

**PIRACY, MARITIME SECURITY AND ECONOMIC IMPLICATION IN EAST
AFRICAN COAST**

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DECLARATION

This project is my original work and has not been submitted for another Degree in any other University

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This project has been submitted for examination with my permission as the University supervisor

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Dr.Anita Kiamba

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DEDICATION

I dedicate this research project to my late husband, Ambassador Pius Barasa Namachanja, who left fingerprints of love and grace in my life. To my children Anatolia, Mathews and Cynthia for their continued support, encouragement and to my Father Lawrence Wakofula and Mom Rabecca Wakofula for their constant prayers and encouragement.

ABSTRACT

Piracy, a criminal activity embellished in maritime East Africa, has become more virulent. Piracy continues to threaten the security of East African regional waters and ports. Consequently, the only way to deal with piracy and maritime insecurity, which is a serious threat in these waters, is to confront and fight through effective policies and laws and their enforcements. This study, therefore, focuses on the dynamics of maritime piracy in the region, drawing attention to explosion of piracy along the east African coast and further examines the factors underpinning the outbreak of piracy in the region and highlights some efforts to curb the scourge. It argues that only an effective combination of counter piracy enforcement measures and robust policies designed to stabilize Somalia can effectively address the growing threat to merchant shipping in east African region.

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ABBREVIATIONS

CMBD	Configuration Management Data Base
EAC	East African Community
EA	East Africa
EEZ	Exclusive Economic Zone
GOA	Gulf of Aden
GPS	Global Positioning Systems
HOA	Horns of Africa
IGAD	Inter-Governmental Authority and Development
IMB	International Marine Bureau
IMO	The international Marine Organization
IOR-ARC	Indian ocean Rim association for Regional cooperation
IPSG	Interpol Secretary Generals
IUU	Illegal Unreported and Unregulated
LCS	Littoral Combat Ship
PRC	Piracy Reporting Centre
RAT	Routine Activity Theory
RPGs	Rocket Propelled Grenades
SADC	Southern African Development Community
TMO	International Maritime Organization
UN	United Nations
UNCLOS	United Nations Convention on the law of the sea
UNEP	United Nation Environmental Programme
UNLOS	United Nations Laws of Sea Convention
WFP	World Food Programme

CHAPTER ONE

PIRACY AND MARITIME SECURITY IN EAST AFRICA

1.0 Introduction

Through traversing the oceans and seas, the mutual interpenetration and reciprocal influence of human civilizations have been accomplished.¹ Despite the sea being a vital highway of the world economy, it has been characterized by its perilous nature.² Traversing the sea can be both hostile and treacherous by nature compounded by the fact that the sea provides the major transport system in the world.³ The sea is characterized by wide, open water, where there are no visible borders or demarcations and very often can leave a vessel vulnerable.

This vulnerability has been the case since the very beginning of human maritime ventures. It has been recorded that since the days of ancient Greece, the crime of piracy has been a constant problem of maritime trade affecting at different times each and every maritime region of the world from the Mediterranean and northern European seas to Asia, the Middle East, Africa and the Americas.

The word "pirate" is derived from the Greek *peirates*, which was the label for an adventurer who attacked a ship.⁴ Until the last two and a half decades, there was little interest in the routine piratical acts being carried out at poorly policed locations.⁵ The common perception was that

¹Okere, *The Technique of international Maritime Legislation*, (1981) 30 *ICLQ* 514

² Ibid

³Kraska James, *Fighting Piracy the Pen and the Sword*: Economic, World Policy Journal, Sage Publication Inc.(2008) pp.47-52

⁴ American Journal of International Law, *Part IV Piracy*, Cambridge: American society of international Law, Vol.26,1932, pp.753-739

piracy was a crime of antiquity. The surprising thing is not that piracy can be violent but that it is happening at all.⁶ The substantive offence is not the historical curiosity that it purports to be. Not only has piracy ever been eradicated but the number of pirate attacks has increased incessantly in the recent years. The International Maritime Organization (IMO) has in recent years compiled reports that graphically illustrate this trend.

The sharp increase in pirate attacks in the Gulf of Aden and off the coast of East Africa between 2008 and 2009 renewed international interest in the suppression of maritime piracy.⁷ While international efforts to curb piracy in the region have met with some success, a permanent solution requires that local governments take primary responsibility for its suppression. Superficially, the situation in East Africa shares a number of characteristics with a spate of pirate attacks perpetrated roughly a decade ago on vessels traversing the Strait of Malacca. In each case, pirates and armed robbers took advantage of a narrow channel, heavily used in ocean-faring commerce.⁸

There are lessons to be learned from the largely successful attempts to control piracy in South East Asia, but the nature of the situation in East Africa cautions against simply duplicating the South East Asian approach. The scope of the problem in Somalia, combined with the relative weakness of regional governments, suggests that a successful regional cooperation agreement will require international legal and financial support

⁶International Maritime Organisation. *Piracy and Armed Robbery at sea*. (2000) available on <http://www.imo.org>.

⁷ The Yale journal of international law online [Vol. 35: 14]

⁸Int'l maritime org., msc.4/circ.115, reports on acts of piracy and armed robbery against ships, annual report—2007, available at http://www.imo.org/includes/blastData.asp/doc_id=9837/115.pdf.

1.2 Statement of research problem

Since 2006, the annual rate of pirate attacks has again been rising precipitously, driven largely by the rapid expansion of pirate activity in the East African region.⁹ The IMO reported thirty-one incidents of piracy in the region in 2006, sixty in 2007, and one hundred and thirty-four in 2008.¹⁰ While the sheer number of incidents that have occurred off the eastern coast of Africa is itself significant, the novel character of the attacks makes the situation even more troubling. Whereas pirate activity in most areas of the world is typified by small-scale theft against ships at anchor in territorial waters,¹¹ attacks in East Africa are often carried out against large commercial vessels sailing hundreds of miles from the Somali coast and frequently result in the target vessel being hijacked and held for a ransom.

This study seeks to deal with the question of why piracy has been experienced, in the East Africa coastal region. It is also important to note that whereas EA countries comprises of five Nations, The study will focus on the countries that have ports (Kenya and Tanzania) and also include Somalia because Somalia pirates have been responsible for EA African attacks. This question of why piracy has been vibrant at EA coast will provide many possible answers that will be analysed in this study. For example are the pirates “freelance militia; or are they warlords of the high seas; or are they criminal bandits (thieves), or are they fishermen who behave like noble thieves or social bandits, who rob the rich to pay the poor, i.e. performing civil defence duties in the pursuit of protecting the scarce food resources of the sea; or finally, are they Islamist militias, fundraising for al- Qaeda or other terrorist groups?

⁹Int’l maritime org., msc.4/circ.133,Reports on acts of Piracy and Armed Robbery against Ships, Annual Report 2008 available at http://www.imo.org/includes/blastData.asp/doc_id=11376/133.pdf.

¹⁰ Ibid

¹¹ Ibid

The question as to what the true nature of these criminals and reasons for piracy in East Africa, is a problematic issue that, considering the amount of media coverage and international recognition and social speculation it receives, deserves a thorough conceptual analysis and definition. The first thought that comes to mind, is that these criminals are indeed modern day maritime pirates. It is thus possible that such groups are the outcasts of society, but the question has to be raised as to how outcast a person can be in lawless country like Somalia for instance. Can a person truly scavenge and plunder the sea like pirates of old in the modern times? What if their intention is to feed the poor?

1.3 Objectives of the study

1. To establish the extent to which, offender's motivation has enhanced maritime piracy in the East Africa coastal region.
2. To determine the economic impact of piracy in the East Africa coastal region.
3. To analyse why piracy has been persistent, in the East Africa coastal region.

1.4 Literature Review

1.4.1 Introduction

This section reviews available literature Conspiracy, gives some definitions of piracy as shown by some scholars and highlights maritime security and the economic implications on the East African Coast. The section also gives possible remedies that elaborate on the levels at which maritime piracy issues are responded to and highlights on some of the reasons as to why piracy occurs along the East African Coast.

1.4.2 Maritime Piracy

Whereas Economic historian Anderson, defines piracy as unauthorized act of violence committed by a private vessel in the open sea against another vessel with intent to plunder (animofurandi)¹². For the British jurist, Kenny views it as armed violence at the sea and therefore unlawful act of war. Kenny echoing Anderson's definition takes the view of piracy, as a subject of violent maritime predation in that it is not part of a declared war.¹³

The International Maritime Bureau defines piracy as any act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of the act¹⁴. The definition shows that an offender must have a suitable target to carry out the crime within a suitable location and that explains why most of the piracy is done at the coast. The limitation of this definition is that it is not backed by international law.

The study will however adopt the United Nations Law of the Sea convention (UNLOS) definition where piracy is considered as,

Consisting of any of the following: (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).¹⁵

While the definition guides this study to determine from incidents, if someone is engaging in piracy-like behaviours, it also relates piracy to other occurrences like financial activities therefore an offender will target the victim because of the financial gains.

¹² Anderson J. L, *Piracy and World History: An Economic perspective on Maritime Predation*, University of Hawaii University: Hawaii Press, vol. 6, No. 2(1995), pp. 176-179.

¹³ Ibid.

¹⁴ Kraska James, *Grasping the Influence of law on Sea Power*, Naval War College Review, Vol.62. No.3, 2009 pp. 126

¹⁵ Malcolm N. Shaw, *International Law*, Cambridge University Press, (1997), pp.423.

In addition to the definition, it is imperative to understand the different methods by which pirates attack. Whereas methods of pirate attacks differ, the literature on maritime piracy pronounces four major types of attacks: robbery of a vessel at sea, hijacking of vessels, kidnapping for ransom, and attacks on vessels berthed in harbours or at anchor.¹⁶ Each of these methods demonstrates the link between financial matters and piracy.

From the understanding, it is noted that the act of piracy came even before the infamous Vikings who were the Sea People that first documented pirates in the 13th century, BC, after raiding the Mediterranean and Aegean Seas.¹⁷ Scandinavian bandits later arrived during the Viking Age through the Early Middle Ages. The Scandinavians, or Vikings, were famous for striking fear into the hearts of sea travellers near Western Europe and Northern Africa.

Henry Ormerod argues that from the time when men went to the sea in ships, piracy and robbery had been regarded as the only means of lively hood that the sea offered.¹⁸ Malcolm Shaw shares similar view that piracy has been one of the activities of the people of the sea¹⁹ and since pirates range from small time independent actors to members of more organized criminal activity, then Cohen and Felson theory of routine activities will help us understand why piracy has been prevalent at the East African Coast. Anderson, in his book *Piracy, and world History* observes that, in the Caribbean, piracy originated in and was fuelled by old world rivalries. The predation on merchant shipping in the Mediterranean Piracy Sea in early modern times was sustained not

¹⁶ Zara, Raymond C. "Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?" *Naval War College Review*, Vol. 62, No. 3 (Summer 2009), 31–42.

¹⁷ Ibid.

¹⁸ Ormerod, *Piracy in The Ancient World*, Baltimore: University of Liverpool press, (1924), pp. 13

¹⁹ Malcolm Shaw, *International Law*, Cambridge University press, (1997) pp.423.

simply by ideological animosity and individual greed, but also by economic rivalry between European nation states²⁰

The East African Coast Piracy has been a major concern especially in the recent years where it has become a dominant issue in the world of International Trade relations. Since time immemorial, oceans and seas have always provided opportunities for relatively cheap transport for goods and peoples, resulting to movements of vulnerable assets, which has attracted predators called pirates against their victims who are usually the suitable targets when they are sure that there is no capable guardian around them.

Piracy began when commerce expanded across large bodies of water. Sea trade began many years ago, and it has evolved with development of new technology. Although sea piracy has adapted through technological means, the principles have remained the same. The East Africa Coast piracy evolved from hijacking fishing vessels and stealing their catch, to quickly realizing there was a very lucrative future in targeting much larger commercial vessels. They were able to successfully conduct these operations with the use of more sophisticated weapons and transportation as the basis of their adaptation to current trends. Growing activities of piracy in the Gulf of Aden and the Horn of Africa have increasingly threatened maritime security on the East Africa Coast.

Ndumbe and Samuel Moki observes that Contemporary pirates are highly sophisticated, they utilize Rocket Propelled Grenades (RPGs), antitank missiles, automatic machine guns, hand

²⁰ J. L Anderson *Piracy and World History: An Economic Perspective On maritime Predation*, La Trobe University, Hawaii Press (1995), Pp.180.

grenades, global positioning systems (GPS), and satellite phones while at the same time utilizing a more modern and faster modes of transportation.²¹ Use of radar has also increased the range off shore which pirates can now reach. This increased range has allowed the pirates a chance to capture the larger commercial ships, but has also enhanced the burden on ships, crew, and the owners of these ships or companies. With the capture of larger ships, businesses are more willing to pay the ransom for which the pirates are demanding.²²

In 2008 for example, the number of incidents of piracy and robbery at sea that took place, along the East African coast surged almost by 200%. Max Boot observes that, piracy at the Coast of East Africa had been growing at an alarming rate with 41 ships attacked in 2007,122 in 2008 and 102 as by mid-2009²³. This included the Saudi Super tanker ship full of oil and Ukrainian freighter ship that was loaded with tanks and other weapons. Since 2011, the number of ships hijacked at East African coast has fallen especially when Kenya's Defence Forces entered Somalia to pursue Al Shabaab group that had been responsible for a number of kidnappings in Kenya. According to the International Maritime Bureau, world sea piracy fell by 35% in the first quarter of 2013.²⁴

²¹Ndumbe J, and Moki S., *Africa; The piracy Hot spot and Its Implications for Global Security*, Mediterranean Quarterly Vol. 20 No. 3 2009, pp. 107

²²Ibid.

