THE IMPACT OF PIRACY ON INTERNATIONAL SECURITY: THE CASE OF

SOMALIA, 1991-2010

BY

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Declaration

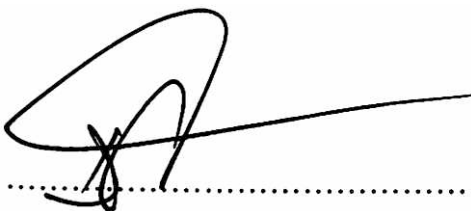This Thesis is my original work and has not been submitted for a degree to any other University.

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Nancy Wandia Thuo **Date**

This Thesis has been submitted for examination with my approval as University supervisor.

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Dr. Ibrahim Farah **Date**

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Dedication

To my father whose greatest achievement has been his commitment to discover new innovations and ideas; and to the people of Somalia who have demonstrated that true patience and resilience can hopefully lead to peace one day, Insha Allah.

Acknowledgements

Abstract

Piracy in the region and in the world is of course not a new phenomenon, however, the momentous rise in the frequency and sophistication of piracy off the Somali coast is of great concern. The main objective of this study is to assess the impact of piracy on international security with a case study of Somalia from 1991 to 2010. The study specifically aims to analyse the root causes of piracy off the coast of Somalia, examine the various approaches by the international community and their effectiveness in dealing with piracy and finally to explore the development of international law in dealing with piracy as a crime. The study uses Buzan's concept of security that uses the three levels of analysis namely; individual level of analysis, state level and the international political system. The research methodology used is exploratory research relying heavily on secondary research. The study contends that piracy has been caused by the lack of a central government, weak governing institutions and the extreme poverty in the country.

List of Abbreviations

AMISOM	AU Mission in Somalia
ARPCT	Alliance for the restoration of peace in Somalia
ARS	Alliance for the Re-Liberation of Somali
AS	Al-Shabaab
AU	African Union
EUNAVOR	European Union
GDP	Gross Domestic Product
HSTF	High Seas Task Force
ICC	International Criminal Court
ICU	Islamic Courts Union
IGAD	Intergovernmental Authority for Development
IMB	International Maritime Bureau
IMO	International Maritime Organisation
IUU	Illegal Unreported Unregulated
NATO	North Atlantic Treaty Organisation
NGOs	Non governmental Organisations
PRC	IMB's Piracy Reporting Centre
SNM	Somali National Movement
SRRC	Somalia Reconciliation and Restoration Council
SUA	Suppression of Unlawful Acts
TFG	Transitional Federal Government
TFG	Transitional Federal Government
TFIs	Transitional Federal Institutions
TNG	Transitional National Government
UK	United Kingdom
UNCLOS	UN Convention on the Law of the Sea
UNEP	United Nations Environmental Programme
UNITAF	Unified Task Force
UNOSOM	United Nations Operation in Somalia
UNSC	United Nations Security Council
UNSCRs	United Nations Security Council Resolutions
US	United States of America
USC	United Somali Congress
WFP	World Food Programme

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.1: Introduction

The purpose of this research will be to examine the impact that piracy off the Coast of Somalia has had and continues to have on International Security. There has been considerable attention given by the media, the international community and even the United Nations Security Council has made a number of resolutions[1] based on the high increase of piracy incidents in the Gulf of Aden off the coast of Somalia and the increased threat of security in the high seas. Piracy in the region and in the world is not a new phenomenon, however, the momentous rise in the frequency and sophistication of piracy off the Somali coast is what has become of grave concern to most security experts.

Despite the fact that the root cause of the problem of piracy off the Coast of Somalia is on land, that is, the conflict in Somalia which has been ongoing for over twenty years, the fact is, that piracy has posed serious threats to ships on innocent passage. Some of the main problems that piracy has directly or indirectly contributed to has been the loss of revenue through the payment of multi-million dollar ransoms, the suspension of critically needed food aid by the World Food Programme (WFP) into some regions of Somalia, disruptions in the international shipping industry through commodity price increases, and even the loss of lives.

This study seeks to analyse how international law dealing with piracy has developed over the recent years due to the extraordinary growth of piracy incidences off

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[1] See United Nations Security Council (UNSC) Resolution 1816, (2008).

the coast of Somalia. It will attempt to examine how effective the response of the international community through the unprecedented international naval cooperation. patrolling the Gulf of Aden with the navies of the United States, Great Britain. France and India and the first-ever European Union naval force has had on controlling the piracy problem. Critics are of the view that the international community is preoccupied with fire fighting approach in responding to situations, and in most cases address symptoms of the problem rather than its root cause.

Somalia is a perfect environment for piracy to thrive[2] since it has been with a little functioning government for more than twenty years and it has a long, isolated and sandy beaches as well as a population that has been through an ongoing war, making the citizens more than desperate for better 'livelihoods'.

Piracy off the coast of Somalia has threatened to drastically disrupt international security in all aspects of economic security, food security, fuelling civil war and escalating many acts of terrorism. The underlying factors and dynamics of the ills in Somalia has both internal and external flavour; internal are identified as historical, economic, social and political factors, while external factors are believed to be the geo-political and strategic-interest. Debatably, any realistic efforts for peace in Somalia have to take into account these factors.

1.2: Statement of the research problem

Piracy off the Coast of Somalia has been an overwhelming problem for the Somali authorities to deal with due to the lack of resources as well as the lack of a strong

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[2] C. Byrne, "The two sides of the Somali piracy coin: An examination of the rise and perpetuation of piracy in Somalia ". *Consultancy Africa Intelligence*, Monday, 16 May 2011.

government. Thus the international community has had to step up and come in to manage or attempt to guarantee safe passage for ships and their crew members through the Gulf of Eden.

Arguably most nations have laws against piracy, but international agreements over the methods of combating the scourge is questionable. There are disagreements over views on piracy with some claiming victims and others criminals. For example, Col. Gaddafi expressed his sentiments in his inaugural tour to the AU headquarters in Addis Ababa over piracy off Somalia Coast on 7th February 2009, by stating that he did not believe that Somali piracy was a crime, and instead described it as a response to what he termed as greedy western nations out to invade, and exploit the Somalia's water resources illegally.

There have also been considerable arguments against foreign vessels fishing within the Somalia waters and sometimes as close to the shores exploiting the Somalia rich marine resources with total disregard for international law and other regulatory standards. Somali warlords have been accused of providing licenses to some foreign fishing companies in the 90s with allocations of small incentives in the absence of regulatory measures to check on the deal.

There have also been allegations which do no have substantial information about the dumping of factory and other toxic waste both in the Somalia onshore and offshore. Though this issue has level of trace implicating some officials of the Barre regime, the disintegration of the state provided more space and entry-points to forces in pursuit of this agenda. In this period of instability sealed containers driven to the coast by waves

were reported from time to time. Unmanned waters of such range are no doubt open for exploitation at a time international attention is drawn to the pirates.

This study will seek to analyse how international law dealing with piracy has developed over the recent years due to the extraordinary growth of piracy incidences off the coast of Somalia. This paper will demonstrate that the problem of piracy off the coast of Somalia has led to various interventions by the international community never seen before, while the traditional definition of piracy under international law restricts military responses by outside powers to those carried out on the high seas, the 2008 Security Council resolutions[3] authorized the use of military force within sovereign Somali waters and territory. This study will thus attempt to examine how effective the response of the international community through the unprecedented international naval cooperation, patrolling the Gulf of Aden with the navies of the United States, Great Britain, France and India and the European Union naval force has had on controlling the piracy problem and maintaining the status quo in international security.

The key guiding question is how international law has been changed or developed to accommodate the use of military action in effectively curbing the piracy problem.

1.3: Objectives of the study

The main objective of the study is to assess the impact of piracy on international security with a case study of Somalia from 1991 to 2010. More specifically, the study aims to:

a) Analyse the root causes of piracy off the coast of Somalia;

b) Examine the various approaches by the international community and their effectiveness in dealing with piracy;

c) Explore the development of international law in dealing with piracy as a crime.

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[3] See United Nations Security Council (UNSC) Resolution 1816, (2008).

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1.4: Literature Review

Alisha Ryu[4]posts that critics looked at Somalia and thought the country was far too destroyed that there was no point in worrying about the problem of piracy since the people of Somalia would fight among themselves and there would be no consequences for the rest of the world, but currently the consequences are now visible for the rest of the world. She emphasises that in 1991. Somalia descended into war after the fall of the regime of dictator Mohamed Siad Barre.

During the next decade, some European and Asian countries took advantage of the chaos in Somalia and sent their commercial fleets to fish in Somali waters. Other European countries sent to Somalia thousands of drums of toxic waste, including nuclear waste, to be dumped at sea.

Without a coast guard to monitor and prevent such illegal activities, Somali fishermen began organizing and arming themselves to confront waste dumpers and to collect fees from foreign vessels taking fish out of their waters. Ryu says that what began as a legitimate fight against foreign exploitation turned into a criminal enterprise when everyone discovered its lucrative potential. The fact that illegal fishing and dumping of toxic waste still goes on in Somalia has become an excellent angle for public relations for the pirates, who use it to defend their actions as justified in defending the Somali waters.

Buzan[5] proposes that the concept of security can only be fully understood by integrating the interdependent "levels of analysis" and "issue sectors" or "dimensions" of

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[4]A. Ryu, "Somali Piracy Exposes Weakness in UN Law of the Sea", *Voice of America*, Radio broadcast, Wednesday, 8 April 2009.
[5]B. Buzan, *International Security Studies in People. States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.2.

security. Buzan's levels of analysis are individual, national and international (both regional and system wide) security, while his issue sectors comprise military, political, societal, economic and environmental security[6]. Other analysts in the security studies field follow a similar conceptual pattern. Although different candidate categories have been used in various studies, such as energy and food security, transnational crime and migration, these all can be subsumed within one or more of Buzan's dimensions of security.

Buzan's individual level of analysis says that individual security is threatened by the absence of basic needs for an individual's survival and the perilous economic condition of the citizenry may weaken or even threaten the existence of a state which, in turn, may have implications for international security if individuals and group economic insecurity leads to civil conflict with potential for the spread of violence beyond state borders or the high seas. The lack of provision of basic needs could be simply food, shelter, education or the constant and consistent feeling of security or having a livelihood.

Many of the pirates operating in Somalia are former fishermen who attack foreign fishing boats claiming that they are illegally fishing Somali waters and threatening their business. This is especially true for the Somali Coast Guard which sees itself as the protector of the Somali fishing industry. "We don't consider ourselves sea bandits," say members of the Guard. "We consider sea bandits [as] those who illegally fish in our seas and dump waste in our seas and carry weapons in our seas. We are simply patrolling our seas."[7] As the struggle for government power continues to prevent effective public institutions from forming, Somali pirates are free to take the law into their own hands.

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[6] R. Betts, "Should Strategic Studies Survive?", *World Politics*, Vol. 50, No. 1 (1997), p.26.
[7] A. David. "Future Face of Conflict: No Quick Solutions to Pirate Crisis", *World Politics Review*, Article 2744, (2008), p.1.

Ironically, however, Somali pirates often fulfil the government's duty to prohibit illegal fishing and smuggling.

There are several factors that have contributed to the emergence of piracy in last decade mainly; the massive increase in commercial maritime traffic, combined with the large number of ports around the world, the higher incidence of seaborne commercial traffic that passes through narrow and congested maritime chokepoints, the lax coastal and port-side security have played an important role in enabling low-level piratical activity, corruption and emergent voids of judicial prerogative have encouraged official complicity in high-level pirate rings, and the global proliferation of small arms has provided pirates with an enhanced means to operate on a more destructive and sophisticated level.

Other writers like Hari[8] and Bryne[9] agree with this statements such as, tries to justify piracy as being caused by the alleged dumping of toxic waste especially after the 2004 tsunami, which apparently led to hundreds of dumped and leaking barrels washing up on the Somalia shore and people who lived around the shore began to suffer from radiation sickness, and more than 300 died. The same article claims that European ships have also been looting Somalia's seas of their greatest resource: seafood. More than $300m-worth of tuna, shrimp, and lobster are apparently stolen every year by illegal trawlers[10]. The former AU Chairman, President Muammar Gadaafi[11], in his visit to the African Union Headquarters in Addis Ababa on 5 February 2010 expressed his opinion on Somali piracy as it not being a crime but a self defense mechanism for the Somali

[8] J. Hari, "You are being lied to about pirates", *The Independent*, Sunday, 4 January 2009.
[9] C. Byrne, "The two sides of the Somali piracy coin: An examination of the rise and perpetuation of piracy in Somalia", *Consultancy Africa Intelligence*, Monday, 16 May 2011.
[10] J. Hari, "You are being lied to about pirates", op cit.
[11] Y. Sheik. "Gadaafi Defends Somali Pirates", *Daily Nation*, Friday, 5 February 2010.

people since the western states had over exploited the Somali waters and 'robbed' off its resources.

Security scholars on maritime security seem to agree that some of the reasons given for the causes of piracy are mere justifications for the high seas crime and it is about time that piracy was taken seriously since the problem is now compounded by an ineffective government in Somalia.

According to the ICC International Maritime Bureau (IMB), the number of piratical incidents reported in 2009 had surpassed the total number reported in 2008.The total number of attacks reported to the IMB's Piracy Reporting Centre (PRC), was 294. Of these, 34 resulted in successful hijackings of vessels. A total of 559 hostages have been taken in these hijackings. The highest number of hijackings have taken place off the coast of Somalia, either in the Gulf of Aden or off the country's east coast in the Indian Ocean.

The increasing number of piracy incidents off the Somalia coast has had an overwhelming impact on the whole international security system. The shipping companies have lost valuable cargo, lost money through late deliveries, lost precious members of their crew through kidnappings or death. From a Humanitarian aspect, many Somalis have lost their lives through malnutrition and starvation due to the suspension or loss of food aid carried by the World Food Programme (WFP) ships.

The Gulf of Aden is the main trade route between Europe, the Middle East and Asia, with approximately 16,000 ships navigating this area each year[12]. The maritime industry off the Somali coast has grown over the years and today, the Gulf of Aden

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[12] A. Brice, "Somali piracy threatens trade, boosts terrorists, analysts say". CNN World, Wednesday, 1 October 2008.

serves as host to 12% of global maritime trade and 30% of the world's crude oil shipments[13]. Shippers have few alternatives to avoid this route, as the added cost of navigating around the Cape of Good Hope is quite substantial. Pirates thus have a wealth of potential targets that they use to their advantage. Another additional danger and cost of piracy is the increase of insurance premiums for the ships travelling through the Gulf of Aden, which has reportedly increased tenfold. Most ships therefore fear reporting pirate attempted attacks for fear of increasing their insurance premiums.

The majority of humanitarian aid transported by WFP is by sea. They can have over 30 ships at sea carrying critical foodstuffs for distribution in more than 80 countries worldwide. Delivering commercial goods and humanitarian aid supplies to Somalia, has been a logistical and security challenge ever since the collapse of the last national government in 1991.The Secretary General of the International Maritime Organisation (IMO), and the Executive Director of WFP, Josette Sheeran, have warned that the actions of pirates operating in the waters off Somalia threaten the sea lanes in the region and endanger the fragile supply line for food assistance to Somalis[14].

The piracy actions and threats were so dire that they requested the International community to continue addressing the rising incidences of acts of piracy and armed robbery against ships carrying humanitarian aid to Somalia. They requested the United Nations Secretary-General to bring the piracy situation off Somalia, to the attention of the UN Security Council, so that, it could request the Transitional Federal Government of Somalia to take appropriate action.

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[13] Agencies, "The year Somali pirates challenged the world ". *The Economic Times*, Monday, 15 December 2008.
[14] See *World Food Programme Somalia*, "Coordinated action urged-piracy threatens UN lifeline to Somalia", *WFP News*, Sunday, 7 October 2007.

The only period during which piracy virtually vanished around Somalia was during the six months of rule by the Islamic Courts Union in the second half of 2006. This indicates that a functioning government in Somalia is capable of controlling piracy. After the removal of the courts piracy re-emerged. A number of experts have related and interlinked the rise of piracy to the continued civil war and failed government of Somalia.

The Civil war in Somalia began in January 1991 with the ousting of the Siyad Barre government. Later in 1991, Somaliland declared itself independent, though its sovereignty is not recognized by any nation or international organization. The UN intervention of 1992 to1995 was the first mission to provide humanitarian relief and help restore order in Somalia after the dissolution of its central government. A coalition of UN peacekeepers led by the US formed the Unified Task force (UNITAF), which was tasked with ensuring distribution of humanitarian aid and the establishment of peace in Somalia. After the battle of Mogadishu the UN withdrew from Somalia on March 1995[15].

In 2004, the Transitional Federal Government (TFG) was founded in Kenya due to the ongoing fighting in Mogadishu. In 2006, the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) was formed as an alliance of mostly secular Mogadishu-based warlords. They were opposed to the rise of the Sharia law oriented Islamic Courts Union (ICU), which had been rapidly consolidating power. They succeeded in capturing the capital. In January 2009, the southern half of Somalia fell into the hands of radical Islamist rebels. The rebels have continued to take over several key provinces, establishing sharia law in areas under their control but have failed to overthrow the government.

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[15] Meredith, M. *The Fate of Africa – A History of Fifty Years of Independence*, (New York: Public Affairs, 2005), p. 472.

Bedford[16]discusses the fact that a solution to the problem of piracy cannot be found in the sea but on land with the international community recognising the need for establishing peace in the world's forgotten state.

