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GOING ASHORE TO ADDRESS SOMALI PIRACY – A STEP TOO FAR?

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Abstract

Piracy in the waters off the coast of Somalia has grown considerably in recent years due to the proximity of busy shipping lanes and the lack of rule of law in Somalia. Analysis of data provided by the International Maritime Organization shows attacks rose from eleven in the first quarter of 2008, to fifty-one by the last quarter, for a total of 135 attacks, of which forty-two were successful. The year 2009 showed the continued growth of Somali pirate operations with a total of forty-seven successfully hijacked vessels out of 217 attacks.

A considerable number of commentators accept that the root causes of Somali piracy are ashore and contend therefore that the complete solution to Somali piracy is ashore and lies in resolving the chaos rampant in Somalia since 1991. However, the threat represented by modern Somali piracy is not large when the numbers of hijacked ships are contrasted against the total volume of shipping that passes by the Horn of Africa on an annual basis, representing less than 0.25% of the total shipping.

The complexity of the problems ashore in Somalia is so great that an international military effort to restore rule of law as a precursor to eliminating piracy is unjustified in light of the current threat posed by Somali pirates. Instead, effective naval intervention can reduce pirate attacks to an acceptable level. Naval forces have proven adequate in the past to reduce piracy to acceptable levels and the reduction in percentages of successful Somali pirate attacks in 2009 demonstrate the current naval presence is having an effect, despite limited assets and the large area to be patrolled. Unless the threat posed by Somali piracy grows to an extent that justifies intervention ashore in the federal state of Somalia, an offshore response is adequate to deter the current level of piracy.

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CHAPTER 1 – INTRODUCTION

Piracy is perhaps best known today as a historical relic from the time of privateers

and pirates in the Caribbean Sea during the 17th and early 18th century and forms the stuff

of legends and commercial exploitation in the form of movies and alcohol. However, it

has never completely disappeared and has been active worldwide in the intervening years.

The Strait of Malacca in particular has been a pirate hotspot since at least the fourteenth

century, partially due to its confined waters, partially due to lax law enforcement, and

partially due to piracy being an accepted way of life in the area. Piracy in this area

experienced a resurgence in the 1990s with the hijacking of oil tankers which threatened

the oil supply moving between the Gulf States and Asia. By the early 21st century the

local authorities in Indonesia, Malaysia, and Singapore had taken effective coordinated

action that saw the threat of piracy drop significantly by 2004 and subsequently fade from

global awareness.

Many people, perhaps thinking piracy dormant, were surprised when Somali

piracy started making the news in 2006. Somalia, with its long history of conflict,

poverty, violence, and previous United Nations interventions, resonated with Western

governments in a way that the Strait of Malacca had not, despite having similar numbers

of pirate attacks. Modern piracy, and in particular the extensive pirate activities off the

coast of Somalia, was compellingly brought to the attention of North Americans in April

2009 when American special forces marksmen killed three pirates who had held Captain

Richard Phillips of the merchant ship *Maersk Alabama* captive for a period of five days

aboard a life boat. While United States (U.S.) interest in Somali piracy predates this

event by several years, the gripping rescue and 24-hour coverage on television news

networks ensured this issue was visible to a wider public. Starting with attacks on small

vessels close to shore, Somali pirates gradually improved their techniques and ability to

cover a much larger area. By January 2010 Somali pirates demonstrated sufficient

sophistication to take control of ships far out to sea when they seized the Motor Vessel

Asian Glory, a British flagged car carrier bound for Saudi Arabia from Singapore, 550

nautical miles offshore.[1]

Somali Piracy

Piracy in the waters off the coast of Somalia has grown considerably in recent

years due to the proximity of busy shipping lanes and the lack of rule of law in Somalia

and Somali waters. Analysis of data provided by the International Maritime Organization

(IMO) shows attacks rose from eleven in the first quarter of 2008, to fifty-one by the last

quarter, for a total of 135 that year.[2] This sharp spike in Somali piracy helps explain the

international interest which has developed since 2008; naval task forces under Europe and

U.S. leadership were deployed and a Maritime Security Patrol Area established. Reaction

by Somali pirates was prompt and by late 2009 they had further broadened their area of

operations to include parts of the Red Sea, the Strait of Bab-el-Mandeb, and Oman.[3]

Piracy originating from the failed state of Somalia is noticeably expanding in terms of

area of operations and frequency of attacks. Due to the proximity of important global

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[1] CBC News, "British-Flagged Ship Seized off Somalia," *Canadian Broadcasting Corporation* January 2, 2010, http://www.cbc.ca/world/story/2010/01/02/pirates-somalia.html (accessed January 2, 2010).

[2] United Nations, International Maritime Organization, "Piracy in Waters off the Coast of Somalia," United Nations, http://www.imo.org/home.asp?topic_id=1178 (accessed December 30, 2009).

[3] International Maritime Bureau, "Unprecedented Increase in Somali Pirate Activity," ICC Commercial Crime Services, http://www.icc-ccs.org/index.php?option=com_content&view=article&id=376:unprecedented-increase-in-somali-pirate-activity&catid=60:news&Itemid=51 (accessed January 4, 2010).

shipping routes, and the natural choke point of the Gulf of Aden for vessels using the

Suez Canal, Somali piracy affects more than just the coastal shipping in the immediate

vicinity of Somali territorial waters and thus has a global effect.

Figure 1 – Map of Somalia[4]

Globalization has tied national economies together in such a way that a cost-

effective method of shipping goods over long distances is essential. Ocean shipping,

currently numbering 46,000 merchant vessels,[5] with its large volume, reasonably quick

speeds and low costs, fills a role that enables the free flow of commerce. This relatively

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[4] "Somalia," Merriam-Webster, Incorporated, http://www.merriam-webster.com/cgi-bin/nytmaps.pl?somalia (accessed January 4, 2010).

[5] Efthimios E. Mitropoulos, "Speech to the Canadian Marine Pilots' Association: First Biennial Congress" (Quebec City, International Maritime Organization, September 1, 2005), http://www.imo.org/Newsroom/mainframe.asp?topic_id=1028&doc_id=5256 (accessed December 30, 2009).

inexpensive method of moving bulk goods is what facilitates global trade and the import-export driven economies of much of the developed world. The United Nations (UN) Conference on Trade and Development Secretariat's annual *Review of Maritime Transport* noted that over four-fifths of all international commerce is shipped by sea, with highly developed economies shipping an even higher proportion.[6] Without this reasonably economical method of moving goods long distances, the majority of the globe would likely experience a lower standard of living, or at least a lower standard than that which the developed world currently enjoys.

Horn of Africa – a Strategic Location

The strategic location of the Horn of Africa makes piracy off the coast of Somalia particularly worthy of note. Somalia is strategically situated to cover both the southern approach to the Suez Canal and the western approach to the Persian Gulf. The International Maritime Organization (IMO) estimates that twelve percent of crude oil shipped by sea and almost a tenth of total global commerce transit the Gulf of Aden annually.[7] It is the nature of the cargoes carried in these waters, namely crude oil, that has such global effects when interfered with. Author and sailor John Burnett calculated that an average Very Large Crude Carrier (VLCC) of 300,000 tons displacement transports "sufficient [crude oil] to provide fuel oil to the entire U.S. Northeast during the winter for ten days."[8] The capture of several VLCC by pirates therefore would have an

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[6] *Review of Maritime Transport, 2009* (Geneva: United Nations, Conference on Trade and Development Secretariat,[2009]), http://www.unctad.org/en/docs/rmt2009ch1_en.pdf (accessed December 30, 2009).

[7] United Nations, International Maritime Organization, *Piracy in Waters off the Coast of Somalia*.

[8] John S. Burnett, *Dangerous Waters. Modern Piracy and Terror on the High Seas* (New York: Penguin Group, 2003), 16.

impact on the world economy, temporarily driving the cost of fuel up and having follow-on economic effects. Certainly the economic loss is a concern; moreover the potential for environmental disaster from a pirate boarding gone wrong, or even attackers deliberately damaging the ship, could be significant.

The Threat and Current Response to Somali Piracy

The threat represented by modern Somali piracy is not large when contrasted against the total volume of shipping that passes the Horn of Africa on an annual basis. Estimates of the number of ships transiting the Gulf of Aden vary between 21,000[9] and 33,000[10]. If the number of Gulf of Aden transits is compared with the total number of pirate attacks, only 0.5% of shipping is affected; this figure is a relatively small portion of the vessels using the passage every year. While even the loss of a single VLCC can have very minor ripple effects on global economies, impacting the cost of fuel and driving shipping insurance costs higher, it does not alone represent a major global threat. However, if pirate attacks succeed in convincing shipping companies to avoid the Horn of Africa, or pirates manage to take a ship containing weapons which could further destabilize a volatile area; it then becomes a more noteworthy threat.

Combating piracy was a core role of the world's navies in the age of sail and has continued through the ages: against the North African Corsairs; pirates in the Malacca Straits; Indian Ocean; and the China Sea. Today, naval ships are employed in this role off

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[9] Milan Vego, "Counter-Piracy: An Operational Perspective," *Tidskrift i Sjöväsendet* 2009, no. 3 (2009), 171, http://www.koms.se/ul_pdf/382_Vego.pdf (accessed December 29, 2009).

[10] United Nations, International Maritime Organization, *Piracy in Waters off the Coast of Somalia*.

Somalia's coast. Maritime forces of the North Atlantic Treaty Organization (NATO)[11]

member states in particular have embraced this tasking, despite no definition of piracy

appearing in NATO's 2009 edition of the *Glossary of Terms and Definitions*. This

enthusiasm reflects the fact that deploying naval forces is relatively quick, has an

immediate effect, and runs little risk for the nation of becoming ensnared in an escalating

cycle of violence ashore. Naval forces have implemented a convoy system, developed a

code of practice for merchant ship self-defence, established regular patrols, and opened a

regional piracy coordination centre. These naval efforts have succeeded in reducing the

number of successful attacks, despite the overall numbers of attempted attacks increasing,

and have enabled the continued use of this significant shipping lane.

What Others Have Said About Modern Somali Piracy

Somali piracy is a topical subject that has generated much discussion as to its

cause and the best approach to address the problem. There is general agreement that the

root causes of piracy include a permissive environment ashore. Robert D. Kaplan, a

senior fellow at the Center for a New American Security, is typical of this consensus

when he notes: "Piracy is the maritime ripple effect of anarchy on land. Somalia is a

failed state and has the longest coastline in mainland Africa, so piracy flourishes

nearby."[12] Raymond Gilpin, an analyst with the U.S. Institute of Peace opines: "The

upsurge in attacks by Somali pirates between 2005 and mid-2009 reflects decades of

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[11] North Atlantic Treaty Organization, *Glossary of Terms and Definitions (AAP-6)* (Brussels, Belgium: NATO Standardization Agency, 2009).

[12] Kaplan, Robert D. "Anarchy on Land Means Piracy at Sea." *The New York Times,* April 11, 2009, sec. World, http://www.nytimes.com/2009/04/12/opinion/12kaplan.html?_r=1 (accessed November 28, 2009).

political unrest, maritime lawlessness and severe economic decline."[13] The Nigerian

ambassador to the United Nations, Joy Ogwe, stated in December 2008: "It is because we

are not engaged on the ground that we see so much threat on the seas."[14] A report

prepared by Congressional Research Service concluded: "The increase in pirate attacks

off the Horn of Africa is directly linked to continuing insecurity and the absence of the

rule of law in war-torn Somalia."[15]

The Solution to Somali Piracy is Ashore?

A considerable number of commentators accept that the root causes of Somali

piracy are ashore and contend that therefore the complete solution to Somali piracy is also

ashore and lies in resolving the chaos that has been rampant in Somalia since 1991.

Patrick Lennox, the J.L. Granatstein Postdoctoral Fellow at the University of Calgary,

argues that pirates originating from Somalia have their roots in the breakdown of the

federal Somali state. He reasons that: "Accordingly, any comprehensive solution to the

problem will have to involve operations on the ground in that country to stabilize the state

itself, as well as to unsettle pirate sanctuaries and destroy pirate infrastructure."[16] This

viewpoint is echoed by Martin N. Murphy, an analyst with the *Center for Strategic and*

Budgetary Assessments: "Piracy is a land-based problem that demands land-based

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[13] Raymond Gilpin, *Counting the Costs of Somali Piracy* (Washington, DC: United States Institute of Peace,[2009]), http://www.usip.org/resources/counting-the-costs-somali-piracy (accessed January 29, 2010).

