# UNIVERSITY OF NAIROBI

## INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

Piracy and Maritime Security in the Gulf of Aden: Case Study of Somalia, 1999-2010

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**R50/75561/2009**

Research project presented in partial fulfilment of the degree of Master of Arts in International Conflict Management, Institute of Diplomacy and international Studies, University of Nairobi.

October, 2011

# DECLARATION

This thesis is my original work and has not been submitted for a degree to any other university.

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This thesis has been submitted for examination with our approval as university supervisor.

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## DEDICATION

To my parents Ahmed Hundubey and Salado Qafal, my wife Habon Ali Farah and my children Zakariye, Feyzal, Abudlahi, Abdiqadar, Asha-kin and Salah. Thank you for your prayers, support and good will during the time when I was pursuing my master's course.

To the Somalia people, I offer this research study as my humble contribution with the hope that peace and good governance will prevail soon.

# Abstract

Since the fall of Siad Barre in 1991, Somalia has been without a functioning government. Maritime pirates and a host of other individual actors have taken advantage of the situation to exploit the global commons. The extent of maritime piracy has increased over the years to reach a level where maritime security is a threat to the security of states in the Horn of Africa and in the maritime region. Maritime security along the Horn of Africa is threatened by piracy which is dominant in the Gulf of Aden. Piracy activities in the region affect political, economic and social security of states in the region. Maritime piracy is exacerbated by a host of factors including lawlessness in Somalia, long coast line, lack of political organization on land, economic benefits and availability of weapons. Maritime piracy falls under the *jus cogens*, this therefore means that, irrespective of the status of a state in ratifying or signing the law that regards maritime activities, they are bound by it. Henceforth, this implies that, maritime activities are a global concern; as such this study employs the theory of collective security as its theoretical framework. Collective security is a security arrangement in which all states cooperate collectively to provide security for all by the actions of all against any states within the groups which might challenge the existing order by using force. In a collective security arrangement, the security needs of one party are defined in terms of security needs of all parties. The methodology for this study research uses both primary published data and primary unpublished data. It uses interviews, Focused Group Discussions (FGD) and primary published documents. Published primary documents were obtained from, International Maritime Organization (IOM) East African Community (EAC), Inter Governmental Authority on Development (IGAD), Maritime Society of East Africa (MSEA), East Africa Seafarers Association (EASA) Institute of Security Studies (ISS) and Somalia autonomous regions of Puntland, Galmudug and Himan and Heb. From the research it emerged that, maritime piracy is a major issue affecting security in the region, the impact of maritime piracy affects states internal security, economic well being and fuels conflicts in the region. In sum it emerged that, the main effect of maritime piracy is not the danger that it poses to marine security but, the actors who take advantage of the

prevailing situation to conduct other illegal activities. Therefore, maritime piracy in the Gulf of Aden is engulfed in a cloud of economic, social and political proxy.

## Acronyms

(CMI) Comité Maritime International

(EASA) East African Seafafrers Association

(EEZ) Exclusive Economic Zone

(FOC) Flag of Convenience

(GPS) Global Positioning Systems

(HSC) Sea Convention that adopted the High Seas Convention

(ICU) Islamic Courts Union

(IGAD) Inter Governmental Authority on Development

(IMB) International Maritime Bureau

(IMO) International Maritime Organizations

(LOS) Law of the Sea Convention

(LTTE) Liberation Tigers of Tamil Eelam

(MSEA) Maritime Society of East Africa

(SUA) Convention for the Suppression of Unlawful Acts

(UNCLOS) United Nations Convention on the Law of the Sea

(UWSA) United Wa State Army

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# Piracy and Maritime Security in the Gulf of Aden: Case Study of Somalia, 1999-2010

## Chapter One

## Introduction

Since the fall of the Somalia government in 1991, piracy in the maritime region of the Horn of Africa has risen to levels that warrant international intervention takes concerted action to secure rule of law in the high seas. The waters off the coast of Somalia have become increasingly dangerous as pirates hijack commercial ships packed with, military artillery and most importantly food meant for relief. Piracy in the maritime region of the Horn of Africa is unique unlike that in other regions, like the Malacca Straits. Piracy in the Horn presents a special case to the international community because of the total breakdown of law and order within Somalia and the lack of capacity to secure their waters.

Lack of a maritime response unit in the region has forced other states to intervene. The problem of piracy has taken a toll on social, political and economic aspects and especially on humanitarian aid. In practice, for an act to qualify as an act of piracy, it must be committed for private ends and by a private ship or aircraft. In addition, piracy shall have been committed only on the high seas or in a place situated outside the territorial jurisdiction of any state. The favored economic position that Horn of Africa enjoyed in the western part of the Indian Ocean and the Black Sea following the Fourth Crusade lasted only until the fall of the Said Barre Government in 1991. Since then, the republic of Somalia has sought to reinstate its democracy over the country and engaged in the process in a prolonged struggle for maritime control between inter clan war lords on one hand and international terrorist on the other whose effects have spread across the region.

## Statement of the Research Problem

The state of Somalia has not had a government since the ousting of Said Barre in 1991. Since then, Somalia has been in constant armed conflict, which threatens many aspects of life. However the problem of piracy has brought in new aspects to economic, political and social life. Somalia has the longest coast line in Africa; many commercial ships use its coast line to deliver goods to ports in other countries. Increase in piracy has discouraged commercial lines from Europe and Asia from using the Somalia route, this in turn has seen the cost of goods like fuel rise, and this means that the cost of production for industries will increase, industries will in turn raise their cost of production and people will be forced to buy goods at a higher price.

When people are forced to buy goods at a higher cost yet their income is constant, it may force people to seek engage in crime to meet their needs, hence, the effect of piracy are felt beyond Somalia coast into the whole region of East Africa. Piracy has also interfered with humanitarian intervention efforts in Somalia. Internally Displaced Persons and vulnerable groups who forced to seek alternative methods of survival and are prone to join rebel movement like Al Shabab, this creates radicals who contribute to the conflict in Somalia, and continues with the cycle of conflict. Also, the amount of ransom paid for ships is increasing every time; this makes piracy an attractive venture, and encourages more piracy acts. Ransom paid impacts on the economy of surrounding states. Since Somalia does not have a stable government, ransom paid is used to invest in other countries, thus causing inflation and raising the cost of living.

**Objectives**

Critically examine the effects of piracy and maritime security in the maritime region with a case study on Somalia.

   i.) Examine the effects of piracy on maritime security in the region

   ii.) Analyze the extent of piracy and maritime insecurity in Somalia and in the Horn

      of Africa region;

   iii.) Examine the outcome of piracy in Somalia

## Literature Review

Piracy in the Horn of Africa is traced back to early 1980s but accelerated after the fall of the Somalia government in the early 1990s and was at its peak from the beginning of the 21st century. Initially the pirates claimed that they were aiming to stop the rampant illegal fishing and dumping of toxic waste that continues to this day off the Somali coast[1]. But from the early 2005, piracy re-emerged as a regional and global security threat. Somalia has the longest coastline in Africa measuring 3900 Kilometres long, absence of a central government and rule of law combine to facilitate other maritime security threats, including maritime terrorism, weapons and narcotics trafficking, illegal fishing, dumping, and human smuggling operations.

Article 101, the United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as any illegal acts of violence or detention, or any act of depredation, committed for

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[1] Robert Stock, *Africa South of the Sahara*, Second Edition: A Geographical Interpretation, The Guilford Press, New York: 2004, p. 26.

private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft. Piracy may be committed anywhere seaward of the territorial sea of a State. Equally, the jurisdiction and powers granted to States to suppress acts of piracy apply in all seas outside any State's territorial waters.[2]

Apart from UNCLOS, there are a number of international treaties that outlaw the conduct and acts of piracy in the international system. For instance, The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (the SUA Convention) obliges states to criminalize, inter alia, 'armed robbery at sea.[3] The offence of hostage taking covered by this treaty covers holding crews for ransom in the typical acts of piracy being committed off Somalia. In addition, the International Convention against the Taking of Hostages 1979 also outlaws the taking of human beings into hostage.

Article 100 of (UNCLOS) says that states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state.[4] On the other hand customary international law provides basic principles governing the appropriate amount of force to be used where it is lawful to stop and arrest a ship at sea. Article 105 refers only to the power of the seizing State to try a seized pirate. However, as a matter of customary international law, every State has jurisdiction to prosecute a pirate subsequently present within their territory irrespective of any connection between the pirate, their victims or the vessel attacked and the prosecuting State. The law of piracy under UNCLOS does not place any express responsibility upon a seizing State to try an arrested pirate, it provides that the seizing State "may" decide upon the penalties to be imposed, including prosecution.

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[2] United Nations Convention on the Law of the Sea.
[3] Ian Brownlie, *Principles of Public International Law*, 7th ed (Oxford University Press, 2008), p.229.
[4] Article 100, UN Convention on the Law of the Sea.

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As regards piracy off the coast of Somalia, UN Security Council resolutions have also been adopted to facilitate international cooperation in deterring and dealing with acts of piracy. The resolutions give cooperating states the right to pursue and capture pirates in Somali territorial waters. Resolution 1851 encourages and promotes a number of methods to facilitate international cooperation in law enforcement for example the use of shipriders, enforcement officers from regional countries and capacity building in Somalia and in the region, including judicial capacity. [5] Although the Security Council resolutions give powers in relation to piracy in Somali territorial waters, Bahar says that the national legislation of most states do not allow prosecution for acts committed in those waters since this is not piracy as internationally defined, [6] he ad that the only time when action is taken s when the act also amounts to a SUA offence.

The SUA Convention does not expressly cover the crime of piracy and that its offences are not coterminous with the crime of piracy as defined under UNCLOS. Guilfoyle notes that the SUA Convention creates a separate offence as among State parties. However, the type of piracy commonly committed off Somalia involves both an attack from one vessel against another and acts of violence intended to seize control of a ship. [7] According to him such acts can constitute both piracy and an offence under the SUA Convention. An act of theft that did not endanger the safety of a vessel, and was committed by one vessel against another, could be an example of piracy which would not be a SUA Convention offence. Conversely, as noted, the internal hijacking of a vessel would be a SUA Convention offence but not piracy.

On the other hand, Guilfoyle adds that this may create a perception that many countries in the West are not prepared themselves to mount prosecutions to discourage piracy in the Horn of

[5] United Nations Resolutions; 1816(2008), 1838(2008), 1846(2008), and 1851(2008).
[6] Michael Bahar, 2007, "Attaining Optimal Deterrence at Sea" New York, Cornell University Press, p.40.
[7] D. Guilfoyle, *Shipping Interdiction and the Law of the Sea* (Cambridge University Press, 2009), pp.36-40.

Africa region that emanate from Somalia.[8] On the other hand, some states are hampered by the difficulties of mounting a successful prosecution, due to difficulties of evidence collection and of investigation and trial more generally. In Kenya for instance there are fundamental challenges to the successful application of the justice system to Somali pirates.

In comparison there are issues that qualify the Somalia piracy to be different from most issues in the region, chief of which is the taking of hostages for ransom. According to Stock this can be viewed as a form of maritime kidnapping.[9] Unlike pirate attacks in Strait of Malacca where ships are boarded either to take the vessel or its contents, pirates off the Horn of Africa routinely take the target vessel's crew hostage in return for ransom payments. This approach is possible because the pirates have a sanctuary on land in Somalia and in its territorial waters from which they can launch pirate attacks and conduct ransom negotiations. Stock adds that piracy in the Horn of Africa is traced back to early 1980s but accelerated after the fall of the Somalia government in the early 1990s and was at its pick from the beginning of the 21st century. Initially the pirates claimed that they were aiming to stop the rampant illegal fishing and dumping of toxic waste that continues to this day off the Somali coast[10].

According to Landman, there are three conditions that are attributed to the rise in piracy, they include economic, social and political.[11] Economic factors are that one can obtain goods without paying for them and sell at a price; the selling price minus the operating cost will show a much larger profit than could be realized by legal production. The social factor affecting piracy is its acceptability within the local culture. The political factor is that, Somalia is a failed state.

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[8] Ibid.
[9] Todd Landman, 2008, *Issues and Methods in Comparative Politics and Introduction*, 3rd Edition, New York Routledge, p 76.

[10] Robert Stock, "Africa South of the Sahara", op, cit.

[11] Todd Landman, 2008, *Issues and Methods in Comparative Politics and Introduction*, op, cit.

Piracy in the Horn of Africa is unique unlike that in other regions, like the Malacca Straits. Piracy in the Horn presents a special case to the international community because of the total breakdown of law and order within Somalia and the lack of capacity to secure their waters. The favored economic position that the maritime region enjoyed in the Western part of the Indian Ocean and the Black Sea following the Fourth Crusade lasted only until the fall of the Said Barre Government in 1991. Since then, the republic of Somalia has sought to reinstate its democracy over the country and engaged in the process in a prolonged struggle for maritime control between inter clan war lords on one hand and international terrorist on the other. Linnee argues that, piracy in the maritime region started to flourish in particular when shipping companies started paying ransoms. The Somaliland coastline is closest to international shipping lanes through the Bab-el-Mandeb and the Gulf of Aden, and should therefore offer better hunting grounds for pirates, but unlike Puntland, the Somaliland authorities and community leaders have adopted a firm and decisive posture against piracy[12].

Harding argues that the threat of piracy incurs the region of Horn of Africa economic costs in many ways, including ransom payments, damage to ships and cargoes, delays in delivering cargoes, increased maritime insurance rates, costs of steps to harden merchant ships against attack, and costs for using naval forces for anti-piracy operations.[13]

Maritime security is defined by Kaplan as the freedom from or absence of those acts which could negatively impact on the natural integrity and resilience on any navigable waterway or undermine the safety of persons, infrastructure, cargo, vessels and other conveyances legitimately existing in, conducting lawful transactions.[14] Kimani on the other hand defines it as

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[12] Susan Linnee, "Capitalism is Thriving Unfettered in Somalia, op, cit.
[13] Nicholas B. Harding, "North African Piracy, the Hanoverian Carrying Trade, and the British State", 1728-1828 , *The Historical Journal*, Vol. 43, No. 1 (Mar., 2008), pp. 1-57: 26
[14] R D Kaplan, Centre Stage for the 21st Century. Op, cit.

the freedom from those acts which could negatively impact on the natural integrity and resilience of any navigable waterway or undermine the safety of persons.[15] In practice, for a maritime act to qualify as an act of piracy, it must be committed for private ends and by a private ship or aircraft. In addition, piracy shall have been committed only on the high seas or in a place situated outside the territorial jurisdiction of any State.

The United Nations Security Council adopted Resolutions to address the problem of piracy around the Horn of Africa.[16] For example, Resolution 1816 (2008) authorized countries to enter Somali territorial waters and use all necessary means to identify, deter, prevent, and repress acts of piracy and armed robbery at sea in a manner consistent with the provision of international law. Hence, the international force could board, search and seize suspect vessels and arrest the perpetrators in the territorial waters of Somalia. Ulrich says that the link between piracy and maritime security is established on the grounds that, natural resource based conflict are most likely to emerge in those areas where resource sovereignty are ill defined or non existent, existing institutional regimes are destroyed by political change, and rapid changes in resource environments outpace the capacity of institutions to deal with the change.[17]

The view expressed above is by no limit constrained to land based natural resources only, Gleditsh and Homer-Dixon says that it also includes water resources, the biosphere and the general global commons[18],[19] typology provides a structure to utilize in engaging in a debate on the relationship between piracy and maritime security in Somalia. Although this may seem incoherent to the Somalia situation, Kaplan notes that it should be understood that Somalia as a

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[15] M. Kimani, Tackling Piracy of the African Shores, *Afrian Renewal*, Vol: 24, No: 4, March 2009, pp. 1-24:4
[16] Article 9. Universality Piracy, The American Journal of International Law, Vol. 29, Supplement: Research in International Law (1935), pp. 563-572
[17] H Ulrich, Global Perspectives of Maritime Security Challenges in African Water, op, cit.
[18] Nils Peter Gleditsch, Environmental Change, Security and Conflict, p.53.
[19] T.F. Homer-Dixon, On the Threshold : Environmental Changes as Causes of Acute Conflict' in *International Security*, Vol:16, No:2, (fall 1991), p. 15- 107:76.

state is rich in resources and has one of the longest coastlines in Africa.[20] As a consequence, some states have taken advantage of the defective government at one time or another and attempted to exploit natural resources in the Indian Ocean and as a result, the people of Somalia have devised ways to protect and defend them.

Seapower argues that the strategy of preventing protecting Somalia's natural resources is contested on one hand as a form of piracy and on the other as protection of Somalia's natural resources.[21] It is also defined as the freedom from those acts which could negatively impact on the natural integrity and resilience of any navigable waterway or undermine the safety of persons.[22] According to Ulrich maritime security has two principal dimensions.[23] The first is the intrinsic dimension, which is concerned with the natural integrity of all elements that form the basic and essential features of the maritime domain, such as the quality of the waters and the quality of fish and other marine resources. Here the degradation of natural resources of the marine ecosystem by activities like dumping or leakage of toxic waste and poaching constitute threats to the intrinsic dimension of maritime security. This dimension is the main focus of this study.

