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MASTERS OF ARTS IN INTERNATIONAL STUDIES

**CURBING MARITIME PIRACY IN INTERNATIONAL WATERS: A
CASE STUDY OF THE EAST AFRICAN COASTLINE**

MARTINA M. MUMANYI

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SUPERVISOR

DR KIZITO SABALA

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Declaration

I, Martina Mokeira Mumanyi hereby declare that this research project is my original work and has not been submitted for any award in any other University.

Signed Date

Martina Mokeira Mumanyi

This project has been submitted for examination with my approval as University Supervisor,

Signed Date

Dr. Kizito Sabala

Acknowledgment

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Abstract

In the 21st century, maritime piracy has become a profitable business that threaten the lives of seafarers and coastal communities, interferes with global commercial activities that rely on the transit of goods through seaways and disrupt the aquatic environment. This study looks at curbing maritime piracy in International Waters, with the East African Coastline being the case study region. The theoretical underpinning of this study is based on the assumptions of the economic rational choice theoretical that sets to explain the proliferation of piracy through the analysis of economic concepts that are relevant to understanding what drives piracy in the East African coast and further illustrate the role that the international system plays in addressing these issues globally. Data for this study was collected through key informant interviews and secondary data sources from publications and research carried out by reliable and reputable international organizations.

The study examines monetary motives, angles of religious fundamentalism, terrorism and perceived acts of nationalism and protection of territorial sovereignty as the causes of maritime piracy in the region. The study then further examines the effects maritime piracy has on the region in an attempt to fully understand the related threats associated with acts of piracy. The study examines the normative and institutional frameworks in existence to control and manage East African maritime piracy with further critical analysis of the role played by the political instability onshore Somalia.

Key recommendations based on the findings of this study are pegged on the need to formulate and implement land-based, development- oriented policies that are culturally, politically and economically sensitive. The recommendations in this research project call for the creation of political stability in Somalia, the promotion of good governance, enhancing regional corporation, providing incentives to local clans and addressing illegal, unprotected and unregulated fishing. These policies; if adopted could result in a decrease in piracy activities in the region; resulting in increased maritime security, maritime trade and consequently a rise in the development of the East African coastal countries.

List of Abbreviations

AFLC	Acute Food and Livelihood Crisis
CDA	Coastal Development Agency
CGPCS	Contact Group on Piracy Off the Coast of Somalia
CIA	Central Intelligence Agency
CIC	Coalition of Islamic Courts
DCoC	Djibouti Code of Conduct
EAC	East African Community
EU	European Union
EU-NAVFOR	European Union Naval Force
FAO	United Nations Food and Agriculture Organization
INTERPOL	International Police
IMO	International Maritime Organization
ISC	Information Sharing Centre
IUU	Illegal, Unreported and Unregulated
MEND	Movement for the Emancipation of the Niger Delta
MNC	Multi-National Corporations
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
OEF	One Earth Future
PSC	Private Security Companies
RECAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia
RDP	Reconstruction and Development Programme
RPG	Rocket – propelled grenade
SHADE	Shared Awareness and Deconfliction
SPSS	Statistical Package for Social Scientists
TFG	Transnational Federal Government
UAE	United Arab Emirates
UN	United Nations
UNCLOS	United Nations Law of the Sea Convention
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
US UNITAF	United States Unified Task Force
UNODC	United Nations Office on Drugs and Crime
UNOSOM	United Nations Operation in Somalia
WFP	World Food Programme

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Chapter One

Background and Introduction to the Study

1.0 Introduction and Background

Piracy may be historically traced to Ancient Greece over 2000 years ago, when sea robbers threatened the trading routes of Ancient Greece. Roman ships faced attacks by pirates who seized their cargoes of grain, and olive oil¹. The Vikings too were also renowned for attacking shipping and coastal settlements. Piracy as a means of economic sustenance flourished between 1620 and 1720, and this period is known as the golden age of piracy².

Piracy in basic terms may be said to consist in acts of violence done upon the ocean or unappropriated lands, or within the territory of a state through descent from the sea, by a body of men acting independently of any politically organized society³. Both The High Seas Convention and Article 101 of United Nations Convention on the Law of the Sea (UNCLOS) were crafted to present modern definitions to categorize acts of piracy. These documents define piracy as acts of violence, depredation or detention which are committed specifically for private ends on the high seas or in an area outside state jurisdiction against the crew and/or passengers of a private craft or vessel and/or persons and/or property onboard⁴. Modern Maritime piracy is therefore a crime under customary international law.

Acts of piracy threaten maritime security by endangering, in particular, the welfare of seafarers and the security of navigation and commerce. Piracy involves the loss of goods,

¹Archibugi, D.& Chiarugi, M. (2009). "*Piracy challenges global governance*". Open Democracy. <http://www.questia.com/searchglobal#!/?publicationID=4209&keywords=Piracy%20challenges%20global%20governance!AllWords&mediaType=books&pageNumber=0> (Retrieved April 9, 2013).

² Ibid

³. Oppenheim L. (1932). "Draft convention on Piracy, American Journal of International Law 26 Special Supplement, International Law: A Treatise, 8 ed. Longmans, Green. New York. p 609.

⁴ Ibid

personnel and revenue for companies around the world. A recurring trend conducted by pirates is the capture of vessels and the apprehension of the crew for ransom, resulting in financial loss for commercial liner companies and country governments as they either adhere to the demands or dispatch personnel to assist the hostages. A major concern with piracy is the illegal distribution of valuable resources which has sparked fears in the international community as it is believed that pirates may be fuelling an underground black market of arms which are finding their way to terrorist organizations such as Al Qaeda and al Shabaab.

In the in the 21st century, piracy has become a profitable business that provides revenue typically through ransoms paid by private citizens, corporations or by states. It is a persistent phenomenon as it affords high risks but is a very profitable source of income for many organized criminal groups who are looking to better their standard of living through conventional means.

1.1 Overview of the East African Coastline

Modern day pirates threaten lives, commerce and the environment as they target ships and crew transiting through international waters. The rising piracy in the Gulf of Aden not only poses a threat to global commerce, but also threatens the delivery of aid by various donor organizations to these drought prone nations. Piracy along the East African coastline threatens the economic and social development of neighbouring countries; it affects industries such as tourism, fishing, and foreign direct investment as well as adds financial and political pressure to the struggling governments of neighbouring states.

For purposes of this study, the East African Coastline region refers to the region covering the Gulf of Aden, Somali, Kenyan and Tanzanian coastline. Each mentioned State has a total sea

area of Exclusive Economic Zone of 200 Nautical Miles with a total length of coastline of approximately 16,470 km⁵.

These states share a coastline and a myriad of essential and key natural resources, forests and a variety of ecosystems which support rich biodiversity. Unfortunately, for all its natural resources, Coastal East Africa is seen to have some of the highest rates of poverty in the world.

Map1: Map illustrating the East African Coastline



The East African Coastline as an area of study is one of great significance as it has numerous variables and dynamics that are specific to the region. The political instability that has plagued Somalia for a decade largely plays a crucial part in the rise and development of piracy in

⁵ Anderson, J. L. (1995). Piracy and World History: An Economic Perspective on Maritime Predation. A journal of World History, Vol. 6, No.2 Pp 175-199

the region. Unlike regions like South East Asia and Western Africa, piracy in East Africa is not entirely driven by monetary motives but has angles of religious fundamentalism, terrorism and perceived acts of nationalism and protection of territorial sovereignty. It is the combination of these variables that make the address of piracy in the region a challenging endeavour as a “one-size- fits- all” counter piracy policy would not suffice. It is therefore the aim of this research to investigate and recommend the implementation of land based sustainable policies that can be employed in Somalia and neighbouring countries as effective counter piracy measures.

1.1.2 Problem Statement

Piracy in the Gulf of Aden, off the Horn of Africa and in the Indian Ocean is undermining international humanitarian efforts in Africa and the safety of one of the busiest and most important maritime routes in the world – the gateway in and out of the Suez Canal. Maritime Piracy off the Eastern coast of Africa became rampant with the fall of Siad Barre’s Somali regime in 1991. There followed two decades of civil war leaving Somalia a “failed state” as inter clan warfare raged on throughout the country. As a response to the prevalence of maritime piracy, in 1948 a United Nations international conference in Geneva adopted a convention formally establishing International Maritime Organization⁶. The organization is mandated to provide a platform for cooperation among governments in the regulation of all matters relating to shipping, international trade; maritime safety, sustainable uses of aquatic resources and the protection of the oceans and marine life.

After the September 11, 2001 terrorist attacks on the United States, Piracy particularly along the Gulf of Aden has been of significant international concern as terrorist groups are

⁶ IMO (2010). “Piracy and armed robbery against ships”.
<http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Default.aspx> (accessed March 27, 2014)

believed to be sourcing finance through these means. Inter-agency interventions, both internationally and regionally have provided a baseline on which to combat maritime piracy.

However, despite the various efforts and interventions made by the International Organizations, piracy along the East African coast has continued to persist. This raises the question as to how effective international organizations, conventions and interventions on maritime security are in combating piracy particularly in along the East African Coastline. Are these interventions sustainable and if not what are the alternatives to these mitigation strategies?

1.2 Research Objectives

The overall objective of this study is investigate how to deal with the problem of Maritime Piracy in International Waters.

1.3 Specific Objectives

The research addresses the following specific objectives:

- 1.3.1** Establish the causes and effects of maritime piracy along the East African Coastline.
- 1.3.2** Examine the normative and institutional frameworks on the control and management of maritime piracy along the East African coastline.
- 1.3.3** Critique the impact of land-based interventions in sustainably curbing piracy in Somalia.
- 1.3.4** Make policy recommendations on sustainable solutions to piracy in the region.

1.4 Research Questions

- 1.4.1** What are the causes and effects of maritime piracy along the East African Coastline?

1.4.2 What are the strengths and weaknesses of the normative and institutional frameworks on the control and management of maritime piracy along the East African coastline?

1.4.3 What are the impacts of land-based interventions in sustainably curbing piracy along the East African coastline?

1.4.4 Are there any recommendations that can be made to inform policy formation of sustainable long term solutions to piracy in the region? Consider what are the recommendations for sustainable solutions to piracy in the region?

1.5 Hypotheses

In order to investigate the objectives and the research questions contained herein this study sets two hypotheses:

1.5.1 Political Instability in Somalia has contributed significantly to the rise of maritime piracy along the East African coastline.

1.5.2 Weaknesses in the counter piracy measures largely explain the recurrence of maritime piracy along the East African coastline.

1.6 Justification and Significance of the study

1.6.1 Academic Justification

The study shall provide academic research to the existing data on maritime piracy along the East African coastline. This research data will be beneficial to future researchers and scholars pursuing studies in the same field.

The study shall provide data on areas of sustainable engagement in Somalia as a means to curb maritime security; an area which few scholars have ventured into effectively bridging the gaps in academic literature.

The study shall bridge the gaps between short term counter piracy measures and provide academic backing for the use of long term developmental policies for the region as a means to curb maritime piracy.

1.6.2 Policy Justifications

The study will suggest solutions to curb maritime piracy in the region. This study will inform the formulation of tailor- made strategies that are culturally, politically and economically suited to address the rapidly developing piracy industry along the East African coastline.

Recommendations drawn from this research shall inform long term policies geared at developing investment strategies that would ultimately see a decrease in piracy activities in the region; resulting in increased maritime security, maritime trade and consequently a rise in the development of these countries.

1.7 Literature Review

The problem of maritime piracy is age-old and ever recurrent. Pirates are well known world over to be a symbol for menace and lawlessness. Historical records from over 2,000 years ago indicate that early civilizations such as the Greek and Romans, dealt with piracy. In a historical account, Julius Caesar was ransomed by pirates, whom he returned to crucify. Ancient Egyptian records also tell of a similar story where Cyprus was attacked by Lukkan pirates⁷.

The Golden age of piracy was between 1620 and 1720, where Piracy was authorized by governments through “privateering” that encouraged pirates to attack and plunder ships from other nations then share their profits with their respective governments⁸. Life on merchant ships during this era was harsh as sailors were often underpaid leading honest sailors to turn to a life of

⁷Anderson, J. L. (1995). Piracy and World History: An Economic Perspective on Maritime Predation. A journal of World History, Vol. 6, No.2 p 34

⁸ Forsythe, David P. (2009). "*Encyclopedia of Human Rights, Volume 1*". Oxford University Press. p. 464.

piracy where they would receive a portion of the plunder and would have no national laws to abide by.

Periodically piracy has been suppressed but never entirely eliminated or addressed wholly. Piracy has moved cyclically throughout each historical era with sporadic spates of small attacks escalating to larger, more coordinated and severe attacks, this in turn provokes a reaction led by most typically by the navy of a hegemonic power with the most to lose from a disruption in international trade.

Modern day Piracy may be said to be prevalent in Southeast Asia, The East African coastline and Western Africa. The increase of Piracy in Southeast Asia was sparked by the growth of international commerce, especially seaborne trade. Today, 80 percent of the world's trade is transported by sea; with more than 46,000 merchant vessels ply the seas. A large portion of the United States imported goods come from Asia with Japan, South Korea and China being the largest exporters of goods. As China's economy exploded in the 1990s, increasing almost fivefold from 1990 to 2000, so did piracy as the number of targets available to the modern-day buccaneers in the Strait of Malacca and Indonesian waters.

In the East African context, Somalia's geographical and political variables have enabled piracy to thrive in the region. The geographical location of Somali makes it an ideal area for piracy as it has 1,880 miles of coastline where onshore local communities are willing to grant pirates refuge from maritime authorities. The Coastline also has the advantage of being in close proximity to the Gulf of Aden where 20,000 ships as well as oil tankers carrying 12 percent of the world's annual oil production transit annually⁹.

⁹ International Maritime Organization (2012). "International Shipping Facts and Figures – Information Resources on Trade, Safety, Security and Environment". Maritime Knowledge Centre. p. 27

In 1991 the authoritarian government of Siad Barre collapsed after having been in control of the clan-based country for 22 years. In the midst of such grave turmoil, it is not surprising that piracy thrives as a way of life¹⁰. In the early 1980s, prior to the outbreak of Somali civil war, the Somali Ministry of Fisheries and the Coastal Development Agency (CDA) launched a development program focusing on the establishment of agricultural and fishery cooperatives for artisanal fishermen¹¹. It also received significant foreign investment funds for various fishery development projects, as the Somali fishing industry was considered to have a lot of potential owing to its unexploited marine stocks. However after the collapse of the central government and ensuing civil war, the Somali Navy was disbanded and with it the territorial waters of Somalia were left undefended and vulnerable to external threats.

Somali narratives of the Post 1991 environment and the development of piracy in the region are based on three broad categories. There are those who fall into the “coast guard” narrative, the “empty sea” narrative and the “anger” narrative¹². In a country with little commerce, the profits obtained through extortion by pirates are a significant source of revenue for coastal communities. Consequently, there are numerous safe havens providing vital support to the pirates. The well-known ports for this are Eyl, Hobyo and Xaradheere all of which are in the break-away province of Puntland. Experts believe that the pirates have approval from the Puntland government to operate in this region as they operate in these towns with considerable impunity.

¹⁰ Bueger, Christian, (2012)“Practice, Pirates and Coast Guard: Reconstructing the Grand Narrative Somali Piracy,” unpublished paper.
http://www.academia.edu/2089360/Practice_Pirates_and_Coastguards_The_Grand_Narrative_of_Somali_Piracy (accessed April 1, 2014).