[14] MacFarquhar, Neil. "U.S. Proposes Going Ashore to Hunt Pirates." *The New York Times,* December 10, 2008, New York, sec. Africa, http://www.nytimes.com/2008/12/11/world/11nations.html (accessed March 12, 2010).

[15] Lauren Ploch and others, *Piracy Off the Horn of Africa* (Washington, DC: Congressional Research Service, [2009]), http://www.fas.org/sgp/crs/row/R40528.pdf (accessed December 26, 2009).

[16] Patrick Lennox, *Contemporary Piracy off the Horn of Africa* (Calgary, AB: Canadian Defence & Foreign Affairs Institute, 2008), 3.

solutions. Naval action can, under the right circumstances and as part of a coherent political strategy, interdict and deter piracy but it can never solve it alone."[17] Emiliano Alessandri reported that a June 2009 conference on *Addressing the Resurgence of Sea Piracy: Legal, Political and Security Aspects* had concluded: "Only restoring a stable and accountable government in Somalia and creating better conditions for the Somali people, especially the young people, will ultimately be able to defeat piracy."[18] A December 2009 conference sponsored by the World Peace Foundation, likewise noted: "Every expert agrees that the scourge of maritime piracy can best be reduced by turning today's Somali-based pirates into law-abiding, productive citizens on land." Peter Chalk and Laurence Smallman observed in *Jane's Intelligence Review* that "piracy will never be eradicated unless measures are taken on land as well."[19] The *International Chamber of Shipping* echoes these beliefs in their 2009 Annual Report: "The ultimate solution, of course, which is really beyond the influence of the industry, will be to restore law and order within Somalia itself."[20]

However, going ashore to resolve the chaos in Somalia is a complex task and one that does not appear to have any significant support from major governments. Murphy

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[17] Martin N. Murphy "Suppression of Piracy and Maritime Terrorism: A Suitable Role for a Navy?" *Naval War College Review* 60, no. 3 (Summer, 2007), 42, https://www.usnwc.edu/getattachment/53a6b24e-4c7e-44f5-bcf9-00d3ac9ee9ea/Suppression-of-Piracy-and-Maritime-Terrorism--A-Su (accessed February 1, 2010).

[18] Emiliano Alessandri, "Addressing the Resurgence of Sea Piracy: Legal, Political and Security Aspects" (Rome, Istituto Affari Internazionali, June 16, 2009), http://www.iai.it/pdf/DocIAI/iai0916.pdf (accessed December 29, 2009).

[19] Chalk, Peter and Laurence Smallman. On Dry Land - the Onshore Drivers of Piracy. *Jane's Intelligence Review,* July 3, 2009, http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2009/jir10679.htm@current&Prod_Name=JIR&QueryText= (accessed January 12, 2010).

[20] International Chamber of Shipping, *Annual Review 2009* (London, UK: International Shipping Federation,[2010]), http://www.marisec.org/AnnualReview09.pdf (accessed March 13, 2010).

concedes that the U.S. government currently has demonstrated no political desire to intervene militarily on the ground in Somalia.[21] This reluctance may be linked to the ill-fated UN intervention in Somalia between 1992 and 1993. It is probably also linked to a desire to avoid another costly nation building exercise that has limited prospects of either quick or lasting effects.

Going Ashore to Address Somali Piracy – a Step Too Far?

Somali piracy is a complex problem wide in scope that challenges nations and commerce around the world. The current international response to Somali piracy consists primarily of a naval approach to managing/addressing this problem and is having some success at reducing the number of successful attacks. Critics of this approach, including Members of the European Parliament, Special Representative of the UN Secretary-General for Somalia Ahmedou Ould-Abdallah, and the Commander of U.S. Naval Forces Central Command, complain that this approach is insufficient for a number of reasons. Commentators argue that an exclusively naval response to the issue will effectively treat the symptoms of the issue but is unlikely to be a permanent solution since ships at sea cannot address the root causes ashore. They contend that the best approach to dealing with Somali pirates involves ground based security solutions that can address the root causes ashore in Somalia, especially the pirates' shore bases of operations and lack of other employment options. However, an examination of the numbers of attacks reveals that the threat posed by Somali piracy is relatively small. Approximately one half of a percent of ships transiting the Gulf of Aden were attacked in 2008. This situation led to a

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[21] Martin N. Murphy "Somali Piracy: Not just a Naval Problem." Center for Strategic and Budgetary Assessments. http://www.csbaonline.org/4Publications/PubLibrary/B.20090417.Somali_Piracy/B.20090417.Somali_Piracy.pdf (accessed February 15, 2010).

ten-fold increase in insurance costs for commercial shipping and an estimated aggregate ransom pay out of $80 million U.S. in 2008.[22] Lloyd's List reported that sixty-seven ships were lost at sea globally in 2009.[23] This number represents forty-five percent more ships than were successfully hijacked by Somali pirates and puts the temporary losses due to hijacking in perspective.

The complexity of the problems ashore in Somalia is so great that an international military effort to restore rule of law as a precursor to eliminating piracy is unjustified in light of the current threat posed by Somali pirates. Instead, effective naval intervention can reduce pirate attacks to an acceptable level. Naval forces have proven adequate in the past to reduce piracy to acceptable levels and the reduction in percentages of successful Somali pirate attacks in 2009 demonstrate the current naval presence is having an effect, despite increasing numbers of attacks, limited military assets and the large area to be patrolled. Timeless techniques such as convoying and better protecting the merchant ships through self-defence measures have led to a declining ratio of successful attacks. Further enhancements can be expected as legal frameworks are improved and better cooperation achieved between merchant shipping and naval units as counter-piracy operations gain experience. Unless the threat posed by Somali piracy grows to an extent that justifies intervention ashore in the federal state of Somalia, an offshore response is adequate to deter the current level of piracy.

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[22] Claude Berube, "Marine Corps: Private Security Companies and Piracy," *Jane's Intelligence Review* 21, no. 3 (13 Feb 2009, 2009), 34, http://www4.janes.com/subscribe/jir/doc_view.jsp?K2DocKey=/content1/janesdata/mags/jir/history/jir2009/jir10577.htm@current&Prod_Name=JIR&QueryText=.

[23] Julian Macqueen, "Casualties Decline in 2009," Lloyd's List, http://www.lloydslist.com/ll/news/casualties-decline-in-2009/20017764033.htm?highlight=true&containingAll=ships+lost&containingPhrase=&containingAnyWords= (accessed April 5, 2010).

Chapter 2 – Piracy and the Law

As piracy is a difficult crime to completely defeat, it is important to understand what legally constitutes the crime of piracy. Piracy is defined by the United Nations Convention on the Law of the Sea (UNCLOS) as "criminal acts of violence, detention, or depredation committed for private ends by the crew or the passengers of a private ship or aircraft that is directed on the high seas against another ship, aircraft, or against persons or property on board such ship…"[24] The distinction of "on the high seas" is significant as identical criminal acts committed in internal waters do not constitute piracy but rather are considered normal crimes and fall under the national jurisdiction. This definition can lead to the distinction of an identical act committed thirteen nautical miles offshore being prosecuted, but an act committed only eleven miles offshore being immune. This subtle difference is nearly immaterial to the discussion on Somali piracy because there is presently no capacity in Somalia to exercise jurisdiction over Somali territorial waters let alone the high seas.

This twin track approach to dealing with the same crime has received international attention and may lead to the definition of piracy being re-written. The International Maritime Bureau (IMB) eliminates the requirement for the act to take place on the high seas and more broadly defines piracy as "the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act." The IMB uses this definition for statistical purposes but it is worth noting that it is much more inclusive, and as a result of the changing nature of piracy, the International Maritime Organization (IMO) Assembly updated the UNCLOS definition in

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[24] *Convention on the Law of the Sea,* (1982): , http://www.un.org/Depts/los/convention_agreements/texts/unclos/part7.htm (accessed December 11, 2009).

November 2001 by way of a draft "Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships."[25] This draft code defined "Armed robbery against ships" as "any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of 'piracy', directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offences."[26] While this new definition covers all attacks at sea, regardless of whether the ship was underway or not, and irrespective of location, for the purposes of this paper the official UNCLOS definition will be used. The principal reason for this distinction is that given the context of Somalia lacking a functioning and effective government, the difference between territorial seas and high seas is moot. Secondly, given the increasing range and ability of the Somali pirates, the majority of their attacks are now taking place on the high seas, thus rendering this distinction of little consequence.

Legal Frameworks to deal with Somali pirates

Piracy has long been considered an international crime in the collective global interest to eliminate, if for no other reason than to facilitate global trade and the freedom to travel securely between states. Zou Keyuan, the Harris Chair in International Law at the University of Central Lancashire, notes that "piracy is traditionally regarded as *hostis humani generis*, the enemy of the human race."[27] As such, any nation should be eager to

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[25] International Maritime Bureau, "Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships," International Maritime Bureau, http://www.imo.org/Facilitation/mainframe.asp?topic_id=362 (accessed December 24, 2009).

[26] International Maritime Bureau, *Piracy and Armed Robbery Against Ships - Annual Report 2009* (Essex, UK: ICC Commercial Crime Services, Maritime House, [2009]).

[27] Zou Keyuan, "Seeking Effectiveness for the Crackdown of Piracy at Sea," *Journal of International Affairs* 59, no. 1 (Fall/Winter, 2005), 117-134,

prosecute captured pirates but this assumption has not proven to be the case. At first

glance the law dealing with pirates appears straight forward as the UNCLOS provides the

legal authority for states to board vessels on the high seas, seize ships and property

involved in pirate acts, arrest pirates, and conduct hot pursuit. UNCLOS limits these

authorities to warships and military aircraft.[28] Despite a seemingly clear mandate under

UNCLOS to intervene, nations are often tentative at actively intervening in piracy acts,

other than by providing naval ships as a deterrent. This tentativeness arises partially from

the legal questions involved: who would conduct the investigation and prosecution of the

pirates; what would happen to the crew of the hijacked ship as they are witnesses and

would be required for a criminal trial; and the additional need for the ship and cargo to be

held as evidence.

A reality that complicates international response is the question of what to do with

captured pirates. The state that captures pirates has three options to conduct criminal

proceedings: hand the suspected pirate over to Somali courts for trial; attempt to secure a

conviction in their own courts; or hand the suspects over to a third party to prosecute.

Under domestic and international laws governing torture, nations need to be extremely

careful about who they turn detainees over to, due to the responsibility under international

law to prevent their maltreatment. The poor current state of the criminal justice system in

Somalia precludes turning suspected pirates over to Somali courts for the time being due

to both a lack of capacity and concerns over possible mistreatment. This situation means

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http://search.ebscohost.com.floyd.lib.umn.edu/login.aspx?direct=true&db=aph&AN=19476735&site=ehost-live (accessed February 1, 2010).

[28] James Kraska CDR and Brian Wilson CAPT, "Piracy, Policy, and Law," *Proceedings* 134, no. 12 (December 1, 2008), 56, http://www.usni.org/magazines/proceedings/archive/story.asp?STORY_ID=1697 (accessed February 1, 2010).

that the option of Somali courts is effectively out of play for the time being and that nations must either prosecute the pirates themselves or have a third party agree to do so. No matter which option is chosen, maintaining the rights of the pirates is difficult to achieve at sea. Concerns include maintaining evidence, access to witnesses, length of time required to transport the pirates from capture to their initial hearing, and the possibility of abuse and maltreatment occurring in foreign custody.

The U.S. has used both Kenyan and U.S. courts to prosecute Somali pirates. In 2006 the USS *Winston S. Churchill* seized control of the pirated Indian-owned dhow *Delta Ranger* and detained the pirates. These pirates were turned over to Kenyan authorities in Mombasa who charged them with piracy under Kenyan laws. They were subsequently convicted and sentenced to seven-year terms. The surviving *Maersk Alabama* pirate is currently facing trial in U.S. Federal Court. American preference is to try pirates in the flag state of the hijacked vessel whenever possible and failing that option, to find a local partner nation to conduct the criminal process. To support this approach, in 2008 the U.S. released a national plan for dealing with piracy in the Horn of Africa entitled *Countering Piracy off the Horn of Africa: Partnership & Action Plan.* This plan stresses legal consequences for apprehended pirates in the directly affected states, be it the ship owners' state, or the state of the pirate. The plan also emphasises the need for capacity building of legal institutions in the region to assist with this effort as this function is currently limited. [29]

Protecting Innocent Lives

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[29] National Security Council, United States of America, *Countering Piracy Off the Horn of Africa: Partnership and Action Plan* (Washington, DC: U.S. Government, 2008), 16.