Maritime piracy is a universal crime under international law which places the lives of seafarers in jeopardy and affects the shared economic interest of all nations. Piracy in the Horn of Africa is growing in frequency, range, aggression and severity at an alarming rate. Somalia pirates operate along a 2300 mile coast and in 2.5 million square miles of ocean. Until the recent attacks of the coast of Somalia, Ulrich is of view that maritime piracy in the International system

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[20] R D Kaplan, Centre Stage for the 21st Century: Power Plays in the Indian Ocean, *Foreign Affairs,* Vol: 88, No:2, pp.3- 27:9

[21] G. Till, Seapower: a Guide for the Twenty-First Century, London: Frank Cass, 2004, p.312.

[22] M. Kimani, Tackling Piracy of the African Shores, op, cit

[23] H. Ulrich, 2008, *Global Perspectives of Maritime Security Challenges in African Water,* p. 14.

and in Africa in particular, had received scant scholarly attention.[24] While this gap is being remedied with increased study of the current increase in attacks, most of it has focused on the problem from the point of view of the nations whose vessels are targeted.

In reference to the first dimension of maritime security discussed above, Ulrich is of opinion that the link between piracy and maritime security is established on the grounds that, natural resource based conflict are most likely to emerge in those areas where resource sovereignty are ill defined or non existent, existing institutional regimes are destroyed by political change, and rapid changes in resource environments outpace the capacity of institutions to deal with the change.[25]

And it was at this point that piracy changed cause and become a security threat. It also affirmed the second dimension of maritime security which covers the safety of all foreign objects existing in or making use of the maritime domain. This then concerns the safety of among other vessels, persons and infrastructure which do not form part of the basic and essential features of the marine ecosystem but which are of value to a state or entity which has the legal right to make use of the maritime domain.[26]

Kimani argues Somalia based piracy against fishing yachts, chemical and oil tankers presents a unique yet serious issue of maritime security.[27] From far, the trend in Somalia piracy has been presented as pure crime against security, but upon closer analysis it emerges that piracy is not an absolute crime. Most of the ships hijacked conduct activities that have an inclination to natural resources and are in contravention of the first dimension of maritime security.[28]

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[24] ibid
[25] H Ulrich, *Global Perspectives of Maritime Security Challenges in African Water*, op, cit
[26] Ibid
[27] M. Kimani, Tackling Piracy of the African Shores, op, cit.
[28] H Ulrich, op, cit

Christy et al says that piracy thrives in regions with large coastal areas high levels of commercial activity, small national naval forces and weak regional security forces.[29] This factors explain the rampant nature of piracy in the Horn of Africa, likewise it should be noted that global common resources are most exploited in areas with the same characteristics. Developed states take advantage of weak governments in the Horn of Africa to exploit natural resources. Any attempt by the locals to preserve waters is deemed as piracy.

Bradbury also argues that, the volatile Horn of Africa has witnessed several armed conflicts and armed banditry in the region[30]. In spite of the longstanding United Nations arms embargo on Somalia established by Security Council Resolution 733 in 1992, trade in small arms and its potential to fuel instability remains a major concern. United Nations observers have reported persistent violations in recent years amid calls from the African Union and others for the lifting of the embargo to allow the armament of transitional government forces battling Islamist insurgents. According to the Security Council Resolution 1851, the lack of enforcement of the arms embargo has permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy.

Hodd describes the maritime region of East Africa as a region in Horn of Africa composed of states that have a coast line lying along the southern side of the Gulf of Aden and extending for hundreds of kilometres into the Arabian Sea[31]. Geographically, it is the easternmost projection of the African continent referred to in medieval times as Bilad al Barbar or Land of the Berbers. The Horn of Africa is made up of four countries Eritrea, Djibouti, Ethiopia and Somalia.

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[29] Christy, Francis T., Jr. and Anthony Scott, 1965. "The Common Wealth in Ocean Fisheries: Some Problems of Growth and Economic Allocation" Baltimore, MD: Johns Hopkins University Press, pp. 24-26.
[30] ibid
[31] Michael Hodd, *East Africa Handbook*, 7th Edition, Passport Books, London, 2002, p. 21

The area covers approximately 2,000,000 km² or 772,200 square miles and the coastline of Somalia alone covers 3,900 km long, this affords the pirates many launching points to attack ships at sea. The Horn of Africa is inhabited by about 100.2 million people. Ethiopia accounts for 75 million, Somalia 10 million, Eritrea 4.5 million, and Djibouti: 0.7 million people.[32] The horn of Africa forms part of the Gulf of Aden, a transit point for over 20,000 ships that use the Suez Canal. According to the International Maritime Bureau 2008 Annual Report, 111 ships were attacked in 2008 and 44 in 2007. 92 of the attacks were in the Gulf of Aden with 19 attacks off Somalia. There were also 42 successful hijacks in 2008 and 13 in 2007. As of 31 December 2008, there were 13 vessels with 242 crew members being held hostage for ransom on the East Coast of Somalia.[33]

Bradbury also argues that, the volatile Horn of Africa has witnessed several armed conflicts and armed banditry in the region.[34] In spite of the longstanding United Nations arms embargo on Somalia established by Security Council Resolution 733 in 1992, trade in small arms and its potential to fuel instability remains a major concern. United Nations observers have reported persistent violations in recent years amid calls from the African Union and others for the lifting of the embargo to allow the armament of transitional government forces battling Islamist insurgents.

## Theoretical Framework

Collective security is understood as a security arrangement in which all states cooperate collectively to provide security for all by the actions of all against any states within the groups which might challenge the existing order by using force. Collective Security is achieved by

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[32] ibid

[33] International Crisis Group (2010a),'Somalia: Combating Terrorism in a Failed State', ICG Africa Report No.75, Brussels/Washington (January); (http://www.crisisweb.org).

[34] ibid

setting up an international cooperative organization, under the support of international law and this gives rise to a form of international collective governance. In a collective security arrangement, the security needs of one party are defined in terms of security needs of all parties. The collective security organization not only gives cheaper security, but also may be the only practicable means of security for smaller nations against more powerful threatening neighbors without the need of joining the camp of the nations balancing their neighbors. The use of hard power by states, unless legitimized by the Collective Security organization, is considered illegitimate and reprehensible. The collective security therefore becomes an arena for diplomacy, balance of power and exercise of soft power. The concept of collective security avoids grouping powers into opposing camps, and refusing to draw dividing lines that would leave anyone out. For instance in an armed conflict situation, member states are able to agree on which nation is the aggressor. Hence, member states are equally committed to contain and constrain the aggression.

Member states have identical freedom of action and ability to join in proceedings against the aggressor and are equally committed to contain and constrain the aggression, irrespective of its source or origin. The cumulative power of the cooperating members of the alliance for collective security will be adequate and sufficient to overpower the might of the aggressor. In the light of the threat posed by the collective might of the nations of a collective security coalition, the aggressor nation will modify its policies, or if unwilling to do so, will be defeated. Hence, the collective security is therefore highly dependent on the cooperation of all parties concerned.

## Hypotheses

i.     Piracy in the maritime region affects social, economic and political stability of the region

**ii.**    Piracy influences conflict in the region and beyond and makes it possible to get access to weapons that facilitate internal crime and instability.

**iii.**    Piracy is a security issue, its outcome is not limited to the region but well beyond due to globalization and interdependence.

## Methodology

This research proposal will use primary and secondary data to get relevant information. In using primary data, it will pursue it in two ways; published primary data and unpublished primary data. Published primary documents from, International Maritime Organization (IOM) East African Community (EAC), Inter Governmental Authority on Development (IGAD), Maritime Society of East Africa (MSEA), East Africa Seafarers Association (EASA) Institute of Security Studies (ISS) and Somalia autonomous regions of Puntland, Galmudug and Himan and Heb. The information from EAC will be useful in gauging the contribution of East African states on piracy; hence will seek information particular to piracy and maritime security, protection and sustaining. It will seek to find out how the member states benefit and aim to contain piracy amid expanded threats.

It will also seek to interview the Director of Maritime Society for East Africa, information sought from here will be about the growth and pattern of piracy in the region, this information will be useful to understand and analyze patterns of piracy and maritime security in the region. It will be used to build up the case study for this study research and in chapter five for critical analysis. In addition, the principal researcher will seek to get published documents from this organization, the documents will be useful to understand the research that has been conducted in regard to maritime security and will help here to ensure there is no duplication of research. Although the Maritime Society of East Africa (MSEA) does not have an organ dealing

specifically with piracy issues, it is apparent that piracy threat is an important aspect. This study will seek to find out what effect the expansion of trade has on conservation and particularly the efforts of MSEA in preserving piracy and maritime insecurity. In addition the information obtained from the East African Seafarers Association will be used to put this study research in context.

Of most concern in this study research is Somalia, the principal researcher seeks to interview the minister for internal security in Somalailand and Puntaland. Information sought will regard, how piracy impacts on the conflict in Somalia, what are the issues that make Piracy to thrive in Somalia, who influences piracy, who controls piracy and where do pirates get their financing from. This information will be important to understand the menace of piracy in detail and how it impacts on the region, as a result the information will help to build up the case study for this study research and on chapter five for critical analysis. The study will seek to find out how Horn of Africa states seek to use cooperation to realize development by focusing in particular on Transboundary Environmental Action Project, Efficient Resource Use for Global commons.

It will also interview the head of internal security in the Islamic Courts Union (ICU), information sought from him will regard the source of funding for prates, who equips the pirates with weapons, the source of motivation for piracy. This information is important since ICU controls parts of the Somalia where piracy thrives most and as pirates is believed to be radicalized members of ICU. This information will therefore be important to build up on maritime security in the region and examine the role of state actors in the piracy related issues.

Moreover, it will also seek information from non state actors that use the ports of Somalia to deliver aid for humanitarian assistance to Somalia people. Hence, it will interview the regional

head of World Food Programme Somalia (WFP-Somalia). Information sought from him will be to find out the impact of piracy to humanitarian affairs and on human security. It will also seek published primary documents that have account of the situation in Somalia. This will be important to understand the trend of piracy and it is impact on economic and social issues, it will also form a basis of understanding attempts made by states in controlling piracy in the region and how piracy issues affect other security issues in the region.

In addition, this study will use unpublished primary data to get information from target sources. The researcher will use interviews to get information from the Somalia representative to the Technical advisory committee and the directorate of the Inter Governmental Authority on Development (IGAD) secretariat, the Somalia representative should be a technocrat with extensive experience and knowledge on Piracy while directorate is composed of an institution that deals with piracy issues within the IGAD, because the post is rotational, hence this study will be able to get the particular interest of states through the goals sought by the executive director.

The researcher will interview the director of Maritime Society of East Africa (MSEA) and the spokesperson for East African Seafafrers Association (EASA) which Manages maritime security issues in the region and, which seeks to develop the water resources of the Indian ocean in a sustainable and equitable way to ensure prosperity, security and peace for all its peoples. It will interview the Watershed Management Cooperative Regional Assessment office which builds a shared information base from which to assess impacts of different land management interventions on a regional scale. This assessment include will include a transboundary analysis of the Horn of Africa watershed system and associated livelihoods and analyze how benefits accrue across the three countries under alternative watershed management interventions.

The study will also use secondary data to analyze the contribution of regional institutions to environment security. It will use books on environmental security to get updated reviews and scholarly debates on current trends; it will also use journal articles to keep in touch with developing research and therefore avoid reinventing the wheel. Finally, the content scope will seek to find out the contribution of regional institutions in enhancing maritime security within the Horn of Africa.

## Chapter outline

Chapter One will be introduction, the statement of the problem, theoretical framework, literature review, hypotheses and the methodology of the study. Chapter two will examine the development of maritime piracy in the context of law. The chapter will review the jurisprudence of maritime piracy and the legal frame work applicable to maritime piracy. Chapter three will analyze maritime security in the maritime region; the chapter will examine the maritime regions as recognized in the international system, then review various maritime threats and maritime security in the region.

Chapter four will be case study for maritime piracy in the Gulf of Aden. The chapter utilized primary published and unpublished documents to build up a cases study of maritime security in the region. Chapter five will be the critical analysis of the study research. Chapter six will be the conclusions

# Chapter Two

## Piracy in International Law

## Introduction

Chapter One of this research study introduced the study topic of this research, examined the statement of the research problem, objectives, literature review, methodology and chapter outline. From the literature reviewed, emerged the theoretical framework of the research study which is collective security. Chapter Two will extend the debate from the previous chapter, but will specifically focus and discuss maritime piracy within the jurisdiction or context of international law.

Chapter Two will contain three sections. The first section will introduce the topic of maritime piracy as described and conceptualized under international law perspective, the second section will discuss the content and issues of maritime piracy and the jurisdiction within it and the third section will examine contemporary debates of maritime piracy.

The term maritime piracy when used in academic discourse is associated with crimes committed on high seas and oceans that in general are regarded as global commons. Crimes of maritime piracy are often committed by individual actors whose aim is to rob, hijack or take by force goods belonging to a ship and those therein. The definition of piracy is described as any armed violence at sea which is not a lawful act of war.[1] Anderson considers maritime piracy as a subset of violent maritime predation because it is not part of declared or widely recognized war.[2]

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[1] *In re Piracy Jure Gentium,* 1934 Application Case No 586.
[2] J.L. Anderson, 'Piracy and World History' *Journal of World History,* Vol: 6, No:2, pp.175-199:182

The International Association in a 1970 Report defined piracy as unlawful seizure or taking control of a sea vessel by violence, threats thereof, surprise fraud or other means.[3] In addition, the International Maritime Bureau (IMB) defines piracy as an act of boarding or attempting to board any ship with the intent or capability to use force in the furtherance of the act.[4] The United Nations Law of the Seas Convention (UNCLOS), 1982 adds to the debate on maritime piracy by offering limitations and restricting the essence of what maritime piracy is. Article 101 of UNCLOS describes piracy as, an illegal act of violence or detention or any act of depredation committed for private ends by the crew or passenger of a private ship or aircraft and directed on the high seas against other ship, person or property on board of such a ship.

## Development of Maritime Piracy and Law

Shearer describes maritime law as that body of law which is in charge of maritime trade activities, navigation and to maritime matters in general.[5] The basis of establishing maritime law among states in the international system is that, each state with a coast should generally control the waters in its territory, and that state's laws should apply within those territorial waters. Considering that there are vast areas of water on the high seas that are not owned or governed by any state, imply that, it is necessary to have an international maritime law. The vast amount of high seas and oceans is called global commons and no state can claim to own it or apply its rule. Because of this, the international community has often attempted to work together to form laws that would

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[3] P.W. Birnie, 'Piracy: Past, Present and Future' *Maritime Policy*, Vol. II, No. 3, July 1987, pp. 170-171.
[4] International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Annual report*, 1 January 31 December 2005, pp.5-8
[5] I.A. Shearer, Problems of Jurisdiction and Law Enforcement Against Delinquent Vessels, 1986, *International and Comparative Law Quarterly*, pp225-340:333.

cover oceans and high seas from actors who may want to exploit it, for instance maritime pirates.

Colombos argues that Maritime law takes place within a context of international law that provides for opportunities and constraints.[6] The law of the Sea is based on both custom and treaty. International Maritime Legislation in this sense is customary in its origin. This is because it evolved from the customs and usages of nations and reflects the solidarity of the international community. Customary laws result from a long and barely visible process based on constant usage and immemorial practice. Customary principles on maritime issues grew over the years from the accepted practice of nations and the desire of maritime states for freedom of navigation. The main advantage of customary law is that it binds all states that have not persistently objected to it.

The Geneva Convention on the High Seas was the first to codify the customary law on High Seas. The convention identified freedoms of the high seas including freedom of navigation and fishing. Ships that are on the high seas are exclusively under the jurisdiction of the flag state, the flag state has a corresponding duty to exercise efficient control of its ships.

Great Britain was for many centuries the leading maritime power, and played a pioneering role in international maritime legislation. After World War II an international navigation organization exclusively devoted to maritime affairs was created. During the 1924 session of the International Law Association at Stockholm, two texts relative to maritime law, and including recommendations for the creation of an international commission, were presented. One was entitled, 'Laws of Maritime Jurisdiction in time of

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[6] J. Colombos, 1967, "International Law of the Sea", Sixth Edition, New York, Jessup op, cit.

peace' and the other was entitled, 'Project for the regulation of maritime communication routes in peacetime.[7]

Raffaelle observes that, international efforts to combat maritime piracy in the international system should be done from two viewpoints. The first viewpoint is the international legal framework for controlling maritime piracy, the second viewpoint is the international cooperation to combat maritime piracy.[8] The international legal framework for controlling maritime piracy mainly consists of treaties and conventions which either set out rules for combating maritime piracy or impose obligations upon contracting countries to control maritime piracy unilaterally or collectively.