¹¹ Geiss R and Petrig A. (2011). Piracy and Armed Robbery at Sea: *The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden*”. Oxford University Press, p 27

¹² Bueger, Christian, (2012)“Practice, Pirates and Coast Guard: Reconstructing the Grand Narrative Somali Piracy,” unpublished paper,
http://www.academia.edu/2089360/Practice_Pirates_and_Coastguards_The_Grand_Narrative_of_Somali_Piracy (accessed April 1, 2014).

Unlike the pirates of Southeast Asia who commit acts of petty theft, low level armed robbery, long term ship seizures, hijackings and ship theft; Somali Pirates confine themselves to taking hostages and asking for ransoms. Reported incidents of piracy along the East African coastline were reported to have increased from 61 in 2008 to 222 in 2009. A total of 48 vessels were hijacked and 4 crew members were killed.¹³ In the East African region, Kenya and Tanzania are particularly affected by the effects of piracy. According to the IMO, many of the piracy attacks reported in these countries are actually committed by Somali pirates operating further and further from their territorial waters. Pirate attacks as with the *Sirius Star* was captured off the Kenyan coast while the *Maersk Alabama* was attacked en route to Mombasa; proving that pirates can now sail as far as 250-400nm away from coastlines to launch attacks.

Piracy and armed robbery against ships off the Somali coast is an increasing concern not only for the maritime industry but for most African countries as it threatens global seaborne trade and maritime economic activities for African countries on the East coast of the continent. Maritime piracy has had a negative impact on the cost of shipping and related activities, tourism and fishing. Maritime piracy also imposes direct costs on humanitarian assistance and has an impact on maritime economic activities such as oil production and cost of energy, insurance and shipping costs, tourism and fishing. Maritime piracy impedes the delivery of relief aid necessary to sustain and nourish a substantial part of the population in Somalia and neighbouring East African states. Reports by the World Food Programme show that more than 2.6 million people in Somalia were dependent on food aid in 2008; presently the number now stands at 3.25 million people. The food aid required to assist Somalia's starving population arrives by sea. The WFP reported that in 2007 the number of ships willing to carry food to Somalia had been cut down to

¹³ Zogg D.M. (2009). "Why the US navy should not be fighting piracy off Somalia". Navy War College, Newport, R.I.

half as a result of the increased dangers faced by humanitarian relief vessels along the East African coastline¹⁴.

Threats to the energy sector as a result of maritime piracy in the region are an area of concern as witnessed by the November 2008 hijacking of the Sirius Star carrying two million barrels of crude oil worth approximately \$ 100 million. This was the largest oil tanker to be seized by pirates held for two months until its release two months later. The attack raised concerns as this was the largest energy ship ever hijacked. The nature of the cargo was an especially sensitive issue as the hijacking was viewed as an escalation in the goals, ambitions and motivations of the pirates¹⁵.

Best practices methods by shipping vessels such as re-routing oil tankers is an especially expensive venture as an additional 2,700 miles is added to each voyage translating to an additional cost of \$3.5 million per annum in fuel levies; impacting the costs of shipping and accessing imported raw materials and oil.¹⁶ Maritime piracy also imposes significant costs on local fishing economies. A report by the International Maritime Organization notes that pirates attacked tuna vessels at least thrice in 2009. The attacks on fishing vessels have prompted many to avoid some of the richest fishing spots in the Indian Ocean. The dwindling catches have raised concerns that Kenya and Somalia could face economic problems related to their fishing industries. The threat of piracy has also led to a reduced number of cruise ships that contribute to the tourism economies of Kenya and Tanzania. Ships that once docked in Mombasa and Dar es Salaam no longer do so as a result of the threat of hijacking and kidnappings by pirates.

¹⁴ World Food Programme (2007). “*Coordinated action urged: piracy threatens UN lifeline to Somalia*”. WFP report 7 October 2007. <http://www.wfp.org>

¹⁵ Chalk, Peter (2008). *The Maritime Dimension of International Security: Terrorism, Piracy and challenges for the United States*. Santa Monica: RAND Corporation.

¹⁶ Akinsanmi, G. (2010). “*Nigeria: a nation loses N25bn to piracy and sea robberies*”. All Africa Report. http://allafrica.com/nigerian_piracy_dilemma

In an effort to address piracy, the international Chamber of Commerce established the International Maritime Bureau in 1981 whose mandate was originally the countering of maritime fraud; it soon started working to counter other types of maritime fraud such as piracy¹⁷. In November 1983 the International Maritime Organization adopted a resolution that urged governments to “take, as a matter of the highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery against ships in or adjacent to their waters, including strengthening of security measures.” The resolution dubbed “measures to prevent acts of piracy and armed robbery against ships” also requested nations to report incidents of piracy to the International Maritime Organization with this measure, piracy achieved visibility at the international level.

The contemporary and conventional prerequisite towards combating piracy globally lies ultimately with the expansion and modernization of a state’s naval capabilities. This form of military spending raises regional concerns as threats of a naval arm race begin to emerge. Outside the scope of state resources and mitigation policies is the utilization of private companies employed by commercial and private vessel owners to travel on board as security measures to deter any acts of piracy attempted on these vessels. These companies, commonly known as Private Security Companies (PSCs) have grown in number especially after the September 11 attacks that foreshadowed the likely incidence of possible maritime terrorist attacks. In an attempt to address piracy off the East African Coast, the International Maritime Organization began implementing an anti-piracy project, a long-term project which began in 1998. Phase one consisted of a number of regional seminars and workshops attended by Government representatives from countries in piracy-infested areas of the world; while phase

¹⁷ Chalk, Peter (2008). *The Maritime Dimension of International Security: Terrorism, Piracy and challenges for the United States*. Santa Monica: RAND Corporation p. 44

two consisted of a number of evaluation and assessment missions to different regions¹⁸. IMO's aim has been to foster the development of regional agreements on implementation of counter piracy measures as opposed to strategies implemented at international level.

Regional cooperation among States has an important role to play in solving the problem of piracy and armed robbery against ships, as evidenced by the success of the regional anti-piracy operation in the Straits of Malacca and Singapore. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (RECAAP), which was concluded in November 2004 by 16 countries in Asia, and includes the RECAAP Information Sharing Centre (ISC) for facilitating the sharing of piracy-related information, is a good example of successful regional cooperation which IMO seeks to replicate elsewhere¹⁹. United Nations (UN) Secretary General, Ban Ki-moon in an address in the UN Chronicle on "Piracy in Somali Waters: Rising attacks impede delivery of humanitarian assistance" (2010)", noted that "piracy is having a devastating effect on regional economies, especially for countries such as Kenya; which in turn translates to economic instability throughout the East African region as the country is the regions hegemony"²⁰.

In a move to address the impact of piracy on the coast of Eastern Africa, in 2010 the International Maritime Organization, through the United Nations Office in Nairobi hosted an international conference on piracy, to which it invited representatives from a range of countries with an interest in the Gulf of Aden. The conference discussed ways in which piracy on the East African coastline may be combated. According to the Second Counselor for Political Affairs in

¹⁸ IMO (2010). "Piracy and armed robbery against ships".. Op.Cit. (accessed on March 27, 2014)

¹⁹ Archibugi, D. and Chiarugi, M. (2009). Op.Cit. (Accessed April 9, 2013)

²⁰ United Nations Chronicle (September 2010). *Piracy in Somali Waters: Rising attacks impede delivery of humanitarian assistance*". UN Chronicle (United Nations Department of Public Information, Outreach, Division) p.

the Foreign Ministry, Anthony Safari,²¹ the main purpose of the conference was *'to formulate a strategy to fight piracy that has contributed to the escalating lawlessness in Somalia'*²². This event illustrates the rising importance countries in East Africa attach to the instability caused by piracy. The formulation of a regional strategies to counter piracy as opposed to international intervention have been encouraged, particularly by the Inter-governmental Agency on Development as this will certainly increase the possibilities for successful implementation of these strategies and improve bilateral and multilateral initiatives, building also on the experience of past failures by international interventions.

Combating piracy on a regional scale poses numerous challenges. The first notable challenge is the nuance of judicial codifications that pose limitations to security agencies that may be mobilized to curb piracy. The definition of piracy itself as written in the UNCLOS and the 1958 High Seas Convention provides a basis to which limitations are projected. The classification of piracy as an act committed “for private ends” can be subject to interpretation. Similarly, the numerous classifications that limit territorial boundaries at sea also create a challenge in the address of maritime piracy. Pirate attacks in international waters are actually not considered pirate attacks rather are relegated by the International Maritime Organization as Armed Robbery against Ships²³. The enforcement jurisdiction to all States in international waters does not extend to pursuing private vessels into the territorial sea of another State. It is such limitations in the Rule of Law that have allowed pirates in Somalia and Southeast Asia to evade search and destroy counter piracy measures employed by state actors.

²¹ Chalk, Peter (2008) Op Cit. p. 57

²² IMO (2010). “Piracy and armed robbery against ships”. Op. Cit.

²³ Guifoyle, D. and Warbrick C. (2008). ‘Piracy off Somalia: UN Security and Council Resolution 1816 and IMO Regional Counter-piracy efforts’ in International and Comparative Law Quarterly. Pp 691-694

Other factors that are a hindrance to the combat of Piracy are the lack of resources, adequate equipment and personnel. A shortfall of trained crew and shipping vessels to adequately patrol vast areas of waterways creates an easy opportunity for pirates to carry out their raids with impunity. According to the High Seas Convention and the UNCLOS, the responsibility to ensure security falls into the hands of the nearest legitimate State, however some States abscond from their duties forcing neighbouring states to rise up to the occasion and step in as the authority.

Despite the best intentions, international agreements surrounding the prosecution of pirates, which criminalizes piracy, have failed. A lack of adequate resources and expertise, and poor understanding of the procedural and evidentiary requirements of international maritime law has posed a substantial challenge for East African states in combating maritime piracy. There is therefore a need to focus on more strategic engagement with regional and international partners on the formulation and implementation of a robust anti-piracy strategy²⁴.

In January 2009, an important regional agreement was adopted in Djibouti by States in the region, at a high-level meeting convened by IMO. The Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden which recognizes the extent of the problem of piracy and armed robbery against ships in the region and, in it, the signatories declare their intention to co operate to the fullest possible extent, and in a manner consistent with international law, in the repression of piracy and armed robbery against ships²⁵.

The signatories commit themselves towards sharing and reporting relevant information through a system of national focal points and information centres; interdicting ships suspected of

²⁴ Forsythe, David P. (2009).Op. Cit p. 457.

²⁵ IMO (2010). “*Piracy and armed robbery against ships*”. Op. Cit.

engaging in acts of piracy or armed robbery against ships; ensuring that persons committing or attempting to commit acts of piracy or armed robbery against ships are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to acts of piracy or armed robbery against ships, particularly those who have been subjected to violence.

A significant component of the long term strategy to counter-piracy originating in Somalia is the attempt to find regional solutions to the problem. The idea is to build a regional maritime security infrastructure which can cope with the menace in the long run²⁶. The Djibouti Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden and the Red Sea areas process (or in short: Djibouti Code or DCoC,) steered by the International Maritime Organization (IMO) has been making slow but steady progress to build such an infrastructure. Implemented as a largely technical structure on an expert level the process has led to some tangible outcomes. The DCoC process is and arguably will be crucial to address piracy in the long run.

The reviewed literature indicates the gap in the management strategies of piracy along the East African coastline. The current policies aim at mitigating the effects of piracy rather than provide long term sustainable policies that would address maritime piracy in the region permanently. The study therefore would make a case to support regional development and investment intervention strategies rather than the “one- size- fits- all mitigation” approach to Piracy along the East African coastline

²⁶ Marley David F. (2011). “*Modern Piracy: A Reference Handbook*”. *Contemporary World Issues Series*”. ABC-CLIO. Pp 76-77

1.8 Theoretical Framework

This study uses the economic rational choice theoretical framework to explain the proliferation of piracy in the East African coast and further illustrate the role that the international system plays in addressing regional issues, in this case piracy in East Africa. The Economic Rational choice theory will allow analysis of economics concepts that are relevant to understanding what drives piracy. Concepts such as supply and demand, costs and benefits may be critical in illustrating what motivates pirates particularly off the East African coast. The rational choice theory holds that people will engage in crime after weighing the costs and benefits of their actions to arrive at a rational choice about motivation after perceiving that the chances of gain outweigh any possible punishment or loss. Criminals must come to believe their actions will be beneficial -- to themselves, their community, or society -- and they must come to see that crime pays, or is at least a risk-free way to better their situation²⁷.

Therefore, this study shall use this theory to justify the need for sustainable development policies to be employed in the East African region as a means to ensure that there are no unfulfilled achievements that would drive marginalized communities to engage in acts of Maritime piracy.

1.9 Research Methodology

1.9.1 Data Collection

Primary data for this research was collected through the use of interviews targeting key informants such as scholars, researchers, journalists and military personnel who have been directly involved in interventions in the region and thus have amassed a wealth of knowledge on the efforts to curb piracy along the East African Coastline.

²⁷ Cohen, L. & Marcus F. (1979). "Social Change and Crime Rate Trends: A routine activities approach." *American sociological review* 44. Pp 588-608

This study also employed broadly the use of secondary data. This data shall be collected through: Publications such as journals, research papers, policy papers and newspaper articles. These sources will provide a bulk of the data collected as extensive research on the causes and effects of piracy along the East African coastline exists.

1.9.2 Data Analysis

The study made use of both qualitative and quantitative data analysis methods. The use of information such as censuses, and other statistical information on piracy along the East African coastline provided the necessary quantitative data that once analyzed provided the necessary data to draw conclusions on whether existing policies to curb piracy in the region have been effective and to what extent are they sustainable.

1.9.3 Data Presentation

Data collected is presented in the form of report and interview narratives throughout the chapters of this research. Interview respondents who chose to remain anonymous are classified using the classification style “R001, R002 and so forth”.

1.10 Chapter Outline

This have five chapters:

Chapter One: Background and Introduction to the Study

This introduces the study by first situating the problem of piracy within the international political and economic system. The chapter contains the statement problem, research questions, and objectives including hypotheses of the study. Within this chapter there is a section on justifications for the study focusing on the contribution of the work both to academia and policy makers. This section is thereafter followed by a brief literature that reviews works on the question of piracy generally at the global level but specifically on the gulf of Eden and the

coastline of Somalia. A discussion on the theoretical framework used to analyse the issues under investigation is also provided in this chapter as well as the research methodology that explains the means that data will be collected analysed and finally presented.

Chapter Two: The Causes and Effects of Maritime Piracy along the East African coastline.

This chapter of the research looks at the causes of maritime piracy along the East African coastline. It traces the cause of piracy to the political instability in Somalia which resulted in poverty and the need for native Somalis to seek new sources of income. It also looks at the Somali fishermen's narratives that justify piracy as an act of nationalism against foreign exploitation of Somali seas and oceanic resources. This chapter proceeds to then look at the vast number of consequences relating to acts of piracy in the region. Some of these include reduced economic growth in neighbouring countries owing to low rates of tourism, fishing and increased costs of importation of goods.

Chapter Three: A Critique of the Normative and Institutional Frameworks against maritime piracy along the East African coastline.

This Chapter focuses on the normative and institutional frameworks set in place by the international community as a means of combating maritime piracy along the East African coastline. The chapter looks at intervention strategies employed by various International Organizations such as the International Maritime Organization, the United Nations Security Council, the North Atlantic Treaty Organization, the African Union and the East African Community. By looking at the various intervention strategies employed by these organization, this chapter critiques the impact that these interventions have had on reducing and addressing maritime piracy in Somalia and ultimately along the East African Coastline.

