known, are so crowded off some stretches of the Puntland (northeast) coast that the glow which emanates from their combined lights at night can be mistaken for a well-lit metropolitan city. During a UN Conference on Trade and Development-funded workshop for Somali businessmen held in Dubai in 1998, the participants were told that at any one time there are over 300 foreign-owned vessels – neither reported, regulated, nor paid for – conducting pirate fishing off the Puntland coast alone.⁵¹

⁵⁰ A.I. Bihi, 'Somalia national report', in *Socio-economic Activities that may have an Impact on the Marine and Coastal Environment of the East African Region*, Nairobi: UNEP, 1984.

⁵¹ Kulmiye, 'What happens', para. 18.

In 2005, it was estimated that around 700 foreign owned ships engaged in IUU fishing in Somali waters.⁵² The scale of the problem was so large that fishing trawlers were visible in satellite pictures off the coast of Somalia.⁵³ It is estimated that the extent of IUU fishing in Somalia removed US\$300 million from the national economy each year.⁵⁴ In

⁵² Environmental Justice Foundation (EJF), *Pirates and Profiteers: How Pirate Fishing Fleets are Robbing People and Oceans*, 2005. Online. Available:

<<http://ejfoundation.org/sites/default/files/public/Pirates%20%20Profiteers.pdf>>

(accessed 25 May 2017); Food and Agriculture Organization of the United Nations

(FAO), *Fishery Country Profile: The Somali Republic*, 2005. Online. Available:

<<http://www.fao.org/fi/oldsite/FCP/en/SOM/profile.htm>> (accessed 25 May 2017); High

Seas Task Force, *Closing the Net: Stopping Illegal Fishing in the High Seas*,

Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United

Kingdom, World Wildlife Fund, International Union for Conservation of Nature, and the

Earth Institute at Colombia University, 2006. Online. Available:

<<https://www.oecd.org/sd-roundtable/papersandpublications/39375276.pdf>> (accessed 25 May 2017).

⁵³ F. Fornari, 'Pirates of the horn of Africa', *F3 Freedom from Fear Magazine*, April

2009. Online. Available:<http://www.unicri.it/news/article/0904-5_f3_3> (accessed 25 May 2017).

⁵⁴ M.L. Stiles, A. Kagan, E. Shaftel and B. Lowell, *Stolen Seafood: The Impact of Pirate*

addition to over exploitation, the foreign trawlers would use prohibited methods such as drift nets and dynamite, which destroyed entire habitats, affecting not only current fish stocks but also future marine resources.⁵⁵ The effects of IUU fishing included a decrease in the catches of the main local fish types (tuna, shark, lobsters, and shrimp) and in some cases the complete disappearance of certain species.⁵⁶ The mass of sharks per boat trip fell from over 600 kg in 1995 to just over 200 kg in 2005; similarly, lobster dropped from 450 kg to less than 100 kg; and other fish catch dropped from 200kg to around 40 kg.⁵⁷

In addition to IUU fishing, toxic waste dumping was another major concern. The UN Environmental Programme (UNEP) and Greenpeace investigated cases of illegal toxic

Fishing on Our Oceans, 2013. Online. Available:

<http://oceana.org/sites/default/files/reports/Oceana_StolenSeafood.pdf> (accessed 25 May 2017)

⁵⁵ UNEP, State of the Environment; G. Musse and M. Tako, 'Current status of marine fisheries in Somalia', in S. Lokman, M.S.N. Azhar, M.S. Nasir & M.A. Borowitzka (eds.), *Assessment and Monitoring of Marine System*, Kuala Terengganu: Universiti Putra Malaysia Terengganu, 1999, pp.255–26.

⁵⁶ FAO, Fishers; UNEP, State of the Environment.

⁵⁷ Ibid.

waste dumping in Somalia finding that the practice was rampant⁵⁸. The economic reasoning for dumping off the coast of Somalia was underscored by the lack of an effective central government, which meant that that disposal costs in Somali waters was US\$2.50 per ton compared to US\$250 per ton in Europe.⁵⁹ The 2004 Boxing Day Tsunami washed sealed containers of waste onto Somali beaches laying bare the extent of the dumping in Somalia.⁶⁰

⁵⁸ Greenpeace, *The Toxic Ships*, 2010. Online. Available: <http://www.greenpeace.it/Report-The-toxic-ship.pdf> (accessed 25 May 2017); UNEP, State of the Environment.

