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Somalia's Pirates: A Complex Problem in Need of a Comprehensive Policy

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CONTENTS

Abstract

The study examines the recent rise of piracy off the Horn of Africa and the root causes. Somalia's unique geography, demography and history of violence provide insight into the origin of Somalia's pirates.

Illegal, unreported and unregulated fishing has devastated the Somali fishery removing a legal income from Somali mariners. Economic analysis of the fishing commons provides insight into the importance of effective governance to protect resources inside a country's economic exclusion zone. Somalia's status as a failed state impacts the effectiveness of governance as a solution to counter piracy.

International reaction to piracy has focused on the application of merchant vessel defensive measures and naval counter-piracy patrols. Legal constraints weaken the coercive effectiveness of warships on anti-piracy missions. International development programs are limited in Somalia. The UN has developed an integrated approach to development with the *United Nations Transitional Plan for Somalia.*

The study makes the broad conclusion that the international community has not fully addressed jurisprudence issues to prosecute pirates nor has it addressed the maritime governance of Somalia's economic exclusion zone. Given the inability of the naval anti-piracy patrols off the coast of Somalia to eliminate piracy, the study recommends a comprehensive anti-piracy policy approach.

Introduction

Somalia has splashed back in to the dialectic of international affairs, regrettably not through the success of development but rather from the scourge of piracy. Pirate attacks on the global shipping lanes near the Horn of Africa have become a major maritime security problem. The International Maritime Bureau, which monitors piracy, reported that 195 attacks originated from Somali pirates in 2009.[1] The rate of increase in pirate attacks over the past few years near the Horn of Africa has been significant with attacks doubling from 2007 to 2008.[2] These attacks have primarily focused on using the captured crews and ships as hostages rather than selling the cargo or ship on the black market. The pirates of Somalia have been successful because they have a secure base ashore and are operating next to major international shipping lanes.[3] Most of the Asia-to-Europe trade in manufactured goods passes by Somalia and ships carrying over 12% of the world's supply of petroleum pass through the Gulf of Aden enroute to the Suez Canal annually.[4] In 2009 the pirates were able to successfully capture 34 ships and over 450 mariners were taken hostage for ransom money.[5] Somalia's geography, weak governance, high level of internal violence, regionalized agrarian economy, a collapsed fishery, and ungoverned waters have fused into a nexus for piracy to flourish.

The international community is responding to the pirate attacks by establishing naval patrols off the coast of Somalia. The patrols are either operating independently or through one of three organized task groups. The three task groups consist of European Union under Operation Atalanta, NATO under Operation Ocean Shield, and an American lead coalition of naval forces under CTF 151. A wide range of countries are providing ships, aircraft and

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[1] Matthew Saltmarsh, *"Pirates Widen Range, Straining Naval Patrols,"* New York Times, (November 20, 2009).

[2] Lauren Ploch et al, *Piracy off the Horn of Africa*, Congressional Research Services, Library of Congress, Washington DC: April 2009, 3

[3] John Scott Cowan, "Piracy, terrorism and the subtleties of multilateralism," Internet http://www.vanguardcanada.com/PirateTalesCowan accessed 3 December 2009.

[4] National Security Council, *Countering Piracy off the Horn of Africa: Partnership & Action Plan*, (Washington DC: December 2008), 4

[5] United Nations, *Report Of The Secretary-General Pursuant To Security Council Resolution S/RES/1846(2008),* http://www.un-somalia.org/docs/FINAL%20REPORT.pdf; Internet: accessed 16 January 2010, 2

boarding teams to protect international merchant shipping against the pirates. With the involvement of China, India and South East Asian countries this has become the major international maritime military operation. The international community established recommendations for merchant vessels to transit the area and provided guidance how to work with naval forces in the area.[6] Yet for naval forces the suppression of piracy has not been a simple task because piracy is more complex than attacks on ships at sea. Piracy remains a significant threat to international trade routes in the area.

Canadian operations during the deployment of HMCS Winnipeg in 2009 highlight the challenges of anti-piracy operations when they are conducted strictly from the application of military force at sea. Military success against pirates is often measured by effective deterrence operations. In April 2009 the Winnipeg foiled an attack by Somali pirates against a Norwegian oil tanker. The frigate was able to board the pirate vessel and seize the pirate's small arms. However, given that the Pirates had not broken the law on Canadian soil nor attacked a Canadian merchant vessel they were released with out further action.[7] This cycle would be repeated in May 2009 when HMCS Winnipeg deterred a Somalia pirate attack against the Maltese cargo ship, the MV Pride, in May 2009. Responding to distress calls the Winnipeg dispatched a helicopter. With the arrival of the helicopter on scene the pirates broke off their attack and attempted to flee to the coast.   The frigates boarding team was able to board the pirate skiffs and once the vessels were searched the pirates were released.[8] Regrettably, the problem with this approach is while it deters pirate attacks it does nothing to address the root causes of piracy. As there was no mandate to take pirate detainees during the mission, the sole coercive effect of the Naval patrol was the cost of the lost small arms thown overboard by the boarding team. HMCS Winnipeg's mission highlights the challenges inherent in preventing piracy solely by military forces at sea. Piracy is a criminal

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[6]   International Maritime Organization, *Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia*, http://www.marisec.org/piracy-gulf-of-aden-indian-ocean-industry-best-management-practice; Internet: accessed 12 March 2010
[7]   Allison Beveridge, "Somali pirates nabbed released by Canadian Frigate," *Canwest News Services,*(19 April 2009), http://www.canada.com/Somali+pirates+nabbed+released+Canadian+frigate/1512697/story.html, Internet: accessed 31 March 2010
[8]   Karen Hawthorne, "Today in piracy Canadian frigate thwarts potential pirate attack in Gulf of Aden," *National Post* (18 May 2009)*,* http://network.nationalpost.com/np/blogs/posted/archive/2009/05/18/today-in-piracy-canadian-frigate-thwarts-potential-pirate-attack-in-gulf-of-aden.aspx, Internet: accessed 3 March 2010

activity and military force is rarely the singular solution to criminal problems. What are the components of a comprehensive policy to counter piracy? Only by examining the roots of Somalia's piracy and understanding its complexity can a comprehensive international policy be developed to effectively counter the pirates.

Piracy has sprouted in Somalia because of a complex series of factors that have created the fertilizer for criminal activity to flourish. The roots of piracy in Somalia reside at a nexus of geographical, demographical, historical, governance, and economic factors. The result is pirates can seize merchant vessels for ransom with little fear of legal consequences for their actions.   Somalia's location at the horn of Africa, astride one of the world's major shipping routes has provided pirates with a rich resource of merchant vessels. Geography has bestowed Somalia with a large offshore Economic Exclusion Zone (EEZ) with rich fishing waters. Somalia's trouble history of civil war and warlordism has resulted in a country with significant governance challenges.   A lack of national governance has allowed for illegal unregistered unregulated fishing by foreign countries to devastate the livelihood of Somali fishers. The challenging economic conditions in a culture rife with violence have created a large unemployed youth group susceptible to the seduction of profiting from piracy. Somalia's failed federal government combined with weak local governments have created the conditions for warlords and businessmen to work in collaboration profiting from piracy. Piracy, which started with capturing foreign fishing boats in Somalia's EEZ, has graduated to large merchant vessels.   The significant economic profits generated by piracy for youth has further weakened the desire to earn a living through a legal employment. The failure of Somalia as a state has meant that there is no Coast Guard able to enforce Somalia's economic exclusion zone from illegal fishers or to arrest and detain pirates. Lacking a federal authority there are no courts to prosecute the pirates even if they are seized at sea. Somalia lacks maritime governance capacity. The complexity of international law with respect to piracy has constrained the coercive effect of international naval patrols.   Despite a desire by developed nations to prosecute pirates in the region, countries with effective governance such as the Seychelles and Kenya do not have an appetite to assume the burden of incarcerating Somali pirates. Resolution of the piracy problem lies in enhanced local governance,

improved security, economic opportunity development, effective counter-piracy jurisprudence, and a maritime governance program for Somalia's EEZ.

The paper will establish the complex circumstances that have lead to piracy flourishing off the coast of Somalia. It will outline Somalia's geographic, demographic and historical features affecting governance and the economy. The paper will examine the context of Somalia's economy and highlight the regional differences that impact piracy. It will outline the significant economic challenges for the people of Somalia. Somalia's unregulated economy creates problems for the control and regulation of national resources. Using Garrett Hardin's concept of the commons, the paper will examine economic factors that have lead to the collapse of the fishing industry. Applying the concepts of vertical and horizontal authority as defined by Kalevi Holsti it will examine the evolution of Somalia to a failed state with weak governance. Weak governance in Somalia has resulted in warlords, chaos and a society wracked with violence. The outcome of this violent society has been the development of a privatized and armed economy. The paper will link the rise of piracy to the lack of national and maritime governance. It examines the effectiveness of the international counter-piracy patrols policy in light of the root causes. The paper analyses the legal challenges associated with international piracy patrols. It will review the international community's development programs in Somalia focusing on their potential impact on territorial and maritime governance with respect to solving the piracy crisis. The paper having established that piracy is a complex problem will identify a range of policy's to establish the conditions to effectively suppress Somalia's pirates. The paper proposes the creation of two organizations to address the root of Somalia's piracy: a UN ad-hoc legal tribunal and a UN Maritime Trust Organization. The paper argues that a comprehensive anti-piracy policy includes: continued economic and governance development by the UN, a UN ad-hoc tribunal to prosecute pirates, a UN Maritime Trust Organization to the control the fishery and the continuation of international counter-piracy patrols.

The Horn of Africa: Somalia's Historical, Geographic, and Demographic Factors.

       Somalia gained independence in 1960 and enjoyed democratic rule until 1969 when the elected civilian government was eventually overthrown by a military regime in a bloodless coup. From 1969 until 1991 the country was under the rule of General Muhammed Siad Barre who appointed himself President. By the late 70s the country resembled a police state which was under the control of select clans represented at the top by President Barre. In 1977 Somalia invaded the Ogaden region of Ethiopia which was populated with Somali clans. By the end of 1978 Somalia suffered defeat in their invasion of the Ogaden region. This event further weakened the states authority and national respect for the military. Unfortunately the military was the sole national institution which represented the state across clan lines.[9]   With the loss of the Ogaden war and public respect the military no longer provided a unifying force to the Somali state. In 1991 the military dictatorship of President Barre was toppled by rival clans and a violent civil war broke out throughout the country. In response to the breakdown of the republic, the region of Somaliland declared independence and set up a separate government. In the remainder of Somalia an extensive civil war resulted in the destruction of most of the states infrastructure. Towns and neighbourhoods of the major cities came under the control of warlords. By the late 1990s any semblance of a unified country had disappeared.

       Somalia entered the 21st century as failed state. In 2004 a new Transitional Federal Government (TFG) was declared. It was backed by a group of clan elders and members of the Somali diaspora. By 2005 the southern and central parts of the country were under the control of the Supreme Council of Islamic Courts (SCIC). In 2006 The TFG received the backing of Ethiopian troops and started to displace the SCIC from their strongholds. By 2008 the TFG achieved a measure of control over Somalia while the SCIC was replaced by the Al-Shabab Islamic movement. The withdrawal of Ethiopian troops in early 2009 triggered a renaissance of Al-Shabab control over the territory with the TFG retaining in

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9   Ali A. Fatah. "Somalia's traditional clan-based system holds key to the country's future stability." *The Washington Report on Middle East Affairs* 21, no. 2 (March 1, 2002). http://www.proquest.com/; Internet: accessed December 14, 2009, 59.

tenuous control of Mogadishu and some regions of southern and central Somalia. This turmoil has affected the ability of the TFG to extend its control over the various local and regional governments.

Somalia's history of violence and failure to establish effective federal level governance has complicated the country's economic development and created the conditions for pirates to operate successfully. At a macro level the lack of a federal government has meant that the country has not been able to engage international institutions such as the World Bank for development programs, coordinate with regional nations on economic issues, or create a regulatory environment to manage natural resources. As a failed state Somalia has no ability to use law and order to regulate her EEZ against illegal fishing nor the capacity to deal with pirates ashore. At the micro level decades of violence has left a mark on society. Prolonged violence tends to leave a society with a general indifference for the rule of law and order. This has seeped into the perceptions of life options for the youth of the country. Their familiarity with violence reduces the normal ethical barriers to using violence for enrichment. Similar to gang culture in western urban areas of poverty the youth of Somalia are attracted to activities where violence is used to quickly acquire wealth. Thus for a Somali the transition from being a student to member of a warlords militia or a pirate is not constrained by the normal respect for law and order. The historical legacy of violence impacts governance, economics and development complicating the resolution of the piracy problem. The impact on these areas is significant and they will each be examined in detail to understand how they have contributed to the piracy problem. Somalia's history has been complimented by its unique geographical and demographical factors that have enabled pirates to be very successful seizing international shipping.

Somalia is located at the Horn of Africa. It has a largely arid terrain with few rivers and a limited natural resource base. Many of its forests have been devastated by harvesting for charcoal export and the remaining terrain is mostly scrubland and desert.[10] Originally the colonial powers of Italy and England administered Somalia through a series of administrative

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[10]   Jane's, "Sentinel Country Risk Assessment – Somalia." Updated 9 December 2009, http://sentinel.janes.com/docs/sentinel/NAFRS_country.jsp?Prod_Name=NAFRS&Sent_Country=Somalia&; Internet: accessed 15 January 2010

districts. Maps of Somalia highlight these districts, but they have limited value in understanding the sociological factors at play in Somalia. Demographically Somalia is a clan based society and the clans cross over the administrative district boundaries. The impact of a clan based society is a district administrative system that has little relevance on the states authority in a region. The clans are considered to be ethnically homogenous, that is 95% of Somali's are from the same ethnic background. Only 5% of the population come from Bantu African, Arab, and Asian ethnic backgrounds.[11] Thus unlike some other conflicts in Africa where battle lines have been drawn across ethnic lines, such as the Hutu and Tutsi in Rwanda, Somalia's internal conflict does not have a racial component. Rather divisions and alliances occur along clan lines adding complexity to establishing a federal government and national governance. This has resulted in any attempt at a national government having to address each clan's respective desires and power bases. The resulting political process, clanism, is unique to Somalia. Since the pirates of Somali operate from shore bases in specific regions and the clans are regional based it would be logical that the pirates are able to use Somalia's clan structure to operate safely from their bases. Any international solution to piracy will have to contend with clanism if is to eliminate the security provided by pirate bases ashore in Somalia.