Chapter Four: Somalia as a factor in the increase of piracy acts along the East African coastline.

This chapter provides an in-depth look into Somalia as being the root cause of maritime piracy and regional insecurity. The chapter is dedicated to understanding the political, social and economic environment in Somalia that cause piracy in the region to be the highest of any. Through understanding these factors, the chapter then proceeds to look at the land-based solutions to addressing the concern of piracy in the long term rather than using the existent reactionary counter piracy measures.

Chapter Five: Summary, Conclusion and Recommendations for creation of sustainable policies that will address piracy along the East African Coastline.

The final chapter of this thesis summarizes concludes and recommends based on the data obtained in chapters 2, 3 and 4. Using these conclusions, the chapter makes recommendations on the sustainable policies that could be formulated and adopted by both local governments in East Africa as well as those of the international community that would address maritime piracy along the East African Coastline.

Chapter Two

Causes and Effects of Maritime Piracy

2.0 Introduction

The causes of piracy are vast, diverse and region specific as are the consequences. This chapter looks at the causes and effects of maritime piracy. It shall trace the historical evolution of piracy in the regions it is most prevalent in, looking at the motivations for piracy through the decades. This chapter then narrows in on the causes and effects associated with the increased rate of maritime piracy along the East African Coastline. Factors such as the political instability in Somalia, poverty, foreign exploitation of the East African Coast and nationalism shall be discussed in-depth and their resultant consequences will be outlined throughout this chapter.

2.1 Causes and Effects of Piracy in selected regions

Periodically piracy has been suppressed but never entirely eliminated or addressed wholly. Piracy has moved cyclically throughout each historical era with sporadic spates of small attacks escalating to larger, more coordinated and severe attacks, this in turn provokes a reaction led by most typically by the navy of a hegemonic power with the most to lose from a disruption in international trade.

Looking at piracy through a regional lens, piracy off West Africa has been driven by political and social grievances. In the Gulf of Guinea, many hijackings target oil tankers, with pirates seizing the oil and then selling it for a profit on the black market. There is evidence that Nigeria's rebel Movement for the Emancipation of the Niger Delta (MEND)--which has

pressured the Abuja government to more equitably allocate oil revenues--has been involved in attacks on oil tankers off the coast²⁸.

In Southeast Asia, piracy has focused on the ransacking of cargo fishing products. Incidents of Piracy in the region have been mainly off Indonesia with a larger number of documented attacks taking place in the Malacca Strait, through which 30 percent of the world's trade and half of the world's oil shipments pass²⁹. The increase of piracy in Southeast Asia was sparked by the growth of international commerce, especially seaborne trade. Today, 80 percent of the world's trade is transported by sea; with more than 46,000 merchant vessels ply the seas. A large portion of the United States imported goods come from Asia with Japan, South Korea and China being the largest exporters of goods. As China's economy exploded in the 1990s, increasing almost fivefold from 1990 to 2000, so did piracy as the number of targets available to the modern-day buccaneers in the Strait of Malacca and Indonesian waters.

Southeast Asia is home to one of the world's most important chokepoints- the Malacca Strait. More than 50,000 ships which make up 25 percent of the world's shipping transit through the strait each year³⁰. Virtually all of the oil delivered to Japan and China and South Korea, 10.3 million barrels of oil pass through the strait each day³¹. Moreover, it is estimated that 10,000 boats fish on the strait each day while an additional 80,000 people cross the strait daily on their business thus making the strait a fertile hunting ground for pirates.

The Phillip Channel and Singapore Strait which separate Malaysia and Singapore from Indonesia's Riau Archipelago are rife with piracy as well. Political conditions facilitate piracy in

²⁸ IRIN NEWS (2014). "*Guns out of Control: the continuing threat of small arms*". IRIN NEWS: Humanitarian News and Analysis Publication.

²⁹ Johnson, Derek (2005). "*Piracy in Southeast Asia: Status, Issues, and Responses Volume 1 of IIAS ISEAS series on maritime issues and piracy in Asia.*" *IIAS/ISEAS series on maritime issues and piracy in Asia*. International Institute for Asian Studies, Institute of Southeast Asian Studies. p. 58

³⁰ Chaikin, Greg (2005). *Op. Cit.* p 125.

³¹ Greshman, John. (2002). "*Is Southeast Asia the Second Front?*" *Foreign Affairs*, Vol. 81, No. 4 (Jul- Aug) p.69.

Southeast Asia that requires cooperation between states to counter. Such cooperation is not always forthcoming as issues of sovereignty come into play. Pirates operating from one nation can, within minutes cross into the territorial waters of another country, attach a ship, and flee back into their home waters free from pursuit by maritime law enforcement officials from the victim state³².

Piracy continues to flourish in Southeast Asia because the brigands have secure sanctuaries among the many islands of Indonesia. Pirates that prey on the Phillip Channel and Singapore Strait are based in Batam. During the economic boom of the 1980s, tens of thousands of Indonesians flocked to the island looking for work. When the bubble burst, many lost their jobs and turned to criminal activities such as piracy as a means to make a living. In the Malacca Strait, the primary culprits are brigands operating out of the Sumatran province which has been wrecked by a separatist insurgency for a number of years, making it an area ripe for piracy³³. Thus in both areas three conditions necessary for piracy to exist, these are- geographical location, political instability and safe havens.

2.2 Somalia and Piracy along the East African Coastline

Piracy in Somalia came up in 1991 when the Somali Democratic Republic collapsed during the civil war outbreak leaving the Somali coastline unprotected and vulnerable to foreign fishing vessels that began poaching and over exploiting the regions vast aquatic resources. Somalia has often been described as a ‘failed state’³⁴ this description stems from the understanding of what exactly statehood entails. A state can be defined as the expanse and consolidation of territorial and demographic domain under a political authority, including the

³² Ibid

³³ Young, Adam J. (2007). Op. Cit. p. 134

³⁴ International Crisis Group (2002). “*Somalia: countering terrorism in a failed stat*” *Issue 45 of ICG Africa report*”. International Crisis Group

imposition of order on contested demographic space³⁵. The political authority is expected to meet the basic needs of the larger majority or their people. The state begins to fail when it becomes consumed by internal violence and cease delivering positive political good to its citizens. This leads to political authority losing credibility among people. It is the state's ability to effectively deliver the most crucial political goods that determine whether the state is strong, weak, failed or even collapsed. It is worthy to note that the cause of piracy in Somalia stems from the historical political governance structures that had many negative consequences of the country's history.

The 1884 Berlin Conference granted the Southern portion of modern-day Somali to Italy, and the Northern region, also known as the Puntalnd region, was granted to Great Britain. But in 1960, due to political pressure and instability, both countries gained independence and were conjoined – albeit with borders drawn by England and Italy, a major contributing factor to Somalia's current lack of political unity³⁶. In 1969, after two presidential administrations with strong ties to European interests, Major General Mohamed Siad Barre led a military *coup d'etat*, plunging Somalia into communist rule.

The government of Siad Barre collapsed after having been in control of the clan-based country for 22 years. Without a replacement, Somalia unraveled into a lawless society where clan-based militias pitted themselves against one another in a long standing intra state war. In March 1995, the Transnational Federal Government (TFG) of Somalia was formed that remotely run the government. In June 2006, a collection of Islamist groups banded together as the Coalition of Islamic Courts (CIC) and took control over two thirds of Somalia³⁷. The CIC was only in power for six brief months but managed to use strict Sheria laws to crack down on pirates

³⁵ Ibid

³⁶ U.S. DOS. "Somalia - Profile." *U.S. Department of State*. February 13, 2011. http://www.asylumlaw.org/docs/somalia/usdos00_somalia_profile.pdf

³⁷ Stevenson, Johnathan (2007). *Op. Cit.* p 5

who they believed had been operating under the protection of the secular warlords of the TFG. African Union troops in support of the Transitional Government continue to fight the Islamist Al-Shabaab Youth Movement, which controls a large portion of Southern Somalia. Adding to the instability are the self-proclaimed autonomous states of Puntland and Somaliland, both of which are located in the North.

In the early 1980s, prior to the outbreak of Somali civil war, the Somali Ministry of Fisheries and the Coastal Development Agency (CDA) launched a development program focusing on the establishment of agricultural and fishery cooperatives for artisanal fishermen³⁸. It also received significant foreign investment funds for various fishery development projects, as the Somali fishing industry was considered to have a lot of potential owing to its unexploited marine stocks. However after the collapse of the central government and ensuing civil war, the Somali Navy was disbanded and with it the territorial waters of Somalia were left undefended and vulnerable to external threats.

Shipping vessels from other countries began charting the unprotected Somali seas dumping along toxic waste that would wash up ashore and have devastating health and environmental consequences. Aggrieved Somali fishermen made appeals to the international community for assistance and redress of the matter but little, to no significant action was taken. The local fishermen took arms and began attacking commercial vessels as an attempt to protect Somali waters and ultimately Somali sovereignty. With the rise in attacks of commercial ships, the international community interest was sparked and efforts to curb these attacks made. These counter attack measures further angered Somali nationals and militia soon joined forces with the fishermen, creating a conducive environment for what is now described as the Somali Pirate

³⁸ Geiss R and Petrig A. (2011). Piracy and Armed Robbery at Sea: *The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden*". Oxford University Press, p 27

region. After seeing the profitability of ransom payments, some financiers and former militiamen later began to fund pirate activities and splitting the profits evenly with the pirates. The realization of the enormous economic returns gained from piracy enabled it to become a thriving industry in and of itself.

Somali narratives of the Post 1991 environment and the development of piracy in the region are based on three broad categories. There are those who fall into the “coast guard” narrative, the “empty sea” narrative and the “anger” narrative³⁹. According to the first narrative, piracy plays a state like security role protecting the Somali Coastline that has for decades been stripped off its riches by foreigners engaging in Illegal, Unreported and Unregulated (IUU) fishing and dumping of toxic waste by Multi-National Corporations. The “empty seas” narrative speaks similarly to the “coast guard” narrative whereby piracy is viewed as the only viable economic activity that Somali fishermen can engage in as their shorelines have been polluted and plundered by foreigners. The final narrative is one of anger resulting from frustration and stress. It is the emotional response by Somali fishermen to the “*violation of Somalia’s national dignity*”⁴⁰.

Somali pirates therefore portray themselves as the nation’s unofficial coast guard, fighting against illegal fishing and waste dumping by foreign corporations. These accusations are actually quite legitimate. The United Nations estimates that illegal fishing companies from Europe and Asia rob Somali coastlines of over \$300 million a year, mostly in the pursuit of yellow tuna⁴¹. In addition, a 2005 UN Environmental Report highlighted a long history of illegal

³⁹ Bueger, Christian.(2012), “*Practice, Pirates and Coast Guard: Reconstructing the Grand Narrative Somaili Piracy*,” unpublished paper.
http://www.academia.edu/2089360/Practice_Pirates_and_Coastguards_The_Grand_Narrative_of_Somali_Piracy (accessed April 1, 2014).

⁴⁰ Ibid

⁴¹ Gill, Sharon (2011). “*Maritime Piracy Costs Global Community up to \$12 Billion a Year.*”*Eyefortransport | News, Analysis & Events.*

dumping off the coast of Somalia, most notably from “Ndrangheta”, an Italian criminal organization. According to the report, it costs European companies \$2.50 to dispose of one ton of waste off the horn of Africa, as opposed to \$250 a ton to dispose of such material cleanly in Europe⁴². The profit of piracy, estimated at just under \$300 million in 2010⁴³, sustains its growth and internal support. Ports and towns along the Gulf of Aden have benefited enormously from pirate activity, making it a significant part of Somalia’s informal economy. Haradheere, a small port town on Somalia’ East coast, even has a twenty-four hour stock exchange – members of the community contribute weapons, funding and soldiers, and receive a portion of the ransom money in return. But support goes far beyond domestic communities. Somali refugees as far as Canada and the United States contribute money to the cause, in addition to financial backing from sources in Saudi Arabia, Dubai, Yemen and Al Qaeda⁴⁴. Thus what was once a disjointed group of Somalis reacting to illegal fishing and offshore waste dumping has turned into an organized and internationally funded operation.

This opportunity for wealth, unrivaled in Somalia’s informal economy, drives the expansion and local support of pirate organizations. The requested sums of ransom money, often in the millions, trickle down through the entire local economy. A UN report based on interviews in Eyl constructed a rough example of how the profits are distributed: 30% to those involved in the hijacking, 10% to the ground militia who control the area, 10% to local community elders and officials, 20% to financiers and 30% to sponsors⁴⁵. In addition, the family of any pirate killed in action receives significant compensation, and the first pirate to board the target ship usually gets a double share of the profits.

⁴² Ibid

⁴³ World Bank (2013). “*The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*”. World Bank. p. 23

⁴⁴ Daniels, Christopher L. (2012). “*Somali Piracy and Terrorism in the Horn of Africa*”. Scarecrow Press. Pp .88-94

⁴⁵ Harding, Andrew (2009). “*Postcard from Somali Pirate Capital*.” *BBC News*. (Accessed on May 4, 2014).

Though it is a lucrative endeavour for the pirates and those involved, these pirates push global trade costs up by billions of dollars per year and severely affect the economic activities of neighbouring countries. A report by the World Bank entitled “ Pirates of Somalia: Ending the Threat, Rebuilding a Nation” highlighted that the increased costs in global trade arise from shippers being forced to change trading routes, sending on soaring fuel bills, as well as paying higher insurance premiums and security bills for guards on board.

Although hijackings in the region have dropped significantly since last year, piracy could still cost the global economy an estimated \$18 billion annually⁴⁶. Maritime piracy has been on the rise off the coast of Somalia for much of the past decade as large-scale attacks off the coast of Somalia in 2008 prompted the deployment of an ongoing international coalition of navies to the Gulf of Aden. A report by One Earth Future's Oceans Beyond Piracy initiative estimated Somali piracy's impact on the global economy to be \$7 billion for 2011, the most detailed estimate to date. A previous report by OEF estimated the global cost of piracy for 2010 to be in the range of \$7 to \$12 billion. Reported incidents of piracy along the East African coastline were reported to have increased from 61 in 2008 to 222 in 2009. A total of 48 vessels were hijacked and 4 crew members were killed⁴⁷. In the East African region, Kenya and Tanzania are particularly affected by the effects of piracy.

The prevailing lawlessness in Somalia makes it a prime target for abuse by Islamist insurgency groups looking for a base to destabilize other neighboring states. The increase in the number of insurgents in Somalia is great concern with regards to the rising cases of terrorist attacks in the region. Arguably, Somali has become a haven for terrorists; particularly the militant Islamists of the Harakat al-Shabaab al-Mujahideen (“Movement of Warrior Youth,” al-

⁴⁶ World Bank (2013). Op.Cit. p. 31

⁴⁷ Zogg D.M. (2009). Op.Cit. p. 64

Shabaab) with their ambitions to establish a transnational fundamentalist Islamist state in the Horn of Africa; their links to Al Qaeda; reach into the Somali diaspora in North America, Europe, and Australia; and the training camps and safe haven they have provided various radical groups⁴⁸. The threat of piracy has also led to a reduced number of cruise ships that contribute to the tourism economies of Kenya and Tanzania. Ships that once docked in Mombasa and Dar es Salaam no longer do so as a result of the threat of hijacking and kidnappings by pirates. Al Shabaab's presence in southern Somalia has hurt Kenya's tourism industry and an increase in pirate attacks have proven costly for Kenya's shipping industry.

