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# **The Safeguarding of International Shipping: A Solution to Somali Piracy?**

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## **Abstract**

Piracy has been steadily increasing in the waters off the coast of Somalia since 2005. The reactions to the rising instances of piracy, particularly in the Gulf of Aden, have resulted in the largest internationally coordinated naval deployments in modern history. However, the military approach taken in response to piracy has seen limited effects with only marginal decreases in numbers of attacks in 2009. The limited efficacy of the current approach to piracy can be attributed to the failure to recognise and seek to address the root causes of the phenomena of piracy. The international naval deployment, the primary response to Somali piracy, has been guided by the claim that a previous approach taken to piracy in the Malacca Straits can successfully be applied to the Gulf of Aden. This article seeks to analyse the typology of Somali piracy and its causal factors. Its aim is to identify the issues which need to be addressed as part of a comprehensive solution to the problem. In doing so, the article refutes the suggestions, made by other scholars, that the provision of alternative financial means and naval patrols of the affected areas will provide an effective response to piracy, in the absence of domestic security and stability. Any comprehensive solution to Somali piracy must look to simultaneously provide security for international shipping and rebuilding the state of Somalia.

## **Introduction**

Somali piracy became of grave concern internationally in mid 2007 with the deadly hijacking of the United Nations World Food Programme aid ship destined for Somalia, prompting the UN to seek assistance from the international community in the fight against piracy.<sup>1</sup> Despite these concerns and the resulting UN resolutions 1816 and 1846 and the ensuing international naval deployment, Somali piracy continued to increase reaching its peak in 2009 with a total of 217 instances of piracy of which 47 resulted in successful hijackings.<sup>2</sup> The Somali pirates' use of weapons

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<sup>1</sup> "Somalia: Pirates attack UN aid ship, prompting call for action," *The UN News Centre* on the Web, <http://www.un.org/apps/news/story.asp?NewsID=22609&Cr=Somalia&Cr1> (accessed 12 July 2010).

<sup>2</sup> ICC International Maritime Bureau, *2009 Worldwide Piracy Figures Surpass 400*, (London: ICC International Maritime Bureau, 2009a), <http://www.icc->

in conducting attacks has enabled them to successfully carry out such a large number of attacks.<sup>3</sup>

While the international naval patrols have seen some success with an overall decline in attacks in 2010, such success has been very limited. Somali piracy continues relatively unabated as illustrated by the expansion of the area in which these pirates now operate.<sup>4</sup> In light of the inefficacy of the international naval deployment to the Gulf of Aden, the chief response to the Somali piracy epidemic, scholars have advanced alternative responses. Michael A. Baker, International Affairs Fellow in Residence, in a recent brief published by the Council on Foreign Relations rightly purports that the greater engagement of African states in addressing the piracy problem will produce a multitude of benefits in way of countering the underlying causes of Somali piracy, namely lawlessness and economic marginalisation.<sup>5</sup>

Somali piracy is intimately connected to the conditions of lawlessness both within the failed state and in its waters. Hence, the collapse of the Somali state, marked by the ousting of the Siad Barre Regime in 1991, was the catalyst for the rise in piracy off the coast of Somalia.<sup>6</sup> The high frequency and concentration of attacks in the Gulf of Aden and its location along a busy 'Sea Lines of Communication' has led governments and scholars alike to draw a comparison between Somali piracy and piracy in the Malacca Straits, guiding the response in the Gulf of Aden. Both the Gulf of Aden and the Malacca Straits constitute chokepoints along the one sealane which connects the oil dependent East Asian states

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[ccs.org/index.php?option=com\\_content&view=article&id=385:2009-worldwide-piracy-figures-surpass-400&catid=60:news&Itemid=51](http://ccs.org/index.php?option=com_content&view=article&id=385:2009-worldwide-piracy-figures-surpass-400&catid=60:news&Itemid=51) (accessed 12 July 2010).

<sup>3</sup> Rohan Mathes, "Pirates operate undeterred in the high seas," The Official Government News Portal of Sri Lanka, [http://www.news.lk/index.php?option=com\\_content&task=view&id=10767&Itemid=52](http://www.news.lk/index.php?option=com_content&task=view&id=10767&Itemid=52) (accessed 26 August 2010).

<sup>4</sup> ICC International Maritime Bureau, *Worldwide hijackings rise as pirates expand areas of operation*, (London: ICC International Maritime Bureau, 2009b), [http://www.icc-ccs.org/index.php?option=com\\_content&view=article&id=406:world-wide-hijackings-rise-as-pirates-expand-area-of-operation&catid=60:news&Itemid=51](http://www.icc-ccs.org/index.php?option=com_content&view=article&id=406:world-wide-hijackings-rise-as-pirates-expand-area-of-operation&catid=60:news&Itemid=51) (accessed 12 July 2010).

<sup>5</sup> Michael L. Baker, "Building African Partnerships to Defeat Piracy", *Council on Foreign Relations*, [http://www.cfr.org/publication/22465/building\\_african\\_partnerships\\_to\\_defeat\\_piracy.html](http://www.cfr.org/publication/22465/building_african_partnerships_to_defeat_piracy.html) (accessed 12 July, 2010).

<sup>6</sup> "Somalia Country Profile" August 11 2010, *BBC News on the Web*, [http://news.bbc.co.uk/2/hi/africa/country\\_profiles/1072592.stm](http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm) (accessed 12 July 2010).

to the Middle East oil fields.<sup>7</sup> Shortcomings in the general approach to the analysis of Somali piracy, specifically the tendency to overlook its unique characteristics, has allowed for an international response which is not likely to produce any significant long term results.