The actions of the United States Navy (USN) illustrate the sometimes variable international response to piracy. In 2006 the USS *Winston S. Churchill* seized control of the above noted Indian-owned dhow and detained the pirates. Two years later, the USN only maintained close surveillance on the *Faina* and did not intervene despite the high risk cargo of weapons. Conversely, in 2009, the hostage-taking of U.S. citizen Captain Richard Phillips was resolved by direct action of the USN. These three situations do not represent an evolution of USN response over time but rather the underlying difference in approaches is due to the ability to act without undue risk to innocent lives. The pirates seized by the *Winston S. Churchill* were aboard a mother ship and had no prisoners. The *Faina* was seized and taken under control by pirates before any warships were present and thus to recapture her would have placed the lives of the crew in jeopardy. Captain Phillips was rescued because there were concerns his life was in immediate danger as the pirates aboard that lifeboat became increasingly desperate.

Determining when to act and when to simply observe is a matter of national policy and requires clear rules of engagement. The decision of when to intervene is also heavily weighted towards the safety of the hijacked crews. Once the pirates have gained control of a ship, it is very difficult to safely regain possession while guaranteeing the lives of the prisoners. The most effective way to achieve the desired outcome is with Special Operations Forces skilled in hostage rescue. These assets tend to be in high demand and thus are too valuable for pre-positioning on warships waiting for an opportunity to act. The USN is not alone – the British, French, and Indian navies have all taken occasional direct action when conditions were favourable. Despite this precedent, direct action remains far from being the standard operating procedure. The nature of coalition operations is a further complicating factor as participating nations all operate under their

own national laws and bilateral agreements with third-party partner nations such as Kenya. The result is that ships need to be positioned and tasked according to their national caveats, which serves to reduce the effectiveness of these ad-hoc task groups. This is not an insurmountable problem, even when considering that these coalitions are comprised of ships working together from nations that do not normally collaborate, such as Russia, India, China, and NATO. The solution to these legal issues is solid plans beforehand to deal with captured pirates, including any necessary bilateral agreements, well established communications and coordination networks, and a willingness to work together in the common interest.

Deterring the Pirates with Legal Consequences

In the specific case of Somali piracy, the United Nations Security Council (UNSC) has passed five separate resolutions under Chapter VII of the Charter of the United Nations in the last two years aimed at facilitating an international military response. These resolutions (1816, 1838, 1846, 1851, and 1872) variously allowed for entering Somali territorial waters to pursue pirates; confirmed that UNCLOS embodies the rules necessary to counter Somali piracy; and encouraged nations to assist the Transitional Federal Government with creating security and legal institutions to deal with piracy. Allowing warships to enter Somalia territorial waters was a key enabler for the naval deterrence and has allowed for both a layered defence and hot pursuit. Until Somalia is able to defend her own territorial seas, other nations will need to continue to use her territorial waters, provided that the UNSC continues to allow this proviso. The remaining two items authorized by the Security Council, UNCLOS and capacity building, bear further scrutiny.

The section of UNCLOS dealing with pirates is straightforward and unambiguous, although the practical application of it depends on the nations involved having either the domestic law in place to deal with piracy or bilateral agreements to transfer suspected pirates to third parties. While bilateral agreements are complex to negotiate, they are possible to achieve and are becoming less of an issue in dealing with Somali pirates. The U.S. and UK signed agreements with Kenya in 2009 and have since transferred the first batches of pirates to the Kenyans for prosecution. These agreements have two principal benefits: Firstly they allow for relatively speedy justice; secondly they allow for justice to have a local face as opposed to a foreign (and possibly an ex-colonial master) face. However, Kenyan courts have a limited capacity and there are some questions about human rights and procedural fairness.[30] Additionally, Kenyan law demands that all suspects must appear before a judge within twenty-four hours of capture.[31] This requirement can present logistical difficulties given the immense area of ocean that needs to be covered and the possibility that pirates may be captured hundreds of miles off shore, necessitating the dispatch of a warship off patrol to deliver them to Kenyan authorities. Notwithstanding these challenges, signing an agreement with Kenya seems to currently be the simplest method to have Somali pirates tried in Africa.

Use of Kenyan courts to prosecute and imprison Somali pirates is a good interim step towards eventually having them returned to their own state for trial. A recent case was reported in *Lloyd's Register - Fairplay Ltd* that detailed the arrest and prosecution of

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[30] Oliver Hawkins, "What to do with a Captured Pirate," *BBC News*, sec. Africa, March 10, 2009, http://news.bbc.co.uk/2/hi/in_depth/7932205.stm (accessed February 25, 2010).

[31] Peter Chalk, Laurence Smallman and Nicholas Burger, "Countering Piracy in the Modern Era. Notes from a RAND Workshop to Discuss the Best Approaches for Dealing with Piracy in the 21st Century" (Arlington, VA, RAND Corporation, March, 2009), http://www.rand.org/pubs/conf_proceedings/2009/RAND_CF269.pdf (accessed February 2, 2010).

eleven pirates by Somali authorities using evidence provided by coalition warships.   This is an encouraging development as it shows the willingness of Somali officials to take action against the pirates. A small first step to be sure but also an encouraging indication of future actions by the Transitional Federal Government of Somalia.

Prior to these bilateral agreements there was much discussion about *catch and release* policies for pirates. This topic had the potential to weaken the political will to deploy the assets necessary to deal with Somali pirates. The BBC reported that suspected Somali pirates have been released from British, Belgian, and German ships because they could not be tried in the respective flag states, and returning them to Somalia to face justice was not an option due to human rights concerns. [32] While this is frustrating for the crews of the warships involved and the governments that sent them, the problem is not insurmountable and nations that have yet to sign bilateral agreements or have not made other arrangements to deal with captured pirates will need to be employed within the Combined Task Force accordingly. There is still a role for these warships, as recent incidents where pirates have mistakenly attacked warships in the belief they were merchant ships shows that pirate ship-recognition skills are not that advanced.[33] Thus regardless of national caveats, pirates may be unable to differentiate the nationality of a warship from a distance and as a consequence the mere presence of any warship can serve as a visual deterrent. Submarines in particular can be used for surveillance of pirate ports by nations that choose not to become involved in detaining pirates for criminal trials. As more countries sign agreements with local governments to arraign and try captured

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[32] Hawkins, *What to do with a Captured Pirate*.

[33] Jason Straziuso, "Somali Pirates Attempt Attack on Dutch Warship," *The Boston Globe*, sec. Africa, March 17, 2010, 2009, http://www.boston.com/news/world/africa/articles/2010/03/17/somali_pirates_attempt_attack_on_dutch_warship/ (accessed March 18, 2010).

pirates, the problem with *catch and release* policies being enforced by billion dollar warship fleets will fade from the media. This will help to ensure that nations continue to provide warships for counter-piracy operations off the Horn of Africa.

Provided sufficient safeguards are built in to the agreement, including frequent monitoring to ensure human rights are not being violated, then the Kenyan route appears to be the best available solution. An effort to assist the Kenyan courts through capacity building and financial assistance is required. Given that many of the pirate acts occur near their territorial waters, the government of the Seychelles should also be encouraged to accept captured pirates for trial, thereby easing the strain on the Kenyan legal system and providing an alternative should problems develop with the Kenyan approach.

The presence of a functional justice structure for dealing with captured pirates is significant because it provides a deterrence effect on prospective pirates. It will also reduce the recidivism rate in the short-term. Knowing that real consequences exist for their actions will cause pirates to re-consider the current rewards versus risk ratio, a ratio that is heavily skewed in the pirates favour at present. It is also a relatively non-invasive method to reduce Somali piracy that does not require a footprint in Somalia.

Pirates originate from Somalia and ultimately it should be the Somali government that deals with them, especially those who commit their criminal acts within the twelve mile limit and thus are not legally pirates. Developing the indigenous capability to enforce maritime security and to conduct criminal proceedings in Somalia is the ideal solution to the eradication of Somali piracy. Civil assistance by foreign governments, involvement of Non-Governmental Organizations with a speciality in human rights, the involvement of the UN in the form of a civilian police deployment, and other interested organizations are required. This can form an adjunct to the current naval effort and long-

term goal of the anti-piracy campaign but is not essential for the short-term deterrence of Somali pirates as long as there is some legal framework in place to effectively deal with captured pirates.

Although not strictly speaking a legal consequence, tracking the money trail could be effective. Eighty million U.S. dollars is paid every year in ransoms and this amount represents a huge amount of money in Somalia. Luxury cars, homes, and jewellery have become normal in pirate ports and allegedly in Kenya as well. Reports that pirates have set up a piracy stock exchange in Haradheere, where investors can purchase shares in pirate gangs and future ransoms in much the same way that commodity futures are traded on world markets, show their increasing sophistication.[34] This sophistication represents a vulnerability that can be attacked by counter-piracy operations and it also shows how piracy is involving whole communities and provides a financial lifeline for many. This trend naturally leads to public approval and support that will make eradicating piracy ashore a very complex task.

Multi-million dollar ransoms should be tracked in much the same way that the proceeds of global crime are already monitored and intercepted. Encouraging regional states to pass anti-money laundering legislation and clamping down on large deposits originating from the Horn of Africa area would serve to deter the leaders of the Somali pirates. Like other criminal activities, pirates are interested in activities where the rewards justify the risks. Removing the ability to profit in large amounts of money will discourage larger criminal organizations from becoming involved in Somali piracy.

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[34] Mohamed Ahmed, "Somali sea gangs lure investors at pirate lair," Reuters, December 1, 2009, http://www.reuters.com/article/idUSTRE5B01Z920091201?sp=true (accessed March 17, 2010).

CHAPTER 3 – CONTEMPORARY SOMALI PIRACY

Piracy in the Horn of Africa has a long history, dating from at least the seventeenth century when merchant ships of the East India Company were the primary targets, through to modern times. It has ebbed and flowed in this period due to naval intervention and the elimination of the social conditions ashore that supported it. The underpinning motivation for naval intervention is economic, both on the part of the trading nations that send warships to protect their economic interests and on the part of the shore-based authorities who are anxious that their domestic trade not be affected. According to the 2009 Annual Report of the International Maritime Bureau (IMB), there were 406 incidents of actual or attempted piracy and armed robbery worldwide in 2009, passing the 400 attack threshold for the first time since 2003. [35] Just as piracy is not a new phenomenon, the use of naval forces to defeat it is likewise an ancient tactic. The USN itself was originally re-established following the U.S. War of Independence to fight the Barbary Coast pirates.

Piracy in its simplest terms is theft conducted on the high seas involving the occupants of at least two vessels. Beyond this simple concept is a host of nuance and motives but the ends have been the same since piracy began: crime committed on the high seas for personal gain. The growth of piracy is dependant on the circumstances that allow it to flourish: opportunity, minimal risk, and a lucrative return on investment. The piracy cycle, repeated multiple times throughout history, starts out with single attacks on small, slow targets and gradually grows in sophistication until checked both at sea and at

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[35] International Maritime Bureau, *Piracy and Armed Robbery Against Ships - Annual Report 2009*, 8.

its home bases. Somali piracy is currently in a growth phase because, at present, no

effective deterrents exist either at sea or ashore.

Pirates may be grouped into two categories: organized and opportunistic.

Opportunistic pirates are pirates who attack when the opportunity presents itself and

generally target ships alongside piers, at anchor, or slow moving vessels close to shore.

Organized pirates represent the more sophisticated pirate who work in a group with

sufficient organization, financial backing, equipment, and weapons to target large vessels

far out to sea.[36] The organized pirate is therefore the larger threat to global shipping

because the pirates have the ability to travel great distances, using mother ships in the

Somali context to support operations, and hijack major vessels. Organized pirates also

have the ability to adapt to changing circumstances and use lessons learned to their

advantage. The modern Somali pirate can be categorized as a highly organized pirate.

This fact represents both a threat and an opportunity for forces trying to deter the pirates.

On one hand the pirates are more sophisticated and dangerous; but on the other hand they

have an organization vulnerable to attack. Attacking supply lines and cutting off financial

support and mother ships can have an effect upon organized pirates without the need to

intervene directly ashore.