According to the CIA World Fact Book, Somalia GDP in 2009 was USD $600. It is reported that a pirate can earn between USD $10,000 and $30,000 per year. In a BBC article, Kenyan Foreign Affairs Minister Moses Wetangula, stated that Somali pirates had been paid more than $150 million in ransom in 2008 alone[17]. Ransoms payments in 2008 included a German-registered freighter released for USD $800,000; a Dutch cargo ship exchanged for $700,000; the Danish-owned *Spitzer Korsakov* icebreaker freed for $1.6 million; and the French luxury yacht *Le Ponant* released for $2 million. Pirates are known to have enhanced their capabilities, including GPS devices and satellite phones thus becoming more dangerous that ever.

There are reports of a new economy that has emerged involving security companies, lawyers and negotiators. It is difficult to trace or track the ransom money to find out where the money ends up because of the communication methods used by the pirates and their networks and the way their financial system works in a country without a government. Another fact is that ransoms are paid out in cash and thus it disappears into the community. Obviously the small groups of pirates who take to sea in speedboats to hijack huge ships do not get all the money. A UN report based on information gathered from pirates based in the north-eastern village of Eyl, reveals that the Maritime militia obtain about 30% of the ransom while about 10% goes to the ground militia (armed groups who control the territory where the pirates are based. Some security analysts say

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[16] C. Bedford, "Piracy in Somalia: Why Solutions can't be found at sea", *Davidpugliese*, Thursday, 21 August 2008.
[17] BBC News, "Pirates 'gained $150m this year", *BBC News*, Friday, 21 November 2008.

pirates have given as much as 50% of their revenue to the Islamist al-Shabab militia in the areas it controls. Though the al –Shabaab has stated that it opposes piracy.

International efforts to stabilize Somalia began with American and international efforts in the early 1990s. Although the US withdrew in 1994 following the 'Blackhawk down' events in Mogadishu, international peace efforts have continued. In total, more than fourteen reconciliation conferences have been held, with significant efforts put forward by the governments of Ethiopia, Egypt, Yemen, Kenya, and Italy. In 2000, Djibouti hosted the reconciliation conference that led to the first Transitional National Government. The current Transitional National Government resulted from talks occurring in Kenya in 2004. It was this government that was temporarily overthrown by Islamists in 2006 and later restored by Ethiopian troops. [18]

The International action to contain Somalia's piracy crisis developed as a response to an increasing number of states that had suffered pirate attacks off the Somali coast. Countries that have been directly targeted by Somali pirates, including the U.S., UK, Russia, South Korea, Ukraine, India, Germany, France, China and others have sent warships to protect their national shipping industries and to safeguard the UN World Food Program (WFP) shipments destined for bereft Somalis by establishing "safe" shipping lanes.

Regional organizations have similarly deployed frigates and warships to enhance maritime security. The European Union adopted the decision on December 8, 2008, to launch a military operation called EU NAVFOR Somalia, which will include up to six frigates and three maritime patrol aircraft, utilizing approximately 1,200 people at any

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[18] See CIA. "Somalia". *The World Factbook* (2009).

one time, at an estimated cost of EURO 8.3 million.[19] In late October 2008, NATO established a maritime presence off the Somali coast – the NATO Task Group of Operation Allied Provider – consisting of three vessels mandated to escort ships carrying WFP cargo and to carry out deterrence duties. The international community has, however, been slow in responding to the crisis, which has been escalating quite evidently.

Piracy has been an increasingly important issue for the UN throughout 2008, as is evident with Security Council resolutions 1801 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), and 1851 (2008) which all make explicit reference to the growing concern over piracy and provide recommendations for action. The importance of these resolutions was made to ensure that piracy off the Somali coast and its threat to international peace and security remain on the agenda of the international community. Secondly, they provided the legal framework for international action giving the authorization to states cooperating with the TFG to "enter the territorial waters of Somalia and use 'all necessary means' to repress acts of piracy and armed robbery at sea,"[20] The downside of the resolution is that it permits international action against pirates only on the high seas.

At the end of 2008, an agreement between the United Kingdom and Kenya provided for set provisions for Britain to hand over suspected pirates to Kenya for trial[21]. The UN Security Council unanimously adopted Resolution 1851 which authorized for the first time international operations against pirates on Somali soil. Advancements of this kind further reinforce the international community's capacity to fight piracy in Somali

[19] See "Military operation of the EU NAVFOR Somalia", *European Union: European Security and Defence Policy*, December 2008.
[20] See United Nations Security Council (UNSC) Resolution 1816, (2008).
[21] K. Houreld, "UK Kenya sign agreement to prosecute pirates", *Associated Press*, Thursday, 11 December 2008.

waters. Pursuant to the request of the TFG which appealed for international assistance in a letter to Secretary General Ban Ki-moon, the Security Council authorized all states capable of lending assistance to undertake all necessary measures "appropriate in Somalia" to interdict the pirates at sea and on land.

Kontorovich[22] states that the continued acts of piracy off the Coast of Somalia and the pressure from International organisations resulted in the UN Security Council passing resolution 1816 in 2008, which authorised nations to take action against pirates even in sovereign Somali waters. The resolution urges States, whose naval vessels and military aircraft operate on the high seas and airspace of the coast of Somalia to increase and coordinate their efforts to deter attacks upon and hijacking of vessels, in cooperation with the country's Government and to repress acts of piracy and armed robbery at sea, in a manner consistent with relevant provisions of international law.

The authorisation of armed action against pirates in sovereign territory was an unprecedented measure by the Security Council, and this caused some apprehension on the part of states with a history of piracy problems, fearing the resolutions may set a precedent eroding national territorial sovereignty. The text accompanying the resolutions and statements made by Council members stressed that the resolutions applied solely to the Somali situation, and would not establish any precedent of customary international law. Indeed, the measures were sought and welcomed by the transitional Somali government, which is too weak to deal with the piracy problem itself[23]. The resolutions required that any action in Somali territory be approved by Somali's transitional government and must conform to international humanitarian law which regards pirates as

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[22] E. Kontorovich, "International Legal Responses to Piracy off the Coast of Somalia", *American Society of International Law Insights*, Vol 13, Issue 2 (February 2009), p.1
[23] Ibid.

civilians and not terrorists. Under international humanitarian law civilians may not be specifically targeted except in immediate self-defence.

Kontorovich also notes that another aspect raised by the resolutions is whether pirates captured in Somali territory would be acquiescent to universal jurisdiction.[24] Piracy is the original universal jurisdiction crime, which allows any nation to try certain offenders who have committed international crimes, even if the crime, the defendant and the victims have no nexus with the state carrying out the prosecution. For hundreds of years the doctrine applied exclusively to piracy. In recent decades, universal jurisdiction has been applied by national courts to prosecute cases of war crimes, crimes against humanity and torture.

While its original application to cases of piracy appeared to have fallen into disuse, now universal jurisdiction has the potential to come full circle to help address the modern piracy epidemic. The nations patrolling the Gulf of Aden have chosen not to prosecute pirates because of the anticipated difficulty and expense. What to do with apprehended pirates has become the central legal question of the current anti-piracy campaign. The dominant approach has been to avoid capturing pirates in the first place, or, if captured, releasing the pirates without charging them with a crime. Returning pirates to Somalia for trial has generally not been considered an option both because of the lack of a functioning government and the probability that the accused would be subject to unfair trials and cruel treatment.

Some European governments have expressed concern that the latter problem presents a conflict with a sending state's obligation of *non-refoulement* under various

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[24] E. Kontorovich, "The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation". *Harvard Journal International Law, Vol 45, No.1* (winter, 2004), p. 4.

international treaties, which prohibit sending people to countries where they will likely be abused. France, one of the more active nations in the piracy campaign, regularly resorts to repatriation of pirates to Somalia[25].

Nations have called for new venues or possibilities for prosecuting the pirates, including an international tribunal or domestic courts in other countries in the region. In December 2008, Britain signed a memorandum of understanding with Kenya formalizing the arrangement whereby captured pirates will be turned over for trial, and handed over the first group of captured pirates for prosecution. The United States was the first to experiment with this arrangement, rendering a group of pirates to the Kenyan government in a carefully controlled test case in 2006. While those pirates were convicted and the trial went off without major complications, it did not turn into a regular procedure. Great Britain and other patrolling nations are also discussing the possibility of other nearby states hosting piracy prosecutions.

1.5: Justification of the Study

The justification for this study is to analyse and explore the degree that piracy off the Somali Coast has had on the whole concept of International Security. Piracy is and has been attributed to a number of factors including the unstable political leadership of Somalia, the collapsed economy and the presence of islamic terror groups in Somalia.

The human rights situation in Somalia continues to be characterized by indiscriminate violence and frequent attacks against civilians. The effectiveness of the central government and public institutions in the three regions of Somalia is severely

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[25] See U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 3(1) ("No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture").

limited by weaknesses in policy and law making and in implementation. Without coherent and public service oriented policies and laws, an effective and accountable central government in Somalia is only a mirage.

This study tries to demonstrate how piracy has threatened international security leading to the development and provisions of international law to deal with pirates and piracy as an International crime. Piracy in Somalia is also deeply rooted in a number of socioeconomic factors, predominantly poverty, hunger and civil insecurity of the coastal population. Puntland is currently the epicenter of piracy due to the fact that vessels can be identified and targeted much more easily as they travel through the Gulf of Aden.

It has been noted that a more structured form of piracy began in the mid 1990's when some armed groups, claiming they were authorised coast guards charged with protecting Somalia's fishing resources, attacked vessels they claimed were fishing illegally in their territorial waters and held them for ransom. This slowly expanded after 2000 to any vessel that sailed within or close to, Somali territorial waters. Both vessels and crews would be held hostage and ransom demanded[26].

Piracy has affected not only maritime security (in the High seas) but has also contributed to the suspension of food aid deliveries, increase in shipping costs, crew member kidnappings and ransom collection which goes towards purchasing of arms for the insurgents in Somalia accelerating the already conflict stricken country.

Compared to pirate operations in other parts of the world, namely the Java Sea, South China Sea and off the coast of Nigeria, Somalia does not have the natural coastal terrain so required by pirates, namely numerous forested inlets and islands, where ships

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[26] E. Kontorovich, "International Legal Responses to Piracy off the Coast of Somalia", *American Society of International Law Insights*, Vol 13, Issue 2 (February 2009), p.1.

can be hidden from aerial and maritime surveillance. Somali pirates do not need this type of terrain because their piratical aims are very singular and straight forward, ransom for hostages only. They are not interested in stealing the cargo and/or reusing the ship for other purposes, they are only interested in the ransom.

It is will be evident that piracy cannot be curbed off the Somali coast in the short term without establishing minimum law and order in Somalia. At the same time, piracy cannot be suppressed without providing coastal populations with alternative occupation and revenue and the ultimate goal should be to establish a minimum state of law in the whole of Somalia to allow business, trade and other economic activities to flourish.

1.6: Hypotheses

The study will test the following hypotheses:

1. The Lack of a central government leads to piracy.

2. Addressing the root causes of piracy decreases piracy incidences.

3. There is a correlation between the development of international law and the curbing of piracy as a crime.

1.7: Theoretical Framework

This study will use the security complex theory that was proposed by Buzan[27]. The contemporary theoretical debate over the term "security" can be traced to the early 1980s during the period of the Cold War tensions. The origins of the movement to expand the definition and scope of security issues away from the predominantly military began in Europe and the end of the Cold War hastened the trend towards refashioning the agenda

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[27] B. Buzan, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era,* (London: Lynne Rienner Publishers, 1991), p.2.

of international security analysis towards new and expanding emphasis upon challenges to the well being of not only the state, but of individuals and communities at a sub-state level and of security at the regional and even global levels. This was a rational outlook that was necessary to expand the narrow view of just the focus on military/traditional strategies.

Buzan proposed that the concept of security can only be fully understood by integrating the interdependent "levels of analysis" and "issue sectors" or "dimensions" of security. Buzan's levels of analysis are individual, national and international (both regional and system wide) security, while his issue sectors comprise military, political, societal, economic and environmental security[28]. Other analysts in the security studies field follow a similar conceptual pattern. Although different categories have been used in various studies, such as energy and food security, transnational crime and migration, these all can be subsumed within one or more of Buzan's dimensions of security. In the level of analysis there are three levels which are the Individual security, where the security of individuals such as minority groups like the gangs of pirates are seen as directly related to the quality of the relationship they each maintain with the state itself and, to the extent that the state can protect them from externally generated "threats." In our study it is clear that the State or lack of a state has significantly contributed to the feeling of insecurity for the people in Somalia as they cannot be able to obtain their basic needs such as food, security or shelter. This leads them to seek other alternatives outside their 'state' to survive in a country torn by civil strife for almost twenty years.

The second level of analysis concerns the state, which is the politically sovereign, entity. Traditionally, the focus of national security has been concerned with external

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[28] R. Betts, "Should Strategic Studies Survive?", *World Politics*, Vol. 50, No. 1, (October 1997), p. 26.

defence and strategic issues. Unfortunately, the Transitional Government in Somalia (TFG) is continuously fighting insurgents that want to oust it from running the country and the civil unrest in the country's country of Mogadishu ensures that the National Parliament does not have an enabling environment to have the parliament meetings. And the region of Puntland which harbours most or all pirates has not had parliamentary sessions in order to ensure they collectively make national security decisions that can protect the country from the acts of piracy.

The last level of analysis is the international security, which is concerned with the systemic factors that influence the behaviour of states and the consequent implications for security among states. Although states are not the only actors in the international system, they are the bodies that hold primary responsibility for providing security to their respective populations. International organizations may play supporting roles in the provision of security to various communities at different levels of analysis, such as distributing food aid to famine victims (WFP), and provision of maritime security using military naval ships to patrol the Somalia waters like the EUNAVFOR[29].

1.8: Research Methodology

The case study research method will be based on an in-depth investigation of the problem of piracy in Somalia and its impact on international security in order to gain more insight understanding as to the root causes of piracy and finding solutions to curb the problem.

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[29] See the mission statement, European Union Naval Force Somalia – Operation Atlanta (2008).

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This research will use the case study approach to test Buzan's[30] level of analysis of security against Somali piracy. This research will use the security level of analysis to analyse the impact of piracy on International Security.

Data collection will be primarily based on secondary data through desk research from the International Maritime Bureau (IMB) and the International Maritime Organisation (IMO) for piracy incidents data, academic journals, conference papers, and United Nations (UN) or Non-governmental Organisations (NGOs) reports.

The scope of the study will cover the development of international law in dealing with piracy as an international crime as well as the international community response to the crime. The limitations of the research are that the data collected by the IMO and IMB differs slightly due to their different collection methodologies and interpretations. IMO data is provided by member governments and international organisations, while IMB reports are based on data provided to the Piracy Reporting Centre in Kuala Lumpur.

Additionally there are information discrepancies, since many acts of piracy go unreported because shipping companies fear raising their insurance premiums. Another additional limitation will be the lack of access to Somalia due to the security situation and the lack of direct contact with Somali pirates. Some of these limitations can be overcome through reviewing journals and newspaper reports covering interviews with pirates.

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[30] B. Buzan. *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.2.

1.9: Chapter Outline

The study is structured on the following five (5) chapters:

1. Chapter 1: Introduction to the study.

2. Chapter 2: The Security Complex Theory: A Theoretical Discussion.

3. Chapter 3: The Impact of piracy on international security: The case of Somalia,

   1991 – 2010.

4. Chapter 4: The impact of piracy on international security: A critical analysis.

5. Chapter 5: Conclusions.

CHAPTER TWO

THE SECURITY COMPLEX THEORY: A THEORETICAL DISCUSSION

2.1: Introduction

Various scholars have attempted to define security, such as Bellany[31]who states that security itself is a relative freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur. Mroz[32] also poses that security is the relative freedom from harmful threats. Buzan's approach towards the definition of security is that it is too narrowly founded and that a broader or wider perspective on security that encompasses more than the traditional focus, which is based on military policy is required. Therefore in his book[33], Buzan does not focus on defining security but on developing a holistic concept of security to serve as a framework to apply in any situation.

His approach therefore, incorporated concepts that were not previously considered to be part of the security conundrum such as regional security, or the societal and environmental sectors of security. Thus allowing him to broaden the analysis that existed and provide a more complete understanding of the complexities of security with the ability to apply these concepts to current issues.

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[31] I.Bellany, "Towards a Theory of International Security", *Political studies*, Vol. 29, No.1 (1981), p. 102.
[32] J.Morz, *Beyond Security: Private perceptions among Arabs and Israelis*, (New York: International Peace Academy, 1980), p. 105.
[33] B. Buzan, *International Security Studies in People. States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.17.

2.2   Definitions

The concept of a "security complex" is defined by Buzan[34] as "a group of states whose primary security concerns link together sufficiently closely that their national securities cannot realistically be considered apart from one another". Hence, security complexes tend to be durable but are neither permanent nor internally rigid. The international system as a whole contains a large number of security complexes, some of which intersect or overlap, therefore because of these complicated patterns, the boundary of any particular concept requires sensitivity to the situation of these states which occupy positions in more than one complex. The links which tie together a security complex together maybe of many types such as geographical, political, strategic, historical, economic or cultural.

Buzan explains that security complexes are a typical product of an anarchic international structure, and that they come close to reflecting the operating environment of national security policy-makers than do higher level abstractions about the distributions of power in the system. Almost every country is able to relate its security perspectives to one or more complexes. This concept also provides a very useful tool for organising patterns of relations, and for arranging them into lateral and hierarchical categories.

Security complexes also provides an analysis at both macro-level of great power impact on the system as well as micro-level of local state relations. By focusing on both levels, security complexes tend to also amplify local problems which can shape and influence the system.

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[34] B. Buzan, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.105.

The idea of security complexes relates clearly to the traditional idea of the balance of power, since the interrelationships among states can be seen as a balance of power. Though the view of balance of power concept is narrowly-based, top-down, view of international relations and provides a limited weight to patterns among minor states. As Hoffman[35] argues, 'it is a mistake to treat issues in which third parties are embroiled as if these countries were pawns in a global balancing game, instead of dealing with the issues' this was in reference to the American-Vietnam war. The security complex theory as a tool for analysis encompasses traditional power priorities by allowing for linked hierarchies of complexes and also stresses the importance of patterns of relations and sources of insecurity at all levels through which power relations are mediated.