Since 2006, tourism spending in East African coastal countries has risen 25% more slowly than other sub-Saharan African nations, mainly because of fewer arrivals from high-income citizens of OECD countries⁴⁹. Piracy in the region is thought to have tarnished its image as a stable holiday destination, with visits to impacted East African coastal nations down by nearly 6.5% relative to visits to other countries.

2.3 Consequences of Piracy in East Africa

In 2011 the then East African Community (EAC) Deputy Secretary General in charge of political integration, Beatrice Kiraso, noted in a press statement that an increase of piracy activities and the kidnapping of tourists are threatening East African peace and security with a negative impact on tourism growth⁵⁰. Ms. Kiraso further noted that Somali piracy was likely to deny the East African region its business opportunities and cause a diversion of potential investments to other countries in Africa. Tourism would be the most affected sector under the current situation when pirates and terrorist groups are still operating in the East African region

⁴⁸ Daniels, Christopher L. (2012). Op.Cit. p 106

⁴⁹ World Bank (2013). Op.Cit p54

⁵⁰ Somalia Report (2011) : Daily Media Roundup

http://www.piracyreport.com/index.php/subcategory/19/Media_MONITOR/Print_/102011///5 (Accessed on May 12, 2014)

through a network to kidnap tourists for ransom. Piracy and related cases of terrorism were causing an increasing poverty and unemployment among the youths in East Africa, as big and promising business opportunities fail to operate in fear of terrorist attacks. Somali pirates were likely to turn to softer targets, such as tourists in Kenya, in response to a more robust defense of merchant vessels. Somalia's Al-Shabaab militants have also escalated their attacks in their homeland in the lawless Horn of Africa.

As a response to maritime piracy and increased insecurity along the coastal towns of Kenya, the Kenyan Government launched an offensive operation against al Shabaab in Somalia codenamed “Operation Linda Nchi” (Operation Protect the Nation) on October 16, 2011. Kenya Navy representative, in an interview recalled that at the time of the Operation Linda Nchi Kenya's naval forces stepped up surveillance along the Indian Ocean coastline with Navy troops patrolling from Kenya territorial waters to Kismayu in Somalia. Before Kenya's cross border incursion into Somalia, consumers in Eastern and Central Africa region had also been affected by the piracy as the cost of insurance went up because of highlighted risks, forcing importers to transfer the high insurance cost to consumers. *“We decided to sort-out the problem of piracy at the source and Kenya Defense Forces (KDF) moved into Somalia last year and teamed up with allied forces and we are now on our way to stabilize Somalia,”*⁵¹.

The consequences of piracy, are perhaps most apparent in Somalia itself. Somalia has suffered recurring humanitarian emergencies over the last 18 years; rates of acute malnutrition are above emergency levels, and chronic food insecurity has in the past mostly affected the rural population.

With the rise of piracy along the East African Coastline, the humanitarian crisis for the first time, affected a significant number of the Somali urban poor, who struggled to cope with

⁵¹ R001 (November 7, 2014) Kenya Navy Representative

sustained hyperinflation in food prices. The urban food crisis affected 25% of the total urban population, or 705,000 people, of which 565,000 were identified as being in Acute Food and Livelihood Crisis (AFLC) and 140,000 in Humanitarian Emergency. In addition, according to UNHCR another one million people have been internally displaced⁵².

Reports by the World Food Programme show that more than 2.6 million people in Somalia were dependent on food aid in 2008; presently the number now stands at 3.25 million people⁵³. The food aid required to assist Somalia's starving population arrives by sea.

According to the CIA World Fact Book, Somalia receives approximately \$236.4 million in economic aid⁵⁴. This aid is necessary to provide food and basic provisions for millions of impoverished Somalis. The World Food Programme (WFP) estimates that Somalia will require at least 185,000 tonnes of food in 2008. Danger in Somali waters, however, has forced the WFP to intermittently suspend shipments, putting Somalia's food stock in serious jeopardy. Without food and other basic necessities, it will be very difficult for Somalia to grow and build a viable economy. In this way, acts of piracy spawned, in part, by economic hardship in Somalia are further aggrandizing the problem. Somali economic growth is therefore contingent upon the successful control of piracy in the Gulf of Aden. The WFP reported that in 2007 the number of ships willing to carry food to Somalia had been cut down to half as a result of the increased dangers faced by humanitarian relief vessels along the East African coastline.⁵⁵

Mthuli Ncube⁵⁶ noted in a press statement that piracy is hampering the delivery of food aid to Somalia, forcing relief agencies to use aircraft or less convenient ports that lengthen

⁵² R002 (November 19, 2014) International Maritime Organization

⁵³ Savidge, JL (2013). *“Hostile Seas: A Mission in Pirate Waters”*. Dundurn Publishers. p 44

⁵⁴ Central Intelligence Agency (2012). *“The World Factbook 2012 World Factbook (Claitors Paperback) Series”*. Government Printing Office p 357

⁵⁵ World Food Programme (2007). *“Coordinated action urged: piracy threatens UN lifeline to Somalia”*. WFP report 7 October 2007. <http://www.wfp.org>

⁵⁶ World Food Programme (2007). Op Cit. p. 12

delivery time. Nearly 260,000 people died during the famine that hit Somalia from 2010 to 2012, half of them were children under the age of five⁵⁷. The United Nations Food and Agriculture Organization (FAO) reported that humanitarian aid needed to be provided more quickly so as to avert the humanitarian disaster.

Food insecurity in the East African region, caused by drought and instability, has been heightened by high food and fuel prices in the region. Officials from the World Food Program (WFP), which ships tens of thousands of metric tons of food monthly to the Horn of Africa region, reports that it has become more expensive to ship assistance to Mogadishu, and that their ability to deliver relief is significantly hampered. A combination of rising costs, rising demand, and insufficient funding recently prompted WFP to announce that it would be closing feeding centers in Somalia. Canada, NATO, and European Union forces assumed WFP escort responsibilities in late 2008⁵⁸.

Maritime piracy along the East African Coastline has implications on commercial shipping and global trade. Piracy in the region poses economic costs in a number of ways, including ransom payments, damage to ships and cargoes, delays in delivering cargoes, increased maritime insurance rates, the costs of steps to harden merchant ships against attack, and costs for using naval forces for anti-piracy operations⁵⁹. Best practices methods by shipping vessels such as rerouting oil tankers is an especially expensive venture as an additional 2,700 miles is added to each voyage translating to an additional cost of \$3.5 million per annum in fuel levies; impacting the costs of shipping and accessing imported raw materials and oil⁶⁰.

⁵⁷ OECD, African Development Bank (2012). “*African Economic Outlook 2011 Africa and its Emerging Partners: Africa and its Emerging Partners African Economic Outlook*”. OECD Publishing. p 214

⁵⁸ World Food Programme (2007). Op Cit. p. 12

⁵⁹ World Bank (2013). Op. Cit. p. 65

⁶⁰ Akinsanmi, G. (2010). Op.Cit. p. 6

In May 2008, insurance underwriters at Lloyds of London designated the Gulf of Aden a "war-risk" zone subject to a special insurance premium based on the advice of the U.K. insurance community's Joint War Committee. In response London-based ocean marine insurers have raised premium rates for ships making the voyage through the Gulf of Aden and the Suez Canal. These levels of increase can only be estimated because of the competitive nature of the ocean marine insurance business. One group of London insurance brokers and underwriters estimates extra premiums at \$10,000 to \$20,000 per trip through the Gulf⁶¹.

Ship operators (and their governments) might judge that the costs of paying occasional ransoms are less than the costs of taking steps to prevent occasional hijackings such as rerouting or arming merchant ships. Some assert that payment of ransoms has tended to keep the level of violence associated with piracy off Somalia relatively low, and while individual ransom payments can be significant, the small percentage of ships operating in the area successfully attacked and captured lowers the overall risk in the eyes of some commercial entities. As such, the payment of occasional ransoms might be viewed by ship operators (and their governments) as a regrettable but tolerable cost of doing business, even if it encourages more piracy. The increase in pirate attacks is occurring at a time when the shipping industry is showing vulnerabilities in its financial health. One development is that the frequency of hiring dry bulk carriers, a key industry component, has decreased; the "hire" rates dropped over 90% in late 2008⁶².

In addition to the generalized threat that piracy poses to the security of shipping lanes, the incidence of piracy has important second order effects on the costs, patterns, and benefits of regional and international shipping and trade. Egypt's Suez Canal serves as a vital shipping link

⁶¹ World Bank (2013). p 71

⁶² Ibid

between the Mediterranean Sea and Red Sea, and the revenue derived from ships transiting the Canal is an important source of funding for Egypt's government.⁶³ Canal authorities report that shipping traffic and resulting revenue have declined over the last year, due both to decreased economic activity and the piracy threat to the Canal's approaches in the Gulf of Aden. Rerouting vessels to avoid the Gulf of Aden and other waters near the Horn of Africa adds additional transit days and fuel costs to shipping companies. The costs vary by type of ship and frequency of voyage, according to the U.S. Department of Transportation.

Threats to the energy sector as a result of maritime piracy in the region are an area of concern as witnessed by the November 2009 hijacking of the *Sirius Star* carrying two million barrels of crude oil worth approximately \$ 100 million. This was the largest oil tanker to be seized by pirates held for two months until its release two months later. The attack raised concerns as this was the largest energy ship ever hijacked. The nature of the cargo was an especially sensitive issue as the hijacking was viewed as an escalation in the goals, ambitions and motivations of the pirates⁶⁴.

Maritime piracy imposes significant costs on local fishing economies. According to the FAO, Africa's fishing industry earned US\$1.73 billion in 2007⁶⁵. The industry also earns additional income through fishing licenses to foreign operators. Besides being the main income-earning activity for many Africans, fish also provides the most important source of protein to the majority of the African population, playing a vital role in nutrition and food security. Fish makes a vital contribution to the food and nutritional security of 200 million Africans and provides income for over 10 million. A report by the International Maritime Organization notes that

⁶³ Kraska, James (2012). "*Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea Contemporary military, strategic, and security issues*". Praeger Security International. Pp. 74-77

⁶⁴ Ibid

⁶⁵ World Food Programme (2007). "*Coordinated action urged: piracy threatens UN lifeline to Somalia*". WFP report 7 October 2007. <http://www.wfp.org>

pirates attacked tuna vessels at least thrice in 2009. The captured fishermen are then detained until they have kidnapped a ship successfully. Their captors are in possession of small boats and thus commandeer the fishermen's boats as they were more seaworthy. The attacks on fishing vessels have prompted many to avoid some of the richest fishing spots in the Indian Ocean. The dwindling catches have raised concerns that Kenya and Somalia could face economic problems related to their fishing industries.

Chapter Three

A Critique of the Normative and Institutional Frameworks on Maritime Piracy

3.0 Introduction

Maritime piracy has become a matter of grave concern for the international community causing several international organizations including the United Nations Security Council and General Assembly, the North Atlantic Treaty Organization (NATO), the International Maritime Organization (IMO) and various other regional organizations such as the European Union and African Union to actively engaged in addressing this grave concern. This Chapter shall focus on the normative and institutional frameworks set in place by the international community as a means of combating maritime piracy along the East African coastline. Specifically, the chapter looks at intervention strategies employed by various International Organizations such as the IMO, the UNSC the NATO, the AU and the EAC. By looking at the various intervention strategies employed by these organization, this chapter critiques the impact that these interventions have had on reducing and addressing maritime piracy in Somalia and ultimately along the East African Coastline.

3.1 International Normative Frameworks

Modern day maritime piracy is a world-wide phenomenon that poses a serious threat to international shipping. An economic approach to the control of maritime piracy is based on the general economic theory of law enforcement that views offenders (pirates) as rational decision makers who would respond to threatened punishments. However, implementation of optimal enforcement policies is impeded by lack of cooperation in the apprehension and prosecution of pirates as a result of free rider problems. In this sense, controlling maritime piracy is subject to similar problems as the prosecution of the global war on terror and the anti-drug war.

In the aftermath of the 9/11 terrorist attacks, serious concern has risen within the maritime communities in respect of the potential for terrorist attacks against ships or against targets such as port facilities by using ships as terrorist weapons, much in the same way that planes were used as weapons in destroying the Twin Towers located in New York. The 9/11 had exposed the potential brittleness of the transportation systems which could lead to unprecedented disruption of the global trade system⁶⁶. On the other hand, piracy, as a traditional serious threat to maritime security had never been eliminated.

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

Customary International law on piracy is codified in the UN Convention on the Law of the Sea, which in section 100 obligates all states to cooperate to the fullest possible extent in repressing piracy on the high seas or in any other place outside the jurisdiction of any state.⁶⁷ UNCLOS is a major anti-piracy treaty in contemporary era with the following relevant provisions. Article 100 provides that: ‘All 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’⁶⁸. On the other hand, Article 105 provides that:

‘On the high seas, or in any other place outside the jurisdiction of any state, every state may seize a pirate ship or aircraft, or a ship or aircraft taken by pirate and under the control of pirates, and arrest the persons and seize the property on board’.

It should be noted that the definition does not refer to either an attempt to commit an act of piracy or to conspiracy relating to such an act. Criminal acts constituting piracy do not fall

⁶⁶Rivkin, David. & Ramos-Mrosovsky Carlos(2010). “*A Better Way to Deal With Pirates*”, WASH. POST, <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/08/AR2010120806188.html>

⁶⁷Nanda, Ved P. (2011). “*Maritime Piracy: How can International Law and Policy address this Growing Global Menace?*” Centre for International and Comparative Law. Strum College of Law. http://www.iqpc.com/uploadedFiles/EventRedesign/UK/2012/September/11397006/Assets/Maritime%20Piracy_addressing%20the%20global%20menace%20by%20Ved%20P%20Nanda.pdf (accessed on 3 June 2014).

⁶⁸ UNCLOS, supra note 23, art. 100

under the UNCLOS definition if they occur inside the territorial waters of a state are called armed robbery at sea and not acts of piracy.

Furthermore, the UNCLOS Article 105 authorizes any state to seize a pirate ship or aircraft and its property, arrest the crew, and prosecute them through its own courts, so long as the seizure takes place on the high seas or on waters outside the jurisdiction of any state⁶⁹. Though the UNCLOS authorizes universal jurisdiction it does not make it obligatory for the state to take action.

Other conventions under which some acts of piracy may be considered offenses include the 1988 SUA Convention, which was primarily intended to apply to acts of terrorism⁷⁰. It obligates states parties to it to establish a number of criminal offenses, most of which correspond at least in part with actions committed by pirates or armed robbers⁷¹. It authorizes non state parties to establish jurisdiction when the person “seized, threatened, injured or killed” is a national of that state and when the act is intended to “compel the State to do or abstain from doing an act.”

Besides the problem of definition, the lack of effective enforcement is another severe weakness of the stated instrument in tackling the issue, notably in Southeast Asia. First, after the entry into force of UNCLOS, the water areas under national jurisdiction have been greatly expanded. Such expansion gives coastal states additional sovereignty or sovereign rights over their respective jurisdictional waters; but, on the other hand, it also causes difficulty in enforcement within these areas, particularly with regard to piracy. It even poses a big problem

⁶⁹ Moller, B.(2009). Piracy, Maritime Terrorism and Naval Strategy. Danish Institute for International Studies (DIIS), report no. 2009:02, http://www.diis.dk/graphics/Publications/Reports2009/DIIS_Report_2009-02_%20Piracy_maritime_terrorism_and_naval_strategy.pdf.

⁷⁰ SUA Convention, Supra note 23, art 58

⁷¹ Ibid

for some smaller states which own vast water areas but lack an effective enforcement mechanism, for instance, archipelagic waters of Indonesia⁷².