The need to address the root causes of Somali piracy is a commonly accepted assertion;<sup>8</sup> however, to date there have been no significant attempts to deal with the domestic turmoil in the failed state of Somalia. This article seeks to analyse the typology of Somali piracy, its causal factors and unique characteristics, with the aim of identifying the issues which must be addressed in order to create a holistic solution. Finally, the current international response to Somali piracy is analysed and critiqued leading to the conclusion that these efforts fall short of addressing the underlying cause of the widespread piracy off the coast of Somalia.

### **History of Piracy in the Gulf of Aden**

Piracy is a phenomenon which is inextricably connected to trade.<sup>9</sup> It has existed for as long as people have taken to the world's oceans for trade and transport purposes.<sup>10</sup> The history of contemporary piracy in Somalia is coupled with a history of conflict and civil war over the past two decades. The collapse of the Siad Barre Regime in 1991 marked the end of centralised government control within the country. Since this time in history, Somalia has been characterised by warring clans and

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<sup>7</sup> Joshua Ho, "Piracy in the Gulf of Aden: Lessons From the Malacca Straits", 22 January 2009, Rajaratnam School of International Studies, [www.rsis.edu.sg/publications/Perspective/RSIS0092009.pdf](http://www.rsis.edu.sg/publications/Perspective/RSIS0092009.pdf) (accessed 13 July 2010).

<sup>8</sup> James Kraska, "The Report on the U.S. Naval War College Workshop on Somali Piracy: Fresh Thinking for an Old Threat," 2009a, 6-8, [www.usnwc.edu/getattachment/521cc632.../Countering-Maritime-Piracy](http://www.usnwc.edu/getattachment/521cc632.../Countering-Maritime-Piracy) (accessed 12 July 2010).

<sup>9</sup> Karl Sorenson, "State Failure on the High Seas-Reviewing the Somali Piracy," FOI Swedish Defence Research Agency, November 2008, 26, [www.foa.se/upload/projects/Africa/FOI-R--2610.pdf](http://www.foa.se/upload/projects/Africa/FOI-R--2610.pdf) (accessed 13 July 2010).

<sup>10</sup> The Barbary Corsairs, active during the seventeenth century, terrorised the world's system of trade, demanding ransoms for kidnap victims. These pirates, originating from Algiers, posed similar problems for governments seeking to eradicate them, as do the Somali pirates, because of their safe haven in the state of Algeria. The only effective means by which to eliminate the Barbary Corsairs was to find a political solution on land. Thus the Corsairs were denied a safe haven. The invasion and occupation of Algeria by the French in 1830, and closely followed by the US, marked the beginning of the end for the Barbary Corsairs. See George Norman Clark, "The Barbary Corsairs in the Seventeenth Century," *Cambridge Historical Journal*, 8:1 (1944): 25-26.

factionalism, with tens of thousands of Somalis having lost their lives.<sup>11</sup> Over one million people have fled their homes as a result of the ensuing violence within the country.<sup>12</sup> In 2004, with assistance from the Kenyan government in facilitating and concluding the peace process, Abdullahi Yusuf Ahmed was elected into power in Somalia as their Transitional Federal President. However, following the withdrawal of the second United Nations Operation in Somalia (UNOSOM 2) in late 2006, the second attempted and failed UN peacekeeping mission in Somalia, the Islamic Courts Union (ICU) gained significant popular support amongst the public as a plausible political entity. Having defeated the warlords, the ICU came into power taking control over the vast majority of the country and in turn piracy declined significantly.<sup>13</sup>

### **Causes and Facilitators of Piracy in the Gulf of Aden**

The typology of piracy seen in the Gulf of Aden is characteristic of the causes and facilitators of piracy found within Somalia. Poverty is commonly identified to be a dominant cause of piracy in the Gulf of Aden and the Indian Ocean. Adam Young's definition of 'social piracy' by which pirates conduct their attacks to the benefit of the wider community can be applied to the Somali pirates.<sup>14</sup> Those who claim to be spokespersons for the Somali pirates maintain that money acquired through acts of piracy are redistributed to families within their villages in aid of the endemic poverty which they face.<sup>15</sup>

The large majority of pirating which takes place in the Gulf of Aden and the Indian Ocean is in the form of large-scale kidnap for ransom attacks. These attacks differ considerably from the majority of those which take place in the Malacca Straits which are of a smaller scale and opportunistic

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<sup>11</sup> James Oberstar and John Mica, "International Piracy on the High Seas," U.S. House of Representatives Committee on Transport and Infrastructure, <http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=801> (accessed 26 August 2010).

<sup>12</sup> "Islamist elected Somali president," *BBC News on Web*, 31 January 2009, <http://www.bbc.co.uk/1/hi/world/africa/7860295.stm> (accessed 20 July 2010).

<sup>13</sup> AMISOM: African Union Mission in Somalia, "Background and Political Developments," [http://www.africa-union.org/root/AU/AUC/Departments/PSC/AMISOM/AMISOM\\_Background.htm](http://www.africa-union.org/root/AU/AUC/Departments/PSC/AMISOM/AMISOM_Background.htm) (accessed 5 July 2010).

<sup>14</sup> Adam J. Young, *Contemporary Maritime Piracy in South East Asia: History, Causes and Remedies*, (Singapore: The International Institute for Asian Studies, 2007), 14.