Another important aspect one can also consider is that the decolonization of African and Asian states in the 1950s to 1980s led to the creation of a several states and thus created higher levels of political and military mobilization outside the great powers than there existed before. The spread of modern weapons to the Third World has also carried military significance for relations between major and minor powers like in the case of the cost to Britain of regaining the Falklands from Argentina during 1982[36] thus creating a trend towards the decentralization of the international security system.

The security complex approach focuses on sets of states whose security problems are closely interconnected and usually arises when the complex is transformed as a result of being overlaid by a more powerful complex as the security community[37], where security communities exist among independent states which do not expect or fear the use

[35] S. Hoffman, *Primacy or World Order*, (New York: McGraw-Hill, 1978), p.252.
[36] E.A. Kolodziej and R. Harkavy, "Developing States and the International Security System", *Journal of International Affairs*, Vol.34, No.1,(1980), p.8.
[37] Holsti and Karl Deutsch et al., *Political community and the North Atlantic Area*, (Princeton: Princeton University Press, 1957), p.32.

of force in relations between them, such as Canada and the United States. These communities might be seen in one sense as resolved or matured security complexes in which basis conflicts and fears have been resolved, resulting in an oasis of relatively mature anarchy within the more fractious field of the international anarchy as a whole.

Finally, it is important to note that the security complex provides a useful referent on which policy can be focused, or can be used to evaluate policy proposals.

2.3: Levels of analysis: The individual, the state and the international system
2.3.1: The individual level

Individual security relates to social threats such as physical, economic (denial of resources), threats to rights and threats to position or status. These threats are not mutually exclusive as the application of one could carry penalties for the other. It is difficult to balance freedom of action for the individual against the potential and actual threats which such freedom poses to others. As Waltz[38] stated 'States, like people, are insecure in proportion to the extent of their freedom. If freedom is wanted, insecurity must be accepted'.

Unacceptable chaos motivates individuals to sacrifice some freedom in order to improve levels of security and in this process, government and the state are born to provide this form of security. Hobbes[39] elaborated this by stating that people founded states in order to 'defend them from the invasion of foreigners and the injuries of one another, and thereby to secure them in such sort as that by their own industry'. The contradiction however, is that the same state can also become a source of social threat

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[38] K.Waltz, *Man, the State, and War*, (NewYork: Columbia University Press, 1959), p. 16.
[39] T. Hobbes, reprinted in Carl Cohen (ed.), *Communism, Fascism and Democracy: The theoretical Foundations*, (New York: Random House, 1972), p. 275.

against the individual. The stability of the State derives from the assumption that it is better to have the threats come from the State than not have a State at all. Thus it seems that the security of individuals is irreversibly connected and entangled to those of a State. However, it should be noted that the foundations of the State rest on the consent of the people being governed thus the actions of the State can be judged according to the impact on the interests of its people.

Individual citizens can face many threats emanating either directly or indirectly from the state. These threats can arise from direct political action by the state against individuals or groups, those arising from struggles over control over state machinery and those arising from the state's external security policies. Threats can also arise from political disorder or the struggle for control over the state's institutions leading to violent conflicts and pose as a serious threat to people.

Locke[40] concept of the state is that it is very much oriented towards the individuals who make it up. The foundations of the state rest on the consent of its citizens to be governed, and therefore the actions of the state can be judged according to their impact on the interests of its citizens.

Individual-oriented security concerns and policies[41] can have very substantial implications for national security for example when individuals such as terrorists or pirates become a national security problem in their own right when they pose as a serious threat to the state. Its therefore fair to state that security has meaning independent of the state at the level of the individual and individual security is affected both positively and negatively by the state.

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[40] J. Locke, *Second Treaties of Government*, (Indiana: Hackett Publishing Company, 1980) p.406.
[41] B. Buzan, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.105.

2.3.2: The State Level

Since the state is composed of individuals bound together into a collective political unit, the difficulties in dealing with security are more complicated and more complex. The state is by far the most powerful type of unit in terms of political allegiance and authority and has more command in terms of control of political force.

Miliband[42] captured the basic ambiguity of state as not being primarily a physical thing and not attached to a physical form. Thus Buzan's analysis of the state comprises of a descriptive model which consists of three elements; the physical base of the state, the institutional expression of the state and the idea of the state. States must have a physical base of population and territory; they must have some form of governing institutions which controls the physical base. The institutions are created to govern, and to make the state work, but their functional logic falls a long way short of defining the totality of the state. Dyson[43] points out that it is a category error to equate the totality of a state to its apparatus, for example the European Community (EC) has institutions but has failed by themselves to act as a gravitational pull for the creation of a European super-state probably because the purpose of the EC was for economic empowerment.

Sovereignty provides another element that divides states from all other social unites. It means self rule and the claiming by the state of supreme decision-making authority both within its territory and over its citizens. It's important to note that sovereignty is divided among states but can never within them.

National security implies that the object of security is the nation; a nation is defined as a large group of people sharing the same cultural and possibly the same racial,

[42] R. Miliband, *The State and Capitalist Society*, (London: Quartet Books, 1973), p.46.
[43] K. Dyson, *The State Tradition in Western Europe*, (Oxford: Martin Robertson, 1980), p. 32.

heritage and normally living in the same area. The state-nation model infers that the state plays an instrumental role in creating the nation, the model refers to a top-down approach whereby populations have been transported from different locations to fill an empty territory, for example the United States that comprises of people from different nationalities. The African states also faced with complex tribal divisions or clans look at this model as their solution to their political problems. Immature state-nations can be highly vulnerable to challenge and interference from within and without like in colonial Zimbabwe where one domestic group may try to capture the nation building process for its own advantage; the white minority group[44].

The other model is the par-nation-state where a nation is divided up among two or more states and where the population of each state consists largely of people from that nation. That is, a nation-state already exists, but a minority of its members fall outside its boundaries, but a minority of its members fall outside its boundaries living as minority groups in neighbouring states. A perfect illustration of this model is Somalia, whereby the country is split in three separate sates; the central government of Somalia, Somaliland and Puntland. The rival part-nation-states like these automatically and continuously undermine each other's legitimacy though they attempt to build up their legitimacy by differentiating their part of the nation from the other parts.

The different types of models provide us with a framework to consider the link between the state and nation. National security can be viewed in different ways and different states experience different kinds of insecurity and security in relation to their nationality. Importantly, all states are to some degree vulnerable to military and economic

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[44] B. Buzan. *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.110.

threats and also suffer from political insecurity. Different components of a state are vulnerable to different kinds of threat, which makes national security a complex problem.

States vary not only in respect of their status as powers, but also in respect of their weakness or strength as members of the category of states. A state's ideology and institutions can be weak making the state weak in comparison to one that has a strong ideology and institutions. A strong feature of a weak state is the high level of concern with domestically generated threats to the security of the government. In comparison, a strong state's security is viewed in terms of outside threats and interference. As mentioned earlier, different components of the state can experience different types of vulnerabilities or threats. These types can be classified by sector such as military, political, economic, societal and ecological[45].

2.3.3: The international political system

States occupy a number of systems or environments which provide both the context and the forum for their behaviour towards each other and which also heavily conditions the whole national security problem. In as much as these systems could be the source of insecurity, states have an interest in trying to shape them into more security-enhancing forms. The international political system is anarchy and its main characteristic is the absence of an overarching government. The principal defining feature of states is their sovereignty thus if the states are sovereign their system of association must be anarchy or rather the absence of a government.

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[45] C. Doran, K. Hill and k. Mladenka, "Threat, Status and Disequilibrium and National Power", *British Journal of International Studies*, Vol.5, No.1, (1979), p.1 and K. Boulding, *Toward a Theory of Peace*, (New York: Basic Books, 1964), p.12; and R.Fischer (ed.), *International Conflict and behavioral Science*, (New York: Basic Books, 1964), p. 4.

The idea of an international anarchy does not easily refer to chaos to the system of states but rather defines a basic structure of relations among them, within which many varieties and styles of system might emerge or be built. The association between anarchy and chaos probably arises from Hobbes[46]view of mankind in state of nature where under such conditions and because of the acute vulnerability of individuals, anarchy seems quite likely to result in chaos.

The current international political system lies between an immature and mature system[47] that is, between the unbridled chaos and the stable reams of maturity like the mutual recognition of sovereign equality and its associated baggage of international law. The United Nations charter is an exemplary example of a more mature anarchy made away from the chaos. However, some forms of anarchy heighten the problem of national security whereas others mitigate it. It's profound to view international anarchy not as an obstacle standing in the way of world government and universal peace but as an opportunity offering attractions that offer and sustain support for world government.

2.3.4: Buzan's security sectors

Political threats represent a constant concern for a state and can be more ambiguous and difficult to identify in relation to military threats. Since the state is, a political entity, a political threat with the purpose of weakening that entity can be considered to be on par with a military threat. They can take the form of competition amongst ideologies, or an attack to the nation itself. However it is important to distinguish between intentional political threats and "those that arise structurally from the impact of foreign alternatives

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[46] T. Hobbes, *Leviathan* (Harmondsworth: Penguin, 1968), ch. 13.
[47] H.Bull, *The Anarchical Society* (London, Macmillian, 1977), p. 68 and S. Hoffman, *Primacy or World Order* (New York, McGraw-Hill, 1978), p. 108

on the legitimacy of states". This means that the threats can result more from the nature of the situation than from the particular intentions of one actor towards another.

Military threats can affect all components of the state and puts into question the very basic duty of a state to be able to protect its citizens as well as have an adverse effect on the social and individual interest. The level and objectives of military threat can take on different levels of importance, and the fact that they involve the use of force puts them in a special category when it comes to security. They also represent the traditional aspect of national security concerns which is military action. According to Buzan, military threats often have political objectives (seizure of territory, change of government of institutions, manipulation of policy or behaviour)

Economic threats are more difficult to relate to national security than military and political ones, this is because the normal condition of actors in the economic domain is one of risk, competition and uncertainty. Economic threats operate only against the economy of the target state.

Due to the fact that all states are different especially in determining their relations with each other, the notion of national security is also different due to the fact that the national security concept is fragmented and cannot be pegged to any simple indicator like military capability thus attempts to build theories of security along market economy is very difficult[48]. However, Economic threats resemble an attack on the state, in that the conscious external actions by others results in material loss, and in a strain on various institutions of the state. At the international political system, the pattern of economic relations has major implications for the stability of the whole system.

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[48] F. Trager and P. Kronenberg (eds), *National Security and American Society: Theory, Process and Policy*, (Lawrence, Kansas, University Press of Kansas, 1973), p. 59

Societal threats are about identity and the balance of culture that can be found within any given state. Weak states are often ill-equipped to deal with differences in identity and culture. If Somalia can be used as an example, one can see that the differences in clans, ideology and religion, which make up clan boundaries found within the state are not easily reconciled with the state itself. Most current conflicts today have a more societal element.

Threats can also occur in environmental events and can damage the population of the state. Environmental threats can be seen as natural and not part of national security concern such as earthquakes, storms, floods, droughts e.t.c. Environmental threats can be appear to deserve a relatively low priority compared to other forms of threat but some extreme scenarios such as toxic waste dumping by ships on the Somalia coast have enough plausibility to command attention.

2.4: The relevance of the security complex theory and piracy

Buzan's approach to broadening the understanding of security based on levels and sectors assists in assessing the complex and compounded problem of piracy on the coast of Somalia in that in breaks it down by level of analysis and sector level. Buzan's theory provides a framework by which piracy can be discussed on a step by step basis. The security complex theory also provides a very useful tool for organising patterns of relations, and for arranging them into lateral and hierarchical categories.

Buzan's uses Waltz[49] levels of analysis which are individual, state and international political systems security, while his security sectors comprise of military, political, societal, economic and environmental threats.

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[49] K.Waltz, *Man, the State, and War*, op cit.

In the level of analysis there are three levels, first there is the individual security, where the security of individuals such as minority groups like the gangs of pirates are seen as directly related to the quality of the relationship they each maintain with the state itself and, to the extent that the state can protect them from externally generated "threats." In Somalia it is clear that the state or lack of a stable state has significantly contributed to the feeling of insecurity for the people in Somalia as they cannot be able to obtain their basic needs such as food, security or shelter. It is estimated that approximately two-thirds of Somali youth are without jobs[50], this has led them to seek other alternatives outside their 'state' to survive in a country torn by civil strife for the last twenty years.

Hari[51] elaborates this in his article on pirates by stating that in 1991, when the government of Somalia collapsed, its nine million people headed towards starvation, and then some Western forces saw an opportunity to steal the country's food supply and dump nuclear waste in their seas. It has been reported that mysterious European ships started appearing off the coast of Somalia, dumping vast barrels into the ocean. The coastal population began to sicken with symptoms varying from rashes, nausea and malformed babies. After the 2005 tsunami, hundreds of the dumped and leaking barrels began to wash up on shore.

The second level of analysis which concerns the state, refers to the state as by far the most powerful type of unit in terms of political allegiance and authority and has more command in terms of control of political force. In Somalia, the state is governed by a weak Transitional Federal Government (TFG) that is continuously fighting insurgents that want to oust it from running the country and the civil unrest in the country's capital

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[50] J. Daly, "Somalia: Pirates of the Gulf", *International Relations and Security Network*, March 12 2009.
[51] J. Hari, "You are being lied to about pirates", *The Independent*, Sunday, 4 January 2009.

of Mogadishu. The TFG lacks an institutional framework and governance structure to sharpen its developing resolve, but weak setups on the political and the security fronts requires a re-examination and development. Puntland State on the other hand, harbours most or all pirates but its structures suffers from stress and are completely overwhelmed with the piracy problem.

The last level of analysis is the International Political system, which is concerned with the systemic factors that influence the behaviour of states and the consequent implications for security among states. Although states are not the only actors in the international system, they are the bodies that hold primary responsibility for providing security to their respective populations. International organisations may play supporting roles in the provision of security to various communities at different levels of analysis, such as distributing food aid to famine victims (WFP), and provision of maritime security using military naval ships to patrol the Somalia waters like the Euro ATLANTA ship along the coast of Somalia.

Buzan's[52] sectors of security refer to military, political, economic, societal and environmental threats. The economic dimension of security can be applied to all levels of analysis, often providing linkages between the different levels. Case in point is individual security which can be threatened by the absence of basic needs required for individual survival and the perilous economic condition of the citizenry maybe weakened or even threatened by the existence of a state which, in turn, may have implications for the security of the individuals and economic insecurity may lead to civil conflict with potential for the spread of violence beyond state borders or the high seas. This is the

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[52] B. Buzan, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.109

prevalent problem in the Somalia waters where seafood provides the primary source of protein for a large proportion of the region's people and fishing is a major economic earner, but there has been an increasing threat through the depletion of fish stocks and toxic waste dumping that has led to loss of income for the population in Puntland. Some people believe that the involvement of some prominent figures in Puntland compromise the counter-piracy initiative. Thus it can be said that ffundamentally, the piracy problem off the Somali coast arises out of the problem of statelessness on shore. There has not been an effective Somali government since 1991. So, without effective governing on shore you're going to have opportunities for criminals to engage in their enterprises with impunity[53].

At an international political systemic level, economic security is to a large extent a function of the ability of states within the international system to secure access to vital goods and resources not available domestically, through the process of international trade mostly carried by sea. Piracy is one of the most notable symptoms of state paralysis and war economy, with attacks on maritime traffic off Somalia coast and beyond, being on the increase. Arguably, food insecurity reigns in Somalia with the crisis deteriorated by both the political instability and the piracy scourge. Several vessels carrying humanitarian cargos were hijacked in 2005, and hence the aid agencies were forced to seek military escorts, and in its absence maintained temporary freeze of operations[54].

Piracy has also imposed high costs on the global economy. According to international shipping organisations, insurance rates for ships have risen to $20,000 per

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[53] See NTU Model United Nations 2011 Security Council, "Somali Piracy – Background paper", (2009).
[54] See International Expert Group on Piracy off the Somali Coast," Piracy off the Somali Coast: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah", (2008).

voyage in 2009 because of piracy, from an estimated $500 in 2008 – a forty-fold increase[55]. Also, avoidance (namely, the alternate route around the Cape of Good Hope) adds roughly 3,500 miles to the journey. The cost of this diversion is particularly worrisome during spikes in oil prices. Deterring pirates is also costly. For example, long range acoustical devices cost $20,000-30,000 each and permanent onboard security guards could be prohibitively expensive. It costs an estimated $1.3 million to deploy a frigate for a month, and approximately $200-350 million to sustain naval vessels in the Gulf of Aden annually[56]. Somalia's neighbors are also impacted by the costs of piracy. Increased insurance premiums and diverted trade affects economic growth, while continued maritime insecurity contributes to the "bad neighborhood syndrome" which discourages investment and tourism. Egypt has been affected by reduced traffic primarily caused by piracy. Revenue from the Suez Canal is expected to fall from $5.1 billion in 2008 to $3.6 billion in 2010[57].

Military threats can affect all components of the state and put into question the very basic duty of a state to be able to protect its citizens this can be questioned in the case of Somalia where the state is hardly able to protect its citizens with its weak governing institutions and military force. Arguably, the survival of the government is attributed to the African Union Peace Support Mission known as AMISOM, which has been offering military support to the TFG forces to fight the insurgents.

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[55] R. Frump, "Danger at Sea: Piracy Threat Likely to Keep Growing Despite Greater International Response", *Shipping Digest*, Monday, January 12 2009.