²³ Max Boot, *Pirates Then and Now; How Piracy was Defeated In the Past and Can Be Again*, Council Of Foreign Relations ,Vol. 88 2009 PP.94

²⁴ The standard Newspaper,*Piracy Attack Fall 35 per cent in First quarter*,(Nairobi,16Th April 2013)pp.34

1.4.3 Maritime Security

Maritime security has been a hot issue attracting the attention of the world international community. Maritime security in this study is concerned with the safety of the navigation especially where there is no capable guardian to protect the ship (target) as emphasized by Cohen and Felson. In this regard, the oceans and seas have been the most vulnerable areas of piracy and terrorism hence making it difficult for movements of ship, the most essential element of trade in the world economy.

Snyder Craig observes that maritime security is vital to East African countries especially Kenya and Tanzania that have ports²⁵. Oceans and seas are important as they allow all countries of the world to participate in the global economy. According to the Centre for military studies in United States, more than 80% of the world's trade travels across the sea. The sea also provides the world with resources example minerals and energy. The pervasive lack of maritime security in some coastal regions in East Africa, possess great threat to the shipping and maritime resources.

Grotius in seeking to establish foundational principles for the law of the sea argued that the very nature of the oceans demanded that they be available to all users.²⁶ Grotius equally appreciated the economic importance of the high seas as the ability of ships to transport people and goods around the globe. Maritime security is therefore concerned with preventing illicit activities in the maritime domain.

²⁵ Synder G. *Maritime Security in the South China Sea: Cooperation and Implications*, Vol. 24, No.(2004), pp.23

²⁶ Grotius Hugo, *The Free Sea*, Liberty Fund,(2002), pp.95

1.4.4 Economic Implications on East African Coast

Kraska asserts that maritime piracy poses well-known economic threats around the Indian Ocean.²⁷ The various companies shipping the merchandise through Somalia as they dock at the East African Coast are equally at risk. Included in these risks are damages to infrastructure. The pirates that operate out of the seaport infrastructure in Somalia offer a significant threat to vessels travelling to and from Somalia as well as travelling through the Indian Ocean thus hindering economic activities.

Chambers observes that pirate attacks at the ports can cause environmental damage, leading to an increase in vessel operating costs to provide sufficient support and defences²⁸. In support of this statement Chaturvedi observes that oceans are being used as dumping ground for affluent and even radioactive nuclear wastes. Coastal communities are being displaced by destruction of littoral and marine resources.²⁹

One of the most spectacular increases in the costs of piracy in recent years has been the increasing price of ransoms paid to hijacked ships. Peter Chalk argues that ransom payments appear to be lengthening negotiations and therefore the duration seafarers are held hostage.³⁰ Also due to the high piracy risks, the maritime insurance industry has responded by its shipping rates and premiums especially in high risk zones, Somalia included. Some slow vessels at all

²⁷ Kraska James, *Contemporary Maritime Piracy; International Law, strategy, and diplomacy at Sea*(Santa Barbara: California, (2011)pp.19-35

²⁸ Mathew Chambers, *International Piracy and Armed Robbery at Sea*, RITA Bureau of Transportation Statistics: Special Report, 9th April, (2010) pp.12

²⁹ Chaturvedi S, *Common Security? Geopolitical Development South Asia and the Indian Ocean*, Third World quarterly, Vol.19, No 4, (1998) pp.701-724

³⁰ Peter Chalk, *Countering Piracy in the Modern Era*, National Defense Research Institute, (2009):pp.2

costs avoid high risk zones by taking longer voyages around the Cape of Good Hope. Re-routing ships leads to high costs because of the extra days it takes and eventually reduces a vessel annual voyages and delivery capacity. This in itself denies the country total annual revenue collection.

Kenya and Yemen are among the countries that have sent naval Ships along the coastal line towards piracy deterrence. The cost of prosecutions cannot be underestimated. International communities have encouraged some countries to carry out prosecutions example Kenya and Seychelles and the process has turned out to be very expensive. Kenya being one of the countries that have suffered economically as a direct result of maritime piracy has been counting losses when piracy impacted negatively on tourism sector, one of the top income earner for the country. The number of cruise ship that has docked at Kenya port with tourists has dwindled since 2008 thus affecting the country's economy. However, since 2011, the situation has changed especially when Kenya's Defence Forces entered into Somalia in pursuit of the Al Shabaab, a militia group that was responsible for a number of hijackings of visitors and Kenyan nationals at the coast.

1.4.5 Maritime issues and possible remedies

Responses to the problem of maritime piracy can be seen as taking place at two levels: at the level of the international community, and at the level of individual naval operations. At the international level, due to the "damage" piracy is inflicting on the commercial shipping business, the United Nations Security Council passed four resolutions: 1816, 1838, 1846, and 1851³¹. Resolution 1816 was created on 2 June 2008 and allows naval forces cooperating with the Transitional Federal Government of Somalia to pursue pirates into Somalia's ungoverned

³¹ General Assembly Resolutions 64/71 of December 2009, Oceans and the Law of the Sea. Issue 72 pp.16

territorial waters.³²These Resolutions gives possible ways of fighting piracy .Resolution 1838 was passed in October of 2008 and focused on the concern organizations were having towards pirate attacks aimed at the World Food Program shipments to Somalia.³³ Resolution 1846 was adopted on 2 December 2008 and recommended that the 1988 Suppression of Unlawful Acts Convention (which protects the safety of ships and the security of their passengers and crews from unlawful, threatening acts) can be applied in the extradition and prosecution of pirates.³⁴ Resolution 1851 was created two weeks later, authorizing states to take action against safe havens utilized by pirates ashore in Somalia.³⁵ Upon the adoption of these four new UN Security Council Resolutions, the United Kingdom and the United States signed a cooperative counter-piracy agreement with Kenya.³⁶ Upon signing the agreement, the United States conducted the first transfer of a group of individuals recently captured on suspicion of conducting piracy operations to Kenya for trial.

In Somalia for instance the root cause of piracy can be traced to 1990s, the piracy off the Somali coast did not begin with a group of bandits looking for money or the best way to make money off the ships that travel through the Gulf of Aden. It began with fishermen who were tired of foreign fishing fleets taking advantage of the instability in the country, dumping toxic waste and illegally fishing in the Somali waters. These activities hampered the economic, environmental and health of the country and its people.³⁷

³² James Kraska, "Grasping "The Influence Of Law On Sea Power" Naval War College Review, Vol. 62, No. 3 (Summer 2009) pp. 129.

³³ Ibid

³⁴ James Kraska and Brian Wilson, *Fighting Piracy: The Pen and the Sword*, Sage Publication, Vol. 25, No.4 ,(2008) pp. 41-52

³⁵ Ibid

³⁶ Ibid

³⁷ Gakii T. James, *Kenya's Piracy Prosecutions*: Journal of Internal Law, Vol. 104, No. 3(July, 2010) pp.416-436.

The activities of these illegal fishing fleets is known as Illegal, Unreported and Unregulated (IUU). It is estimated that annually between \$4-9billion is generated from this illegal activity with encroachment in Sub-Saharan Africa's waters amounting to about \$1billion. With no effective authority over the territorial waters of Somalia, these fishing fleets have taken control of the 3,300km coastline available to Somalia and its abundant marine resources. It is estimated that annually about 700 international vessels illegally poach in Somali territorial waters exploiting species of high value such as deep-water shrimps, lobsters, tuna and sharks.³⁸

In addition to the illegal fishing, there has also been the dumping of toxic waste into the waters by international companies. The 2005 United Nations Environmental Program (UNEP) Report acknowledged that indeed industrialized nations are reported to be dumping their hazardous waste in Somali territorial waters and the main reason for this practice is cost. In 2009, it cost a European country \$2.50 per tonne to dump its toxic waste in Somalia and \$250 per tonne to dump it safely in Europe. Thus, taking advantage of the lack of political security and non-enforcement of environmental security laws, the companies are dumping waste in Somali waters. This is a practice that has been on-going since the outbreak of the civil war. However, evidence became available after the 2004 tsunami, which washed ashore the containers and barrels, resulting in an outbreak of diseases among the villagers.³⁹

This is how the war between the local fishermen and the foreign encroachers began in the 1990s. The fishermen in an attempt to protect their waters and livelihood from being encroached upon by the foreign vessels confronted the acts of foreigners. There are documented cases of these

³⁸ Ibid.

³⁹ United Nations Environment Programme Report. (2005). Tsunami Somalia layout. Retrieved from http://www.unep.org/bh/Publications/Somalia/TSUNAMI_SOMALIA_LAYOUT.pdf

fishermen being drenched with boiling water in their canoes, their nets being destroyed. The environment of the coastal line contributed towards piracy crime. This is because the offenders, who in this case were the fishermen, had identified the potential targets who in this case were the foreign ships that had no capable target. Again we see how the theory of Cohen and Felson of routine activities help us to understand some of the reasons of piracy and it is indeed difficult to fight it. If there was a strong naval ship that had stopped piracy when it started, perhaps this study could be concentrating on something different all together.

Grima Yohannes notes that navies around the world have joined the United States in revamping their patrols on the open ocean. Countries have taken an increased interest in not only defending their commercial shipping vessels, but also protecting the routes they utilize in order to deliver their goods.⁴⁰ Due to the fact that Somalian pirates are indiscriminate to what vessels they attack, any and all vessels are at risk of being hijacked or attacked. The only concern to pirates is the ransom which will eventually be paid in order to release the crew and vessel. For these reasons, several countries, such as the United Kingdom, China, India and the United States, have increased not only increased awareness and concern for this issue, but have also taken active role in patrolling waterways to help combat this threat.

Cavas observes that the level of U.S. naval operations, are two new United States Navy ship types that have either been utilized or are planned to be utilized to assist with the anti-piracy efforts.⁴¹ One of the platforms currently in use is the SSGN (Ship, Submersible, Guided Missile, Nuclear powered) special operations/cruise missile nuclear submarine. Going in to few details

⁴⁰ Grimma Y, *The Emergency and Impacts of Islamic Radica lists*, Auflage, 2009, pp. 78

⁴¹Cavas, Christopher P. *To Fight Pirates, Follow the Money*: U.S. Admiral, *Defense News*, and 19 April 2010: pp. 28.

(due to the sensitivity of the missions), Admiral Fitzgerald noted that “this submarine has been used in the Somali basin and has proven to be a very effective platform.”⁴² The second type of Navy platform he is planning on utilizing is the new Littoral Combat Ship (LCS).⁴³

Clamping down on the activities of Somali pirates off the Horn of Africa will require international navies to target the brigands’ mother ships and governments to go after the financial backers of such groups, James Kraska observes.⁴⁴ From January to May 2010, there were a total of 116 pirate attacks, 20 vessel hijackings and 389 hostages taken worldwide. “Sixty-five of those attacks took place off the Horn of Africa, involving 17 hijackings and 362 hostages.”⁴⁵ Due to the increased piracy operations, and the pirates’ ability to operate further off their coast up to 1,000 nautical miles, the trade routes have been affected to various countries such as Kenya.⁴⁶

1.4.6 Mode of attack

The four main methods of pirate attack on commercial shipping have been observed. Zara Reymond argues that these four types include robbery of a vessel at sea, hijacking of vessels, kidnapping for ransom, and attacks on vessels berthed in harbours or at anchor.⁴⁷ With more than 3,600 acts of international piracy and armed robbery at sea between 1998 and 2008, it is important to observe exactly how the acts were carried out as well as what the end results were

⁴²Ibid

⁴³Ibid

⁴⁴Kraska J, *Contemporary Maritime piracy: International Law, Strategy and Diplomacy at Sea*. Greenwood publishing group, Santa Barbara (2011) pp.19.

⁴⁵Kraska J, *Maritime Piracy in East Africa*, *Academic Journal* , Journal of International affairs Vol. 62, no. 2 pp.55-68.

⁴⁶Ibid

⁴⁷ Catherine Zara Raymond, *Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?* Naval War College Review Vol. 62 No. 39 (2005)

(successful/ unsuccessful).⁴⁸ This is vital information because it provides specific details involving what types of people were involved in the piracy, as well as what their ultimate goals were. For example, in Zara Raymond observes that in 1997, the Asian Financial Crisis led many civilians to explore alternative options to supplement lost income, including turning to piracy.⁴⁹ Fortunately, citizens did not change careers to piracy. These individuals were desperate to make ends meet and their pirate behaviours lasted for a short period of time. In turn, during the late 1990's and early into the new millennium, there was increased speculation that terrorists and pirates could begin to collaborate their efforts. In fact, when al-Qaida launched its attack on the twin towers, they were noted as "demonstrating that ordinary means of transportation could be utilized to carry out large scale attacks on economically important targets".⁵⁰

Moreover, piracy became so successful because it was not only common practice, but also common knowledge, that commercial vessels travelled unarmed as well as travelling with a small efficient crew. This small crew allowed the cost to transport the merchandise from port to port to remain relatively low. Amateur pirates were aware of this information and used it to their advantage. Commercial vessels became easy targets with an endless supply of income.