⁵⁹ United Kingdom Parliament, *Foreign Affairs Committee: Piracy off the Coast of Somalia, Written Evidence*, 2011. Online. Available: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfa/1318/1318we18.htm> (accessed 25 May 2017)

⁶⁰ BBC, 'Waves brought waste to Somalia', 2005. Online. Available: <http://news.bbc.co.uk/2/hi/africa/4312553.stm> (accessed 25 May 2017); B. Hussein, *The Evidence of Toxic and Radioactive Wastes Dumping in Somalia and its Impact on the Enjoyment of Human Rights*, Somacent Development Research Foundation, 2010. Online. Available: http://somalitalk.com/sun/toxic_waste_dumping_somalia.pdf (accessed 25 May 2017).

Locals were aware of these types of foreign encroachment.⁶¹ Moreover, these encroachments were often coupled with aggressive behaviours, with local fishermen reporting boats being rammed and nets being cut.⁶²

Well, we were fishing; we had two lion fish [*shark*] in the boat. Then all of a sudden two boats came to us. They shot, they fired shots. They came into our boat and then they beat us...He said to me unless you say I am a pirate, I am a thief, then they're going to throw you into the sea.⁶³

In interviews, it is these violations that were used by pirates as rationalizations for their attacks. It is important to note that these are self-identified, subjective statements. Nevertheless, there is consistency in this narrative as the 32 interviews (with 25

⁶¹ Integrated Regional Information Networks (IRIN), 'Somalia: Fishermen appeal for help over foreign fishing ships', 2006. Online. Available: <http://www.irinnews.org/Report/58369/SOMALIA-Fishermen-appeal-for-help-over-foreign-fishing-ships> (accessed 25 May 2017); Hussein, 'Evidence'.

⁶² IRIN, 'Somalia'; EJF, *Pirates and Profiteers*; FAO, *Fishery*; The Economist, 'Swimming against the tide', 2006. Online. Available: <http://www.economist.com/node/7262034> (accessed 25 May 2017).

⁶³ Testimony by Gabul Abdullahi Ali, in United States v. Mohammed Modin Hasan, Gabul Abdullahi Ali, Abdi Wali Dire, Abdi Moammed Gurewardher, Abdi Mohamed Umar, 2010, Volume 5 U.S. p.1131 & 1138.

separate individuals self-identifying as pirates) that were sourced by this author, all provided a similar account.⁶⁴ As a consequence, Somali piracy has been labelled 'defensive piracy'.⁶⁵ What is seen in these narratives of self-identified pirates, is that they neutralize their behaviour by denying the victim.⁶⁶ In the words of one interviewee, who was serving time for the crime of piracy in Puntland, 'If you hold hostage innocent people, that's a crime. If you hold hostage people who are doing illegal activities, like waste dumping or fishing, that is not a crime'.⁶⁷

Of all the cases of Somali piracy between 2001-2010, the CMPD shows that less than one per cent involved any form of theft.⁶⁸ Somali piracy is the capture of foreign vessels for ransom and this too is rationalized activity, as explained in another interview,

⁶⁴ Twyman-Ghoshal, *Understanding*.

⁶⁵ Weldemichael, 'Maritime corporate terrorism'.

⁶⁶ G. Sykes and D. Matza, D, 'Techniques of neutralization: A theory of delinquency', *American Sociological Review*, 1957, 22(6), 664-670.

⁶⁷ Interview with Sugule Ali in J. Gettleman, 'Q.& A. with a pirate: "We just want the money"', *The New York Times*, 30 September 2008. Online. Available:

<<http://thelede.blogs.nytimes.com/2008/09/30/q-a-with-a-pirate-we-just-want-the-money/>> (accessed 25 May 2017)

⁶⁸ Twyman-Ghoshal, *Understanding*.

There is no country in the world that does not take taxes. In a small country with no government, a small militia catches a ship and takes some taxes from them, and then releases them without harming or killing them, there is nothing wrong with that.⁶⁹

The vessel, cargo, and crew are in most cases left intact with relatively few casualties with the aim of ensuring a financial settlement. (It is important to note that as piracy attacks increased in the 2000s, the casualties increased as well.) These narratives suggest that piracy is fundamentally motivated by the acquisition of pecuniary gain, a form of primitive taxation.

Based on the CMPD, the most common vessels that are captured off the coast of Somalia are merchant ships, with tankers, bulk carriers, and container carriers making up 56.7 per cent of all the recorded incidents between 2001-2010.⁷⁰ Fishing vessels only made up 6.3 per cent of the recorded incidents for that same period, suggesting a notable discrepancy in the narratives presented and the reality of vessels that are targeted. Although this is partly a reflection of the focus of data collection agencies on merchant shipping, the lack of reporting by fishing vessels, and a high percentage of

⁶⁹ S. Reeve, 'Face to face with a Somali pirate', *BBC*, 2012 Online.