[56] Knott John, "Somalia Clan Rivalry, Military Conflict and the Financial and Human Cost of Piracy", *Mondag*, Tuesday, March 17 2009.

[57] L. Wasser, "Somali Piracy Costs Suez Canal Business", *San Francisco Chronicle*, Wednesday, April 29 2009.

The International Maritime Organization (IMO) had been lobbying the United Nations Security Council (UNSC) to take action to combat Somali piracy, so in an unprecedented move, the UNSC adopted Resolution 1816 (2008), authorizing foreign naval vessels to enter Somali territorial waters for an initial period of six months (which was extended) to use "all necessary means" to repress acts of piracy and armed robbery at sea, consistent with relevant and existing provisions of international law[58].

The multinational naval forces consisting of ships from several countries including the United Kingdom, Canada and Norway among others provided naval forces to escorts carrying humanitarian cargo to the region. The multinational naval force have reportedly destroyed pirates' boats or disrupted suspected pirates. It is believed that the positive role played by the international naval forces against pirates in that area is vital in mitigating the severity of the attacks. The reduction in the number of incidents in this first quarter of 2010 is linked to the presence of the multinational forces[59].

2.5: Conclusions

In conclusion, the security complex theory is widely relevant and will provide an excellent framework in analysing the piracy problem off the coast of Somalia. It will enable the case study of piracy in Somalia to be analysed on a level of analysis basis.

The coast of Somalia remains in the lead and most vulnerable region with 100 pirates' attacks in 2010 including 27 hijackings[60]. There is seemingly a shift on the

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[58] C. Bedford, "Piracy in Somalia: Why Solutions can't be found at sea", *Davidpugliese*, Thursday, 21 August 2008.

[59] See International Expert Group on Piracy off the Somali Coast,"Piracy off the Somali Coast: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah", (2008).

[60] See International Maritime Bureau Piracy Reporting Centre.

geographical space with a progressive move from the Gulf of Aden to the East Coast thus suggesting a rise in the number of the high seas incidents in the Indian Ocean.

Arguably most nations have laws against piracy, but international agreement over what's and how's of combating the scourge is questionable. Some Somalis view pirates as heroes defending their territory from foreign exploitation while others view it as a serious crime, citing attacks outside Somalia waters.

CHAPTER THREE

THE IMPACT OF PIRACY ON INTERNATIONAL SECURITY: THE CASE OF SOMALIA, 1991 - 2010

3.1: Introduction

In the previous chapter, the security complex theory was defined and exponentially analysed according to the levels of analysis elaborated by Buzan as individual, state and international political systems. The piracy issue was also discussed in reference to the theory and the different levels of analysis.

Chapter three seeks to elaborate on the impact of piracy on international security in greater detail. In order to assess the impact of piracy off the coast of Somalia on international security it is important to provide a background to the conflict that Somalia has experienced for the last twenty years creating a complicated civil war and an environment conducive for crime to prosper and gain ground. With no stable or strong government to enforce the law and prosecute criminals, Somalia became the ultimate brewing ground for an old crime that had probably been long forgotten until now.

This chapter will also discuss the humble beginnings of piracy as early as the 1990s. There were reports of irregular incidences of armed robbery against small fishing or leisure craft but the organised form of piracy incidents only started in the mid-90s in which factions of government authorities mobilised armed groups to protect Somalia's marine resources. In that respect, the hunt for vessels fishing illegally in the territorial waters was launched.

3.2: Background to the Somali conflict

Somalia is a former British (Somaliland) and Italian (the remainder of the country) protectorates, Somalia became independent and unified in 1960. In October 1969, the Somali President was assassinated, and a few days later, the army under Major General Mohamed Siad Barre took power. Siad Barre's legacy was of a government that used state resources to privilege members of Barre's clan at the expense of others thus creating the inter-clan tensions which resulted into violence when the government crumbled in 1991. The bloody rebellion was successful in ending the authoritarian regime of President Siad Barre.

Although the major clans had been united in their opposition to Siad Barre, their leaders had no common political vision of Somalia's future. Consequently, civil strife continued at a reduced level after Siad Barre was deposed. The dominant faction in the north, the Somali National Movement (SNM), refused to accept the legitimacy of the provisional government established by the United Somali Congress (USC). Responding to widespread popular resentment of the central government, in June 1991 the SNM declared an independent Republic of Somaliland in the region that had constituted the British Somaliland before independence and unification with the former colony of Italian Somaliland in 1960[61].

For the next years, rival factions fought to establish power in the country and at the same time severe drought struck Somalia, creating famine in its aftermath[62], which resulted in the intervention of humanitarian relief and food aid which also quickly became part of the war economy. While the initial aim of these conflicts was the control

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[61] H. Chapin Metz, *Somalia: A Country Study,* (Washington: GPO for the Library of Congress,1992), p.7.
[62] P.T. Leeson, *Better Off Stateless: Somalia Before and After Government Collapse,* (USA: West Virginia University, 2007), p. 5.

of a new government, their ongoing basis was predatory looting, banditry, and contests over valuable property. A war economy developed in which powerful warlords and merchants competed for resources, and militia commanders had only a very loose control over the young gunmen whose main aim was war proceeds[63].

On 24 April 1992, in response to a recommendation of the Secretary-General, the Security Council adopted resolution 751 (1992), it was decided to establish a United Nations Operation in Somalia (UNOSOM)[64]. In accordance with the agreements reached with the two main Somali factions in Mogadishu, the ceasefire in the capital was to be monitored by a group of 50 unarmed uniformed United Nations military observers. In May 1993, the operation was formally handed over to the United Nations, whose mandate was to assist Somalis in promoting national reconciliation, rebuilding the central government, and reviving the economy.

The intervention initially succeeded in freezing armed conflicts, however in June 1993, the militia faction of General Aideed attacked U.N. forces, killing 24 peacekeepers and precipitating a four month battle between the United Nations and Aideed's militia. The subsequent failure of U.S. and U.N. forces to capture Aideed and the paralysis that the fighting imposed on U.N. nation-building efforts resulted in the "Black Hawk Down[65]" incident that sealed the fate of the U.N. operation, which departed in March 1995, leaving Somalia still in a state of violence and anarchy.

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[63] See Immigration Advisory Service, *How Country of Origin Information can help win asylum cases* (London: Research, Information & Policy Unit, 2009), p. 7.
[64] See United Nations, "Somalia – UNSOM 1 Background (2010)", *UN*, accessed May 2011.
[65] The October 3, 1993 U.S. raid on Mogadishu in Somalia, in which 18 soldiers and two Black Hawk helicopters were shutdown.

The next years marked the beginning of a failed pattern of externally funded national reconciliation conferences. Somalia has had over fourteen peace conferences, in which all, except the Arta Peace conference held in Djibouti which produced the Transitional National Government (TNG) in 2000 and marked a new phase in Somali reconciliation. In contrast to all the previous conferences, the Arta conference included extensive participation by unarmed civic leaders such as intellectuals, clan and religious leaders and members of the business community[66]. In 2001, the Somalia Reconciliation and Restoration Council (SRRC) was formed to oppose the Arta process and the TNG, and to promote the formation of a federal Somali state. In an effort to reconcile the TNG with its SRRC adversaries, IGAD launched a national reconciliation process which developed into a sixth major Somali reconciliation meeting, the Somali National Reconciliation Conference, held in Eldoret, Kenya, in October 2002. It produced a ceasefire agreement signed by 24 faction leaders stipulating the need to create a federal structure leading to the emergence of the Transitional Federal Government (TFG) in 2005.

The TFG proved unable to impose order on south and central Somalia, and its failure and the ongoing combination of a war economy, warlordism, criminality, factionalism including inter and intra clan conflict, human rights abuses by TFG and foreign (Ethiopian) forces and humanitarian disaster, all facilitated the rise of well-supported Islamic militancy and politics in Somalia. The emergence of a variety of Islamist movements seeking to establish an Islamic state in Somalia has always been in existence and their significance came to the fore in April 2006 when a coalition of

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[66] M. Bradbury and S. Healy, "Whose peace is it anyway? Connecting Somali and international peacemaking", *Accord*, Vol.12, No. 1(2010), p.1.

Islamic Courts, the Islamic Courts Union (ICU), in alliance with other clan militia, ousted a coalition of warlords from Mogadishu that had been backed by the US government. The ICU won public support for creating an unprecedented degree of security in the capital and quickly established a presence across most of south-central Somalia. However, Ethiopian forces, with implicit backing from Western governments, entered Somalia in December 2006 and forced out the ICU and installed the TFG in Mogadishu. The ICU leadership took refuge in Eritrea where, with other opposition figures, they established the Alliance for the Re-Liberation of Somali (ARS) that mobilized support against the Ethiopian occupation[67].

In early 2007 a small contingent of AU peacekeepers (the AU Mission in Somalia – AMISOM) was deployed to Mogadishu to protect the Transitional Federal Institutions (TFIs). But over the next two years efforts by the TFG and Ethiopia to impose peace has provoked violent resistance from a mixture of clan militia and remnants of the militant wing of the ICU – *Harakat al Shabaab* ('the youth movement').

In June 2008 the TFG and members of the Islamist militancy Alliance for the Re-Liberation of Somalia (ARS) reached an agreement in Djibouti known as the 'Djibouti peace agreement[68], which declared a cease-fire between these two groups, allowed for the provision of humanitarian assistance, called for the deployment of a UN peacekeeping/stabilisation force, and demanded the complete withdrawal of Ethiopian troops from Somalia. During December 2008 and January 2009, Ethiopian troops completely withdrew from Somalia, leaving AMISOM in charge of supporting the TFG in their work towards fully implementing the Djibouti peace process.

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[67] Ibid.
[68] See Djibouti Code of Conduct (2009).

The current Transitional Federal Government (TFG) is headed by Sheikh Sharif Sheikh Ahmed, former Chairman of Somalia's Union of Islamic Courts (UIC). He was elected in January 2009 for a period of two years in a deal backed by the international community, but rejected by many of the Islamist opposition forces and insurgent groups. The current President leads a Cabinet consisting of previous TFG members, previous insurgent group members, particularly the Alliance for the Re-Liberation of Somalia (ARS), civil society members and Somalis from the diaspora.[69] The TFG is supported by AMISOM and is thus in control of the southern districts of Mogadishu. The Al-Shabaab group and allied insurgent factions continue to control much of southern Somalia, as well as major portions of Mogadishu and central Somalia. The main threat to the current stability and political process in Somalia still remains as coming from the armed insurgent groups, particularly Al-Shabaab and Hizbul Islam.

The Republic of Somaliland, a region located in the north-western part of Somalia, declared its independence unilaterally in 1991 but has not been recognised by the international community as an independent state. Since 1997, Somaliland has been characterised by relative stability and rudimentary but functioning governmental institutions, and a democratic political system. Somaliland faces recent threats from Al Shabaab which aims to see its extreme version of Islamic culture and Sharia law extended throughout Somali and beyond, and that religion should replace ethnicity as the key to Somalia's social organisation[70].

Puntland is a region in the north-eastern part of Somalia, which declared itself autonomous in 1998 and carried out a peaceful transition of government and President in

[69] See IRIN, "Analysis: Who is fighting who?" *IRIN*, Wednesday, September 2 2009.
[70] See Institute for Security Studies, "Somalia: Understanding Al-Shabaab", *Institute for Security Studies*, Vol 12, Issue 4 (2009)p.1.

2005[71]. Puntland has experienced a rise in insecurity and political tension due to the widespread of piracy along its coast.[72] Piracy is widely tolerated by the authorities, both because they stand to profit from the practice and because they lack the political will to confront the gangs for fear that doing so might provoke fighting between subclans. The International Crisis Group contends that piracy is rooted in problems of unemployment, poverty, and worsening living conditions that may lead to Puntland's "disintegration or overthrow by an underground militant Islamist movement[73]."

3.3: Piracy off the Somali Coast

A large number of vessels pass through the Red Sea and the Gulf of Aden, making it one of the most heavily trafficked maritime paths in the world. Most of the major shipping companies own vessels passing through the Gulf, either inbound or outbound, for the Suez Canal. A good deal of the goods passing through are oil and petrol from the Middle East destined for Europe and North America and ships carrying chemical compounds needed for ratifying the crude oils, as well as merchandise, bound for the Middle East and Asia. In addition, fishing vessels from Denmark, Spain, South Korea and other nations traffic the waters to fish for the much sought after tuna[74].

Prior to 1990, piracy was not a major issue off the coast of Somalia, but like most coastal nations there were irregular incidences of armed robbery against small fishing or leisure craft. A more structured form of piracy began in the mid 1990's when some armed groups, claiming they were authorised coast guards charged with protecting Somalia's

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[71] J. Gundel, "Clans in Somalia", *ACCORD*, Vol.13. Issue.5 (2009) p.4.

[72] See International Crisis Group, "Somalia: The Trouble with Puntland", *International Crisis Group, Africa Briefing*, No. 64 (2009),p.2.

[73] Ibid.

[74] R. Middleton, "Piracy in Somalia – Threatening Global Trade, Feeding Local Wars ", *Chatham House Briefing Paper*, No. 25 (2008) p.4.

fishing resources, attacked vessels they claimed were fishing illegally in their territorial waters and held them for ransom. This slowly expanded after 2000 to any vessel that sailed within or close to, Somali territorial waters. Both vessels and crews would be held hostage and ransom demanded[75].

During 2005 an increase was noted in the number of attacks being attempted against vessels sailing in the Indian Ocean off the coast of Somalia. By 2006 some of the pirate attacks were extending as far as 350 nm off the coast of Somalia. During 2006 piracy escalated as more attempts were made to hijack ships not only in the Indian Ocean but also in the Gulf of Aden and the mouth of the Red Sea. The phenomenon grew through 2007 from the major pirate bases of Eyl, Hobyo and Haradheere concentrated along the east coast of Somalia. By 2008 this reached outlandish proportions with ships being attacked seemingly at random and whenever the pirates decided. Consequently marine travel off the northern coast of Somalia, that is Puntland, become the most dangerous region in the world for pirate attacks.

The pirates' frequent attacks on the World Food Programme's (WFP) relief aid necessitated a reaction from the international community resulting in the establishment of structures and naval presence to deal with the piracy along the Somalia coast and the Gulf of Aden. Several countries including the United Kingdom (UK), Canada and Norway among others provided naval forces to escort vessels carrying humanitarian cargo to the region.

The Somali pirates are known to be relatively well armed with standard equipment and weapons though they are considered to be aggressive they exert little

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[75] See International Expert Group on Piracy off the Somali Coast, "Piracy off the Somali Coast: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah" (November 2008).

lethal force[76]. Somali piracy activity has almost exclusively been about hijacking ships in order to extort as much money as possible.

As mentioned in an interview with Mr. Marcelino Benet, the European Union, Somalia Unit field officer for Puntland[77], the main concentration of pirates continues to be the coastline of Puntland as well as the Central regions in Somalia. Those areas where pirates safely anchor hijacked ships have, however, reduced in numbers. Eyl in Puntland, has ceased to be a piracy hub due to the outreach efforts of the government of Puntland in conjunction with traditional and religious elders. The "safe areas" used by pirates to anchor the hijacked ships are currently concentrated in South Puntland and Mudug, areas which are "controlled" by the Puntland and the Galmudug administrations respectively.

3.4: The root causes of piracy

Piracy is a problem that has surfaced and resurfaced repeatedly over many centuries and in many parts of the world. According to Murphy[78], there are several factors that can lead to the development or growth of piracy. These factors are; under-funded law enforcement, permissive political environments, conflict and disorder, Legal and jurisdictional weaknesses and the promise of reward.

All these factors are applicable in explaining the emergence of piracy in Somalia. Conflict and disorder can lead to criminality at sea especially in the absence of law-enforcing authorities and desperate circumstances such as extreme poverty combine to draw people towards criminality[79]. Yves-Pierre Rousseu, EU NAVOR reservation

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[76] M. N. Murphy, "Contemporary Piracy and Maritime Terrorism – the threat to international Security", *Adelphi Series. ISS,* No.5 (2007) p. 30.

[77] Interview with M. Benet, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 24 2011.

[78] Ibid.

[79]Interview with Y. Rousseu, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 23 2011.

officer[80] states that a solution to the piracy problem can only be found on land with the establishment of a stable government with a well equipped military and police force. Somalia has been without a stable government since 1991 leading to Somalia's inhabitants becoming involved in piratical activities, since the people were in desperate need of basic necessities such as food and shelter.

In Somalia, the under-funded law enforcement security which has been created by the inadequate state funding and limited police force has allowed the pirates the freedom to operate.[81] This is due to the fact that the present Somalia government or the TFG lacks the financial capacity to fund legitimate law enforcement agencies to patrol the gulf and ensure security to all the merchant ships in transit. In Puntland, regional authorities have been established with some sort of basic coast guard but lacks the required equipment, adequate staff, training, boats and capabilities.[82]

The region of Puntland has a fairly effective government, but has been the base for the most piratical activities and networks in Somalia. Corruption has also been reported at every governmental level as Yves-Pierre Rousseu [83] cites an example of captured Somali pirates who are arrested at sea and handed over to the Somali authorities but are 'suspiciously' released after a few months of imprisonment. It has also been claimed that regional and local government officials in Puntland continuously facilitate and profit from piracy in the area[84].

[80] Ibid.
[81] Ibid.
[82] L Ploch, C.M Blanchard, R O'Rourke, R.C Manson, and R.O King, *Piracy off the Horn of Africa*, (Washington, DC: Congressional Research Service, 2009) p.5.
[83] Interview with Y. Rousseu, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 23 2011.
[84] Ibid. p.10.

The Legal and jurisdictional weaknesses have also increased the problem for pirates as the National law on piracy differs from country to country which led to the development of the an international anti-piracy legislation which is the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and the United Nations Convention on the law of the Sea (UNCLOS) [85] has significant limitations and is not always successful in its approach to piracy.