3.1.2 United Nations Security Council Resolutions

As the incidents of piracy increased in 2008, the UN Security Council, acting under Chapter VII, adopted several resolutions to counter piracy and armed robbery at sea. In 2008 the Security Council adopted more resolutions on piracy than on any other subject. In Resolution 1816, adopted on June 2, 2008, it authorized member states cooperating with the Transitional Federal Government (TFG) to take action against pirates, even in Somalia's territorial waters ("hot pursuit"), for a period of six months. This authorization was extended for one year under Security Council Resolutions 1846 of December 2, 2008, and 1851 of December 16, 2008⁷³.

Subsequently, Resolution 1897 of November 30, 2009, further extended the scope of permissible military force in Somalia's territorial waters for another twelve months, and broadened the definition of piracy to include certain land-based operations on the Somali mainland.⁷⁴ The Security Council also noted in Resolution 1846 that the SUA Convention "provides for parties to create criminal offenses, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat [of force] or any other form of intimidation," and thus it urged states parties to the SUA Convention to fully implement their obligations under the Convention, including cooperating

⁷² Ho, J. (2009). "Combating piracy and armed robbery in Asia: The ReCAAP Information Sharing Centre (ISC). *Marine Policy* 33(2)", Pp. 432-434.

⁷³ Nanda, Ved P. (2011). "Maritime Piracy: How can International Law and Policy address this Growing Global Menace?" Centre for International and Comparative Law. Strum College of Law. http://www.iqpc.com/uploadedFiles/EventRedesign/UK/2012/September/11397006/Assets/Maritime%20Piracy_addressing%20the%20global%20menace%20by%20Ved%20P%20Nanda.pdf (Accessed on 3 June 2014).

⁷⁴ Ibid

with the IMO to “build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia”⁷⁵.

On December 16, 2008, the Security Council passed Resolution 1851, under which it decided that states and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia could “undertake all necessary measures that are appropriate in Somalia, for the purposes of suppressing acts of piracy and armed robbery at sea,” in accordance with applicable human rights law and international humanitarian law⁷⁶.

Subsequently, in Resolution 1897 of November 30, 2009, it renewed its call upon states and regional organizations that have the capacity to do so to deploy “naval vessels, arms and military aircraft” and seize and dispose of “boats, vessels arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use”⁷⁷.

Finally, in Resolution 1918, adopted on April 27, 2010, the Security Council called on member states to criminalize piracy under their domestic laws and to favourably consider the prosecution and imprisonment of suspected pirates. It also requested the Secretary General to present within three months a report on possible options to further the aim of prosecuting and imprisoning those responsible for acts of piracy off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the CGPCS [Contact Group on Piracy Off the Coast of Somalia],

⁷⁵ Ibid

⁷⁶ United Nations Security Council (November 16, 2008). Department of Public Information. News and Media Division. New York. <http://www.un.org/News/Press/docs/2008/sc9541.doc.htm>

⁷⁷ Ibid

the existing practice in establishing international and mixed tribunals, and the time and the resources necessary to achieve and sustain substantive results⁷⁸.

In response to the request from the Security Council, the Secretary General presented a report on July 26, 2010, identifying seven options for the Security Council's consideration. The first option calls for the UN to enhance assistance to build the capacity of regional states to prosecute and imprison suspected pirates.

The second option involves establishment of a Somali court sitting in the territory of another regional state and applying Somali law, either with or without the United Nations' participation. The necessary arrangements would have to be made through negotiations between Somalia and the host state. If the United Nations was to participate it would also require agreement between the UN, Somalia, and the host state⁷⁹. However, as Somalia currently faces instability and other major challenges, including that of its judicial system, there are no realistic prospects for the implementation of this option, which therefore has to be a plan for the future.

The third option envisages the establishment of a special chamber within the national jurisdiction of a state or states in the region, without UN participation, while the fourth option is the same arrangement but with UN participation. It does not seem that in the near future either of these options holds great promise. Somalia, as a failed state, lacks judicial capacity, although Kenya, Seychelles, the United Republic of Tanzania, and Mauritius have judicial capacity in the region to establish a special chamber, the cost involved and the logistics, with or without the UN's participation, will present formidable hurdles to be overcome⁸⁰.

⁷⁸ United Nations Security Council (November 16, 2008). Department of Public Information. News and Media Division. New York. <http://www.un.org/News/Press/docs/2008/sc9541.doc.htm>

⁷⁹ Nanda, Ved P. (2011). "*Maritime Piracy: How can International Law and Policy address this Growing Global Menace?*" Centre for International and Comparative Law. Strum College of Law. http://www.iqpc.com/uploadedFiles/EventRedesign/UK/2012/September/11397006/Assets/Maritime%20Piracy_addressing%20the%20global%20menace%20by%20Ved%20P%20Nanda.pdf (visited on 3 June 2014.)

⁸⁰ Ibid

The fifth and final option consists of a regional tribunal, not embedded in a national jurisdiction but established on the basis of a multilateral agreement among regional states and with the UN's participation⁸¹. An agreement with the United Nations would, however, be needed with this option, regarding the selection of judges, prosecutors, and other judicial staffing.

3.2 Institutional Frameworks

3.2.1 The International Maritime Organization

The IMO is a specialized agency of the United Nations that works in cooperation with the shipping industry and nongovernmental organizations, and is the most effective organization in fighting piracy. Its activities pertaining to piracy began as early as 1983, when the IMO Assembly adopted a resolution on measures to prevent acts of piracy and armed robbery against ships. Since then, and especially since the 1990s, it has very actively and effectively addressed the question of maritime piracy⁸².

The IMO's initiatives have resulted in the establishment of several regional and sub-regional arrangements aimed at preventing, deterring, and repressing acts of piracy and armed robbery against ships⁸³. These include the 2004 ReCAAP; the 2008 Sub-Regional Coast Guard Network for the West and Central African Regions, under the auspices of the Maritime Organization for West and Central Africa (MOWCA); and the 2009 Djibouti Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct)⁸⁴. Another important initiative is the

⁸¹ Ibid

⁸² International Maritime Organization (2014). "*Introduction to IMO*", <http://www.imo.org/About/Pages/Default.aspx> retrieved on 09-June-2014

⁸³ Nanda, Ved P. (2011). "*Op.Cit.p.85*

⁸⁴ Ibid

IMO's effort to improve maritime security, safety, and environmental protection in the Straits of Malacca and Singapore, which resulted in the 2007 Singapore Statement⁸⁵.

In addition to these initiatives creating regional arrangements, two recent important sets of guidelines for effectively fighting piracy are noteworthy. First, in September 2009, the IMO's Maritime Safety Committee updated its guidance on combating piracy and armed robbery against ships and adopted a set of "best management practices" to deter such attacks⁸⁶. The guidelines include several recommendations related to travel routes and more technical advice regarding preferred modes of communication and reporting, evasive manoeuvring tactics, and other defensive measures. Second, in December 2009, the IMO adopted a guidance document in the form of the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships to foster regional cooperation and to coordinate governments' actions⁸⁷.

Among other UN bodies, UNODC set up its program to support piracy prosecutions in May 2009. The organization's assistance is especially focused on Kenya and Seychelles, although it has also provided support in the Puntland and Somaliland regions of Somalia. UNODC has trained police in modern investigatory procedures and supplied the police with cars, offices, etc. In Kenya, it has supported the criminal justice system; it has trained the judiciary and renovated courtrooms, introduced computers and provided defence lawyers; it has refurbished prisons, providing medical facilities among other improvements; and has undertaken similar capacity building and support programs in Seychelles, where the European Commission

⁸⁵ Ibid

⁸⁶ IMO, Measures to Prevent Acts of Piracy and Armed Robbery Against Ships, IMO Assemb. Res. A. 545 (13) (Nov. 17, 1983) <http://www.imo.org/About/Pages/Default.aspx> retrieved on 09-June-2014

⁸⁷ IMO, Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships, IMO Assemb. Res. A. 1025 (26). <http://www.imo.org/About/Pages/Default.aspx> (retrieved on June 09, 2014)

has entered into partnership with it.⁸⁸ The UNDP has been engaged in training for the judiciary and police and has also supported court infrastructure in each of the regions of Somalia.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP), signed in 2004 and in force since September 4, 2006, was a pioneering attempt at a regional arrangement aimed exclusively at fighting piracy and armed robbery in the Malacca and Singapore Straits, another major area then being targeted by pirates. Japan played a leading role in bringing the states together by issuing the “Tokyo Appeal” in March 2000 and “Tokyo Action Plan” the following month.⁸⁹ Under the treaty, the sixteen states parties are to “make every effort to take effective measures” in preventing and suppressing piracy and armed robbery against ships, arresting pirates or those who have committed armed robbery against ships, seizing ships or aircraft used in committing such acts, as well as ships taken by them and the property on board such ships, and rescuing victim ships and victims of such acts⁹⁰. As this arrangement was so successful in preventing and deterring piracy in the region, the IMO in November 2007 called upon East African states to adopt a similar agreement to fight piracy. The IMO sponsored meetings in Yemen, Oman, and Tanzania to explore the possibility of creating such an arrangement among states in the Western Indian Ocean. The UN Security Council recommended in its Resolution 1851 that Eastern African states follow this example to coordinate their activities in the Horn of Africa; the outcome was the 2009 Djibouti Code of Conduct.

⁸⁸ Nanda, Ved P. (2011).Op Cit. p. 55

⁸⁹ Regional Cooperation Agreement on Combating Piracy and Armed Robbery in Southeast Asia art. 2, 1, Apr. 28, 2005, 44 I.L.M. 829 [hereinafter ReCAAP]; IMO, Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden, IMO Council Doc. C 102/14 <http://www.imo.org/OurWork/Security/PIU/Documents/DCoC%20English.pdf> [hereinafter Djibouti Code of Conduct];About MOWCA, MAR. ORG. OF W. & CENT. AFR. [MOWCA], <http://www.mowca.org/new%20design/about-mowca.html> (retrieved on June 09, 2014)

⁹⁰ Nanda, Ved P. (2011). Op. Cit. p. 55

An important regional instrument, the Djibouti Code of Conduct was developed under the auspices of the International Maritime Organization (IMO) on January 29, 2009. Sixteen regional states, signatories to the Djibouti Code, a nonbinding instrument, have declared their intention to review their national legislation “with a view towards ensuring that there are national laws in place to criminalize piracy and armed robbery against ships, and adequate guidelines for the exercise of jurisdiction, conduct of investigations, and prosecutions of alleged offenders”⁹¹. The signatory states have also committed to “facilitate coordinated, timely, and effective information flow” among themselves through a system of national focal points and information centers⁹².

3.2.2. North Atlantic Treaty Organization (NATO)

Pursuant to the request of UN Secretary General Ban Ki Moon, NATO provided escorts to the UN World Food Programme vessels transiting through the Gulf of Aden and off the Horn of Africa under Operation Allied Provider between October and December 2008, in order to provide humanitarian aid to Somalia⁹³. In March 2009, NATO expanded its role in counter-piracy efforts with the launching of the successor Operation Allied Protector to contribute to the “safety of commercial maritime routes and international navigation” by helping to deter, defend against, and disrupt pirate activities in the area. Canada, Denmark, Germany, the Netherlands, Norway, Portugal, Spain, and the United States routinely contributed to the NATO naval force conducting the operation. That operation lasted until August 2009 and since that time NATO has been conducting Operation Ocean Shield⁹⁴. The Alliance has broadened its mission to include assistance to regional states at their request to develop their own capacity, such as strengthening their local coast guard, to combat piracy activities.

⁹¹ Geiss R and Petrig A. (2011). Op. Cit. Pp. 48-51

⁹² Ibid

⁹³ Ibid, p 23

⁹⁴ Ibid

3.2.3. European Union

The European Union's operation EU-NAVFOR Somalia, known as operation "Atalanta," is conducted in support of UN Security Council resolutions 1814, 1816, 1838, 1846, and 1897.¹³⁹ According to the EU Council Decision of December 8, 2008, the EU's first ever maritime operation was launched "to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast."⁹⁵ The operation became fully operational in February 2009. Specifically, it has responsibility for ensuring the protection of 1) shipments of the World Food Programme carrying food aid to displaced persons in Somalia and 2) vulnerable cruising vessels off the Somali coast. In general, its objective is to deter, prevent, and repress acts of piracy and armed robbery at sea in that area. On June 14, 2010, the Council of the EU decided to extend the mandate of the Operation until December 12, 2012.⁹⁶ The Operation has taken the leading role in the SHADE (Shared Awareness and Deconfliction) mechanism to promote coordination among international, regional, and national naval forces operating in the area. In the first EU-NAVFOR operation to result in court judgment, a Mombasa Law Courts Chief Magistrate sentenced seven Somali pirates who were apprehended by a EU-NAVFOR warship after they attacked a German naval.

The Contact Group on Piracy off the Coast of Somalia following the adoption of Security Council Resolution 1851, the United States took the lead in creating the Contact Group on Piracy off the Coast of Somalia on January 14, 2009⁹⁷. The primary objective is to coordinate an effective international response to piracy in that region. This is a voluntary international forum that has brought together almost 50 countries and several international organizations—the

⁹⁵ Nanda, Ved P. (2011). "*Maritime Piracy*".
http://www.iqpc.com/uploadedFiles/EventRedesign/UK/2012/September/11397006/Assets/Maritime%20Piracy_addressing%20the%20global%20menace%20by%20Ved%20P%20Nanda.pdf (retrieved on 3 June 2014.)

⁹⁶ Ibid

⁹⁷ Geiss R and Petrig A. (2011, Pp 55-59)

African Union, the League of Arab States, INTERPOL, IMO, NATO, and the UN Secretariat—as well as two major maritime industry groups that take part as observers.⁹⁸ The participants have established four working groups: military and operational coordination, information sharing, and capacity building, chaired by the United Kingdom; legal issues, chaired by Denmark; commercial industry coordination, chaired by the United States; and public information, chaired by Egypt.¹⁶⁰ At the sixth plenary meeting of the Contact Group at the UN Headquarters in New York on June 10, 2010, participants agreed that, for a viable solution for ending piracy, the root causes on land have to be addressed effectively, and thus they emphasized the need for regional capacity building. The meeting underlined the central importance of adherence to the Best Management Practices guide, whose purpose is to “assist ships to avoid, deter, or delay piracy attacks” in the area⁹⁹. The Contact Group stated that international efforts to restrict support for pirates should include “tracking and freezing” pirates’ assets to deter their operations.

In January 2010, the Contact Group established a Trust Fund to help countries in the region fight piracy, the main objective of which is to “build capacity in their criminal-justice systems so they can prosecute” suspected pirates. Then, in April, the Board of the Trust Fund decided to undertake five projects focused primarily on efforts to prosecute suspected pirates.¹⁰⁰ Four of these projects are designed to help strengthen institutions in Seychelles and the autonomous Somali regions of Puntland and Somaliland relating to “mentoring prosecutors and police, building and renovating prisons, reviewing domestic laws in piracy and increasing the

⁹⁸ Nanda, Ved P. (2011). Op. Cit.

⁹⁹ Ibid

¹⁰⁰ Ibid

capacity of local courts.” The fifth project is designed to help local media disseminate anti-piracy messages within Somalia¹⁰¹.

3.3. National Legal Responses

Several states have enacted laws to criminalize piracy and to prosecute alleged pirates in their courts. These include Kenya and Seychelles in Africa, several European countries, and the United States. The UN Secretary-General noted in his report that ten states are currently prosecuting acts of piracy.¹⁰² Pursuant to Security Council Resolution 1851 of December 16, 2008, which had urged states and regional organizations to conclude special agreements with countries willing to take custody of and prosecute pirates, Kenya entered into several agreements—with the European Union, the United Kingdom, the United States, Denmark, China, and Canada¹⁰³. It would be desirable if more states in the region would allow prosecutions of pirates in their courts, but no such additional agreements have been reached as of September 2010.