Available:<<http://www.bbc.co.uk/news/world-africa-17914920>> (accessed 25 May 2017)

⁷⁰ Twyman-Ghoshal, *Understanding*.

cases missing information on victim vessel type (29.8 per cent), it still raises an important question – why are Somali pirates targeting ships that are not the ones causing the problems?

It is clear from the trends in Somali piracy that over time piracy developed into a successful business. The *pioneer* pirates of the early 1990s had learnt to streamline hijacking operations; having built up an infrastructure for holding ships and sustaining the crew over the hostage period they created opportunities for local young men to become *novice* pirates. Although the rationalizations presented in the pirate narratives are supported by research (i.e., IUU fishing and toxic waste dumping were occurring off the coast of Somalia), over time the incentive for piracy changed. This is confirmed in the interviews analysed, with statements such as that of Idle,

The first decision was to defend our waters. After that a lot of money was made and more and more people got involved. Because of that it's turned into a business. There is no problem taking a ship. It will only be taxed and released safely.⁷¹

The Puntland coast, where the majority of piracy attacks originated became the ideal location for the business of piracy. Puntland has been described as a 'comfortably

⁷¹ Reeve, 'Face to face'.

chaotic haven', the advantage of this region was that it enjoyed relative stability but had a weak government.⁷² Puntland authorities did not share the legitimacy of neighbouring Somaliland (which declared independence in 1991 and has not been the source of any piracy attacks) and struggled with law enforcement. However, in contrast to southern Somalia, it had peace and relative security, providing a good environment for organized piracy to thrive.⁷³

In 2008, Somali piracy escalated by 300 per cent.⁷⁴ It is this dramatic escalation that compelled the use of counter-terrorism forces in the Indian Ocean to thwart Somali

⁷² R. Middleton, *Piracy in Somalia: Threatening Global Trade, Feeding Local Wars*, London: Chatham House, 2008; S. Hansen, *Piracy in the Greater Gulf of Aden: Myths, Misconceptions, and Remedies*, Norwegian Institute for Urban and Regional Research, NIBR Report 2009:29. Online. Available: <<http://www.qsdrc.org/document-library/piracy-in-the-greater-gulf-of-aden-myths-misconceptions-and-remedies/>> (accessed 25 May 2017); S. Bengali, 'At former British prison, Somali pirates tell their side', *McClatchy Newspaper Company*, 29 April 2009, para. 24. Online, Available: <<http://www.mcclatchydc.com/2009/04/29/67142/at-former-british-prison-somali.html>> (accessed 25 May 2017); Maouche, Piracy.

⁷³ B.J.Hesse, *Somalia: State Collapse, Terrorism and Piracy*, Abington: Routledge, 2011, pp.1-12.

⁷⁴ Twyman-Ghoshal and Pierce, 'Changing nature'.

attacks on merchant ships. The question that is important to ask here is whether the escalation of piracy in 2008 had a different motivation? Was piracy morphing into terrorism or was it fundamentally still the same phenomenon?

The 2008 escalation was caused by multiple factors that were a combination of governance failures from within Somalia and unwise international interventions.⁷⁵ This was already observed during Barre's regime, where repeated restructuring was founded upon allegiances with the world powers of the time. With the shift to a neoliberal economy, safety nets and controls on the market were removed. The extent of economic liberalization was further intensified with the collapse of the Barre regime, with the growth of the commercial economy surpassing pre-1991 figures.⁷⁶ Rampant liberalization brought an unequal distribution of wealth. Although there were more schools and higher education institutions than before 1991, these were accessible only

⁷⁵ Twyman-Ghoshal, *Undertanding*.

⁷⁶ B. Powell, R. Ford and A. Nowrasteh, 'Somalia after state collapse: Chaos or improvement?', *Journal of Economic Behavior and Organization*, 2008, 67(3-4), 657-670; P. Leeson, 'Better off stateless: Somalia before and after government collapse', *Journal of Comparative Economics*, 2007, 35(4), 689-710.

to those who could afford them.⁷⁷ Similarly, social services such as health, water, and transportation which were provided by private entities, were only accessible for a fee.⁷⁸

The internal governance failures that escalated the piracy problem are tied to the regional asymmetries that made Puntland, the stable but weak territory, the ideal environment for the piracy business. Puntland authorities exacerbated the situation when they subcontracted coast guarding duties to foreign firms. Particularly salient was that these foreign firms were authorized to finance their activities by providing fishing licenses to foreign fleets without any supervision by the Puntland authorities.⁷⁹ These companies employed and trained local fishermen as coast guards, when they left, these well-trained men became unemployed.⁸⁰ The Puntland government was unable to continue their employment due to funding shortages which translated into civil servants and local security forces being underpaid or not paid at all.⁸¹ This combination of distrust in the local government (due to the lack of transparency in the issuing of fishing

⁷⁷ United Nations Development Program (UNDP), *Human Development Report, Somalia*, 2001. Online. Available: <<http://hdr.undp.org/en/content/human-development-report-2001>> (accessed 25 May 2017).