<sup>15</sup> Patrick Lennox, "Contemporary Piracy off the Horn of Africa," Canadian Defence and Foreign Affairs Institute, December 2008, 2, [www.cdfai.org/PDF/Contemporary%20Piracy%20off%20the%20Horn%20of%20Africa.pdf](http://www.cdfai.org/PDF/Contemporary%20Piracy%20off%20the%20Horn%20of%20Africa.pdf) (accessed 7 June 2010).

in nature.<sup>16</sup> A multitude of factors enable Somali pirates to successfully launch a number of large-scale attacks. The state of lawlessness within Somalia provides pirates with the impunity required to anchor hijacked vessels while mediation takes place in regards to the payment of ransom. Lawlessness and lack of government will also provides pirates with access to a market for the money they have extorted through ransom payments.<sup>17</sup>

The UN Security Council has identified the primary causes and facilitators of Somali piracy to be: the unwillingness of states to enforce the arms embargo established under resolution 733, the continuing payment of ransom demands, the weak judicial capacity of Somalia, the incapacity of Somalia to secure its coastline, the general lack of law enforcement capabilities within the country and the civil unrest and resultant widespread poverty which has plagued the country for over seventeen years. Clearly, these underlying causes of piracy will need to be addressed as part of any long term solution to piracy off the coast of Somalia. As lawlessness has been central to the ability of piracy to flourish, efforts to counter the act of piracy must address government capacity within Somalia.<sup>18</sup>

The drastic increase in piracy in the Gulf of Aden and the adjoining Indian Ocean correlates to the deteriorating conditions within Somalia over the past two decades.<sup>19</sup> The lack of available opportunities for Somali people is a dominant cause of piracy. Apolo Nsimbambi, Prime Minister of Uganda, argues that since the abatement of the Cold War, the increasing marginalisation of the African continent has been further exacerbated by forces of globalisation. For the African states and particularly Somalia who continue to struggle to get a toehold in the global economy, the forces of globalisation have intensified their economic marginalisation.<sup>20</sup> The inequitable distribution of the benefits

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<sup>16</sup> Young, 114.

<sup>17</sup> Sorenson, 20.

<sup>18</sup> The United Nations, *Security Council Authorizes States To Use Land-Based Operations In Somalia As Part Of Fight Against Piracy Off Coast, Unanimously Adopted 1851 (2008), Resolution 1851*, 16 December 2008d, <http://www.un.org/News/Press/docs/2008/sc9541.doc.htm> (accessed 13 July 2010).

<sup>19</sup> Oberstar and Mica, 6.

<sup>20</sup> Apolo Nsimbambi, "The Effects of Globalization on the State in Africa: Harnessing the Benefits and Minimizing the Costs," Panel Discussion on Globalization and the State, November 2, 2001, United Nations General Assembly, Second Committee, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan001978.pdf> (accessed 12 July 2010).

and costs associated with globalisation is tantamount to the reality within many African states like Somalia.

Nsimbambi also argues that with the cessation of the bipolar structure of international relations new foreign investment opportunities presented themselves in the former communist Eastern European states. Hence, foreign investment which was once destined for Africa was invested elsewhere.<sup>21</sup> The political instability and widespread conflict which has gripped the vast majority of the region in the period dating since the Cold War has largely made Africa an undesirable location for foreign investment. The loss of foreign investment within African states has had a marginalising effect for such states. However, Somalia's economic marginalisation is only one factor, albeit a significant factor owing to the widespread poverty amongst its citizens. Political instability, while inseparable from Somalia's economic failure, has compounded the already dire economic conditions and poverty within the country. In order for viable market alternatives to gain traction within the failed state of Somalia, stability must be antecedent to any economic solutions.

In the aftermath of the collapse of the Siad Barre Regime, unable to decide on a successor government, Somalia entered into a continual state of civil unrest.<sup>22</sup> The emergence of the ICU within Somalia in 2004 as a political alternative to the newly installed Transitional Federal Government (TFG) had a further destabilising effect on the country. The current TFG is the African Intergovernmental Authority on Development's (IGAD) fourteenth endeavour to install a stable government in Somalia since 1991.<sup>23</sup> By June 2006, the ICU had taken control of the capital, Mogadishu. The possibility of an Islamic state on its border and the ICU's alleged connection to the al-Shabaab radical Islamic militant group provoked serious concern amongst Ethiopia and the US as its ally. These concerns led to the invasion of Somalia by Ethiopian US backed forces in December 2006.<sup>24</sup> However, the TFG and its allied troops continue to struggle to regain control over the capital and the southern region of Somalia. While environmental conditions such as drought have contributed to the poverty amongst Somalis, the continuing political instability within Somalia is contributing to the widespread

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<sup>21</sup> Nsimbambi, 3.

<sup>22</sup> AMISOM: African Union Mission in Somalia.

<sup>23</sup> Stephanie Hanson, "Backgrounder: Somalia's Transitional Government", *Council on Foreign Relations*, 12 May 2008, <http://www.cfr.org/publication/12475/#p2> (accessed 17 June 2010).