The major international treaties and conventions concerning piracy control are the 1982 Law of the Sea Convention (LOS) and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988. In light of maritime piracy, the main principles of customary law were codified in the 1982 UNCLOS. The effect of the UNCLOS upon maritime security depends on a variety of factors, including where the threat occurs, and the nationality of the ship involved. Rubin argues that waters that are beyond the High Seas are traditionally open to all states in the international system.[9]

Kahn notes that collective action implies two meanings. First, it refers to cooperation between non state actors or private entities and organizations, such as the International Maritime Bureau (IMB) or the Comite Maritime International (CMI). Second, it refers to collective acts performed by states, governments and international

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[7] Boleslaw A. Boczek, 2005, International Law: A Dictionary by Boleslaw A. Boczek, Scarecrow Press, p.309.
[8] P. Raffaele, 2007, The Pirate Hunters, Smithsonian, Vol:38, No:5, pp.7-41:38.
[9] A.P. Rubin, The Law of Piracy, op, cit, p.42.

organizations, such as International Maritime Organizations (IMO). The second type of international cooperation also extends to joint efforts of neighboring countries to combat maritime piracy.[10]

Rubin notes that articles 100 to 107 of the law of the Sea convention identified principles on maritime piracy control and enforced obligations on states to engage in collective efforts to battle maritime piracy threats committed on the high seas and outside the jurisdiction of a state.[11] Article 100 for instance, imposes a duty on states to cooperate in the repression of maritime piracy; the article requires all states to cooperate to the fullest possible extent in the repression of maritime piracy on the high seas or in any other place outside the jurisdiction of any State. This provision offers a possibility to organize certain collective actions to combat piracy.

Garmon argues that the limitation of maritime law is that, the principle applies only to maritime piracy threats taking place in regions that are beyond the maritime regions of states and outside the jurisdiction of any state.[12] This limitation therefore renders international obligations to combat maritime piracy unenforceable once the pirates have moved into the jurisdiction of any coastal state. Similarly, international obligations do not expressly compel any state to crack down on suspected pirates who move within the territorial waters of the state. The limitation also opens a back door for countries to shy away from any blame laid against them for their inefficiency in controlling piracy such as in their territorial seas or areas subject to disputed jurisdiction.

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[10] L.J. Kahn, 1996, 'Pirates, Rovers, and Thieves: New Problems with an Old Enemy", *Tulane Maritime Law Journal*, Vol. 20, pp: 285-327:325.

[11] A.P. Rubin,1998, "The Law of Piracy", New York, Transnational Publishers 2nd Edition, p. 31.

[12] Tina Garmon, 2005, "International Law of the Sea: Reconciling the Law of Piracy and Terrorism in the Wake of September" Vol:11, pp.217-270:259

Wambua argues that, maritime security issues demand cooperation to a degree that does not agree easily with the protected concepts of sovereignty and jurisdiction by states.[13] Wambua adds that, this is because issues of maritime governance go beyond national, geographic and political boundaries.[14] The transnational nature of maritime issues generally in the international system and particularly in Africa highlights the need for collective maritime cooperation. The need for collective maritime cooperation is further emphasized by the lack of capacity by most African coastal states to individually address maritime governance issues that present any degree of complexity.

Halberstam argues that, the contest from above rises when there is contest between the international responsibilities of a state and its domestic interests in combating maritime threats.. For example, when a state has an obligation to cooperate with other states as required by the United Nations Convention on the Law of the Seas (UNCLOS) to combat piracy outside its territorial waters, then that state does not have any obligation to cooperate in combating maritime piracy within its territorial waters, where the unlawful acts against ships are not regarded as piracy under the convention.[15] A coastal state may therefore take a passive position in combating maritime piracy within its territorial waters, this is because states do not have legal obligation to take action, the only time they can take action is if they are bound by the 1988 SUA Convention.

Universal jurisdiction does not apply when crimes are committed in territorial waters, nor does it allow authorities to pursue maritime pirates to their sanctuaries inside

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[13] P.M. Wambua, 'Enhancing Regional Maritime Cooperation in Africa: The Planned End State' *African Security Review,* Vol. 18, No 3, pp.45-51: 47.
[14] Ibid
[15] M. Halberstam, "Terrorism on the High Seas: The Achille Lauro, Piracy and the International Maritime Organization Convention on Maritime Safety", op, cit.

territorial limits or on land.[16] Notwithstanding this limitation, United Nations Security Council Resolution 1851 purports to permit states to venture into Somali territory to capture pirates. Outside of Somalia, there can be strategies for creating a nexus, such as stationing ship riders on vessels who are nationals of states that are willing to prosecute.

The principle of universal jurisdiction of maritime piracy calls for domestic prosecution of apprehended maritime pirates.[17] However, not every state has the capacity to do so while guaranteeing the rights of those that are accused, and in the process of such prosecutions countries risk running against international standards of fairness, due process, and human rights. Additionally, there are no uniform procedural standards across states where prosecution might occur and domestic legal systems may lack the necessary legislation to prosecute fairly and effectively. Finally, because not all states would mete out the same punishment for the crime of piracy, domestic prosecution of piracy could raise issues of legitimacy and accountability.

The development of the necessary legal tools to catch pirates has proceeded in the private, national and international spheres. In the international sphere, the United Nations (UN) has reinforced these efforts with resolutions obliging coastal state parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to accept SUA offenders for prosecution unless they can explain why the Convention does not apply.[18] In addition, the applicable UN Security Council resolutions reaffirm the power of navies to pursue pirates, in the case of Somalia even expanding these powers by authorizing pursuit on land. Although these cooperative efforts have resulted in the capture of hundreds of pirates over the last year, few of the

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[16] Law of the Sea Convention
[17] Ibid
[18] B. A. Boczek, "The International Law Dictionary" , op, cit.

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captured pirates have gone through the full prosecution process and many have been released without prosecution, limiting the deterrent effect of anti piracy efforts to date.

According to the Convention on the Law of the Sea, there is an international legal framework under the United Nations Convention on the Law of the Sea (Law of Sea Convention or UNCLOS) for the apprehension and prosecution of pirates and the SUA Convention provides for the transfer of captured SUA offenders ashore and mutual legal assistance between States Parties to the SUA Convention.[19] In practice, however, efforts to bring pirates to justice in national courts have foundered due to many legal and practical challenges, including concerns regarding the security and impartiality of local judges, a lack of clarity with respect to the steps that capturing ships must take in order not to run afoul of their human rights obligations, difficulties in the process of preserving and transporting evidence, inadequate national laws relating to the crime, and reluctance on the part of countries to prosecute pirates for fear that they will be forced to grant them asylum once their sentence has been served.

Burnett notes that there are seven issues that encourage maritime piracy to flourish, lessen the risk of capture and help protect maritime pirates in most parts of the international system. These issues include legal and jurisdictional opportunities, favorable geography, conflict and disorder, under funded law enforcement or ineffective institutions, lax political organizations, cultural acceptability among people and reward for committing the crimes.[20]

The legal and judicial difficulties faced by law enforcement agencies are considerable in lowering the risk factor where maritime piracy is a security problem.

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[19] Convention on the Law of the Sea, op, cit.
[20] J.S. Burnett, "Dangerous Waters: Modern Piracy and Terror on the High Seas ", op, cit.

According to Kraska and Wilson, these difficulties are both in the national and international law aspect of maritime piracy.[21] The weakness on UNCLOS as the basis for international maritime law are founded on the fact that the definition of maritime piracy is restricted to private as opposed to public or political acts, this therefore excludes the notions of piracy from being considered in the same breath as other international criminal offences.

In addition there is a lack of requirement that states should enact domestic anti piracy legislation, there is also lack of requirement that states should cooperate in anti piracy measures, there is lack of mechanism to penalize states that do not fulfill their anti piracy obligations and finally there is lack of disputes procedure. Maritime piracy acts often takes place on areas that are close to the coasts, Gottschalk argues that contemporary maritime piracy is land based and concentrated in a limited number of areas. This is because; piracy is sustainable in areas that offer a combination of rewarding hunting grounds, acceptable levels of risk and proximate safe heavens.[22] Attacks on ships generally take place on international waterways, estuaries and archipelagos where vessels are forced to move closer to shore for navigational or commercial reasons, hence offering the best opportunities for pirates to attack.

## Maritime Piracy in International law

In the context of International law, maritime piracy is composed of six crimes namely, robbery, hijacking, killing, plundering, murdering and taking a vessel for ransom. International Maritime Bureau notes that, maritime piracy includes two distinct

[21] .Kraska, and Wilson, B., 2009, Piracy Repression, Partnering and the Law, *Journal of Maritime Law and Commerce*, Vol:40, pp.43-58:40.

[22] J. Gottschalk and B. P. Flanagan, "Jolly Roger with an Uzi: The Rise and Threat of Modern Piracy", Annopolis, Naval institute Press, 2000, p.3.

sorts of offences; robbery or hijacking, where the target of the attack is to steal a maritime vessel or its cargo; and kidnapping, where the vessel and crew are threatened until a ransom is paid.[23] These maritime crimes instigated the need for laws regulating high seas.

The laws of maritime piracy can be traced back to Britain, Britain in an attempt to secure the safety of sea farers pushed for laws regulating closed seas since it is own trade was expanding beyond the confines of the narrow seas surrounding it is territory and was therefore exposed to maritime piracy. Maritime crimes described above were taking a toll on vessels belonging to Britain. Noyes argues that the concept of closed seas known as *mare clausum*, is the basis upon which the laws regulating maritime piracy on the high seas are founded, this concept is driven in part by the need to control the activity of pirates or perhaps the piratical temptation experienced by many sea farers.[24]

In this regard, Johnson argues that British customary international law led to the establishment of piracy law under what is known as *Jure Gentium* on the high seas. *Jure Gentium* on the high seas means that, states in the international system are accorded the right and responsibility to arrest maritime pirates and arraign them under their domestic laws.[25] This development however raised concern among scholars; some like Johnson argues that the notion of universality in the high seas was controversial, although some like Grotius argued that piracy is a universal crime *jus cogens*, Johnson denies this, pointing to the lack of an international criminal court or treaty to which all states are parties.

[23] International Maritime Bureau, "Piracy and Armed Robbery Against Ships", op, cit.
[24] J.E. Noyes, "An Introduction to the International Law of Piracy", *California Western International Law Journal*, Vol. 21, pp. 65-109:106.
[25] D.H.N Johnson, 1957, 'Piracy in the Modern International Law, *Grotius Society Transactions*, Vol. 43, p. 26-80:69.

Kontorovich notes that, when the law first emerged, maritime piracy threats were not condemned when they threatened security of states. And for this reason, to draw parallels between it and modern crimes such as genocide which had universal jurisdiction under *jus cogens* is ill conceived.[26] Although the general idea that maritime piracy was a universal crime, it is interpretation and application in domestic legislation varied widely. In this respect, after the League of Nations was constituted, maritime piracy was chosen to be one of the first offences for international codification. The League through the Draft Provisions for the Suppression of Maritime Piracy arranged eight articles that restricted Maritime piracy to the high seas, limited it to private acts, exempted politically motivated acts and allowed states to make certain determinants about the status of the belligerents.

However the above draft failed to secure wide spread support among states. In place a group assembled by the Harvard law School published in 1932, what was referred to as Draft Convention on maritime piracy. Although noble in content, the work of the Harvard school failed to reflect understanding of International law on piracy, this according to Dubner is a result of two main things. First, the Harvard drafters were mainly concerned with piracy on the high seas which had almost disappeared.[27] Secondly, Dubner notes that, maritime piracy was considered as a as a historical problem recurring in the international system such that, it was of little relevance to the modern world, hence if it did happen again, it would be dealt with easily.

The weakness from above was reflected in the International Law Commission that convened in 1949. According to a report by the Harvard research centre, the commission

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[26] E. Kontorovich, 'The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation', *Harvard International Law Review*, Vol. 45, No. 1, Winter 2004, pp.183-237: 187.
[27] B.H. Dubner, "The Law of International Sea ", The Hague: Martinus Nijhoff, 1980, p. 38.

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was purposed to prepare a comprehensive maritime law,[28] however, maritime piracy was discussed as just but a mere issue. This process concluded with the 1958 law of the Sea Convention that adopted the High Seas Convention (HSC) Articles 14-21 that emphasized on piracy.

Dubner notes that the wisdom of the eight articles were compared to the Harvard draft, however the conference adopted parts of the draft that were recommended by the commission, moreover, the commission had recommended parts it thought would be acceptable.[29] As a result of this, many ideas from the international customary law that the Harvard Drafters had identified as useful were modified leading to what Dubner described as a privatized piracy. Keyuan observes that, the piracy provisions of the High Seas Convention were incorporated into the 1982 United Nations Law of the Sea Convention (UNCLOS).[30] It then emerges that, if the HSC was weak then the UNCLOS was then weaker.

The narrow definition used in the International Law Commission and HSC had restricted maritime piracy to private ends as regards purpose and geographically to the high seas. Restricting maritime piracy to private ends implied that acts committed for political ends were omitted; in practice separating private ends from political end is impossible. In addition the Convention recognized the claims of several states to enlarge their territorial masses and enclose international waterways used international shipping, such as the Gulf of Aden, this hence endeared shipping lines to greater piracy attacks. Keyuan argues that, by allowing starts to be enclosed within territorial waters, it handed

[28] Harvard Research in International Law, Draft Law on Piracy with comments, 1932, pp. 740-885.
[29] B.H. Dubner, "The Law of International Sea", op, cit.
[30] Z. Keyuan, 2005, 'Seeking Effectiveness for the Crack down of Piracy at Sea", Vol.59, No. 1, p.80-140:122.

control of what was often critical choke points to states that in some cases lacked the ability, resources and interest to maintain security and good order.[31]

## Jurisdiction of Piracy under Maritime Law

Grotius is accredited as the founder of the idea of jurisdiction of the high seas; he presented his argument on the basis of law called *Mare Liberium*. In comparison, Colombos observes that, the idea of *Mare Liberium* is based on a simple division of the sea between territorial waters, territorial waters are defined as a narrow belt over which coastal states have jurisdiction and the high seas where no authority prevails.[32] This benefit was perceived to be of universal benefit. In addition, maritime pirates who were attacking voyagers were branded as universal enemies or *hostis humani generic*.

Shaw argues that the link between maritime law and maritime piracy can be established on the basis that, acts of piracy threaten maritime security by endangering, in particular, the welfare of seafarers and the security of navigation and commerce.[33] These criminal acts may result in the loss of life, physical harm or hostage taking of seafarers, significant disruptions to commerce and navigation, financial losses to ship owners, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment. Shaw adds that pirate attacks can have widespread effects, including preventing humanitarian assistance and increasing the costs of future shipments to the affected areas.[34]

Universal jurisdiction of maritime piracy does not apply when crimes are committed in territorial waters, nor does it allow authorities to pursue pirates to their

[31]Ibid
[32] J. Colombos, 1962, "International Law of the Sea", Fifth Edition, London, Longman, p. 220
[33] M.N. Shaw, "International Law", Sixth Edition, London, Cambridge University Press op, cit.
[34] Ibid

sanctuaries inside territorial limits or on land.[35] Notwithstanding this limitation, United Nations Security Council Resolution 1851 purports to permit states to venture into Somali territory to capture pirates. Outside of Somalia, there may be strategies for creating a nexus, such as stationing ship riders on vessels who are nationals of states that are willing to prosecute.

At first sight it may seem remarkable that, of the seventy three articles concerning the law of the sea in time of peace adopted by the International Law Commission at its eighth session in 1956, no fewer than eight were devoted to the subject of maritime piracy. Boczek notes that, according to the International Law Commission, piracy must be committed on the high seas, or at least in a place outside the jurisdiction of any State.[36] In this it is following both the League of Nations and the Harvard research committee of 1932. The former stressed that maritime piracy has as its field of operation that vast domain which is termed the high seas. The latter argues that maritime piracy must be committed in a place not within the territorial jurisdiction of any State.

Jurisdiction for maritime piracy is grounded in international customary law and the Law of the Sea Convention. Keyuan argues that any state in the international system has the authority to prosecute the crime of maritime piracy.[37] However, it is important to emphasize that the straightforward application of universal jurisdiction pertains only to the crime of maritime piracy, which is defined as any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft.