⁷⁸ Ibid.

⁷⁹ Hansen, *Piracy*.

⁸⁰ Bahadur, *Pirates of Somalia*.

⁸¹ Hansen, *Piracy*.

licenses) and a general lack of legal opportunities for young men served to increase the pool of possible pirates in Puntland.

Unwise international interventions further exacerbated the problem. Essentially, foreign intervention in Somalia was largely driven by the role the country had or could have in a larger geopolitical strategy rather than meeting the needs of Somalia as a sovereign nation struggling to recover after the 1991 civil war. This was exemplified with the 2006 overthrow of the Islamic Courts Union (ICU). After the collapse of the Barre regime, Somalia's first semblance of a central government came in the form of the Transitional National Government (TNG) in 2000. This was the creation of the international community and lacked local buy-in and legitimacy. Due to security concerns, TNG government offices were located in the capital of Kenya rather than Somalia.⁸² When in 2006, the ICU came to power after a decade of efforts to gain authority, it was due to a collective sense of insecurity and unhappiness of Somalis who were yearning for stability and peace rather than a desire for a religious state.

⁸² S. Hansen, *Al-Shabaab in Somalia: The History and Ideology of a Militant Islamist Group, 2005-2012*, New York: Oxford University Press, 2013; C. Barnes and H. Hassan, 'The rise and fall of Mogadishu's Islamic Courts', *Journal of Eastern African Studies*, 2007, 1(2), 151-160; K. Menkhaus, 'The crisis in Somalia: Tragedy in five acts', *African Affairs*, 2007, 106(424), 357-390.

Under the ICU, piracy was actively prosecuted. As the ICU gained territory north of Mogadishu, pirate groups from Galmudug moved further north, to Puntland, to avoid prosecution. Puntland was not under the control the ICU, nevertheless during the 6 months of the rule of the ICU, piracy was reduced dramatically over the entire coast of Somalia.⁸³ However, the effect was short lived. The US was deeply concerned with an Islamic government in Somalia, concerns that were a based on fears in a post-9-11 environment and the rise of Al Shabaab. To ensure that the ICU was destabilized, the US engaged in several brazen activities. These included the assassination of ICU members, funding of local warlords to actively disrupt the ICU, and, together with the UN, supporting an Ethiopian military intervention to oust the ICU.⁸⁴

The effect of these activities was to provide more legitimacy to Al Shabaab, which gained momentum after the overthrow of the ICU.⁸⁵ In the escalation of piracy, Al Shabbab did not have a relationship with pirates as has been suggested by some sources.⁸⁶ Based on Islamic law, piracy is considered *haram*. In 2007 and 2008 Eyl in

⁸³ Bahadur, *Pirates of Somalia*.

⁸⁴ J. Pendergast and C. Thomas-Jensen, 'Blowing the horn', *Foreign Affairs*, 2007, 86(2), 59-74; Barnes and Hassan, 'Rise and fall'.

⁸⁵ Hansen, *Al Shabaab*.

⁸⁶ R. Middleton, *Piracy in Somalia*.

Puntland became the source of most piracy attacks from Somalia, continuing the same types of ransom attacks as before however now with a larger pool of *novice* pirates concentrated in a smaller area.⁸⁷

The escalation of piracy in 2008 was a result of a convergence of multiple factors that resulted in an escalation in piracy incidents; however, the nature of these incidents did not change. They were still seizures for ransom, still motivated by pecuniary gain, still a form of business that was normalized using narratives of exploitation. The scale of the problem changed, but it was still fundamentally the same problem.

The problem of labelling Somali piracy *terrorism*

From the foregoing discussion, it is clear that the aim of piracy is profit. Although the scale and modus operandi of Somali piracy is different in that it is focused on ransoming rather than theft, ransoming is not conceptually different from other profit-making enterprises as seen in piracy around the world. Somali piracy although unique, is an innovative adaptation, where individuals are striving to attain the goals of monetary gain and success using non-institutionalized means.⁸⁸ There is a marked difference in the goals of terrorism and piracy, this is confirmed for Somali based piracy activities.