<sup>24</sup> Sorenson, 11.



poverty throughout the state. Fighting on the ground amongst rival warlords, militia and the TFG, hinder the efforts of the World Food Programme as it struggles to deliver aid to those most in need.<sup>25</sup> Al-Shabab militia have forced many aid agencies out of war torn Somalia, making food aid provided through the World Food Programme invaluable to the livelihood of Somalis.<sup>26</sup>

Without a stable government to provide the necessary goods for its citizens (notably both internal and external security, healthcare and education) many people of Somalia have become dependent upon the proceeds from piracy. With a per capita GDP US\$600, piracy is currently one of few profitable industries within Somalia.<sup>27</sup> The once bountiful supply of tuna stocks in Somali waters historically provided many Somalis with an income from which they could support themselves. However, without an effective government able to secure Somalia's waters, illegal fishers have opportunistically plundered Somalia's once profitable tuna stocks. Several Somali officials claim piracy to be a direct consequence of the illegal fishing which has been common practice in their territorial waters since the collapse of the state in 1991.<sup>28</sup> Many fishers once employed by the fishing industry claim they have turned to piracy to compensate for their loss of wages.<sup>29</sup>

The European Union (EU), Russia, Japan, India, Egypt and Yemen have all been accused of illegally fishing in Somalia's territorial waters. Ironically, the majority of these states are engaged in the anti-piracy patrols in these same waters.<sup>30</sup> Additionally, the practice of dumping toxic waste in Somalia's waters has further decimated the country's once profitable fishing industry. Allegedly, European states have been

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<sup>25</sup> Lennox, 7.

<sup>26</sup> "Rains help Somalia, but 2 million still need food", *Associated Press*, 24 August 2010, <http://www.google.com/hostednews/ap/article/ALeqM5hFtUgiCSMmajw666xtPnbS7quUbQD9HP89GO0> (accessed 30 August 2010).

<sup>27</sup> Max Boot, "Pirates, Then and Now: How Piracy Was Defeated in the Past and Can Be Again," *Foreign Affairs*, 88:4 (2009), 95.

<sup>28</sup> "Piracy at Sea", *The New York Times* on the Web, 4 May 2010, [http://topics.nytimes.com/top/reference/timestopics/subjects/p/piracy\\_at\\_sea/index.html?scp=1-spot&sq=sea%20piracy&st=cse](http://topics.nytimes.com/top/reference/timestopics/subjects/p/piracy_at_sea/index.html?scp=1-spot&sq=sea%20piracy&st=cse) (accessed 12 July 2010).

<sup>29</sup> Sorenson, 30.

<sup>30</sup> Mohamed Abshir Waldo, "The two piracies in Somalia: why the world ignores the other," in *AfroSpear*, 18 April 2009, <http://afrospear.wordpress.com/2009/04/18/forwardheernews-the-two-piracies-in-somalia/> (accessed 12 July 2010).

dumping illegal toxic waste in Somalia's waters since the collapse of its government in the early 1990s.<sup>31</sup>

### **Current Responses**

The increasing presence of coordinated patrols of the Gulf of Aden and the adjoining waters of the Indian Ocean has correlated with an increase in the frequency of attacks in these waters. Concerns surrounding the growing problem of piracy led to the current international naval presence in these waters. Further, while patrols take place, there has been an effort on behalf of those engaged in the fight against piracy to improve the capacity of not only Somalia (as the origin of pirates) but also the regional states of the Horn of Africa.<sup>32</sup> Regional involvement, incorporating Somalia's neighbouring states, is required as piracy is a problem which cannot be confined to one state's jurisdiction. The weakness, however, of these regional states and Somalia hampers the ability to foster a regional response to piracy. Hence capacity building initiatives for Horn of Africa states is a necessary requirement for greater regional engagement.

Recommendations to replicate the Malacca Straits model due to its perceived success in diminishing instances of piracy in the Straits have largely guided the current response to Somali piracy. The littoral state's (Indonesia, Malaysia and Singapore) trilateral coordinated patrols of the Straits (MALSINDO) have been credited with reducing the rate of piracy in the Straits. Their efficacy is contested on the grounds that other factors worked to diminish piracy, including the 2004 tsunami as the patrols were limited in their effect due to the denied right to hot pursuit in each other's territorial waters.<sup>33</sup> While the US government and the IMO have made note of a few of the differences presented in the two cases of Malacca Straits' piracy and Somali piracy, (specifically the domestic situation

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<sup>31</sup> Lennox, 3.

<sup>32</sup> European Union Common Security and Defence Policy, *EU naval operation against piracy (EUNAVFOR Somalia – Operation ATALANTA)*, April 2010, [www.consilium.europa.eu/.../100426%20Factsheet%20EU%20NAVFOR%20Somali%20-](http://www.consilium.europa.eu/.../100426%20Factsheet%20EU%20NAVFOR%20Somali%20-) (accessed 26 August 2010).

<sup>33</sup> Martin Murphy, "Contemporary Piracy and Maritime Terrorism: The threat to international security," *Adelphi Paper 388* (Oxon: Routledge, 2007), 67; Carolin Liss, "The Challenges of Piracy in Southeast Asia and the Role of Australia," *Austral Policy Forum*, <http://gc.nautilus.org/Nautilus/australia/apsnet/policy-forum/2007/the-challenges-of-piracy-in-southeast-asia-and-the-role-of-australia/> (accessed 16 July 2010).

within Somalia), responses to piracy in the Gulf of Aden and Indian Ocean are not illustrative of this understanding.<sup>34</sup>