Finally, in terms of maritime piracy, African government officials did very little to combat piracy. The corruption of the African governments, along with these agencies ignoring the cry for help from the owners of the commercial vessels under attack, and the reality that governments have assigned this problem a low priority status has only fuelled the frequency of

⁴⁸ Matthew Chambers, *International Piracy and Armed Robbery at Sea*, RITA Bureau of Transportation Statistics: Special Report (April 2010) pp. 1.

⁴⁹ Catherine Zara Raymond, *Piracy and Armed Robbery in the Malacca Strait: A Problem Solved?* Naval War College Review Vol. 62 No. 3 (2005)

⁵⁰ *Ibid.*, 12

attacks. When the pirates realized the corrupted governments were ignoring the crews cry for help, in a way they became more confident and not only increased the frequency of their attacks, but also increased the level of violence in their weapons they utilized.⁵¹

1.4.7 Contemporary Piracy

Contemporary day pirates have steadily evolved. Through the acquisition of advanced weaponry and technology, they have been able to attack larger sea-going vessels (whose values are estimated to be around several million dollars).⁵² With these advancements, maritime piracy only expanded. Gal Luft and Anne Konin observes that today's pirates are usually often trained fighters aboard speedboats that are equipped with satellites phones. And global positioning systems that are armed with automatic weapons, anti-tank, missiles and grenades.⁵³ While maritime piracy is steadily expanding, three distinct pirate groups have been found in Somalia. These groups are "the Northern gang, based in Eyl; the Central gang, based in Hobyo; and the Southern gang, based in Harardera."⁵⁴

The International Maritime Bureau has warned that commercial shipping transiting along the east African coast of Africa, not to come within 50 nautical miles of the coastline because of pirates. According to Sakhuja, attacks occur in ports, at anchor or during slow teaming of the coast.⁵⁵ Somali being the most dangerous zone that has seen Somali militia operate speedboats, pose at that at the coast as guards.

⁵¹ Ibid.

⁵² Murphy M, *Contemporary piracy and Maritime Terrorism: The Threat To International Security*, International Institute for Strategic Studies, Routledge,(2007) pp.8-25

⁵³ Gal L. and Anne Korin ,*Terrorism Goes to The sea* ,Foreign Affairs ,Vol.83,No.6 (2004),pp.61-65

⁵⁴ Congressional Research Service, *Piracy off the Horn of Africa*, 28 September (2009) pp. 7.

⁵⁵Sakhuja V, *Contemporary Piracy Terrorism and disorder at Sea*. Mars studies (2002) pp.29

“Unlike pirate attacks in Strait of Malacca or Nigeria, where ships are boarded either to take the vessel or its contents, pirates off the Horn of Africa (HOA) routinely take the target vessel’s crew hostage in return for ransom payments.”⁵⁶ One of the main reasons for this distinction in the type of attacks committed in these different regions is mainly a result of where the pirates operate from. These particular pirates have a “sanctuary on land in Somalia and in its territorial waters from which they can launch pirate attacks and conduct ransom negotiations.”⁵⁷ Having this sanctuary is a key advantage that the Somalian pirates have in comparison to other piracy groups.

Murphy observes that political piracy is different from other forms of piracy as it focuses on violence as a means of creating havoc or instilling fear in a population.⁵⁸

Other maritime pirates do not have similar, large safe havens in which they bring their hostages back in order to demand a ransom. Most pirates operate directly from their vessels, which presents a problem when trying to negotiate for ransoms. Unfortunately for these pirates, there are not many places to hide, nor do they have the accommodations to use as leverage in their negotiations with the hostages’ host countries. Due to the sanctuary the Somali’s have, “this has presented maritime security forces with significant challenges to traditional engagement strategies and tactics.”⁵⁹ Somalia, although still developing, is an internationally recognized country. This means that in order to conduct any type of operation to rescue hostages, governments agencies would have to coordinate with the Somalian government. This would be a

⁵⁶ Congressional Research Service, “Piracy off the Horn of Africa,” 28 September 2009, 10.

⁵⁷ Ibid.

⁵⁸ Murphy M, *Contemporary Piracy and maritime terrorism; The Threat to International security* International Institute for Strategic studies, Routledge, 2007, pp.70

⁵⁹ Piracy off the Horn of Africa, Congressional Research Service, 28 September (2009), pp. 10.

difficult task to accomplish given the fact that the government in Somalia is highly corrupted. The Somali government, following a checkered history of failed attempts at central government, finally collapsed in the early 1990s.⁶⁰

1.6 Justification of the study

The 16th African Regional Conference of the International Police Organisation (Interpol), the Acting Executive Director, Willy Deridder, presented an Interpol Secretary Generals' (IPSG) threat assessment for the African region. Deridder highlighted maritime piracy, amongst other crimes, as one of the crimes posing the greatest threat to the peace and stability of the African region.⁶¹

The South African minister for Intelligence Services, Ronnie Kasrils addressing Sea Power for Africa Symposium said that Africa must move swiftly deal with the problem of piracy, before it reaches levels that make Africa's ports unattractive destinations. He pointed out that while this used to be a problem restricted to the Gulf of Guinea, pirate attacks are now common off Somalia and that this scourge has moved south along both coasts in recent years. Considering the highlighted challenges and many more, the findings of this study will help countries affected by the piracy issue, put policies in place that will addresses piracy issues.

⁶⁰ Bruce A. Apgar, *Countering 21st century piracy in the Horn of Africa*, Strategy Research Project, 18 February 2010, pp.4

⁶¹ Deridder, W. Minutes of the 16th African Regional Interpol Conference, Gaborone, Botswana, (July 2001) p.2-4 [Online]. Available from: <http://www.interpol.int/public/Region/Africa/Conference/papers16/Minutes.asp>

The study therefore seeks to enhance the substance and content of literature in this field in addition to contributing to the academic debates in this area. Moreover, it will seek to give timely recommendations, which would be timely in augmenting the process and effectiveness of responses to piracy and maritime security at the east African coast.

Conclusion

Piracy possesses a serious threat to maritime security due to the connections between organized piracy and wider criminal network. Max Boot observes that piracy has been spiralling at an alarming rate along the East African Coast.⁶² About 20,000 ships pass through the Gulf of Aden adjacent to the Indian Ocean each year transporting cargo that includes 12 percent of the world's daily oil. The sea and the oceans are historically important to the trade routes a fact that makes economic impact of the maritime insecurity self-evident in the maritime spheres.

Most of the scholars in the literature review have shown that piracy at the east African Coast has occurred due to the economic factors .Kraska asserts that piracy in East Africa began when the fishermen started protecting their fishing grounds from the foreigners and later saw that piracy was a lucrative business.⁶³

The study seeks to identify why piracy has surged at east African coast and its persistence even with naval patrol. It also seeks to find out whether there is a link between motivated offenders, potential target, and absence of capable guardian with piracy. This is in line with routine activity

⁶² Boot Max, *Pirates, then and Now; How Piracy was Defeated in the Past and can Be Now*, council of foreign Relations, Vol. 88 No. 34, (2009) pp.94

⁶³ Kraska James, and Wilson Brian, *Fighting piracy: The Pen and the Sword*, sage Publications, Vol.25 No.4(2008)pp.41-52

theory that emphasizes on three elements of crime that converge for a crime to occur. The large volume of shipping in EA region has created opportunities for attackers on merchant ships.

To fight this menace, joint effort is needed from regional and international community as well as efforts from individual states that have ports, example Kenya, Tanzania and Somalia.

Hypothesis

The study tests the following set of hypothesis;

- i. The joint effort by East African countries and International Community will enhance Maritime security at the East African Coast.
- ii. The failure to provide mechanism in which piracy can be stopped poses a threat to the maritime security of East Africa.

1.6 Theoretical Framework.

Numerous theories exist to discuss the phenomenon of maritime piracy.

The study will be guided by the Routine Activities Theory as developed by Lawrence Cohen and Marcus Felson. .Cohen and Felson argues that Routine Activity Theory (RAT) examines a motivated offender, the suitable target and the victim.⁶⁴Gennaro and Maahs are in agreement with Cohen and Felson. They observe that, for piracy to occur or any other crime, three elements must converge: namely motivated offender, a suitable target and the absence of a capable guardian⁶⁵. In this case piracy occurs because there are motivated offenders, who are the pirates, suitable target for example the commercial cargo ship, and the absence of guardian who might be

⁶⁴ Cohen L. and Felson M, *Social change and crime rate Trends, A Routine activity approach*, American Sociological Association. Vol. 44 No.1 (1979). Pp.588-608.

⁶⁵Gennaro Viito and Maahs, *Criminology: Theory Research and Policy*, Sad bury: Jones, (2005.) Pp.66

the Patrols that needs to provide security to the ships. All in all, piracy occurs due to the potential gains from the crime.

A motivated offender with weapons, funding and satellite cell phone, will have his or her motivation increased.⁶⁶ A victim on the other hand, who is unaware of the danger, becomes more appealing target. Adler and Adler observe that location, particularly near coastal areas where vessels are plentiful, and where government controls are diminished or non-existent provides for increased piracy⁶⁷. Adler and Adler therefore supports to some extent, the presence of capable guardian as the main reason for curbing piracy without which, piracy will prosper.

The Routine Activity theory helps us to comprehend the dynamics of Environmental conditions and the influences of the individual networking that supports piracy. The study proposes to develop the argument that piracy has occurred several times at the East African Coast because of the three major elements of motivational offender, suitable target (the victim) or the location. Lack of coordination among the East African states example Kenya Tanzania and even Somalia is another contributing factor to piracy. The theory provides insights into how criminal justice system must interact in order to have greater controls in place of countering piracy. The study will also show that there are underlying multiple and complex causes of piracy. This paper will look at why piracy occurs and suggest reasons for eradication. Vaggs suggests that piracy corresponds to social, economic, cultural and political situations.⁶⁸

⁶⁶ Ibid

⁶⁷ Adler, P.A and Adler P. *Construction of Deviance: Social power context and Interaction* Belmont.CA Thompson Higher Learning. (1995) pp.105-198.

⁶⁸Vaggs, *Rough Seas? Contemporary Piracy in South East Asia*, British Journal of Criminology Vol.35, No 1 1995 pp.63-80.

Actors involved in piracy in East Africa gives reasons as to why they get involved as injustices they have suffered. Their claims have some legitimacy especially when one looks at Somalia where piracy came as a result of the people protecting their fishing territories and their resources from being depleted. The study therefore, looking at the causes of piracy, will use Cohen and Felson theory of Routine Activities to see whether piratical attacks are, motivated by the three elements of crime; motivated offender, Suitable target or the victim. The theory is appropriate for the study because it focuses on the main reasons for piracy and makes one understand the behaviour of the actors. The study therefore provides the framework within which to form an analysis. Dr. Lawrence Cohen and Marcus Felson research suggests that patterns of behaviour by people and organization contributes to both volume and the type of crime found in any society.

1.7 Methodology

This study is an exploratory study aimed at increasing our understanding of piracy and maritime security: their nature, character, and the extent to which offenders' motivation has enhanced maritime piracy. Furthermore, the study provides an exploratory look at the conditions that underlie the emergence and growth of this phenomenon in the East Africa coastal region. To address these questions, the study uses two complementary methodologies; an analysis of piracy reports since 2001 to 2010 from the two major international piracy reporting agencies, and a case study of the dominant form of piracy that has emerged in the 21st century. In this approach two or more variables are usually examined to test research hypotheses. The results allow researchers to examine the interrelationships among variables and to draw explanatory inferences. The study relied on secondary sources for data used in this study from resources such as periodicals, scholarly journal, ships logs, and reputable news organizations.

Sampling Technique

Purposive and simple random sampling technique will be employed in this study. Purposive sampling technique will help in getting information from designated personnel from the ministry of defence and personnel from the ships that, have been hijacked. The basic idea of sampling is that by selecting some of the elements, conclusion will be drawn. There are several advantages of sampling as opposed to a census, as the costs are lower and have greater accuracy in results, greater speed of data collection and availability of elements involved. The ultimate test to a sample design though, is how well it represents the characteristics of the data it purports to represent. The sample must be valid. The validity of a sample depends on two considerations: accuracy and precision. The simple random sampling design is aimed at ensuring high accuracy and precision which will be this researcher's aim.

Data Collection Method

The study will utilize a quantitative data collection technique because the method produces results that are easy to summarize, compare and generalize. The data collection tool will be a questionnaire which by definition is a group of structured questions with each item in the questionnaire developed to address a specific objective, research question or hypothesis of the study. In this study, the questionnaire will have 2 distinct parts. The first part will collect background information from the respondents.

The second part makes the main questionnaire intended to determine the causes of piracy at the east African Coast and why this menace has persisted. The questionnaire will contain closed questions measured on a 5 likert scale where 1=strongly disagree, 2=disagree.