Gaining Momentum

In addition to the 2009 *Maersk Alabama* incident, other noteworthy pirate attacks

have served to focus world governments on the piracy issue around the Horn of Africa in

the recent past. The event that first gripped the attention of global decision makers was

the September 2008 attack on the M/V *Faina*. The global interest in this cargo ship from

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[36] Brian D. Murray, "Piracy in Southeast Asia: Cause for Concern and Intervention," 16.

the Ukraine was largely due to her cargo of thirty-three T-72 tanks and other weapons for

the Kenyan Army, leading to fears that the cargo could end up in the wrong hands and

contribute to instability in the region. Concern over the cargo of the *Faina* led to

significant publicity, close monitoring by warships of several nations and, in due course,

to United Nations Security Council Resolution 1838 which "called upon States interested

in the security of maritime activities to deploy naval vessels and military aircraft to

actively fight piracy on the high seas off the coast of Somalia"[37] under the authority of

Chapter VII of the United Nations Charter. This resolution explicitly requested that UN

member states take action against the pirates and shows the level of concern over Somali

piracy at the global level of decision making. However, resolutions are not synonymous

with action and this resolution in and of itself changed very little. States inclined to send

warships were already doing so, or making plans to do so, and those that were not

inclined to contribute did not.

Two months after the *Faina* attack, Somali pirates seized their largest prize to date

with the capture of the M/V *Sirius Star*. The attack on the *Sirius Star* was notable both by

the size of the ship involved and by the location of the attack. *Sirius Star* is a VLCC of

318,000 tons and was hijacked in November 2008 nearly 450 nautical miles (NM) South-

East of Kenya. This distance was far enough offshore that most industry experts at the

time believed it to be safe from pirates. The hijacking of the *Sirius Star* demonstrated the

Somali pirates were able to extend their reach further offshore than previously predicted

and demonstrated their growing sophistication as this feat necessarily involved the use of

mother ships and other means of extending their reach. Perhaps more newsworthy was

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[37] *Resolution 1838,* 1838, 5987th sess., (October 2, 2008, 2008): http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/538/84/PDF/N0853884.pdf?OpenElement (accessed February 24, 2010).

the fact that *Sirius Star* is owned by a subsidiary of Saudi Aramco and represented the

first Saudi tanker to be hijacked. Given the importance of Saudi Arabian crude oil to the

United States of America this led to increased pressure on the Americans to act. The

widespread media images of this extremely large ship being captured by Somali pirates

appeared to exhaust the U.S. tolerance of Somali piracy and led to calls for action.

Retired Royal Navy Commodore Stephen Saunders observes in the 2009-2010 edition of

Jane's Fighting Ships that "the [*Sirius Star*] incident symbolises the sophistication,

boldness and ruthlessness of the Somali pirates, [and] the difficulties in combating them

faced by maritime forces."[38] Saunders is accurate in his assessment as there were already

numerous warships in the region on counter-piracy patrols when the *Sirius Star* was

seized; yet the sheer size of the area to be patrolled and the unexpected range and daring

of the pirates meant both that no ships were safe from attack, and that despite the growing

naval presence the pirates were able to act with impunity.

A common theme emerges from both the *Sirius Star* and *Faina* hijackings – the

payment of multi-million dollar ransoms to secure the freedom of the ship, crew, and

cargo. *The Times* reported that a ransom of $3.5 million (U.S. Dollars) was paid for

Faina and $3 million (U.S. Dollars) for *Sirius Star*.[39] In each case it was reported that the

ransoms were paid to the pirates via parachute drop, demonstrating the sophistication of

both the pirates and the intermediaries hired to act as go-betweens. The payments of

these large ransoms confirmed to the pirates that this was a lucrative activity worth

continuing. Lest it appear that these large ransoms were unique or owing to the

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[38] Stephen Saunders, ed., *Jane's Fighting Ships 2009-2010*, 112th ed. (Coulsdon, UK: Jane's Information Group, 2009), 26.

[39] CBC News, "Somali Pirates are Paid Record $3.5 Million Ransom for MV Faina," *Canadian Broadcasting Corporation* December 10, 2009, http://www.cbc.ca/world/story/2009/12/10/greek-pirates-ransom.html (accessed December 10, 2009).

significance of the ships and cargos held, large multi-million dollar ransoms were reported as having been paid in 2009 as well.[40]

Tools of the Trade

Modern pirates have simpler logistical requirements than the pirates of history. A speedboat with automatic weapons or Rocket Propelled Grenades (RPG), a portable Global Positioning System (GPS) receiver and a handheld Very High Frequency (VHF) maritime radio are the bare essentials for committing a piracy attack. Even a small fishing boat will suffice for launching an attack. Combining this minimal capital investment with a complicated legal framework for the prosecution of captured pirates, and it quickly becomes apparent that unlike the "professional" pirates of yore such as Captain Kidd and Calico Jack, modern pirates can be local fishermen looking for quick money, terrorists, rogue naval personnel, or even merchant sailors working for organized crime syndicates. Piracy does not necessarily need to be a full-time career choice but can be as spontaneous as a night's work raiding passing ships.

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[40] CBC News, "Pirates Say \$2.8M Ransom Paid for Greek Ship," *CBC News* December 10, 2009, http://www.cbc.ca/world/story/2009/12/10/greek-pirates-ransom.html (accessed December 10, 2009).

Figure 2 – Suspected pirate vessels in the Gulf of Aden[41]

Figure two shows a Boarding Party from Her Majesty's Canadian Ship (HMCS) *Winnipeg* inspecting two suspected pirate vessels in early 2009 and gives a good idea of the type of craft currently in use by Somalia pirates. It can be seen from the picture that a Somalia pirate vessel is effectively a small fishing vessel plus small arms or rocket propelled grenades and boarding ropes. Note that the smaller craft with the outboard engine would be the type of vessel used to attack and board the much larger merchant ships. Despite the obvious size imbalance between these pirate vessels and the merchant ship visible in the background, the relatively low wake qualities of modern commercial shipping, coupled with low speeds make it possible for pirates to board potential victims with relative ease, provided the weather and sea state conditions are favourable. Analysis of past attacks showed that pirate attacks were less frequent when visibility was less than

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[41] Carole Morissette WO, "IS2009-6578," Canadian Forces Combat Camera, http://www.combatcamera.forces.gc.ca/netpub/server.np?find&catalog=photos&template=detail_eng.np&field=itemid&op=matches&value=13370&site=combatcamera (accessed January 19, 2010).

two nautical miles, wave heights were larger than seven feet, or wind was gusting higher than twenty knots.[42]

Conducting the attack itself does not require sophisticated tactics or a highly trained crew. A typical Somali pirate attack consists of small vessels with powerful outboard engines approaching the target ship and firing upon the bridge windows in an effort to have the ship slow down or stop. Pirates then board the ship and direct it to a safe haven along the Somali coast in order to conduct ransom negotiations.[43] One feature that distinguishes Somali pirates from previous piracy campaigns is the ease with which pirates can move between legal activities and piracy. A Somali fisherman at sea can transition from legitimate fishing to piracy and back again without changing vessels or basic equipment. Even the presence of small arms is not sufficient to differentiate pirates from fishermen as many non-pirates carry weapons for self-defence.

Unlike other forms of piracy that involve stealing the ship itself or the cargo, the objective of the Somali pirate is a ransom payment for the safe release of the ship and crew. This situation has two effects on the pirate and their equipment. The first effect is that small, simple boats can be used for the attack as there is no need to transport stolen goods on completion. The second and more difficult aspect for the Somali pirate is holding the crews, ships, and cargoes while conducting ransom negotiations, often over the period of several months. The small teams of armed Somali sailors hijacking passing ships with small arms and rocket propelled grenades from their skiffs may be the public

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[42] Jim Smalley, "Chasing and Mapping Pirates," Emergency Management, Spatial Intelligence: GIS, http://www.emergencymgmt.com/emergency-blogs/gis/Chasing-and-Mapping-Pirates.html?elq=1b9521abbd2c40ef81561d93c16d3c98 (accessed February 18, 2010).

[43] International Maritime Bureau, "Unprecedented Increase in Piracy Attacks Off Somalia," International Maritime Bureau, http://www.icc-ccs.org/index.php?option=com_content&view=article&id=108:unprecedented-increase-in-piracy-attacks-off-somalia&catid=60:news&Itemid=51 (accessed January 25, 2010).

face of piracy but are in reality merely the tactical forces of an enterprise that involves

coastal villages and organized criminal syndicates. This is facilitated by the lack of law

enforcement capabilities in Somalia and is a factor that would optimally be resolved by

addressing the failed state of Somalia directly and establishing rule of law along the coast

line. Given the immense cost of nation building as witnessed in Iraq and Afghanistan and

the current threat posed by Somali pirates, intervening ashore with military or security

forces is not currently justified.

The Threats of Somali Piracy

The year 2009 showed the continued growth of Somali pirate operations with a

total of forty-seven successfully hijacked vessels out of 217 attacks   Out of this total, 116

ships reported Somali pirate attacks or attempted attacks in the strategically important

Gulf of Aden. Contrasting this number with the 22,000 vessels that transited the Gulf of

Aden that year shows that only one in every 190 ships is attacked, representing a threat of

one-half of one percent. Recent high-profile hijackings of ships such as *Maersk*

Alabama, Sirius Star, and *Faina* have galvanized public opinion and led to enhanced

naval presence in the form of coalition task groups which has had an effect of reducing

the ratio of successful attacks. Never the less, total numbers of attacks and attempted

attacks are increasing, are being covered on a regular basis by Western media outlets, and

have led to concerns about the stability of a vital global shipping route. There are also

many less significant threats from unresolved Somali piracy such as increased financial

support for armed militias that are the source of much regional instability, the welfare of

the merchant ship crew members, economic impact in the form of higher shipping costs,

potential for environmental disaster, damage to Somalia in the form of undermining

attempts to restore law and order, and preventing the use of Somali ports for import/export.

Somali piracy is not a new phenomenon but the current high numbers of attacks and the pirate's long range abilities are new. Small scale piracy is a possibility anywhere there is easy access to weapons, sufficient target ships, and suitable reward for the pirates. It is merely a nuisance to global shipping until it becomes concentrated in one area and expands to such an extent that it affects the reliability and cost of global shipping.

A global concern that argues for solving the shore-based problems of Somalia is the potential for sea-based terrorism. Somalia has been in a state of civil war for much of the last twenty-nine years. Armed gangs fighting for supremacy, an Islamic faction fighting to control the capital city, no functional federal government, proximity to Yemen and other sources of terrorism, all speak to the potential for terrorism taking root in Somalia. Following the events of 11 September 2001 there has been renewed interest in the West to fight terrorism at the sites used for training and support. This justification has been proffered as a reason to become involved in Somalia as well. Terrorist organizations have made use of water-borne attacks in the past. Two well-known examples are the Liberation Tigers of Tamil Eelam which used suicide attacks against the Sri Lanka armed forces, and the attack on the USS *Cole* by al-Qa'ida operatives in Yemen. The Tamil Tigers and al-Qa'ida have both demonstrated the will and the means to conduct attacks at sea and it may be only a matter of time before they transition to the high seas with its lucrative and highly explosive targets such as VLCC and liquefied natural gas (LNG) tankers.

Despite the above facts there is presently no definitive link between Somali pirates and any known terrorist factions.[44] This absence does not lessen the potential danger of such an alliance, particularly in a global economy with factories dependent on "just in time" delivery supply models and vulnerable to delays in shipping. Ultimately, however, the end goals of Somali pirates and those of terrorists are not compatible. Pirates are interested in personal gain and an environment that is conducive to that gain is in their best interest. Terrorism and its associated damage and destruction would deter shipping from those areas and would be counter-productive from the pirate point of view. Somalia and Somali pirates are not unique in their potential to transition to terrorism, sea-based or otherwise. The threat of terrorists linking with Somali pirates merits monitoring, deterring the pirates from acting, and supporting ongoing efforts to restore law and order ashore. These are all actions that will occur as part of efforts to suppress pirates regardless of any terrorism links. The mere potential of future links between Somali piracy and maritime terrorism does not, at this point, merit direct intervention ashore by foreign forces.

Somali Piracy Today – Threat or Nuisance?

Piracy has a long history, in all probability dating back to shortly after the first person pushed off from shore on a make shift raft. The pirates currently operating from Somalia are typical of the historical model of pirates in that they are committing violence at sea from one vessel to another in hope of personal gain. The evolution of Somali piracy away from the historical pattern of stealing cargoes and ships, towards a new

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[44] John Patch CDR, "The Overstated Threat," *Proceedings* 134, no. 12 (December, 2008), http://www.usni.org/magazines/proceedings/archive/story.asp?STORY_ID=1694 (accessed February 22, 2010).

model of hijacking ships using very simple boats and small arms and then holding the merchant ships for ransom, is merely nuance. The limited barriers to entry and hitherto modest attempts to suppress Somali piracy have made this activity a lucrative and attractive economic opportunity for Somalis.