After 19 years of civil war and internal chaos Somalia has evolved into several different regions representing a level of commonality between clans, politics and economics. The impact of clanism is best understood by dividing the country into four major regions. The four regions reflect clan, economic, governance and religious factors that contain nuanced differences. These nuances contribute to the geographic location of pirate bases. Southern Somalia is a largely pastoral agricultural zone. Central Somalia is an area surrounding Mogadishu containing a mix of local commerce and farming. To the north and east the districts have grouped together to form a semiautonomous region known as Puntland. Finally, to the north-west the former British colony of Somaliland has declared independence and has its own form of local government. Somalia's western boarder with Ethiopia and Ethiopian border districts contains clan groups with ethnographic links in to Somali's clans. South of Somalia is Kenya, which represents a significant market for exported Somali

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[11]   Jane's, "Sentinel Country Risk Assessment…

agricultural products. This framework of four regions is most useful in understanding the impact of governance and economic issues in Somalia and it will be applied in the detailed study of those factors in their respective chapters.

Figure 1: Map of Somalia and regional political power bases[12]

Somali's unique position on the Horn of Africa has placed it adjacent to the Indian Ocean and the Gulf of Aden. Somalia has 3,025km of coastline results in a sizable marine area and is positioned beside major international maritime trading routes. This extensive coastline provides the country access to large economic exclusion zone (EEZ) which extends out to 200 nautical miles from the coast. This EEZ contains diverse marine resources and

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[12]   Ken Menkhaus, "Governance without Government in Somalia," *International Security* 31, no. 3 (Winter 2006), 79.

has historically been the source of significant fishing by international fleets.[13] Unfortunately much of the fishing off of the shores of African is what is deemed illegal, unreported and unregulated (IUU) fishing.[14] The impact of IUU fishing in African countries' EEZ has become a major focus of international conferences. IUU fishing has been assessed as a major global problem impacting sustainable fisheries for developing nations where dependency on fisheries is important for survival and export income.[15] IUU fishing thrives where governance is weak and where countries are unable to regulate and police their waters. IUU fishing in Somalia's waters has been estimated to have cost over 80 million dollars in economic losses damaging indigenous fishing.[16] The arrival of IUU fishing was the impetus for Somali's to take to the sea in armed skiffs under the pretext of protecting their fisheries.[17] These armed skiffs would graduate from imposing fishing fees, to seizing IUU fishing vessels for ransom to finally branching out to attack cargo vessels.[18] Somalia's significant coastline and EEZ combined with IUU fishing is one of the base factors that has enable the development of piracy. To counter the piracy problem the international community need to address the fishing problem. This issue will be further expanded in the papers examination of the economics which underlie Somalia's piracy.

Somalia's northern and north eastern shore is located in close proximity to the main shipping route between Europe, the Middle East and Asia. The major shipping route passes through the Gulf of Aden past the Horn of Africa out into the Indian Ocean either South East to Asia or North East to the Arabian Sean. Geography has uniquely located the country close to one of the worlds major shipping routes offering plenty of targets for pirates. Without this

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13 Dr. Hassan and A. Mwangura, "IUU Fishing and Insecurity Impacts on Somali Fisheries and Marine Resources," 4th Chatham House IUU Fishing Update and Stakeholder Consultation Meeting, http://www.illegal-fishing.info/uploads/Hassan.pdf; Internet: accessed 8 April 2010

14 Note: The term illegal, unreported and unregulated (IUU) fishing might suggest that a fishing activity must be all three, the interpretation in used in this paper is a fishing activity can be classified as IUU if it constitutes action that is either, illegal, unreported or unregulated inside Somalia's EEZ. The Food and Agricultural Organization of the United Nations has further details on the definition of IUU fishing at http://www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM paragraph 3.

15 *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries: Final Report*, London UK: Marine Resource Assessment Group for UK Department for International Development, 2005, http://www.illegal-fishing.info/uploads/illegal-fishing-mrag-report.pdf; Internet: accessed 10 April 2010, 15

16 Dr. Hassan and A. Mwangura, *IUU Fishing and Insecurity Impacts…*

17 ibid

18 High Seas Task Force, *Closing the Net: Stopping Illegal Fishing on the High Seas*, http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf Internet: accessed 10 April 2010, 81

close location to major shipping routes it would not have been possible for Somali pirates to graduate from seizing IUU fishing vessels to attacking large cargo vessels. The international community initially countered these attacks by moving further off shore and establishing the International Recommended Transit Corridor (IRTC) in the Gulf of Aden to enhance the protection of merchant shipping by naval vessels.[19] This action does provide a dissuasive effect but it does not address the root cause of the piracy problem. Somalia's geographic location at the Horn of Africa places the country close to a major international shipping route. Geography is a core factor in the piracy problem and one that can not be solved by anti-pirate patrols without a more comprehensive policy countering the roots of piracy located ashore in Somalia.

Somalia's location at the Horn of Africa has resulted in unique historical, demographical, and geographical factors that have contributed the success of piracy. Somalia's tragic history of civil war and warlordism has resulted in a failed state that is not able to participate in international dialogue; it has set the conditions for failed governance. Demography has enabled the conditions for clanism to flourish, further complicating governance and economic development. The pirates have been able to use clanism to protect their operating bases ashore. Somalia's geography has regionalised the economy and bestowed Somalia with a large offshore economic exclusion zone with rich fishing waters. A lack of national governance has allowed for IUU fishing by foreign countries to devastate the livelihood of Somali fishers, Geography has enable the pirates to shift from attacking IUU fishing vessels to cargo ships transiting one of the oceans main traffic roots. All of these factors lie at the core of the piracy crisis; international anti-piracy policy must address these factors to successfully eliminate the threat. The improvement of Somalia's maritime governance will contribute significantly to countering both the IUU fishing threat and the act of piracy. In order to improve maritime governance the issue of governance ashore in Somalia must also be addressed. The impact of good governance will be constrained by the underling economic factors effecting Somalia's society. A contextual examination of

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[19]   United States Navy, *General guidance for vessels transiting high-risk piracy areas*, http://www.cusnc.navy.mil/marlo/Guidance/guidance.htm, Internet: accessed 14 April 2010

Somalia's economy provides insight to the root factors affecting the growth of piracy in the North Eastern region of Somalia.

Somalia's Economy: Regionally Different, Rife with Violence and Clanism.

To understand the draw of piracy for the average Somali and the economic challenges for governance in Somalia it is important to comprehend the macro level economic factors affecting the country. To develop effective anti-piracy policy the international community needs to understand the underlying economic challenges and develop programs to increase the economic options for Somalia's pirates. The impact of a lack of central government has been dramatic on the livelihood of the average Somali. The most stable economy in Somalia is located in Somaliland where the regional government provides security and order. Somaliland economy's main export is cattle to Saudi Arabia through the port of Berbera.[20] Additionally the southern region of Somalia also has an economy based predominantly on the cattle industry. However the export trade occurs along the frontier with Kenya.[21] The rest of the country has suffered significant economic setback since the civil war. All parts of the country are heavily dependent upon remittances of the Somali citizens who live overseas. It is estimated that Somalia receives approximately $1 billion from the diaspora of its citizens located in western countries.[22] The fall of the central government in 1991 is at the root of the current economic system with its mix of privatized services, violence, and remittance funds.

Warlord militias in the civil war destroyed most of Somalia's infrastructure. They seized control of the remaining state resources creating significant challenges in the daily lifestyle of the average Somali citizen.[23] The warlords fought over every item of value in the country from fishing piers to telephone poles.[24] Anything that could be turned into a profit was seized. The poor security environment created a proliferation of small arms, a breakdown in law and order and the use of violence to acquire wealth. For a Somali

[20]   Jane's, "Sentinel Country…

[21]   Peter Little, *SOMALIA: Economy without State,* (Bloomington: Indiana University Press, 2003), 18

[22]   Matthew Saltmarsh. "Remittance companies become the lifeblood of Somalia's economy; In Somalia's ragged economy, remittances are a lifeline: In midst of civil strife, financial network takes on governmental roles." *International Herald Tribune*, 13 November 2009, http://www.proquest.com/; Internet: accessed 14 December 2009.

[23]   Fatah. "Somalia's traditional

[24]   Jeffery Gettleman. "The Most Dangerous Place in The World." *Foreign Policy* no. 171 (March 1, 2009): 61-69, 4. http://www.proquest.com/; Internet: accessed 15 January 2010.

"violence became a means to pursue trade, to get employment or to participate in political decision-making."[25] Warlords and their power entrenched the perception that violence and the use of force are the main method one can use to acquire wealth. The impact of this level of violence associated with economic livelihood has created an expectation in Somali society that the only way to effectively earn a living is to use force.   This provides the pirates with a society ripe for recruitment, comfortable with the use of violence and desensitised to the rule of law. The pirate attacks increased success in receiving large ransom payments has reinforced the value associated with violence to acquire wealth. As a result the pirate syndicates have no problem recruiting Somali youth to their cause.

Concurrent with the rise of warlords was the growth of money lords. The money lords were Somalia's business owners who used money to acquire militias for their own security and then provided services, such as water, for profit.[26] As these money lords became more focused on business they created an alliance with local clan authorities and Islamic groups to provide a form of local administration and order. [27]   In much of Somalia the money lords in concert with the clan elders have brought economic order by using money to buy the allegiance of the militias from the warlords.[28]   This has created a level of security for local trade to function. Somali's lacking economic earning options are highly dependent on the money received from remittances to purchase trade goods. These remittances are the lifeblood of the current economic system.

Remittance funds have been critical in the development of the limited infrastructure after the destruction of the state in the civil war. Some clan leaders use the remittances to provide a limited amount of local governance. The most successful clans, the Hawiye and Darod, have used remittances to create conditions of local security and have provided schools for use by clan members.[29]   The majority of remittance funds in the economy are used to

[25]   Christian Webersik, "Differences That Matter: The Struggle Of The Marginalised In Somalia." *Africa* 74, no. 4 (January 1, 2004): 516-533. http://www.proquest.com/; Internet: accessed 14 December 2009.
[26]   Gettleman. "The Most…
[27]   Fatah. "Somalia's traditional…
[28]   Bronwyn Bruton. "In the Quicksands of Somalia." *Foreign Affairs* 88, no. 6 (November 1, 2009): 79-94. http://www.proquest.com/; Internet accessed 14 December 2009.
[29]   ibid

purchase the necessities for daily life in Somalia.[30] The private sector provides services, which would normally be the function of the state authority, such as water, education and health care.[31] These services are provided on a profit basis not as a public good. Somalia's citizens use their remittance money to pay for the services provided by businessmen. Without remittances it would be impossible for the average Somali citizen to survive, they would have to seek an alternative source of income.[32] Despite the national impact of remittances to Somalia's economy there are subtle regional differences that have impacted the development of piracy as an economic choice.

Southern Somalia which is an agrarian economy mainly focused on cattle.[33] Peter Little's detailed study of southern Somalia's economy "*Somalia: Economy without state*" demonstrated that despite the Civil War, clanism and warlords the cattle industry remains a valid livelihood for the people who inhabit the region. In north western Somalia, the region of Somaliland has benefited from the stability provided by the regional government. This has allowed for a functioning local economy and reasonable control over resources contained within the area. To the east of Somaliland lies Puntland.   Puntland's economy is a blend of livestock (goats and camels), fishing and remittances. The fishing industry in Puntland has a significant challenge due to the illegal fishing fleets in its waters. [34] As a result of IUU fishing Puntland's fishing industry has collapsed and no longer provides a viable living.[35] The collapse of the fishing industry is directly related to governance problems and links into the selection of piracy as a lifestyle it bares further inspection.

The history of the fishing industry off the coast of Somalia is not well understood in the context of the piracy problem. Inshore fishing for substance is an outcome of the impact of droughts in 1974 and 1986 when Somalia livestock farmers resettled along the coast and

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[30] Jane's, "Sentinel Country….

[31] Ken Menkhaus. "State Collapse in Somalia: Second Thoughts," in *Review of African Political Economy*, Vol 30 No 97, ROAPE Publications, 2003,90

[32] Saltmarsh. "Remittance…

[33] Little. *SOMALIA: Economy*…23

[34] Jane's, "Sentinel Country….

[35] Ted Dagne*, Somalia: Current Conditions and Prospects for a Lasting Peace*, Congressional Research Services, Library of Congress, Washington DC: May 2009, 7

developed fishing based lifestyle.[36]   Under the government of President Barre access to state resources were centrally managed under the planned economy approach.[37]   Initially a modern offshore fishing economy grew from the fleets of modern fishing vessels provided to Somalia by Moscow during the cold war.[38]   The government of President Barre sold fishing licensees to international companies to harvest offshore.[39]   The collapse of the federal government resulted in a corresponding collapse of Somali's fledgling Navy and Coast Guard services.[40] This removed any form of governance in Somalia's territorial waters and EEZ.