⁸⁷ Bahadur, *Pirates of Somalia*.

⁸⁸ Merton, 'Social Structure and anomie'

Piracy off the coast of Somalia has elicited the deployment of a previously unprecedented military counter piracy operations which has involved 40 countries and three coalitions: the European Union Naval Force Somalia (EUNAVFOR) through Operation Atalanta, the Standing Naval Group of the North Atlantic Treaty Organization through Operation Ocean Shield, and the Combined Task Force 151. One of the reasons for this level of response has been the scale of the disruption piracy has caused international trade, resulting in rising insurance rates, the increased use of on-board security, the need to reroute cargo ships, and even the cancelation of routes.⁸⁹ It is estimated that the cost of piracy was US\$18 billion per year between 2005-12.⁹⁰ However, it is notable that trade disruption has not triggered this level of international response before, for instance piracy in the Malacca Straits which until the Somali problem was the piracy hotspot. Therefore it is clear that another reason for the scale of the response has been the rhetoric around the conflation of piracy and terrorism, both of which are thriving in a failed states.⁹¹

⁸⁹ World Bank, *The Pirates of Somalia: Ending the Threat, Rebuilding the Nation*, 2013.

Online. Available:

<<http://documents.worldbank.org/curated/en/182671468307148284/The-pirates-of-Somalia-ending-the-threat-rebuilding-a-nation>> (accessed 25 May 2017).

⁹⁰ Ibid.

⁹¹ Singh and Bedi, 'War on piracy'.

The risk of maritime terrorism off the coast of Somalia has been presented extensively by academics and journalists.⁹² In 2005, this became a national strategy for the US when the Bush administration brought maritime security under the ambit of the War on Terror.⁹³ This was based on the fear that piracy could be used for terrorism and with the intention of promoting the use of the SUA Convention as the appropriate legal standard for both.⁹⁴ By December 2008, the UN Security Council suggested that in addition to the SUA Convention, both the Hostage Taking Convention 1979 and the Terrorist Financing Convention 1999 could apply to piracy cases. The association was advantageous for advancing counter-terrorism ambitions, which relied on increased military spending for the purposes of enhancing national security under the Bush administration.⁹⁵

⁹² Burgess, *World*; Snoddon, 'Piracy and maritime terrorism'; G. Luft and A. Korin, 'Terrorism goes to sea', *Foreign Affairs*, 2004, 83(6), 61-71.

⁹³ Singh and Debi, 'War on piracy'.

⁹⁴ Ibid.

⁹⁵ Ibid.

The reality, however, is that the risk has not materialized.⁹⁶ Although maritime terrorism can and does occur, based on the Global Terrorism Database, only 0.2 per cent (199 out of 98,000) of all recorded attacks were directed at maritime targets.⁹⁷ The risk of maritime terrorism is much lower compared to land based forms; despite the opportunity, maritime terrorism has not been a strategy of non-state actors.

In Somalia, threats of Al Shabaab and piracy have largely stayed distinct. Even in the one case where Al Shabaab did control a pirate port in Galmudug (central Somalia) in 2010, the motivation continued to focus on profit, rather than using it to launch terrorist attacks at sea.⁹⁸ This suggests that rather than piracy becoming a tool for terrorism, there was a conscious effort to 'avoid involvement in the wider War on Terror'.⁹⁹ It continues to be unlikely that Somali piracy will morph into politically motivated

⁹⁶ Chalk, *Maritime Dimension*; M. Murphy, *Small Boats, Weak States Dirty Money: Piracy and Maritime Terrorism in the Modern World*, New York: Columbia University Press, 2009; J. Engels, 'Floating bombs encircling our shores: Post 9/11 rhetoric of piracy and terrorism', *Cultural Studies Critical Methodologies*, 2007, 7(3), 326-349.

⁹⁷ V. Asal and J. Hastings, 'When Terrorism Goes to Sea: Terrorist Organizations and the Move to Maritime Targets', *Terrorism and Political Violence*, 2015, 27(4), 722-740.

⁹⁸ Hansen, *Al Shabaab*.

⁹⁹ Ibid., p.111.

attacks.¹⁰⁰ In interviews with pirates conducted in various studies, the narrative has consistently been to deny any ties with Islamists and to reaffirm that attacks are not politically motivated.¹⁰¹

Nevertheless, the conflation of piracy and terrorism has continued. This has another notable outcome: it has financially benefitted maritime insurance and private military companies.¹⁰² The rhetoric, which is perpetuated by insurance companies through the war risk designation has resulted in a 300 per cent rise in insurance rates from 2008-12.¹⁰³ In 2011, this translated into marine insurers earning US\$635 million from piracy-

¹⁰⁰ World Bank, *Pirates*; Singh and Bedi, 'War on piracy'.