1.8 Chapter outline

Chapter one is the introduction of the research and contains the background of the research, problem statement, objectives of the study, literature review, Theoretical Framework, justification of the study and methodology.

Chapter two presents an overview of piracy and its development. Piracy has been defined in various ways by scholars but the study uses the international Law definition to guide it. The chapter also focuses on the causes of piracy and gives reasons as to why piracy, being a crime, has persisted on the east African coast.

Chapter three presents evidence of incidences of piracy along the east African coast. Piracy has occurred persistently as a result of fragile and weak state of Somalia. Somali pirates have been responsible for the hijackings that have occurred on the east African coast which has affected the normal trade operations in the Indian Ocean. A number of attacks have been reported from various quarters example the Kenyan courts, the media and even from International Maritime Bureau (IMB) which is a piracy reporting centre. The chapter highlights the variations of piracy and presents an overview of the risks that vessels are exposed to as they sail along the east African coast.

Chapter four presents a critical analysis to piracy and maritime security where it discusses the emerging issues. Some of the emerging issues include the economic implications of piracy in east African coast. The chapter also outlines some of the reasons that have contributed to the persistence of piracy at the east African coast and highlights the effects of contemporary piracy in east Africa.

Chapter five gives an elaborate conclusion of the entire study, the findings and also Recommendations. Since piracy is an organized crime, to suppress it, collective responsibility is needed.

CHAPTER TWO

CONCEPTUAL APPROACH TO MARITIME PIRACY

2.0 Introduction

This chapter presents an overview of piracy, outlining the changes that have occurred in the definition of piracy; further the developments that have transpired on the piracy topic relating to nature and occurrences have been highlighted. The analysis provides an assessment of the character, magnitude and development of contemporary piracy in the 21st century.

In the post Westphalian order piracy flourished, especially around busy trade route example the Strait of Malacca and Gulf of Aden. A new distinction was created between pirates, who were seen as disturbing the friendship between nations,⁶⁹ and privateers, who were authorized to plunder by sovereign nations. By 1856 privateering, the state sponsored form of piracy, was outlawed by the Declaration Respecting Maritime Law signed in Paris. Maritime piracy nigh disappeared in the nineteenth century, therefore the crime also disappeared or was omitted from many national criminal codes around the world.

Throughout history, piracy has changed in nature and location; it is a dynamic phenomenon that adapts to changing times. In 1932, the 20th century British historian Philip Gosse stated “the modern age seems to have done away with piracy. What with thirty-five knot cruisers,

⁶⁹Goodwin, J. *Universal Jurisdiction and the pirate: Time for an old couple to part*. Vanderbilt Journal of Transnational Law, 39 (2006), 973-1011.

aeroplanes, wireless and above all the police power of the modern State, there seems little chance for the enterprising individual to gain living in this fashion”.⁷⁰

Gosse was unable to foresee how enterprising pirates of the future would take advantage of the modern State and new technology. Although today we know that Gosse was wrong, the developments he identified did initially all but eradicate piracy. It was not until some years after the end of the Cold War that piracy began to re-emerge on a larger scale. The problem became serious enough in Southeast Asia that by 1983 the International Maritime Organization (IMO) began requesting annual reports from the International Maritime Bureau (IMB) on the phenomenon.⁷¹ By 1992 the IMB had set up a free service to seafarers, the Piracy Reporting Centre (PRC) in Kuala Lumpur, Malaysia, where shipmasters could report attacks to a single point of contact in order to initiate a process of response.

Although the term piracy is loosely applied to a variety of acts both in modern and historical times, there are some vital elements of contemporary piracy which distinguish it from its historical counterpart.⁷² Adam Young describes three particular discontinuities between modern and historical piracy: the static territorial borders introduced by nation State consciousness; the fact that in the past piracy had some conditional legitimacy whereas in the present it is considered completely illegal; and the material, political, social, and cultural changes of the modern era.⁷³

⁷⁰Gosse, P. *The History of Piracy*. Mineola, NY: Dover Publications Inc. (2007) pp.26

⁷¹Hyslop, I., *Contemporary Piracy: Piracy at Sea*. Paris: ICC, Publishing, (1989) pp. 3-40.

⁷²Young, A. (2007). *Contemporary maritime piracy in Southeast Asia*. Singapore: Institute of Southeast Asian Studies, (2007) pp.134

⁷³Ibid. p.16

Despite 30 years of piracy, systematic criminological research on the subject is scarce. The goal of this research is to provide an overview of what contemporary piracy is and understand the context for piracy in a country that has become the piracy hotspot of the 21 century; to unmask the opacity of modern piracy.⁷⁴

In 1934, piracy was recognized as more than theft. The British jurist C. S. Kenny described it as “any armed violence at sea which is not a lawful act of war”. However Kenny’s definition is not the legal definition, perhaps because it is too broad. The first international codification of piracy occurred in the 1958 Geneva Convention on the High Seas (Article 15) and the later in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).⁷⁵

According to Joseph Bingham, who prepared the Comment to the Harvard Draft Convention on Piracy, the public ends element of the definition excludes “all cases of wrongful attacks on persons or property for political ends, whether they are made on behalf of states or of recognized belligerent organizations, or of unorganized revolutionary bands”.⁷⁶ This limitation effectively excludes from international jurisdiction (under this convention) any acts of piracy that are condoned or organized by nation states as well as acts of terrorism that are directed at the source state.⁷⁷ Although UNCLOS focuses on the motivation of the perpetrators according to Bento⁷⁸, it

⁷⁴Teitler, G, *Piracy in Southeast Asia: A Historical Comparison*. *Maritime Studies*, (2002) pp.67-83
67-83.

⁷⁵United Nations (UN). (2003). United Nations Committee on Arms Smuggling to Somalia; Yemen’s role. Wikileaks. Retrieved from United Nations Web site:
<http://www.cablegatesearch.net/cable.php?id=03SANAA2800>

⁷⁶Hassan, M., & Chalmers, C. (2008). *UK Somali Remittances Survey*. United Kingdom Department of International Development (DFID) Report. Retrieved from The African Diaspora Policy Centre Web site: http://www.diaspora-centre.org/DOCS/UK_Somali_Remittan.pdf

⁷⁷ Ibid, p.278

⁷⁸ Best Management Practices for Protection against Somali based Piracy (BMP4). (2011). Retrieved from Maritime Security Centre Horn of Africa Web site:

does not provide any guidance as to what constitutes a private motivation or how to classify an event where private and public motivations are commingled.

UNCLOS limits the act of piracy to transgressions committed on the high seas. The high sea is the area of the ocean that is outside the territorial jurisdiction of a nation state, also known as international waters.⁷⁹ Territorial waters extend 12 nautical miles (nm) from the coast of a nation state (this 12 nm limit was set in UNCLOS itself, extending it from the previous 3 nm). Beyond this, each nation state has an Exclusive Economic Zone (EEZ) stretching 200 nm from its coast. Within the EEZ, the state has exclusive exploitation rights over the natural resources therein. According to UNCLOS ships have transit rights in the EEZ but they have to pay regard to coastal states' rights, laws and regulations.⁸⁰ Technically these are international waters and according to Art. 58(2) of UNCLOS the piracy provisions apply. That means all vessels, regardless of nationality, can arrest and arraign pirates encountered in the EEZs and bring them to justice under their own domestic law.⁸¹

It can be noted that the focus of UNCLOS was not piracy; primarily it was concerned with redistribution of resources to the new nations that were created with the end of colonialization, whilst simultaneously ensuring freedom of navigation for the more established fleets of former colonial powers.⁸² Of the 327 articles in UNCLOS, only seven deal with piracy. Largely this is

http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf

⁷⁹United Nations (UN). (2003). United Nations Committee on Arms Smuggling to Somalia; Yemen's role. Wikileaks. Retrieved from United Nations Web site:

<http://www.cablegatesearch.net/cable.php?id=03SANAA2800>

⁸⁰Ibid

⁸¹Ibid

⁸²Anderson, J.L, *Piracy and world history: An Economic Perspective on Maritime Predation. Journal of World History*, Vol. 6 No.2 (1995) pp. 175-199.

because at the time of drafting piracy was regarded as a problem of the past. The drafters of UNCLOS were concerned with issues of sovereignty not piracy which may explain why they failed to set any requirements for nations to legislate comparable domestic legislation on piracy and neglected to require any form of cooperation between nations when dealing with maritime predation.⁸³

It was not until 1995 that the act of piracy within territorial waters was defined in international law. The *Code of Practice for the Investigation for the Crime of Piracy and Armed Robbery against Ships* distinguishes between piracy and armed robbery at sea. The definition states in Paragraph 2.2:

Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, directed against a ship or against persons or property on board such ship, within a State’s jurisdiction over such offences.⁸⁴

Therefore identical behaviours are differentiated by location of the attack (either in territorial or international waters). Simply put, armed robbery at sea happens within the jurisdiction of a State, whereas piracy happens on the high seas, which is governed by international law.

Given the shortcomings of the legal definition of piracy, an alternative definition of piracy, used for statistical purposes, is proposed by the International Chamber of Commerce’s International Maritime Bureau (IMB), one of the two major international organizations dealing with piracy. It is closer to Kenny’s original conception and centres on the victim’s experience. Maritime piracy

⁸³ Murphy, M. *Contemporary piracy and maritime terrorism: The threat to international security*. London, UK: Routledge (2007) pp.134.

⁸⁴ United Nations (UN). (2003). United Nations Committee on Arms Smuggling to Somalia; Yemen’s role. Wikileaks. Retrieved from United Nations Web site: <http://www.cablegatesearch.net/cable.php?id=03SANAA2800>

is defined as ‘any act of boarding or attempting to board any ship with the apparent intent or capability to use force in the furtherance of the act’.⁸⁵

The IMB definition is used in this dissertation as a basis for statistical analyses. The IMB definition encompasses a variety of acts without making a distinction based on the location of attack (high seas, territorial waters or in port) or the type of attack (hijack, theft, kidnap etc.). The IMB definition does not require that the act be committed from another vessel, instead it focuses on boarding of, or attempted boarding of a ship with intent or capability of the use of force.⁸⁶ It is also noteworthy that the IMB definition does not distinguish between illegal acts that are committed for private ends or those that have the support of nation states; therefore it avoids any bias based on political motivations. The use of a broad definition, such as provided by the IMB, enable the study to capture a more comprehensive range of incidents and a broader array of behaviours.

Piracy was defined in international law and declared in article 101 of the 1982 Convention to consist of any of the following acts:

Any illegal acts of violence ,detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or private aircraft directed on the high seas against another ship or against persons ,property on board, against a ship or aircraft in a place outside the jurisdiction of any state. Any act of voluntary participation in the operation of a ship or of any

⁸⁵IMB Regional Piracy Center. (1992). IMB Annual Piracy Report. Kuala Lumpur: IMB.

⁸⁶United Nations (UN). (2003). United Nations Committee on Arms Smuggling to Somalia; Yemen’s role. Wikileaks. Retrieved from United Nations Web site:
<http://www.cablegatesearch.net/cable.php?id=03SANAA2800>

aircraft with knowledge of facts making it a pirate ship.⁸⁷ This definition is the most appropriate as it contains three criteria for offence of piracy that, it occurs on the high seas against another vessel for private gains.

Piracy has been there since time in memorial. Colonel Biddulp, a retired British army officer wrote in 1700s that east India ship was never safe from attack. Every coast was infested with either foreign or local pirate that made the oceans and seas unsafe⁸⁸. In early eighteenth century, piracy flourished in around the Atlantic and Indian Oceans. In the Red Sea for example, ships were seized full of gold or jewels although at this point, many nations had looked at piracy as mere nuisance. It was not until overseas trade flourished that states begun to hire privateers to root out piracy. In 1665 for example, William Kidd a Briton, received royal warrant to patrol the Red Sea and the Indian Ocean though later started seizing merchant ships for himself and he was later returned to England and hanged⁸⁹. At this time, piracy was regarded as “*hostess humanis generis*’ that is common enemy of mankind.

2.1 Causes of piracy

Opportunity is the most common causal factor identified in piracy literature. For piracy, the idea of opportunity includes favourable geography as well as legal and jurisdictional weaknesses.⁹⁰Favourable geography consists of both geophysical attributes (such as narrow waterways and an abundance of islands and inlets that afford ideal hiding places) and the

⁸⁷ Malcolm Shaw, *International Law*, (Cambridge University Press, 1997) pp.423

⁸⁸ Max Boot, *Pirates, Then, and Now: How pirates Was Defeated in the Past and Can Be again*. Vol.88 No. 4,(2009) pp.94

⁸⁹ *Ibid.*

⁹⁰ Murphy, M. *Contemporary piracy and maritime terrorism: The threat to international security*. London, UK: Routledge (2007) pp.53

presence of potential targets in high traffic areas.⁹¹ When this is coupled with “insufficient coastal/port surveillance, or perhaps what Cohen and Felson calls Lack of capable guardian, corruption, lack of adequate marine policing resources and ready access to weaponry”⁹² it creates a perfect storm for piracy.