The international fishing industry has operated inshore and offshore with impunity using a variety of justifications for their presence. After the fall of President Barre government fishing companies continued to use the fiction of these licenses for personal profit.[41] Somalia's expatriate community was complicit in these actions using connections for personal enrichment while providing no revenue for the various nascent attempts at federal government post civil war. Kenyan journalist Mohamad Waldo reported that the African and Middle East Trading Company paid for 43 fishing licenses at $30,000 for a four month season to a group of warlords for the "right" to fish in Somalia's EEZ.[42] Companies like the Somali High Sea's Fishing, run by Munia Saiid, harvested fish while operating out of Yemen.[43] The acceptance of these licenses by the international community demonstrates a level of complicity in the failure of the nascent federal governments and governance in Somalia. Estimates indicate that the federal government has lost revenue of approximate $150,000 (US) per boat per year.[44]   Lost revenue of this magnitude results in significant economic consequences impacting both government programs and citizen lifestyle. Nascent

[36]   M. A. Waldo, "Somali piracy: the other side of the coin," *African Prospects*, (October 2000), http://www.illegal-fishing.info/item_single.php?item=document&item_id=688&approach_id, Internet: accessed 12 Apr 2010
[37]   C. Webersik, "Mogadishu: An Economy without a State," *Third World Quarterly*, Vol. 27, No. 8 (2006), pp. 1463-1480; http://www.jstor.org/stable/4017690 Internet: accessed: 31 March 2010, 1467
[38]   R. de Wijk, D.M. Anderson, and S. Haines, "Forum: The New Piracy: Three Contexts", *Survival*, 52: 1, 39 — 54; http://dx.doi.org/10.1080/00396331003612463; Internet: accessed 19 March 2010, 46
[39]   ibid, 47
[40]   Waldo, "Somali piracy: the other …
[41]   R. de Wijk, D.M. Anderson, and S. Haines "Forum: The New Piracy:…, 47
[42]   M.A Waldo. "The two piracies in Somalia: Why the world ignores the other?" *Wardheernews*, http://wardheernews.com/Articles_09/Jan/Waldo/08_The_two_piracies_in_Somalia.html, Internet: accessed 12 April 2010
[43]   Webersik., "Mogadishu: An Economy without …, 1469
[44]   Hassan and Mwangura, *IUU Fishing and Insecurity Impacts on Somali …*

attempts at creating federal government in Somalia have floundered with the loss of revenue from national resources. Fishing licensing could have provided wealth for the government services increasing its vertical legitimacy with Somali society. For coastal communities who were dependant on subsistence based inshore fishing, the harvesting by larger trawlers had direct impact on their livelihood as they were unable to compete for high value fish stock.[45]

Illegal, unreported and unregulated (IUU) fishing is a major economic and environmental problem off the coast of Africa. The environmental impact on fishing beds is one of the main concerns of western countries and is a major thrust of international reports such as *Closing the Net* by the High Seas Task Force.[46] In Somalia's situation it is the economic impact of IUU fishing that is most significant. IUU fishing increased post civil war when there was no longer a federal government to provide a regulatory regime nor a Coast Guard to patrol Somalia's EEZ . Estimates place up to 700 IUU vessels operating in Somalia's waters removing a sizable amount of revenue from Somalia's economy, in the case of the shrimp industry an annual estimate would be over $94(US) million.[47] The catch from the IUU fleet is "laundered," it is caught and processed at sea with packaging as a product from another country such as Kenya.[48] IUU fishing has removed significant economic wealth from Somalia. Fledgling national governments like the TFG or regional governments in Puntland and Somaliland desperately need this revenue to provide services to the population. In Somali society these services are provided by businessmen further weakening any improvement in the legitimacy of a government. IUU fishing represents significant potential export income for the economy that a national government could use to enhance its control of society. IUU fishing not only impacts federal government revenue it removes economic opportunity for Somali citizens. The loss of food and revenue from IUU fishing impacted the economic prospects for Somalia fishers. It displaces Somali's from a legal occupation making them more susceptible to criminal activities. Lacking a national solution and being directly impacted economically by IUU fishing, Somali fishers reacted in dramatic fashion. The loss of a viable economy based on fishing, combined with poor governance

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[45]   Waldo, "Somali piracy: the other …

[46]   Note: the report was generated for the Fisheries Ministers from Australia, Canada, Chile, Namibia, New Zealand and the UK.

[47]   *Review of Impacts of Illegal, Unreported …*, 167

[48]   Hassan and Mwangura, *IUU Fishing and Insecurity Impacts on Somali …*

and an acceptance of violence in their daily life would eventually lead many of these fishers to resort to piracy.

Somalia fishers frustrated by the amount of IUU fishing offshore organised themselves into pseudo coast guards and tried to force fishing vessels out of their waters.[49] Somali fishers were a product of an armed society and they equated the use of violence as a method to achieve results. Thus it was only logical that they form groups such as the National Volunteer Coastguard to "tax" IUU fishing vessels in their waters.[50] This "tax" was a form of ransom and it is believed that the money remained in the possession of the fishers. In response foreign vessels armed themselves and the level of violence increased.[51] The cycle of piracy commenced with Somalia's fishers attacking and seizing vessels to protect their fishing grounds.[52] Initially piracy was concentrated on fishing vessels and the smaller coastal freighters involved in the world food program operating out of Mogadishu.[53] The impact of the decline in the fishery was the most dramatic in Puntland because this region has been the most affected by droughts in a agriculture economy focused on subsistence farming.[54] This would mean that Puntland fishers would have the most to gain economically by turning to piracy. Puntland's fishers would end up becoming the majority of pirates that plague international shipping routes.

The impact of poor governance, combined with Somalia's unique location on the Horn of Africa and a challenging domestic economy ruled by warlords, clanism and a fishing industry devastated by illegal, unreported and unregulated fishing has set the conditions for piracy to flourish. The international community needs to comprehend the underlying economic challenges and develop programs to increase the economic options for Somalia's

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[49]   B. Moller, *Piracy off the Coast of Somalia,* Copenhagen: Danish Institute for International Studies Brief (January 2009), http://www.diis.dk/graphics/Publications/Briefs2009/bmo_piracyofsomalia2.pdf; Internet: Accessed 12 Apr 2010, 2
[50]   ibid
[51]   Waldo, "Somali piracy: the other …
[52]   ibid
[53]   B Moller, *Piracy….*, 2.
[54]   R. Middleton, *Piracy in Somalia: Threatening global trade, feeding local wars*, London UK; Chatham House (October 2008), http://www.chathamhouse.org.uk/publications/papers/download/-/id/665/file/12203_1008piracysomalia.pdf; Internet: accessed 3 February 2010, 5

pirates. By understanding these factors the international community can create developmental programs to enhance governance, develop economic options and suppress the economics of piracy. International policy to counter piracy needs to address these baseline factors to ensure a long term solution to eliminate the Somalia pirates. In addition to these underlying aspects there are unique factors associated with Somalia's piracy that flow from the fishery challenge that bare further examination. By using economic theory to fully understand the impact of the IUU fishing and the incentive for piracy it becomes possible to construct a more integrated policy framework to counter Somalia's pirates.

Economics of Somali Piracy: Exploitation of the Commons for Profit.

At its core, the problem of piracy is economic in nature. Piracy is a criminal endeavour that enriches its participants through the ransom money paid for the release of seized vessels. An examination of Garrett Hardin's economic essay "*The Tragedy of the Commons*" in the context of Somalia's piracy provides significant insight to how modern piracy has developed and how one might resolve the problem of Somali piracy. While Holsti's theoretical framework provides an improved comprehension of the impact and effectiveness of governance in Somalia it is Hardin's framework which provides insight to the economic factors underlying the governance challenge.[55] Hardin's construct of "freedom in a commons" applied to the Somali fishery explains the value of governance in the protection of a state's resource. Furthermore his economic construct provides for the development of potential solutions for the Somalia piracy problem. Hardin writes about common goods in his essay and the unique economic challenge they present in a free economy.[56] Fish are a renewable resources and a common good, a resource not owned by anyone. Examining the economic problem of common goods (i.e fish) using Hardin's economic framework explains the maritime governance challenges facing Somalia in the nations EEZ.

Fish are the source of livelihood for many of the world's individuals. The High Seas Task Forces study into IUU fishing on the high sea's assessed that the majority of this fishing occurs in the EEZ of developing countries. The impact on Sub-Saharan Africa was estimated to amount to one billion dollars (US) per year.[57] Somalia's status as a failed state increases the complexity in calculating the dollar value impact of IUU fishing. However, Somalia's economic loss would represent a significant faction of the Sub-Saharan amount. The linkage between IUU fishing and the impact on regional fishery's has been well established in

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[55]   Note: Holsti's theory will be analyses later in this paper.

[56]   Garrett Hardin, "The Tragedy of the Commons," Science New Series, Vol. 162, No. 3859 (Dec. 13, 1968), pp. 1243-1248; http://www.jstor.org/stable/1724745; Internet: accessed 15 January 2010.

[57]   *High Seas Task Force (2006). Closing the net: Stopping illegal fishing on the high seas.* Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, IUCN and the Earth Institute at Columbia University. http://www.high-seas.org/docs/HSTFfinal/HSTF-Final-Report-09-03-06.pdf; Internet: accessed 26 March 2010, 3

international reports. In Somalia's region of Puntland maritime governance failure and resulting IUU fishing devastated the fishery. This combined with weak local governance and a society accustomed to using violence set the conditions for piracy to flourish.

In a fully functional state there is an agency or government department that oversees the utilization of resources. This authority ensures that companies do not over consume resources or cause environmental damage. The establishment of state control over common resources has a sound foundation in economics. Economic theory explains that there is an incentive to consume all of an available resource. This is a rational economic behaviour if the resource is a common good. The exploitation of a common resource for personal gain is the subject of Hardin's article. Hardin argues that with a common good a person will seek to maximize their return by seeking an incremental amount of the common good despite the damage that incremental amount causes to the common good.   The incremental damage of the individual's gain is distributed over all exploiters of the resource. Thus it only has a marginal impact on the individual. Over time the freedom to consume the common good will result in the destruction of the good. One way of preventing this type of over consumption is by creating regulations that give property rights to the individual over the resource.

Governments commonly create property rights for common resources through the use of licensing such as logging permits or fishery quotas. The creation of regulations and enforcement of quotas provides an economic incentive for sustainable management of the resource.   Without creating an economic incentive to manage the exploitation of the resource the individual will over consume the resource destroying its viability. Modern societies, recognizing these facts, have decided to regulate the fishing industry under international agreements and most significantly through recognizing the right of nations to claim part of the ocean as their territory. International law permits states to regulate fishing just as they regulate the logging industry on land.   States claim the first 12 nautical miles of ocean waters as territorial waters. Additionally states have the authority to regulate resource consumption in the economic exclusion zone (EEZ). International law recognizes the EEZ as the area of water from the coast out to 200 nautical miles. This area usually corresponds to

the continental shelf, which is normally the prime area of interest for the fishery industry.[58] As a result most states have authority over the fish resources contained within the most productive fishery eco-system.

Hardin writes about the incentive to maximize the use of the commons. In economic terms no one person who takes a fish away has to pay it back. In the context of fish we can consider each fishing boat as an individual who will maximize his consumption of this common resource. Each fisher will seek to extract more fish to maximize his return, a rational economic decision. The individual marginal increase to profit by maximizing the fish catch is greater than the minor incentive to mange the fish stock for future consumption. Furthermore the fisher gains nothing by leaving fish in the water if another fisher can just come along and catch those fish. The result, over time, is the diminished viability of the fish stock. To prevent this occurring inside of an EEZ, the consumption of fish is regulated by the state. However should there be no regulations on the fishery then all fishers will seek to maximize their return by maximizing their catch. IUU fishing fleets exploit this economic paradigm to reap large catches from the regions of the world with poor maritime governance with little cost as they do abide by a regulatory regime.   The rational individual economic decision to maximize the return will lead to the eventual collapse of the fishery. The cumulative increase in the total catch by all fishers will destroy the biologically sustainable fish population. Herein lies the tragedy of the fishery, as Hardin states "the individual benefits as an individual from his ability to deny the truth even though society as a whole, of which he is a part, suffers."[59] In the fishery each fisher is locked into an economic system that compels him to fish continuously until there are no more fish left for anyone in the fishers' society. The result of this freedom is the ruin of the fishing industry. As Hardin so elegantly stated "Freedom in a commons brings ruin to all."[60] Applying Hardin's logic to fish as a resource reveals the tragedy of the Somali fishing industry as impacted by IUU fishing fleets.

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[58] Robert Repetto, "A new approach to managing fisheries." *Issues in Science and Technology,* 18, no. 1 (October 1, 2001): 77-84. Internet: http://www.proquest.com/ accessed 4 December 2009

[59] Hardin, "*The Tragedy…,*1243-1248

[60] ibid

Since the fall of the national government of Somalia in January 1991 there has been no central authority able to control the regulation of the Somalia's EEZ fishery.[61] The lack of central authority over the fishing industry established the freedom of the fishery. The lack of national government control resulted in illegal fishing by European and Asian countries inside of Somalia's EEZ.[62] The absence of authority allowed all who fished to overharvest the fishery causing a collapse of the industry.   The impact of the collapse of the fishery was most significant on the fishers of Puntland who lost their way of life.[63]   Society's governance is vital to avoid the tragic destruction of this common resource. Effective governance provides the necessary coercion against over exploitation of the fishery.

Hardin emphasises the value of coercion "to escape the horror of the commons"[64] Coercion in most societies occurs through effective governance which includes the legislated regulation of individual actions such that undesirable actions by an individual are punished. Governments also provide property rights for common resources through the use of licensing. Governments protect these rights with policing, in the case of the fishery the policing function is normally carried out by a Coast Guard. The Coast Guard and courts ensure ownership rights are maintained by punishing anyone who contravenes individual property rights. To avoid the tragedy of the commons in the fishery there needs to be a regulatory effect on each fisher. This lack of coercion is one of the root problems in the case of Somalia's fishing industry.

The 1991 civil war marked the end of government control over common resources.[65] The lack of central government resulted in an inability to maintain Somalia's sovereignty over the countries EEZ. Somalia has developed a solution for the provision of some common goods on shore with local businessmen providing traditional public services under the construct of a "privatization of everything."[66]   While traditional government services such as ports and water delivery can be run for profit there is no economic incentive for a

[61]   Menkhaus. "State Collapse…, 407
[62]   Dagne, Somalia…, p7
[63]   Al Jazeera video, "Abdulrashid Muse Mohamed, in prison for piracy,"
http://english.aljazeera.net/focus/2009/06/200961220144592942.html Internet: accessed 5 January 2010
[64]   Hardin, "The Tragedy…. 1243-1248
[65]   Menkhaus. "State Collapse..., 407
[66]   Menkhaus, "Governance…, 90

businessman to manage common resources like the fishery. In Somalia's case warlords, acting under economic principles to maximise their personal gain, sold protection to the IUU fishing fleets by embarking their militia's to protect the IUU vessels from organized Somali fishers acting as a Coast Guard.[67]   The inability to control the states natural resources has created economic freedom to exploit resources. In the waters of Somalia's EEZ the lack of regulation and enforcement by a Coast Guard resulted in the collapse of the fishing industry and the loss of a viable livelihood for the Somali fishers living in Puntland.