The concerted efforts of the IMO to bring the issue of piracy to the attention of the Security Council over a period of two years culminated in the adoption of UN resolution 1816 on 2 June 2008. This resolution allowed for foreign powers to enter the territorial waters of Somalia and employ “all necessary means”<sup>35</sup> to apprehend pirates for a period of six months.<sup>36</sup> Further, UN resolution 1846, adopted in December of the same year, sought to extend the conditions of resolution 1816 for an additional period of 12 months.<sup>37</sup> The resolutions followed Somalia’s call for international assistance on the matter of suppressing piracy in its waters.<sup>38</sup> On 9 December 2008, the then Somali President Abdullahi Yusuf Ahmed issued a letter to the UN Security Council calling for additional assistance to aid the TFG in its fight against piracy both onshore and out at sea. In response to the request of the Somali TFG, the UN Security Council unanimously adopted Resolution 1851 on December 16, stating the need for a holistic approach to anti-piracy off the coast of Somalia; addressing the root causes of piracy on land.<sup>39</sup>

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<sup>34</sup> Donna Miles, “Admiral Cites Partnership, Commitment As Keys to Piracy Crackdown,” Office of the Secretary of Defense Public Affairs, 13 May 2009, [www.navy.mil/search/display.asp?story\\_id=45235](http://www.navy.mil/search/display.asp?story_id=45235), (accessed 26 August 2010); “IMO floats UN fleet to turn tide of piracy,” *Financial Times on the Web*, 3 November 2008, [http://www.ft.com/cms/s/0/33f9ce70-a947-11dd-a19a-000077b07658.html?ncl\\_ick\\_check=1](http://www.ft.com/cms/s/0/33f9ce70-a947-11dd-a19a-000077b07658.html?ncl_ick_check=1) (accessed 13 April 2009).

<sup>35</sup> The use of ‘all necessary means’ refers to the rights of foreign powers to deploy naval vessels and military aircraft to patrol the Gulf of Aden and additionally their right to seize and dispose of vessels engaged in piracy. The actions of state’s under resolution 1816 and 1846 must remain in accordance to international law as defined under UNCLOS., see The United Nations, *Security Council Decides States, Regional Organizations May Use ‘All Means’ To Fight Piracy off The Coast For 12-Month Period, Resolution 1846*, 2 December 2008c, <http://www.un.org/News/Press/docs/2008/sc9514.htm> (accessed 6 June 2010).

<sup>36</sup> The United Nations, *Security Council Condemns Acts of Piracy, Armed Robbery off Somalia’s Coast, Authorizes for six months “All Necessary Means” to Repress Such Acts, Resolution 1816*, 2 June 2008a, <http://www.un.org/News/Press/docs/2008/sc9344.doc.htm> (accessed 6 June 2010).

<sup>37</sup> The United Nations, 2008c.

<sup>38</sup> The United Nations, *Security Council Asks Nations With Military Capacity In Area To “Actively Fight Piracy” On The High Seas Off Somalia’, Resolution 1838*, 7 October 2008b, <http://www.un.org/News/Press/docs/2008/sc9467.doc.htm> (accessed 7 June 2010).

<sup>39</sup> The United Nations, 2008d.

Following the adoption of Resolution 1851, as part of the Djibouti Code of Conduct, an International Contact Group on Piracy off the Coast of Somalia was established to coordinate the international naval patrols off the coast of Somalia.<sup>40</sup> The Djibouti Code of Conduct was the result of a meeting held on 26 January 2009, convened by the IMO, to establish an international coordinated response and commitment to thwarting Somali piracy. The Code was signed by the following states: Comoros, Djibouti, Egypt, Ethiopia, France, Jordan, Kenya, Madagascar, Maldives, Oman, Saudi Arabia, Seychelles, Somali, South Africa, Sudan, Tanzania and Yemen.<sup>41</sup> The agreement reached through the Djibouti Code, however, remains nonbinding and in turn largely a custom rather than an active measure in way of reducing piracy.<sup>42</sup>

At present, international naval deployments to the Gulf of Aden and the Indian Ocean constitute the chief response to the current spate of piracy in this region. As of January 2009, more than 30 navy vessels under the auspices of Combined Task Force-151 were patrolling an area of water limited to 1 million square miles.<sup>43</sup> However, evidence reveals pirates to be operating in an expanse of water which exceeds 2.5 million square nautical miles.<sup>44</sup> According to the International Maritime Bureau, pirate attacks in the Gulf of Aden, the Red Sea, the Arabian Sea, Oman and the Indian Ocean may all be attributed to Somali pirates.<sup>45</sup> To date, upon request of the UN security Council, naval deployments to the Gulf of Aden and its adjoining waters include multinational Combined Task Force 151 which involves naval assets from 20 states,<sup>46</sup> including that of

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<sup>40</sup> U.S. Department of State, *United States Actions To Counter Piracy Off The Coast Of Somalia*, Fact Sheet, 1 September 2009, <http://www.state.gov/t/pm/rls/fs/128540.htm> (accessed 16 July 2010).

<sup>41</sup> International Maritime Organization, *High-level meeting in Djibouti adopts a Code of Conduct to repress acts of piracy and armed robbery against ships*, 30 January 2009, [http://www.imo.org/newsroom/mainframe.asp?topic\\_id=1773&doc\\_id=10933](http://www.imo.org/newsroom/mainframe.asp?topic_id=1773&doc_id=10933) (accessed 23 July 2010).

<sup>42</sup> James Kraska, "Fresh Thinking for an Old Problem: Report of the Naval War College Workshop on Countering Maritime Piracy," *Naval War College Review*, 62:4 (2009b): 142.

<sup>43</sup> Boot, 95.

<sup>44</sup> Hanson, 2009.