In April 2010, the Kenyan government announced that it would no longer prosecute pirates because its legal system was overburdened and the international community had not provided sufficient support. However, Kenya subsequently resumed the adjudication of piracy cases in May after receiving assurances of additional support¹⁰⁴. In July, Kenya opened a new high-security courtroom near Mombasa with funds donated by the European Union and several countries, and channeled through UNODC. EU-NAVFOR alone has turned over 75 suspects to the Kenyan authorities since its deployment. In September 2010, Kenya was reported to have

¹⁰¹ Nanda, Ved P. (2011). “*Maritime Piracy: How can International Law and Policy address this Growing Global Menace?*” Centre for International and Comparative Law. Strum College of Law. http://www.iqpc.com/uploadedFiles/EventRedesign/UK/2012/September/11397006/Assets/Maritime%20Piracy_addressing%20the%20global%20menace%20by%20Ved%20P%20Nanda.pdf retrieved on 3 June 2014.

¹⁰² Struett, M. , Carlson, J. , Nance, M. (2013). *Maritime Piracy and the Construction of Global Governance: New International Relations*. Routledge.

¹⁰³ Ibid

¹⁰⁴ Ibid

convicted fourteen Somali men accused of acts of piracy¹⁰⁵. Seychelles was the second state in the region to set up a UN-backed regional center for prosecution of suspected pirates. In the course of the Security Council meeting on August 25, 2010, the country's delegate informed the Council that Seychelles' Supreme Court had sentenced 11 Somali pirates to ten years in prison each and another 29 suspects were awaiting trial¹⁰⁶.

The first European trial of Somali pirates for hijacking a cargo ship registered in the Netherlands Antilles commenced in the Netherlands District Court of Rotterdam on May 25, 2010. They were convicted and sentenced to five years each, while another Dutch court approved the extradition of ten other Somali piracy suspects to Hamburg, Germany.

Over 2,600 pirate attacks, actual or attempted, were reported over the period 2004-2011, though there has been some recent decline due to the effort of naval task forces as well as a very large increase in the use of on-board armed guards. The Piracy Reporting Center of the International Maritime Bureau (IMB), a division of the International Chamber of Commerce, which issues periodic piracy reports, noted that incidents of piracy and armed robbery in 2009 exceeded 400, Africa accounting for 270 of these and the Somalia coast and Gulf of Aden accounting for 196¹⁰⁷. The report notes further that in 2009 a total of 1052 crew were taken hostage, while 68 were injured and eight were killed in various incidents.

Somali pirates principally operate a capture-to-ransom model, with ransoms of up to \$5.5 million per incident being collected. Elsewhere in the world robbery is the main motive for pirate attacks. The overall economic cost of maritime piracy in 2012 was estimated at \$6 billion, down

¹⁰⁵ Frank Hagemann (2010). "*Strategy Making in the European Union: The Quest for Comprehensive Security in the European Union's Military Operations: EUFOR RD Congo, EUFOR Tchad/RCA, and EUNAVFOR Somalia*". BoD – Books on Demand. Pp.49-53

¹⁰⁶ Ibid

¹⁰⁷ Ibid

from \$7 billion the year before and as much as \$16 billion a few years earlier¹⁰⁸. Spending on on-board security equipment and armed guards increased from about \$1 billion to \$2 billion between 2011 and 2012. Other economic costs include additional travel days as a consequence of re-routing of ships; increased insurance costs of as much as \$20,000 per trip; increased charter rates, as longer time at sea reduces the availability of tankers; the cost of faster steaming through pirate-affected seas; and greater inventory financing costs for cargoes that remain longer at sea¹⁰⁹. There needs to be legal, normative and institutional frameworks working simultaneously with these naval interventions as an effective, sustainable solution to the mitigation of maritime piracy. Significant to this, R002 noted that on 12th November 2014 the Security Council Expressing continued grave concern over piracy off the coast of Somalia despite a sharp decline in attacks, the Security Council renewed for another year authorizations, first agreed in 2008, for international action to fight the crime in cooperation with Government authorities.

Through the unanimous adoption of resolution 2184 (2014) under Chapter VII of the United Nations Charter, the Council renewed its call upon States and regional organizations that had the capacity to do so to fight ongoing sea crimes by deploying naval vessels, arms and military aircraft and through seizures of boats, vessels and weapons used in the commission of those crimes. It also continued to exempt, from the arms embargo imposed on Somalia by resolution 733 (1992), supplies of weapons and military equipment destined for the sole use of States, international, regional and sub-regional organizations taking measures in line with the authorizations¹¹⁰. By other terms, the Council underlined the primary responsibility of Somali

¹⁰⁸ International Maritime Bureau, supra note 9, at 5-6. Reports on acts of piracy and armed robbery against ships: Annual Report 2009. IMO Doc. MSC.4/Circ.152
<http://www.imo.org/OurWorld/Security/PiracyArmedRobbery/Monthly%20and%20annual%20piracy%20and%20armed%20robbery%20report/152-Annual2009.pdf>

¹⁰⁹ World Bank (2013). “*The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*”. World Bank. p 42

¹¹⁰ R002 (19th November 2014) International Maritime Organization

authorities in the fight against piracy and armed robbery off their coast, urging them to adopt the necessary legal framework. All States were urged to adopt legislation to facilitate the prosecution of suspected pirates and to take measures to prevent the illicit financing of piracy.

Chapter Four

Somalia as a factor in the piracy acts along the East African Coastline.

4.0 Introduction

This chapter examines a comprehensively the problem of piracy along the East African Coastline with specific reference to Somalia and its role in fuelling piracy in the region. It is dedicated to understanding the political, social and economic environment in Somalia that nurture piracy in the region to be the highest of any other. Through understanding these factors, this chapter shall look at the various long term and sustainable socio- economical, developmental and political strategies and local solutions that could be employed in Somalia that could ultimately result in the complete eradication of piracy along the East African Coastline.

4.1 Historical Evolution of Political Instability in Somalia

For thousands of years, the weather patterns and currents of the Indian Ocean have transported watercraft from Africa to Arabia, Arabia into the Persian Gulf, then off to the west coast of India, and back again. Trade with the Mediterranean world sailed south on the Red Sea, through the Bab el Mandeb, into the Indian Ocean and beyond¹¹¹. While current incidents of piracy off the Horn of Africa are part of a long tradition, they must also be understood in the context of modern history and modern notions of borders, state sovereignty, and territorial waters. Somali pirate operations on the high seas are a result of what has happened to the nation of Somalia, both politically and in terms of rapid population growth. Somalia now is "by far the longest-running instance of state collapse in the post-colonial era." Other analysts agree¹¹².

¹¹¹ Calaudius Ptolemy's Geography: The Knowledge of Fourth-Century Byzantium," in G.S.P. Freeman-Greenville, *The East African Coast Select Documents from the first to the nineteenth century* (Oxford, 1962).

¹¹² Kenneth J. Menkhaus, "The Somali Catastrophe, Bigger than the Horn—and Not Over Yet," *Current History* (March 2007).

Somalia's history goes a long way towards explaining the challenge that post-Cold War Somalia has confronted in state formation. While Somalis have a strong sense of nationalism, external factors have repeatedly obstructed their efforts to build a stable state. A central theme in the regional history of the Horn is the conflict between Islam and Christianity, which fractured the region. Christianity took hold in the Ethiopian highlands in the 4th century AD; Islam followed in the desert littoral along the Red Sea and Indian Ocean in the 10th century.¹¹³ The best ports such as Adulis, Zeila, and Mogadishu became thriving city states with distinctive architecture, funerary traditions, and Islamic schools. The Somali fishermen and Arab traders who lived in these villages participated in the maritime culture of the Indian Ocean¹¹⁴.

In the 1880s the Europeans returned to the Horn for a century-long competition for influence and territory that would tear apart the region, then dominated by many Somali clans: France in French Somaliland (which became the independent state of Djibouti in 1977); Italy in Eritrea and Italian Somaliland (which became independent in 1960 as Somalia); and England in British Somaliland (where independence also came in 1960, and is now the Somaliland Republic) and in Kenya, the north-eastern coast of which was ethnic Somali¹¹⁵. In addition, Ethiopia, because of its defeat of the Italians at Adwa in 1896, negotiated control of the Ogaden. In the 1920s, Sayyid Mohamed Abdille Hassan (also known as the "Mad Mullah") led a movement to evict the colonizers and restore Greater Somaliland. But the colonial power structure—which had divided the Somali nation between states—could not be undone¹¹⁶.

In 1960, the newly independent states of Italian Somaliland and British Somaliland joined together to form what is now recognized as Somalia. But the other Somali regions (the

¹¹³ Lewis, Ioan (2008). *Understanding Somalia and Somaliland* Columbia University Press. New York.

¹¹⁴ Ibid

¹¹⁵ World Bank (2013). Op.Cit. Pp.82

¹¹⁶ Ibid

Ogaden, northern Kenya, and Djibouti) remained separate—part of the Greater Somali nation but not part of a unified state. For the previous 30 years the union of British and Italian Somaliland endured, primarily under the government of Mohamed Siad Barre. But continued conflict with Ethiopia over the Ogaden and shifting alliances, first with the Soviet Union, then with the United States, undermined Somalia's government. One legacy of the U.S. and Soviet Cold-War competition for influence in the Horn is an abundance of weapons. When the United Nations and the United States launched operation Restore Hope in 1992—sending 30,000 international peacekeepers into Somalia to bring some order and protect the civilian population—they met resistance from well-armed Somali gangs who killed scores of soldiers, most famously those of the U.S. helicopter crew whose story is told in the book and movie *Black Hawk Down*¹¹⁷.

In 1994 the United States unceremoniously left Somalia. The United Nations soon followed suit, packing their bags in 1995. In March 1995, the Transnational Federal Government (TFG) of Somalia was formed that remotely run the government. In June 2006, a collection of Islamist groups banded together as the Coalition of Islamic Courts (CIC) and took control over two thirds of Somalia¹¹⁸. The CIC was only in power for six brief months but managed to use strict Sheria laws to crack down on pirates who they believed had been operating under the protection of the secular warlords of the TFG. African Union troops in support of the Transitional Government continue to fight the Islamist Al-Shabaab Youth Movement, which controls a large portion of Southern Somalia. Adding to the instability are the self-proclaimed autonomous states of Puntland and Somaliland, both of which are located in the North.

While there have been subsequent efforts to restore peace, including a major Ethiopian effort from 2006-2008 that employed thousands of well-equipped soldiers, none have succeeded.

¹¹⁷ Lewis, Ioan (2008). Op. Cit. p.105

¹¹⁸ Stevenson, Johnathan (2007). Op. Cit. p.17

In the midst of this state chaos, Somalia has experienced a demographic explosion of remarkable intensity—and this may be the most important destabilizing phenomenon in recent decades that helps to explain the rise of piracy. From 1950 until 2000, Somalia was the only state in sub-Saharan Africa with an annual rate of population growth of 7%. Subsequently the rate slowed to 3% per annum, still extremely high¹¹⁹. The cumulative effect is that over the past 57 years Somalia's population has increased from some 2 million people to more than 8 million—including the exodus of more than two million Somalis to the Middle East, North America, and Europe. The result is a serious economic crisis that makes state formation even more difficult¹²⁰.

4.2 The Pirates of Somalia

The homeland of most of the pirates is the autonomous region now known as Puntland—from Cape Guardafui on the tip of the Horn down from the Gulf of Aden along the Indian Ocean coast past the town of Eyl. Here, in the midst of a faltering and unstable economy, piracy has become an industry¹²¹. Somali pirates have become increasingly more sophisticated over time. Where they initially used tactics involving nothing more than launching a fishing boat from shore and attacking the first ship that happened by, they are now acquiring larger, faster vessels as well as more powerful weapons and sophisticated navigation tools. Initially it was assumed by maritime security experts that the pirates would be unable to operate 50,100, or 200 nautical miles from land because their small sea boats were unworthy and lacked the fuel capacity to remain on station for very long¹²². This notion was quickly disproven when the pirates attacked the Saudi tanker *Sirius Star* 450 nautical miles off the coast. They had adapted to the change in

¹¹⁹ Washington, The (2009). "*Somali pirates a far cry from buccaneers of old*". *WashingtonTimes.com*. (Retrieved March 27, 2013.)

¹²⁰ *Ibid*

¹²¹ Kenneth J. Menkhaus, "The Somali Catastrophe, Bigger than the Horn—and Not Over Yet," *Current History* (March 2007).

¹²² Gill, Sharon (2011). *Op. Cit.* p.122.

shipping patterns by capturing fishing trawlers and small freighters and using them as mother ships or afloat operating bases¹²³. Since they appear like any other commercial vessel, mother ships help the pirates disguise their purpose and extend their range hundreds of miles out to sea. They hide in shipping lanes waiting to identify their quarry so that they may swarm their victims in wolf pack- like style using six or more high powered speed boats. In order to convince their targets to surrender without resistance, they fire automatic weapons and rocket – propelled grenades (RPGs) at the pilot house forcing the ship captain to surrender¹²⁴.

Somali piracy is a kidnapping/ransom business and therefore pirates tend to take reasonably good care of their hostages. In the port of Eyl, the pirates’ main haven, several new restaurants are maintained to cater to the captives’ culinary needs¹²⁵. Shipping companies are more willing to meet the pirates’ demands because they realize that the pirates do not intend to harm their crews, ships or cargoes. Attempting to take a vessel back by force might result in casualties among the crew, endangering the ship, or sparking retaliatory violence by the Somali pirates themselves¹²⁶. Allowing the ship to remain under their control is not a viable alternative as every day lost costs the shipping company as much as \$25,000¹²⁷. Therefore, it is in the best interest of the shipping company, the hostages and the perpetrators for a ransom to be paid and the hostage situation be concluded.

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ United Nations Chronicle (September 2010). *Piracy in Somali Waters: Rising attacks impede delivery of humanitarian assistance*". UN Chronicle (United Nations Department of Public Information, Outreach, Division)

¹²⁶ Gill, Sharon (2011) Op. Cit. p.122

¹²⁶ Ibid

¹²⁷ International Maritime Organization (2008). “*Reports on Acts of Piracy and Armed Robbery Against Ships: Annual Report*”. IMO London.

4.3 The Economics of Somali Piracy

In the East African region, Kenya and Tanzania are particularly affected by the effects of piracy. According to the IMO, many of the piracy attacks reported in these countries are actually committed by Somali pirates operating further and further from their territorial waters¹²⁸. Pirate attacks as with the *Sirius Star* was captured off the Kenyan coast while the *Maersk Alabama* was attacked en route to Mombasa; proving that pirates can now sail as far as 250-400nm away from coastlines to launch attacks¹²⁹.

The profit of piracy, estimated at just under \$300 million in 2010¹³⁰, sustains its growth and internal support. Ports and towns along the Gulf of Aden have benefited enormously from pirate activity, making it a significant part of Somalia's informal economy. Haradheere, a small port town on Somalia's East coast, even has a twenty-four hour stock exchange – members of the community contribute weapons, funding and soldiers, and receive a portion of the ransom money in return. But support goes far beyond domestic communities. Somali refugees as far as Canada and the United States contribute money to the cause, in addition to financial backing from sources in Saudi Arabia, Dubai, Yemen and Al Qaeda¹³¹. Thus what was once a disjointed group of Somalis reacting to illegal fishing and offshore waste dumping has turned into an organized and internationally funded operation.