The tragedy of the collapse of the fishing commons off the coast of Somalia has resulted in the growth of piracy in the region. Desensitized to the use of violence to acquire wealth in Somali society the ex-fishers initially tried to use force to protect their fishing areas from outsiders.[68]   Being unsuccessful Somali fishers were unable to generate a living from fishing and had to find another source of income.[69]   The ex-fishers, as expert mariners, combined their skills with those of local armed militias to create a nexus of abilities well suited to piracy.[70]   Somali pirates are expert local mariners skilled in both small boat use on the high seas and in the application of violence.[71]   The former fishers can earn a sizable ransom from a merchant vessel creating a comfortable lifestyle in Putland.[72]   The impact of the increased ransoms from pirate attacks has differing levels of micro-economic impact for Somali's.   For individual pirates they can earn in the thousands of dollar per successful pirate attack and ransoming while the leaders of the pirate syndicates earn significantly more.[73]   It is estimated that between $20-40 million US has been paid in ransom funds in 2008.[74]   The allure of money is alleged to have attracted criminal syndicates with financial

[67]   A. Khalif, **"**How Illegal Fishing Feeds Somali Piracy," *The Somaliland Times*, (15 November 2005); http://www.somalilandtimes.net/200/08.shtml: Internet: accessed 20 April 2010
[68]   Al Jazeera video, " Abdulrashid Ahmed, pirate." http://english.aljazeera.net/focus/2009/06/200961220144592942.html Internet: accessed 5 January 2010
[69]   Ploch et al, *Piracy…*, 7
[70]   Dagne, *Somalia…*, 6.
[71]   Christopher Joyner, "Navigating Troubled Waters: Somalia, Piracy, and Maritime Terrorism." *Georgetown Journal of International Affairs*, no. 2 (July 1, 2009), 85. http://www.proquest.com/ accessed 4 December 2009.
[72]   Muhammed Adow, "The pirate kings of puntland," *Al Jazeera*, Internet http://english.aljazeera.net/news/africa/2009/06/2009614125245860630.html accessed 5 January 2010.
[73]   Nick Wadhams, "Down And Out In Nairobi: Somali Pirates In Retirement," *Time* (1 April 2010); http://www.time.com/time/world/article/0,8599,1976993,00.html ; Internet: accessed 6 April 2010
[74]   Ken Menkhaus, "Dangerous Waters", *Survival*, 51: http://dx.doi.org/10.1080/00396330902749640; Internet accessed 19 March 2010, 23
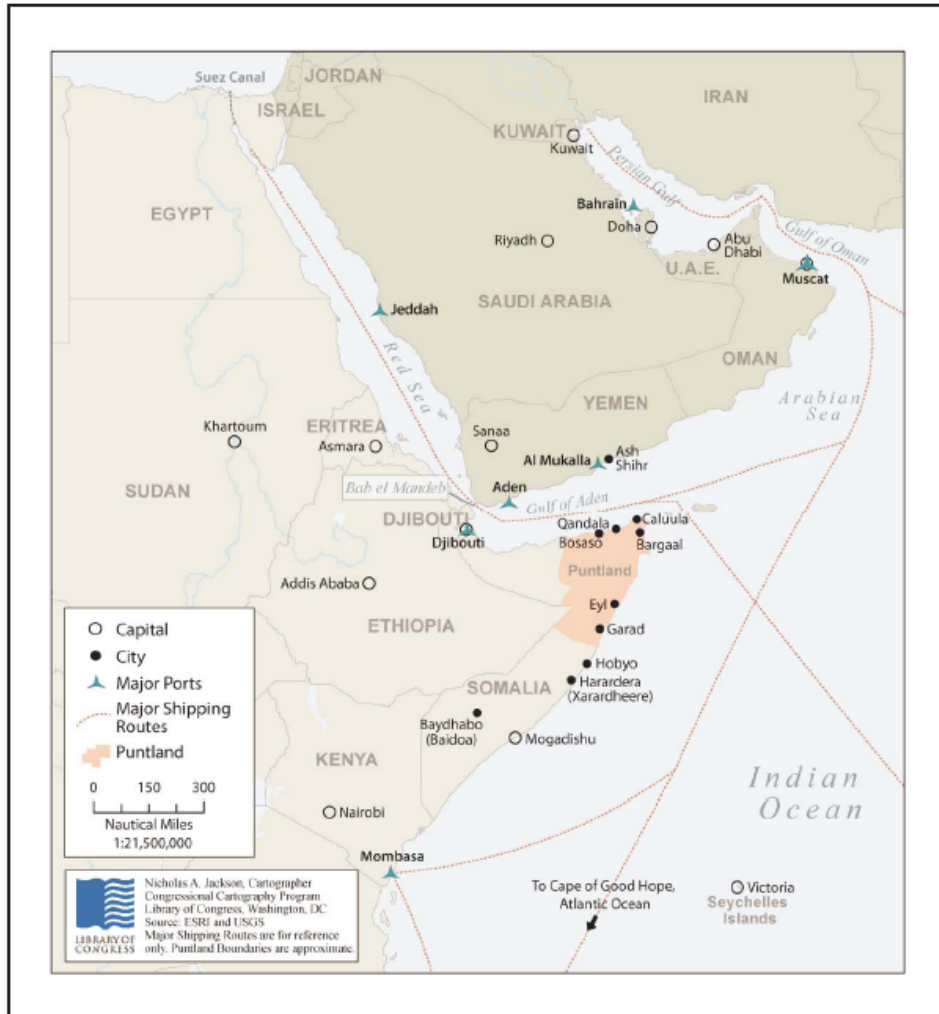
investors based outside of Somalia.[75] In Somalia pirate activity has become more organized and it is controlled in the central region by the "Afweyne" family and in Puntland's Sanaag region by members of the Warsengeli sub-clan.[76] These pirate warlords power base from clans reflects the impact of clanism on society in Somalia after the failure of the central state. Family connections and profit sharing is rife within the Puntland administration and impact the prosecution of pirate warlords. A notorious example is the pirate warlord Boyah who "publicly admitted to being the commander of a maritime militia consisting of approximately 500 pirates."[77] He has not been prosecuted by Puntland officials and he has alleged that regional officials receive 30 percent of ransom money.[78] This is a predictable micro-economic impact of piracy; money always has a powerful effect on governments in regions with poor levels of established governance.

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[75]   Wadhams, "Down And Out In Nairobi…

[76]   United Nations, *Letter dated 10 March 2010 from the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council S/2010/91 10 March 2010*; http://daccess-dds-ny.un.org/doc/United NationsDOC/GEN/N10/246/89/PDF/N1024689.pdf?OpenElement; Internet: accessed 16 April 2010, 38

[77]   ibid, 41

[78]   ibid, 42

Source: Congressional Cartography Program, Library of Congress, adapted by CRS Graphics.

Figure 2: Somalia and Major Shipping Routes

Poor governance ashore has allowed pirates to setup operation bases on the Horn of Africa closely located to major shipping routes. The former fishers and warlords militia's commenced their attacks on merchant vessels transiting the major shipping routes which pass north and east of Somalia. Since the initial attacks the pirates have expanded out from Somalia's EEZ and attacked cargo ships in the Gulf of Aden and the Indian Ocean.[79] Somali pirates have become an international problem impacting world trade.[80] By the end of 2009 the level of attacks had increased 95 percent from 2008 despite increased naval patrols in the

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[79]   Ploch et al, *Piracy…*, 8
[80]   ibid, 19

region.[81] Through an economic lens Somali fishers, acting in concert with warlords as pirates have substituted the economic resource of pirating merchant shipping for their previous resource of fish.

Piracy is thriving because it is profitable and virtually consequence free. The rule of law in Somalia does not include a central government with courts enforcing international law for the protection of the fishery or illegal piracy. Local governance groups have focused their efforts of law and order on reducing street crime. [82] Local warlords who use violence to enforce their will provide sanctuary on land for pirates most likely in return for some amount of monetary compensation.[83] Both the warlords and pirates represent a failed moral career choice for people living in a chaotic society. The pirates have selected violence to "win" in the economic challenge of finding a livelihood. Hardin states that violent solutions demand a change in human values or morality to prevent their adoption. To counter the option of using violence society requires some form of coercion against using violence.   In a normally functioning society human morality is regulated by laws which provide the required coercion to live within the rules of society. Given the lack of national governance authority in Somalia it falls to the international community to apply coercion and resolve the problem of piracy. Clearly the international community desires enhanced governance in Somalia. It would be an effective counter to the impunity which pirates enjoy from their shore bases. An analysis of the governance factors at play in Somalia's society provides insight into the challenges that developing a comprehensive policy to counter piracy must overcome.

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[81]   United Nations, *Letter dated 10 March 2010 from the Chairman of the Security Council Committee pursuant to resolutions …*, 36
[82]   Menkhaus. *"State Collapse….*, 412
[83]   Ploch et al, *Piracy…*, 8

Governance in Somalia: Failed State, Clanism and Regionalism Arising.

To understand the impact of governance in Somalia it is useful to use a theoretical framework which provides a better comprehension of the impact and effectiveness of state authority. By applying a framework it is possible to understand how the nature of government authority has a consequence on the governance provided to a society. Kalevi Holsti has created a very useful construct to examine state authority and governance in a society. This theoretical framework provides an improved comprehension of the impact and effectiveness of governance in Somalia.

Kalevi Holsti in *The state, war, and the state of war* outlines a concept of state authority for understanding governments and their relative strength. Holsti has defined state authority as the "right to rule," which is derived from a blend of vertical and horizontal legitimacy.[84] Vertical legitimacy for each state originates from a unique blend of eight major factors. These factors are identified as: force and might, religion, heredity, leadership attributes, ethnicity, ideological task, consent or contract, and task achievement.[85] Each of these factors can be used to evaluate the style of a state's government and the country's sociological factors to determine the level of vertical legitimacy the ruler has over the state. Holsti does not believe government legitimacy is vested solely in vertical factors. He also describes the concept of horizontal legitimacy. Horizontal legitimacy is that authority that has developed between the groups and individuals within the state, that is the "nature of the community over which formal rule is exercised."[86] Both horizontal and vertical legitimacy factors blend together and can be used to understand the relative authority of a government over a society. Holsti groups states into strong and weak states by examining the level of vertical and horizontal legitimacy. A unique type of weak state is a failed state. A failed state is a country whose political structure has collapsed.[87]   Somalia is currently considered a failed state.

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[84]   Kalevi Holsti, *The State, War, and the War.* (Cambridge: Cambridge University Press, 1996), 84
[85]   Holsti, *The State, War…,* 86
[86]   ibid, 87
[87]   ibid, 90

Holsti identifies a series of characteristics of weak states. Most notably is the absence or low level of vertical legitimacy.[88] Often it is the personalization of state authority, where the society confuses the authority of state with the personification of the ruler. Many of these states are deemed to be patrimonial states where the ruler has a patron-client relationship with the polity.[89] Holsti recognizes a series of factors and policies will erode the development of legitimacy for the state.[90] These factors are: the lack of security for citizens, the state extracting economic resources to point of livelihood collapse, a lack of social consensus on how the political system works, one group or family capturing state resources to sustain their personal wealth, massive corruption, and the poor compression of the separation of civil society and religion. All of theses factors can combine to weaken state authority. Weak state authority often creates governance issues which result in collapsing government services and violence. Citizens will respond to this situation differently. Holsti notes that the four common responses by the citizens are enduring the state, exiting the state for new life elsewhere, voicing discontent with the structures of the state, and finally rebellion against state authority. [91]

Reviewing Somalia's history against the construct of Holsti's model of state legitimacy it becomes clear that state authority did not collapse immediately with the commencement of 1990-1991 Civil War. Somalia weakened overtime to eventually arrive as a failed state. Somalia's path to weak state status commenced with the military coup against the democratic government in 1969. President Barre military regime weakened its vertical legitimacy over the society by the nature of his system of rule. His government garnered its authority from the legitimacy factors of force and might and leadership attributes. President Barre used military force to create a police state to impose his will on the society.[92] His use of force soured the citizen's belief in the value of state agencies in the provision of security. This is directly counter to the individual's desire for the state to provide security. It weakens the legitimacy of the state in the eyes of the citizen as the state is perceived to be a

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88   Holsti, *The State, War…,*104
89   ibid*,*205
90   ibid, 108
91   Ibid, 118
92   Fatah, "Somalia's traditional…

threatening element to a safe and secure livelihood.[93] President Barre also used his personal leadership attributes as a basis for his authority as ruler. He developed his leadership attributes through a patrimonial relationship where he provided his supporters monetary rewards and control of state resources.

Patrimonial authority refers to a patron client relationship between the leader and select citizens of the state. It implies that the leader's authority is only valid as long as the leader provides for the citizen-client. Holsti identifies this type of government as a mark of a weak state. When the ruler is no longer able to provide the sufficient rewards to his citizen-clients the state will collapse.[94] President Barre allowed the control of government agencies to fall under the authority of chosen clans creating a system of "fiefdoms."[95] The decision to enhance the status of particular clans was very damaging in Somalia because the state is considered to be an ethically homogeneous state. The advent of elevating one clan over another weakens the homogeneous nature of Somali society retarding modern governance process such as development of a professional civil service. Under President Barres' plan of augmented clan authority what quickly became important were not a person's professional skills but rather their clan heredity. Clan heredity determined what job a person would get and what state agency would provide them a service. By selecting a few clans over others President Barre enhanced the divisive effect of clans in the society. The act of endowing certain clans with more authority over state agencies, the normal role of a civil service, created the seeds of clanism in Somalia society. Once his federal government failed all that would remain from his government was the authority of inherent in the clan structure. Lacking a civil service to administer the victors of the civil war would fall back on clanism to run the country. President Barre's actions ensured that the government had no horizontal authority arising from a homogeneous society. All of the other clans that made up Somalia's society did not provide him with horizontal authority. His authority would only exist under a patron-client relationship from the clans whose "fiefdoms" enriched their status.

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[93]   Holsti, *The State, War…,*108
[94]   ibid, 105
[95]   Fatah, "Somalia's traditional…

Somali citizens responded to the weak national governance with a mix of the four of responses described by Holsti. Initially citizens used voice inside the state against the government expressing concern with the patronization of the civil service.[96] When General Barre responded with the use of force to quash dissidence the majority of those in the elite able to oppose the regime exited the state.[97] Those who could not afford to emigrate endured the regime until open rebellion broke out in the fall of 1990. The revolt quickly degenerated into a civil war, which eventually turned Somali into a warlord state. The final result of the national government's weak vertical and horizontal authority was the total collapse of governance in Somalia. The Barre regime's violent actions suppressing dissent in the fall of 1990 represented final act of a weak state. The resulting overthrow of the Siad Barre government in 1991 marked the end of centralized national government of Somalia.