<sup>45</sup> ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships Annual Report 1 January – 31 December 2009* (London: ICC International Maritime Bureau, 2009c), 6.

<sup>46</sup> The Combined Task Force 151 is a multinational force established in January 2009 to deter and suppress piracy and to secure the maritime environment its related activities and is now employed for anti-piracy responses in the Gulf of Aden and the adjoining waters of the Indian Ocean., see "New Counter-Piracy task Force

the North America Treaty Organisation (NATO) states, the EU NAVFOR Atlanta, and naval warships from China, Russia, India, Japan, South Korea, Saudi Arabia, Malaysia, Iran and Australia.<sup>47</sup>

The efficacy of these collective efforts to patrol the Gulf of Aden and the adjacent waters of the Indian Ocean has however been limited. The likelihood of a warship responding to a distress call within time to foil the attack is constrained by the slow speeds at which these vessels travel.<sup>48</sup> Although convoying of ships has been a primary tactic of the naval deployment to the Gulf of Aden, the speed at which warships travel is much slower than commercial vessels. Thus the commercial vessel is required to reduce its speed. Traversing waters at slower speeds makes these vessels more vulnerable to being attacked by pirates. Consequently

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Established”, *Navy NewsStand* on the Web, <http://www.globalsecurity.org/military/library/news/2009/01/mil-090108-nns02.htm> (accessed 23 July 2010).

<sup>47</sup> Countries committed to the NATO anti-piracy patrolling exercises include: Bulgaria, Canada, Denmark, France, German, Greece, Italy, the Netherlands, Portugal, Spain, Turkey, Britain, U.S., see North Atlantic Treaty Organization, “Counter Piracy Operations”, 17 August 2009, <http://www.nato.int/issues/allied-provider/index.html> (accessed 21 October 2010); Belgium, France, Britain, Germany, Italy, Greece, the Netherlands, Spain, Sweden and Norway are involved in the coordinated anti-piracy patrolling exercises of the collective EU, see Council of the European Union, *EU NAVFOR Somalia*, <http://www.consilium.europa.eu/showPage.aspx?id=1518&lang=en> (accessed 21 October 2010); Also see, “PLA Navy Escort Mission in the Gulf of Aden,” *Sino Defence* on the Web, <http://www.sinodefence.com/special/operations/anti-piracy.asp> (accessed 29 August 2009); “Russian Destroyer to join UN anti-piracy mission off Somalia next week,” *Ria Novosti*, 7 July 2010, <http://en.rian.ru/russia/20100711/159761662.html> (accessed 16 July 2010); “Indian Navy warship deployed in Gulf of Aden,” *Thaindian News* on the Web, [http://www.thaindian.com/newsportal/uncategorized/indian-navy-warship-deployed-in-gulf-of-aden\\_100108116.html](http://www.thaindian.com/newsportal/uncategorized/indian-navy-warship-deployed-in-gulf-of-aden_100108116.html) (accessed 22 August 2009); “Japanese Navy Ships Leave For Anti-Piracy Mission,” *ABC News International* on the Web, <http://abcnews.go.com/International/wireStory?id=8009094> (accessed 22 August 2009); “S. Korean Naval Forces Capture Pirates off Somalia,” *The Korea Times* on the Web, [http://www.koreatimes.co.kr/www/news/nation/2009/08/205\\_49674.html](http://www.koreatimes.co.kr/www/news/nation/2009/08/205_49674.html) (accessed 22 August 2009); Mark Valencia. and Nazery Khalid, “The Somalia Multilateral Anti-Piracy Approach: Some Caveats,” *The Nautilus Institute*, 12 February 2009, [gc.nautilus.org/Nautilus/australia/apsnet/policy.../Valencia-Khalid.pdf](http://gc.nautilus.org/Nautilus/australia/apsnet/policy.../Valencia-Khalid.pdf), (accessed 26 August 2010); “Iran send warships to Gulf of Aden-navy,” *Reuters India* on the Web, 25 May 2009, <http://in.reuters.com/article/worldNews/idINIndia-39868320090525> (accessed 12 July 2010); “Aussie warship, aircraft to fight piracy,” *The Sydney Morning Herald* on the Web, 29 May 2009, <http://news.smh.com.au/breaking-news-national/aussie-warship-aircraft-to-fight-piracy-20090529-bp7d.html> (accessed 12 July 2010).

<sup>48</sup> Lauren Ploch et al., “Piracy off the Horn of Africa,” CRS Report for Congress, 24 April 2009, 8, [www.fas.org/sgp/crs/row/R40528.pdf](http://www.fas.org/sgp/crs/row/R40528.pdf), (accessed 12 July 2010).

shipowners are less likely to opt for a convoy.<sup>49</sup> Sam Bateman, Senior Research Fellow at the Rajaratnam School of International Studies in Singapore, on a trip taken through the Gulf of Aden late last year observed that the captain of the vessel on which he traversed these waters did not wish to join a convoy as doing so would come at a significant cost in terms of both time and money.<sup>50</sup> Since December 2008, the success rate of pirate attacks off the coast of Somalia has dropped from one in three to one in four.<sup>51</sup> However, bad weather is likely to be an influencing factor in the reduction of piracy in the initial months of 2009. The decrease in piracy in early 2009 is a result of the monsoon season, restraining the pirate's ability to traverse the seas in their small vessels.<sup>52</sup>

Coordinated patrolling efforts are also constrained and undermined by the pirates' use of sophisticated GPS tracking devices. These devices enable them to track the whereabouts of warships before launching their attacks in an alternative location.<sup>53</sup> Naval patrols are not only largely ineffective in response to piracy but have in fact exacerbated the issue itself. Preceding the international naval presence off the coast of Somalia, piratical attacks were limited to the waters of the Gulf of Aden. A US Congressional Report released early in 2009, claims that the concentration of naval presence in the Gulf of Aden has caused the pirates to extend their operations into the Indian Ocean to escape capture and prosecution.<sup>54</sup> Having driven the pirates further out into the Indian Ocean will additionally constrain the efficacy of patrols.