On a National scale, the Somali people have justified or rather attributed the cause of the increase of piratical incidents as being the practice of illegally fishing and waste dumping in Somalia's waters, proliferation of (small) arms, and most importantly the lack of economic opportunity[86].

The practice of illegal fishing and waste dumping in Somali waters is used as a justification by pirates to engage in piracy, but as Ernest Njoroge, EU Somalia Unit, Livestock programme manager[87] states 'one crime cannot be a solution to another crime', in other words illegal fishing cannot justify any act of piracy.

Since the outbreak of the civil war in 1991, Somalia's sea has been plundered by foreign vessels with fishing fleets from around the world illegally plundering Somali stocks and freezing out the country's own fishermen. Another UN report stated that an estimated 300 million US dollars worth of seafood is stolen from the country's coastline each year[88]. Thus the already small scale fishing industry in Somalia collapsed and fishermen were forced to look for other ways to make their livelihoods. The additional

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[85] See UNCLOS.
[86] S. Roodenburg, *Dangerous waters: Maritime piracy off the coast of Somalia: An analysis of the complex and multifaceted problem of Somali-based piracy and its possible solutions*, (The Hague School of European Studies: The Hague University of Applied Science, 2010) p.11.
[87] Interview with E. Njoroge, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 25 2011.
[88] I.Tharoor, "How Somalia's fishermen became pirates", *Time Magazine*, Saturday, April 18 2009.

practice of dumping toxic and nuclear waste by foreign vessels in Somalia's seas has been another justification towards gearing to piracy as a United Nations Environmental Program report of 2005 mentioned the dumping of uranium radioactive and other hazardous deposits leading to skin and other physical diseases among inhabitants of villages near the coast. Thus many pirates claimed to be 'protectors' of Somalia's natural resources and of local communities. They argued that the foreign vessels should pay a legitimate taxation in the form of ransom money. As stated by members of the pirate group 'Somali Coast Guard', "We consider sea bandits as those who illegally fish in our seas and dump waste in our seas and carry weapons on our seas. We are simply patrolling our seas", says a Somali Coast Guard[89]

Abdullahi Abdinur Mohamud[90]literates that the illicit activities by foreign vessels off the coast of Somalia were the cause for the rise of piracy and the actions of the pirates are completely justified. He says that 'fishermen had long complained that foreign ships had been hurting their livelihoods from over fishing, but no one listened to them'. His comments are also shared by Rahma Bashir Ali[91] who also adds that ' toxic wastes dumping has been ongoing in the Indian ocean for a very long time and am very convinced that there has been dumping of solid waste, chemicals and maybe nuclear waste even if there is no evidence to prove this'.

In Somalia, pirates are seen by many as true heroes as they have obtained a certain level of prestige, in terms of hard currency in form of dollars as Yves stated that pirates have even affected the economy of Puntland as food prices have shot up due to the

[89] S. Ross and B. David, "Who are Somalia's Pirates", *Harvard Africa Policy Journal, Vol.5.(* 2009) p.55.
[90] Interview with A. Mohamud (via E-mail), Delegation of the EU to Kenya, Somalia Unit, Garowe, Puntland, August 25 2011.
[91] Interview with R. Ali (via E-mail), Delegation of the EU to Kenya, Somalia Unit, Garowe, Puntland, August 25 2011.

increased flow of US dollars in the market. According to Yves, it has been reported that for a people that used to survive on less than a dollar, some pirates earn as much as 65,000 USD per year.

The presence of weaponry in the country may have fed the upsurge of piracy. The global proliferation of small arms has supplied criminal gangs, including pirates and terrorists, with an enhanced means to operate on a more destructive and sophisticated level.[92]. The Somali population has easily access to weapons as they appear to be sold and bought on the free market and pirates are thus able to acquire them easily for the attacks off the Horn of Africa.

To summarise Ahmed Khalif[93] says that the root causes of piracy have been the most importantly the dire poverty of the Somalia people and the lack of a stable government with institutions that could enforce and reinforce the fight against piracy. He emphasizes that corruption within government, especially in Puntland has exacerbated the problem of piracy as high government officials have been alleged to be connected to pirates as well as wealthy business men who have been rumoured to have financial ties to the pirates. In addition to this, the issuance of illegal fishing licenses to particular European companies to fish on the Somali waters is complicated by the fact that only specific clans are allowed to award these licenses to these companies and this creates animosity within various clans.

[92] P.Chalk, "Maritime Piracy. Reasons, Dangers and Solutions", RAND, CT317, Wednesday, February 4 2009.
[93] Interview with A. Khalif, Delegation of the EU to Kenya, Somalia Unit, Nairobi,25 June 2011, Nairobi.

Mohamed Mohamud[94]says that if the international community wants to limit the acts of piracy then they have to assist Somalis to keep illegal foreign fishing and toxic

waste dumping away from their coastlines. He emphasises that 'most Somali people view the international community as protecting their own self interests in establishing the naval force, as the military force does not hunt down the foreign vessels that conduct illegal fishing on Somali waters but only chase after pirates'.

3.5: Consequences of piracy off the Somalia Waters

The threat of piracy in the waters of the Somali coast and the Gulf of Aden has had diverse economic and commercial consequences derived from the delays in ports, increases in insurance rates for ships traversing the waters off the Somali coast and the costs associated with ships and ship owners opting for alternative routes to the Gulf of Aden such as the much longer route around the Cape of Good Hope. Ship owners have also incurred higher costs due to crews demanding higher wages for travelling through pirate infested waters. These higher costs are ultimately borne by consumers in the form of higher prices for the goods and commodities they consume[95].

The impact of piracy on the global and regional area includes the fact that piracy endangers safety and security of one of the important international maritime routes (lines) of the Indian Ocean and Gulf of Aden causing an increase in the cost of freight, insurance premiums that in return disrupt international trade flow hampering investment and hiking cost of living in the region and across the globe.

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[94] Interview with M. Mohamud, (via E-mail), Delegation of the EU to Kenya, Somalia Unit, Mogadishu, Somalia, 26 August 2011.
[95] See IGAD Somali Inland Strategy and Action Plan to Counter and prevent Piracy 2010 – 2015.

Somali pirate attacks have added a cost of at least $2.4 billion to transport costs because vessels are being diverted onto longer routes to avoid attacks off east Africa, Louisville, Colorado-based One Earth Future Foundation estimates. Average ransom payments rose to $5.4 million in 2006, compared with $150,000 in 2005[96].

Piracy is expected to continue as EUNAVFOR Reserve officer[97] reported that many pirates are happy to take the place of those who are arrested.

Piracy has also affected the delivery of humanitarian aid to Somalia, the UN claim that 3.1 million people in Somalia face "an acute food, nutrition and livelihood crisis."[98] Ninety-five percent of the supplies provided by the World Food Programme (WFP) must be delivered to Somalia by sea.[99] Since the attack on a WFP-contracted ship in late 2007 and again in early 2008, the international community began to provide navy protection to WFP ships[100].

Somali community members in Puntland for example have also complained about the role of pirates in inflating the prices of basic commodities causing a hike in the cost of living. For example, an average goat was sold at 25 USD in Eyl before the prevalence of piracy and increased up to 100 USD with the coming of pirates to the town.

Local communities have been the most affected by piracy in a cultural sense as reported by respondents in the IGAD study[101] that pirates have introduced bad habits that were previously rare in Somali society such as alcohol consumption and prostitution. The pirates' unruly behavior and sometimes their unwillingness to honor debts they have

[96] A. Mwangura, "Pirate Attacks Increase, Raise Shipping Costs", *BBC news Africa*, Vol.125, Col.2, (2011),p.2.
[97] Interview with Y. Rousseu, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 23 2011.
[98] See United Nations Security Council, p 34.
[99] Ibid..
[100] Ibid,
[101] See IGAD Somali Inland Strategy and Action Plan to Counter and prevent Piracy 2010 – 2015, p 40.

incurred from local suppliers (merchants/businessmen that supply them with food, drinks and Khat) have also caused resentment from the local communities. Pirates who have struck it rich have also tended to divorce their wives and look for younger, prettier women to marry. Piracy also led to the increase of single mothers as a result of divorce, adultery, remarriage, abandonment and women being left with small children because of the death or imprisonment of their pirate husbands.

Ahmed Khalif notes that 'clans began to have relevance after engaging in pirate activities as they had more money to splash around and increase their importance to the community'[102]. This can be seen as an impact on the local communities who had minor status in society, which has now been elevated thus providing them with a voice or representation. Piracy according to Khalif has also driven away the trawlers and thereby increasing marine resources in the sea and creating an enabling environment for the fishermen to catch more fish.

3.6: The development of international law

This section attempts to look into the existing legal frameworks that have been developed to address the transnational crimes related to piracy. The most important aspect in discussing the legal framework is the definition of the crime of piracy and the identification of the legal mechanisms of jurisdiction for prosecution of pirates and other legal measures.

The 1982 UN Convention on the Law of the Sea (UNCLOS)[103] addresses the fundamental issues in relation to piracy. These relate to what constitutes piracy, such as the geographic scope of the crime, issue of jurisdiction including powers granted to states

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[102] Interview with A. Khalif, Delegation of the EU to Kenya, Somalia Unit, Nairobi, 25 June 2011.
[103] See Article 101 of UNCLOS.

to address piracy. The UNCLOS defines piracy in article 101 as: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)[104].

Therefore for an act to constitute piracy, it should involve an illegal act of violence or detention, or any act of depredation. And such an act should be committed by the crew or passengers of a private ship or a private aircraft for private ends. In Somalia, the forcible seizure or capture of ships or armed attacks or assault against ships by Somali nationals on private boats on the waters off the Somalia coast with a view to collect ransom fulfils this important element of the crime of piracy.

In terms of geographic scope of the crime to the 'high seas' this limits the area where piracy can be internationally regulated, meaning that the international community are legally excluded from piracy acts within the territorial waters of coastal states, meaning that only Somalia has the sovereign jurisdiction to take action against acts of piracy committed in its territorial waters. In terms of jurisdiction and under customary international law, piracy is regarded as an international crime. As such, every state has the jurisdiction to prosecute a pirate found within the territory of that state irrespective of the existence or otherwise of a connection between the pirate and the state. This in international law is referred to as universal jurisdiction.

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[104] See Article 101 of UNCLOS.

Therefore on the high seas, any State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

Hence, any state can exercise jurisdiction against acts of piracy within the framework of UNCLOS. In regards the powers given to states to address piracy, one article[105] states that a seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect, therefore in Somalia, any of the ships forming part of the Naval mission operating in the Gulf of Aden can seize pirate ships or boats.

The 1979 International Convention against the Taking of Hostages[106] applies to Somalia because even though piracy is not a subject covered under the convention against the taking of hostages, the acts of piracy on the Somalia waters often involve hostage taking therefore making the convention relevant and ensuring that pirates become responsible not only for these acts but also for other offences that accompany the crime of piracy such as hostage taking. One of the main activities of Somali pirates is the taking and detention of hostages on the condition that a payment of ransom is paid upon the release of the hostages. The convention obliges each state party to establish jurisdiction where such crime is committed in its territory, onboard a ship registered in that state, by

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[105] See Article 107 of UNCLOS.
[106] See The International Convention against the Taking of Hostages, (1979).

any of its nationals or with respect to a hostage that is the national of the state in question. Where an alleged offender is present in the territory of a state party, that party can chose to exercise jurisdiction where it doesn't take action towards extraditing the alleged offender to states that have established jurisdiction. The importance of this convention is that it can be applied as an alternative basis for assuming jurisdiction to prosecute pirates in situations where the prosecuting state doesn't have the alternatives available.

3.6.1: UNSC Resolutions

In a very short period, international law has evolved to circumvent the constraints imposed on enforcement jurisdiction by UNCLOS. Specifically, states have clarified prosecution responsibilities and processes for pirates captured through reliance on universal jurisdiction. The international initiatives in the form of United Nations Security Council (UNSC) resolutions were adopted by the UNSC to fight piracy in Somalia[107].

The Security Council recognised that the Somali Transitional Federal Government (TFG) lacked the capacity to interdict pirates or patrol and secure the international sea lanes off the coast of Somalia. Therefore the only possible way UNCLOS could be said to provide for entrance into territorial waters without prior permission is through the notion of 'assistance entry'. Which means that under UNCLOS[108] ships have the duty to render assistance in three circumstances: when they find a person at sea in danger of being lost, when informed of the need for rescue by persons in distress, and after a collision with another ship hence the UNSC Resolution 1816 (2008) was established to allow naval vessels to enter into Somali territorial waters

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[107] See UNSC resolutions 1816(2008), 1838(2008), 1846(2008), 1897(2009) and 1918 (2010).
[108] See Article 101 of UNCLOS.

to combat piracy and armed robbery against ships, for a period of six months. The entrance was conditional to receiving the prior written permission of the TFG, and while in Somali waters "all necessary means" could be used to repress piracy and armed robbery against ships. The resolution was extended further by UNSC Resolution 1846 (2008) for a further year until December 2009. Absent from both resolutions was the clarity as to who had the adjudicative jurisdiction and priority to prosecute pirates captured in Somali waters.

Resolution 1918 (2010) calls on states to criminalise in their national laws acts of piracy and thereby establish jurisdiction over activities of piracy in the waters off the coast of Somalia. Resolution 1950 (2010) is the latest resolution to be adopted by the UN Security Council for repressing piracy and encourages States to fully implement their relevant obligations in criminalising acts of piracy under their domestic laws.

3.6.2: Regional Agreements

The Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden was adopted in 2009[109] or the Djibouti Code of Conduct was as the result of a high level meeting held among 17 states from the Western Indian Ocean, Gulf of Aden and Red Sea areas under the auspices of the International Maritime Organization (IOM). The participants declared their intention to cooperate to the fullest extent possible and in a manner consistent with standards set in international law in the repression of piracy and armed robbery against ships.

The Code of Conduct adopted the definition of piracy provided in the UNCLOS[110] and elaborated their scope and purpose of the envisaged cooperation. They

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[109] See Djibouti Code of Condut, (2009).
[110] See Article 101of UNCLOS.

agreed to cooperate towards; the sharing and reporting of relevant information; the interdicting of ships and/or aircraft suspected of engaging in piracy or armed robbery against ships; to ensure that persons committing or attempting to commit piracy or armed robbery against ships were apprehended and prosecuted; and to facilitate the proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to piracy or armed robbery against ships, and especially those who have been subjected to violence.

The Kampala Process and Gaalkayo Agreement which seek to ensure cooperation between the separate administrations in Somalia. In particular, Kampala process is supposed to enable the TFG, Puntland and Somaliland governments to work together through inter-Somali dialogue for the reconstruction of key Somali Institutions in partnership with the international Communities and partners. The Gaalkayo agreement was signed by the TFG and Puntland administration to cooperate in the maintenance of peace and security that would enhance the counter piracy effort.

3.6.3: The Transitional Federal Government (TFG) draft piracy law[111]

The Transitional Federal Government (TFG) is seen as dysfunctional entity without the capacity to challenge the pirates or to provide naval muscle in support of the international partners engaged in counter-piracy measures. The TFG has been reported to use the piracy issue as an argument linking to the challenges in the onshore for sympathy and donor support. However, it has cooperated with the international community's efforts in addressing piracy, even though it has failed to put in place structures to absorb donor assistance to build on sustainable structures with a long-term effect.

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[111] See Draft Antipiracy law as enacted by the TFG Council of Ministers (2010).

Despite all these factors, the TFG has taken some steps internally to address the crime. The TFG Council of Ministers discussed and passed the draft Anti-Piracy Law presented by the Minister for Justice and Judiciary Affairs, Abdikarim Ahmed Ali on 3rd September 2010.[112] The draft anti-piracy bill addressed the gaps related to trails in which question of territorial jurisdiction in the view of experts was not considered. Arguing that a trial has to take place where the crime has been committed to give territorial jurisdiction some sort of legal relevance.

In January 2011, it was reported that Somali lawmakers had blocked the Anti piracy bill criminalising piracy which been proposed by the justice minister to pave the way for a local tribunal. Some of the members of parliament argued that the the text on the punishment of pirates was not compatible with Islam and could therefore not be approved[113]. The Somali parliament's justice committee has since then began to work on the redraft. Some of the issues under the proposed law, suggest that anyone caught in the act of piracy to be fined from between $50,000 (£31,000) and $500,000 or face a prison term of between five and 20 years.

Government critics report that the Somali interim government's authority is very limited and even if the law was passed, the government lacks the ability to apprehend pirates who operate across thousands of miles of the Indian Ocean.

3.7: International intervention

'About 30 anti-piracy ships are deployed daily in the region by groups including the European Union and NATO. The European Naval Force patrols about 2 million square

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[112] Ibid.
[113] A. Mwangura, "Somalia Lawmakers Challenge Anti-Piracy Bill", *BBC News*, Vol.124, No.2, (2011) p.14.

nautical miles', says Yves-Pierre Rousseu of EUNAVOR[114]. The EU is recognised as being at the forefront of the fight against piracy with its support of the EU NAVFOR patrolling ships.

The international community, has continuously requested the TFG and regional Somali authorities to deliver a clear and unequivocal statement in the overall fight against piracy, creating legitimate alternatives for earning a livelihood, says Jeremie Robert, Political advisor of EU Somalia Unit[115]. Strong messages of encouragement have also been passed to the Puntland authorities to get them to both refrain from having any linkages to piracy networks and intensify their efforts to fight piracy, most notably in the stronghold of Gara'ad. President Farole has also been encouraged to restore/improve his relations with some key elders and gain their support or neutrality for future counter piracy operations.