Somalia has the longest coastline in Africa and a state of anarchy has existed through much of the state since the collapse of a functional government in the early 1990s. This combination has led Somalia to become a fertile breeding ground for piracy based on the chaos caused by a failed state and proximity to frequently used sea lanes with sufficient high-value targets for the pirate's endeavours. As the shortest conduit between Asia and Europe as well as the direct route between the Middle East and North America, the Gulf of Aden is a strategically important shipping route that is both busy and which geographically forms a choke point. The principal cargo of many ships using these waterways is oil which has strategic importance in and of itself.

Unfortunately the state of Somalia is not in a position to suppress piracy originating from its territory. This situation has led to calls for intervention ashore by foreign forces to forcefully restore order and defeat piracy at its roots. Naval forces have traditionally been employed in suppressing the cycle of piracy and they are currently being brought to bear on the problem of Somalia piracy with some promising initial results. However, the limited numbers of successful attacks, and the fact that merchant shipping is still using the area as a shipping route, leads to the deduction that the problem has not moved beyond being a nuisance and perhaps even represents the cost of doing business at sea in the vicinity of the Horn of Africa.

Protecting the merchant ships themselves from pirate attack is a reasonably straightforward task. The characteristics that make ships vulnerable to attack are known:

low freeboards; minimal crew sizes leading to minimal watch keeping; poor lighting;

economical speeds; operating in areas of known pirate activity; and poorly secured

hatches and doors. Despite there being relatively simple to implement precautions

associated with these vulnerabilities, the multilateral *United Nations Contact Group on*

Piracy off the Coast of Somalia created by United Nations Security Council Resolution

1851, reported on 28 January 2010 that the majority of ships successfully seized by

Somali pirates in 2009 had not taken any self-defence precautions. The group estimated

that up to one quarter of ships sailing through the Gulf of Aden likewise fail to take any

safety precautions against pirates.[45] Clearly, convincing more ships to take some

responsibility for their own security would be a cost effective method of preventing pirate

attacks. Even if the self-protective measures are not sufficient to deter pirates forever,

they at least buy time for naval units on patrol to respond to the scene. The fact that many

merchant ships are still not taking these basic precautions when transiting through areas

of known pirate activity suggests that the threat is not as serious as the media would have

us believe.

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[45] John Heilprin, "UN Group of Nations Says most Ships Hijacked by Pirates Ignored Safety Precautions," *Associated Press* January 28, 2010, http://www.newser.com/article/d9dh0p702/un-group-of-nations-says-most-ships-hijacked-by-pirates-ignored-safety-precautions.html (accessed January 29, 2010).

Chapter 4 – Somalia: A Land in Chaos

In order to understand why directly intervening ashore in Somalia is an undesirable solution to the problem of Somali piracy, it is important to understand the context of Somalia today and the recent history that resulted in the chaos that currently exists. Somalia is located on the North Eastern corner of Africa, the aptly named Horn of Africa. It has the longest coastline in Africa, nearly 3,300 kilometres, which stretches along the Gulf of Aden in the North down to the Indian Ocean in the South. A relatively new state, having only been created in the last fifty years, it has been suffering from internal strife for the last twenty-nine of those years. Repeated droughts, poverty and poor economic expectations are the norm. One in four children die before their fifth birthday according to the World Food Programme, and those that do become adults have a life expectancy of only 46.2 years.[46] No central government has been able to establish rule of law since 1991 and anarchy accompanied by a poor human rights record is standard.[47] Piracy has flourished in this region in recent years, given that a lack of economic opportunity and low probability of being stopped by law enforcement are key enablers of crime, maritime or otherwise.

The IMB reported that Somali pirates attacked 217 ships in 2009 with forty-seven of those attacks resulting in ships being seized along with 867 crew members. Somali pirates accounted for more than half of the total pirate attacks reported to the IMB world-

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[46] "Somalia," World Food Programme, http://www.wfp.org/node/3584 (accessed December 24, 2009).

[47] Belachew Gebrewold, "Democracy and Democratization in Africa," in *Peace & Conflict in Africa*, ed. David J. Francis (London, UK: Zed Books Ltd., 2008), 167.

wide in 2009.[48] Piracy is not a new phenomenon in this area and a long tradition of

attacking global shipping has existed since the Portuguese first ventured into the Indian

Ocean in the sixteenth century.[49] However the remarkable increase in the number of

attacks and vastly increased area of operations in recent years has attracted the attention

of world decision makers and led to global action to curb the rampant piracy. Once the

current piracy campaign became an evident success, organized crime started to take over,

allegedly including businesses in Puntland and possibly members of the Somali

Diaspora.[50] The operative question is how did Somalia end up in this deplorable state of

affairs?

A Lawless Land - Background

The population of Somalia is comprised predominately of Somali with the

remaining fifteen percent being Bantu. Numbering approximately ten million residents,

they are mostly nomadic pastoralists with strong clan loyalties to the six major clans,

namely the Daarood, Digil, Dir, Haawiye, Isaaq, and Raxanweyn. Originally settled by

Arab settlers from across the Gulf of Aden in Yemen, Somalia was gradually colonized

by European powers starting with the Portuguese in the 15th century. Following the

Portuguese were the Italians and British who formed the states of Italian Somaliland and

British Somaliland respectively. In keeping with European practice of the time, clan

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[48] International Maritime Bureau, *Piracy and Armed Robbery Against Ships - Annual Report 2009*, 1-103.

[49] Robert D. Kaplan, "Anarchy on Land Means Piracy at Sea," *The New York Times*, sec. World, April 11, 2009, http://www.nytimes.com/2009/04/12/opinion/12kaplan.html?_r=1 (accessed November 28, 2009).

[50] Virginia Lunsford, "What Makes Piracy Work?" *Proceedings* 134, no. 12 (December 1, 2008), http://www.usni.org/magazines/proceedings/archive/story.asp?STORY_ID=1693 (accessed February 1, 2010).

boundaries were not taken into consideration when forming these new states and this short sight has proven to be problematic as clans are a stronger source of unity than political boundaries. Ioan Lewis is an Emeritus Professor of Anthropology at the London School of Economics and has studied Somali culture and society for fifty-five years. Based on his extensive field studies in the Horn of Africa he has concluded that "differences between clanship and ethnicity are formal distinctions which have, however, a practical outcome: in the Somali case, solidarity at the level of the ethnic group (the nation) is less binding than that within the clan structure, segmented though that is."[51]

The Somali Republic was created on 1 July 1960 when British Somaliland merged with Italian Somaliland. Unfortunately the western ideals of a parliamentary style federal government, contained in the new constitution that was adopted by national referendum in 1961, did not suit the tribal background of Somalia. Clans naturally formed the basis of political power creating internal strife that led to a military coup which installed Major-General Mohamed Siad Barre as the new President in October 1969 after a mere nine years of independence. Sponsored by the Union of Soviet Socialist Republics (USSR) with military hardware and advisors, Barre managed to stay in power for the next twenty-two years, eventually substituting the U.S. for the USSR following Soviet support to Ethiopia during the 1977 Ogaden Conflict.

Barre's inept handling of Somalia's internal struggles, which ironically had brought him to power, proved to be his downfall. Using the Somali military to viciously suppress an insurgency, coupled with the loss of the majority of its advanced hardware during the Ogaden Conflict with Ethiopia, eventually led to the dissolution of the military

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[51] I. M. Lewis, "Visible and Invisible Differences: The Somali Paradox," *Africa: Journal of the International African Institute* 74, no. 4 (2004), 511, http://www.jstor.org/stable/3556839 (accessed February 11, 2010).

and reversion of its personnel and arms into armed clan-based militias. Since Barre was propped-up by the military, this dissolution of his power base led to his ousting from power in January of 1991 and began Somalia's descent into regional clan-based warlordism from which it has yet to emerge. These clan-based warlords have divided Southern Somalia into their own kingdoms ruled via private militias.

Despite the popular perception of Somalia as a land in chaos, there is one region that has established a functioning civil society. The clan based in the north of Somalia declared itself independent within four months of the collapse of the Barre regime and formed the Republic of Somaliland. While no international recognition of any kind has been granted this new entity, it has nonetheless remained relatively stable due to its single-clan population and support from the USA. This relatively successful attempt at self-government suggests that the future for the Republic of Somalia may not lie in one consolidated federal state and that foreign intervention to prop-up what was essentially an arbitrary colonial creation will merely prolong the birth pains of a future political structure on the Horn of Africa. This is a complicating factor which would need to be seriously considered if intervention ashore in Somalia should ever be seen as a viable option to eliminate piracy at its source.

The north-eastern clans attempted to emulate the Republic of Somaliland in 1998 by forming a state within the Somali Republic using the name of Puntland. Unfortunately this venture has been largely unsuccessful and internal conflict remains rife. Puntland, along with the southern regions of Somalia, have become sources of current piracy while the relatively stable Republic of Somaliland has remained largely immune. The strategic location of Puntland can be appreciated on the map below by noting its proximity to the nearby international shipping lanes.
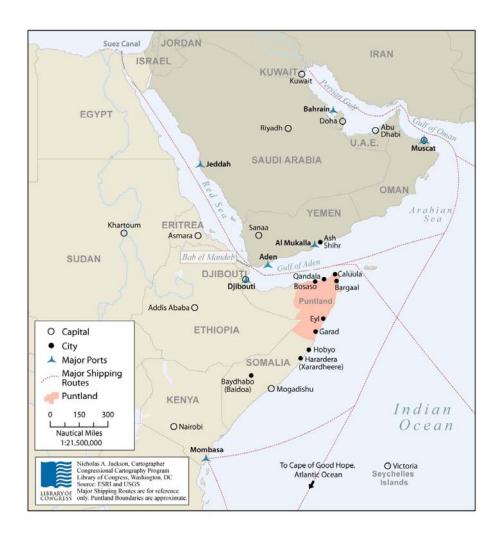
Figure 3 – The Horn of Africa, Surrounding Waters, and Key Locations[52]

Military Intervention

Following the fall of the Barre government, the southern areas of the Somali

Republic collapsed into anarchy which, when combined with poor harvests due to

drought, led to mass starvation with an estimated 300,000 deaths and 800,000 refugees

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[52] Nicholas A. Jackson, *The Horn of Africa, Surrounding Waters, and Key Locations*, Vol. 1:8,200,000 (Washington, DC: Library of Congress, 2009), 2.

between 1991 and 1993.[53] This humanitarian crisis resulting from the civil war and

famine prompted the United Nations to intervene with three separate missions

(UNOSOM, UNITAF, and UNOSOM II) between April 1992 and November 1993.

Western politicians were acutely aware of public sensitivities to costly and bloody foreign

interventions and were wary of becoming involved in a mission that could become a

quagmire. Therefore, the U.S. in particular insisted on limited duration mandates with

defined exit dates.

Violence continued escalating and came to a head on June 5, 1993 when twenty-

five Pakistani soldiers were killed by a warlord's militia while unloading humanitarian

aid. The UN started hunting down the perpetrators leading to a battle in October 1993

which resulted in the death of eighteen U.S. soldiers. Within short order, the U.S.

withdrew from Somalia and UNOSOM II failed. This incident was later immortalized in

the film *Blackhawk Down,* demonstrating to the general public the overwhelming

corruption in modern Somalia, and helping to explain why Western Democracies have

been reluctant to become involved in Somalia again. Nonetheless, the world appetite for

developing peace at all costs led to continuing cooperation with the warlords. Osman and

Souare note that the United States transported Aideed to a conference in Addis Ababa in

an American Air Force aircraft a mere two months after his forces killed the eighteen

U.S. soldiers.[54] Interpreting correctly that the world community would allow warlords to

do as they wished in Somalia, the numbers of warlords exploded from four to seventy

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[53] Ramesh Thakur, "From Peacekeeping to Peace Enforcement: The UN Operation in Somalia," *The Journal of Modern African Studies* 32, no. 3 (Sep., 1994), 387, http://www.jstor.org/stable/161981 (accessed February 5, 2010).

[54] Abdulahi A. Osman and Issaka K. Souare, eds., *Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State* (London: Adonis & Abbey Publishers, 2007), 17.

within a few short years.[55] Many of these warlords are now believed to be involved in

piracy and land-based criminal activities including ongoing theft of humanitarian aid.