¹⁰¹ Twyman-Ghoshal, *Understanding*; Bahadur, *Pirates of Somalia*; K. Hamilton, 'The piracy and terrorism nexus: Real or imagined?', *Proceedings of the 1st Australian Counter Terrorism Conference*, Edith Cowan University, 2010. Online. Available: <<http://ro.ecu.edu.au/cgi/viewcontent.cgi?article=1002&context=act>> (accessed 25 May 2017)

¹⁰² A. Leander, 'The power to construct international security: On the significance of private military companies', *Millennium: Journal of International Studies*, 2005, 33(3), 811-815.

¹⁰³ A. Bowden and S. Basnet, *The Economic Cost of Somali Piracy 2011*, One Earth Future Foundation. Online. Available:

related insurance premiums, compared to US\$160 million that Somali pirates earned in ransoms.¹⁰⁴ The war risk designation for ships transiting the Indian Ocean has translated into a US\$1 billion industry for private military companies.¹⁰⁵

The common approach to dealing with the threat of Somali piracy has been to provide a deterrence-based solution. This has focused on reducing the favourable opportunities for piracy, including greater security on merchant ships, sailing further away from the coast of Somalia, and increasing the military presence of international naval forces in the Gulf of Aden and the Indian Ocean.¹⁰⁶ This has correlated well with counter-terrorism policies, providing further support for the conflation of the two risks. Although it is largely appreciated that military presence is insufficient to stop piracy, most policy recommendations are still founded on notions that piracy can be contained using a law

<http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf>

(accessed 25 May 2017).

¹⁰⁴ Ibid.

¹⁰⁵ Singh and Bedi, 'War on piracy'.

¹⁰⁶ J. Lindley, *Somali Piracy: A Criminological Perspective*, Abington: Routledge, 2016; V.C. Figliomeni, 'Countering piracy and other organized illicit activities in East Africa: Piracy, Illegal activities of organized crime and failed states', in S.C. Galletti (ed.), *Piracy and Maritime Terrorism: Logistics, Strategies, Scenarios*, Amsterdam: IOS Press, 2012.

enforcement model.¹⁰⁷ International military counter-piracy efforts have been credited with reducing piracy in 2012.¹⁰⁸ However, the reduction of piracy in 2012 was preceded by nearly a decade of piracy displacement and an increase in casualties which has also been related to the counter-piracy efforts. The threat of Somali piracy expanded with an ever-widening radius around the coast of Somalia, by 2011 vessels were instructed to sail 1000 nm off the coast of Somalia an 'area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E'.¹⁰⁹ In addition, the increased militarization of the Indian Ocean and the Gulf of Aden also resulted in a higher number of casualties in piracy, from 2 recorded deaths in 2005, to 32 in 2011.¹¹⁰

¹⁰⁷ Middleton, *Piracy*; Lindley, *Somali Piracy*.

¹⁰⁸ Alessi and Hanson, *Combatting Maritime Piracy*; A.A.Elmi, L. Affi, W.A. Knight, and S. Mohamed, 'Piracy in the horn of Africa Waters: Definitions, history and modern causes', *African Security*, 2015, 8(3), 147-165; The Guardian, 'No Somali pirate hijacking in nearly a year, says UN', 2013 Online. Available: <<https://www.theguardian.com/world/2013/may/03/somali-pirate-hijacking>> (accessed 25 May 2017)

¹⁰⁹ Best Management Practices for Protection against Somalia Based Piracy (BMP4), 2011, p.4. Online. Available: <http://eunavfor.eu/wp-content/uploads/2013/01/bmp4-low-res_sept_5_20111.pdf> (accessed 25 May 2017)

¹¹⁰ Singh and Bedi, 'War on piracy'.