The international community has reemphasised its strong policy against illegal fishing worldwide and its efforts in supporting the Indian Ocean countries in sustainable use of fishing resources says Ernest Njoroge[116] and the EU NAVFOR has also been requested to better communicate its mandate to monitor illegal fishing activities off the coast of Somalia.

The international community has also promised to consider funding a coastal and maritime environment assessment in Somalia, possibly through the United Nations Environmental Programme (UNEP). The concerns over the alleged dumping of waste

[114] Interview with Y. Rousseu, Delegation of the EU to Kenya, Somalia Unit, Nairobi, 23 June 201.
[115] Interview with J. Robert, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 30 2011.
[116] Interview with E. Njoroge, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 25 2011.

issues require to be addressed as does the alleged damage to biomass in Somali waters, says Jeremie Robert[117].

Building on the already substantial on-going international community development and humanitarian assistance, projects have been developed to directly address the most pressing needs of the population (water, education and health).

Ahmed Khalif[118] proposes that ' there should be tough measures for pirates other than creating development project for pirates, because they are just that, criminals', therefore he suggests that pirates should be imprisoned in the countries that capture them not even in Africa but in western prisons which are a long way from home and this might actually be a lesson learned for all the other young men who want to engage in pirate activities.

3.8: Conclusions

The solution to piracy in Somalia lies mainly in the restoration of peace and stability in the country as well as creating an environment which enables development within an overall comprehensive approach. As Jeremie Robert[119] concludes, 'piracy today requires quick answers and quick responses and because right now piracy is tolerable the international community is not investing as much as it should, it is also not supporting the local authorities because they are more focused on the peace solution on the ground though both these actions should be taking place simultaneously'.

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[117] Interview with J. Robert, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 30 2011.
[118] Interview with A. Khalif, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 25 2011.
[119] Interview with J. Robert, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 2011.

CHAPTER FOUR

THE IMPACT OF PIRACY ON INTERNATIONAL SECURITY: A CRITICAL ANALYSIS

4.1: Introduction

In the last chapter, the root causes and the consequences of piracy were discussed in great depth through the interviews carried out with the various stakeholders such as the Somali and members of the international communities. The common overriding factor in all was on the root causes of piracy as being caused by poverty, weak Somali governing institutions and the obvious Somalia conflict that has been ongoing for the last twenty years as well as the absence of the rule of law.

This chapter will critically analyse the impact of piracy on international security by examining the emerging issues such as the debates over the root causes of piracy, the impact of piracy on international security and countering piracy off the Somali coast from local and international perspectives.

4.2: Emerging issues

4.2.1: Debates over the root causes of piracy

There have been a range of debates over the root causes of piracy and all seem to agree that the real solution to the piracy lies not in the waters of the Indian Ocean, but onshore in Somalia. This is because one of the root causes is Somalia's chronic insecurity and State collapse and therefore the long term solution lies in re-establishing State authority in all regions of Somalia. For example, a wide spectrum of Somalis representing civil society, women's groups, the media, business professionals, youth organizations, elders, and representatives of the moderate pro-government militia, Ahlu Sunna wal Jamma

debated on the root causes of piracy at a meeting held in Galmudug in May 2011[120], and

agreed that the main causes of piracy was the lack of a functional government with

existing administrations incapable of dealing with piracy and of course the lack of

employment.

The international community and the Somali people agree that there has always

been a correlation between poverty, the vicious cycle of violence and anarchy and that

the crime of piracy is just a symptom of the ongoing conflict in Somalia.

The extreme poverty experienced in Somalia is of fundamental extremes with the

country experiencing prolonged drought, desertification and soil erosion. Many Somalis

who are nomads make their meagre livelihood from their livestock, but natural disasters

have wiped out humongous portions of their livestock, leaving them stranded with no

alternative income to support their families and thus the possibility of getting into piracy

seems more enticing under these circumstances.

The most debated issue is the illegal fishing and toxic waste dumping that

propelled the beginning of piracy in Somalia. According to the High Seas Task Force

(HSTF), there were over 800 illegal, unreported and unregulated (IUU) fishing vessels in

Somali waters at one time in 2005, taking advantage of Somalia's inability to police and

control its own waters and fishing grounds. It was reported that the IUUs poached an

estimated $450 million in seafood from Somali waters annually, thus depleting the

resources from the world's poorest people and ruining the livelihoods of legitimate

fishermen[121]. The allegations of dumping of toxic waste and illegal fishing, had been

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[120] A. Farah, "Piracy Debate Concludes in Galmudug", *Somalia Report*, Tuesday, 17 May 2011.
[121] N. Abdullahi, "Toxic waste behind Somali Waters", *Al Jazeera English*, Saturday, October 11 2008.

circulating since the early 1990s, but hard evidence emerged when the tsunami of 2004 hit the country.

The United Nations Environment Program (UNEP) reported that Somalia was one of the many Least Developed Countries that reportedly received countless shipments of illegal nuclear and toxic waste dumped along the coastline. Starting from the early 1980s and continuing into the civil war, the hazardous waste dumped along Somalia's coast comprised uranium radioactive waste, industrial, and other toxic waste which was simply dumped on the beaches in containers and disposable leaking barrels[122].

The contamination from the waste deposits caused health and environmental problems to the surrounding local fishing communities including the contamination of groundwater. This is viewed as the beginning of the war between the local fishermen and the foreign encroachers as the local fishermen attempted to protect their waters and livelihood from being encroached upon by the foreign vessels. The fishermen began bearing arms and the trawlers began bearing more sophisticated weapons to overpower the fishermen and as a result the fishermen then up-scaled their protection and the cycle continued and thus the war began and over the years it has developed into what we now call the Somalia piracy problem. In as much as this is seen as a justification for the rise of piracy, it must be understood that a crime cannot be solved through the makings of another crime.

Another critic is that the cause of piracy has been increased by the payment of ransoms by shipping companies which has contributed to the general climate where the price of ransoms has risen and added an incentive for more people to get involved in the

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[122] See UNEP, "The National rapid environmental desk assessment – Somalia", *UNEP Tsunami Reports* (2005).

lawlessness of piracy as well as the cycle of getting ransom to acquire more advanced weapons to commit the crime. Somali pirates are today more equipped with heavy-machine guns, grenade-propelled rockets, satellite phones, and even Global Positioning System, which they buy with the ransoms they get[123] and thereby better suited to commit piracy. These changes are the proof that pirates have transformed simple opportunists into sophisticated professional operators and that they are more than likely to prolong the lifeline of their crimes unless something is done to stop them.

Another critical factor that facilitates piracy is the relative ease of capturing a ship because of small number of sailors required on board to hijack a ship. Since only few sailors are needed to navigate modern vessels from the starting point to its final destination, shipping firms make use of small crews. The smaller number of sailors onboard has reduced the options for concerted anti-piracy watches. It has made the task of gaining control of ships rather easy for pirates and it has stimulated pirates to carry out attacks on vessels[124]. These methods have encouraged young men to engage in piracy because the human resources required for the crime are quite minimal at a low price.

It can also be argued that the presence of weaponry in the country may have fed the upsurge of piracy. The global proliferation of small arms has supplied criminal gangs, including pirates and terrorists, with an enhanced means to operate on a more destructive and sophisticated level[125].

Wealthy businessmen in Dubai have been alleged to have historically invested in pirate activities. Interviews with captured pirates have produced limited insight into these

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[123] China View, "Analysis: What causes rampant Somali piracies?", *china view*, Saturday, 22 November 2008.
[124] P.Chalk, "Maritime Piracy. Reasons, Dangers and Solutions", *RAND*, CT317, Wednesday, February 4 2009.
[125] Ibid, p.3.

financiers, but the allegations seem to be certain. When Somalis are unable to procure necessary weapons and equipment on their own, outside investment fills the gap[126].

It has also been alleged that there has been a close established relationship between the pirates and government officials in Puntland and Somaliland. This relationship has worked to the advantage of both parties. The pirates have been rumored to use part of their ransom to bribe local officials and tribal chiefs in order to create a network of intelligence and logistical assistance.

Local government depends on piracy as one of its only sources of income. With no tax base and no exportable commodities, ransoms fund the governments. Interviews conducted with apprehended pirates suggested that over 30% of an average ransom is distributed to various local officials to ensure their support[127].Alarmingly, this relationship with local government has also extended to the armed forces since the government has been unable to pay steady wages, thus thousands of soldiers have defected to pirate gangs who pay them thousands of times more.[128] Thus they become dependent on pirate gangs for revenue and simultaneously losing personnel to these gangs only undermines the already weak regimes in Puntland and Somaliland.

4.2.2: The impact of piracy on international security

The problems associated with piracy have become increasingly global, as the geographical area in which the pirates operate has expanded dramatically. In 2008, Somali pirates were largely contained to the Gulf of Aden, but due to the response by the

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[126] R. Hunter, "Somali pirates living the high life", *BBC News*, Tuesday, October 28 2008.
[127] J. Gettleman, "Somalia's Pirates Flourish in a Lawless Nation", *The New York Times*, Tuesday, October 28 2008.
[128] See Garowe Online, "Somalia: Puntland Soldiers Join Forces With Pirates", *Garowe Online*, Thursday, June 5 2008.

naval force, the pirates have pushed out towards the Red Sea and the coast of Oman, east out into the Indian Ocean, and south down to the Mozambique Channel.

The most profound impact of piracy in Somalia has been the impact on food security through the interruption of food aid by the WFP[129] into Somalia thus forcing the establishment of a naval force with the mandate to escort and provide security for the WFP vessels passing through the Gulf of Eden ensuring that this badly needed humanitarian aid reaches the most in need. It is quite revolting that the pirates themselves have no sense of sympathy for their own people who are suffering in the mainland.

Piracy has also affected international trade in through the increase of insurance premiums for ships that need to pass through the Gulf of Aden. It has been reported that the premiums have increased and eestimates indicate that shipping companies may be losing between thirteen and fifteen billion dollars per year due to pirate attacks. To make matters worse, ships are now being forced to avoid the Gulf of Aden and take the long route to Europe and North America around the Cape of Good Hope thereby increasing the expenses in terms of travel and fuel consumption as well as the cost of transporting goods.

There has been a tremendous impact on the lives of Somalia's citizens as piracy has contributed towards the instability in the state and further undermined the already weak TFG. The TFG was established to unite the fragmented state, but the activities of the pirates makes it almost impossible provide the security for the state and its citizens. The international community also keeps piracy as one of the TFG's priority problems that the weak government needs to deal with which is a tall order considering their instability.

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[129] See UN Monitoring Group on Somalia 2010,"Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853", (2008).

Piracy has developed into a complex and lucrative economy of its own; its impact even extends deep into Somali village structure and life. Piracy does not simply enrich individuals or pirate groups; it brings wealth to entire villages. Coastal villages make money by providing food to pirates and hostages who wait for negotiations to end favourably. Local negotiators make money by bringing the ship owners to pay the ransom money via a cash drop at sea or on land. Some estimates have reported that Somali pirates received more than $150 million in ransom over the 12 month period between November 2007 and November 2008[130].

Thus making piracy the main attractive business to engage in especially for the younger generation. Having seen the success of previous pirate operations, young Somali men are attracted towards the gangs of pirates that recruit in villages. Furthermore there is the fact that the illegal activity of the pirates has had a positive effect on local, legitimate economies as the pirates spend their newly gained wealth in their home villages. This has enabled certain areas to modernise significantly and to thrive on a financial front making it all the more difficult to see how the problem of piracy can be tackled at a grass roots level.

A significant proportion of ransom payments enter the Somali economy via payment for services, as well as the purchase of consumer durables, high-end vehicles and real estate. Piracy proceeds have contributed to a real estate bubble in piracy havens like Eyl[131].

Piracy has also had an impact on Somali society and culture though there is limited information on the impact of piracy on Somali society as a whole, according to a

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[130] Ibid.
[131] Ibid

report from Jack Lang, the UN's Special Adviser on Legal Issues related to Piracy off the Coast of Somalia, piracy is already having a destructive effect on Puntland's[132] clan structure. For example, the idea that pirate networks are undermining the clan structure overlooks the fact that the authority of clan "elders" has been in decline for decades and their legitimacy as leaders and peacemakers has only very recently begun to enjoy something of a renaissance.

There has also been a regional impact by rise of piracy since 2008, which has severely impacted the security of the Red Sea being a strategic water passage. With the rise in risks of navigation in the region, many countries began to use alternative routes such as the Cape of Good Hope, despite the high cost to do so. There is a risk that the Red Sea region could transform into a battle field where other countries impose themselves politically and drug dealing could blossom under such chaotic circumstances; the transforming of the Red Sea into an international water passage, which would reap out the benefits of the benefiting regional countries.

The "privatisation of terrorism," may easily become a problem in Somalia, where Osama bin Laden is believed to have militant training bases, and where militant

factions linked to al-Qaeda operate freely[133] that is the Al-Shabaab which is the militant Islamist rebel group that has been responsible for carrying out a number of terrorist attacks in Mogadishu. It is believed that if kept unchecked, the Somali pirates could forge allegiances with terrorist groups interested in attacking in Somalia or elsewhere in the world.

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[132] S. Mohamed, "Puntland: Progress report on Counter-piracy", *Minister of Maritime Transport, Ports & Counter Piracy*", (2010).
[133] Bahar, *supra* note 8, at 28; *Death Toll Rises, supra* note 13 (linking a local militant Islamic group, al-Shabaab, to al-Qaida).

Since pirates tend to hijack gigantic supertankers loaded with millions of barrels of (crude) oil, Somali piracy has the potential to trigger a major environmental disaster. Evidently, the chance of such a catastrophe increases in busy waterways such as the Gulf of Aden. For example, if a heavily-laden oil tanker is out of control and collides with other steaming vessels due to a pirate attack, it can create extreme danger, like an explosion with unforeseen consequences especially for the crew and passengers on board of the ship and other ships nearby. In addition, as a result oil can leak and drift towards shore. This poses a serious threat on fertile coastal lowlands, offshore (fish) resources and other maritime life. In the worst case scenario, the environment in the region will be damaged irrevocably[134].

An additional problem resulting from an environmental disaster in one of the world's maritime commercial chokepoints is the possible blockage of the busy sea lane. This poses a severe threat on the global economy as oil prices will rocket, the costs of shipping will increase due to the use of alternative routes, congestion in the sea-lanes and ports will emerge and already expensive maritime insurance premiums will further rise. More accidents can occur in the over-crowded shipping lanes, with subsequent environmental disasters as a likely consequence.

4.2.3: Countering piracy off the Somali coast: local and international perspectives

The local authorities in Somalia have made some tremendous efforts towards the fight against piracy in Somalia despite the lack of resources and the overriding Somalia conflict.

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[134] P.Chalk, "Maritime Piracy. Reasons, Dangers and Solutions", *RAND*, CT317, Wednesday, February 4 2009.

Beginning with Puntland region, which is believed to be the springboard for piracy activities. The UN Monitoring Group on Somalia[135] in its report suggested that Puntland officials maybe involved in the piracy business. In fact, piracy leaders are said to move around freely in Puntland's capital Garowe[136]. The government of Puntland appeared to be more entangled in the piracy operations than already known. Leaders of pirate gangs were believed to be protected by the government or even formally integrated in the military structures. Moreover, it was reported that President 'Faroole'of Puntland and other ministers were also involved in piracy.

The Puntland administration has made efforts to fight off piracy. In May 2010, they engaged the services of a British private security firm, SARACEN International to train coast guard marines to fight off Somali pirates and had already trained about 1000 marine forces before the suspension of its services in February 2011 after close consultations with the UN[137].

According to a progress report by the Ministry of Maritime Transport, Ports & Counter Piracy[138], the Puntland administration had made several efforts to fight piracy since April 2010 by capturing a top pirate "Abshir Boyah" and others and bringing them to justice, where they were convicted of piracy offences and imprisoned at the Bossaso Prison. The Puntland administration also established an awareness campaign within the Ministries of Justice & Religious Affairs, Education, Labour, Youth & Sports, Security, and Maritime Transport, Ports & Counter Piracy to prevent communities from becoming

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[135] See UN Monitoring Group on Somalia 2010, "Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853", (2008).
[136] Ibid.
[137] See Associated Press, "Somalia: Puntland vs Saracen International", *Associated Press*, Vol. 11. No. 1 (2011) p.2.
[138] S. Mohamed, "Puntland: Progress report on Counter-piracy", *Minister of Maritime Transport, Ports & Counter Piracy*, (2010).

involved in piracy activities and to warn those already involved to withdraw without any prerequisites.

The Puntland government has also appealed for pirates imprisoned elsewhere to be transferred to Puntland with the help of the United Nations office on Drug and Crime (UNODC), so as to engage in the region-wide efforts to tackle piracy. In May 2011, during a meeting held at the Seychelles Ministry of Foreign Affairs, it was announced that Puntland would accept the transfer of all convicted Somali pirates held in Seychelles[139]. In addition, Puntland was involved in the training of 50 former pirates from vocational courses to equip them with various skills for future careers. The Puntland Government has also been engaged in monitoring operations along the coast of Somalia on a daily basis.

On the other hand, the TFG is seen as dysfunctional entity without the capability to challenge the pirates or to provide the naval muscle required for the support of the international partners engaged in counter-piracy measures. The TFG has managed to cooperate with the international community's perspectives in addressing piracy, but failed to put in place capacity to absorb donor assistance to build on sustainable structures with a long-term effect.

The Anti-piracy commission[140] was expected to study and identify issues surrounding piracy including those involved, flow of ransom and other financial incentives and real issues of the frontline communities for informed interventions.

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[139] See World Tourism directory, "Seychelles and Puntland strengthen piracy agreement", *World Tourism directory*, Vol. 1 (2011) p.1.
[140] On July 2010, the former Prime Minister of the TFG – Omar Abdirashid Ali Sharmarke announced appointment of Prof. Muhyadin Ali Yussuf as head of the TFG Commission on Anti-piracy.