Since Somali's national government failed in the 1991 civil war there has been no effective central government ruling the nation. The Civil War quickly degenerated into battles of warlords, where warlords used force to control regions for personal gain. The warlords eventually found their power weakened as most of the clans became unwilling to provide further financial support after experiencing years of conflict in the early 90s.[98] By the late 1990s and early 2000s a form of governance developed at the local level through the influence of clan elders and a desire for stability by the mercantile class. These pseudo municipal governments were supported by an alliance of clan elders, businessmen and religious leaders. This type of government administration was effective only at the municipal and neighbourhood level.[99] They achieved their authority through horizontal legitimacy. They were able to act as a local government providing increased security by hiring the warlords' armed men as a militia and using Islamic law to punish street crime.[100] This resulted in a series of city-state styled local governments separated by regions of pastoral lawlessness.[101] In order to provide a level of public service the city states managed to

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[96]   Abdi Ismail Samata,. "Leadership and ethnicity in the making of African state models: Botswana versus Somalia," *Third World Quarterly* 18, no. 4 (September 1, 1997): 687-707, http://www.proquest.com/; Internet: accessed December 9, 2009.
[97]   Samatar. "Leadership and…
[98]   Menkhaus, "Governance…, 88
[99]   Menkhaus. *"State Collapse…*, 409
[100]   ibid, 417
[101]   Menkhaus, "Governance…, 86

provide the basic services such as water, electricity, cellular phone networks through private firms.[102] Somalia became a country with a privatized infrastructure and delivery of public services.   This is a feature of weak states because of the absence of a central and efficient central government.   However, these local governments have not been able to provide anything relating to a federal government and large parts of the countryside side have not come under their effective control.[103] Mogadishu, the former capital, remains a unique case where no one faction controls the whole city.

Mogadishu has been the centre of the battle between factions for the control of Somali. By the early 2000's Mogadishu was mostly under the control of the Transitional Federal Government (TFG). Using Holsti's construct of state authority the TFG is a very weak government that has its only source of vertical legitimacy arising from its international recognition and access to development programs. The TFG has weak horizontal legitimacy due to the general scepticism of centralized authority by the population of Somalia. The TFG has to rely on international forces for control of its sections of Mogadishu.[104] Inside of Mogadishu the TFG is tolerated by the warlords but it has no effective authority over them.[105] External to Mogadishu the TFG remains challenged in a bid to be perceived as the national government of Somalia.

The TFG controls some of districts to the west of Mogadishu near the Ethiopian boarder.   Additionally international recognition provides the TFG with a level of authority when dealing with other local governance organizations located throughout south and central Somalia. The TFG has no control over the autonomous regions of Somaliland and Puntland.[106]   In the south there is more fragmented control over the society; however, between the TFG and the Supreme Council of Islamic Courts (SCIC) there is a level of coordination with the clan authorities and warlords who control the towns and villages. The southern clans have a predominately agrarian lifestyle. While the clans and SCIC provide a

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[102]   Gettleman. "The Most Dangerous …
[103]   Menkhaus, "Governance…, 86
[104]   Bruton. "In the Quicksands ....
[105]   "Government Recognition in Somalia and Regional Political Stability in the Horn of Africa," *The Journal of Modern African Studies*, Vol. 40, No. 2 (Jun., 2002), 247-272, http://www.jstor.org/stable/3876279; Internet; accessed 6 January 2010.
[106]   Menkhaus, "Governance…, 83

level of governance they have not removed violence from the daily life of a citizen. Peter Little in "*Somalia: Economy without State,*" explains that Somali's have adapted their farming routines to adjust for the level of violence they experience over transportation routes, water supply and other required resources. This area is not known to support piracy.

Northern Somalia's regions of Somaliland and Puntland have developed differently since the civil war. Somaliland is the most stable region of the country. It has a functioning regional government which provides a range of services and a reasonable level of security for its citizens.[107] The government functions relatively well with UN and NGO agencies assisting in the development of the region.[108] As a result the government of Somaliland enjoys both horizontal and vertical legitimacy. There is a low level of internal violence, and a functional security force which includes a Coast Guard that protects the EEZ.[109] Somaliland is not known to harbour pirates or extremist organizations.

Puntland is located in north eastern Somalia and was part of the Italian colonial administration of Somalia. Upon independence the region continued to use the Italian administrative districts for regional governance. The name Puntland would not apply to the region until after the breakdown of the central national government in the 1991 civil war. Puntland enjoyed a lengthy period of stability and peace for the majority of the 90s. Major civil strife broke out in the 2001 when Colonel Abdullah Yusuf chose to oppose a peaceful transition of power in the regional government. His opposition resulted in a collapse of local authority and increased violence in Puntland.[110] Warlords used the increased level of violence to increase their powerbases. It is possible that some violence was linked to factions in the TFG who desired to destabilize what had been a successful regional government.[111] The impact of this civil strife was a significant degradation in the quality of life for local

[107] United NationsDP Draft Country Program Document Somalia (2008-2009), Internet http://www.so.undp.org/index.php/Download-document/13-United NationsDP-Somalia-CPD.html, p 2
[108] United Nations transitional plan for Somalia 2008-2009, internet http://www.so.undp.org/index.php/Download-document/61-Un-transitional-plan-for-Somalia-2008-2009.html , p11
[109] Jane's, "Sentinel Country…
[110] Federico Battera, "Some considerations on State Building in Divided Societies and the Role of the "International Community": Somaliland and Somalia Compared" *Northeast African Studies* 10, no. 3 (September 1, 2003): 225-247. http://www.proquest.com/; Internet: accessed December 14, 2009.
[111] Battera, "Some considerations…

citizens and a return to a more violent lifestyle. Puntland's regional government power struggle was stabilized in 2004. By 2007 the government had established a nascent security force in Bossaso, the seat of the regional government. However, hyper-inflation impacted the security forces pay and willingness to enforce law. This breakdown in local and regional governance enhanced the power of warlords and local armed militias who supported the growth of piracy out of the port town of Eye.[112] As profits increased with large ransoms from merchant vessels piracy grew and expanded in Somalia. The weak governance and poor security capacity in Puntland has resulted in increased piracy attacks that go unchecked by local law and order authorities.[113] The centre of the current piracy problem is predominately based out of ports in the Puntland region.[114]

Holsti's model of state authority provides insight to the collapse of Somalia's central government as the state gradually became weaker and weaker. With the civil war Somalia became a failed state without any central governance. The impact of the internal chaos in Somalia during the civil war, the rise of warlords and persistent use of violence in Somalia's society has inculcated Somali citizens to associate the use of violence with power. Somali's who would become pirates, are products of this society. The failure to create central government after the civil war lead to the development of a society ruled by clanism and weak local governance. The pirates who operate from Somalia are able to use their wealth and clan connections to successfully function inside the failed state. While authorities have created a level of governance in Puntland it has lack sufficient local authority to impact pirate operations in coastal towns. Additionally, the internationally recognised government of the TFG has no authority in the north east nor has it sea going assets such as a Coast Guard to arrest the pirates. The result is that pirates are able to operate without restraint from shore.

Holsti's theoretical framework of a state authority is useful to understand the impact of a failed state on the effectiveness of governance in Somalia. Somalia's failed federal government, the rise of clanism and weak local governance post-Civil War have created the

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[112]   Mary Harper, "Life in Somalia's Pirate Town," *BBC News*, 18 September 2009, http://news.bbc.co.uk/2/hi/africa/7623329.stm; Internet: accessed 15 January 2010
[113]   Jane's, "Sentinel Country…
[114]   ibid

conditions for warlords and businessmen to replace the state in providing services. However they have not provided any form of national protection of Somalia's off shore resources. Lacking central governance and a Somali authority to protect the EEZ, IUU fishing has devastated the livelihood of Somali fishers. Piracy, which started with locals capturing foreign fishing boats in Somalia's Economic Exclusion Zone, continued to expand under a vacuum of governance. The failure of Somalia as a state has meant that there is no maritime governance such as a Coast Guard able to enforce Somalia's economic exclusion zone to arrest and detain pirates for prosecution under Somalia's laws. Nor is there a national government to create the legal framework for regulation, law and jurisprudence. The lack of any maritime governance in Somalia has resulted in a situation where there are minimal consequences for pirates as they operate from costal towns. The governance challenges must be addressed by the international community in developing further capacity ashore for local governments such as Puntland while providing a framework for national maritime governance in Somalia's EEZ. Somalia's people have experienced economic circumstances that have encouraged their selection of piracy as a lifestyle. Pirates have arisen from a web of rational economic choices, poor governance, a society rife with violence and clanism, unique Somali demographic and geographic factors at the Horn of Africa. To counter Somalia's piracy the international community has chosen to focus on a sea based solution. The use of dissuasive and coercive measures by international anti-piracy patrols bares further examination to determine the gaps in developing a comprehensive policy.

International Anti-piracy Patrols: An Incomplete Solution

The complex roots of the piracy problem, which lies in governance, economics and a society rife with violence, requires some form of coercive action to encourage legal behaviour on the high seas. The international community has focused on tackling the piracy issue through a blend of international shipping regulations and naval patrols protecting shipping lanes in the region.   Given the complex roots of Somalia's piracy problem it is questionable whether international anti-piracy patrols are the only effective solution.   The rise of piracy attacks in 2008 resulted in the creation of the Maritime Security Patrol Area (MSPA) in the Gulf of Aden. [115]   The MSPA was created to increase defensive protection for merchant shipping by warships.   Subsequently the International Maritime Organization (IMO) published the *Best Management Practices To Deter Percy In The Gulf Of Aden and Off The Coast Of Somalia* as a guide for merchant vessels operating in the region. The guide emphasised defensive measures and left offensive counter piracy to naval vessels. The IMO, in coordination with Naval Task Groups, established an Internationally Recommended Transit Corridor (IRTC) for ships to transit the MSPA to maximize maritime security.[116] These defensive measures are designed to minimize the success of pirate attack by providing an armed warship capable of using force against pirates.   Defensive counter piracy policy measures do not contribute to long term solution of the Somalia piracy problem. They only provide increased security for the merchant vessels transiting the area. The protection of merchant shipping in the Gulf of Aden has forced pirates to shift their attacks to the Western Indian Ocean. The large size of that region limits the effectiveness of dissuasive counter piracy options such as the IRTC.   As a result warships have concentrated on seeking out pirate vessels and seizing the pirates before they attack a merchant ship.

The international community has chosen naval anti-piracy patrols as key part of its coercive anti-piracy strategy. These patrols have the goal of the arrest, prosecution and

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[115]   United States Navy, "New Counter-Piracy Task Force Established," http://www.navy.mil/search/print.asp?story_id=41687&VIRIN=63759&imagetype=1&page=1; Internet: accessed 12 April 2010.
[116]   International Maritime Organization, *Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia*, http://www.imo.org/includes/blastData.asp/doc_id=11918/1335.pdf; Internet: accessed, 16 April 2010.

detention of pirates. The UN, under resolution 1816, has authorized nations to use all means to repress acts of piracy in the waters of Somalia.[117] This resolution was updated and expanded in the fall of 2008 under resolution 1846.[118] The resolutions create a permissive regime whereby non-Somali naval vessels can enter and enforce the laws of the sea on piracy in Somali territorial waters if their government has the authorization of the TFG. Anti-piracy patrols commenced in the summer of 2008 and by the fall of 2009 it was assessed that they had become a stabilizing influence.[119] The Security Council passed resolution 1851 in 2008 to encouraged States and organizations to create a system for international cooperation in combating piracy off the coast of Somalia.[120] By early 2009 this resolution had resulted in the Contact Group on Piracy off the Coast of Somalia, a group of 46 States and 7 international organizations. The Contact Group was set up to coordinate actions between states and organizations to suppress piracy.[121] By the fall of 2009 the level of international concern and the high number of merchant shipping transiting through the region resulted in a significant number of nations contributing naval forces at sea. Three international naval flotillas patrolling the seas near Somalia: a European Union Naval Task Force (Operation Atalanta), a NATO Naval Task Force (Operation Ocean Shield), and a Combined Maritime Forces (CFT-151) from a USA led coalition. In addition to the multi-national task group operations there are also forces from nonaligned nations such as India, China, Malaysia, Russia, Japan and Saudi Arabia.

The passing of numerous Security Council resolutions, the forming of the Contact Group and the number of warships deployed to the region highlights how seriously the international community perceived the piracy threat. Warships aim to provide a level of

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[117]   "*The Untied Sates Joins International Response to Somali Pirates,*" The American Journal of International Law, Vol. 103, No 1(Jan., 2009), 147
[118]   United Nations, "Security Council Decides States, Regional Organizations May Use 'All Necessary Means' To Fight Piracy Off Somalia Coast For 12-Month Period," http://www.un.org/News/Press/docs/2008/sc9514.doc.htm Internet: accessed 16 January 2010
[119]   United Nations, *Report of Secretary-General pursuant to Security Council Resolution 1846 (2008)*, http://www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/Somalia S2009 590.pdf Internet: accessed 16 January 2010
[120]   United Nations, "Security Council Authorizes States To Use Land-Based Operations In Somalia, As Part Of Fight Against Piracy Off Coast, Unanimously Adopting 1851 (2008)," http://www.un.org/News/Press/docs/2008/sc9541.doc.htm; Internet: accessed 12 April 2010.
[121]   Department of State, "Contact Group on Piracy off the Coast of Somalia," United States; http://www.state.gov/t/pm/ppa/piracy/contactgroup/index.htm; Internet: accessed 12 April 2010.

coercive control over piracy. Even with three flotillas and numerous independent warships the vast area of sea to be covered limits the coercive effectiveness of warships countering piracy.[122] Furthermore there is a perception that naval vessels can readily use force to counter piracy as they patrol the ocean. There are legal limits to the use of force against suspicious pirate vessels. Most rules of engagement for naval vessels only allow for deadly force to be used against pirates when an attack occurs. The rules of engagement on the use of deadly force stop when the pirates cease attacking. These constraints weaken the overall dissuasive impact of Naval Task Forces operating in the region because pirate vessels can often resemble legitimate local mariners (i.e. fishers).