The level of militarization and coalition of various navies from around the world was accompanied by a gamut of responses to piracy. The consequences have ranged from not engaging with pirate skiffs/motherships; giving pirates food and supplies, then letting them go; firing warning shots at suspicious vessels; killing pirates; sinking pirate boats; confiscating equipment and setting pirates out to sea without provisions; capturing and processing pirates through a foreign criminal justice system; and more recently bombing the coast to destroy boats and equipment of *alleged* pirates.¹¹¹ The root of this range of

¹¹¹ Hansen, *Piracy*, p. 49; J. McCurry, 'Eight Somali pirates killed as South Korea rescues freighter crew', *The Guardian*, 21 January 2011. Online Available: <<http://www.guardian.co.uk/world/2011/jan/21/south-korea-rescue-somali-pirates>> (accessed 25 May 2017); National Broadcasting Company, 13 April 2009, 'Captain freed after snipers kill Somali pirates'. Online. Available: <http://www.msnbc.msn.com/id/30178013/ns/world_news-africa/t/captain-freed-after-snipers-kill-somali-pirates/#.T9EJqcXwrAk> (accessed 25 May 2017); BBC, 'Dutch marines kill Somali pirates, Iranian boat freed', 4 April 2011. Online. Available: <<http://www.bbc.co.uk/news/world-africa-12962900>> (accessed 25 May 2017); BBC, 'Freed Somali pirates 'probably died' – Russia source', 11 May 2010. Online. Available: <<http://news.bbc.co.uk/2/hi/8675978.stm>> (accessed 25 May 2017); K. Hoesslin, 'India: Bad cop in a predicament?', *Strategic Insights*, 2011, 32(1), 4-7; A. Guled and S. Lekic, 'EU navy, helicopters strike pirate supply center', 15 May 2012. Online. Available: <<https://www.usnews.com/news/world/articles/2012/05/15/eu-carries-out-first-strikes-on-somali-pirates>> (accessed 25 May 2017).

law enforcement tactics stems from the lack of universally applicable rules of engagement with pirates. As outlined earlier, the international law on piracy is dated and the diverse fleets involved in the coalition forces are subject to their own national laws and an unprecedented Security Council Resolutions that allowed unprecedented access to the territory of a sovereign nation.¹¹²

The problem of a deterrence focused model to deal with piracy is captured well in the words of a US Navy Fifth Fleet, 'We patrol an area of more than one million square miles. The simple fact of the matter is that we can't be everywhere at one time'.¹¹³ The size of the ocean is too large for a policing-only approach. Patrols are short-term solutions, they 'ultimately are like trimming the leaves of a particularly invasive weed rather than pulling it out by its roots'.¹¹⁴ The usefulness of patrols to prevent piracy attacks is based on certainty of being apprehended, which is the effective part of

¹¹² P. Reynolds, 'Rules frustrate anti-piracy efforts', *BBC*, 9 December 2008. Online.

Available: <<http://news.bbc.co.uk/2/hi/7735144.stm>> (accessed 25 May 2017)

¹¹³ M. Mazzetti and S. Otterman, 'U.S. Captain is hostage of pirates; navy ship arrives',

The New York Times, 9 April 2009. Online. Available:

<<http://www.nytimes.com/2009/04/09/world/africa/09pirates.html>> (accessed 25 May 2017).

¹¹⁴ Young, *Contemporary Maritime*, p.3.

deterrence theory.¹¹⁵ Therefore, to have sustained value it would require a continued elevated level of presence in the Indian Ocean as well as maintaining the International Recommended Transit Corridor through the Gulf of Aden, which is costly and fundamentally unsustainable.¹¹⁶

It is also important to note that the deterrent effect is undermined in the eyes of Somalis when coalition forces do not respond to IUU fishing or toxic waste dumping off the coast of Somalia, despite the existence of international legislation that tackle both. Although there have been several recommendations that IUU fishing requires international attention, this has remained notably absent in most recommendations for multinational fleets that were mandated to combat piracy.¹¹⁷ Peter Hinchcliffe of the International Chamber of Shipping believes that warships protecting fisheries as well as international trade vessels would be an important message to the people of Somalia (Author Interview, February, 2010). This is particularly salient since some of the countries

¹¹⁵ D.S. Nagin, 'Deterrence in the Twenty-First Century', *Crime and Justice*, 2013, 42(1), 199-264.

¹¹⁶ World Bank, *Pirates*.