With the intensification of globalization, international trade has grown, new technologies have developed, commercial maritime traffic has increased substantially, and with that, the scale of the opportunity for maritime predation. Since 1968 seaborne trade has quadrupled, from an estimated 8 thousand billion tonne-miles to 32 thousand billion tonne-miles in 2008, with over 50,000 merchant ships plying the seven seas⁹³ and over 6,500 terminals that handle these cargoes.⁹⁴ Piracy becomes feasible when ocean going vessels slow or stop. Generally traffic slows not only when in proximity of ports and terminals but also around maritime choke points. These are areas which force ships into bottlenecks around narrow sea-lanes. In addition, when these are coupled with potential safe havens where pirates can move about unseen and escape into sheltered hiding spots (such as archipelagos) vessels becomes more vulnerable to attack. Roger Middleton observes that the situation in East Africa portrays this picture. Pirates and armed robbers have taken advantage of a narrow channel heavily used in ocean faring commerce. The scope of the problem in Somalia combined with the relative weakness of regional governments

⁹¹Caplan, J., Moreto, W., & Kennedy, L. *Forecasting global maritime piracy utilizing the Risk terrain modeling approach to spatial risk assessment.*(2010)

⁹²Chalk, P. (2008). *The maritime dimension of international security: Terrorism, piracy and Challenges for the United States*. Santa Monica, CA: RAND.

⁹³International Chamber of Shipping International Shipping Federation (ICS). 2011. Key Facts:

⁹⁴Chalk, P, *The maritime dimension of international security: Terrorism, piracy and Challenges for the United States*. Santa Monica, CA: RAND (2008)pp.66

suggests that attacks in East Africa are often carried out against large commercial vessels sailing hundreds of miles from the Somali Coast

Alfred H. Rubin in the nineteenth century argued that some societies stigmatized as having been piratical were merely claiming or exercising a historical right to levy taxes on passer-by⁹⁵. When commerce was intense, any ship that did not pay taxes, was captured and its cargo confiscated and the crew enslaved⁹⁶. British legal decision for example denied Borneo dyaks a jurisdiction of their own to commerce in waters that they claimed as part of their territory. However, the approach raises questions on the origin and justification of such levies.

Opportunity refers to the practical conditions that are necessary for this crime to flourish, why piracy occurs in some parts of the world as opposed to others. However topography and traffic concentration are insufficient to explain any variance in piracy incidence over time. Nor does it explain the context that enables piracy.

In addition to opportunity, poverty in littoral states has been implicated in the rise of piracy⁹⁷ although the general consensus has been that poverty is only part of a more complex explanation.⁹⁸ Since poverty does seem to be a common factor (although to date there is no detail as to the impact fluctuation in economic conditions has on piracy) among nations with a high rate of piracy it does necessitate some comment. Only two of the highest piracy incidents countries

⁹⁵ Alfred H Rubin, *The Law of Piracy*, (New Port: 1998) pp.305-37.

⁹⁶ Ibid.

⁹⁷ Burnett, J.S. *Dangerous waters: Modern piracy and terror in the high seas*. New York, NY: Plume.(2002)

⁹⁸ Chalk, P. *The maritime dimension of international security: Terrorism, piracy and Challenges for the United States*. Santa Monica, CA: RAND.(2008)

(that account for over 31 percent of all attacks in the study period) fall within the list of the United Nations Least Developed Countries. These two countries, Somalia and Bangladesh, are two of the three countries with the highest number of piracy reports in the study decade. However, poverty rates are not static, whether there is a genuine longitudinal correlation between the two remains to be empirically established although there is some evidence that higher per-capita incomes dampen the level of physical violence and material damage of piracy attacks.⁹⁹ Considering the case of Southeast Asian piracy, measuring in terms of gross domestic product (GDP) and other industrial output measures, there is evidence of considerable economic growth.

The living resources of the sea have been coming under intensifying pressures. Chaturvedi observes that in 1960s shipping communication and fishing was rapidly replaced by new scientific and political uses of the marine environment¹⁰⁰. The Indian Ocean in which East African Coast lie, contributes about 6 million tonnes of marine fish production yearly.⁹⁰ Some States therefore become dissatisfied with the law of the sea and thought of increasing their jurisdiction to safeguard their economy. Though we can say that customary fishing communities at this time was being eroded by the expansion of large scale tourism and industrial development.

Another issue to consider is that the poor are not only the “labour pool for piracy from which the majority of piracy stems, but also constitutes the majority of victims”.¹⁰¹ Although Young was considering the countless (often unreported) fishing vessels that are attacked by pirates in the

⁹⁹⁹⁹ Iyigun, M. Ratisukpimol, W. *Learning piracy on the high seas* : university of Colorado, (2011)

¹⁰⁰ Chaturvedi, Sanjay, *Common Security? Geopolitical Development, south Asia and The Indian Ocean*. Third world Quarterly, Vol. 19 No.4 (1998 pp.701-724.

¹⁰¹ Young, A.J. *Contemporary Maritime Piracy in Southeast Asia. History, causes and remedies*. Institute of South East Asia Studies; Singapore, (2007) pp.134

Malacca Straits, it is equally important to consider crew on merchant ships. Increasingly cargo vessels recruit at minimum wages from the world's poorer nations.

Both officers and ratings (i.e. those working in an engine-room, forming part of a watch, or serving on certain types of ship) are recruited from the developing world. Currently 70.7 percent of officers and 80.8 percent of ratings come from the developing world (this includes seafarers from Eastern Europe, Far East, Indian sub-continent, Africa, and Latin America), which translates to about 1,045,000 individuals.¹⁰² Poverty is therefore a factor for both the makeup of the offender and the victim population, adding to the problem of using it as the sole explanatory factor.

Within criminology, poverty alone has been found to be an insufficient explanation of crime generally; instead a more fruitful correlation has been to focus on economic inequality within a broader framework of factors.¹⁰³ Among piracy scholars Adam Young puts the issue of poverty in context, he suggests that the problem is based on a form of social breakdown and that the roots of modern piracy in Southeast Asia lies “in the cultural, economic and political environment of states in the region, and their inability to effectively control or regulate this environment, economic growth without concomitant political development, poverty and ineffective distribution of wealth, and fragmented or challenged political hegemony, are some of the roots of

¹⁰²Baniela, S.I. *Piracy at sea: Somalia an area of great concern*. In: *Journal of Navigation* Vol. 63, No. 2, (2010) pp 191-206

¹⁰³

Smith & M. Zahn, *Homicide, A Sourcebook of Social Research*, Thousand Oaks, CA: Sage Publication (1999)pp.125-145

piracy”.¹⁰⁴ Furthermore Young suggests that the issue is weak state development, “economic development has outpaced the capacity of the state to redistribute the profits effectively”.¹⁰⁵ Looking at another region of the world, Anyu and Moki¹⁰⁶ similarly list poverty, failed states/poor governance, and flaws in maritime-transport treaties as the three salient factors that have made Africa a “piracy hot spot”. The broader issue of governance is also identified in other works that mention factors such as a permissive political environment,¹⁰⁷ cultural tolerance for piracy,¹⁰⁸ the presence of conflict and disorder¹⁰⁹ as well as insufficient/inadequate marine policing and corruption.¹¹⁰ Some have described the lack of governance and an effective social security apparatus as key elements in making piracy a viable activity.¹¹¹ Some pirates have claimed that they have involved themselves in piracy in order to protect Somalia’s natural resources due to over fishing that has been done by the Europeans, Asians and African ships.¹¹²

The primary root of the maritime raiding problem in the Malacca Strait is the lack of effective government along the Sumatran coast coupled with absence of viable, legitimate economic opportunities for coastal communities. If poor governance has allowed the maritime predation

¹⁰⁴ Ibid, 2007, pp.3

¹⁰⁵ Ibid, 2007, p.59

¹⁰⁶ Anyu, N., & Moki, S. Africa: The piracy hot spot and its implications for global security. *Mediterranean Quarterly*, Vol.2, No.3 (2009) 95-121.

¹⁰⁷ Murphy, M, *Contemporary piracy and maritime terrorism: The threat to international Security*. London, UK: Routledge (2007).

¹⁰⁸ Caplan, J., Moreto, W., & Kennedy, L. *Forecasting global maritime piracy utilizing the risk terrain modelling approach to spatial risk assessment*. (2010)

¹⁰⁹ Murphy, M. *Contemporary piracy and maritime terrorism: The threat to international Security*. London, UK: Routledge (2007).

¹¹⁰ Chalk, P. (2008). *The maritime dimension of international security: Terrorism, piracy and challenges for the United States*. Santa Monica, CA: RAND.

¹¹¹ Sakhuja, V. (2010). *Security threats and challenges to maritime supply chains*. In UN Institute for Disarmament Research, Disarmament Forum 2 (3-12). Retrieved from <http://www.unidir.org/pdf/articles/pdf-art2967.pdf>

¹¹² Max Boot, *Pirates Then And Now: How Piracy Was Defeated in The Past And Can Now*. Council Of Foreign Relations ,Vol.88 No.4(2009).pp.94-104

problem to persist for more than 30 years, including the participation of rogue officials, then the present emphasis on more efficient and better coordinated patrols at sea is addressing only part of the problem. The fact that there are no pirate bands based on the Malaysian side of the Strait (leaving aside the ship hijacking rings which contract the actual hijackings) suggest that economic development and effective administration and governance are key factors in addressing piracy in the Malacca Strait.¹¹³ Similarly, when discussing Somalia, Hansen and Hoesslin state that, “Maritime security in waters surrounding Somalia is fully correlated with the internal situation...Besides the economic decline and the political chaos, the lack of effective control over the coast is the primary reason for the surge in piracy”.¹¹⁴

Despite identifying governance as a salient concept, the coverage of the relationship has been superficial, lacking an analysis which explains what the relationship between piracy and governance consists of. Moreover, the tendency has been to focus on governance as government. Governance is a broader concept which includes “the mechanisms and processes for citizens and groups to articulate their interests, mediate their differences, and exercise their legal rights and obligations. It is the rules, institutions and practices that set limits and provide incentives.”¹¹⁵ Governance can be understood broadly as the set of norms, processes, and institutions through which diverse interests emerge, are articulated and acted out, and through which conflicts of interests are addressed or resolved in a given social group or community.¹¹⁶

¹¹³ Ibid

¹¹⁴ Ibid, 2009, p.18

¹¹⁵ June, T., Chowdhury, A., Heller, N., & Werve, J. (2008). *User's guide to measuring corruption*. Retrieved from Global Integrity Web site:

¹¹⁶ Passas, N., & Twyman-Ghoshal, A. (2012). Controlling piracy in Southeast Asia – Thinking outside the Box. In R.C. Beckman & J.A. Roach (Ed.) *Piracy and International Maritime Crimes in ASEAN: Prospects for Cooperation*, Cheltenham: Edward Elgar Publishing,(2012) pp.130-175

The policing function of nations and sub regions is contingent on existing types of governance and political will. Moreover, policing the seas presents different challenges than those on land, not only is the area much greater (consider policing Indonesia's 14,000 islands or the 20,000,000 square miles of the Indian Ocean including the Red Sea and the Persian Gulf that are troubled by Somali pirates) but the sea is divided by competing interests and priorities. UNCLOS provides the geographical area within which a nation state may regulate seas, primarily up to 12 nm from the coast (territorial waters) and then to a limited degree up to 200 nm from the coast (exclusive economic zone). However the ocean is not as clearly demarcated as the Convention would have it and some territorial waters overlap, creating uncertainty and conflict. For instance, the Malacca Straits has the customary international legal status of high seas; this despite the fact that at the southern end it is only 7.8 nm wide, technically falling within the 12 nm limit of territorial waters of the two sovereign nations of Malaysia and Indonesia. To date these countries are still not in agreement about their respective maritime boundary which clearly affects the policing of those areas.¹¹⁷

These legal ambiguities make cooperation critical – with the sea abutting the coasts of different countries, pirates can transit from the territory of one country to the next with relative ease. To be effective maritime security needs the same flexibility as practiced by pirates. UNCLOS however, remains silent on the issue of international cooperation. Cooperation depends on the priority afforded by individual nations to policing the sea, as well as on the allocation of funds by the governments of coastal states. Overall, it can be said that piracy has been of low priority on policy agendas. In countries such as the Philippines and Indonesia there have been more pressing

¹¹⁷Sakhuja, V. (2010). *Security threats and challenges to maritime supply chains*. In UN Institute For Disarmament Research, Disarmament Forum 2 (3-12). Retrieved from <http://www.unidir.org/pdf/articles/pdf-art2967.pdf>

inland issues that have required government attention.¹¹⁸ With the added burden of the sheer scale of the area to police, the problem of a lack of boats, equipment, staff, and training, policing inadequacies can only in part explain failures in inhibiting piracy, but not the onset and escalation of piracy.

Finally, another potentially critical factor that has been identified as a precursor of contemporary piracy is globalization and neo-liberalization. Globalization and neo-liberalization have been associated with the growth in crime generally,¹¹⁹ in the increase of translational crimes, and piracy.¹²⁰ Lehr explains that globalization and neoliberalization have had a direct impact on the level of maritime traffic and the presence of potential targets, thereby impacting the opportunity for committing piracy. However, these forms of internationalization have also had a vast impact on socio-economic, political, and environmental conditions within nations, which need to be explored in more detail when considering the context for piracy.