To be a successful coercive force against pirates the international naval patrols have to be perceived by the pirates as an impediment to their operations. Effective coercion by naval forces requires that pirates be tried and punished for their crimes. Despite two years of international naval counter-piracy patrols very few pirates have been prosecuted in a court of law. Many who have been seized have been released at sea in circumstances similar to HMCS Winnipeg's actions of April 2009. Navies operate within a complex legal environment when prosecuting pirates and this situation weakens the effectiveness of anti-piracy patrols. The prosecution of captured pirates remains a significant legal dilemma; it bares further examination in order to understand why naval forces have released 50-60% of the captured pirates.[123]

The legal complexity behind pirate prosecution starts with the mix of nationalities involved in an attack. Potentially multiple nations are involved in a piracy event when the pirates are seized by a naval vessel. The pirates are Somali, the cargo vessel is owned by a company in one nation, often flagged in another nation, and the crew usually represent a variety of nations. Lastly the nationality of the naval vessel seizing the pirates determines the initial legal decision to prosecute the pirates because the authority to prosecute lies with the nation holding the pirates. The second level of legal complexity occurs because naval vessels are operating on the high seas under international and domestic legal frameworks.

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[122]   Saltmarsh, *"Pirates Widen Range…*
[123]   *Piracy And Legal Issues: Reconciling Public And Private Interests*, Conference Report: Africa Programme and International Law, London UK: Chatham House (1 October 2009), 7

The international standards concerning laws governing piracy on high seas are well established in the *UN Convention on the Laws of the Sea* (UNCLOS). UNCLOS articles 100, 105 and 107 provide authority and clarity on the repression and seizure of pirates on the high seas. But UNCLOS does not provide any rules for the prosecution of pirates.[124] The *Convention For The Suppression Of Unlawful Act Against The Safety Of Maritime Navigation* (SUA Convention) obliges states to criminalize "armed robbery at sea" which has been interpreted to be applied against acts of piracy.[125] The SUA Convention requires that an individual detained for acts of piracy must be treated in accordance with criminal law of the nation seizing the pirate. In the case of Somali pirates once a warship seizes a pirate, the pirate must be tried under the criminal laws of the state that owns the warship. The challenge of pirate prosecution then lies in applying the domestic legal process of a criminal prosecution onboard a warship operating far from its home nation. Similar to many other domestic issues, the importance of political will is often more critical than the legal framework to prosecute. Prosecutions of pirates seized on the high seas can also suffer from a country's failure of political will resulting in pirates being released with only the loss of their weapons. Unfortunately when this occurs the coercive effect of warship patrols is undermined. Nations can find the political will to prosecute pirates when they have attacked a flagged vessel of their own nation or an allies State. However, even with good political intentions domestic jurisprudence requirements complicate the legal situation.

Domestic legal requirements for the prosecution of pirates involve several issues that add complexity to naval vessel holding seized pirates. There is a legal requirement to ensure the state has necessary domestic legislation to prosecute pirates. Legally both the UNCLOS and SUA conventions have been incorporated in domestic legislation for a criminal process to commence.[126] States can be reluctant to prosecute pirates in their home courts for a variety of reasons. The State may be concerned that the pirates will claim refugee status or evidence rules may preclude a successful conviction.[127] There may be jurisdiction issues

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[124]   *Piracy And Legal Issues…*, 5
[125]   ibid, 3
[126]   ibid, 8
[127]   Patrick Lennox,. *Pirates Have Rights, Bring in the Police,* CDFAI Policy Update paper, May 2009, http://www.cdfai.org/PDF/Pirates%20Have%20Rights,%20Bring%20in%20the%20Police.pdf; Internet: accessed 12 April 2010

related to the attacked merchant vessels flag State.   Perhaps the most significant legal issue is the detention of pirates onboard a warship. Once warships seize pirates they are considered criminals under domestic law. As criminals of the State domestic standards for criminal detention apply and this presents a challenge for warships. Warships are not constructed for the detention of criminals. In the EU task force most naval vessels do not meet the standards for convicts under the European Convention on Human Rights (EUCHR). [128]   Due to the EUCHR most EU governments are reluctant to detain pirates due to potential court challenges to the prosecution process.   The EU solution aimed to locate regional countries that would be willing to prosecute and imprison pirates. The EU's efforts concentrated on arranging diplomatic agreements with Kenya and the Seychelles. The Seychelles determined that they did not have the "infrastructure nor the resource to provide… a facility for pirates to be prosecuted."[129]   The European Union had initial success in arranging an agreement for prosecution of Pirates in Kenyan courts.[130]   Kenya incarcerated over 100 pirates; however, they have become a burden on the state and as a result Kenya ceased accepting EU captured Somali pirates in its courts.[131]   The consequence of EU domestic detention laws was a negative outcome for Operational Atalanta's coercive strategy of counter-piracy patrols. Legal issues with pirate detention are not restricted to the EU naval task force other Navy's operate with the same problem.

Concerns about the treatment of pirates in the Kenyan justice system has been driven by the legal opinion that domestic human rights legislation (e.g. EUCHR) applies to the pirates once they are detained for trial. [132]   Human rights legislation requires that Somali pirates have the right to a fair trial and the Kenyan legal system lacks the capacity to progress these trials.[133]   Given the challenges with Kenyan criminal courts capacity that the European

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[128]   Emiliano Alessandri, *Report of the Conference "Addressing The Resurgence Of Sea Piracy, Legal, Political And Security Aspects."* Rome IT: Istituto Affari Internazionali (16 June 2009). http://www.iai.it/pdf/DocIAI/iai0916.pdf; Internet; accessed 12 April 2010.

[129]   Goutier, H., "To survive, be strong economically. To be strong, work hard. The days of the begging bowl are over: Interview with President James Alix Michel," *The Courier*, No XIV November-December 2009, 43

[130]   Alessandri, *Report of the Conference "Addressing …*

[131]   "Kenya ends Somali pirate trials," *BBC News*, http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/8599347.stm; Internet: accessed 12 April 2010.

[132]   Alessandri, E., *Report of the Conference "Addressing …*

[133]   *Piracy And Legal Issues…*, 9

Union has experienced it is unlikely that countries such as Canada, New Zealand, or India will be able to achieve a diplomatic solution with the Kenyan government for the prosecution of Somalia Pirates. Kenya's capacity issue contributes to the weak coercive effect of anti-piracy patrols. The overall impact of domestic criminal and human rights jurisprudence is that many nations are unwilling to allow their counter-piracy naval vessels to detain and prosecute pirates. Somali pirates are well aware of these issues and they continue to view piracy as an essentially risk free activity on the high seas.

The prosecution of piracy on the high seas will not attack the root issues but it will provide a complimentary coercive effect if pirates view their activity as a high risk of incarceration and loss of freedom. Kenya's decision to suspend trials creates the ideal opportunity for the United Nations to form a legal tribunal tasked with the prosecution of Somali pirates seized on the high seas. The United Nations has set up criminal tribunals to prosecute specific war crimes in fragile states (e.g. Rwanda) under the rational of a threat to international peace and security.[134] Somalia's status as a failed state and source of piracy is also a threat to international peace and security. Somalia's status could be used to establish an ad-hoc tribunal with its authority flowing from a UN Security Council Resolution. The tribunal would be charged with prosecuting persons who originate from Somalia and are responsible for piracy and other serious violations of international law on the high seas. The ad-hoc tribunal would act on behalf of Somalia until the time arrives when the country has a national government capable of taking over the prosecution and detentions of pirates. The impact of an effective pirate prosecution tribunal will be to remove the perception from Somali's ex-fishers and warlord militia members that piracy is a risk free economic activity.

Naval forces are an effective dissuasive force against piracy when protecting merchant vessels in constrained geographic areas of the IRTC in the Gulf of Aden. Although most nations have deployed naval forces to the region, insufficient number of warships and the large size of the geographic area limit the impact of naval patrols as a visual deterrent to piracy in the Western Indian Ocean. In order for anti-piracy patrols to be effective as a

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134   United Nations, *Security Council resolution 955 (1994) on establishment of an International Tribunal and adoption of the Statute of the Tribunal*, http://www.un.org/ictr/english/Resolutions/955e.htm; Internet: accessed 22 Apr 2010.

coercive vice dissuasive force in the protection of the commons of merchant vessels there has to be sufficient pirate trepidation of prosecution. The legal impediments under domestic criminal law dissuade governments from prosecuting captured pirates resulting in a weaken coercive effect from anti-piracy patrols. Multinational Naval Task Groups, such as the European Union's Operation Atalanta, recognize these limitations inherent in a military solution to piracy. The EU assesses that a comprehensive approach to maritime security is needed to resolve the piracy problem.[135] The first stage in a comprehensive approach is the creation of an UN ad-hoc tribunal to prosecute pirates clear of domestic legal encumbrances. A more comprehensive policy would improve maritime security through improved maritime governance of Somalia's territorial waters and EEZ. An understanding of current development programs in Somalia and coercive efforts at sea provides a baseline to understand the policy gaps in developing an integrated policy to suppress Somalia's pirates.

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[135]   Giovanne Grevi,, et al, *European Defense and Security Policy the First Ten Years (1999-2009)*, The European Union Institute for Security Studies (Paris: 2009), 400

International Development: The Foundation of a Comprehensive Policy.

World wide international aid and development programs generally target a developing country's economic and governance programs. This is done with a goal to improve the quality of life for the billions who live in conditions of poverty while enhancing local government transparency. Somalia's economy and poor governance make it an ideal country for international development. Yet as a failed state the country provides a particular challenge for international development programs traditionally focused on working with national governments. Somalia's unique economic and governance situation lies at the root of the piracy problem. Development programs can counter the factors that allow the pirates to recruit Somali youth and operate from shore with relative impunity. To design an integrated counter piracy policy the current international development environment in Somali needs to be understood in order to identify programme areas that could be enhanced to counter the economic influence of pirates.

International development in Somalia has been a difficult process since the start of the Civil War in 1991. The rise of warlordism and clanism created a very challenging security environment for international development agencies and NGO's. The United Nations Operation in Somalia II (UNOSOM) mission in the early 1990's aimed to achieve the restoration of peace, stability, law and order in Somalia. It represented the last period when the UN, NGO and national development agencies focused on major national aid programs in the country. Since then aid and development has been primarily supplied by UN organisations working on smaller scale missions. As a failed state, Somalia presents significant security and organizational challenges for organizations such as the World Bank, the International Monetary Fund, and national development agencies (e.g. USAID). These organizations normally work in partnership with a nation's government when operating development programmes. Since no federal state exists in Somalia, international agencies like the World Bank are unable to finance developmental projects to enhance governmental capacity or to fund programs to increase economic activity. The result is international development programs in Somalia have largely rested on the United Nations.

The challenges facing the World Bank in Somali serve to highlight the difficulty for most aid and development programs trying to operate in a failed state. The World Bank established the Low-Income Countries Under Stress (LICUS) Trust fund to assist countries by: institutional reforms, developing resilient systems for social services delivery, harmonizing multi-donor approaches for these countries, and support to peace building efforts. In Somalia, the LICUS has announced a strategy focused on the improvement of public goods, knowledge intensive investment for institutional capacity building, and income generation support programmes.[136] This is a sound strategy that will enhance the horizontal legitimacy of local governments while simultaneously improving baseline economic factors. The World Bank, acknowledging the challenges of operating programmes in a failed state, has partnered with the UNDP to deliver the LICUS Trust fund program in Somalia. The World Bank/UNDP Reengagement Note on Somalia expands this strategy into a development plan with four major strategic entry points consisting of: support to macroeconomic data collection, creating an enabling environment for livestock and meat industry, a coordinated action plan to address HIV/AIDS issues, and capacity building for skills development and training centers.[137]

World Bank analysis has focused on the success of Somalia's private sector in providing public goods and services in the local society. The World Banks decision to focus efforts on enhancing skill setting the private sector will improve governance at the local level. However, this strategy does not address national resources (i.e. fish) or maritime governance of the EEZ. The World Bank strategy acknowledges the importance of a viable economy in the programs designed to enhance the livestock industry which represents 80% of Somalia's exports.[138] Worthy of examination in the same context is the potential of the fishing industry to contribute export income to Somalia. There is a need for an international program to develop Somalia's fishing industry and maritime governance capacity. World Bank LICUS Trust funds implement by the UNDP may not be the most suitable program to

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[136] World Bank, "The LICUS Trust Fund," http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,,contentMDK:21359590~pagePK:64171531~piPK:64171507~theSitePK:511778,00.html; Internet: accessed 12 April 2010.

[137] World Bank, *World Bank/United NationsDP Re-engagement Note,* http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/03/25/000112742_20040325090551/Rendered/PDF/282760Somalia0Country0reengagement0note.pdf; Internet: accessed 12 April 2010, 5

[138] World Bank, *World Bank/United NationsDP Re-engagement Note…*, 8

conduct this type of development. Other UN agencies provide differing development and aid programs in Somalia and they may be more suitable for a program aimed at maritime governance capacity.

After the civil war ended in Somalia UN organizations attempted to continue aid and development programs. Each organization ran their programs in isolation from sister UN agencies resulting in a hodgepodge development environment. Typical of these type stovepipe programs was the UN-HABITAT agency's Good Local Governance and Leadership Training Programme in Somalia (2003 to 2005).[139] The programme focused on 16 targeted towns to improve leadership and management skills in running the local authorities.[140] While useful, stovepipe projects like UN-HABITAT's were not integrated with an overall development strategy. Learning from past challenges the UN shifted its approach to Somalia and developed the United Nations Transition Plan (UNTP) for Somalia. This is an overarching strategy that integrates all UN agencies development and aid programs in the context of a long term plan.   The UN is the international organization the most involved in Somalia thus the UNTP for Somalia is the most significant development framework in the context of counter piracy policy evolution.

The *2008-2009 UNTP for Somalia* is the most recently published development document by the UN on Somalia. This plan provides a holistic approach to the development UN programs in Somalia. The *UNTP for Somalia* is an inter-agency country team report and plan that encompasses all UN development and aid programs in Somalia. The *UNTP for Somalia* focuses on five overall strategic outcomes:

> Key federal, Somaliland and Puntland institutions administer and manage core
> government functions more effectively; Local governance contributes to peace
> and equitable priority service delivery in selected locations; Improved security
> and protection under the law for all; Children, youth and vulnerable groups
> have increased, more equitable access to quality education and health

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[139]   United Nations - HABITAT, *Good Local Governance and Leadership Training (GLTP) - Urban Governance,* http://www.unhabitat.org/content.asp?cid=699&catid=233&typeid=13&subMenuId=0; Internet: accessed 12 April 2010.
[140]   ibid

services; and Vulnerable and marginalized groups have improved sustainable food security and economic opportunities. [141]

The strategic outcomes of institutional governance, security, and economic opportunity have significant potential to address the root causes of piracy. The integrated approach builds upon years of UN experience in running development and aid programs in Somalia's fractured governance structure. It acknowledges the wide diversity of governance throughout the regions of the country. Somaliland has had reasonable success in developing governance over its region. Unlike Puntland it does not contain pirate bases. Yet national development and aid organizations in developed nations have been reluctant to provide programs for Somaliland. Most nations will not work with the government of Somaliland because the region has declared independence and it is not recognized internationally as a nation. However if it is viewed as a region of Somalia with an effective regional government then programs can be developed to build upon its stability. The regionalized and fractionalized nature of clan life in Somalia's governance processes requires that developmental programs work with the existing local and regional structures to strengthen core governance processes. The *UNTP for Somalia* recognises this issue and takes the approach of enhancing regional/local governance as a stepping stone to a more stable nation of Somalia.