From UN Intervention to the Present

Stung by the abject failures of the two UN peacekeeping missions, no follow-up

UN peacekeeping operations were mounted in Somalia and further progress on conflict

resolution was limited to fourteen peace-building conferences held at luxury resorts

throughout the world. The fourteenth such conference, held in Kenya in October 2002,

resulted in a tentative constitution and in due course a new government, titled the

Transitional Federal Government of Somalia. Noting that this is one of a number of

attempted federal governments formed since 1991, the mere presence of a fledgling

government does not signal a return to law and order in Somalia. This new transitional

government was initially unable to govern or even establish itself in the capital city of

Mogadishu due to resistance by warlords with a vested interest in maintaining the *status

quo* of a lawless state. As a demonstration of the complex nature of Somali politics, some

of these warlords resisting the new government had signed the peace agreement and

accepted ministerial posts in the new government.[56]

This government eventually managed to establish itself in Mogadishu and

continues to exist, although tenuously, today. However, peace has proven to be elusive in

southern Somalia, with the Islamic Courts Union (ICU) seizing and holding Mogadishu

for the first six months of 2006. Using religion as a unifying force, the ICU was able to

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[55] *Ibid.,* 17.

[56] Ted Dagne, *Somalia: Current Conditions and Prospects for a Lasting Peace* (Washington, DC: Congressional Research Service,[2009]), http://search.ebscohost.com/login.aspx?direct=true&db=tsh&AN=37607509&site=ehost-live (accessed February 12, 2010).

overcome clan loyalties and restore a modicum of stability and rule of law, albeit a strict version of Sharia Law.[57]

Like the Transitional National Government before it, the current government rules only a small portion of Somalia, and even that portion of Mogadishu is held due to the presence of 5,300 African Union soldiers (known as AMISOM) who have a mandate to protect several key parts of the capital city including the Presidential Palace. The principal resistance to the government is the Al-Shabaab insurgents who continue to attack the government and AMISOM with mortars and roadside bombs. Notwithstanding the bleak outlook for Somalia there are some sign of progress and hope for the future. In early January 2010, Ahmedou Ould-Abdallah, Secretary-General Ban Ki-moon's Special Representative for Somalia, opined to the Security Council that "we have moved from a failed Stated to a fragile State – a State which needs to be nurtured, supported to be able to carry out its responsibility at home and abroad, including in the region."[58]

Somalia's Transitional Federal Government has been making increasingly forceful statements about its intention to gain control of Somalia and restore the rule of law.[59] Should AMISOM and the Transitional Federal Government continue to make progress, at least sufficient to justify Ahmedou Ould-Abdallah's assessment of Somalia moving from a failed state to a fragile state, a significant step will have been taken

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[57] Michelle Shephard, "Chasing Peace in Somalia," *Toronto Star* January 31, 2010, http://search.ebscohost.com/login.aspx?direct=true&db=n5h&AN=6FP3316955934&site=ehost-live (accessed February 12, 2010).

[58] "Somali Government Needs More Coordinated, Effective Support – UN Envoy," UN News Centre, http://www.un.org/apps/news/story.asp?NewsID=33488&Cr=somalia&Cr1= (accessed February 12, 2010).

[59] "Somalia's President Vows to Defeat Insurgents and Restore Peace and Stability," *The Canadian Press* January 30, 2010, http://search.ebscohost.com/login.aspx?direct=true&db=n5h&AN=MYO251835670310&site=ehost-live (accessed February 11, 2010).

towards eliminating piracy. However, with an estimated per capita GDP of only $600[60],

and noting that a major driver of piracy is the lack of economic prospects and other

gainful employment for the personnel involved, the economic prospects for the country

are not promising at this time.

Economic Conditions

Somalia was not a wealthy nation and the collapse of the Barre regime in 1991

only exacerbated the situation. Ranked worst of the six Horn of Africa nations for GDP

per capita, adult literacy rates, and infant mortality rates, the *United Nations Millennium*

Development Goals Report 2009 estimated that only two thirds of the population is

employed.[61] Relying primarily on the agricultural sector and international humanitarian

assistance, Somalia is substantially dependent on favourable climate conditions and a

secure environment in which to transport goods. Somalia has major development

challenges including a lack of developed natural resources and heavy industry, although it

does have deposits of bauxite, copper, gypsum, iron ore, natural gas, tin, petroleum, and

uranium.[62] These resources remain unexplored due to the current security situation.

Warlord and clan inspired violence, including the use of land mines, has made

agriculture difficult and destroyed key infrastructure such as roads, dams, and irrigation

systems. Repeated and severe droughts are also a major factor in Somalia's poor

agricultural production. This is especially critical as livestock production is a key source

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[60] "Background Note: Somalia," U.S. Department of State, http://www.state.gov/r/pa/ei/bgn/2863.htm (accessed February 12, 2010).

[61] *United Nations Millennium Development Goals Report 2009* (New York: United Nations, Statistics Division,[2009]), http://mdgs.un.org/unsd/mdg/Data.aspx (accessed January 24, 2010).

[62] *Background Note: Somalia*.

of exports and livestock also represent the only form of secure wealth that exists in Somalia.

Clearly, Somalia has challenges in becoming self-supporting, but a secure environment in which to conduct business is an essential first step. Recovering from the environmental and infrastructure destruction that has occurred in nineteen years of internal strife will require the long-term involvement of the world's more developed economies. A key component of substantially eliminating Somali pirates is providing them with alternative methods of earning a living and denying them a base from which to operate and impound hijacked ships. These objectives require a secure environment in which to conduct business and a functioning economy to both employ Somalis and to pay the taxes necessary to fund a security force. The economic activity which most directly affects Somali pirates, however, is the fisheries sector. It provided the initial manning and equipment for early pirates as well as providing an enduring motivation and justification for robbing foreign vessels alleged to be poaching in the Somali Economic Exclusion Zone.

The Original Heart of the Piracy – Somali fisheries

Fisheries are a potential source of wealth that remains under-exploited by Somalis. Despite favourable oceanographic conditions for an offshore fishery, especially of tuna, lobster, and shrimp, a viable domestic fishing industry had collapsed in Somalia by the early 21st century. Instead, OCHA Somalia reported in 2007 that one hundred million U.S. dollars per year is exploited by foreign fishing fleets rather than Somali fishermen.[63]

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[63] *Somalia Fact Sheet - Livelihood and Food Security* (New York: United Nations, Office for the Coordination of Humanitarian Affairs,[2007]),

The reasons are linked to the chaos that has existed in Somalia since 1991 and the resulting inability to patrol Somali territorial waters to enforce laws and prevent abuses. Local fishermen have complained that catches have decreased in recent years and are insufficient to maintain the economic viability of the Somali fisheries industry. Anecdotal reports suggest two major factors: over fishing by foreign fleets; and environmental damage resulting from the dumping of toxic materials in Somali waters by European companies.[64] It should be noted that at least one international organization, the World Peace Foundation, questions whether any toxic dumping actually took place.[65]

Contemporary piracy in the vicinity of Somalia is frequently reported to have started in response to a collapsed Somali fishery. Also, while not a direct contributor to Somali piracy, the significant Indian Ocean Tsunami in 2004 likewise affected Somalia, killing an estimated 40,000 coastal Somalis, destroying villages, and wrecking havoc with fishing vessels and gear.[66] This natural disaster would have made a desperate situation worse and may have encouraged men who would have otherwise remained fishermen to become pirates.

The over-fishing, described as poaching by Somalis, is partially due to the lack of a functioning government able to enforce fishing controls even if foreign fishing fleets were inclined to seek permits. The *High Seas Task Force* estimated in 2006 that up to

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http://ochaonline.un.org/Resources/FactSheets/tabid/2732/language/en-US/Default.aspx (accessed February 14, 2010).

[64] Kizito Sabala, Aisha Ahmad and Edwin Rutto, "The Somali Peace Process from Arta to Eldoret to Mbagathi," in *The Resolution of African Conflicts*, eds. Alfred Nhema and Paul Tiyambe Zeleza (Athens, Ohio: Ohio University Press, 2008), 144.

[65] Robert I. Rotberg, *Combating Maritime Piracy: A Policy Brief with Recommendations for Action* (Cambridge, MA: World Peace Foundation, 2010), 11.

[66] Peter Lehr, ed., *Violence at Sea. Piracy in the Age of Global Terrorism* (New York: Routledge, 2007), 14.

seven hundred foreign fishing vessels are operating in Somali waters and that this is an

unsustainable level of fishing activity.[67] There are also reports that these foreign fishing

vessels use banned fishing equipment that over-harvest fisheries resources and destroy

natural habitats. The alleged environmental damage being wrought by foreign dumping

of hazardous materials and the presence of foreign fishing vessels did not go unnoticed by

Somali fishermen. It is understandable how frustrations led to minor clashes between

Somali fishermen and foreign fishing vessels. Starting with low-level intentional

collisions, attacks with fire hoses, and sabotaging of equipment, confrontation quickly

escalated to armed violence. Somali fishing vessels were involved in violent altercations

with foreign fishing vessels as far back as 2002.[68] Fishing vessels and crews operating

out of Haradarre formed the "Somali Marines" to attack foreign trawlers in Somali waters

and incapacitate their equipment. This group attacked foreign trawlers with small arms

easily available in Somalia such as rocket-propelled grenades and AK47 assault rifles.[69]

Another armed group calling itself the "National Volunteer Coast Guard of Somalia"

conducted attacks against Taiwanese fishing boats in 2005.[70]

It is clear that an industry with an economic impact of only one hundred million

dollars per year can not be the sole answer to Somalia's economic problems. However

the fishing industry was the original source of the Somali pirates. Unable to make a

living from fishing, yet having access to fishing boats, trained sailors, small arms, and a

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[67] Government of Australia and others, *High Seas Task Force. 2006. Closing the Net: Stopping Illegal Fishing on the High Seas* (London, UK: IUU Fishing Coordination Unit,[2006]), http://data.iucn.org/dbtw-wpd/edocs/2006-024.pdf (accessed February 15, 2010).

[68] Lehr, *Violence at Sea. Piracy in the Age of Global Terrorism*, 14.

[69] Lennox, *Contemporary Piracy Off the Horn of Africa,* 9.

[70] Lehr, *Violence at Sea. Piracy in the Age of Global Terrorism*, 14.

ready supply of targets in the form of foreign fishing vessels made this transition a simple

one. Garowe resident Abdulkadil Mohamed in 2008 commented: "illegal fishing is the

root cause of the piracy problem, they call themselves coast guards."[71] This testimony

combined with the armed fishing groups described above shows the level of involvement

of the fishing sector in Somali piracy, even if only by providing a narrative which covers

the nature of the organized crime that currently exists. It thus follows that any solution to

Somali piracy should address the fishing industry in Somalia. Moreover, preventing

foreign over-fishing is something that can be accomplished by naval ships already in

place for anti-piracy operations and is a measure of assistance which does not require a

footprint in Somalia.

Somalia – a Failed State?

Frequently described as a failed state; Somalia has not existed as a federal state

since 1991. In 2009 Somalia ranked first in the Failed State Index, written by *The Fund*

for Peace and *Foreign Policy* magazine, for the second year in a row[72]. This ranking is

based on social-economic indicators and political stability factors. Ali A. Mazrui, a

professor of Political Science at the State University of New York, uses six functional

areas of a government to assess whether a state is failed: sovereign control over territory;

taxation; provision of basic services; supervision of natural resources; rule of law; and

maintenance of national infrastructure.[73] There is some debate over the utility of the term

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[71] Robyn Hunter, "Somali Pirates Living the High Life," *BBC News*, sec. Africa, October 28, 2008, http://news.bbc.co.uk/2/hi/africa/7650415.stm (accessed January 11, 2010).

[72] "Failed States Index." The Fund for Peace. http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=323 (accessed March 31, 2010).

'failed state', however. In 2003, Ken Menkhaus, a Professor of Political Science at Davidson College, argued: "The terms 'failed state' and 'collapsed state' have become throwaway labels to describe a wide range of political crises."[74] Edward Newman contends: "the concept of 'failed' states is politicized to such an extent that it is analytically useless…"[75]

Notwithstanding this, Menkhaus continues to use the term, observing in 2006: "Somalia has been without a functional central government [since January 1991], making it the longest-running instance of complete state collapse in postcolonial history."[76] Newman also concludes that: "the concept of failed states, however problematic, should therefore not be abandoned."[77] Abdulahi A. Osman, a professor of African politics at the University of Georgia and Issaka K. Souare, a PhD in political science candidate at the Université du Québec à Montréal, also used the term frequently, even in the title of their book on Somalia, in which they observed that "despite 14 publicized attempts for

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[73] Ali A. Mazrui, "The Blood of Experience: The Failed State and Political Collapse in Africa," *World Policy Journal* 12, no. 1 (Spring, 1995), 28, http://www.jstor.org/stable/40209395 (accessed March 31, 2010).