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[35] Law of the Sea Convention
[36] Boleslaw A. Boczek, 2005, "International Law", op, cit.
[37] Zou Keyuan, 1999, 'Piracy, Ship Hijacking and Armed Robbery in the Straits', *Journal of International and Commerce Law*, Vol:3, p.15-55:53

The principle of universal jurisdiction of maritime piracy calls for domestic prosecution of apprehending pirates.[38] However, not every state has the capacity to do so while guaranteeing the rights of the accused, and in the process of such prosecutions countries risk of going against international standards of fairness, due process, and human rights. Additionally, there are no uniform procedural standards across the national contexts where prosecution might occur and domestic legal systems may lack the necessary legislation to prosecute fairly and effectively. Finally, because not all countries would mete out the same punishment for the crime of piracy, domestic prosecution of piracy could raise issues of legitimacy and accountability. Although, the law of the Sea Convention, states that all countries have a right to seize and prosecute those committing pirate acts on the high seas. Lehr argues that the convention does not consider the emergence of failed states like Somalia, further more it neglects to address the question of what happens if a pirate attack takes place not on the high seas, but within a state's territorial waters or in its neighbor's waters.[39]

Despite significant, unprecedented moves by the international community to address the growing threat posed by maritime piracy, considerable legal challenges remain. Rotberg argues that the current legal regime is not comprehensive with respect to the enforcement of either international law or domestic criminal law against those responsible for pirate attacks.[40] Rotberg argues that the international law on maritime piracy assumes that individual states would assume the responsibility of policing and

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[38] Ibid

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

[40] R. I. Rotberg, 2005, "Combating Maritime Piracy: A Policy Brief with Recommendations for Action ", op, cit.

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patrolling their own waters and to prosecute those seized in the act of piracy.[41] But not all states have the resources and capacity to ensure maritime security within their waters. This is now being highlighted by the piracy problem in Somalia.

Booth argues that the authority of a State over acts of maritime piracy is based on nationality.[42] That is, there must be a genuine link between the State and the ship, or between the State and the waters on which the offences take place. Therefore, unless Somali courts are willing and able to conduct prosecutions, the responsibility for enforcement will predominantly fall upon those members of the international community whose ships are currently patrolling off the coast of Somalia. The ability of a State with a ship in Somali waters to apply and enforce its own laws with respect to maritime piracy and sea robbery will depend on whether the pirate ship or the pirates have the nationality of that State, or the degree to which the national law of the enforcing state makes piracy a universal crime which can be subject to arrest and prosecution anywhere throughout the world.

## Legal Framework Applicable to Piracy

Bassiouni observes that, the legal framework pertinent to maritime piracy consists of customary international law. Under which maritime piracy is a *jus gentium* crime and therefore subject to universal jurisdiction.[43] This means that, no link like nationality is required for maritime piracy to be judged and therefore jurisdiction is available regardless of the nationality of the pirates or the victims, the ship or aircraft, or the location of the act. International law of maritime piracy observes that any state may assert criminal

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[41] Ibid

[42] K. Booth, *Navies and Foreign Policy*. London: Croom Helm, 1977, p.14

[43] M. C. Bassiouni, 2001, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice", *International Law*. Vol. 81, pp.13- 137:136

jurisdiction over the crime of maritime piracy since it is a *Jus Gentium*. The courts of the state that carried out the seizure may prosecute captured pirates in criminal court, or transfer suspects to other nations for legal disposition.

Kraska also argues that, maritime piracy is a standard crime of universal jurisdiction, which means that any nation may assert criminal law enforcement jurisdiction over maritime piracy threats.[44] Kraska further notes that, maritime piracy should not be considered as a universal crime. A universal crime is one that is unlawful in every state, such as the crime of genocide. Furthermore, there is no international piracy court, such as the International Criminal Court in The Hague, which could assert jurisdiction over the crime of piracy.

Kraska argues that, since piracy is conducted for private ends, means that pirates are not licensed to act on behalf of a government or state, but instead act for private gains. The private ends requirement, however, does not mean that maritime piracy may not be politically motivated as well, as is the case in the Gulf of Guinea.[45] Two ships must be involved for a crime to constitute the act of maritime piracy, a pirate ship and a victim ship. Mutiny of a single vessel is not piracy under UNCLOS. Piracy includes planning offenses, such as conspiracy to commit piracy or attempted piracy.

Kraska further argues that, the legal difficulty in managing maritime piracy comes about when implementing the international requirements to act and stop maritime piracy, states may lack adequate naval capability or retain weak domestic criminal laws.[46]

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[44] James Kraska, 2005, "Looking for Law in all the Wrong Places: Maritime Piracy as a Domestic Legal Problem", Washington, Naval Publishers, pp. 1-3
[45] James Kraska, Looking for Law in all the Wrong Places, op, cit.
[46] Ibid

Because pirates are non state actors who act like combatants, it is unclear what protections they can claim under the law of war and international law.

On the one hand, Hoffmann observes that, captured pirates can qualify to be regarded as prisoners of war under the Third Geneva laws, which also requires that all captured pirates must be treated as prisoners of war until a competent tribunal determines otherwise if a doubt exists as to their status.[47] The Fourth Geneva affords no protection to captured pirates. On the other hand, UNCAT affords captured pirates certain basic protections and limits those states to which the capturing power can turn captured pirates over for trial. Finally, captured pirates are also protected by basic humanitarian law and moral duty.

## The Application of the Third Geneva to Pirates

The Third Geneva suggests that captured pirates are likely to be prisoners of war in only three very narrow circumstances. First they are actually members of the armed forces of a state but are pursuing piracy attacks for private ends, second they are fighting as part of an organized resistance movement, and third the suspected pirates are actually not pirates but rather a legitimate naval, rising up to repel invasion, mistaken for pirates. Colombos argues that, if captured, suspected pirates can claim prisoner of war status and if there is any doubt as to their status, they are entitled to be treated as prisoners of war until a competent tribunal determines that they are not.[48]

Hoffman observes that, maritime pirates who belong to a militia or organized resistance movement and are not part of any armed forces of a state are not prisoners of

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[47] M. H. Hoffman, "Terrorists Are Unlawful Belligerents, Not Unlawful Combatants" *Journal of International Law*, op, cit.

[48] J. Colombos, "International Law of the Sea", op, cit.

war.[49] Pirates acting for private ends sometimes have links to some organization larger than themselves other than a state. For example, some pirates in Indonesia are members of separatist groups and some pirates in Somalia are loyal to regional warlords. Lehr argues that, there are no maritime pirates who conduct piracy operations in accordance with the laws and customs of war because the act of piracy is itself outside the law of war.[50]

Lehr notes that, pirates who belong to a militia or organized resistance movement not part of the armed forces of a state, cannot fulfill all four of the requirements mentioned above to qualify as a prisoner of war. Most acts of piracy are clearly not a declared war or other armed conflict between two high contracting parties because only states can be parties to the Conventions. Because acts of piracy under international law occur on the high seas or outside the jurisdiction of any state, they do not arise during partial or total occupation of a high contracting party.

For the same reason, the minimum provisions guaranteed to detainees in article three cannot apply to pirates because piracy under international law does not occur in the territory of one of the high contracting parties. Furthermore, Rotberg notes that, armed conflict is not well defined in the common articles and may not cover every incident that requires military means to address.[51]

Piracy has historically been outside the law of war. Pirates were commonly called *hostes humani generis*, meaning the enemies of all humankind. Captured pirates were not prisoners of war, and in some cases had fewer rights than domestic criminals. Pirates

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[49] M. H. Hoffman, Terrorists are Unlawful Belligerents, Not Unlawful Combatants" *Journal of International Law*, op, cit.

[50] Peter Lehr, ed., *Violence at Sea. Piracy in the Age of Global Terrorism* ,op, cit

[51] Robert I. Rotberg, "Combating Maritime Piracy: A Policy Brief with Recommendations for Action ", op, cit.

captured while in the commission of a crime, were executed without a trial. Additionally, pirates were subject to unlimited interrogation and questioning.

Finally, Rotberg argues that, most acts of piracy are not a declared war or other armed conflict between two high contracting parties because only states can be parties to the Conventions.[52] Because acts of piracy under international law occur on the high seas or outside the jurisdiction of any state, they do not arise during partial or total occupation of a high contracting party.

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[52] Ibid.

# CHAPTER THREE

# MARITIME SECURTY IN THE MARITME REGION

## Introduction

Chapter Two examined the jurisdiction of maritime piracy in the international system and the development of maritime piracy in the Horn of Africa region. In the process, the chapter identified six threats that are recognized under Maritime piracy; moreover, chapter two analyzed the conceptual description of Maritime piracy as recognized by law. Chapter Three will look up at the situation of maritime security as it exists in the maritime region in the Gulf of Aden, therefore this chapter will open with an analysis of maritime regions as recognized by the international law of the sea, examine development of maritime security in the international system and also analyze maritime security in the Gulf of Aden region.

The security of international waterways like the Gulf of Aden is important to the operations of maritime activities. International waterways are part of the global commons, international law argues that, global commons are not owned by any state.[1] They form an important element in transport, marine life and are a pillar for economic development for states that have territorial access to the sea. International waterways also serve as a medium of transportation, source of economic exploitation of such minerals as crude oil and a source of food in the form of fishing.

As a result, the importance of international waterways has in recent years put the issue of maritime piracy to be regarded as a serious issue first by states in the region and second by the states in the international system. In addition, since there is no state or

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[1] W. H. Taft, 2003. The Law of Armed Confl ict After 9/11: Some Salient Features. *Yale Journal of International Law* 28: 319–323, p. 321.

regulations.[3] It also aims to work for the unification of maritime law and to summon international conferences; to work for the improvement of its regulations.

Chalk observes that, since the maritime area covers all fields and things that are under, adjacent to, or bordering on a sea, ocean or other navigable waterway including all maritime related activities, it brought about the need to demarcate high seas.[4] Geographically, the International Maritime Bureau notes that the maritime domain is divided into four regions, namely, the territorial waters, the contiguous zone or costal waters, the Exclusive Economic Zones (EEZ) and the continental shelf.[5] Noyes notes that the division of the sea into these regions implies that states have different powers and duties on these regions in the high seas.[6]

In practice, Wambua argues that, management of maritime issues most of the time requires cooperation among states, however states with coastal territories do not easily agree to cooperate, this is because, every state feels that, the most important thing is to defended it is sovereignty and exercise jurisdiction on the mass of water which it feels belongs to its territory.[7]

Issues of maritime governance transcend national, geographic and political boundaries; hence it calls for cooperation among states that share similar waters. Hence, the transnational nature of maritime issues brings into focus the need for regional maritime cooperation. The need for regional maritime cooperation is further emphasized

[3] Ibid
[4] P. Chalk, "Threats to the Maritime Environment: Piracy and Terrorism" Presentation at the RAND Stakeholder Consultation, 200, p. 251
[5] International Maritime Bureau, 2009, " Annual Report on Maritime Piracy" p. 12
[6] J.E. Noyes, "An Introduction to the International Law of Piracy", *California Western International Law Journal*, Vol. 21, pp. 121-135:122.
[7] P.M. Wambua, 'Enhancing Regional Maritime Cooperation in Africa: The Planned End State'*African Security Review*, Vol. 18, No 3, pp.45-51.

by the lack of ability by costal states to individually address maritime governance issues that present any degree of complexity within territorial waters.

The term territorial waters is used to describe any area of water over which a state has control over, this includes internal waters, the contiguous zone, the exclusive economic zone and potentially the continental shelf. Territorial waters are defined by the International Maritime Bureaus as a mass of water which measures twelve nautical miles from the coast, the contiguous zone or costal waters are calculated at twenty four nautical miles from the coast, the exclusive economic zones are measured at 200 nautical miles from the coast and the continental shelf are calculated at 350 nautical miles from the coast.[8]

The division of high seas gives coastal states authority to exercise legal power affecting foreign ships in their territorial sea for various purposes including navigational safety, fisheries, environmental protection, customs and immigration control.[9] Chalk observes that, states can exercise these restrictions in their ability to enforce criminal laws against foreign ships, unless the consequences of the crime affect the coastal state, the ship is engaged in drug trafficking, or the coastal state has been asked to intervene by the flag state.[10] However, the International Maritime Bureau notes that, there are restrictions in the ability to enforce criminal laws against foreign ships, this includes that, the consequences of the crime must affect the coastal state, the ship in question should be engaged in illegal activity like drug trafficking or illegal dumping, or the coastal state has been asked to intervene by the flag state where the ship is registered.

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[8] Ibid
[9] International Maritime Bureau, "Annual Report on Maritime Piracy" 2009 op, cit.
[10] Ibid

Noyes observes that, although the territorial sea of a coastal state is under the sovereignty of that state,[11] ships that are going through high seas in territorial waters, may remain under the legal rule of their flag state whenever they may go in the world but at the same time they may fall under the concurrent jurisdiction of a coastal state in one of it's maritime regions. Foreign ships therefore have a right of innocent passage to navigate through it, provided that their presence is not harmful to the peace, good order or security of the coastal state.[12]

On the contiguous zone, Colombos observes that coastal states do not have legislative power over foreign ships passing through this zone, but they have policing powers to enforce violations of some of their laws committed inside their territory or territorial sea, including customs and immigration laws but not security measures.[13] Colombos notes that Coastal states do not have complete sovereignty over an EEZ, but they have sovereign rights for the purpose of exploiting and managing natural resources including fish stocks. Colombos further notes that, interception of foreign vessels in the EEZ is legitimate provided that it is undertaken by the coastal state to protect it is natural resources.[14] Moreover, the United Nations Convention on the Law of the Sea endorsed the claims to Exclusive Economic Zone (EEZ) extending from the limit of the territorial sea up to a maximum of 200 miles from the coastal baseline.

[11] J.E. Noyes, "An Introduction to the International Law of Piracy", op, cit.
[12] Ibid
[13] J. Colombos, 1962, "International Law of the Sea", Fifith edition, London, Longman, p. 234
[14] Ibid

## International and Maritime Security

According to Morgenthau security is described as the calmness, and freedom of care, or the absence of anxiety upon which life depends.[15] Barston describes security as the intensity of tension and the subsequent extent to which actor's interest can be accommodated through non violent means, without recourse to use of force on the basis of mediation, rule and norm setting.[16]

Kraska and Wilson define the term maritime security as the absence of those acts that could negatively impact on the natural integrity and toughness of any passable waterway or undermine the safety of persons of persons, infrastructure, cargo, vessels and other vessels legitimately existing in conducting lawful transactions on international waterways.[17] Kraska furher defines maritime security as the prevention of illegal acts in the maritime domain whether they either directly impact the county or region in question or the perpetrators that are in transit.[18]

In this regard, it can be argued that maritime security should ensure that there is unhindered trade in the high seas, safe navigation of vessels, safe guarding of coastal communities and their livelihoods and preserving the oceanic contribution to the health of the planet. Maritime Security also implies the ability to coordinate the efforts of the different national agencies with responsibilities in the maritime domain and to take this cooperation further into the international arena.

The need for having maritime security is based on crimes that fall under the category of maritime piracy. Ghosh describes maritime security as the security which is

[15] H. J Morgenthau, "The Problem of the National Interest, in: Politics in the Twentieth Century" University of Chicago Press: Chicago, 1971, pp. 204-207.
[16] R.P Barston, 1988, "Modern Diplomacy", Longman, London, p. 184.
[17] J.Kraska, and Wilson, B.,"Piracy Repression, Partnering and the Law", 2009 Vol:40, p. 1-27:13.
[18] Ibid

concerned with the prevention of intentional damage through sabotage, subversion or terrorism in the high seas.[19] According to Rubin, maritime security has arguably two principal dimensions, first is the intrinsic dimension which is concerned with the natural integrity of all elements that form the basic and essential features of the maritime domain, such as the quality of the waters and the quantity of fish and other marine resources.[20] The degradation of the natural integrity of the marine ecosystem by such activities as dumping of toxic waste and substances constitute threats to the intrinsic dimension.

The extrinsic dimension of maritime security covers the safety of all foreign objects existing in or making use of the maritime domain. Shaw hence observes that this concerns the safety of vessels, persons and infrastructure which do not form part of the basic and essential features of the marine ecosystem but which are of value to a state or entity which has the legal right to make use of the maritime domain.[21]

Pinto and Talley argue that, maritime security is pursued within a context of international law, international law provides for opportunities and constraints for states to regulate high seas.[22] The law of the Sea is based on both custom and treat. Kraska and Wilson argue that, customary principles on sea navigation have grown over the centuries from the accepted practice of nations and the desire of maritime states for freedom of navigation against the interests of national states in the security and resources of their inshore waters.[23]

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[19] P. K. Ghosh, "The Maritime Dimension', in 'Oil and Gas in India's Security" (Ed) Jasjit Singh, New Delhi July 2001, pp.34-37
[20] A.P. Rubin, *The Law of Piracy*, Second Edition, Transnational Publishers, New York, 1998, p. 93.
[21] M.N. Shaw, *International Law*, Sixth Edition, Cambridge University Press 1998, p. 398.
[22] P. C. Ariel. and Talley, Wayne K. "The Security Incident Cycle of Ports" Old Dominion University, Maritime Institute. Working paper. Norfolk, VA. July 2006, pp.2-5
[23] J.Kraska, and Wilson, B., Piracy Repression, Partnering and the Law, op, cit

Customary law has the advantage that it binds all states that have not persistently objected to it. The main principles of the law of customary law were codified in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The effect of the UN Convention on the Law of the Sea upon maritime security depends on a variety of factors, including where the threat occurs, and the nationality of the ship involved.