The historian Anderson, explains that earlier forms of piracy that have been “at least partly global in its structure, events and policies that are formulated in one part of the world, have a direct impact on actions in another part of the world”.¹²¹ This is true in the sense that what happens in Somalia has direct impact on east Africa. It is argued here, that this is also true for current forms of piracy, which is affected by modern forms of interconnectedness on many

¹¹⁸ Ibid

¹¹⁹ Sheptycki, J. (2005). Relativism, transnationalism and comparative criminology. In J. Sheptycki & A. Wardak (Eds.), *Transnational & comparative criminology* (69-88). London, UK: Glasshouse Press

¹²⁰ Young, A. *Roots of contemporary maritime piracy in Southeast Asia*. In D. Johnson & M. Valencia (Eds.), *Piracy in Southeast Asia: Status, Issues and Responses* (2005) pp.1-33. Singapore: Institute of Southeast Asian Studies Publications.

¹²¹ Johnson, D., & Valencia, M. (2005). Conclusion: Towards an agenda for piracy research. In D. Johnson & M. Valencia (Eds.), *Piracy in Southeast Asia: Status, Issues and Responses* (160-166). Singapore: Institute of Southeast Asian Studies Publications.

levels. In addition to the impact of globalization on the level of maritime traffic, particularly on important transit routes, piracy has benefited from advances in technology.

Contemporary shipping is able to function with “skeleton crews” due to advanced navigation technology, meaning there are fewer crew for anti-piracy watches.¹²² Simultaneously organized forms of piracy are able to use cell phones and the internet to access websites that track merchant ship movements. However, the impact of globalization is broader than just through technology and traffic.

In summary, research on contemporary piracy has identified a variety of potential causes of piracy, but there have been few attempts to examine empirically if socioeconomic and governance factors are associated with piracy and if so, how these affect piracy. Literature that has identified socioeconomic and governance factors, has not examined these systematically.¹²³

2.2 Conclusion

The IMB definition is used in this chapter as a basis for statistical analyses. The IMB definition encompasses a variety of acts without making a distinction based on the location of attack (high seas, territorial waters or in port) or the type of attack (hijack, theft, kidnap etc.). The IMB definition does not require that the act be committed from another vessel, instead it focuses on boarding of, or attempted boarding of a ship with intent or capability of the use of force. It is also noteworthy that the IMB definition does not distinguish between illegal acts that are committed for private ends or those that have the support of nation states; therefore it avoids

¹²² Chalk, P. (2008). *The maritime dimension of international security: Terrorism, piracy and challenges for the United States*. Santa Monica, CA: RAND.

¹²³ Anyu, N., & Moki, S. *Africa: The piracy hot spot and its implications for global security*. *Mediterranean Quarterly*, Vol.20, No.3 (2009) pp. 95-121.

any bias based on political motivations. The use of a broad definition, such as provided by the IMB, enable the study to capture a more comprehensive range of incidents and a broader array of behaviours.

The results from the analysis of piracy in the 21st century suggest that the prevalent form of piracy has changed and a new type of piracy which begun in the 1990s has become the major threat in the study period. The most prevalent form of contemporary piracy originates from Somalia. The analysis of the integrated piracy dataset demonstrates that Somali piracy has distinct characteristics which are unlike other contemporary forms of piracy.

CHAPTER THREE

PIRACY IN EAST AFRICA

3.0 Introduction

This chapter presents evidence of piracy along the east African coast that has happened as a result of fragile and weak state of Somalia. In fact the ships that have been hijacked at the east African coast have been done by Somali pirates. The chapter highlights the variations of piracy and presents an overview of the risks that the vessels are exposed to as they sail along the east African coast. The study also discusses the efforts put by regional and continental bodies in fighting piracy.

The increase in piracy incidences has occurred despite a noteworthy presence of international maritime patrols in the Gulf of Aden (GOA) and along the East African coast. Kraska notes that the incidence has been spreading rapidly to the coast of Kenya, Tanzania and to some extent Seychelles. Andrew Mwangura, the head of East Africa Seafarers observes that piracy, off the coast of EA has been growing at alarming rate, with 41 ships attacked in 207, 122 in 2008 and 102 as of mid-May 2009. A quick review around the globe shows evidence of maritime piracy in some key locations where a high volume of ship transits, a factor that supports Cohen and Felson theory of Routine Activity (RA)

Somali has been an epicentre of piracy and incidences of piracy off the coast of east Africa increased from 172 in 2010 to 223 in 2011. However, between 2012 and 2013, data from International Maritime Bureau indicates that increased policing of the Indian Ocean and the Gulf

of Aden has seen piracy decline to seven year low¹²⁴. In February 18th 2011 for example, the *S/v Quest*, a 58 feet U.S.A sailing vessel with four Americans on board was captured by 19 Somali pirates. The ship was being sailed by owners Scott and Jean Adams. The yacht had been travelling from Oman with other private sailing ships and 102 as of mid-May 2009.¹²⁵ A quick review around the globe shows evidence of maritime piracy in some key locations where a high volume of ship transits, a factor that supports Cohen and Felson theory of Routine activity.

According to whiteneck, piracy flourishes where there has been lack of maritime power to regulate behaviour at sea.¹²⁶ With arrival of European navies, the east African coast was able to witness order and enforcement of international rules. Piracy has grown where there is lack of government on land. Just as the study has shown, piracy, like many other crimes takes place in 'victim rich 'environment. In east Africa, pirates have been drawn to the shipping along those lines and have found plenty of targets.¹²⁷

International maritime Bureau (IMB) a Piracy reporting centre (PRC) which is a non-governmental organizations set up to monitor piracy attacks free of political interference, recommended the sailors to be staying six hundred miles away from the coastline when travelling past East Africa due to high numbers of attacks that were being recorded.¹²⁸ The IBM is also a key hub for disseminating information such as statistics and area warnings where recent hotspots of pirate activity have been responded.

¹²⁴ Daily Nation, lull in piracy yet to see drop in Shipping fees,(Nairobi 13th August,2013) pp.6

¹²⁵ Daily nation, *pirates Hijack Italian tanker off Oman*,(Nairobi, 28th December, 2011)pp.16

¹²⁶Whiteneck D, *Piracy Enterprise in Africa*, CNA Press, 2011, pp. 25-28

¹²⁷Ndumbe A, and Moki S, *Africa: The piracy Hot Spot Implications for Global Security*, Mediterranean, Quarterly 20, Vol, 3(2009) pp.95-121.

¹²⁸ Journal of maritime Research, *Sea Piracy and Maritime security*, SEECMAR, 2010 vol. VII, No.3 pp.43-56.

International Maritime Bureau reports that in 2008 forty four vessels were hijacked in East African compared to just seven in other regions. There were twenty five hijackings in 2009 and 3 elsewhere. Eight piracy incidences were recorded including two hijackings in the first six months of 2013, with seafarers taken hostage.¹²⁹ From these reports, it is clear that pirates had made the east African coast, a dangerous shipping lane. The courts in east Africa and especially in Kenya had entered into agreements with other States to try pirates at their courts. This was because the offenders were many and the crime had become rife.

The BBC News Africa reported that a court in east Africa had been opened in Mombasa Kenya port funded by international Community to try pirates. When the court was being opened, visitors were shown a room where evidence like attack boat and rusty arms and ammunition was being stored. This indicates that there is evidence of piracy along the east African coast and even the number of offenders was increasing at an alarming rate, and that is why establishing a court in Kenya was necessary. Pirates based in neighbouring Somalia had made the Gulf of Aden one of the world's most dangerous shipping lanes.

The reports from Kenyan courts show that the country had been overwhelmed by the piracy cases witnessed in east Africa¹³⁰. The Attorney general reports that Kenya had been handling many modern piracy related cases. This was after Attorney general filed an appeal challenging the judgment of Justice Ibrahim Mohammed on criminal case No. 840 where he had ruled that Kenyan courts do not have jurisdiction to try piracy offence cases committed on the high Seas.

¹²⁹ Ibid.

¹³⁰ Court of appeal Kenya, Attorney General V Mohamud Mohammed, civil appeal No 113 of 22011, October, 2012.

In 2008, attacks on ships in the Gulf of Aden (GOA) and east Africa surged. Pirates captured then biggest prize to date that send shockwaves to the whole world.¹³¹ The *Sirius Star*, a Saudi super tanker owned by Dubai based subsidiary of Saudi Arabian oil company Aramco.¹³² The super tanker was brimming with 2 million barrels of oil, estimated value of 100 million dollars. The Monrovia registered *Sirius Star* was hijacked by Somali pirates who had boarded the oil tanker more than 450 nautical miles from Kenyan port. The pirates asked for 15,000,000 US dollars as ransom. What shocked the world was for pirates being able to hijack such a large ship that is almost the size of US navy air craft carrier that require sophisticated plan for successful hijacking. The hostages were held for three months where 3 crew members drowned and ransom of 3 million dollars paid.

On September 2008, a Ukrainian ship *M V Faina* was hijacked by pirates. The ship was loaded with 30 million dollars highly lethal military equipment's. The ship had also the crew of twenty men who were taken hostage making the hijacking one of the most dangerous one in the world. The military equipment on board on the *MV Fainawas* stated to be on its way for delivery to Kenyan port of Mombasa. When the pirates obtained the invoice and destination of the ships contents, speculation arose that the equipment was really heading to south Sudan via Kenya. The ship and the crew were held hostage for three months and released after a ransom of 3.2million was paid.

¹³¹ Corbett Peter ,*A Modern Plague of pirates*, Offshore and Maritime publications(,2008), pp.21-28

¹³² Ibid.

A dramatic hijacking of *M.V Maersk Alabama* was also one of the most dramatic one at the coast. The container was seized 400 nautical miles east of Somalia's capital city Mogadishu on its way to Mombasa Kenya to deliver 17, 000 tons of UN food to Somalia, Rwanda and Uganda. The Maersk was attacked by several small boats in a five hour battle during which the pirates overpowered the ship. Captain Richard Phillip surrendered himself as sole hostage having ordered the crew to lock themselves in the cabin. The US navy, the SEALs later rescued Captain Phillip after a very fierce fight.¹³³

3.1 Piracy variations

According to Abhyankar, piracy can be divided in five specific forms, varying according to different regions. First there is what can be called "Asian Piracy". Ships are boarded by pirates, sometimes disguised as coast guards or harbour police, and then cash and valuables are stolen from the safe with minimum violence.¹³⁴ The ship often contains large amount of money which is needed for payroll and port fees and hence becomes potential targets. This form of piracy is characterized by night attacks, the high degree of skills that is used to come on board of the ship and the fact that violence is only used when detected or getting resistance.

Secondly, there is 'South 'American' or 'West African Piracy. More violent attacks will happen where ships berthed or at anchor. Targets are cash, cargo, equipment or anything which can be moved or carried. In most cases the offenders would have lived with targets surveying and understanding their mode of operations before they attack.¹³⁵

¹³³ Christopher D, *Somali Piracy and Terrorism in the Horn of Africa*, Scarecrow press, Maryland, (2012), pp.43-48

¹³⁴ Abhyankar J. *Piracy: Armed Robbery and Terrorism at sea*. ISEAS Publishing(2006) PP.119

¹³⁵ Ibid

The high degree of violence, that Abhyankar notes is Pre- planning, value, and the lack of competence or willingness to respond on the part of Law enforcement are the characteristics of this kind of piracy¹³⁶. This again brings us to the theory developed by Cohen and Felson that Piracy, which in simple terms is a crime, happens when three elements converge; that is the offender, the target, who is the victim and the absence of capable guardian. When the guardian lacks competence and willingness to respond, there is nothing that will stop piracy from happening.

Piracy with military or political feature is the third form of piracy. These are likely incidental incidents. Hijacking a ship a ship, overpowering the crew and stealing the entire cargo can be stated as the fourth variations.¹³⁷ The last form that can be diversified is called ‘phantom or ghost-ship’. The pirates force the victims off the ship and then sail it to a port in order to repaint it and to give it a new identity through false papers.¹³⁸ This form of piracy requires not only organized expertise on an international scale, but also involves big capital investment .The pirates work with a network of accomplices who can even give ‘legal’ papers to change the identity of the ship.¹³⁹The objective of this kind of piracy is to use the ship to commit cargo frauds. Macqueen argues that a phantom ship operation lies around the ninety days. Such ships can manage three or four voyages a year. It is a huge profitable business. The lifespan of a ship is about three years, after that the ships that are not well-maintained will be abandoned by pirates¹⁴⁰.

¹³⁶ Abhyankar J, *Violence at Sea: Piracy in the age of Global Terrorism*, Routledge, (2007) pp.119.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Abhyankar J, *piracy and Armed Robbery against ships*, Annual Report, International Maritime Bureau Barking Essex United Kingdom, 2002

¹⁴⁰ Macqueen, *The Great Deception*, *Lloyds Shipping Economist*, Monday, 1st, 2004.