[74] Ken Menkhaus, "State Collapse in Somalia: Second Thoughts," *Review of African Political Economy* 30, no. 97, The Horn of Conflict (Sep., 2003), 407, http://www.jstor.org/stable/4006984 (accessed 11 February 2010).

[75] Edward Newman, "Failed States and International Order: Constructing a Post-Westphalian World," *Contemporary Security Policy* 30, no. 3 (12, 2009), 425, http://search.ebscohost.com/login.aspx?direct=true&db=tsh&AN=45542022&site=ehost-live (accessed February 21, 2010).

[76] Ken Menkhaus, "Governance without Government in Somalia Spoilers, State Building, and the Politics of Coping," *International Security* 31, no. 3 (Winter, 2006), 74, http://www.jstor.org/stable/4137508 (accessed February 20, 2010).

[77] Edward Newman, "Failed States and International Order: Constructing a Post-Westphalian World," *Contemporary Security Policy* 30, no. 3 (12, 2009), 443, http://search.ebscohost.com/login.aspx?direct=true&db=tsh&AN=45542022&site=ehost-live (accessed February 21, 2010).

resolution, Somalia remains the ultimate failed state as its conflict continues with no end in sight."[78]

A Failed State Facilitates Piracy

Despite having a reasonably homogeneous population Somalia was unable to make a parliamentary style federal government work once it achieved independence from Italy and Great Britain. It appears in hindsight that this all too brief period of federal democracy resulted from failing to consider the role of clans when implementing national structures and boundaries. The relative success story of the Republic of Somaliland may indicate that the future of Somalia lies in smaller political entities; but there is currently no global appetite for changing national boundaries. Indeed the Republic of Somaliland remains diplomatically unrecognized, possibly due to fears of setting a precedent in a continent with many weak states comprised of multiple clans, peoples, and religions.

The chaotic situation in Somalia results from many factors: the failure to consider clan loyalties when establishing the state in the first place; uncontrolled warlordism unchecked since 1991 and in danger of becoming the structural norm in Somalia; mass unemployment and poor prospects for the future due to environmental and infrastructure damage; almost no industrial base; and a devastated fisheries sector. The prospects for Somalia's economic recovery are bleak. Poor rates of literacy, a damaged environment, ruined infrastructure, and lack of financial capital will all be impediments to progress. Indeed the length of time that Somalia has been a failed state has given rise to a generation acclimatized to living in chaos, perhaps even accepting it as the *status quo*.

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[78] Osman and Souare, *Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State*, 8.

The aggregate problems facing Somalia are too large to be solved by Somalis alone, although it certainly requires their personal investment, involvement, and leadership to succeed. The warlords who currently rule Somalia might very well benefit from a more secure and stable environment but their fear of an unknown and possibly less lucrative future, coupled with normal resistance to change is preventing them from accepting a peace that may or may not prove advantageous to them personally.[79]

Whatever the value of the term "failed state", Somalia does not currently exist as a functioning federal state, and has not for nearly thirty years. The breakdown of civil society following the overthrow of the Barre government in 1991 has led to a society subject to clan-warfare and habituated to living in chaos. Whether the collapse of the federal government in Somalia is the final chapter in decolonization[80] as Mazrui maintains, or merely an evolution in governance in a post-Westphalian world[81] as Newman argues, the fact that Somalia is unable to maintain the rule of law along her coasts and in her territorial seas is the important factor. Pirates will continue to operate as long as the conditions that allow them to succeed continue to exist. As Lennox notes, Somali pirates as "essentially rational actors operating in pursuit of their own survival and self-interest…Somali pirates can be expected to adapt their tactics to international responses, and continue to ply their trade until the risks of doing so outweigh the rewards."[82] Given the current status of Somalia, the relatively high rate of return versus

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[79] Menkhaus, *State Collapse in Somalia: Second Thoughts*, 405.

[80] Mazrui, *The Blood of Experience: The Failed State and Political Collapse in Africa*, 28.

[81] Newman, *Failed States and International Order: Constructing a Post-Westphalian World*, 443.

[82] Lennox, *Contemporary Piracy Off the Horn of Africa*, 3.

risk, and the lack of viable options for unemployed fishermen, pirates can be expected to continue operations off Somalia's coasts into the foreseeable future.

In order to be truly effective, the complex of rebuilding the federal state of Somalia requires an international response by nations working together and looking to the long-term. The poor history of UN intervention in Somalia, coupled with corruption and warlord interference with humanitarian aid that continues to this day, means that most governments are wary of involvement on the ground in Somalia. Given the immense scope of the task to rebuild Somalia as a functioning federal state, and the requirement for the Somalis themselves to become personally invested in the reform process if it is to have any hope of becoming a permanent entity, intervening ashore with military forces is not justified by the current scope of Somali piracy. The United Nations has started the *Somali Reconstruction & Development Programme* to address the most basic needs of rebuilding Somalia. This programme will cost over two billion U.S. dollars not including the costs of security.[83] Troop costs can be estimated based on the U.S. costs in Afghanistan and Iraq that were estimated by the U.S. Congressional Research Service at $275,000 U.S. dollars per soldier in 2005.[84] It can be seen that even a very modest security force would cost substantially more than the cost of current Somalia piracy, shipping delays, eighty million U.S. dollars per year in ransoms, and increased insurance costs.

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[83] United Nations, "Somali Reconstruction & Development Programme," United Nations, http://www.somalisupportsecretariat.info/rdp/index.htm (accessed 4 April, 2010).

[84] Amy Belasco,
The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations since 9/11 (Washington, DC: Congressional Research Service, [2006]), http://zfacts.com/metaPage/lib/CRS-Belasco-2006-09-Iraq-Costs-RL33110.pdf (accessed March 5, 2010).

More ships are lost globally per year due to other causes than fall victim to Somali pirates. The fact that ships continue to use affected waters near the Horn of Africa suggests that the threat is not yet a significant cost to global shipping companies and therefore not a major cause for concern for the global economy. While a humanitarian argument can be made for intervening ashore in Somalia, the justification of doing so for the purpose of eliminating piracy at its source does not represent an effective return on investment nor prudent strategic decision making.

Chapter 5 - Deterring Somali Pirates

The International Maritime Bureau's *Piracy and Armed Robbery against Ships -*
Annual Report 2009 showed that actual and attempted pirate attacks in the Gulf of Aden
are increasing at a rapid rate. In 2005 and 2006 there were only ten incidents reported in
the area. This number grew to thirteen in 2007, ninety-two in 2008, and one hundred and
sixteen in 2009, showing an increase of over ten-fold in five years.[85] Piracy in the Horn
of Africa area, with increasingly substantial ransoms, may continue until a comprehensive
solution involving fixing the failed state of Somalia is in place. However, the desired
end-state is a permanent reduction of pirate attacks to an acceptable level. Rather than
assign an absolute value to what constitutes acceptable, the concept of sea control is
useful. NATO defines it as such: "Sea control is the condition in which one has freedom
of action to use the sea for one's own purposes in specified areas and for specified periods
of time and, where necessary, to deny or limit its use to the enemy."[86] Maintaining Sea
Control over the *Maritime Security Patrol Area* in the Gulf of Aden and establishing a
similar protected shipping lane along the eastern coast of Africa will allow for safe
passage of merchant shipping without incurring the risks or costs of intervening in a state
that has been in a state of civil war for nearly thirty years.

Prior to the fall of the Barre government, maritime security in Somali territorial
waters was enforced by the Somali Navy. The presence of UN forces until the mid-1990s
helped prevent piracy but following their departure Somali fishermen began having
conflicts with foreign fishing vessels which deteriorated to armed confrontations and

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[85] International Maritime Bureau, *Piracy and Armed Robbery Against Ships - Annual Report 2009*,
1-103.

[86] North Atlantic Treaty Organization, *Glossary of Terms and Definitions (AAP-6)*, 205.

eventually to Somali militias hijacking foreign fishing vessels. The situation escalated and by August 2008 there was a sharp spike in piracy in the Gulf of Aden which focussed world attention on the subject. With this attention came the deployment of dedicated naval forces to confront the pirates. The fact that the pirates were based in a failed state, and the corresponding lack of indigenous law enforcement capability, meant that naval forces could not rely on local partners to help in controlling the Somali pirates as successfully happened in the Straits of Malacca. Nevertheless various international naval forces have made a difference, especially in the Gulf of Aden, with the number of successful attacks in 2009 being less than those in 2008 despite an increasing number of attempted attacks. Given the current level of Somali piracy, suppression and deterrence, without direct intervention ashore, are adequate responses. As pirates operate in areas where rewards greatly outnumber the risks, making sure that real consequences are attached to the act will deter Somali pirates.

Combating the Piracy Issue At Sea

Naval forces have been used to protect merchant shipping since navies were first formed. Counter-piracy operations are a natural fit for navies and are encompassed in the constabulary and diplomatic roles of naval author and strategist Ken Booth's well-known triangle model of naval roles.[87] Booth considered the use of the sea to be the primary focus of navies with three supporting roles being constabulary, diplomatic, and military. The ability of naval forces to move quickly from one role to another is what makes them well suited to operations in areas where the situation is chaotic and liable to escalate to violence with little notice.

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[87] Ken Booth, *Navies and Foreign Policy* (London: Croom Helm, 1977), 16.

Naval units are frequently forward deployed into troubled areas as a quick method for governments to show action in response to crisis. Therefore, ships were already patrolling the Gulf of Aden and northern areas around the Horn of Africa as part of the Global War on Terror (GWOT) legacy from the 9/11 attacks when Somali piracy spiked in 2008. Re-tasking ships that formed Combined Task Force 150 (CTF-150), a unit already in area due to a tasking in support of *Operation Enduring Freedom*, allowed for a rapid counter-piracy presence at negligible cost since the ships were already on patrol in the area. Aside from differing legal mandates and frameworks for dealing with detainees, the actual day-to-day tactical employment of warships changes very little between Maritime Interdiction Operations (MIO) looking for terrorists, and counter-piracy operations. Therefore ships can perform both tasks simultaneously.

The decisions by Russian, Chinese, and Indian governments to deploy warships to counter Somali piracy was welcomed by the international community and also reflects their national interests at play. All three countries have nationally flagged merchant shipping using the global shipping routes threatened by pirates. They also have sizeable naval fleets and apparent ambitions to become blue water Global Force Projection Navies so the counter-piracy mission is a good match of national interest and national ambition. These navies represent a source of naval assets that can back-stop any western shortages, even if they are not incorporated directly into standing counter-piracy task forces.

Defending the Targets - Self-Protective Measures

Recalling that many of the ships successfully captured by Somali pirates were not taking even basic prevention measures, the first step towards deterring piracy rests with the ship owners themselves. Demonstrating that they have taken reasonable measures to

defend their ships from being easy prey will also lend credence to their calls for increased

naval support to deter pirates at sea. The European Union Maritime Security Centre –

Horn of Africa (MSCHOA) recommends self-protective measures that range from

increased lookouts, use of dummies, lock-down procedures and onboard safe rooms,

pressurized fire hoses, zigzag manoeuvres, razor wire, passive defence equipment, night

vision goggles, Closed Circuit Television, and remotely controlled lighting which is

available but not yet in use.[88] The most important factor stressed by MSCHOA is the

requirement to have a plan prepared beforehand and to exercise the crew in the

implementation of this plan. Common sense items such as transiting at night, having a

good lookout astern, having pictures of suspected pirate vessels available to the bridge

team, and minimizing exposing the crew on upper decks are all components of being

vigilant and convincing pirates to look elsewhere for easier prey.

Figure 4 – Tanker ship with fire hoses rigged to repel pirates[89]

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[88] NATO Shipping Centre, *Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia* (Northwood, UK: NATO Shipping Centre, [2009]), http://www.shipping.nato.int/BESTPRACTI/file/_WFS/BMP%20Very%20Final%20Version%202%20Dated%2021-8-2009%20%282%29.pdf (accessed February 2, 2010).