UNDP outcome plans were developed under regional consultation to ensure local issues were addressed. Consultations highlighted different needs in differing regions. In Somaliland consultations identified strengthening local authorities.[142] The UNDP donated vehicles to the police and judiciary of Somaliland as part of the *UNTP for Somalia* strategy.[143] This improved the regional government's authority by providing additional security and law and order capacity. It enhanced the government's vertical authority over society and ensured that the rule of law is affective against criminal activities (e.g. piracy).

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[141]   United Nations, *United Nations Transition Plan For Somalia 2008-2009,* http://www.so.undp.org/index.php/Download-document/5-United-Nations-Transition-Plan-for-Somalia-2008-2009.html; Internet: accessed 16 January 2010, v

[142]   ibid, 2

[143]   "Somaliland: UNDP donates vehicles to police, judiciary." *BBC Monitoring Africa*, (15 June 2008); http://www.proquest.com/; Internet: accessed 31 March 2010.

Developing law and order capacities will help improve Somalia's anarchistic society and provide an atmosphere more conducive for raising Somalia's youth in a less violent environment. Since the pirates of Somalia are predominantly based in Puntland the regionalized approach to local governance development is an effective policy choice to develop shore based counter-piracy programs under the UNTP security and law and order outcome.

UN sponsored development programs ashore work with the local clan and regional authorities that provide governance in Somalia. This development approach should be extended to national aid and development agencies (e.g. USAID) for their programs in the Horn of Africa. Bronwyn Burton in *Somalia: A New Approach* argues for the United States of America to achieve a more effective out come in the region it must change strategy. The USA, since 2004, has used a strategy focused on the reconstruction of a central government to provide increased governance authority in Somalia.[144] Burton emphasis that development "should be pursued in a decentralized fashion that involves collaboration with the informal and traditional authorities all ready in place."[145] Burton acknowledges the critical importance for economic growth and resource management to provide governance legitimacy and value based employment. It will weaken the fiscal attraction of piracy.[146] This economic approach ties in with her conceptual idea to resist politicizing the piracy. She argues that politicizing piracy with overwhelming use of force will increase Somali society's tolerance of pirate activities.[147] Treating piracy as a criminal activity stemming from economic challenges rooted in a lawless society will result in a more constructive solution than trying to solve it through a politicized environment.

The UN recognizes the challenges arising from extensive criminal activity in Somalia and the *UNTP for Somalia* document addresses this through a variety of programs. The strategic outcome of improved institutional effectiveness identified enhanced local governance infrastructure and effective administrative policies as its main objective. The

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[144]   Bruton, B., *Somalia: A New Approach*, Council Special Report No. 52, New York NY: Council on Foreign Relations, March 2010, 6
[145]   ibid, 28
[146]   ibid, 29
[147]   ibid, 33

UNTP for Somalia does not include programs for improved maritime governance in the context of EEZ development and management. The outcome focuses on local (e.g. town) and regional government capacities. The *UNTP for Somalia* governance development programs could be expanded to include components of maritime governance such as the construction of infrastructure (e.g. ports) and the publishing of EEZ fisheries regulations. This would be separate from the UN outcome of security and the rule of law which focuses on the internal security environment including police training programs.[148] The United Nations Office on Drug ands Crime (UNODC) manages a development program with the aim to improve legal and institutional capacity to prosecute and detain pirates.[149] A similar program under the security outcome could incorporate the development of a Coast Guard to provide EEZ security. A Coast Guard would provide the capacity to counter IUU fishing and pirate activity in coastal waters.

In Puntland the fishing industry is an important part of the economy. Consultations by the UN in Puntland identified the need to improve fisheries infrastructure and training.[150] Fishery issues are best addressed under an integrated maritime security strategy to ensure the EEZ is managed in an environmentally sustainable manor. A maritime security strategy flows from institutional governance capacity. However, development programs aimed at increased maritime security are targeted at national governments. To counter pirates and to control the EEZ fishery, the problem remains one of maritime governance capacities at the national level.

The *UNTP for Somalia* plan encompasses developmental principles respecting national ownership and the development of national capacities.[151] Applied in a maritime governance construct development programs would target the base factors underlying piracy. Effective maritime governance would address the economic and legal aspects of the fishery. Pirates operating from central Somalia and Puntland often cite the end of the viable fishing

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[148]   United Nations, *United Nations Transition Plan…*,16
[149]   United Nations, *UNODC Counter Piracy Programme,* United Nations Office on Drugs and Crime, http://www.unodc.org/documents/easternafrica//piracy/United NationsODC_Counter_Piracy_Programme.pdf; Internet: accessed 12 April 2010.
[150]   United Nations, *United Nations Transition Plan…,* 2
[151]   ibid, 14

industry prior to their commencement of a career as a pirate. The *UNTP for Somalia* need to address the potential of the fishery. The UN development plan should address natural resources because without policies to protect fish they will be exploited to extinction. Economics analysis dictates the need for regulation of the fishery to provide sustainable employment. The *UNTP for Somalia* could incorporate fishery regulation under the economic opportunities outcome strategy

The *UNTP for Somalia* does not articulate a plan to influence maritime governance (i.e. a coastguard or fishers inspections process), the plan does identify the desire to develop "efficient, lean and effective institutions which play a key role in establishing the necessary regulatory, planning and financial management for public service delivery."[152] The plan recognizes the importance of regulation for the governance of public goods. A Coast Guard would enhance the monitoring and enforment of regulations concerning fish in Somalia's EEZ. A Coast Guard is normally a national institution and it acts as the capacity arm of a states' maritime governance. A failed state lacks the national government legitimacy that would provide the legal and institutional framework to build and run a Coast Guard. The development of a Somali Coast Guard presents significant organizational challenges to international development programs. Furthermore maritime governance needs a regulatory regime to go with its capacity arm.   The problem needs to be considered in a more holistic approach and from outside the norms of international development. The UN could form a UN trust organization to provide maritime governance on behalf of Somalia.

A UN Somalia maritime trust organization would start to address the concerns of Somali fishers. The livelihood outcome strategy in *UNTP for Somalia* has identified illegal fishing as a factor impacting coastal fisherman's livelihood and their ability to access markets.[153] It notes that over 80% of Somali households rely on natural resources to produce a livelihood.[154] The improvement of EEZ governance and the creation of a viable fishery would have a dramatic and immediate impact on Somalia's economy and household income levels. Furthermore the UN trust organization could provide Somali's employment and

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[152]   United Nations, *United Nations Transition Plan…,* 14
[153]   ibid,19
[154]   ibid,19

training at the lower levels (e.g. working as crew on a Coast Guard vessel) while simultaneously providing leadership training to assume higher positions in the UN trust organization. A UN maritime trust organization would support the *UNTP for Somalia* economic outcome that aims for "the development or strengthening of infrastructure systems know-how and policies that enable them improvement in livelihood opportunities and food security and natural resource management."[155] Improved natural resource management in the fishing industry requires improved management of Somalia's EEZ. A UN Somali maritime trust organization has the potential to address the economic roots of the piracy problem through effective maritime governance, and the management of the EEZ.

Somalia status as a failed state combined with unique economic and governance situation lies at the root of the piracy problem. Development programs can counter the economic, demographic and governance challenges that lie at the root of Somali piracy. International aid and development in Somalia is largely driven by the UN through the *UNTP for Somalia* plan which has identified five major strategic outcomes. Three of these outcomes: governance institutions, economic opportunities and security and the rule of law, have an important role in the development of a comprehensive anti-piracy policy. By improving local governance capacity, creating nonviolent economic choices for Somali's and enforcing government authority the shore based supply of pirates and pirate port havens will be weakened. However, the *UNTP for Somalia* plan does not address natural resources (i.e. fish) or maritime governance of the EEZ effectively. The lack of a central/national government for Somalia precludes development of an indigenous Coast Guard and regulatory regime for the EEZ. The creation of a UN maritime trust organization charged with maritime governance combined with ongoing development ashore and international coercive measures off the coast of Somalia provides the framework of a comprehensive counter piracy policy. The UN Security Council has been very actively focused on coercive measures at sea authorizing a number of resolutions to provide international legitimacy for naval forces to counter Somali pirates. Regrettably coercive force from Naval Task Forces will not be sufficient to eliminate the complex roots of Somalia's piracy. At best Naval Task Forces can only hope to reduce its effectiveness and act as a dissuasive force on the high seas. The

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[155]   United Nations, *United Nations Transition Plan…*,19

development of an integrated maritime governance program focused on maritime domain awareness, infrastructure, regulatory regimes (EEZ), and enforcement capacity (coastguard) will contribute significantly to a comprehensive anti-piracy policy.

Maritime Governance: An Integrated Policy for Somalia's EEZ.

As this paper has determined Somalia's piracy resides at a nexus of geographical, demographical, historical, governance, and economic factors. The *UNTP for Somalia* development programs are focused on improving governance and economic opportunities ashore. The UN has approved resolutions for anti-piracy naval forces at sea and the international community has responded through the forming of naval patrols in the contested waters. Despite these efforts naval forces have not stopped piracy from growing. Illegal unregistered unregulated fishing by foreign countries has devastated the livelihood of Somali fishers providing them with few options but piracy. Somalia's EEZ has become an ungoverned region. A comprehensive anti-piracy policy should develop an integrated maritime governance program to address EEZ issues. The policy should also provide for a process to prosecute pirates in order to resolve naval forces domestic legal issues. The policy should establish a UN maritime trust governance organization on behalf of Somalia to provide the necessary national infrastructure, regulations, capacity and professional training for a Coast Guard to protect the EEZ.

The recommended solution proposed to counter piracy is to create a functioning level of security and governance in Somalia.[156] The UN has been actively involved in trying to enhance the authority of a national government of Somalia. In 2006 the United Nations Security Council passed resolution 1725 authorizing an African Union peacekeeping mission with a mandate to enhance the central governance of Somalia. This was followed by resolutions 1744 and 1772 in 2007 refining and extending the original mandate.[157] The focus of international effort has been to provide support to Somalia's TFG government. However, the influence of the TFG is limited outside of its occupied territory. The TFG is not able to manage nationwide public goods, enforce laws and regulations with a result that it has no coercive effect on either warlords or pirates.[158] Ahmedou Ould-Abdallah, the UN Secretary General's Special Representative for Somalia, speaking of governance challenges sees

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[156]   Ploch et al, *Piracy…*, 27
[157]   Dagne, *Somalia…*, 12
[158]   ibid, 4

Somali society as is "more anarchy than organized violence,"[159] he acknowledges the economic challenges for Somali youth who "have no hope to get a job or earn a decent living."[160]   Mr Ould-Abdallah comments reflect the core problems that lie at the root of the complex piracy situation. Puntland's former Presidential Candidate, Nuadin Direi highlights that international "state-building" must be "designed to build foundations of governance, *and* investment in economic infrastructure."[161] These comments recognize the need for continued international development and the value of the fishery industry in Somalia. These are key components of a comprehensive anti-piracy policy.   A comprehensive anti-piracy plan must address the economic viability of Somalia's fishery.

The UN's development plan, *UNTP for Somalia*, includes a strategic outcome to enhance governance capacity internal to Somalia. The UNs governance development has been the most successful in Somalia when it is focused on the local and regional level. The international community's attempts at negotiating a federal governance structure have not been successful. In the near term the comprehensive anti-piracy strategy must concentrate on building federal governance from the ground up. This will require accepting that Somalia can not solve the economic and governance roots of piracy without assistance. The international community through the UN will have to provide greater security for Somalia's developing economy.

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[159]   Ahmedou Ould-Abdallah, *The Crisis in Somalia*, Chatham House, June 2008,2
[160]   ibid, 7
[161]   Nuadin Dirie, *Beyond the Transitional Federal Government: Future Options for Somalia*, Chatham House June 2009, 7
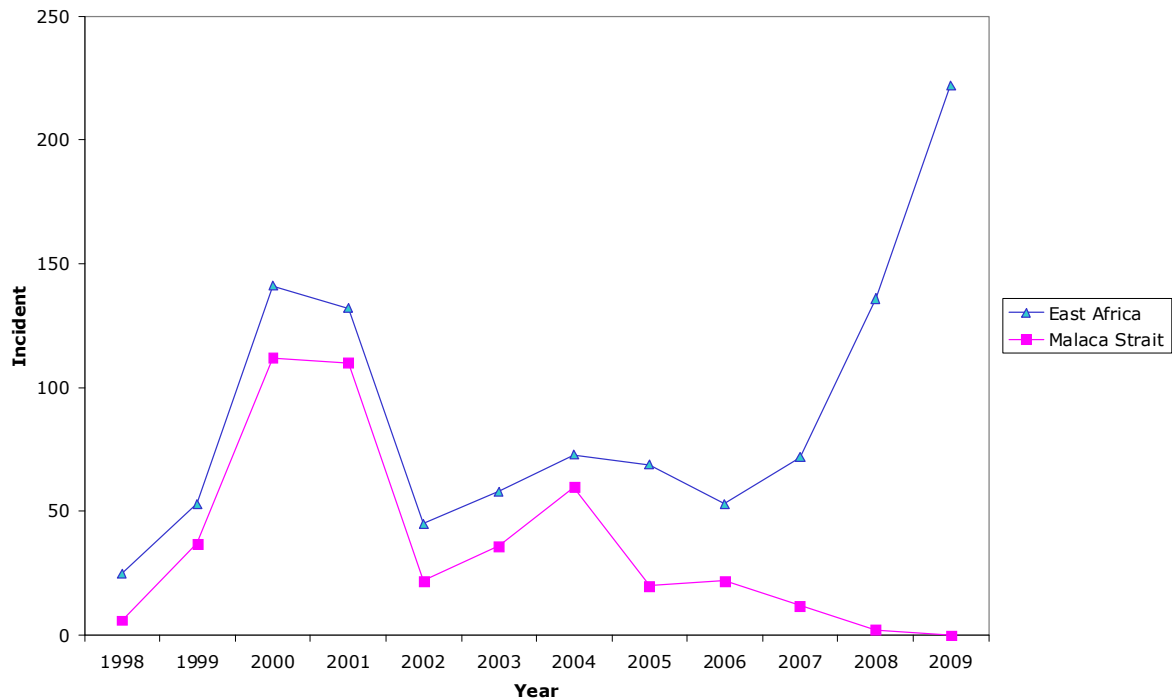
IMO Reported Piracy Incidents