Hamiliton argues that, maritime security is not achieved by impressive law enforcement operations at sea alone, but by the ability to coordinate activities and share information among the different actors like states and shipping companies with partial responsibilities in the maritime area.[24] Maritime Security cannot be achieved by seeking military contributions from states alone, there is need for balance between political and military strategies. Military strategies aim to discourage by threatening with the use of power while political strategy discourage by threat of sanctions like economic.

Willet argues that, since threats to maritime security threats are still both geographically limited to maritime piracy and have not materialized to a large extent like terrorism, means that, there is a good chance to effectively provide security at manageable costs in the short term.[25] Enhanced cooperation concerning maritime security is in the immediate interest of states involved in maritime trade and have access to maritime territories. Gorman and Freedberg argue that, insecurity threats could be deterred significantly by a collective initiative that improves the presence of maritime security forces, enables the boarding of suspicious vessels according to internationally

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[24] Booz Allen Hamilton, 2007, "Port Security War Game: Implications for U.S. Supply Chains", London, Harper, pp.34-35.
[25] L. Willett, "Report on Royal United Services Institute (RUSI) Workshop on 'The Importance of Sea Lines of Communication in British Defence and Security Policy' (29th October 2007), pp.2-3

agreed legal rules and provides important situational data by integrated civil-military surveillance capacities.[26]

Raymond argues that, delivering maritime security involves the ability to carry out a variety of military operations and to protect all forms of lawful activity at sea to ensure the provision of a safe maritime environment.[27] Raymond notes for instance that, during the Cold War era the two superpowers reinforced their maritime influence directly or indirectly through an impressive array of available port facilities in this region. The post Cold War era indicates a socio politico strategic shift in thought. Globalization, specifically economics, today dominates strategic considerations. This led to enhanced maritime security concerns, since most regional trade is carried on the sea.

Hamilton argues that, security at sea is an ever more important issue, because of the globalization of trade, enduring freedom of movement on the high seas and the increasing use of the sea by potential opponents both as a means of moving people and material and as a target in its own right. This suggests therefore that some actors will attempt to exploit the use of the oceans for their own gain.[28] This can include illegal dumping of waste and illegal fishing and exploitation of ocean resources.

A report by the National Strategy for Maritime Security indicated that, the world's reliance on the sea accounts for ninety percent of global trade by bulk moved by sea.[29] This reliance implies that the sea is prone to a number of maritime threats. Chowdhury argues that, the main maritime threats are maritime terrorism, narcotic terrorism, gun

[26] Gorman, Siobhan and Sydney J. Freedberg, Jr. 2005, "Early Warning." *The National Journal*, pp.1-32:24
[27] Catherine Z. Raymond, 2006,"The Threat of Maritime Terrorism in the Malacca Straits." *Terrorism Monitor*. Vol. 4 . No. 3. pp.1-17:8.
[28] B. A. Hamilton. *Port Security War Game: Implications for U.S. Supply Chains*. 2003, p. 45
[29] The National Strategy for Maritime Security. September 20, 2005. p. 4.

running and sea piracy.[30] While the world's trading system may be robust enough to withstand limited attacks on its structure, the system's interconnected nature may mean that any conflict between any of the major powers will affect all of them.

## Maritime Terrorism

Acts of maritime terrorism may have many objectives. Walter and Sandler argue that, maritime terrorism may seek to cause human casualties, economic losses, environmental damage, or other negative impacts, alone or in combination, of minor or major consequence.[31] The fight against maritime piracy and persistent issue has received a boost with the backing of the international community, particularly the United States.[32] While the search for terrorists like Al Shabab continues on land, at sea the international community is hunting for terror ships, known as the phantom fleet.

Several terrorist organizations in and around the Indian Ocean possess merchant fleets of various types. Ghosh notes that, the Liberation Tigers of Tamil Eelam (LTTE), for example, have an entire flotilla engaged in dubious maritime trade.[33] Most of these are registered under what is known as Flag of Convenience (FOC) countries for example 'pan-ho-lib,' that is Panama, Honduras and Liberia, and are difficult to track as they routinely change names and registry. Lloyds of London lists eleven merchant ships belonging to Asian front companies that are in reality managed by Kumaran Pathmanathan of the LTTE.[34] Thus FOCs pose another major challenge to maritime

[30] Rahul Roy Chowdhury, 'India's Maritime Security' New Delhi, June 2000, p.30.
[31] Walter and Sandler, Todd. *The Political Economy of Terrorism.* Cambridge University Press. Chap. 1. Nov. 2005, p.14
[32] International Maritime Organization, 2002, *'Report on Acts of Piracy and Armed Robbery against Ships Annual Report'* , p.3
[33] P. K. Ghosh, 2001, 'The Maritime Dimension', op, cit
[34] B. Raman, 2002, 'Control of Transnational Crime and war against Terrorism' *Defense Review,* Vol: 17, No: 2, pp:151-176:154

security. Flying the flag of a state other than the country of ownership enables the owners to avoid high registration fees and taxes, and to employ cheap labor operating under sub-standard conditions.

## Drug Trafficking

An important adjunct to maritime terrorism is drug trafficking. Raman argues that, the nexus of these two phenomena is admittedly so deep that they are often analyzed under the same parameters.[35] Drug trafficking is by far the most lucrative means of generating funds to fuel the ever growing terrorist activities and insurgencies around the region. Additionally, terrorist groups often work hand in hand with drug cartels from the regions.

Raman notes that, while this symbiotic relationship provides established routes for drug and arms smuggling, it also provides terrorists with the logistical infrastructure to move people, arms and material according to their desires. This relationship has other benefits, giving powerful syndicates access to politicians, with the aim of weakening or influencing rather than destroying them. Terrorist groups may therefore coerce a weak government to look the other way while crime syndicates conduct their affairs.

There are three central problems which come to the fore of maritime security. Mahan observes that, the first has been to hijack a vessel registered with a Flag Of Convenience, often belonging to a small state that is unable to retaliate and is practically a risk free endeavor.[36] The second problem has been the exploitation of some merchant vessels by terrorist organizations.

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[35] B. Raman,2002, 'Control of Transnational Crime and war against Terrorism' *Indian Defence Review*, Vol 17, No: 2, pp.1-22:9

[36] A.T. Mahan 'Armaments and Arbitration' Harper Brothers. New York, 2002 p. 22

## Gun Running

The symbiotic relationship between gunrunning and drug trafficking is a well developed threat of maritime insecurity. It is extremely difficult to control one without controlling the other. Gunrunning by sea is by far regarded as the safest means for transferring arms and ammunition around the world, while drug trafficking is considered as the most lucrative.[37] Insurgent movements around the world, like the United Wa State Army (UWSA) a splinter faction of the Burmese Communist Party operating from the northern Shan state in Myanmar depend extensively on drug money to fuel their movement and equip their forces. There are clear links between the narcotics and illegal light weapons trade that include shared supply and transit routes, the use of weapons for protection amongst drug traffickers themselves, and funding of gunrunning through drug trade and vice versa.[38]

## Maritime Pollution

Oil related disasters at sea are the reason of not only environmentalists but mariners and security specialists as well. Maritime pollution creates devastation of the ecology in the maritime environment and has the potential to affect maritime security. The environmental effects can be of long term or short term duration, but their consequential effects in related maritime spheres can continue over a longer period. Smith and Berlin note that, state and non state actors own vessels that directly are

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[37] Research Report on '*Combating Illicit Light Weapons Trafficking: Developments and Opportunities*,' British American Security Information Council, London January 1998, p.42
[38] Research Report on '*Combating Illicit Light Weapons Trafficking: Developments and Opportunities*,' British American Security Information Council, London January 1998, p.42

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involved with major oil spills or wrecks of oil tankers at narrow approaches to harbors and international waterways, such spills can seriously affect marine life and security.[39]

## Mining of waters

For many years after World War II, sea mines were not considered a serious threat to naval operations. However, Iran's extensive laying of mines during its war with Iraq in the 1980's brought a new awareness of the danger. Hence mining in a constricted area like the Malacca Straits has the potential to create havoc on international merchant shipping.

Mining of waters is one of the cheapest ways to conduct maritime insecurity. Sakhuja argues that, mines may be laid by seaborne or airborne vessels. Civilian aircraft or vessels may carry out mining operations, which can even be perpetrated by non state actors to a limited extent.[40] It is not even necessary to carry out actual mining operations. The mere threat or a well calculated disinformation campaign about the laying of a minefield can deter any merchant ship from entering an affected channel or strait.

## Maritime Security in the Horn of Africa

Kaplan argues that piracy in the Gulf of Aden and Gulf of Guinea has been there for centuries.[41] For instance, the Barbary Coast in North Africa which includes the area around Morocco, Tunisia and Libya was a notorious area for piracy from the 17th century to the early 19th century. In the recent times however, the horn of African region has featured prominently in the Horn of Africa Region.

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[39] Paul J Smith and Don Berlin, 'Transnational Security Threats in Asia,' Conference Report, Asia Pacific Centre, p.6

[40] V. Sakhuja, 2003, 'Naval Diplomacy: Indian Initiatives' *Bharat Rakshak Monitor* Vol:6, No:1, p.1-45:21

[41] Seth D. Kaplan, 2008, 'Fixing Fragile States: A New Paradigm for Development'. Westport, Praeger Security International, p.3

Traditionally, scholars often associated security with the issues of war and peace.[42] From the Treaty of Westphalia in 1648 to date, the realist theory has regarded states as the most powerful actors in the international system for the simple reason that states have been the universal standard of political legitimacy with no higher authority to regulate the relations between them. Thus, for a long time the overriding interest of states has been national security, defined largely in terms of military capability.

Realism views the relations between sovereign states in terms of a balance of power, in which states pursue their individual national interests in an anarchic international system.[43] It is also assumed that such interests frequently conflict, thus, constituting the very reasons for war. This trend of thought was strengthened even further as the Cold War intensified.

The dominance of Somalia pirates, has projected the Gulf of Aden, coast of Somalia and horn of Africa region to be regarded as a dangerous route for sea vessels. Piracy in the Horn of Africa is concentrated along the Gulf of Aden and Somalia Coast. Unlike piracy acts in other areas, Osman et al note that piracy in the Horn of Africa has increased in frequency and sophistication.[44] In addition, Osman et al adds that, piracy in Somalia has increased both horizontally and vertically.

Horizontally, piracy has acquired the weaponry and high tech gadgetry that enabled them to expand the range of their attacks up to the Gulf of Aden and deep into the Indian Ocean. The sophistication involves use of automatic weapons, rocket propelled

[42] Finkelstein Marina and Finkelstein, Lawrence, 'Collective Security', San Francisco, Chandler Publishing, 1968, p.4.

[43] Butjoy Andrew, 'Common Securities and strategic Reform: A Critical Analysis', New York: Macmillan, 1997, p. 15.

[44] O. Abdulahi A. and Issaka K. Souare, 2007, 'Somalia at the Crossroads: Challenges and Perspectives in Reconstituting a Failed State'. London: Adonis and Abbey Publishers, pp. 5-8.

grenades, faster attack craft with longer ranges satellite phones and Global Positioning Systems (GPS) in their attacks. Vertically, attacks have increased in the sense that, all kinds of vessels like general cargo ships, bulk carriers, tankers and fishing vessels, sailing yachts and tug boats are all targeted.

Burk argues that, the expansion of pirate attacks outside the Somalia coast into the Gulf of Aden threatens the vital international trade route between Africa and Europe, and by extension Asia. Burk argues that various factors account for the upsurge of piracy in the Horn of Africa.[45] This include but not limited to historical failure of governance in Somalia, proliferation of small arms and light weapons large profits from the payment of ransom, worsening poverty and the absence of a joint maritime strategy.

Till notes that, criminal acts and terrorist attacks in the maritime field presents major threats to maritime security.[46] Among the criminal acts piracy poses a direct problem for international seaborne trade. It is still widely dispersed with hotspots in South East Asia and at the Horn of Africa. However, Till notes that, even though it is a lethal threat for those seafarers navigating these hotspots it is perhaps not an existential threat to seaborne trade yet.

Nevertheless a global initiative for maritime security is in the immediate interest of the Horn of Africa for two key reasons: firstly, because, that which is a limited threat now has the potential to turn into a huge problem as long as these activities are not decisively cut off and discouraged; and secondly, each individual has the right to be protected from unlawful acts irrespective of his or her geographic location.

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[45] J. Burk, 2003, *Dangerous Waters. Modern Piracy and Terror on the High Seas*. New York: Penguin, p.34.
[46] Geoffrey Till, 2004, *Sea Power: a Guide for the Twenty-First Century*. London: Frank Cass Publishers. p.298.

In conclusion, piracy is an extension of land based violence, itself rooted in weak state institutions, poverty, domestic lawlessness and corruption. A critical part of developing a strategy for prosecuting pirates should therefore take into account a commitment to supporting local institutions (including courts) promoting a culture of rule of law, and adding value to local economies. From an Horn of Africa perspective it is obvious that the various maritime challenges must be addressed on a multi-layered basis.

# CHAPTER FOUR

## Maritime Piracy in the Gulf of Aden, Case Study

## Introduction

Chapter Four analyzed maritime security as understood within law and the demarcation of maritime regions, the chapter also explored the jurisdiction of maritime piracy threats in the international system and generally examined the centrality of maritime regions as provided by the international law, finally, the chapter examined maritime security threats as conceptualized in the discourse of security studies.

Onuoha observes that piracy in Africa has a pattern with two major characteristics, first is that, piracy works through a pattern that is distinct and typical to the geographical landscape of the continent.[1] The pattern is as follows, on one side of the African continent is the Atlantic ocean, the Atlantic Ocean forms the Gulf of Guinea international waterway, the gulf of Guinea international water way covers the region of Sao Tome, Guinea Bissau, Equatorial Guinea, Liberia, The Gambia, Guinea and Ivory Coast. On the opposite side of the African continent is the Gulf of Aden international waterway, this waterway is often described as Horn of Africa region. The area includes the waters of Indian Ocean which border the coast of Djibouti, Eritrea, Kenya, Somalia among other states. Within the Gulf of Aden international waterway lies the Somalia state, somalia coast line is the longest stretch of coast in Africa measuring approximately 3200 kilometers and subsequently accounts for most activities in the Indian ocean.[2]

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[1] Freedom Onuoha, 2009, 'Sea Piracy and Maritime Security in the Horn of Africa', *African Security Review* Vol. 18. No.3, pp.22-40:32
[2] International Maritime Bureau (IMB) *Piracy and Armed Robbery Against Ships*, December to January 2008, London, p.1.

The Gulf of Guinea and Gulf of Aden are therefore similar in the sense that, both are hotbeds for maritime security threats and piracy in the high seas.[3] Maritime piracy in the Gulf of Aden international waterway has been out of control particularly since the overthrow of Siyad Barre in 1991. While in the Gulf of Guinea, Nigeria territorial waters are the main part that is notorious for maritime piracy, in the Horn of African region, the coastal region close to the Gulf of Aden within Somalia territorial waters is the main area that is dominated with maritime piracy. The rise of maritime piracy in the Horn of Africa region has been regarded as having a huge impact on the region both directly and indirectly, the following section will attempt to patch together primary information gathered through interviews to determine how piracy impacts on the region.

Although maritime has six types of threats as identified in chapter three, maritime threats in the Gulf of Aden is predominantly on two threats namely hijacking ships for ransom and taking people hostage. Onuoha notes that, although piracy in the Gulf of Aden was for long regarded as being silent when compared to piracy in the Gulf of Guinea.[4] However upon close analysis, it emerges that in terms of the magnitude of violence, maritime piracy in the Gulf of Aden is violent like maritime piracy in Gulf of Guinea. Piracy in the Gulf of Guinea international waterways is confined to particular regions and maritime zones while in the Gulf of Aden it is uncontrolled and extends several kilometers off the sea. In comparison, maritime piracy in Somalia defies domestic laws mainly because of lack of institutions to implement rule of law thus rendering it prone to free fall of piratical related activities. In this regard, Onuoha observes that,

[3] J.Kraska, and Wilson, B., *Piracy Repression, Partnering and the Law*, 2009, 40 *Journal of Maritime Law and Commerce*, pp.43-58: 25
[4] Freedom Onuoha, 'Sea Piracy and Maritime Security in the Horn of Africa' op, cit

Somalia piracy extends vertically and horizontally.[5] The reasons explaining this are manifold and will be examined in the following section.