The incapacity of the Somali government to pursue and prosecute pirates requires international and regional assistance with the aim of improving the law enforcement and judicial capacities of the Somali government. Despite the UN's call for assistance in apprehending and prosecuting pirates in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) to accommodate for Somalia's judicial incapacity,<sup>55</sup>

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<sup>49</sup> Sorenson, 37.

<sup>50</sup> Sam Bateman, personal correspondence with author, 26 September 2009.

<sup>51</sup> Roger Middleton. "Pirates and How to Deal With Them", 2, *Chatham House*, Briefing Note, April 22 2009, [http://www.chathamhouse.org.uk/files/13845\\_220409\\_pirates\\_law.pdf](http://www.chathamhouse.org.uk/files/13845_220409_pirates_law.pdf) (accessed 23 August 2010).

<sup>52</sup> "Piracy problem persists in the Gulf of Aden", *Lloyds 360 News on the Web*, 20 August 2009, [http://www.lloyds.com/News-and-Insight/News-and-Features/360-News/Emerging-Risk-360/Piracy\\_problem\\_persists\\_in\\_gulf\\_of\\_aden\\_200809](http://www.lloyds.com/News-and-Insight/News-and-Features/360-News/Emerging-Risk-360/Piracy_problem_persists_in_gulf_of_aden_200809) (accessed 30 August 2010).

<sup>53</sup> Boot, 104.

<sup>54</sup> Ploch et al., 11.

<sup>55</sup> The United Nations, 2008d.

problems remain in doing so.<sup>56</sup> Though UNCLOS may recognise the rights of states to prosecute pirates, domestic laws within some states do not, as Roger Middleton observes, “[c]ourts and legislatures are often reluctant to establish jurisdiction over events occurring outside their territory.”<sup>57</sup>

In September 2008, a crew from a Danish warship apprehended and arrested ten suspected pirates off the coast of Somalia. However, after having held the suspects onboard for close to a week they were forced to release the men as the Danish courts did not believe they had the jurisdiction to prosecute them. Constitutionally, Denmark and Germany are only lawfully able to prosecute pirates if they have posed a direct threat to their country’s national security interests and/or its citizens. Further, there have been several other cases where pirates have been held by naval authorities and later had to be released due to a breach of domestic law.<sup>58</sup> Due to difficulties associated with prosecuting pirates within their own legal systems, many countries prefer to prosecute pirates within the legal systems of Somalia’s regional states.<sup>59</sup>

Kenya has been the dominant destination for suspected pirates as it has the appropriate legislation to arrest and prosecute pirates. Though a number of pirates have been taken to Yemen for legal prosecution,<sup>60</sup> the US and the UK have both reached a formal agreement with Kenya to prosecute all Somali pirates. Problematic, however, is the legal stipulation that witnesses must be present at the trial of suspected pirates in Kenya. This stipulation has often required ship captains and crew members of both military and commercial vessels to remain in the region until the time of the trial. It is, however, a costly exercise to retain crew in both time and money. What is more, captains and their crews of naval ships are unable to continue with patrols and the possible apprehension of more pirates when needed to attend trials in Kenya.<sup>61</sup> As a result of the complexities involved with the prosecution of pirates, many detained pirates remain to be prosecuted, and many of them have been released without any consequence.<sup>62</sup> Djibouti is a potential other alternative for

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<sup>56</sup> Boot, 105.

<sup>57</sup> Middleton, 6.

<sup>58</sup> Middleton, 4.

<sup>59</sup> Middleton, 6.

<sup>60</sup> “Yemen tries Somalis over piracy,” *BBC News on Web*, 15 July 2009, <http://news.bbc.co.uk/2/hi/8152998.stm> (accessed 18 July 2009).

<sup>61</sup> Middleton, 7.

<sup>62</sup> “Yemen tries Somalia over piracy,” 2009.

the destination of suspected pirates. However, the Djibouti government has openly expressed its unwillingness to take responsibility of prosecuting pirates, citing a lack of capacity to do so.<sup>63</sup>

Long term solutions to piracy in the Gulf of Aden and the waters off the coast of Somalia must address the root causes of piracy, lawlessness and widespread poverty. Hence, “[n]aval ...action cannot provide any long term solution to piracy in Somalia.”<sup>64</sup> International anti-piracy measures have not yet sought to address the lawlessness which remains in the failed state of Somalia. As of yet, any proposed solution to the piracy problem off the coast of Somalia has failed to address the issue of illegal fishing and toxic waste dumping, and other contributors to poverty - the underlying cause of piracy. While the states engaged in anti-piracy responses in the Gulf of Aden and Indian Ocean have asserted their understanding of the need to address lawlessness in Somalia, their current actions fall short of this objective.<sup>65</sup>

Alternatively, discussions have taken place regarding a peace process in Somalia. The most significant of these recent efforts has been the Djibouti agreement agreed to amongst the TFG and several leaders of the warring factions in June 2008. The agreement called for a cease fire amongst the parties and for the withdrawal of Ethiopian forces from Somalia.<sup>66</sup> However, the agreement appears to not have invoked the stipulated changes in the domestic political environment. The recent invasion of Ethiopian troops into Somalia is indicative of the failure of the Djibouti Agreement.<sup>67</sup>

Though discussion of the possibility of a peace keeping mission in Somalia continues, the only party that to date has volunteered their efforts in a possible intervention is the African Union Mission in Somalia (AMISOM). This force is solely comprised of Ugandan and Burundi troops and is severely under funded and under resourced.<sup>68</sup> The UN has openly expressed its aversion to intervening in Somalia, as has the US as a result of their legacy of Mogadishu.<sup>69</sup> The alternative solution has been

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<sup>63</sup> Middleton, 7.