Figure 3: Yearly Piracy Incidents by Region[162]

Regional maritime security operations have been a useful tool in the fight against piracy in South East Asia. Maritime governance in the Straits of Malacca and Singapore region became much more effective after the signing of a regional counter piracy agreement.[163] The creation of a regional agency enabled nations to improve their information sharing, capacity building, and cooperative arrangements concerning piracy in the region. The result was a decrease in piracy in the South China Seas.[164] In a similar vein, the International Maritime Organization has achieved the first step in creating a regional maritime governance framework with the Djibouti Code of Conduct. The Djibouti Code of Conduct concerns "The repression of piracy and armed robbery in ships in the western Indian

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[162] Note: compiled from *Annual IMO Reports on Acts of Piracy and Armed Robbery Against Ships* found at http://www.imo.org/Circulars/mainframe.asp?topic_id=334; Internet: accessed 29 April 2010.
[163] International Maritime Organization, "Piracy and armed robbery against ships," http://www.imo.org/Facilitation/mainframe.asp?topic_id=362; Internet: accessed 22 April 2010.
[164] International Maritime Organization, *Reports On Acts Of Piracy And Armed Robbery Against Ships Annual report – 2009,* MSC.4/Circ.152 - 29/3/2010, http://www.imo.org/includes/blastData.asp/doc_id=12790/152.pdf; Internet accessed 22 April 2010, Annex 4

Ocean and the gulf of Aden."[165] It charges signature nations to: "cooperate to the fullest possible extent…in the repression of piracy… sharing and reporting relevant information… interdicting ships suspected of engaging in acts of piracy …ensuring that persons committing or attempting to commit acts of piracy…are apprehended and prosecuted.."[166] Significantly, the Djibouti Code of Conduct will allow for the recently opened maritime rescue coordination centers in Mombasa (Kenya) and Dar Es Salaam (Tanzania) to assist in counter-piracy efforts.[167]   The agreement will be most effective in enhancing maritime governance capacities for the regional countries with sound governance (e.g. Seychelles, and Kenya). It will do little to improve maritime governance off the coast of Somalia despite the decision of the TFG to sign the Djibouti Code of Conduct. To ensure the Djibouti Code of Conduct is enforced in Somalia's territorial waters and EEZ the international community will have to develop a maritime governance capacity for Somalia.   Somalia's maritime governance capacity is an integral component of a comprehensive anti-piracy policy.

A comprehensive anti-piracy policy should continue with the merchant and naval measures already implemented at sea. The IMO guidance provided for merchant ships operating in the area's near Somalia are an effective defensive policy and should be continued. Naval patrols of the IRTC are an effective dissuasive presence in a comprehensive anti-piracy policy. However, naval operations at sea aimed at seizing pirates have not been successful in furnishing sufficient coercive effect to increase the risk associated with piracy. To ensure the effectiveness of seizing pirates on the high seas the international community should establish UN run ad-hoc tribunals to try pirates. The creation of UN ad-hoc tribunals will address many of the legal issues surrounding warships detaining pirates at sea. It will provide an internationally recognized process to prosecute and imprison pirates. Concurrently with the development and running of the tribunals the UN should assist the nascent governments in Somaliland and Puntland in developing their respective legal capacity for criminal trials and detention.

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[165]   International Maritime Organization, "High-level meeting in Djibouti adopts a Code of Conduct to repress acts of piracy and armed robbery against ships," http://www.imo.org/newsroom/mainframe.asp?topic_id=1773&doc_id=10933; Internet: accessed 22 April 2010.
[166]   International Maritime Organization, *High-level meeting in Djibouti…*
[167]   ibid

Piracy is a rational economic action in the context of Somalia. A comprehensive anti-piracy policy must address economic opportunities for Somali's. The current international solution of attempting to regulate the piracy through international maritime patrols does not address the roots of the problem. Somali mariners have lost their economic options for a legal livelihood due to the destruction of the fishery by IUU fishing vessels operating in the EEZ. The need for viable economic opportunities has been stressed by The Prime Minister of the TFG of Somalia, Omar Abdirashid Ali Sharmarke. He assesses that "piracy will be eradicated by offering a sustainable business proposition to the pirates and the communities they support"[168] and that "a return to a profitable, healthy fishery industry can lead people out of piracy."[169] Only by returning Somalia's fishers to the fishery or some other viable form of economic livelihood, will they cease their acts of piracy. In applying the concepts found within Hardin's economic framework to the problem of the Somali fishers, the solution should include maritime governance of the fishery resources contained within Somalia's EEZ. Only by controlling the EEZ fishery to ensure that the resource is harvested sustainably will international development lead to a viable living for Somali fishers. A comprehensive anti-piracy policy addresses EEZ issues through a maritime governance organization.

Maritime governance of a States EEZ flows from established international law. UNCLOS part V governs the internationally agreed norms concerning Coastal States and their EEZ. UNCLOS grants rights and obligations to States concerning the management of living resources (i.e. fish) in its EEZ. UNCLOS requires each State to provide surveillance of the EEZ, a fisheries management and regulatory process, licensing of fishing vessels, inspections of fishing vessels, and to work in cooperation with neighboring states in a regional fisheries management process. UNCLOS EEZ governance in Coastal States is normally conducted by a Coast Guard in cooperation with a fishery management department. These two organizations are branches of a national government. Somalia status as a failed state presents additional complexity for the international community in providing Coast

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[168]   Omar Abdirashid Ali Sharmarke, *Somalia: Building Stability and Peace*, Chatham House, October 2009, 3.

[169]   ibid, 5.

Guard capacity development. The internal challenges of providing an effective Coast Guard has been acknowledge by the TFG leadership of Somalia.[170] The creation of a Coast Guard capacity needs a novel solution to solve Somalia's requirement for maritime governance.

To resolve Somalia's capacity gap the international community must orient its aid and development programs to ensure coverage of all maritime governance elements. Effective national maritime governance has four major elements: maritime domain awareness (electronic and aircraft surveillance of the EEZ), maritime infrastructure (ports and logistic support to a Coast Guard), maritime enforcement capability (Coast Guard and fishery inspection service) and maritime professionals (qualified and trained human resources). Somalia's weak federal governance indicates that the country is not capable of managing a national Coast Guard, fisheries protection service, EEZ resource regulations or the appropriate infrastructure to support these public services. The maritime governance capacity gap impacts Somalia's ability to meet its requirements under the Djibouti Code of Conduct. Furthermore without improved maritime governance Somalia can not fulfill its UNCLOS Coastal State EEZ requirements. Somalia presents the international community the opportunity to create a precedent: the UN should form a Maritime Trust Organization (MTO) for the country operating under the authority of a Security Council resolution. The MTO would provide the four essential elements of maritime governance enabling Somalia to meet its requirements under the Djibouti Code of Conduct. At a future date, when a functioning federal government represents the entire nation, the MTO would be transferred to Somali to act as a national maritime governance agency.

The UN MTO would be a significant economic development enabler in a compressive anti-piracy policy. It would furnish the four essential elements of maritime governance, it would provide jobs and training for Somali youths in the Coast Guard, it would conduct inshore and EEZ surveillance to assist in counter-piracy operations, it would eradicate IUU fishing, and it would facilitate significant economic opportunities through a sustainable fishery. Complimenting the sustainable fishery there has to be a higher cost

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[170]   HE Sheikh Saarif Sheikh Ahmed (President of the Transitional Federal Government of Somalia), *Somalia at a Crossroads and the Duty of the International Community*, Chatham House, March 2010, 10.

associated with piracy to reduce the economic incentive associated with ransoming the pirated ships and crews. This would be provided through the UN ad-hoc tribunal tasked with trying pirates seized on the high seas. As the UN MTO develops it will eventually have sufficient Coast Guard capacity to relieve naval forces from anti-piracy patrols in Somalia's territorial waters and EEZ. Naval forces would remain involved in protecting the IRTC and patrolling the Western Indian Ocean. The combined impact of naval forces and the UN MTO Coast Guard on piracy would be quite effective. The creation of a UN MTO, a UN ad-hoc piracy tribunal and enhanced development programs ashore are the base components of a comprehensive counter-piracy strategy. A comprehensive maritime strategy to counter pirates has sound historical roots.

History suggests that naval forces were not sufficient to suppress pirates without employing diplomacy, enforcement of laws, and methods of co-opting pirates to other economic activities.[171] Historically pirates have operated from lands with limited local government and part of the solution has been the re-establishment of effective governance.[172] Since Somali governance has only developed at the local level it is not capable of meeting the internationally recognized level of actions required from a State.[173] Somali pirates are able to profit greatly from ransom money and they hold no fear of international jurisprudence. Diplomatic efforts are a challenge when dealing with a failed state due to the lack of a central state authority with sufficient legitimacy to negotiate and enforce laws.

The UN has noted the intention of the TFG and local government in Puntland is to cooperate on fighting piracy.[174] However, sound intentions do not provide the needed coercive counter-piracy effect to stop pirate attacks. The UN needs to continue local governance development while concurrently developing new maritime governance programs. An UN authorized ad-hoc tribunal would resolve the current prosecution challenges faced by naval vessels operating under the UN security resolutions. Effective legal prosecution will enhance the coercive effect of anti-piracy naval patrols. Enforcement of fishing regulations

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[171]   Cowan, "Piracy, terrorism…
[172]   ibid
[173]   Menkhaus, "Governance…, 102
[174]   United Nations, *Report of Secretary-General… S/RES/1846(2008)…*, p 12

in Somalia's EEZ would need to be undertaken concurrently with the anti-piracy patrols. A sustainable fishery will have a co-opting effect encouraging Somali fishermen to return to their previous life as fishers. The UN MTO would provide the necessary maritime governance to control the EEZ enhancing economic opportunities. During the transition period the international community will have to provide robust economic incentives to lure the unemployed fisher away from piracy and other criminal activities.[175] Only once Somali fishers have a lawful resource to exploit and when there are serious enforced consequences to piracy, will they cease their economically rational behaviour of exploiting regional merchant shipping thorough piracy. Development programs focused on improved governance ashore and increased economic opportunities, a UN Maritime Trust Organization with a Coast Guard patrolling Somalia's EEZ, a viable fishing industry for Somali fishers, implementation of the Djibouti Code of Conduct and continued international naval patrols are the key components of a comprehensive anti-piracy policy.

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[175]   Dagne, *Somalia…*, 7

Conclusion

The advent of piracy in Somalia represents a nexus of factors; clan demographics, geography that places the pirates close to major shipping routes, rise of warlords, city states that tolerate criminal activity, a way of life accustomed to violence, severe economic challenges, the lack of a viable fishing industry due to widespread IUU fishing, and skilled mariners working with armed militias seeking a source of income to sustain their livelihood. Piracy is a rational economic and social choice for a young Somalia raised in anarchy in an agrarian society. Clearly the largest factor has been the collapse of the Somali state and the lack of effective governance to enforce the rule of law. Hoslti's "*The state, war, and the state of war*" provides insight to the collapse of Somali and the resultant impact on society. Governance provides security, protection and regulation of common resources and services to the citizens. Without effective federal governance international development programs are significantly challenged to build Somalia's national maritime governance capacity to counter the rise of piracy. The creation of a Somali economy that runs on remittances and provides services only for profit has made its people extremely vulnerable to economic shocks. Since violence is a way of life in Somalia the use of weapons to acquire wealth has become the quickest way to provide a livelihood. This has created a society were "looting became one if not the only source of income."[176] Somalia's failed federal government combined with weak local governance enables warlords and businessmen to collaborate in profiting from public goods.

Lacking an effective federal government to regulate and govern Somlia's EEZ international IUU fishing vessels have plundered the local waters. Hardin's "*Tragedy of the Commons*" aptly describes the economics that underlay the exploitation of natural resources such as fish. Over fishing by IUU fishing fleets have brought a "Tragedy of the Commons" to Somalia's offshore resource. The collapse of the fishery has led Somali fishers to locate another source of income. Geography has blessed Somalia with seas rich in the resource of international shipping. Piracy has arisen as Somalia fishers and warlord militias have formed syndicates to loot the regional resource of shipping for an income. Piracy has become an

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[176]   Webersik, "Differences that matter…

effective economic choice for the fishers and unemployed youth of the Puntland region in Somalia.

Governance in Somalia is not just a challenge ashore, the actions of IUU fishers and pirates highlight the need for maritime governance. The need for a level of coercive control over resource exploiters to ensure long term economic viability is described in Hardin's paper. Illegal international fishing inside of Somalia's EEZ must be stopped. To assist Somalia in the control of fishery the international community should enforce resource regulation in the EEZ. Somalia's status as a failed state means that there is no Coast Guard to regulates, patrol, inspect and enforce legal activities in Somalia's EEZ. Lacking a federal authority there are no criminal courts to prosecute Somali pirates seized at sea. Furthermore the complexity of international law as it is integrated with domestic criminal law for the Navy's patrolling the waters off the coast of Somalia has constrained the coercive effect of international naval patrols. Regional countries with effective governance such as the Seychelles and Kenya do not have an appetite to assume the burden of prosecuting and incarcerating Somali pirates. To resolve the issues of legal jurisdiction the UN through a Security Council Resolution should establish an ad-hoc tribunal to try Somali's accused of piracy. Despite the recent signing of the Djibouti Code of Conduct there remains a significant maritime governance challenge in the Region. The international community through the UN should establish a Maritime Trust Organization for Somali to provide the necessary maritime governance. The UN Maritime Trust Organization would provide the national infrastructure, regulations, capacity and professional training for a Coast Guard to police Somalia's EEZ. The UN should continue to provide development to local communities improving governance, security and economic opportunity ashore. International Naval patrols and the defensive protection measures of merchant shipping should continue as a dissuasive effect against pirates. Only thorough effective governance ashore and at sea combined with the coercive effect of international naval patrols can the world hope to stem the scourge of piracy.

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