Furthermore, the TFG Council of Ministers discussed and passed draft Anti-Piracy Law as presented by the Minister for Justice and Judiciary Affairs, Abdikarim Ahmed Ali on 3rd September 2010. The draft law faintly addressed the gaps related to territorial jurisdiction as trial has to take place where the crime was committed to give territorial jurisdiction some sort of legal relevance. Somalia's penal code which consists of 565 articles and in which there is no single provision regulating or dealing with piracy unless one assumes that it is an act of robbery.

Some experts on Islamic Law are of the view that Sharia law has more chances of addressing piracy, but the TFG has adopted Sharia law for political reasons, and in that respect shows no trace of amendment reflected on the TFG Charter, in that regard. Its declaration was intended just to deny public space and de-legitimize the insurgents groups, but seemingly failed to embrace such an outcome.

The obstruction of vessels ferrying food consignments chartered by the WFP by the pirates in 2008 necessitated reaction from the international community, resulting into establishment of structures and naval presence to deal with the piracy along the Somalia coast and the Gulf of Aden among others. Several countries including the UK, Canada and Norway among others provided naval forces to escorts carrying humanitarian cargo to the region.

On 20th August 2007, the UNSC adopted resolution 1772[141] on the situation in Somalia and stressed over concerns of piracy off the Somalia coast. On 2nd June, 2008, the UN Security Council passed resolutions 1816[142] sponsored by France and the US that allowed foreign warships to enter Somalia waters with an aim to repress piracy and

[141] See UN Resolution 1772 (2007) adopted by the Security Council at its 5732nd meeting, on 20 August 2007.
[142] See UN Resolution 1816(2008) adopted by the Security Council at its 5902nd meeting on 2 June 2008.

armed robbery by any means necessary. On 7th October 2008, the Council again adopted resolution 1838[143] that provided some level of space to the TFG on counter-piracy operations. The resolution gave 6-months to the multinational naval forces to use any means necessary to repress acts of piracy and armed robbery at sea with the consent of the Somalia's interim government. Reports indicate that resolution accommodated concerns by Indonesia that opposed vehemently external use of force in the waters of a sovereign state.

Deeply concerned by the outbreak of acts of piracy and armed robbery off the Somali coast and in support of UN Security Council Resolutions[144], the European Union began to conduct a military operation EUNAVFOR Somalia ("operationAtalanta"), to provide protection of vessels of the WFP delivering food aid to displaced persons in Somali and for the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast. Since the UN resolution, the Gulf of Aden is currently patrolled by one of the largest anti-piracy flotillas in modern history. Organized as the Combined Maritime Forces, the United States-led coalition features warships from at least 20 different navies.

Due to differing rules of engagement and the various legal complexities related to capturing, holding, and prosecuting pirates, the multilateral contingent has attempted to combat pirate attacks mainly through the sheer strength of its presence in the area. As expected, pirates tend to shy away from commercial vessels backed by a military escort,

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[143] See UN Resolution 1838 (2008)adopted by the Security Council at its 5987th meeting, on 7 October 2008.
[144] See UN Security Council Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1846 (2008) and 1897 (2009).

preferring instead to go after unprotected and thus more vulnerable targets[145]. The naval force has criticism has come from members of the Somali community who think they are not doing enough in terms of capturing the pirates[146], since they release the pirates once they capture them because some of them are just in their teens.

On January 8 2009[147], the U.S. Navy announced the reorganization of the multilateral forces patrolling the Gulf of Aden. Through the establishment of Combined Task Force 151 (CTF-151), the United States and its partners have sought to strengthen the force's ability to deter and disrupt the pirates by freeing-up a section of the coalition forces to focus exclusively on pirate groups (leaving Combined Task Force 150 to focus on other destabilizing activities, such as drug smuggling and weapons trafficking thereby suggesting that piracy is a long term battle that may become more complicated than it already is.

The NATO naval escorts under *Operation Allied Provider* the WFP ships, which began in late 2008[148]. The initial operational codename was thereafter replaced by *Operation Allied Protector* from March 2009 to August 2009. The *Operation Ocean Shield 2010* was launched with broader tasks including protection of vessels and training of the regional states in developing combat capacity against piracy activities. The NATO Council approved the operation on 17th August 2009 and with an extension up to the end of 2012.

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[145] R. Biegon, "Somali Piracy and the International Response", *Foreign Policy in Focus* , Vol. 12, 2009, p.14.
[146] Interview with A.Gaal, Delegation of the EU to Kenya, Somalia Unit, Nairobi, May 31 2011.
[147] See Navy Military. "New Counter-Piracy Task Force Established", *Navy Military, Vol. 1*, 2009, p. 12.
[148]See Agence France-Presse, "NATO Launches Anti-Piracy Operations off Somalia", *Agence France-Presse*, October 27, 2008.

As a result of the considerable escalation in acts of piracy the European Union under the Common Security and Defence Policy (CSDP) launched an operation in order to protect humanitarian aid and reduce the disruption to the shipping routes and the de-stabilising of the maritime environment in the region. The EUNAVFOR Somalia – Operation ATALANTA, was launched in support of the UNSC Resolutions.[149] The mandate of the EUNAVFOR was also to protect the vessels of the WFP delivering food aid to displaced persons in Somalia, the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast as well as contributing to the monitoring of fishing activities off the coast of Somalia. The operation was scheduled for an initial period of twelve months, until 13 December 2009 but was extended twice until December 2010 and then to December 2012.

Currently over 26 countries had made some contribution to the operation in terms of headquarter staff, warship or aircraft and the contribution period and frequency have differed from one country to another.[150] So far 13 EU Member States have provided an operational contribution including France, Spain, Germany, Greece, Sweden, Netherlands, Italy, Belgium, United Kingdom (also hosting the EUNAVFOR Operational headquarters), Portugal, Luxembourg, Malta and Estonia. 9 other EU Member States have participated in the effort providing military staff to work at the EU NAVFOR Operational Headquarters (Northwood – UK) or onboard units. These are Cyprus, Romania, Bulgaria, Slovenia, Czech Republic, Hungary, Poland, Ireland and Finland. 4 other non EU Member States, Norway, Croatia, Ukraine and Montenegro have also

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[149] See UNSC Resolutions 1814 (2008), 1816 (2008), 1838 (2008) and 1846 (2008).
[150] See the mission statement, European Union Naval Force Somalia – Operation Atlanta (2008).

provided an operational contribution with a warship regularly deploying in the area of operation.

The common funding for the operation is shared between the EU Member States and is established on the basis of their GDP, and mainly covers the running costs of the Operational Headquarters and the Force Headquarter. Costs of supplying military assets and personnel are shared by the contributing states and established according to their involvement in the operation, with each state continuing to bear the cost of the resources it deploys. As European countries go through the worst financial crisis ever seen since the great depression, Member States are concerned about the high funding required to fund the naval force but continue to support the operation since there have been a decrease in pirate activities[151].

On the other hand, the United States government advised the maritime shipping companies to consider employing armed guards[152] as they had been using them and still continue to use armed guards on many of their commercial ships that carry military cargo, since the crew members cannot be able to protect themselves with fire hoses if the pirates are armed with rocket-propelled grenades.The shipping industry's response to this advice has been mixed. This is not surprising because, as security governance analysts note, some of these relationships and understandings are often slow to transform because of their complexity and because different actors have different interests, capabilities, and contributions to make[153].

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[151] Interview with Y. Rousse, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 24 2011.
[152] T. Capaccio, "Petraeus urges ships to use armed guards", *Boston Globe* Wednesday April, 29 2009.
[153] E. Krahmann, "Security governance and the private military industry in Europe and North America, Conflict", *Security & Development*, Vol.5, No.2,(2005), pp. 247-268.

On the other hand, some shippers have sent their slower and more vulnerable vessels around the Cape of Good Hope to avoid the pirate prone region entirely. In addition rather than absorb the costs of private security companies and accept the normative implications, many shipping companies have chosen instead to absorb the costs of increased fuel consumption and the virtual attrition of its fleet that comes with an addition of three weeks to transit times

Many in the shipping industry seemingly draw the line, however, at the use of arms for various reasons. One relates to fears regarding the implications of violence as it may affect trade and seafarers' lives and cause an environmental disaster[154]. Both the International Maritime Bureau of the International Chamber of Commerce and United Nations International Maritime Organization discourage the arming of merchant ships in any way. Vessels are also subject to international law, the law of their flag state, and the national law of the territory they are in at a certain time. As a result, carriage of weapons subjects the ship and its owners to the task of conforming to the weapons laws of multiple jurisdictions in the course of a voyage. This is time consuming and expensive in legal fees. Egypt, Saudi Arabia, Yemen, Oman and the UAE expressly forbid the possession of firearms by non citizens, and further, by anyone that is not a policeman or active duty military[155].

International Shipping companies as well as the naval force developed the Industry Best Management Practices (BMP) booklet, to assist ships to avoid, deter or delay piracy attacks off the coast of Somalia, including the Gulf of Aden (GoA) and the

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[154] R. Middleton, "Piracy in Somalia – Threatening Global Trade, Feeding Local Wars", *Chatham House Briefing Paper*, No. 25,(2008), p.4.
[155] See European Security Center for Global Security, "Anti-piracy vessel security services", *European Security Center for Global Security*, Vol.15. No. 5, (2009), p.15.

Arabian Sea area. Experience, supported by data collected by Naval forces, showed that the application of the recommendations contained within the booklet could make a significant difference in preventing a ship becoming a victim of piracy[156]. This booklet has been blamed for the significant contribution it has made in decreasing pirate attacks on ships.

The United Nations Office on Drugs and Crime (UNODC) counter-piracy programme (CPP) began in 2009 with a mandate to help Kenya deal with an increase of attacks by Somali pirates. The mandate widened to include six countries in the Somali Basin region[157]. The CPP has proved effective in supporting efforts to detain and prosecute piracy suspects according to international standards of rule of law and respect for human rights. The CPP focuses on fair and efficient trials and imprisonment in regional centres, humane and secure imprisonment in Somalia, and fair and efficient trials in Somalia. Kenya has triad 69 suspects and convicted 50, while Seychelles has prosecuted 31 pirated and convicted 22 suspects. The sentences for prosecuted pirates generally range from 5 to 20 years, although sentences of up to more than 33 years have been handed down[158].

As a consequence of the Security Council's urgent call to foster collective action against armed maritime violence off the Horn of Africa, presented in UNSC Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on 14 January 2009. The main aim of this contact group is to discuss a coherent international

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[156] See *The Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*, (Seamanship International: Witherby Seamanship International Ltd, 2010).
[157] See UNODC, "Counter-Piracy Programme Support to the Trial and Related Treatment of Piracy Suspects", *UNODC*, Issue 5, 2011, p.21.
[158] Ibid.

response to the multifaceted complex issue of Somali piracy and to serve as a contact point and forum for states, regional and international organizations.

4.2.4: Other issues

A vast majority of the nations who have had ships come under attack from Somali pirates are states parties of the law of the sea and the International Criminal Court. Thus these nations may seek relief through the relevant statutory provisions of these conventions and courts. Examining several specific and prominent instances of Somali piracy will show that these laws can be applied effectively to the Somali piracy situation.

Customary International Law states that the act of piracy constitutes a violation of customary international law, as this crime is viewed as a threat to all nations making use of the open seas. As a result, the principle of universal jurisdiction applies to acts of piracy. This principle allows all nations to prosecute acts of piracy in their domestic courts whenever these acts occur[159]. Accordingly, nations could rely upon this principle to seize and prosecute Somali pirates encountered on the high seas. However, because attacks by Somali pirates occur mainly within the territorial waters of Somalia and because these pirates frequently outnumber and overpower ships' crews, a nation wishing to assist another nation's ship under attack would most likely be forced to encroach upon Somali sovereignty as part of such a response[160]. This tension between the customary international law norms against piracy, on the one hand, and the international law principle of state sovereignty, on the other, has proven to be one of the initial stumbling blocks for the successful capture and prosecution of pirates.

[159] M. Scharf, "The Amnesty Exception to the Jurisdiction of the International Criminal Court", *Cornell International Law Journal*, Vol.12, (1999), p.11.
[160] B. Carter and P.Trimble, *International law*, (London: Little Brown, 1995), p.463.

The United Nations Convention on the Law of the Sea (LOS) entered into force on November 16, 1994[161].The convention addresses issues such as maritime boundaries, the fair use of resources, and punishable crimes committed on the high seas. It also calls for all states to cooperate to the fullest extent in the repression of piracy on the high seas or any other place outside the jurisdiction of any state. Not all ships are authorized to seize pirate vessels under the law of the sea, only warships, military ships, or other crafts of governmental service are permitted to seize. If the seizure is carried out improperly, however, the state carrying out the seizure is liable to the state whose ship was improperly seized.[162]

In addition to a seizing state, the law of the sea allows for two main avenues for dispute resolution between states parties: the International Tribunal for the Law of the Sea[163] and the International Court of Justice (ICJ). These two avenues are open to all states that are parties to the law of the sea and these two courts have jurisdiction over all matters concerning the interpretation or application of the law. The final decision of the Tribunal is binding on all states parties[164].

However, state parties may refer the law of the sea disputes to the ICJ by submitting the controversy to the Secretary-General of the United Nations[165] and the decisions rendered by the ICJ are binding on all parties. The Legal and jurisdictional weaknesses have also increased the problem for pirates as the National law on piracy differs from country to country which led to the development of the an international anti-piracy legislation which is the Convention for the Suppression of Unlawful Acts Against

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[161] See art. 100 of Law of the Sea
[162] Ibid.
[163] Ibid.
[164] Ibid.
[165] See art. 36 of Statute of the International Court of Justice.

the Safety of Maritime Navigation (SUA) and the United Nations Convention on the law

of the Sea (UNCLOS) has significant limitations and is not always successful in its

approach to piracy.[166]

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limitations and is not always successful in its approach to piracy.[167]

The International Criminal Court (ICC) was established by the Rome Statute and

entered into force on July 1, 2002[168].146 The ICC was created with the understanding

that the most serious crimes of concern to the international community must not go

unpunished and that their effective prosecution must be ensured. This includes crimes

such as genocide, crimes against humanity and war crimes. Certain elements of pirate

attacks an fall within the definition of war crimes, though this will depend on whether

the Court views the Somali piracy crisis as a protracted armed conflict, as opposed to

sporadic acts of violence or an internal disturbance, and whether the pirate acts are

deemed to be "committed as part of a plan or policy or as part of a large-scale

commission of such crimes"[169].Particular war crimes that may be committed in the course

[166] Ibid. article 36.
[167] L Ploch. C.M Blanchard, R O'Rourke, R.C Manson, and R.O King, *Piracy off the Horn of Africa*, op cit.
[168] See the International Criminal Court, *Establishment of the Court*, available at: _http://www.icccpi. int/about.html_ (last accessed 7/19/11).
[169] See the Rome Statute of the International Criminal Court (1998).

of a piracy attack include extensive and unjustified appropriation of property, unlawful confinement, the taking of hostages, and wilful killing.[170]

The Somali piracy crisis demands the attention of the international community. When possible, individual nations should seize and prosecute Somali pirates who attack their ships on the high seas under applicable treaty law such as the law of the sea. However, when a victim nation is unable to do so (because they are overpowered by the pirates or they lack the authority to do so within Somali territorial waters), they will need to rely upon other nations hence the implementation of the June 2008 UN Resolution, which ensures that other states offer assistance in combating and seizing pirates in Somali territorial waters.

4.3: Conclusions

Somalia is widely known as failed state since it has not had a stable government from the early 1990s, and is also currently battling warlords and militant Islamic groups for control of the country. Therefore piracy in Somalia is largely viewed as a symptom of underlying constraints affecting not only Somalia itself but the entire Horn of Africa. As much as the naval force have had their successes, naval patrols do not address Somali piracy's root causes and thus piracy at sea cannot be disconnected from its bases on land. Since Puntland is known as the epicentre of piracy, the best option for long-term international counter-piracy policy would be to focus on security capacity building programs centred in Puntland. It is only through building up the region's police, coastguard, and judicial institutions that pirate networks on land can be effectively destroyed.

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[170] Ibid.

CHAPTER FIVE

CONCLUSIONS

5.1: Summary

The first chapter of this study proposed to research and discuss the root causes of piracy, the impact of piracy on international security through the development of international law by the UNSC that established anti-piracy measures by providing for the presence of a naval force in the Gulf of Eden to provide security for WFP vessels carrying humanitarian aid to Somalia as well as analysing the effectiveness of this naval force in curbing piracy.

Chapter two discussed the Security Complex Theory as proposed by Buza[171] discussing the security levels of analysis as broken down into the three levels of individuals, States and international systems and in the various sectors of Political, Military, Economic, Societal, and Environmental. The theory was seen to relate and analyse the problem of piracy off the coast of Somalia by examining pirates as individual gangs or terrorists that have taken advantage of a State without a stable government and decided to carryout criminal activities with impunity[172].

The case study of the Somalia coast in chapter three attempted to elaborate on the impact of piracy on international security in greater detail referencing interviews and other sources in order to assess the impact of piracy off the coast of Somalia on international security. Chapter three discussed the humble beginnings of piracy as early

[171] B. Buzan, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), p.105.
[172] Interview with G. Abullahi, Delegation of the EU to Kenya, Somalia Unit, Nairobi, May 31 2011.

as the 1990s when reports of irregular incidences of armed robbery against small fishing or leisure craft began.

Chapter four provided a critical analysis of the impact of piracy on international security with regards to examining the emerging issues such as; the debates over the root causes of piracy, the impact of piracy on international security and countering piracy off the Somali coast from local and international perspectives.