This opportunity for wealth, unrivalled in Somalia's informal economy, drives the expansion and local support of pirate organizations. The requested sums of ransom money, often in the millions, trickle down through the entire local economy. A UN report based on interviews in Eyl constructed a rough example of how the profits are distributed: 30% to those involved in

¹²⁸ Lewis, Ioan (2008). Op. Cit. p54

¹²⁹ Ibid

¹³⁰ World Bank (2013). Op. Cit. p. 23

¹³¹ Daniels, Christopher L. (2012) Op. Cit Pp .88-94

the hijacking, 10% to the ground militia who control the area, 10% to local community elders and officials, 20% to financiers and 30% to sponsors¹³². In addition, the family of any pirate killed in action receives significant compensation, and the first pirate to board the target ship usually gets a double share of the profits.

Though it is a lucrative endeavour for the pirates and those involved, these pirates push global trade costs up by billions of dollars per year and severely affect the economic activities of neighbouring countries. A report by the World Bank entitled “Pirates of Somalia: Ending the Threat, Rebuilding a Nation” highlighted that the increased costs in global trade arise from shippers being forced to change trading routes, sending on soaring fuel bills, as well as paying higher insurance premiums and security bills for guards on board.

4.3.1 Financial Ransoms from Somali Piracy

Between US\$339 million and US\$413 million was taken in ransom from the hijacking of ships off the coast of Somalia and the Horn of Africa between 2005 and 2012, according to a report released today¹³³. The study – carried out by the World Bank, the United Nations Office on Drugs and Crime (UNODC) and INTERPOL – reveals that much of the ransom money was used to fuel a wide range of criminal activities on a global scale. The study “*Pirate Trails*” – using data and evidence from interviews with former pirates, government officials, bankers and others involved in countering piracy – investigates the flow of ransom money paid out to Somali pirates operating in the Indian Ocean¹³⁴. The study examines the reach of the pirates into the stimulant “khat” trade, human trafficking and other illegal activities that hinder development.

The study revealed that between \$339m and \$413m was paid in ransoms off the Somali

¹³² Harding, Andrew. (2009). Op. Cit. p.75

¹³³ World Bank (2013). Op Cit. p. 86

¹³⁴ Ibid

coast between 2005 and 2012¹³⁵. The average haul was \$2.7m. Ordinary pirates usually get \$30,000-75,000 each, with a bonus of up to \$10,000 for the first man to board a ship and for those bringing their own weapon or ladder¹³⁶. Tracing a pattern that it calls “the pirate money model,” the study analyzes the investments made by a sample of 59 pirate “financiers” to reveal the range of sectors – including both legitimate businesses and criminal ventures – that were funded by the ransom money. Emphasizing the prominent position of pirate financiers, the report estimates that between 30 percent and 75 percent of the ransom money ends up with these financiers. The pirate “footsoldiers” aboard the ships receive just a fraction of the proceeds, amounting to between 1% and 2.5% of the total¹³⁷.

During operations, pirates spend with abandon. Interest rates on loaned goods and services are high: \$10 of mobile-phone airtime is charged generally at around \$20. The men on the anchored ships also pay up to three times the market price for khut, driving up prices on the coast¹³⁸. “With piracy everything became more and more expensive,” complains a fisherman-turned-pirate. Some locals (including former pirates) offer services to potential and actual victims of piracy, for instance as consultants, negotiators or proof-of-life interviewers. Some of these “companies” openly advertise their services, sometimes contacting victims directly.

Financing pirate expeditions can be quite cheap by comparison. The most basic ones cost a few hundred dollars, which may be covered by those taking part. Bigger expeditions, involving several vessels, may cost \$30,000 and require professional financing; this comes from former police and military officers or civil servants, khut dealers, fishermen and former pirates. They

¹³⁵ Ibid

¹³⁶ World Bank (2013) Op. Cit. Pp. 116-124

¹³⁷ Ibid

¹³⁸ Ibid

take anywhere between 30% and 75% of the ransom.¹³⁹ A typical operation has three to five investors. Some provide loans or investment advice to other financiers. Some financiers, especially those in the Somali diaspora who have little cash inside Somalia but large deposits abroad, employ what the report describes as “trade-based money-laundering” to send funds to Somalia. This involves finding legitimate Somali importers willing to use a financier’s foreign money to pay for their shipments and reimburse him at home in cash once the goods are sold¹⁴⁰.

The same technique is sometimes used to transfer ransom money out of Somalia. Cash is also smuggled across the region’s porous borders or transferred through intermediaries. One pirate took \$12,000 in \$50 and \$100 bills to an office that transmits money and wired it abroad, bought a car and shipped it back to Somalia¹⁴¹. The Somali financial sector is surprisingly dynamic and growing more quickly than state institutions. Various internet-payment services have popped up, even in the roughest parts of the country.

The World Bank report identifies Djibouti, Kenya and the United Arab Emirates (UAE) as the main transit points and final destinations for much of the money. The financial institutions in Dubai, part of the UAE, are a particular worry. Investigators concluded that the ransom from the hijacking of the *MV Pompei* in 2012 was moved to Djibouti, then wired to banks in Dubai¹⁴². A third of pirate financiers invest profits in setting up militias or gaining political influence. Some also finance religious extremists. Ciise Yulux, one of the most active pirate leaders who is reckoned to command up to 70 men, provided money and equipment to fighters linked to the Shabab and al-Qaeda in 2012.¹⁴³ Much of the rest flows into property and the khut trade.

¹³⁹ World Bank (2013) Op. Cit. Pp. 116-124

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Lewis, Ioan (2008). “*Understanding Somalia and Somaliland*” Columbia University Press. New York

¹⁴³ Ibid

Khut-chewing is big (and generally legal) business in much of the region, and the role of Somalis in distributing it is growing. The lack of transparency or monitoring of the khut trade in Kenya, the main supplier to Somalia, makes it susceptible to crime. Nine tonnes of the green leaf is flown each day from Kenya to Mogadishu.¹⁴⁴ In some cases, pirate financiers have taken over entire khut co-operatives. They invested in the trade partly to feed the pirates' habit. That is especially lucrative because of their willingness to pay over the odds. The writers of the study suggest ways to disrupt the money flows from piracy, such as better monitoring of cash transmitters and khut producers. But it may be harder to stop laundering the money than to curb the piracy itself.

Stuart Yikona, a World Bank Senior Financial Sector Specialist says that its findings of the World Bank's report highlights the dangers posed not only by the hijackings themselves but also from the proceeds of the criminal acts: "Unchallenged piracy is not only a menace to stability and security, but it also has the power to corrupt the regional and international economy"¹⁴⁵. Piracy costs the global economy about US\$18 billion a year in increased trade costs. Because the outbreak of piracy has reduced maritime activity around the Horn of Africa, East African countries since 2006 have suffered a significant decline in tourist arrivals and fishing yields. International remittances – a lifeline for the poor – have been affected by the decision of some banks to cease their operations with money remitters working with Somalia, which some financial institutions associate with risks involving the funding of terrorist activities.

¹⁴⁴ Ibid

¹⁴⁵ Yikona, Stuart (2013). World Bank Report "*The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*". World Bank.

4.3.2 Somali Pirates and the Al- Shabaab Militants

Al Shabaab; a Somali militant group that pledged allegiance to al Qaeda is said to have turned to piracy to finance its effort to topple Somalia's government, posing further risks for shipping companies and the international naval forces patrolling the waters off the horn of Africa. Al Shabaab designated by the U.S. as a terrorist group, has proceeded from taxing Somali pirates' ransom revenue to dispatching its own fighters to attack ships—American vessels in particular—according to pirates, al Shabaab officials, residents of seaside towns and the Somali government. In a sermon in the southern port city of Kismayo, Sheikh Mahad, a senior al Shabaab official, branded the group's piracy as "sea *jihad*" and called on young militants about to head to sea to target American ships. "America is our enemy," he said, according to a person who was present and recorded the sermon. "We have to retaliate against them by sea or by land"¹⁴⁶.

The most “conclusive” evidence of an al-Shabaab and Somali Pirate union was presented in December of 2009, when Canadian Intelligence was convinced the group was arming and training pirates in exchange for a slice of the pie. The Top Secret report by Integrated Threat Assessment Centre maintained that there was an “Islamist extremism-piracy nexus” with al-Shabaab providing “weapons, combat training and local protection” to the Mudug pirates of southern Somalia. In exchange, al-Shabaab was to receive a percentage of the ransoms¹⁴⁷.

There are however various factors that contradict these allegations. Factors such as locations, skillset and purpose of piracy requires very specific maritime hostile-boarding skills, coastal access and sailing history (al-Shabaab recruits primary from inland camps and southern

¹⁴⁶ Childress, Sarah (10/09/2010). “*Somali Pirates try piracy to fund attacks*” The Wall Street Journal. <http://online.wsj.com/news/articles/SB10001424052748703720004575477491009472882> (Retrieved on July 22, 2014)

¹⁴⁷ Rollins, John (2010). “International Terrorism and Transnational Crime: Security Threats, U. S. Policy, and Considerations for Congress”. DIANE Publishing. p. 37

areas) and also patient ransom negotiation skills with insurance companies or ship owners¹⁴⁸. While it is indeed plausible that some pirate new recruits may have learned how to shoot a gun in al-Shabaab camps they can however get the same training from the TFG, Puntland Marines, foreign countries and other training programs. The ideology does not necessarily transfer, even if the skills do. Al-Shabaab is neither a maritime-based group nor do its leaders know anything about the dark secrets of negotiating ransoms with insurance companies. This skill was nurtured in Bosasso during a maritime security training program that fell apart in 2000¹⁴⁹.

Pirates flourish in a “sweet spot” of intermediate governance — not too weak, not too strong — and cannot function under conditions of either intense conflict or effective rule of law. This is because piracy, like other illicit businesses, needs stable conditions to prosper. Studies by Anja Shortland, a professor of International Studies at King’s College London, has demonstrated that piracy falls when war is raging on land, as it has since Kenya invaded Somalia two years ago. For all its terrorist activity — including, most notably, the deadly attack on the Westgate shopping mall in Nairobi on 21/09/2013 — Al Shabab has been a key contributor to the stamping out of piracy from Somali ports, due to its harsh interpretation of Shariah Law and the personal animus between profit-seeking pirates and Islamist militants¹⁵⁰.

According to Shortland’s research, there have been isolated attempts at cooperation between pirates and terrorists, but research shows that Islamists are serious about putting an end to piracy. In any given month from 1993 through 2011, Islamist control of a region was associated with a 50 percent drop, on average, in the number of pirate attacks emanating from

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Percy, Sarah and Shortland, Anja (2010). “The Business of Piracy in Somalia”. Deutsches Institut für Wirtschaftsforschung.

that region. Now that Al Shabab is in retreat, the emerging power vacuum in Somalia's southern ports may lead to "sweet-spot" conditions for pirates to resurface¹⁵¹.

4.4 On-shore Solutions to Maritime Piracy

Given the complex nature of piracy in Somalia, there is no simple solution to this problem. Indeed, it is a complicated and multifaceted problem that requires a multifaceted solution - politically, militarily and legally. Attempts at addressing Somalia's internal conflict, were initially attempted with the aim of restoring peace and mediating between warring parties. Since the beginning of the crisis, the UN was active in the area through its UNOSOM I and II missions (in coordination with the US UNITAF mission) in 1992-95, as well as through mediation efforts and development programmes. Despite the legitimacy conferred on these actions by successive UN Security Council Resolutions,¹⁵² results have been wanting. The main deficiency in the UN's approach in the early 1990s was the belief that the crisis could be solved through top-down mediation between warlords by means of political mediation¹⁵³. This approach mostly neglected the lack of social cohesion and the subsequent effect of legitimate violence as a defensive tool, made possible by the widespread availability of weapons. In this respect, the UN military mission was meant to deal only with the humanitarian situation in Somalia and was not mandated with disarmament tasks. On the contrary, the parallel US mission adopted a "selective disarmament" approach, proceeding with disarmament only in case of danger to humanitarian aid distribution or international personnel. The situation on the ground remained unchanged due to the two missions' lack of a clear and equal disarmament mandate, and the belief that

¹⁵¹ Ibid

¹⁵² UN Security Council Resolutions on Somalia S/RES/751 (24 April 1992), S/RES/794 (3 December 1992), S/RES/814 (26 March 1993), S/RES/733 (23 January 1992), S/RES/1725 (6 December 2006), S/RES/1744 (21 February 2007), S/RES/1910 (28 January 2010), <http://www.un.org/documents/scres.htm>.

¹⁵³ Marangio, Rossella (2012). "*The Somali Crisis: Failed State and International Interventions*". Istituto Affari Internazionali. <http://www.iai.it/pdf/dociai/iaiw1215.pdf> retrieved on 18th October 2014

mediation among the leaders of armed groups could suffice¹⁵⁴. The assumption that mediation between leaders could settle the Somali civil war ignored the fluidity of group formation in Somali society which, as said above, is based on changing opportunities and alliances. Since the outbreak of the civil war, several ceasefires have been signed and different peace processes launched, the last being the Djibouti Peace Process (started in 2008), but to no avail. The evidence of a continued struggle among groups shows how these agreements have been limited in their application. For each agreement concluded or opponent to the central state defeated, new groups and leaders have emerged to carry on the armed struggle¹⁵⁵.

Kenya has demonstrated some ability to counteract al-Shabaab in Southern Somalia and has spurred the international community to renew its commitment through the adoption of a UN Security Council Resolution calling for an increase in troops and an extension of AMISOM's presence in the country. In spite of this, overall success in stabilizing Somalia is far from assured for three main reasons. First, this renewed impetus is mainly connected to the need to fight a common enemy - al-Shabaab - and solves neither the underlying causes that make Islamist militancy attractive to Somalis nor the divergence of interests of the international actors involved with respect to the future of Somalia. Secondly, it continues to have a top-down approach downplaying the question of social cohesion. Thirdly, despite the inclusion of disarmament tasks in the mandate of AMISOM, the widespread availability of arms in Somalia continues to threaten security¹⁵⁶.

¹⁵⁴ Matteo Guglielmo, *Somalia*, cit., p. 97.

¹⁵⁵ Security Council Report, Update Report Somalia, Nos. 1 (October 15, 2010) and 3 (December 8, 2010), http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2400725/k.71BF/Publications_on_Somalia.htm

¹⁵⁶ International Crisis Group, *Somalia: An Opportunity that Should Not Be Missed*, 22 February 2012 (Africa Briefing ; 87), p. 4, [http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/b87-somalia-an-opportunity-that-should-not-be-missed.pdf](http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/somalia/b87-somalia-an-opportunity-that-should-not-be-missed.pdf)

International actions have also included development and humanitarian activities carried out or financed mainly by the UN and the EU with the aim of addressing the underlying problems of widespread poverty and scarce access to resources. This is a key issue in approaching the Somali crisis since it also addresses local realities, not just central authorities. Strategic guidelines for development cooperation have been issued in the Reconstruction and Development Programme (RDP), a document issuing from the Somali Joint Needs Assessment Process, an assessment of Somalia's post-conflict needs led by the UN and the World Bank in the 2005-2007 period¹⁵⁷. The document identifies different priority clusters and cross-cutting issues, but its premise is that peace hinges on governance, economic development, infrastructure and human rights reforms. The same applies to the operational framework documents for development cooperation issued by the UN and the EU, the major actors involved in this field in Somalia. Both the United Nations Somali Assistance Strategy 2011-2015¹⁵⁸, defining UN actions coordinated by the UN Country Team in Somalia, and the Somalia Joint Strategy Paper for the period 2008-2013, setting the priorities for EU action, state that security is a prerequisite for development and call for the implementation of several related actions in various fields: food security, governance and justice. However, even if security conditions undeniably affect the outcome of every other action, the reverse mechanism should also be considered: development programmes can also have a positive impact on security conditions by effectively impacting the root causes of Somali instability. Development programmes have enormous potential as regards inclusion, social cohesion and reconciliation, especially at the local level¹⁵⁹.