3.2 Maritime risk on ships

The pirates that operate out of the seaport infrastructures in Somalia offer a significant threat to vessels travelling to and from Somalia, as well as travelling through the Indian Ocean or the Gulf of Aden. This has become an international problem. We again note the infamous attack on the Saudi super tanker, the *Sirius Star* on 15 November 2008. The Somalia pirates demanded a ransom of \$3 million dollars, which was parachuted on board after more than two months of negotiations.¹⁴¹ Because oil from the Gulf is shipped all over the world to numerous countries, the lasting effects of this pirate attack can still be felt. Furthermore, approximately seventeen tankers carrying in the region of 6.3 million barrels of crude oil and petroleum products transit the gulf each day. These ships become potential targets for the offenders who are ready to commit a crime when there is an opportunity. This includes close to 30 percent of Europe's oil and gas that passes through the gulf.¹⁴² Due to the increased piracy operations, along with the pirates' ability to operate further off their coast (up to 1000 nautical miles), these particular seaports and trade routes have drastically affected countries on an international level and especially east African Coast.¹⁴³ In the year 2008 there were over 80 attacks (successful or attempted) on commercial vessels.

Countries shipping merchandise via the seas, has two options; they can assume the risk of a possible hijacking in the Gulf of Aden or they can reroute their ships through Cape of Good Hope. If a merchant vessel is rerouted from a country in the Gulf (Saudi Arabia for example) through the Cape of Good Hope, they can expect approximately 2,700 miles added to their

¹⁴¹Ndumbe J. Anyu and Samuel Moki, *"Africa: The Piracy Hot Spot and Its Implications for Global Security,"* Project Muse, (Summer 2009) pp. 107.

¹⁴²*Ibid.* 103.

¹⁴³ David Pugliese, *"Experts: Target Pirates' Motherships, Financing,"* Defense News, 3 May 2010, 24.

voyage.¹⁴⁴ This longer distance will increase the annual operating cost of the vessel by reducing the delivery capacity for the ship from about six round-trip voyages to five voyages, or a drop of about 26 percent. The additional fuel cost of travelling via the Cape of Good Hope is about \$3.5 million annually.¹⁴⁵ If the commercial vessel were departing from Europe instead of the Gulf, and transiting through the Cape of Good Hope instead of transiting the Suez Canal, the increased operating costs would be much greater. This adds “An estimated additional \$89 million annually, which includes \$74.4 million in fuel and \$14.6 million in charter expenses. In addition, the rerouting would increase transit times by about 5.7 days per ship. This would result in the need for an additional vessel to maintain the service frequency.”¹⁴⁶ These costs do not take into consideration what a longer transit time would do to the logistics side.

3.3 Cost of maritime piracy

Though the cost of piracy is difficult to calculate because sometimes the information given by owners is not accurate, there has been spectacular increase of piracy that has worried the world and especially the east African coast. The situation report from Institute of Security Studies shows that that the number of attacks has continued to increase in East Africa.¹⁴⁷ In 2006, the secretary general of United Nations, Ban Ki Moon, reported to the Security Council that piracy had had an immense impact on the economies of east Africa especially when internal trade routes were threatened. There has been notable increase of ransom payment which has even been estimated to have doubled the value paid to pirates. This includes the cost of negotiations,

¹⁴⁴ Department of Transportation United States of America, “Economic Impact of Piracy in the Gulf of Aden on Global Trade,” 1.

¹⁴⁵ Ibid

¹⁴⁶ Department of Transportation United States of America, “Economic Impact of Piracy in the Gulf of Aden on Global Trade,” 1.

¹⁴⁷ Institute of Security studies, *Kenya and the Pest of Piracy*, (Nairobi, February, 2012) pp.21

psychological trauma, counselling, repair of ships damage, and physical delivery of ransom. These high risks at the Indian Ocean have led to high insurance and premiums.¹⁴⁸

Slow vessels that usually are at risk of piracy attack, avoid those zones by re-routing the ship which again becomes very expensive as the owners have to pay for the additional extra days to a journey which eventually reduces a vessel annual voyage and delivery capacity. Ship owners may opt to fit their ships with security equipment or personnel which also very expensive.

Kenya and Yemen are among the countries that have sent their natives to protect the Indian Ocean water which has proved to be expensive. Recently, Kenya also sent its military forces to Somalia to pursue the Al Shabaab terrorist group that is believed to be part of wider group of Al Qaeda. This was in response to kidnapping of the locals and visitors inside Kenya. The cost of prosecution cannot be underestimated either. Under universal jurisdiction, a state can prosecute crime of piracy regardless of whether they have a direct nexus or not.¹⁴⁹ It was on this basis perhaps, that Kenya and United Kingdom signed a memorandum of understanding for Kenya to prosecute pirates in 2008, and United States in 2009 following an increasing trend of captured pirates. The prosecution has left the country even more vulnerable to the attacks that have eventually made it not want to bear more burden than its share.

¹⁴⁸ Department of Transportation United States of America, Economic Impact of Piracy in the Gulf of Aden on Global Trade.

¹⁴⁹ Gakii James, *Kenya's Piracy Prosecutions*, *The American Journal of International Law*, Vol.104, No. 3 July, (2010), pp.416-436.

Alfred H. Rubin in the nineteenth century argues that some societies stigmatized as having been piratical were merely claiming or exercising a historical right to levy taxes or passer-by. When commerce was intense any ship that did not pay taxes, was captured and its cargo confiscated and the crew enslaved.¹⁵⁰ British legal decision for example, denied Borneo Dyaks a jurisdiction of their own to commerce in waters that they claimed as part of their territory. However, the approach raises questions on the origin and justification of such levies.

Burnett observes that the roots of contemporary maritime piracy in south East Asia lay in the cultural, economic and political environment of states and their inability to effectively control or regulate this atmosphere. In other words, lack of proper patrols at the east African coast, the location of countries example Kenya Tanzania and Somali provides an opportunity for potential target as they border the coast.

Not only is there a financial cost incurred from a maritime pirate attack, there is also the tragic human cost which cannot be overlooked. “Piratical attacks off the Horn of Africa constitute a threat to the lives and welfare of the citizens and seafarers of many nations.”¹⁵¹ All it takes is one maritime attack to question seafarers’ confidence in the security in the global shipping lanes. “A single piratical attack often affects the interests of numerous countries, including the flag State of the vessel, various States of nationality of the seafarers taken hostage, regional coastal States, owner States, and cargo owner, transshipment, and destination States.”¹⁵² The cost of maritime

¹⁵⁰ Alfred H, *The Law of Piracy*, (Newport, Brill, (1998,))pp.305-307

¹⁵¹ National Security Council, “*Countering Piracy off the Horn of Africa: Partnership & Action Plan*,” (December 2008) pp. 4.

¹⁵² National Security Council, “*Countering Piracy off the Horn of Africa: Partnership & Action Plan*,” (December (2008) pp. 4.

piracy has off the coast of Somalia is recognized in the world to be a significant threat. This threat is not only to the operating cost but also to the safety of their commercial shipping vessels operation in the waters around Somalia. This is why several operations have been established to counter this threat. Military operations are not the only way maritime piracy will be decreased or eliminated.

For the last five years, the world has witnessed maritime piracy attacks of the tremendous proportions, which involved thousands of victims. A number of piracy attacks have been reported along the east African coast and these attacks have been related to Somali piracy. As outlined in this study, there were a number of piracy incidences that shocked the world. Despite the fact that there have been naval patrols along the cost, pirates have been using different forms of attacking and hence making it difficult for guardians to protect the ships. The ships sailing along the east African cost have been exposed to various risks including loss of lives. The study has therefore shown some of this risks that the ships and the crew are exposed to.

As noted earlier, while many people believe piracy to be something daring and magical as depicted through Disney movies, the reality is that piracy is real and ever growing threat to seafarers. To piracy at the east African coast, there should be joint effort of individual governments and international community. International community should focus in helping the nation build a functional political system as proposed by new world report.

3.4 Efforts by continental bodies to deal with piracy

Piracy is spiralling out of control if left unchallenged and now threatens the sea lanes that transport almost half the world's cargo including one third of Europeans oil supplies.¹⁵³

In accordance with Security Council resolution 1950 (2010), the authorizations contained in resolutions 1846 (2008), 1851 (2008) and 1897 (2009) related to counter-piracy activity in the territorial waters off the coast of Somalia and in Somalia were extended. The main focus for these Resolutions was to fight piracy. As at 3 October 2011, no additional Member State or regional organization had transmitted advance notification of its cooperation with the Transitional Federal Government of Somalia in the fight against piracy and armed robbery at sea off the coast of Somalia.

Kraska and Wilson observes that Piracy suppression include collective efforts to deter and defeat the crime from intercepting money transfers of all ill-gotten ransoms to taking expeditionary action in the coastal towns and villages.¹⁵⁴

East African governments have stated their commitment to eradicate piracy and agreed to a national counter-piracy strategy, as stipulated in the Mogadishu road map of S

On 3 February 2011, together with the Secretary-General of IMO, the Executive Directors of the World Food Programme (WFP) and the United Nations Office on Drugs and Crime (UNODC), as well as senior representatives of the maritime industry launched the anti-piracy action plan in support of the 2011 World Maritime Day theme "Piracy: orchestrating the response".¹⁵⁵ The plan

¹⁵³ Max Boot, *Pirates, Then and Now; How piracy was defeated in the past and can be Now* Vol. 88, No 4(2009), pp 94.

¹⁵⁴ Kraska J, and Wilson B, *Academic Journal, Journal of International Affairs*, Vol. 62, No. 2 pp.121.

¹⁵⁵ <http://www.unodc.org/unodc/en/eds-corner/index.html>

aims at strengthening the focus on anti-piracy endeavours of all kinds and at facilitating a broader global effort. Its prime objectives aim at increasing pressure at the political level to secure the release of all hostages being held by pirates; review, improve and promote IMO guidelines; promote greater levels of support and coordination with navies; promote coordination and cooperation between States, regions, organizations and industry; assist in capacity-building in piracy-infested regions of the world, and provide care for those attacked or hijacked by pirates and for their families.

In 2011, IMO worked to promote further cooperation between and among States, regions and organizations through information sharing; coordination of military-civil efforts; and development and implementation of regional initiatives, such as the IMO-led Djibouti Code of Conduct.¹⁵⁶ James Gakii notes that the United Nations Security Council urged States and regional organizations to enter into agreement with Kenya to try pirates.¹⁵⁷ The International Contact Group on Somalia, on 3 June 2011 in Kampala, recognized the need to assist Somalia and the region in building capacity to fight piracy through the Kampala Process, and to establish land-based employment and income generation projects that could contribute to a durable eradication of piracy and other illegal activities. On 30 September 2011 in Copenhagen, the Contact Group acknowledged that a solution to piracy required a comprehensive approach that would address the political, security and socio-economic root causes in Somalia and the protection of maritime resources. Participants also urged the Transitional Federal Institutions to adopt counter-piracy legislation and consider declaring an exclusive economic zone.

¹⁵⁶ UNODC report, 2011

¹⁵⁷ Gakii James, *Kenya's Piracy Prosecutions: The American Journal of International Law*, Vol. 104, No. 3 (2010), pp.416-436

The meeting chaired by the Rwanda's infrastructure Minister in Arusha noted with concern that piracy had impacted negatively on economic developments on East African block. The council instructed the secretariat to develop a proposal on the Establishment of a regional maritime patrol Unit, urged partner states to support the efforts of the IMO, African Union, IGAD, in fighting piracy along the East African States.

The United Nation Convention on The Law of the Sea, classifies piracy as a crime carried out on the high seas. This means that acts of violence that occurs at the ports or territorial waters are not regarded as piracy but armed robbery. All in all The United Nation (UN) has played a very important role in fighting piracy. Through this organization, a number of patrol groups have been sent at the east African coast to curb piracy.

The European Union response includes deployment of naval vessels and surveillance planes to the area under operation. Criminal offences on the coast usually involve perpetrators, victims and witnesses from multiple countries and so cooperation with flag states is needed to curb piracy.

3.5 Regional Cooperation on fighting piracy

The odds that regional East African piracy will disappear without robust response from maritime nations are equally remote ¹⁵⁸while it is impossible to eradicate maritime piracy completely, the threat can be reduced if we broaden efforts to work with regional and international community.

The International Maritime Organization (IMO) has sponsored meetings in Tanzania and Djibouti to reach agreements among the regional states of the Horn of Africa for developing a

¹⁵⁸ Max Boot, *Pirates Then and Now: How Piracy was Defeated in the Past and Can be Now*. Council of foreign Relations,(2009), Vol.88, No. 4 pp.94-104

treaty against piracy in the western Indian Ocean.¹⁵⁹ According to Kelegame, The Indian Ocean Rim association For Regional Cooperation (IOR-ARC) had 14 countries as members that had formed an organization whose aim was to become a stronger economic grouping.¹⁶⁰ The organization could not become very strong as other global issues that piracy interfered with its operations. Since the organization had focused on economic issues and not security, very little was therefore achieved.

Maritime crimes have increased which has opened avenues for maritime security cooperation to maintain maritime order. International efforts to support piracy in the region have generally taken the form of supplying naval forces to detect and interdict private attacks. However, long term suppression of piracy in the region requires that government take over responsibility for serving their own coastline piracy.¹⁶¹ East Africa, having noted a dramatic reduction of piracy in south east Asia, as a result of regional cooperation, agreement, decided to begin implementing a similar cooperation that could coordinate anti-piracy efforts however, this has been effective due to lack of resources.