¹¹⁷ A notable exception is the Norwegian Institute for Urban and Regional Research Report by Hansen, *Piracy*, p.50; Twyman-Ghoshal, *Understanding*, p.227-8; EJF, *Pirates and Profiteers*; High Seas Task Force, *Closing the Net*; UNEP, *The State of the Environment*; IUCN, *Country Environmental Profile*.

contributing assets to counter-piracy efforts are the same countries from which the IUU fishing fleets originate from.¹¹⁸

The extended period without a central authority and the continued ignorance by the international community of the smaller state formations have disadvantaged Somalia on the global stage. Whilst the economy has improved since the collapse of the central state, the hardship of an unfettered market economy in Somalia is felt particularly by those less fortunate in society and those that are politically marginalized.¹¹⁹ The reforms are partial, they are based on capital, services, and goods which are only available to those that have financial while others face hunger and malnutrition.¹²⁰

The long-term solution to piracy needs to come from within the country. The pool of would-be pirates need pro-social methods to achieve their goals, viable alternatives to piracy. To achieve this, the international community needs to shift its focus from military

¹¹⁸ J. Hughes, *The Piracy-illegal Fishing Nexus in the Western Indian Ocean*, Oceans Beyond Piracy, 2011. Online. Available: <http://oceansbeyondpiracy.org/publications/piracy-illegal-fishing-nexus-western-indian-ocean> (accessed 25 May 2017)

¹¹⁹ A. De Waal, 'The shadow economy', *Africa Report*, 1993, 38(2), 24-29.

¹²⁰ Ibid.

solutions to governance and development. Such a shift would allow for funding priorities to change; instead of increasing levels of arms spending, these resources should instead be diverted to poverty alleviation and local development.¹²¹ The cost of one frigate deployed in the Gulf of Aden for six months is equivalent to the wages of 100,000 police officers or civil servants for the same period.¹²²

For meaningful change to occur, the international community needs to understand and support non-conventional forms of governance evident in various parts of Somalia.¹²³ Somalia has developed a unique form of civic governance that is dispersed horizontally, where citizens and groups articulate their interests, mediate their differences, exercise their legal rights and obligations within smaller sub state formations.¹²⁴ Rules, institutions, and practices are created by the civil society, clan authority, and customary

¹²¹ S. Bateman, 'Assessing the threat of maritime terrorism: Issues for the Asia-Pacific region', *Security Challenges*, 2006, 2(3), 77-91.

¹²² P. Chalk, 'Piracy off the Horn of Africa: Scope, dimensions, causes and responses', *Brown Journal of World Affairs*, 2010, 16(2), 89-108.

¹²³ Twyman-Ghoshal, *Understanding*; A.M. Cawsey, *The Success of Clan Governance in Somalia: Beyond Failed State Discourse*, Somali Think Tank, 2014. Online. Available: < <http://somalithinktank.org/wp-content/uploads/2014/05/Latest-1.pdf>>(accessed 25 May 2017)

¹²⁴ Twyman-Ghoshal, *Understanding*.

law providing for an alternative social control mechanism.¹²⁵ Support needs to be diverted towards local governments to help strengthen this form of social control. Amongst other things, for meaningful piracy reduction this would need to include locally owned and culturally acceptable forms of law enforcement.¹²⁶ In addition, vocational training and reintegration programs for former pirates would provide a pathway out of piracy and into pro-social activities.¹²⁷ Funding needs to be directed at alternative sources of income for coastal communities.¹²⁸ A key factor specifically for reducing piracy is that the local community disapproves of this maritime crime and actively acts to reduce it. Funds need to be directed at awareness campaigns and incentives for local clan elders that ensure the community collectively condemns piracy.¹²⁹

In early 2017 piracy off the coast of Somali once again is making headlines, the same year that Somalia was listed as one of the four countries facing the largest humanitarian

¹²⁵ Cawsey, *Success of Clan Governance*.

¹²⁶ Singh and Bedi, 'War on piracy'.

¹²⁷ C. Bueger, 'Learning from piracy: future challenges for maritime security governance', *Global Affairs*, 2015, 1(1), 33-42.

¹²⁸ A. Shortland and F. Varese, 'The protector's choice: An application of protection theory to Somali piracy', *British Journal of Criminology*, 2014, 54, 741–764.

¹²⁹ Ibid.; World Bank, *Pirates*.

crisis since the UN was founded in 1945.¹³⁰ Understanding that Somali piracy is not terrorism and identifying what truly triggers Somali piracy is still important. Dealing with the issue requires evidence-based policies that are founded on research of the precursors of piracy, rather than simply relabelling the problem. Targeting resources at the societal factors provides a meaningful alternative to enhanced militarization. Conflating piracy with terrorism to support excessive militarization will only serve to embolden frustrated locals and increase levels of violence while misdirecting funds essential for human security. To find a solution to piracy requires understanding the root causes of the problem, allowing Somalis agency in their country's development and implementing local solutions that are perceived as legitimate and just.

¹³⁰ Al Jazeera, 'Famine "largest humanitarian crisis in history of UN"', 11 March 2017. Online. Available: <<http://www.aljazeera.com/news/2017/03/famine-united-nations-170310234132946.html>>(accessed 25 May 2017)