Kennedy argues that, the reasons for maritime piracy can be divided into three broad categories, political, geo-strategic and economic reasons.[6] Political reasons are conceptualized on the point that, the political regimes in Somalia have used marine resources for personal gain, the extent of this led for instance to the fall of Siad Barre in 1991. Mwangura argues that, the fall of Siad Barre is partially linked to misuse of marine resources, this is because, Barres's government officials used to illegally sell fish and pocket the proceedings in individual accounts often belonging to their family and close friends.[7] Corruption in marine fisheries was rampant to the extent that, other leaders who were tired of the misuse planned for eventual overthrow of Siyad Barre in 1991.

In addition, Mwangura notes that, apart from Siyad Barre, other presidents in Somalia have also used marine resources for their own gain, for instance, former president of Somalia Transitional government Abdulahi Yusuf regime also used marine resources for personal gain, but unlike Barre who depended on marine resources directly, Yusuf gained from maritime piracy rather indirectly. Mwangura argues that, this marked the period when maritime piracy was blessed to be a capital venture in Somalia. When former transitional president Yusuf was hospitalized in a London hospital, two ships were hijacked and the ransom money obtained from here was used to settle his hospital bill.[8] This incidence according to Mwangura demonstrated that, maritime piracy has a political bearing to the leaders and leadership in power.

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[5] Ibid, pp.35-36
[6] Frank Kenedy, 'Somalia Crisis has Reached a Crisis Point', *Gulf News*, 9 September 2008, www.gulfnews.com, accessed on 27 May 2011.
[7] Andrew Mwangura, Spokesperson, East Africa Seafarers Association, Interview.
[8] Ibid

To draw a distinct difference and show that piracy is influenced mainly by leaders in power, Mwangura observes that, poaching of marine resources and maritime piracy was low during the period of rule by Islamic courts Union (ICU). Mwangura notes that, this was because the Islamic Courts Union (ICU) adhered to strict religious Islamic law, which does not permit maritime piracy and contained dire consequences for those who break the law. The success of ICU in taming maritime activities was observed for instance when the port of Kismayo was opened up and all ships going through the Somalia waters required to pay levies that went directly to the local custom authority. This was no mean achievement considering that the Kismayo port had remained closed for fourteen years and after ICU was ousted, the port closed again and maritime piracy threats started to steadily increase.[9]

Abdisamad observes that, piracy is a crime in Somalia much as it is a crime in the international system, the reason why piracy is expanding is because of lack of facilities. Abdisamad observes that, Galmudug state for instance has made many attempts to curtail piracy, but these attempts are often curtailed by lack of resources like military equipments, human resource and equipments to fight maritime piracy.[10]

A report on the Indian Ocean news letter observes that, the rise in maritime piracy is also connected to the geo strategic position of Somalia. For instance, Somalia has the longest coast line in the African continent which in addition complimented by a narrow stretch of passage on the Red Sea and adjacent to Somalia. This positions Somalia pirates in a central geo location to monitor maritime activities from Europe to Africa.[11] Thus, it

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[9] A. Mwangura, Spokesperson, East Africa Seafarers Association, Interview.
[10] Abdisamad , Vice President of Galmudug State, Interview on 29-May-2011.
[11] The Indian Ocean News Letter, www.africanintelligence.com. accessed on 7-May 2011

makes it easier for sea pirates to attack vessels that are passing through the international waterway.

The impact of piracy according to Asamoa is on two main issues, economic and security. Economic impact of piracy adopts many forms and patterns, for instance, due to maritime insecurity, the fiber optic cable was rerouted, the effect results on high cost of internet on land, also, when ships opt to use divert routes, it results to more cost for shipping goods and this causes a ripple effect on the goods on transit, which increase in value of the goods. Economic reasons explaining the proliferation of piracy in the Somalia coast is identified in many ways, Onuoha argues that these include, increase in trade of small arms and light weapons, large profits, from the payment of ransom, worsening poverty and the absence of a joint maritime security strategy.[12]

In this respect it should be mentioned that demanding ransom from hijacked ships is a defining characteristic of maritime piracy and related activities in the Horn of Africa region. Aden notes that, ransom money paid by pirates has a direct impact on social and economic strands of people in the region of Himan and Heb. This is based on the fact that, they are small urban centers, hence when there is a sudden influx of money; it destabilizes the local economic strands.[13]

As mentioned in Chapter Two, piracy was confined to three main elements, plundering, kidnapping and terrorism.[14] Economic related activities and particularly demanding ransom has developed to define the tendencies of piracy in the Horn of Africa region. Ransom piracy has established root in the Gulf of Aden and is arguably been the trade mark, this therefore puts the region in the map. To engage in further review of

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[12] Freedom Onuoha, 'Sea Piracy and Maritime Security in the Horn of Africa', op, cit, p. 37
[13] Mohamed Aden Tiey, President of Himan and Heb state, Adado, Central Somalia, interview
[14] See Chapter Two

economic related factors and piracy, there is need to examine the types of pirates in the Somalia coast.

Asamoa argues that the reasons why maritime piracy is rampant is because conflict on land is directly related to the conflict in water.[15] Somalia's lawless coastline has been ravaged by unscrupulous outsiders with impunity since the Somali government collapsed in 1991, In the early 1990s, for example, Somalia's unpatrolled waters became a cost-free dumping ground for industrial waste from Europe. Fishing boats from Italy were reported to have ferried barrels of toxic materials to Somalia's shores and then returned home laden with illicit catches of fish.[16]

The conflict on land compromises the situation in the sea, in the sense that when people are deprived their source of legitimate income, they compromise corruption to earn a living, corruption in this sense implies that the Somalia coast guar could be bribed to allow dumping of toxic waste and illegal fishing. In contrast, Mwangura argues that although there is corruption, it is found at the level of state and neighboring states, he argues that illegal fishing vessels for instance are licensed by Kenya.

Security threats in water also results to increase in availability of small arms, small arms are often used in neighboring states to commit crimes and this affects insecurity levels. Asamoa argues that, the prevalent in rise of maritime piracy can be conceptualized by considering the fact that, every security threat has a political and economic aspect. The economic aspects are the inherent reinforcement structure for maritime insecurity. In this sense maritime piracy is an opening for some people to

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[15] Andrew Atta-Asamoa, Senior Researcher, Conflict Management Program at the Institute of Security Studies, interview.
[16] Paul Salopek, 2008 'Who is Pirating Who?' Chicago Tribune Newspaper, p.12

benefit economically, those who seek to end maritime piracy in the Horn of Africa region are those that do not benefit from maritime piracy.

Asamoa attributes the rise in piracy incidences to the failure of the coast guard in the region which he regards as being idle and thus allowing illegal operations in sea such as illegal fishing and dumping.[17] Generally, he argues that piracy is rampant in Somalia because of three main reasons, first those engaged in piracy consider the risk of engaging in piracy against the gains, often when the gains are more than the risk which is often the case, then maritime piracy is worth the adventure, secondly the profitability level is rising, ransom realized from hijacked ships has been in an upward trend and encouraged the sophistication of maritime piracy in the maritime region. Finally, the enduring conflict on land provides conditions for the grooming of criminal related activities.

Onuhoa argues that maritime piracy was not a major issue in the maritime region until the western states were affected.[18] In addition, the area around which piracy activities were was small compared to the current levels, however, when ships and water vessels resorted to using divert routes, they attracted marine pirates to venture deep into the ocean. The collapse of the Somalia government compounded by the realization that piracy can substitute for income, propounded illegal groups scavenging through the sea to misuse the strategic position of Somalia territorial waters. The Chicago tribune reported that, Somali pirates have wielded other, more self-serving justifications for their criminal activity on the high seas. Mostly, arguing that, the attacks are a tough payback for the world community's abuse of prostrate Somalia's territory and resources.[19]

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[17] Andrew Atta-Asamoa, Interview.
[18] Freedom Onuoha, 'Sea Piracy and Maritime Security in the Horn of Africa' op, cit.
[19] Paul Salopek, 'Who is Pirating Who' *Chicago Tribune, 10 October 2008.*

The prevailing understanding of maritime piracy in Somalia is not a new development. Maritime piracy can be traced back to the period before the fall of Siad Barre in 1991, since then piracy has arguably evolved through five phase. The following section will examine the five phases under which maritime piracy has developed through, ranging from 1989 to 2010.

## Maritime Piracy between the years 1989-1995

The period before the fall of Siad Barre was engulfed in wrangles among the political clout ruling Somalia. The complains among fishermen and individuals directly depended on marine resources were that a huge percentage of profits from fish sales were pocketed by Siad Barre or members of his family. In addition Mwangura argues that, Barre was colluding with some western countries to let them dump toxic waste in the Somalia coast and in return he received large sums of money.[20]

As a response to this, vigilant groups were formed to take care of the sea and prevent illegal dumping of toxic waste.[21] This proved successful as a number of ships that had intentions of dumping toxic waste or carrying illegal fishing were detained or chased away from Somalia waters. This realization prompted the vigilant groups to launch an assault on illegal fishing boats. Although it was hard to differentiate between legal fishing boats and illegal fishing boats, vigilant groups were determined to do this, just but to sabotage presidents Bares government.

After the overthrow of president Barre, the port of Mogadishu and other minor ports in Somalia were closed down. The vigilant groups banned all fishing boats from

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[20] Andrew Mwangura, Spokesperson, East African Seafarers Association, Interview.
[21] Ibid

Somalia waters but could not sustain this order with any restrictions, lack of organization and corruption would witness some fishing vessels going about fishing. However illegal toxic dumping continued until the vigilant groups obtained firearms. They would use this to deter ships from dumping.

## Maritime Piracy between the years 1996-2002

Besteman and Cassanelli argue that, this period coincided with two major events; the first was the formation of the Puntland state.[22] Second was, the entry of Hardy Consultant Company, a British marine outfit contracted to provide maritime security in Somalia territorial waters. Hardy consultant was a British Marine Unity contracted by Puntaland to train young Somalia men to be Marines and take care of Somalia territorial waters.

The separation of Somalia into two parts implied that both would sign and enter into contracts independent of each other.[23] When Somalia separated into two parts, the contract with Hardy group was arguably nullified. Somalia land refused to sign a new contact with them and Hardy Consultant were forced to close up shop. It should be noted that, the period after the collapse of Siad Bare government, vigilant groups operating in the ocean were ill equipped and with no formal training, hence the area of jurisdiction was limited to particular areas.

Mwangura notes that, Hardy Consultant used to pay all those it was training well and majority were comfortable with the earnings.[24] However, when they left the youths

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[22] Besteman, C. L. and Cassanelli, L.V. 2000, *The Struggle for Land in Southern Somalia: The War behind the War*, Colorado/London: Westview Press/HAAN Publishing, p.42.
[23] Ibid
[24] Andrew Mwangura, Spokesperson, Seafarers Association, Interview.

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were left with GPRS locaters, and sophisticated equipments. Hence, after Hardy Consultant left, the youths would perform the marine duties they were trained for during the day and at night they would waylay ships to plunder their goods. The total withdraw of Hardy Consultant group catapulted the trained youths to engage in full time piracy. It should be noted that it was also during this period that piracy in Somalia waters became sophisticated.

## Maritime Piracy between the years 2003-2005

This period coincided with the election of Abdluahi Yusuf as the president of Somalia Transitional Federal Government (TFG). The main development during this phase was that when ships were hijacked, the crew was taken hostage and ransom money demanded from the ship owner. Mwanguru added that after the election of Yusuf, he fell sick and was admitted to a London hospital. During this time two ships were hijacked, the ransom money paid is said to have been used to pay for President Yusuf's hospital bill.[25]

This claim points to the allegation that, pirates in Somalia are not the young men who risk to go to the sea and hijack ships but *Kabachoris* (derived from Indian one Kaba meaning Big and Chori meaning thief) who control political offices and use agents to make money from piracy related activities. Somalia piracy in this sense is a private economic enterprise limited to a number of people with connections in areas of power.

As mentioned above, real pirates in the region are the Kabachoris while those in the sea are agents of piracy. Menkhaus argues that, piracy in the region is not violent

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[25] Ibid

compared to other acts of piracy in the world.[26] This is because Piracy in Somalia was first used to deter four main issues. Piracy started as an attempt to prevent illegal fishing ships from operating in the Somalia coast, secondly, piracy can be traced to the need to deter foreign ships from dumping toxic waste n the Somalia waters, third piracy can traced to the need to stop illegal trading of fire arms through the Somalia waters and four piracy can be traced to the need to stop human trafficking between Somalia and Yemen.[27]

There are six types of maritime security identified and recognized by international law, namely; terrorism, kidnapping, hijacking, murder, theft and ransom. Piracy in the Somalia coast fits the bill of three of the above characteristics namely, kidnapping, hijacking and ransom demanding. Maritime security is used to imply freedom from maritime threats. However in the maritime region, there are threats emanating from laxity in maritime security. According to Mwangura, the core causes of rebellion by Somalia's to engage in piracy are quashed by the magnitude of *Kaba Chori's*. This is because illegal fishing is still up and running as does the dumping of toxic waste.

## Maritime Piracy between the years 2006-2009

This period is regarded as the most turbulent in terms of maritime insecurity in the Horn of Africa region. During this period a number of ships were taken hostage by pirates and record ransom paid to release them. As a result, it was during this period that maritime piracy in the Gulf of Aden surpassed levels that were in other parts of the world.

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[26] Ken Menkhaus, 2005. 'Somalia and Somaliland: Terrorism, Political Islam, and State Collapse' In R. Rotberg (ed.): *Battling Terrorism in the Horn of Africa*. Washington: Brookings Institution Press, pp. 50-105:85
[27] Frank Gardner, "How do you Tackle Piracy?" *BBC News website*, 13 December 2008, http://news.bbc.co.uk/

Garner argues that, unlike in the past when western states seeking to dump toxic waste would collude with Somalia government officials, during this phase, they were using neighboring countries as a ploy to dump and do illegal fishing.[28] A case in point was the Hijacking of *Alpha Serengeti* and *Feisty Gas* fishing vessels. Both had apparently been licensed by the Kenyan government to fish in Kenyan waters. Of concern was the fact that, the ships loads found in the containers, were the rare type of fish that are only found in Somalia waters along the mouth of river Juba.

Apart from illegal fishing and dumping, this phase also witnessed the development and inclusion of another aspect of insecurity that of trade in contraband goods. According to Mwanguru, trade in contraband goods is arguably the greatest threat to maritime security and safety.[29] The basis of Mwangurus argument is the fact that, since the proceeds from trade in maritime security are high, even more than the proceeds realized from ransom payments, then, encourage individual powerful actors in government institutions not to discourage piracy. As such, while the international community is focused on maritime piracy, the real business is concealed and happening without little notice.

Hence, the development of piracy during this period is enshrined in divert tactics. For instance, sugar from South America, and a host of other products are imported to the port of Kismayo, but registered as being in transit at the port of Mombasa. However, when the ship that originally was designated for Kismayo docks in Mombasa, the cargo is offloaded, re-branded and sold in the local market. In this respect, the money realized

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[28] Ibid
[29] Andrew Mwangura, Spokesperson, Seafarers Association, Interview.

from the sale of contraband goods in the country and beyond is used to fund piracy in the maritime region.

The impact of trade in contraband goods is a serious consequence spanning beyond the maritime region. For instance, instability in the Great lakes region is credited in one way or another to piracy acts in the horn of Africa. The reasoning being that some of the warlords fighting in DRC, for example Nkunda, own tanks, since it is hard for his rebels to import tanks from the Gulf of Guinea, the only possible route then remain the port of Mombasa and Dar Es Salaam.

Reynolds observes that, the dynamics involved in this trade form a web of interlocking issues that directly feed into piracy and armed conflict.[30] At this point it emerges that laxity in maritime security feeds the conflict in the great lakes region. However, at another point it also emerges that conflict in the great lakes region and maritime insecurity share a symbiotic relationship. The relationship emerges from illegal minerals obtained from countries in the great lakes region, this are smuggled out through the same port, possibly using the same means as the weapons and contraband goods to get into foreign markets.[31]

Maritime security is not limited to activities and crimes committed in sea. Actually according to Mwangura, a big percentage of maritime insecurity is contributed by unsuspecting people who consume contraband goods hence, indirectly contributing to piracy and maritime insecurity.[32]

Contrary to the belief that ransom paid to piracy is part of the reason for increase in inflation rates, increase in property and demand for good and services, Mwanguru

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[30] Paul Reynolds, 'Rules Frustrate Anti-Piracy Efforts" *BBC News*, 9 December 2008, http://news.bbc.co.uk/
[31] Ibid
[32] Andrew Mwangura, Spokesperson, Seafarers Association, Interview

argues that this may not be true. His argument is based on the fact that, their highest amount of ransom paid in a year was 160 million US dollars, paid out in 2009, in comparison, Somali's living in the diasporas remit an average of 2.2 billion dollars a year to their kinsmen living the Horn of Africa region.[33] Hence ransom money is an inconsequential figure to cause inflation, or cause a raise in property prices.