¹⁵⁷R002(November 19, 2014) International Maritime Organization

¹⁵⁸ Ibid

¹⁵⁹ European Commission, Somalia: Joint Strategy Paper for the period 2008-2013, 2007, http://ec.europa.eu/development/icenter/repository/scanned_so_csp10_en.pdf.

Confidence-building measures such as common management of resources, shared procedures and grassroots participative processes can lead to greater social cohesion and trust in new procedures, forms of cooperation and legal activities contributing to the transformation of the conflict, thanks also to an equal distribution of peace dividends. Even though the approach used in the field of development is both top-down and community-based, the former is mainly adopted in the security and governance domains while the latter is used in addressing other issues, e.g. food security, resources management and economic development, thus determining a cleavage between these two spheres¹⁶⁰. Multilevel actions that combine central and local needs are foreseen under the above-mentioned strategic documents. However, the community based bottom-up strategies should be privileged over mere central institution-building. As the fragmentation of Somali society suggests, cooperative mechanisms enabling social cohesion are more likely to engender positive spill over if they move bottom-up rather than top-down.

¹⁶⁰ R002(November 19, 2014) International Maritime Organization

Chapter Five

Summary, Conclusion and Recommendations

5.0 Introduction

This study sought to establish the causes and effects of maritime piracy along the East African Coastline examine the normative and institutional frameworks in existence to control and manage East African maritime piracy. The study further aimed at critically examining the impact of land-based interventions in sustainably curbing piracy in Somalia and making recommendations that would inform policy formation of sustainable long term solutions to piracy in the region. The aforementioned objectives resulted in the formulation of two hypotheses stating that political instability in Somalia has contributed significantly to the rise of maritime piracy along the East African coastline and secondly, weaknesses in the counter piracy measures largely explain the recurrence of maritime piracy along the East African coastline.

These assumptions were examined within the economic rational choice theoretical framework which sought to explain the proliferation of piracy in the East African coast through the analysis of economics concepts that are relevant to understanding what drives piracy and propose a need for sustainable development policies to be employed in the East African region as a means to ensure that there are no unfulfilled achievements that would drive marginalized communities to engage in acts of Maritime piracy.

This chapter brings to end this study by revisiting the cause and effects of maritime Piracy; the social, economic, political and geographical factors that make the East African coastline a haven for pirates. This chapter shall further revisit the normative and institutional frameworks established by international organizations to mitigate maritime and the role Somalia has played in the increase of piracy acts along the East African coastline.

On objective one which relates to hypothesis one, the study found that political instability in Somalia has contributed significantly to the cause and rise of maritime piracy along the East African Coastline. The collapse of the Somali Democratic Republic following the civil war outbreak in 1991 left Somalia with no political authority to govern the state and its people, leading to an anarchic social and political situation. Somali communities turned to piracy as a means of economic sustainability and for the protection of its vulnerable coastline from foreign fishing vessels poaching and over exploiting the regions vast aquatic resources.

Regarding the second objective which relates to hypothesis two, the study found that weaknesses in the normative and institutional counter piracy frameworks set to control and manage maritime piracy are largely unsustainable and thus explain the recurrence of maritime piracy along the East African coastline. Intervention strategies employed by international Organizations such as the International Maritime Organization, the United Nations Security Council, the North Atlantic Treaty Organization, the African Union and the East African Community have failed at providing an internationally agreeable definition for piracy leading to a weakness in the legal enforcement of laws pertaining to maritime security. Furthermore, there is a lack of synergy and cohesion in the formation of interventions by the various international institutions creating duplication of efforts, ineffective use of resources and ultimately resulted in unsustainable counter piracy normative and institutional frameworks.

5.1 Summary

This study aimed at empirically answering throughout each chapter, key research questions that would further support or nullify the research hypothesis. The first Chapter introduced the menace that is maritime piracy highlighting that the problem of maritime piracy is age-old and ever recurrent with the Golden age of piracy being between 1620 and 1720.

Maritime Piracy throughout history has been suppressed but never entirely eliminated or addressed wholly causing it to escalate from sporadic spates of small attacks to larger, more coordinated and severe attacks. Modern day Piracy is prevalent in Southeast Asia, The East African coastline and Western Africa where geographical, social and political variables enable piracy to thrive in the region. Piracy and armed robbery against ships is an increasing concern not only for the maritime industry but for most coastal countries as it threatens global seaborne trade and maritime economic activities. Maritime piracy also has a negative impact on the cost of shipping and related activities, tourism and fishing.

Where addressing the causes and effects of maritime piracy along the East African Coastline, research explored in chapter two provided validation for hypothesis one proving that political instability in Somalia has contributed significantly to the rise of maritime piracy along the East African coastline. This instability that has endured in Somalia for more than a decade following the collapse of the authoritarian government regime of General Siad Barre and the consequent lack of socio political structures, unemployment and destitution led large numbers of fishermen and idle youth to join radical groups in an attempt to secure a source of income to fight against the prevailing case of poverty in the country. Foreign exploitation of Somalia's seas through overfishing and the dumping of toxic waste further caused aggrieved fishermen to take to piracy as a means of protecting the vulnerable coastline. These actions have had negative consequences to region as there has been a decline in tourism, foreign investment, reduced revenue from local fishing, and increased cases of food insecurity as humanitarian aid becomes a challenge to deliver as well as various commercial and industrial implications owing to the hijacking of oil tankers and commercial vessels in the region.

Upon the examination of the strengths and weaknesses of the normative and institutional frameworks on the control and management of maritime piracy along the East African coastline, chapter three highlighted the various institutions that have developed policy frameworks and interventions to aid in curbing maritime piracy not only along the East African coastline but globally. This chapter elaborated on the International Legal Frameworks stipulated under the United Nations Convention on the Law of the Sea (UNCLOS), counter piracy strategies employed by the International Maritime Organization, the resolutions adopted by United Nations Security Council, the naval operations carried out by the North Atlantic Treaty Organization, the regional cooperative frameworks established by the African Union. These normative and institutional frameworks as well formulated and funded as they are have yet to result in the complete eradication of the threat that is maritime piracy rather they have succeeded in managing its severity.

Finally, to further justify the hypothesis that political instability in Somalia has contributed significantly to the rise of maritime piracy along the East African coastline, chapter four of this study examined in depth Somalia as a factor in the increase of piracy acts along the East African coastline. Through understanding the historical evolution of political instability in Somalia, the study was able to deduce that piracy in Somalia stems from the historical political governance structures that had many negative consequences of the country's progression. The absence of a stable political authority expected to meet the basic needs of the larger majority of people; internal violence and the prevalence of lawlessness are all contributors to the rise in piracy along the East African coastline.

5.2 Conclusions

Piracy along the East African coastline is as a result of the political instability that has endured in Somalia for more than a decade following the collapse of the authoritarian government regime of General Siad Barre. The lack of socio political structures, unemployment and destitution led large numbers of fishermen and idle youth to join radical groups in an attempt to secure a source of income to fight against the prevailing case of poverty in the country. Foreign exploitation of Somalia's seas through overfishing and the dumping of toxic waste further caused aggrieved fishermen to take to piracy as a means of protecting the vulnerable coastline. These actions have had negative consequences to region as there has been a decline in tourism, foreign investment, reduced revenue from local fishing, and increased cases of food insecurity as humanitarian aid becomes a challenge to deliver as well as various commercial and industrial implications owing to the hijacking of oil tankers and commercial vessels in the region.

There are various institutions that have developed policy frameworks and interventions to aid in curbing maritime piracy not only along the East African coastline but globally. What stands out however is that overriding factor that these interventions have yet to result in the complete eradication of the menace that is maritime piracy rather they have succeeded in managing its severity. It is evident that long term sustainable social, economic and political interventions are required along the East African coastline so as to improve the livelihoods of local communities providing them with opportunities for personal development and deterring them from looking towards piracy as a means of self-sustenance.

The situation of the coast of Somalia underscores the futility of trying to suppress piracy using only naval forces. Despite the presence of a powerful flotilla of ships and other resources

dispatched by international organizations to curb piracy along the East African coastline, the Somalis continue to operate with impunity. All the best that naval anti-piracy task forces can do is guard the primary sea lanes and to encourage sea captains to only sail through those areas where the coalition naval forces operate. In the long run, piracy along the East African coastline can only be resolved ashore. That involves a combination of attacks on the on shore pirate havens and well as address the social, economic and political challenges that face Somalia presently. In light of the US experience it is understandable that American policymakers are reluctant to take on the task, however as in previous periods of piracy have shown; the address on a global concern such as piracy requires a determined effort by the international community at large and through a holistic approach-that is, both at sea and on land.

5.3 Recommendations

The growth on piracy along the East African coastline threatens the interests of states and people both within and outside Africa. The endurance of maritime piracy in this region is as a result of deep and long standing economic and social challenges emanating from the political instability in Somalia. Spontaneous responses to maritime piracy in region have proved to be largely unsustainable as these deeply entrenched causes require long term and holistic initiatives which not only involve reactionary, immediate counter piracy measures onshore, but the implementation of social, economic and political developmental programmes onshore that target eradicating the root causes of piracy in the region.

This study therefore makes recommendations in specific thematic areas that if employed by policy makers, states and communities in unison, would result in sustainably curbing maritime piracy along the East African Coastline. Initiatives aimed at increasing deterrence, strengthening local judicial capacity and offering opportunities for gainful employment of youth

at risk of being drawn into piracy. Such efforts would be critical in ensuring that Somalia's coastal communities feel they have a stake in efforts to resolve maritime piracy. Enabling those who live with the daily damage both reputational and economic brought on by piracy to Somalia to view themselves as stakeholders in efforts to remove the scourge of piracy could prove invaluable in achieving long lasting solutions¹⁶¹.

5.3.1 Good Governance and the Political Stabilization in Somalia

Creating political stability in Somalia is paramount to the curbing of maritime piracy along the East African Coastline. It is in the anarchic political environment that piracy have thrived and flourished in the region. There is a need to tackle the root causes of piracy in Africa rather than reacting to this symptom of a deeper malaise. Like most security challenges confronting Africa, the origin of maritime insecurity along the East African coastline lays in the progressive failure of governance and internal contradictions that serve to undermine human development. The factors are extensive, but corruption, marginalization and injustice figure as the most prominent causes of insecurity onshore that extend offshore.

Good governance is therefore absolutely fundamental to achieving sustainable maritime security and development in Africa. Efforts must be made to address poor governance by strengthening and networking all institutions and mechanisms at national, regional and continental levels that are fighting corruption and undemocratic tendencies.¹⁶² The importance of policies designed to curb corruption in African states, ensures transparency and accountability in the management of national resources, greater investment in human development, and the strengthening of the democratic process to ensure the emergence of credible leaders.

¹⁶¹ World Bank (2013). "*The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*". World Bank.

¹⁶² Menkhaus, Kenneth (2007)., "*The Somali Catastrophe, Bigger than the Horn—and Not Over Yet*," *Current History*. <http://origins.osu.edu/article/pirates-puntland-somalia/page/0/1> (Retrieved on 11th July 2014)

The international community, through the United Nations must band together and work towards further advancing peace, security and reconciliation in Somalia. An exit strategy for the African Union Mission to Somalia needs to be formulated and a more robust UN peacekeeping mission operation be devised and implemented along with the implementation of simultaneous long term political and economic reconstruction and stabilization programmes tailor made to suit the people of Somalia. Establishment of a special crime commission is necessary to investigate the activities of warlords, militia leaders and other criminals who have contributed to the Somali crisis and recommend as well as implement appropriate sanctions.

5.3.2 Enhancing Regional and International Cooperation

There is a need for the African Union, regional organizations, national governments , civil society organizations and grassroots communities to intensify collaborative networks and strengthen existing mechanisms to control the proliferation of small arms and light weapons in Africa, and with particular reference to the East African Coastline¹⁶³.

Along with the control of SALW, the African Union with other stakeholders should intensify its collaboration with the Regional Economic Communities to ensure that the concepts of the African standby Force and the sub-regional standby brigades become functional and sustainable. Efforts must be made to develop the capacity of the regional brigades to protect Africa's maritime interests within a clearly defined holistic maritime security strategy for Africa¹⁶⁴.

Foreign navies operating along the regions coast should establish cooperative partnerships with navies of coastal states in the region. Cooperation would transfer knowledge

¹⁶³ Rivkin D. & Mrosovsky C (, 2010). "A Better Way to Deal With Pirates". WASH. POST. <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/08/AR2010120806188.html> Retrieved on 09-June-2014.

¹⁶⁴ Haberfeld M. And Von Hassell, A (2009). "Modern Piracy and Maritime Terrorism: The Challenge of Piracy for the 21st Century". Kendall Hunt Publishing Company.

and build the capacities of the local navies which in turn would ensure sustainable naval presence is maintained in the region. Cooperation would also attach legitimacy to foreign led operations in the region. The cooperation here must go beyond merely fighting piracy to include emphasis on effective protection of the marine resources of African States from liberal pillage and the dumping of toxic wastes by foreign and local vessels.

5.3.3 Providing Incentives to the local Clan Communities

Influencing the incentives of those who accommodate the piracy trade is an efficient way of affecting pirates' own incentives. For example, pirate havens operate under the protection of local clans that use the hosting of pirates as a way to create employment and make money (through a share of the ransom payments). By co-opting these clans and providing pay-outs under the condition that no pirated ships are held at such locations, one is able to provide the right kind of incentives to discourage piracy¹⁶⁵. Given the impact of piracy on international trade, as well as the costs involved in the military missions in the area, any reasonable pay-out to these local clans will be a much more cost-efficient way of dealing with the threat of piracy.

5.3.4 Addressing illegal, unprotected and unregulated fishing

Actions by the European Union to suppress illegal fishing have positive effects in improving regional maritime security capacities at large. The EU is actively supporting the fisheries sector national policies, including surveillance through the fisheries partnership agreements in the Indian Ocean, as well as contributing with technical assistance through ACP FISH II and Environment and Sustainable Management of Natural Resources including Energy (ENRTP) programmes. The European Commission funded with €10 million a Regional Surveillance Plan for fisheries in the South West of the Indian Ocean from 2007 to 2011. The

¹⁶⁵ Groot Olaf De (2013). “*Stockholm International Peace Research Institute*”.
<http://www.sipri.org/media/blogs/eps-blog/combating-blackbeard-how-to-reduce-maritime-piracy-in-somalia>
(retrieved on January 29, 2015)

aim was to reduce the number of vessels fishing illegally in the area and to contribute to the conservation and sustainable management of tuna resources.¹⁶⁶ Currently underway, the SmartFish Programme aims to increase the level of social, economic and environmental development and deeper regional integration in the Indian Ocean region through improved capacities for the sustainable exploitation of fisheries resources. The programme is worth €21 million for the first of two implementation phases, and includes specific action in support of the Somali fishing industry.

¹⁶⁶ European Union (2012). “The EU fight against piracy in the Horn of Africa”. European External Action Service. http://eeas.europa.eu/agenda/2012/200212_factsheet_piracy.pdf

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