The use of armed guards aboard merchant ships has been controversial. Many

shipping companies have decided against either arming their crews or using embarked

security teams. There are several reasons for this stance, including concerns over legal

liability, fear of escalating the situation, and the nature of the cargo onboard precluding an

exchange of gunfire.[90] However the American carrier Maersk is successfully using

security teams aboard its ships. The embarked team aboard the *Maersk Alabama* was

able to deter a second attack in 2009 by responding with gunfire and acoustic devices.[91]

In addition to acoustic devices, laser dazzlers and spot-lights can be used to deter the

attackers. Other suggested methods to make ships difficult to attack include hulls covered

with anti-traction foam or grease, fences, and ropes strung over the side to make boarding

difficult. A key enabler to successfully boarding merchant ships is reduced crew sizes.

This has not only resulted in reduced numbers of look-outs but also meant that the team

onboard can be tired due to high work loads and thus fail to spot pirates until it is too late

to take evasive action. Shipping companies need to consider their potential operating

environment when developing crew sizes and consider whether a small increase in crew

size would offset the cost of being hijacked.

Encouraging merchant ships that currently do not take self-protective measures to

adopt them will help reduce the number of successful attacks. Adding crew members to

improve watch keeping, making ships more difficult to board, operating slower ships in

other areas of the world and using faster ships for the Horn of Africa, are all relatively

[89] Anonymous, (2010).

[90] "Maritime Safety Committee - 86th Session," International Maritime Bureau, http://www.imo.org/dynamic/mainframe.asp?topic_id=1833 (accessed January 2, 2010).

[91] Alan Cowell, "Pirates Attack Maersk Alabama again," *The New York Times*, sec. Africa, November 18, 2009, http://www.nytimes.com/2009/11/19/world/africa/19pirates.html (accessed November 29, 2009).

simple ways to deter pirates. Low cost technological advances in the form of layered

defence systems for merchant ships are coming on the market and should be encouraged,

perhaps through tax incentives and insurance policy requirements. Improving compliance

with suggested best practices for merchant ships is a low cost and quickly implementable

measure to reduce the numbers of successful attacks.

Defending the Targets - Maritime Forces

In addition to ship self-protective measures, ships require naval forces to help

defend against pirates. There are currently three distinct maritime operations combating

piracy in the vicinity of the Horn of Africa: a European Union task group, Combined

Task Force 151, and individual ship contributions from nations such as India and China.

These naval forces are having an impact by reducing the number of successful attacks.

Assisting the naval forces are contributions of Maritime Patrol Aircraft and U.S. MQ 9

Reaper drones operating out of the Seychelles.[92] The drones are a particularly valuable

asset as they have enormous endurance and highly sophisticated sensors. The high

quality image taken by the drones will contribute significantly by collecting evidence in

order to conduct successful prosecutions.

To assist in allocating scarce naval forces as far as possible, keeping in mind that

the total area to be patrolled off the Coast of Somalia and in the Gulf of Aden totals over

two million square miles, naval forces have established an *Internationally Recognised*

Transit Corridor for Ships Transiting the Gulf of Aden (IRTC). This concentration of

forces has had a significant effect on the number of successful attacks in that area. There

are two methods to transit the IRTC, either alone or in escorted Group Transits. Ships

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[92] Will Ross, "Drones Scour the Sea for Pirates," *BBC News*, sec. Africa, November 10, 2009, http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/8352631.stm (accessed November 11, 2009).

capable of sustained speeds greater than eighteen knots are encouraged to bypass the convoys and make their transits under the cover of darkness.[93]

Another technique that has proven successful is layered defence. This is a tactic whereby some units are positioned close to the pirate home bases to provide Indications and Warning while other ships are positioned in the shipping lanes to provide deterrence and interdict pirate vessels when identified. Since Somali pirates use vessels identical to those of ordinary fishermen in the area, the only effective way to differentiate between them is persistence in theatre, getting to know the traffic patterns and usual characters at sea. Expressed differently, what is required is actionable intelligence on the pirates operating off the Horn of Africa. The most effective method to gain this knowledge is time-on-station by ships and submarines, observing traffic patterns, conducting hailings and boardings, and developing a feel for what is normal activity and what needs further investigation. Having units close to shore that can provide cueing allows for a more effective distribution of the remaining assets.

Improved interoperability between NATO forces and other contributing nations such as Russia, China, India, and Japan will also pay dividends in future operations. Development of a regional anti-piracy coordination centre, the MSCHOA, has helped to effectively manage the assigned assets and route merchant shipping around known trouble spots off the Horn of Africa. Improved intelligence gathering will also be a function of this persistent naval presence and should enable maritime planners to develop a fused Recognized Maritime Picture that includes more than just radar paint on contacts

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[93] NATO Shipping Centre, *Best Management Practices to Deter Piracy in the Gulf of Aden and Off the Coast of Somalia*, 1-17.

but also indicates who is a threat and thus enables merchant ships to be routed around that threat.

Somalia has the longest African coastline and the current area of operations for Somali pirates encompasses two million square miles. Despite this massive area to protect, successfully defending against piracy is possible. The maritime forces on patrol, the published guidelines to ships masters on how to harden their ships against attack, and the benefits accruing from having a naval presence and beginning to understand what is normal for that area, are paying dividends. Comparing the International Maritime Bureau pirate attack data from 2008 to the 2009 data we can see that Somali pirates attempted 217 attacks in 2009 of which forty-seven were successful. This number is a sharp increase from 2008 when only 111 attacks were attempted with forty-four successful attempts.[94] It can be seen from this comparison that despite the number of attacks increasing, the percentage of successful attacks is dropping, possibly due to increased self-protective measures and the naval presence in the area.

Improving the Defence

The primary methods of defeating pirates at sea involve making commercial ships harder to hijack and deterring pirates with a naval presence. As a result of these twin approaches, the percentage of successful pirate attacks off the Somalia coast decreased in 2009. Nevertheless, there are a number of areas that could be improved without establishing a military footprint ashore.

The key enabler that allows Somali pirates to roam far out to sea in search of lucrative targets is the use of mother ships. These ships function as mini auxiliary

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[94] International Maritime Bureau, *Piracy and Armed Robbery Against Ships - Annual Report 2009*, 1-103.

replenishment ships for the pirate combatant craft which are too small to operate solo far offshore. These mother ships are frequently hijacked vessels themselves, with the original crew forced to continue manning their posts under pirate control. Targeting the mother ships requires persistent surveillance of the area which will strain resources. However, an intelligence fusion cell can develop sufficient situational awareness from the already managed common operating picture to cue warships to investigate suspicious vessels. Providing a set of criteria for determining possible mother ships to transiting merchant ships and encouraging them to report suspected mother ships would also be effective.

Blockading the home ports of Somali pirates would be an effective method to contain the pirates. The locations of these bases are known, Eyl and Haradhere being the principal bases, and they serve as both the staging base and the receiving base where hijacked ships are held captive pending ransom negotiations and payment. A layered defence approach using surface ships, patrol aircraft, drones, and patrol submarines would be effective at maintaining surveillance, and if required, warning of potential attacks. Given the effective range of modern sensors this activity can be done from outside the twelve mile territorial limit if required.

A longer-term approach would be capacity building of the Somali Navy so that it is able to challenge pirates in their lairs. Currently, the Somali Navy has hired five hundred recruits and is conducting shore-based training as it has no equipment or boats.[95] Providing funds to support this fledgling capability would be a fraction of the cost of maintaining a squadron of frigates on station but past problems with accountability of

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[95] Will Ross, "Somali Navy Chief: World's Worst Job?" *BBC News*, sec. Africa, October 26, 2009, http://news.bbc.co.uk/2/hi/africa/8096137.stm (accessed November 11, 2009).

funds destined for the Somali security sector has made donors wary. A solution to this accountability concern is to also provide mentor and training teams which can provide expert advice, training, and credibility, plus be a safeguard that resources are not being diverted due to corruption. If the Transitional Federal Government continues to gain strength and demonstrates some competence, this type of funding could become more available without oversight.

Declaring the Exclusive Economic Zone of Somalia to be off limits to all foreign fishing vessels, and subsequently enforcing that zone would have two benefits. Firstly, it would eliminate claims that Somali pirates are just fishermen defending their territory. It would also provide a source of legitimate income for a desperate coastal population by increasing the available numbers of fish to be landed. As a final benefit, it would reduce the number of fishing vessels in areas of pirate operations and thus make the task of differentiating pirates from legitimate fishermen simpler for warships and merchant ships alike.

CHAPTER 6 – CONCLUSION

The Republic of Somalia, with the exception of the Republic of Somaliland, has been largely lawless since the fall of the Major-General Mohamed Siad Barre government in early 1991 threw the state into turmoil from which it has yet to recover. Piracy thrives in lawless areas and the under-employed fishermen with easy access to small arms, un-patrolled waters, and presence of rich targets offshore facilitated the development of a lucrative Somali piracy. Piracy in the waters off the coast of Somalia has been a growth industry, despite the presence of naval vessels and widely distributed methods of merchant ship self-defence, reflecting that the rewards thus far outweigh the risks.

The recent surge in Somali pirate attacks prompted a global response due in part to the strategic location of Somalia on the Horn of Africa and astride one of the most important waterways in the world. It was also due to Western outrage over the seeming immunity of the Somali pirates. Globalization has tied national economies together such that a cost effective way of shipping goods long distances is essential. Ocean shipping, with its large volume, relatively quick speeds, and low costs, fills this role. Due to the nature of global trade, an increase in piracy along one of the major sea lines of communications affects the way of life and the economic well-being of many people.

Naval forces from various maritime powers, including China, the European Union, India, Russia, and the U.S. commenced operations in the Somali area and quickly reduced the number of successful pirate attacks. However, despite this decreased level of success and increasing numbers of naval ships and aircraft, the frequency of pirate attacks has nearly doubled. Many commentators have claimed that this demonstrates that the long-term solution to Somali piracy is not at sea. It is thus important to examine the

actual numbers of attacks in the context of how busy this global waterway is. 116 ships reported pirate attacks or attempted attacks in 2009. Contrasting this number with the 22,000 vessels that transited the Gulf of Aden that year shows that only one in every 190 ships is attacked. Thus while it is important not to overstate the problem, the cost and threat is high enough to merit an international response, especially given that Somalia is currently unable to police its own waters and coasts. The nature and size of this response is the key question. It is worth noting that the danger of environmental catastrophe occurring when rocket propelled grenades are fired at crude oil tanker ships is another cause for concern and intervention, especially in a part of the ocean that is an important fisheries area such as off Somalia.

Lawlessness, poverty and a devastated fishery are some of the causes of Somali piracy. These root causes of piracy reveal that the complete solution to this complex problem will never be solely military, and will require law enforcement ashore in order to fully eradicate the threat. However, the long and tangled history of international intervention in Somalia has soured many western nations against putting troops ashore. The experiences of UNOSOM and UNITAF showed that casualties can be high and the rewards very hard to quantify. Even the current African Union force is only able to muster two-thirds of the mandated troop levels. A solution might be ashore in Somalia and a humanitarian argument could be developed that a concentrated effort ought to be made to restore the rule of law, develop a better economic outlook for the average citizen, and provide alternatives to clan-based civil war. Fourteen international peace conferences aimed at restoring peace may have finally proven sufficient and the current transitional government is showing some signs of promise as it makes progress at growing beyond the current enclave in the capital city of Mogadishu. However, expanding this effort to

include additional foreign troops and military intervention ashore merely on the basis of eliminating Somali piracy at its roots cannot be justified by the current threat posed.

Combating piracy was a core role of the world's navies in the age of sail and that they have begun to be employed in this role off Somalia's coast again is hardly surprising. The ability of merchant ships to ply their trade unmolested is crucial to the success of international trade in this globalized world. Any significant threat to this freedom of navigation is a concern and Somali piracy affects world-wide commerce due to its strategic location close to the shipping lanes carrying crude oil from the Middle East. The warships and maritime aircraft on patrol today have had an effect at deterring pirate attacks, as has the implementation of convoys and an anti-piracy coordination centre. While it may not be the total solution to Somali piracy, successfully defending a vast majority of merchant shipping using this area against piracy, such that global shipments of crude oil and other important commodities can continue to supply the global economy, is possible. The maritime forces on patrol, the published guidelines to ships masters on how to harden their ships against attack, and the benefits accruing from having a continual naval presence and beginning to understand what is normal for that area, are paying dividends.

The complexity of the problems ashore in Somalia is so great that an international military effort to restore rule of law as a precursor to eliminating piracy is unjustified in light of the current threat posed by Somali pirates. Instead, effective naval intervention can reduce pirate attacks to an acceptable level. Naval forces have proven adequate in the past to reduce piracy to acceptable levels and the reduction in percentages of successful Somali pirate attacks in 2009 demonstrate the current naval presence is having an effect despite limited naval assets and the large area to be patrolled.

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