Reynolds observes that, a case in point to illustrate this was in 2006, during this time, the Islamic Courts Union (ICU) had taken leadership in Somalia, ICU opened the port of Mogadishu after a fourteen year closure and appointed an interim management body to oversee the collection of income collected from ships that were docking their.[34] ICU was also against warlords funding piracy, and as a result no single ship was hijacked in 2006. However, the prices of goods were on the rise as was inflation during the same year.

Brown argues that, the cost imposed by maritime piracy are significant, costs stem from stolen goods and cargo and also from delays in port increases in insurance rates when transiting from pirate waters.[35] There are also increases in crew wages for shippers that take longer routes, some crews now demand double wages to sail near Somalia waters. These costs are added on to the value of the goods being shipped resulting in higher prices for consumers.

According to the Humanitarian news and analysis, maritime piracy is always prevalent in countries with weak governments, where humanitarian needs are dire and

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[33] Ibid
[34] Paul Reynolds, "Rules frustrate anti-piracy efforts", op, cit
[35] N, Brown Maritime Piracy: Implications for Maritime security, *Journal of Energy Security*, Feb 2009, p.1-15:3

economic opportunities are limited.[36] In turn, piracy can itself worsen humanitarian conditions. This is the case in Somalia where maritime piracy is taking toll and exacerbating the well being of Internally displaced People (IDP). Not all pirate attacks are politically motivated, massive unemployment and the lack of meaningful economic opportunities have drawn young men into all sorts of maritime criminal activities (refer to chapter three for types of piracy). This is the reason why maritime piracy and kidnapping for ransom is rampant. Maritime piracy also imposes significant costs on the local fishing economy. The attacks range from minor harassment to theft of fish cargoes, engines and other materials on board.

## Maritime Piracy in the year 2010

The year 2010 saw two new developments adopted by the international community in an endeavor to deal and combat maritime piracy. First is that, unlike in the previous years when pirates have been released after capture due to technicalities involving the jurisprudence and trial of maritime pirates. In the year 2010 developed increased their intensity to arrest and try suspects abroad and retaining other in jails particularly in Kenya.

The effectiveness of holding pirates of Somalia origin in Kenya prisons has never been efficient. Wambua argues that, pirates are aware they can not be prosecuted by the laws of Kenya. The law regarding maritime pirates is ill developed and does not reflect urgency of the prevailing situation. The international community has also been hesitant to try maritime pirates in their countries for fear that, this may be against international law of exhausting local remedies before trying them in their own countries.

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[36] IRIN, 2008, Humanitarian News and Analysis, p.27

Moreover, developed states have also increased the number of naval ships in the Gulf of Aden. However, Gardner argues that, the presence of American Naval ships is arguably enshrined in misery and proxy.[37] Effectiveness of their ability to combat piracy is dismal. This emerges from the fact that since they took command, no single ship has been arrested for illegal fishing yet the trend is ripe and happens. The belief is that Naval ships are stationed here to protect illegal fishing vessels. The fishing vessels operating in this waters are complete sets of floating factories equipped with processing units, packaging centers, and helicopters for transport.

Once the fish are caught, they are processed, packaged and airlifted in packages indicating that the fish are from Italy or Spain. According to Mwanguru, there is need to highlight that fishing vessels enjoying protection of naval ships package the ships as being produce of European states. But fishing vessels that are given license by Kenyan government have the fish labeled as a produce of Kenya.

By the end of the year 2010, Somalia pirates had in the territory twenty eight vessels and 638 crew members as hostages, the vessels attacked include General cargo, bulk carrier, Ro Ro, container fishing vessels, sailing yacht, dhows and tugboats. Most of this attacks involve the use of lethal weapons which are described as being of concern to merchant navy vessels and serious threat to seafarers, environment, cargo and ships.[38] Piracy in Somalia is sophisticated in the sense that, maritime pirates resort to use of mother ships to hijack other unsuspecting ships and has greatly increased the probability of maritime pirates to capture vessels.

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[37] Frank Gardner, "How do you Tackle Piracy?" op, cit
[38] International Maritime Bureau, 'Piracy and Armed Robbery Against Ships', 1st January -31st December 2010, P. 19.

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[37] Frank Gardner, "How do you Tackle Piracy?" op, cit
[38] International Maritime Bureau, 'Piracy and Armed Robbery Against Ships', 1st January -31st December 2010, P. 19.

Somalia pirate attacks cover a wide area which extends to the Gulf of Aden, Southern Red Sea, Off Yemen, Off Oman, Arabian Sea, off Kenya, Off Tanzania, Off Seychels, Off Mozambique, Indian ocean, Off Indian west coast and Off Maldives west coast. In view of increasing pirate incidents off the coast of Kenya including in it is territorial waters by Somalia pirates, Kenya Maritime Authority created a maritime corridor for ships that were entering the port of Mombasa. Karigithu argues that, this zone is patrolled by the Kenyan Navy to provide security for vessels waiting to berth at the port.[39]

Pascoe argued that the war on Somalia piracy can not be won by using warships alone, but emphasized that there was need to continue with the battle in it is broadest manner, by focusing on deterrence, security and rule of law and as well as providing economic alternatives for Somalia youth.[40] He also added that there was need to address impunity and increase the capacity of the Transitional Federal Government to expand it is authority and stamp law and order.

In conclusion, it can be argued that the threat of maritime piracy on maritime security in the Gulf of Aden is not a direct security threat that can be understood by direct observation, but a vice whose roots are deep within the conflict in land, trade in contraband goods and illegal fishing. Piracy is used by *Kaba Chori* to conduct illegal trade, the trickledown effect is the increase in conflicts in the region, smuggling of precious minerals out of the region to foreign markets and using the menace of piracy to camouflage in activities violating security in the region.

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[39] Ms. Nancy Karigithu, Kenya Maritime Director, Interview.
[40] B. Lynn Pascoe, United Nations undersecretary General for political Affairs, *Brief to United Nation.*

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# Chapter Five

# Critical Analysis of Maritime Piracy in the Gulf of Aden

## Introduction

This study has so far analyzed various issues informing maritime security in the maritime region; it has equally addressed numerous debates underlying maritime law, maritime piracy and the case of maritime piracy in the Gulf of Aden International waterways. In summary, chapter one studied the introduction, statement of the research problem, primary and secondary objectives, literature review, theoretical framework methodology and hypothesis. Chapter two explored the jurisprudence of maritime piracy in international law and the development of the law of maritime piracy. Chapter three analyzed the conceptual issues of maritime regions and identified the maritime regions as recognized in the international system; the chapter also examined maritime security in the international system. Chapter four analyzed empirical findings collected from primary sources like interviews and Focused Group Discussions (FGD) to build an argument for this case study.

This chapter will endeavor to critically analyze issues and tie debates examined so far in the context of collective security theory. This chapter will also gauge research objectives identified in chapter one to determine if they agree with the hypothesis suggested in chapter one or they do not agree. All these will be done against the background of the theoretical framework suggested in chapter one. To achieve this, chapter five will be sectioned into two main phases. The first phase will attempt to lay

bear the conceptual underpinnings of collective security theory as put forward by scholars. This is important so that, it lays bear the epistemological foundation upon which this critical analysis chapter will be based. The second phase will critically review the prevailing situation of maritime security in the maritime region. It will compare issues and debates discussed so far in the context of collective security against suggestions of scholars to critically tackle the objectives for this study research.

The theoretical framework suggested in chapter one for this research study is collective security. On the one hand, Mathews observes that, collective security is a system of security organization whereby all states in the international system should cooperate to provide security for all, by the actions of all against any state within the groups which might challenge the existing order by using force against the other in the international system.[1] On the other hand, Walters notes that, collective security for states can be achieved if states set up a single cooperative organization under the support of international law. International law is important because it gives rise to a form of international collective governance.[2] In collective security governance, the security needs of one state are usually regarded as security needs of all other states in the international system.

Morgenthau observes that, the primary objective for establishing collective security is the respect for morals and legal requirements among states. In reference to Walters, this means that, in collective security, states need to consider an attack by any

[1] J.T. Mathews, ,'Redefining Security', *Foreign Affairs,* Spring 1989 Vol:62, No: 2, pp. 3-6.
[2] F.P. Walters, 'A History of the League of Nations', Oxford: Oxford University Press, 1967, p. 44.

nation upon any member of the alliance as an attack upon all members of the alliance.[3] Morgenthau further notes that, the alliance to which he referred to is a universal alliance for all sovereign states against potential aggression from other states that are parties to the international system.[4]

Claude argues that, collective security should not necessarily be a universal alliance committed to the automatic use of force anywhere in the world against any aggressor no matter what the circumstances.[5] Carr adds that, this is because the concept of collective security means different types of issues in different circumstances. In view of the fact that the international system is dynamic, implies that causes of insecurity are also bound to change. The conditions of aggression conceptualized when the theory of collective security first emerged are also different from the prevailing conditions. When collective security theory emerged, threats to states security were considered as external and coming from outside the state.

Morgenthau argues that, while the conditions which are necessary for proper implementation of collective security are unlikely to ever exist in practice in the international system.[6] The idea of collective security should nonetheless be pursued based on a willingness to maintain order in the international system. Rousenau describes the international system, as a unit consisting of a set of variables that interact haphazardly with each other like balls in a game of Billiard.[7] In this system conflict of interest is bound to be there among actors that benefit directly and indirectly from maritime piracy.

[3] Hans J. Morgenthau, 'Politics Among Nations' New York, Alfred A. Knopf, 1953, p. 142.
[4] Ibid
[5] P. Claude, and International Relations, p. 153.
[6] Hans J. Morgenthau, 'Politics Among Nations', op, cit.
[7] J. Rosenau, 'Governance in the twenty-first century,' *Global Governance Journal*, Vol:1: 1995, p. 3

In chapter four, it emerged that, the main people that are behind maritime piracy are not the ordinary pirates who risk their lives to hijack sea vessels in sea, but people in authority who seek to advance their economic and financial interests by exploiting the weak law of maritime security. This conflict of interest among those who are supposed to ensure collective security may lead to confrontations as the actors involved in it seek to protect their personal interests. Furthermore, at least in Morgenthau's view, collective security is therefore identified with defense of the status quo, and this view has been additionally supported as the core cause for the increase of maritime security in the Horn of Africa region.[8]

Collective security should not neglect or ignore any situation in the international system that demands its attention, but in the Horn of Africa maritime region, collective security for maritime threats is arguably neglected. The relevance of collective security in regulating maritime security threats in the Horn of Africa region is distinct to the region, this is because, it has been used sparingly by the international community who according to the theory of collective security are supposed to administer security in the international system.[9] To put into context the prevailing situation in the Gulf of Aden international waterways, there is need to construct the prevailing scenario in light of the need for collective action. Ariel notes that, the threat of maritime piracy exists in the Gulf of Aden as a result of the desperate situation in Somalia and the devastated political economy

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[8] See Chapter Four for more details
[9] Ibid

along the coastline.[10] As a result, pirates are exploiting the vacuum created by anarchy in Somalia and the lack of rule of law inside the nation to enhance their activities.

In chapter Four, it emerged that, Somali pirates are driven by the goal of financial gain.[11] Moreover, the crime of maritime piracy has some amount of acceptance among Somalia societies residing in the coastal region. The acceptance of piracy is seen by some of the respondents interviewed in chapter four as the only way that deters states that conduct illegal fishing and dump toxic waste along its coast. The main challenge is then on how one can tell the genuine individual actors protecting the maritime region from those that are preying on sea vessels. To solve this problem, there is need for states in the international system to act collectively. The collective action should not focus on the problem in water alone but also seek to solve the problem from land. Piracy in the offshore areas of Somalia is committed by organized criminal gangs that benefit from political protection or failure of a functioning government; hence any solutions attempted will have to account for the wider political context inside the country and mainly from land. In Chapter Four it emerged that, before 1990, maritime piracy was fairly insignificant in the Gulf of Aden, a more structured form of maritime piracy emerged in the mid 1990s when armed groups patrolled the exclusive economic zone of Somalia, claimed they were the authorized coast guard charged with protecting Somalia's fishing resources.[12]

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[10] P. C. Ariel. and Talley, Wayne K. 'The Security Incident Cycle of Ports' op, cit, p.7
[11] See Chapter Four, for more details.
[12] See Chapter Four for more details

## Cooperation at the regional level

Raymond argues that, organizing a response to prevent maritime piracy requires collective action by all states that are directly and indirectly affected.[13] The need to shift the outcome of this equation in the Gulf of Aden is obvious, but the means to do so are debatable. This statement gives rise to the division of responsibility among regional states in responding to maritime piracy. On the one hand, collective security need not be promoted by regional states. This is because, issues informing security threats are less relevant to most of the security threats already on the scene in the post Cold War world, than are hard estimates of how these threats affect the development of the regional order.

On the other hand international security can be applied in Gulf of Aden region. Such a response would have both military and nonmilitary components; hence it could be an effective means of maintaining sub regional and regional maritime peace and stability. An international collective maritime security strategy is essential if the military confrontation is to be reduced without chaos and without danger on land. Walter and Sandler argue that, international collective action on maritime security attempts not only to strengthen the support of security by bringing together neighboring states to secure common goals but also attempts to broaden its definition beyond the traditional concerns to include naval arms control, confidence building, and maritime cooperation.[14]

In Chapter Four, it emerged that, piracy attacks in the region briefly declined under the rule of the Islamic Courts Union (ICU) between 2006 and 2007, this fact demonstrates the critical influence that regional cooperation among states in the Horn of

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[13] Catherine Z. Raymond, "The Threat of Maritime Terrorism in the Malacca Straits." *Journal of Security Studies,* Vol:17, No: 5, pp.15-70:56
[14] Ibid

Africa can play in managing maritime piracy.[15] The ICU was successful because it was backed by regional states during its brief stay in power. During their brief tenure in power, ICU also was able to make strides because they took a firm stand against the beneficiaries of maritime pirates, this points to those that have political and economic muscle. ICU was also able to extend their military control over the known pirate bases of Haradheere and Hobyo. The capture of Haradheere was particularly significant considering that the Somali pirate group operating there had the most sophisticated capabilities of any of the pirate groups operating in the country.

So far there has been a high tolerance for piracy because costs are distributed throughout the international system, with no single nation bearing the burden.[16] It is now high time that states in the international system collectively to ensure ransom money paid is tracked and prevented from reaching those it is intended for. Secondly, governance, stability, and security within Somalia must be improved such that it is less risky yet reasonably profitable alternatives to piracy can be fostered both at sea and of the sea. Although both of these suggestions are ideal, the second task is a much more challenging proposition than the first, given Somalia's fragmented and unstable state and availability of weapons.[17]

## Cooperation at the international level

Considering that, piracy consists of those acts of robbery and depredation upon the high seas, which, if committed upon land, would amount to criminal acts. Kraska and

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[15] See Chapter Four

[16] J.Kraska, and Wilson, B.,"Piracy Repression, Partnering and the Law", 2009 Vol:40, p. 1-27:13.

[17] Ibid

Wilson argue that, to repress maritime piracy states require international action and coordination because much of the high seas is under no individual state's jurisdiction.[18]

For instance, navy ships that are provided by developed states will be ideal to help in patrolling international waterways; international cooperation will also help increase inputs from overhead satellites and greater deployment of maritime patrol aircraft and long range surveillance assets.[19] Chalk argues that, perhaps the most essential weakness of the international strategy response to maritime piracy, is the fact that it is intended on containing maritime piracy at its endpoint on the seas, rather than containing it from land.[20] This is the reason why naval deployments have little relevance to many of the territorial factors that give rise to armed maritime crime and violence off the Horn of Africa.

Commercial shipping vessels that are the very targets of maritime piracy can be found throughout the areas of interest. For instance, Maersk has operations in nearly three hundred ports around the world and makes thirty three thousand port calls a year. No single navy can make such a claim, and no single nation can see what Maersk ships see every day. If each one of these thousands of commercial vessels at sea were to contribute to a partnership for maritime surveillance and reporting, international awareness would potentially improve as would the ship's own security.[21] Somalia has the longest coastline in Africa with over two million square miles of water at risk of maritime piracy; this is a factor that can complicate naval strategy described above. Salopek argues that, the

[18] .Kraska, and Wilson, B., 'Piracy Repression, Partnering and the Law', 2009, Vol:40, pp.1-23:2
[19] International Maritime Organisation, "Reports on Acts of Piracy and Armed Robbery against Ships Annual Report 2002, pp.2-7
[20] P. Chalk, 'Threats to the Maritime Environment: Piracy and Terrorism' Presentation
[21] International Maritime Organisation, op, cit

deployment of large numbers of warships from Western and European states into the area is therefore not an effective strategy.[22] This is because many of the nations that have sent warships are unaccustomed to operating them far from home waters and without logistical support in unfamiliar regions. Hence, to make this more practical, regional states need to be trained so that they understand the dynamics of naval logistics. Furthermore, it is not possible that such a large area can realistically be patrolled at all times, even by a large multinational force.[23] It would take more warships to provide an effective presence over the length of a single, narrow transit waterway. Since this is not possible for the time being, more effective approaches should be developed with a main long term goal of having a large naval presence in the Gulf of Aden.