<sup>64</sup> Middleton, 2.

<sup>65</sup> The United Nations, 2008d.

<sup>66</sup> The United Nations, 2008d.

<sup>67</sup> Will Ross, “Ethiopia ‘seizes’ town in Somalia,” *BBC News on the Web*, 29 August 2009, <http://news.bbc.co.uk/2/hi/africa/8228503.stm> (accessed 26 August 2010).

<sup>68</sup> The United Nations, 2008d.

<sup>69</sup> Boot, 105.



to request greater international financial support and capacity building for AMISOM and the Somali TFG.<sup>70</sup> However, the current transitional government in Somalia led by President Sheikh Sharif Ahmed, has continually been accused of corruption, albeit from the opposing political party.<sup>71</sup> The alleged misappropriation of funds on behalf of the TFG will make financial support to Somalia more problematic.

The UN recommended capacity building and training exercises to improve the law enforcement capacity of both the Somali state and the regional states is the most viable option in the absence of further international support for intervention. Middleton believes capacity building to be the best response to the failed state of Somalia and in turn piracy in its waters.<sup>72</sup> Several states, both regional and international, have offered support in the way of capacity building and training exercises. To date, the EU and the US are actively engaged in state capacity and institution building initiatives within Somalia. EU capacity building efforts are focused upon improving the management of aid and building the necessary political institutions in order to achieve this objective and to improve the overall political stability of the state.<sup>73</sup> The US has chosen to contribute to capacity building within Somalia through the UN and their support for AMISOM.<sup>74</sup> At a conference held by the UN on April 23 2009 thirty states met to discuss and develop a plan to contribute US\$250 million to rebuild the state of Somalia.<sup>75</sup> In addition, AMISOM is assisting in the training of the Somali police force.<sup>76</sup> However, AMISOM remains restrained in its actions due to limited finances. What is required is a more concerted effort to address the domestic situation in Somalia with the awareness that no significant change will come without a cost. In light of the inefficacy of the costly patrols, this money would be best

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<sup>70</sup> The United Nations, 2008d.

<sup>71</sup> Ahmed Yusuf Ahmed, "Rampant Corruption in the Prime Minister's Office," *Hiiraan Online* on the Web, <http://www.hiiraan.com/op/2006/aug/Corruption-in-the-PM-office-Ahmed-Ahmed220806.aspx> (accessed 23 August 2010).

<sup>72</sup> Middleton, 6.

<sup>73</sup> Edda Costarelli, "Overview of EC Support to Capacity Building and Technical Assistance in Somalia," 2, European Commission, 16 March 2009, <http://capacity4dev.ec.europa.eu/overview-ec-support-capacity-building-and-technical-assistance-somalia> (accessed 26 August 2010).

<sup>74</sup> U.S. Department of State.

<sup>75</sup> Kraska, 2009a, 6.

<sup>76</sup> "AMISOM holds capacity building workshop for Somali police force", The Official Website of the Somali Government, 26 August 2009, <http://www.tfgsomalia.net/index-page-News-nid37.htm> (accessed 1 October 2009).

allocated to capacity building initiatives both within Somalia and the wider region.

### **Conclusion**

The dominant response to piracy in the Gulf of Aden has been a coordinated attempt by several members of the international community to patrol the Gulf of Aden and parts of adjoining Indian Ocean. Recommendations to mimic the response taken to piracy in the Straits of Malacca have clearly been taken onboard. However, in having done so, important defining and characteristic aspects of Somali piracy have been overlooked. Many of the characteristics unique to Somali piracy, specifically the scale of attacks can be attributed to the very factors which aid and abet this form of criminal activity.

Piracy in the Gulf of Aden is not in the form of opportunistic maritime plunder as is often the case in the Malacca Straits. Somali pirates are motivated by the absolute denial of other opportunities available to them by which to make a living. It is the constant state of lawlessness and resulting poverty within Somalia that not only causes piracy but enables it. While some governments and scholars engaged in the piracy issue have commonly asserted the need to address the root causes of piracy, anti-piracy efforts are not currently designed to do so. Worryingly absent from any recommended responses to Somali piracy is the will to address the issue of illegal fishing and toxic waste dumping in Somali waters. Although international coordinated patrols have seemingly, yet marginally reduced the rate of piracy in the Gulf of Aden, arguably other factors can be attributed to the minor decrease in piracy in these waters, namely bad weather. The efficacy of patrolling exercises is significantly constrained by the area of water in which pirates are evidenced to be executing their attacks. What is more, the incapacity of not only Somalia but its neighbouring states in the Horn of Africa region to effectively respond to piracy has been overlooked as a major impediment to the application of the Malacca Straits regional initiative in response to piracy.

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