5.2: Key findings

The main findings of this study were identified by other authors as being the lack of a stable government in Somalia, weak governing institutions, poverty, an under funded law enforcement,[173] payment of ransoms leading to the lavish lifestyle of the pirates and thus making it a more lucrative business to engage in for desperate young men.[174]

Another key finding is that there is a controversy on the un-substantiated claims by the Somali government on the alleged illegal fishing and toxic waste dumping by companies from Europe and Asia along the Somali Coast before the onset of piracy. The international community has alleged that these claims are justifications by the Somali government to gain more support for the government.[175]

There have been tremendous efforts by the international community through the UN resolutions and the establishment of a naval force showcasing a display never seen before of naval forces from different countries cooperating and coordinating actions to patrol the Gulf of Eden and push away the pirates from the region. Ship owners have also

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[173] L Ploch, C.M Blanchard, R O'Rourke, R.C Manson, and R.O King, *Piracy off the Horn of Africa*, op cit.
[174] Interview with J. Robert, Delegation of the EU to Kenya, Somalia Unit, Nairobi, June 25 2011.
[175] Ibid.

benefited from this international coordination as they have been able to obtain local information on details about potential pirate attacks.

The Transitional Federal Government is weak and is still occupied with its internal political wrangling as well as its fight against the insurgency. It controls only parts of Mogadishu, and hence has capacity to fight piracy. The TFG has regularly condemned piracy and is committed to fighting it hence the appointment July 2010 of a chairman for the anti-piracy Commission and has adopted an anti-piracy law, which is still to be adopted by Parliament.

The situation in Puntland is far more complex. Most of the Somali pirates are from Puntland and some elders together with various political representatives of the clan have provided clan protection to pirates. While some key members of Puntland authorities have alleged links to piracy networks, even President Farole and the Interior Minister Ikajir have been named in the report of the UN Somali Monitoring Group of March 2010 for their involvement in piracy matters. There are also strong assertions that President Farole used funding gained from piracy to assist his election campaign in December 2008.

5.3: Recommendations

The solution to piracy in Somalia lies mainly in the restoration of peace and stability in the country as well as creating an environment which enables a holistic approach as it will take many years before security and the rule of law are fully restored in Somalia. However, there are a number of actions that the international community together with the local authorities can do to help restore peace, stability and development in Somalia and to encourage the regional countries to do more in the fight against piracy.

The engagement of Somalia authorities needs to be improved and the international community, needs to continue reemphasising to the TFG and regional Somali authorities to deliver clear and unequivocal statement on the overall fight against piracy, creating legitimate alternatives for earning a livelihood, and exhort those leaders pertaining to clans involved in piracy.

In Puntland, strong messages of encouragement need to be passed to the Puntland authorities to get them to both refrain from having any linkages to piracy networks and intensify their efforts to fight piracy. The international community should support some of the anti-piracy activities of Puntland, especially those that include a security and rule of law element or dialogue with local communities.

There is need to alter the perception of piracy within Somalia, and especially Puntland, and to articulate the positive role played by the international community in combating piracy by supporting the efforts of the local authorities to reach out to the local and coastal communities through the use of key actors such as the traditional and religious elders.

The international community should consider funding a coastal and maritime environment assessment in Somalia, possibly through the United Nations Environmental Programme (UNEP)[176] to investigate the allegations of dumping of waste so as to address the damage to biomass in Somali waters.

The international community is already providing important support to the rule of law sector in Somalia generally, and to Somaliland and Puntland specifically, in the judiciary and custodial sectors for example, the prisons in Hargeisa and Qardo have been

[176] See UN Monitoring Group on Somalia 2010, "Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853 (2008).

built using donor funding, as well as to the civilian police. Increased support could help Puntland in the prosecution, sentencing and incarceration of those pirates arrested either by Puntland forces or by international ones.

The creation of a fishing zone with a proper licensing system which would see the authorising of fishing within the Somali Exclusive Economic Zone so as to deter the current practice where warlords or local administrations provide licenses to some foreign fishing companies[177].

In the past some coast guards trained by the international community have reverted to piracy. This risk has shaped the international community's current aversion to the standing-up of such a capability without any oversight mechanism.

More should be done on the issue of recruitment among the young population who invariably end up as pirates. Greater emphasis should be placed on correctional activities for pirates and prisoners in vocational training to provide alternative skills and income generating projects. The provision of alternative skills or jobs may help elevate one of the root causes of piracy, poverty, though it may obviously not provide the same amount of income as compared to piracy, but it is an honest and long term way to make a livelihood.

The ultimate solution to the problem of piracy could well lie onshore with the final establishment of a stable Somali government with strong government institutions that can uphold the rule of law without any assistance from the international community.

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[177] Ibid.

Bibliography

Abdullahi Najad, "Toxic waste behind Somali Waters", *Al Jazeera English*, Saturday, October 11, 2008.

Agencies, "The year Somali pirates challenged the world." *The Economic Times*, Monday, 15 December 2008.

Agence France-Presse, "NATO Launches Anti-Piracy Operations off Somalia", *Agence France-Presse*, October 27, 2008.

Associated Press, "Somalia: Puntland vs Saracen International", *Associated Press*, Friday, 18 March 2011.

BBC News, "Pirates gained $150m this year", *BBC News*, Friday, November 21 2008.

Bedford Christian., "Piracy in Somalia: Why Solutions can't be found at sea", *Davidpugliese*, Thursday, 21 August 2008.

Bellany Ian, "Towards a Theory of International Security", *Political studies*, Vol.29, No.1 (1981), p.102.

Betts K. Richard, "Should Strategic Studies Survive?" *World Politics*, Vol. 50, No. 1 (1997) pp. 26-30.

Biegon Rubrick, Edited by Saif Rahman, "'Somali Piracy and the International Response", January 29, 2009.

Boulding Kenneth, *Toward a Theory of Peace*, (New York: Basic Books, 1964), pp.12-13.

Bradbury Mark and Healy Sally, "Whose peace is it anyway? Connecting Somali and international peacemaking", *Accord*, Vol.12, No. 1(2010), p.1.

Brice Arthur, "Somali piracy threatens trade, boosts terrorists, analysts say." *CNN*, Wednesday, 1 October 2008.

Bull Hedly, *The Anarchical Society*, (London, Macmillian, 1977), p. 68.

Buzan Barry, *International Security Studies in People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, (London: Lynne Rienner Publishers, 1991), pp.2-110.

Byrne Carrie, "The two sides of the Somali piracy coin: An examination of the rise and perpetuation of piracy in Somalia", *Consultancy Africa Intelligence*, Monday,16 May 2011.

Capaccio Tony, "Petraeus urges ships to use armed guards", *Boston Globe*, Wednesday April, 29 2009.

Carter Barry and Trimble Philip, *International law*, (London: Little Brown, 1995), p. 463.

Chalk Peter, "Maritime Piracy. Reasons, Dangers and Solutions", *RAND, CT317*, Wednesday, February 4 2009.

China View, "Analysis: What causes rampant Somali piracies?", *china view*, November 22 2008.

CIA, "Somalia", The World Factbook, 2009.

UNODC, "Counter-Piracy Programme. Support to the Trial and Related Treatment of Piracy Suspects", *UNODC Issue 5*, February 2011.

Daly C.K John, "Somalia: Pirates of the Gulf", *International Relations and Security Network*, March 12 2009.

99

David Axe, "Future Face of Conflict: No Quick Solutions to Pirate Crisis", *World Politics Review*, Article 2744, (2008), p.1.

De Porte W. Anton, *Europe between the Superpowers: The Enduring Balance*, (New Haven: Yale University Press, 1979).

Djibouti Code of Conduct, 2009.

Doran Charles, Hill Kim and Mladenka Kenneth, "Threat, Status and Disequilibrium and National Power", *British Journal of International Studies*, Vol.5, No.1,(1979) p.1.

Draft Antipiracy law as enacted by the TFG Council of Ministers, 2010.

Dyson Kenneth, *The State Tradition in Western Europe*, (Oxford: Martin Robertson, 1980), p. 32-33.

European Security Center for Global Security, "Anti-piracy vessel security services", *European Security Center for Global Security*, (2009).

Farah Abdi Fatah Hasan, "Piracy Debate Concludes in Galmudug", *Somalia Report*, Tuesday, 17 May 2011.

Fischer Roger (ed.), *International Conflict and behavioral Science*, (New York: Basic Books, 1964), pp. 4-5.

Frump R Robert, "Danger at Sea: Piracy Threat Likely to Keep Growing Despite Greater International Response", *Shipping Digest*, Monday, January 12 2009.

Garowe Online, "Somalia: Puntland Soldiers Join Forces with Pirates", *Garowe Online*, Thursday, June 5 2008.

Geneva Conventions on the Laws of War (1949).

Gettleman Jeffrey, "Somalia's Pirates Flourish in a Lawless Nation", *The New York Times*, Tuesday, October 28 2008.

Gundel Joakim, "Clans in Somalia", *ACCORD*, Vol.13. Issue.5 (2009) p.4.

Hari John. "You are being lied to about pirates", *The Independent*, Sunday, 4 January 2009.

Hobbes Thomas, reprinted in Carl Cohen (ed.), *Communism, Fascism and Democracy: The Theoretical Foundations*, (New York: Random House, 1972), pp. 275-276.

Hoffman Stanley, *Primacy or World Order*, (New York: McGraw-Hill, 1978), pp. 108-252.

Holsti ole and Deutsch Karl et al., *Political community and the North Atlantic Area*, (Princeton: Princeton University Press, 1957), pp.32-33.

Houreld Katherine, "UK, Kenya sign agreement to prosecute pirates." *Associated Press*, Thursday, 11 2008.

Hunter Robyn, "Somali pirates living the high life", *BBC News*, Tuesday, October 28 2008.

IGAD Somali Inland Strategy and Action Plan to Counter and prevent Piracy 2010 – 2015.

Immigration Advisory Service, *How Country of Origin Information can help win asylum cases* (London: Research, Information & Policy Unit, 2009), p. 7.

Institute for Security Studies. "Somalia: Understanding Al-Shabaab", *Institute for Security Studies*, Vol. 12, Issue 4 (2009)p.1.

International Convention against the Taking of Hostages (1979).

International Crisis Group. "Somalia: The Trouble with Puntland", *International Crisis Group, Africa Briefing*, No. 64 (2009) p.2.

International Expert Group on Piracy off the Somali Coast, "Piracy off the Somali Coast: Workshop commissioned by the Special Representative of the Secretary General of the UN to Somalia Ambassador Ahmedou Ould-Abdallah" (Friday, 21 November 2008).

International Maritime Bureau Piracy Reporting Centre.

IRIN, "Analysis: Who is fighting who?" *IRIN*, Wednesday, September 2 2009.

Knott John, "Somalia Clan Rivalry, Military Conflict and the Financial and Human Cost of Piracy", *Mondag*, Tuesday, March 17 2009.

Knott John, "Somalia Clan Rivalry, Military Conflict and the Financial and Human Cost of Piracy", *Mondag*, Vol.1, No. 2 (2009) p.1.

Kolodziej Edward and Harkavy Robert, "Developing States and the International Security System", *Journal of International Affairs*, Vol. 34, No.1, (1980), p.8.

Kontorovich Eugene, "International Legal Responses to Piracy off the Coast of Somalia", *American Society of International Law Insights*, Vol 13, Issue 2 (2009), p.1

Kontorovich Eugene, "The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation", *Harvard Journal International Law*, Vol 45, No.I (winter, 2004), p. 4.

Krahmann Elke, "Security governance and the private military industry in Europe and Security governance and the private military industry in Europe and North America, Conflict, Security & Development" (August 2005), pp. 247-268

Leeson T Peter, *Better Off Stateless: Somalia Before and After Government Collapse*, (USA: West Virginia University, 2007), p. 5.

Locke John, *Second Treaties of Government*, (Indiana: Hackett Publishing Company, 1980) pp. 406 -407.

Lynch Colum, "U.N. Authorizes Land, Air Attacks on Somali Pirates", *Washington Post* December. 17, 2008.

Meredith, Martin. *The Fate of Africa – A History of Fifty Years of Independence*, (New York: Public Affairs, 2005), pp. 472-473.

Metz Chapin Helen, ed. *Somalia: A Country Study*,(Washington: GPO for the Library of Congress, 1992).p.7

Middleton Roger, "Piracy in Somalia – Threatening Global Trade, Feeding Local Wars", *Chatham House Briefing Paper*, No. 25 (2008) p.4.

Miliband Ralph, *The State and Capitalist Society*, (London: Quartet Books, 1973), pp.46-47.

Military operation of the EU NAVFOR Somalia, *European Union: European Security and Defence Policy*, December 2008.

Mission statement, European Union Naval Force Somalia – Operation Atlanta, 2008.

Mohamed Saeed, S. Mohamed, "Puntland: Progress report on Counter-piracy' Minister of Maritime Transport, Ports & Counter Piracy",(2010).

Morz John, *Beyond Security: Private perceptions among Arabs and Israelis*, New York: International Peace Academy, 1980), p. 105-106.

Murphy Michael, "Contemporary Piracy and Maritime Terrorism",(London : 2007), p. 15.

Murphy N. Martin, "Contemporary Piracy and Maritime Terrorism – the threat to international Security", *Adelphi Series, ISS*, No.5 (2007) p. 30.

Mwangura Andrew, "Pirate Attacks Increase, Raise Shipping Costs", *BBC news Africa*, Vol.125, Col.2, (2011) p.2.

Mwangura Andrew, "Somalia Lawmakers Challenge Anti-Piracy Bill", *BBC News*, Vol.124, No.2.(2011) p.14.

Navy Military, "New Counter-Piracy Task Force Established", *Navy Military*, January 8 2009.

NTU Model United Nations 2011 Security Council, "Somali Piracy Background Paper" April 2009.

Ploch L, Blanchard C.M, O'Rourke R, Manson R.C, and King R.O, *Piracy off the Horn of Africa*, (Washington, DC: Congressional Research Service, 2009) p.5.

Rome Statute of the International Criminal Court,1998.

Roodenburg S, *Dangerous waters: Maritime piracy off the coast of Somalia: An analysis of the complex and multifaceted problem of Somali-based piracy and its possible solutions*,(The Hague School of European Studies: The Hague University of Applied Science, 2010) p.11.

Ross Shani. and David Ben, "Who are Somalia's Pirates", *Harvard Africa Policy Journal, Vol.5 (*2009) p.55.

Ryu Alisha, "Somali Piracy Exposes Weakness in UN Law of the Sea", *Voice of America*, Radio broadcast, Wednesday, 8 April 2009.

Scharf Michael, "The Amnesty Exception to the Jurisdiction of the International Criminal Court", *Cornell International Law Journal*, 1999.

Seamanship International, *Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area*, (Witherby Seamanship International Ltd, 2010.

Sheik Yermami, "Gadaafi Defends Somali Pirates", *Daily Nation*, Friday, 5 February 2010.

T. Hobbes, *Leviathan* (Harmondsworth: Penguin, 1968), ch. 13.

Tharoor Ishaan, "How Somalia's fishermen became pirates", *Time Magazine*, Saturday, April 18 2009.

The White House. "The National Security Strategy of the United States of America", March 2006.

Trager Frank and Kronenberg Phillip(eds), *National Security and American Society: Theory, Process and Policy*, (Lawrence, Kansas, University Press of Kansas, 1973), pp.59-60.

UNEP,"National rapid environmental desk assessment – Somalia" *UNEP Tsunami Reports*, 2005.

UN Monitoring Group on Somalia 2010,"Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1853", 2008.

UN Resolution 1772 (2007) adopted by the Security Council at its 5732nd meeting, on 20 August 2007.

UN Resolution 1838 (2008) adopted by the Security Council at its 5987th meeting, on 7 October 2008.

United Nations Convention on the Law of the Sea, (1982).

United Nations Security Council Resolution 1851, December, 16 2008.

United Nations Security Council Resolution, 1816, June, 2 2008.

United Nations Security Council Resolution, 1844, November, 20 2008.

United Nations Security Council. Resolution 1846 (2008). Adopted by the Security Council at its 6026th meeting, on 2 December 2008, p.34.

United Nations, "Somalia – UNSOM 1 Background", 2010.

Waltz Kenneth, *Man, the State, and War*, (NewYork: Columbia University Press, 1959), pp.16-17.

Wasser Louis, "Somali Piracy Costs Suez Canal Business", *San Francisco Chronicle*, Wednesday, April 29 2009.

World Food Programme Somalia,"Coordinated action urged-piracy threatens UN lifeline to Somalia", *WFP News*, Sunday, 7 October 2007.

World Tourism directory, "Seychelles and Puntland strengthen piracy agreement", *World Tourism directory*, May, 12 2011.

List of Interviewees

Ali Rahma Bashir, Civil Servant, Ministry of Livestock, Garowe, Puntland.

Marcelino Benet, Field Officer - Puntland, Delegation of the European Union to Kenya, Somalia Unit.

Khalif Ahmed, Field Officer - Mogadishu, Delegation of the European Union to Kenya, Somalia Unit.

Mohamud Abdullahi Abdinur, Programme Manager, European Commission Liaison office, Garowe, Puntland.

Mohamed Mohamud, Information officer, European Commission Liaison office, Mogadishu.

Ernest Njoroge, Livestock Programme Manager, Delegation of the European Union to Kenya, Somalia Unit.

Jérémie Robert, Political Advisor, Delegation to the European Union to Kenya, Somalia Unit.

Yves-Pierre Rousseau, EU NAVFOR Reservation Officer, Delegation of the European Union to Kenya, Somalia Unit.

Appendix 1

- The 1949 Geneva Convention on the Laws of War
- The 1979 International Convention Against the Taking of Hostages
- The 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- The 2009 Djibouti Code of Conduct
- The 2010 Draft Anti-piracy law