Collective security requires that, for it to be effective the international system should recognize states that are flouting accepted international norms, as a direct threat to their own national interests even when their own interests may not be directly affected.[24]

The international community needs to change its present approach to the anti piracy enforcement in three crucial ways. First, the international community should recognize that states do not require Security Council approval to engage in counter piracy measures and enforce anti piracy laws in Somalia. Every state has the inherent right to use force against the Somali pirates under Article 51, and a global understanding of that point will provide the legal support for more confident, aggressive, and effective anti-piracy initiatives.[25]

[22] P. Salopek, 'Who is Pirating Who?' op, cit
[23] Ibid
[24] Raymond Aron, 1966, 'Peace and War Among Nations', New York: Doubleday, p. 159.
[25] United Nations Security Council , op, cit

Secondly, the United Nations should not condition foreign anti piracy measures in Somalia on the government's permission. Such conditions are harmless enough in this situation where the prevailing government has incentive to grant permission because in doing so it is legitimized as the official Somali government, strengthened by the presence of allies, and benefited by a reduction in the number of pirates. Rubin argues that, this condition exposes important global anti piracy efforts to unnecessary exposure and insecurity, and establishes bad example.[26] Third, while it is not legally allowed under the principle of universal jurisdiction, the global anti piracy effort would likely benefit from an established legal settlement process for all Somali pirates. Hamilton argues that, this would serve the purposes of making legal anti piracy efforts, eliminating confusion surrounding the pirate's prosecution after arrest, putting to rest fears of legal complications in reference to enabling concentration of human rights resources so as to ensure that maritime pirates both during and after arrest are treated in accordance with international human rights law.[27]

Walker argues that, collective action to implement maritime security will never be automatic given the prevailing circumstances, but instead will be highly dependent upon specific circumstances in the region.[28] These circumstances include the commitment of political machinery among Somalia leadership, support from neighboring states and interests of actors in securing the region. In chapter four it emerged that, it is the neighboring states that benefit from trade in contraband goods, they are therefore interested parties in the maritime piracy. The application of collective security in the Gulf

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[26] A.P. Rubin, *The Law of Piracy*, op, cit

[27] Booz Allen Hamilton, 'Port Security War Game: Implications for U.S. Supply Chains', op, cit

[28] B. J. Walker, 1990, 'Security, Sovereignty, and the Challenge of World Politics,' *Alternatives Journal*, Vol: 15:No:1, 3-27:6.

of Aden should be aimed at a problem that Morgenthau saw as the main concern of diplomacy from the beginning of the modern state system to the First World War which is to localize an actual or threatening security problem in a region, in order to prevent it from spreading to other nations.[29]

## United Nations Security Council in collective security

The United Nations is a valuable legitimizing agent in coordinating collective security within the international system. A resolution adopted by the Security Council can be used to justify military action by individual nations joined in a coalition or by an alliance. Del Rosso observes that, the only method of putting in force the law of maritime piracy against Somali pirates within Somali territory other than under a theory of Article 51 self defense is by authorization from the Security Council.[30] The Security Council has mandate to take whatever actions it deems necessary to maintain or restore international peace and security any where in the international system

The Somali pirates constitute a threat to peace that the Security Council is empowered to counter by itself or with the aid of United Nations members.[31] Thus, Branigan argues that, the current U.N. Security Resolutions authorizing member states to use force against Somali pirates in Somalia are within the power of the United Nations, and represent another legally acceptable method of exercising enforcement jurisdiction over pirates in the Gulf of Aden.[32] To address the challenge of Somali piracy, the United

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[29] Hans J. Morgenthau, 'Politics Among Nations', New York: Alfred A. Knopf, 1953, p. 335
[30] Stephen J. Del Rosso Jr., 'The Insecure State: Reflections on 'the State' and 'Security' in a Changing World,' Vol:124, No: 2, pp.187-93.
[31] Stephen D. Krasner, 1983, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables,' p.1 in Krasner, ed., *International Regimes*, New York Cornell University Press.
[32] William Branigan, 'As U.N. Expands, So Do Its Problems,' *Washington Post*, 20 September 2009

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Nations Security Council has approved resolutions 1816, 1838, 1846, and 1851 that contain authority to use all necessary means to counter maritime piracy in the Gulf of Aden.[33] These resolutions encourage states to develop a cooperative framework to oppose piracy in the region and grant specific authority to cooperating states to enter Somalia's territorial sea to repress maritime piracy in a manner consistent with international law.

Resolution 1851 authorizes cooperating states to go further and engage in anti piracy action on Somali soil, although this is a complex endeavor even under the best of circumstances and one that ought to focus on building the capacity of Somalia's transitional government's to fulfill its responsibility to the Somali people and root out piracy and armed robbery at sea.[34] However, none of these resolutions authorize any state to address the conditions on land that are arguably why individual actors find piracy potentially attractive.

The United Nations Security Council has passed several resolutions intended to allow foreign states to watch over Somali waters for pirates and even continue their pursuit on land, but the international response on this has been inconsistent. The French Navy has for instance been aggressively confronting pirates, arresting them, and sending them to Paris to face trial. While, the British Royal Navy has generally sought to avoid confrontation with pirates due to concern over human rights violations. For instance, on a number of occasions, the Danish Navy has released suspected pirates captured off the Somali coast onto the beach after concluding that the Danish government did not have jurisdiction over the pirates.[35] The Italian Navy also seems reluctant to arrest pirates,

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[33] International Maritime Bureau, '*Piracy and Armed Robbery Against Ships*' op, cit
[34] United Nations Security Council Resolution 1851
[35] International Maritime Bureau, 'Piracy and Armed Robbery Against Ships' op, cit

preferring to limit itself to warding off pirate attacks rather than dealing with the potential legal predicament that might follow an assertion of jurisdiction.

The United States has also refrained from prosecuting Somali pirates on its own soil, preferring instead to seek arrangements for the trial of pirates in Kenya and elsewhere in the region.[36] This somewhat reluctant response from the international community is in large part the result of states proceeding cautiously in the Gulf of Aden. Difficulties associated with prosecuting maritime piracy have led states to avoid the courtroom. For instance, in several cases in 2008, countries simply released Somali pirates after capturing them.[37] There is sufficient jurisdiction and an emerging legal capacity in East African nations to impose law and order in response to maritime piracy. However, these states require assistance in order to enhance their capacity.

International human rights function within the international system, an international regime can be defined as the principles, norms, rules and decision making procedures around which actor expectations converge in a given issue area.[38] An effective regime should assist the members of a collective security system in their individual decisions to enforce the norms of the regime. The challenge of rule of law that emerges out of maritime piracy in the Horn of Africa can be pursued in two fronts, the local rule of law and the international rule of law. The Law of the Sea contains provisions relating specifically to maritime security. Article 99 pertains to trafficking in human slaves; Articles 100 through 107 address piracy; and Article III contain provisions for hot pursuit from the high seas into a coastal state's territorial sea.

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[36] Ibid
[37] Paulo Prada and Alex Roth, 'On the Lawless Seas, It's Not Easy Putting Somali Pirates in the Dock,' *Wall Street Journal*, 12 December 2008, p1-12:8
[38] Karl W. Deutsch and Stanley Hoffman, 1968, 'The Relevance of International Law: Essays in Honor of Leo Gross', Cambridge, Schenkman, p. 44.

Law, or norm, enforcement will not occur, if ever, as the result of the centralization of authority in the United Nations. Rather, it will occur because most members believe that the regime under which they are acting benefits them and that the costs of abandoning it could be serious. Keohane observes that, institutions that facilitate cooperation do not mandate what governments must do, but they help governments pursue their own interests through cooperation with other states.[39]

However, it is debatable; to what extent an international regime can influence maritime piracy in the Gulf of Aden. If collective security can be made to work in the years ahead, however, it will be because such a regime has taken hold and the enforcement of its norms has become the national interest of each of its participants. Collective security should be seen as a function of reciprocal expectations.[40]

The fundamental fact of maritime piracy in the Horn of Africa region is a land based challenge. Maritime piracy is most often looked at as a waterborne problem. Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as, any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed first on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.[41] This definition, though adequate for the framing of law enforcement and anti piracy activities on the Gulf of Aden, does not account for the dual challenge that characterizes maritime piracy in the Horn of

[39] Robert Keohane, 1984, 'After Hegemony: Cooperation and Discord in the World Political Economy', Princeton, Princeton University Press, p.246
[40] Boutros Boutros-Ghali, 1922,'An Agenda for Peace', New York: United Nations, p. 44.
[41] CSCE Helsinki Document 1992, p.17.

Africa. UNCLOS article 101 is focused on the symptom, the crime at sea, and not the cause, the deplorable conditions ashore.[42]

Finally, whether to engage in collective security operations, maritime piracy should be judged by no less than four criteria. First is whether in the absence of intervention, there is serious potential for wider conflict; secondly whether there is likely to be a significantly adverse impact on international norms, particularly those related to the use of force to change established frontiers. Third is whether moral considerations such as war crimes, crimes against humanity or the survival of large populations come into play and fourth is whether the survival of Somalia state is at stake. If all four of these criteria can be answered affirmatively, the case for collective security in the maritime security in the maritime region is a powerful one and difficult decisions would still be required.

In conclusion, it can be argued that, maritime piracy is connected to a number of factors that make it a desirable endeavor to pursue. Maritime piracy is encouraged by lack of lawlessness on land, the promise of economic benefits it offers and most importantly weak political organization and inefficient harmonization of interest in the international system. Considering that piracy is an activity executed in the international global commons, points to the fact that, the long term solution should be sought from a collective perspective. Hence, collective security if executed strategically, can aid to curb maritime security in the maritime region.

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[42] P. K. Ghosh, 'The Maritime Dimension', in 'Oil and Gas in India's Security', op, cit

# CHAPTER SIX

# CONCLUSIONS

Since, the beginning of this research study, a number of issues have emerged that explain the centrality of maritime security and maritime piracy in the region. The crime of maritime piracy falls under *jus cogens*. This means that, irrespective of any excuses that states may seek, they are bound to obey it. This includes ineffective political organization in Somalia which should not be regarded as an excuse by pirates to commit maritime crimes.

It emerged that maritime piracy is used up as cover for *Kaba Chori's* to conduct illegal activities. Most of these illegal activities have a bigger impact on security, economy and political of states in the region. Considering that ransom money paid to secure ships is a fraction of what Somali's in the diasporas submit. Proves the fact that the money realized from maritime piracy has a small impact on economic life of the region.

In conclusion, it emerged from the study that, maritime piracy is a major threat to security of states to the region. This agreed with the first secondary objective raised in chapter one. Maritime piracy like most conflict in the great horn of Africa region employs the use of weapons to injure, threaten and manipulate targeted victims into submission. The threat of maritime security in the maritime region emerges from two main factors; first the fact that Somalia is lawless provides ground for maritime pirates to exploit the situation at sea and extend it to land with little resistance.

Secondly, the fact that, political organization in the region as a whole is not perfectly integrated and committed to address maritime piracy provides ground for maritime pirates to maneuver and execute their plans with easy. This demonstrates that,

the data collected from the case study agrees with the second hypothesis and second objective of this study research As a result the problem of maritime piracy is exacerbated by lack of a clear guide strategy to control it. Somalia has been without a functioning government since the overthrow of Siad Barre in 1991.

The fall of Siad Barre is in part linked to the issue of maritime resources. As indicated in chapter four, Siad Barre was blamed for engaging in illegal fishing, his regime was benefiting by allowing states from some states in Europe to fish illegally in Somalia waters. Somalia has the longest coast line in Africa which also boasts of two rare species of Tuna fish that are found at the mouth of River Juba. Siad Barre used to pocket revenue that was obtained from illegal fish sells, leading to his people to plot for his down fall.

After Barre was ousted, Somalia remained without a central functioning government until fishermen realized that, some developed states were taking advantage of the lawlessness to deposit toxic waste material at Somalia coast. The fishermen formed groups to repel and protect their coast. Later on, as indicated in chapter four, when Puntland state emerged as an autonomous state, British Consortium Company was hired to train the former fishermen to be marine guards. However, since the company could not sustain these operations in Somalia, it had to wind up, leaving the trained Somalia youths with sophisticated weapons and without a source of income. In part this can be argued as the main factor that led the Somalia fishermen now trained coast guards to adopt this defiant behavior and turn to maritime piracy.

Maritime piracy is a threat to states in the region. This was the main objective of study and it was demonstrated in chapter four and five. The impact of piracy can arguably be quantified by considering its impact of maritime piracy affects key sectors of states in the region. Maritime piracy affects political, economic and social sectors. For instance,

considering that shipping line companies plying through the waters and destined to other parts of the continent often pass through the Gulf of Aden, means that most of them will be forced to change routes to avoid attacks, resulting to high cost of goods and in extreme incidences loss of capital to the states in the region. Maritime piracy is hence a threat to economic security of states in the region.

Economic effects of maritime piracy have witnessed increase in trade of contraband goods in the region. Contraband goods affect the local economies of states in the region and development of local industries in the region. When industries producing goods are affected; means that, their products will not find favorable market to compete, employment levels will be down and people previously depended on the industries for development will seek other means to make a living. The other means may force people to engage in crime thus further increasing the risk of social security among states.

As indicated in chapter four, maritime piracy in the Gulf of Aden is characterized by two issues namely taking people hostage and demanding ransom. Ransom money paid to pirates is a factor responsible for inflation of the economy in the region and at the same time a factor that encourages young men to venture into piracy. Inflation leads to increase in cost of basic commodities like food and housing. In addition, the hope that young jobless men will get a living from piracy encourages others to engage in maritime piracy and related activities. Although in chapter four it emerged that, the impact of ransom money is insignificant to causing inflation, it remains to be told that, this is true when considering inflation from a national level, however in a regional level, ransom money is a factor of inflation particularly in urban centers, where the ransom is alleged to be invested by those who benefit from sharing it.

Maritime piracy is also a threat to political security of the region. Considering that, there is lawlessness in the maritime waters has led to some individual actors from

countries in the great lakes region that are engaged in conflict, to exploit the situation and equip their armies, thus ensuring that, their militias continue to fight and are well equipped. Moreover the relationship between the conflicts in the great lakes region and the maritime region can be argued to be symbiotic. This is because; individual actors capitalize on lawlessness in the maritime region to ship in artilleries and weapons used in waging conflicts in the region. The weapons are used to secure the interests of individual actors which often are to acquire resources. In return, individuals arguably use the same channels to source out mineral resources to other parts of the world.

From the above, it then emerges that, collective security is the best approach that can be employed to manage maritime piracy. The theoretical framework suggested hence was helpful to put into context how maritime piracy can be implemented to manage maritime piracy. While maritime piracy may seem from afar as a problem emanating and limited to the region, upon close analysis it emerges that, there core basis of maritime piracy is enshrined in mystery and includes states beyond the region, particularly those that are the end users of the mineral resources.

As a result any endeavor or solution to maritime piracy must embrace collective responsibility and pursue genuine interests. Piracy in the maritime region is arguably part of the larger universal syndicate employed by criminals to carry out their activities. Much as money is laundering or drugs are trafficked. Hence focusing on maritime piracy in solitude misses the whole picture. If the war on maritime piracy is to be won, states should endeavor to analyze the menace of maritime piracy in wholesome and accord it the seriousness that it deserves. Finally, states should collectively treat maritime piracy as other illegal crimes that are recognized under *jus gentium* and approached with collective security perspective.

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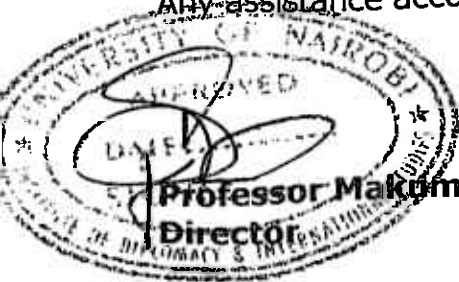**TO WHOM IT MAY CONCERN**

**Dear Sir/Madam**

**RE: HUNDUBEY MOHAMMED AHMED -  R50/75561/2009**

The above named is a bonafide registered student in M.A. International Conflict Management at the Institute of Diplomacy and International Studies, University of Nairobi.

He has completed his course work and is currently embarking on his research project.  The project title is "Piracy and Maritime Security in the Maritime Region, Case Study of Somalia".

Any assistance accorded him will be appreciated.

**Professor Makumi Mwagiru**
**Director**