Various States have signed the IMO-led Djibouti Code of Conduct, namely, Eritrea, in November 2010, and the United Arab Emirates, in April 2011. This brings the total number of signatories to 18, including Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Jordan, Kenya,

¹⁵⁹Kraska J, *Fighting Piracy; The Pen and the Sword*, World policy Journal Sage publications, 2008 pp.47-52.

¹⁶⁰Kelegame S, *Indian Ocean Regionalism: Is there a future?* Economic and political Weekly, Vol.37 No.25 (2002) pp.2422-2425.

¹⁶¹Kraska J, *Developing Piracy Policy for the National strategy for Maritime Security*, Legal Challenge supra note, Vol. No. 311(1995), pp.369-370

Madagascar, Maldives, Mauritius, Oman, Saudi Arabia, Seychelles, Somalia, Sudan, United Arab Emirates, United Republic of Tanzania and Yemen.¹⁶²

Progress has been made on all aspects of the implementation of the Djibouti Code of Conduct, which is largely funded and administered through IMO. IMO has delivered training on maritime situational awareness to staff of the information-sharing centres and conducted regional workshops. A regional programme for operational maritime law enforcement training is being developed in partnership with NATO and the European Union. The information-sharing centres became operational in early 2011, and are now linked to all 18 Djibouti Code signatory States through the web-based information exchange network.¹⁶³

In Tanzania, maritime situational awareness is enhanced through the upgrading of the coastal radar and automatic identification system, linked with the Tanzanian navy and the Dar es Salaam maritime rescue coordination centre. IMO, together with UNODC, and with the participation of the Office of Legal Affairs of the United Nations Secretariat, conducted initial workshops to develop a multi-agency approach to maritime law enforcement in Djibouti and Nairobi as part of a larger programme to foster a cross-agency environment necessary to deliver effective maritime security. The African Union, COMESA, the East African Community (EAC), the Economic Community for West African States (ECOWAS), the Intergovernmental Agency on Development (IGAD), the Indian Ocean Commission, and the Southern African Development Community (SADC) continued to keep matters related to piracy on their agenda.

¹⁶²Deane-Peter Baker: African Security Review, September 2009

¹⁶³Ibid

Ministers from the Eastern and Southern Africa and Indian Ocean region adopted a regional strategy and a regional plan of action for maritime security at the second regional ministerial meeting on piracy and maritime security in the Eastern and Southern Africa and Indian Ocean region, held in Mauritius in October 2010. The strategy provides for a regional framework to prevent and combat piracy, and promote maritime security through a three-pillar approach. This would involve: (1) the development and implementation of a Somalia inland action plan to counter and prevent piracy; (2) encouraging States in the region to prosecute pirates with the financial and technical support of the international community; and (3) strengthening regional States' capacities to secure their maritime zones. The regional plan of action also includes information exchange, cooperation, joint action and capacity-building measures. It was decided that an interregional coordination committee consisting of COMESA, EAC, IGAD, the Indian Ocean Commission, SADC and the European Union would serve as the secretariat of the regional coordination mechanism to support the implementation of the plan. SADC defence ministers held an extraordinary meeting in Pretoria, on 25 July 2011, at which a regional anti-piracy strategy was adopted and a task force formed comprising of navy commanders from Tanzania, Mozambique and South Africa.

The task force is expected to establish a zonal centre in South Africa to coordinate information and intelligence on piracy. SADC countries were encouraged to strengthen regional and domestic legal frameworks for the arrest, the prosecution and the imprisonment or the repatriation of pirates. The importance of these measures, together with sharing of intelligence and the ratification of relevant international maritime treaties, was emphasized, given that the waters of the SADC region fall outside of the international military maritime operations being

conducted off the Horn of Africa. At a meeting held in Dar es Salaam on 10 December 2010, East African regional States supported the creation of regional post-release joint investigation teams. Through collaboration between the South African police and INTERPOL, a vessel released by Somali pirates in April 2011 was jointly investigated, leading to the recovery of a large quantity of evidence that is still being analysed.

Chalk, observes that on 18 and 19 April 2011, the United Arab Emirates, together with a private port company, held a high-level international conference in Dubai that highlighted the importance of public-private partnerships in the fight against piracy. Participants agreed that piracy could be fought only through a comprehensive strategy that also took into account the root causes and the serious humanitarian and economic aspects of maritime piracy.¹⁶⁴ The Government of Seychelles hosted a high-level international piracy conference on 7 and 8 September, which focused on better implementation of the laws of the sea, political support from international organizations and national Governments, and capacity-building in coastal States.

3.6 Additional efforts by Member States

The efforts made by the multinational coalition forces are complemented by individual activities conducted by Member States off the coast of Somalia. China, India, the Islamic Republic of Iran, Japan, Kenya, Malaysia, Saudi Arabia, South Africa and Yemen have deployed naval ships and/or aircraft to combat piracy in the region. In varying degrees of coordination with the coalition forces, their vessels have escorted hundreds of merchant ships; provided close protection for designated merchant vessels, including for vessels released by pirates; conducted rescue operations for vessels in distress; and confiscated large quantities of weapons and other

¹⁶⁴ Chalk P, *Piracy off the Horn of Africa: Scope, Dimensions, causes and Responses, and Cooperation*(2011) pp.88

contraband. China, India and Japan have also agreed to carry out more effective coordination by establishing a convoy coordination working group as part of the Shared Awareness and Deconfliction mechanism.¹⁶⁵

3.7 Conclusion

For the last five years, the world has witnessed maritime piracy attacks of the tremendous proportions, which involved thousands of victims. A number of piracy attacks have been reported along the east African coast and these attacks have been related to Somali piracy. As outlined in this study, there were a number of piracy incidences that shocked the world. Despite the fact that there have been naval patrols along the coast, pirates have been using different forms of attacking and hence making it difficult for guardians to protect the ships. The ships sailing along the east African coast have been exposed to various risks including loss of lives. The study has therefore shown some of these risks that the ships and the crew are exposed to.

As noted earlier, while many people believe piracy to be something daring and magical as depicted through Disney movies, the reality is that piracy is real and ever growing threat to seafarers. To fight piracy at the east African coast, there should be joint effort of individual governments and international community. International community should focus in helping the nation build a functional political system as proposed by new world report. It is true that East African coast piracy displays different characteristics from other forms of contemporary piracy: this is also true for the motivation underlying east African pirate attack. The attacks are motivated by the availability of offenders and targets that are not protected by the capable

¹⁶⁵United Nations Security Council: Report of the Secretary-General pursuant to Security Council resolution 1950, (2010)

guardians. The study has looked at some of the guardians that include naval ships from United States, European Union and even patrols offered by Regional states. Piracy still continues to be a menace because of lack of coordination among the bodies and also lack of finances.

CHAPTER FOUR

PIRACY, MARITIME SECURITY AND ECONOMIC IMPLICATIONS ON THE EAST AFRICAN COAST: A CRITICAL ANALYSIS

4.0 Introduction

This chapter offers a critical analysis of piracy, maritime security and its economic implications in east Africa as examined in the last chapters. It also presents some of the emerging issues that include economic implications of piracy on the east African coast as outlined in the study.

Chapter one laid down the format and gave the theoretical framework that guided this study, in exploring the root causes of piracy along the east African coast. It is also through Cohen and Felson theory of routine activity that this analysis has undertaken. They argue that for any crime to take place, three elements must converge; that is motivated offender, a suitable target and the absence of a capable guardian. It therefore goes without saying that pirates off east African coast have been motivated by the ransoms that they get from the victims. It is estimated that ransom payment from ship owners or insurers totals about 100m dollars per year making piracy one of the most lucrative activity in the world. A suitable target refers to the crew or commercial ships that always carry expensive commodities like oil. From the study the issue that has come out clearly is that lack of guardian that is the patrols that are supposed to provide security to the ships has contributed to persistence of piracy. However the situation in east Africa shares a number of characteristics with a spate of pirate attacks perpetrated roughly a decade ago on vessels traversing the Strait of Malacca. Pirates and armed robbers have taken advantage of a narrow channel of the Suez Canal, heavily used in ocean fairing commerce.

Chapter two gave an account on how every coast has been infested by pirates. Colonel John Biddulp, a retired British army officer noted that piracy has been there since time in memorial and in fact it has been far most serious problem. What is different in history is that piracy has changed in nature and location. It has been dynamic and more sophisticated in its structure. It has been sophisticated and brutal enterprise that ranges from petty thieving with machetes to well organized activities of criminal organizations. Anderson observes that piracy has been global in its incidence and sometimes global in its structure, a fact that perhaps explains why piracy has been persistent along the East African Coast.

Chapter three presented evidence of piracy along the east African coast that has happened as a result of fragile and weak state of Somalia. The study revealed that the ships that have been hijacked at the east African coast have been done by Somali pirates. The chapter highlighted the variations of piracy and presented an overview of the risks that the vessels are exposed to as they sail along the east African coast. The chapter also discussed the efforts put by regional and continental bodies in fighting piracy.

Chapter five gives a summary of the findings of the whole study, the conclusions and also Recommendations. The study has shown that piracy is an organized crime that will need collective responsibility of the actors to suppress it.

This study gives an analysis of causes of piracy. Piracy occurs due to the potential gains from the crime. A motivated offender with weapons, funding and satellite cell phones, will have his or her motivation increased. A victim on the other hand who is unaware of the danger becomes

more appealing target. There are also other underlying and complex causes of piracy that are summarized as political and socio- economic. Vaggs explains that, piracy corresponds to socio economic, cultural and political situations. Pirates along the east African coast have been involved in piracy due to the injustices they suffered. Some of these injustices might have led to the formation of The Indian Ocean Rim Association for regional Cooperation whose aim was to liberate countries that were disadvantaged economically.

Piracy at the east African coast has revealed the following issues;

Anyone can become criminally motivated if the right opportunity for crime oppresses itself. Crime activities at the east African coast have been created when motivated offender intersect with suitable target in the absence of capable guardians. The study therefore, looking at the causes of piracy concludes that piracy has been rampant due to the three elements of crime. There are also other underlying multiple and complex causes of piracy that ranges from socio – economic and political and to some extent cultural factors. Massive increase in commercial maritime traffic combined with large number of ports around the world has provided pirates with an almost limitless range of tempting high pay offs targets.¹⁶⁶

That security at the Indian Ocean and more specifically East Africa coast has been difficult as it is recognized that different security needs of various communities or countries concerned vary greatly. Patterns of behaviour by people or organization also contribute significantly to both the volume and the type of crime found in any society.

¹⁶⁶ Chalk Peter, The Maritime Dimension of International Security: Terrorism, Piracy and Challenges for the United States ,RAND Corporation 2008 pp. 263

The other emerging issue is that, the fact that seas and ocean's resources and rich trade routes are historically important to a region makes insecurity self-evident. In the maritime sphere, security impacts on imports and exports, fishing, trade and the environment of the east African coast.

4.1 Economic Implications of maritime piracy on the EA coast

The study has shown that maritime piracy poses well-known economic threats around the Indian Ocean today. The various companies shipping the merchandise through Somalia as they dock at the East African Coast have been at risk. Included in these risks are damages to infrastructure of the 195 countries in the world. This section presents an overview of the risks that the vessel are exposed to and eventually discuss the overall cost of piracy as found from the reviewed literature.

“In today's economy, the oceans have increased importance, allowing all countries to participate in the global marketplace. More than 80 percent of the world's trade travels by water and forges a global maritime link.”¹⁶⁷

Somalia's locality citizens are able to import and export commodities easily, thus providing revenue to rebuild other necessary infrastructures. With the Gulf of Aden and the Indian Ocean surrounding the country, Somalians were able to build a total of four seaports for transporting and selling their goods. With the means of maritime access in place, Somalia earns a gross domestic product (GDP) value of approximately \$5.6 billion. Regrettably, these waters are also considered home to many pirates. They attack all types of ships sailing or docking in these areas, stretch to east African Coast and have been claimed to be some of the most dangerous waters in the world.

¹⁶⁷ George W. Bush, The National Strategy for Maritime Security, (September 2005): 1.

From the study, it is clear that the cost of piracy is difficult to ascertain because sometimes the information given by owners is not accurate.¹⁶⁸ There has been spectacular increase of piracy that has worried the world and especially the East African Coast. In 2006, the Secretary General of the United Nations, Ban Ki-moon, reported to the Security Council that piracy had had an immense impact on the economies of East Africa especially when international trade routes are threatened. There has been notable increase of ransom payment which has even been estimated to have doubled the value paid to pirates. This includes the cost of negotiations, psychological trauma, counselling, repair to ship damage, and physical delivery of the ransom. This high risks at the Indian Ocean has led to high insurance and premiums,¹⁶⁹ slow vessels that usually are at risk of piracy attack, avoid those zones by re-routing the ship which again becomes very expensive as the owners have to pay for the additional extra days to a journey which eventually reduces a vessels annual voyage and delivery capacity¹⁷⁰. Ship owners may opt to fit their ships with security equipment or personnel which is also very expensive¹¹⁹

Kenya and Yemen are among the countries that have sent their navies to protect the Indian Ocean water which has proved to be expensive. Recently, Kenya also sent its military forces to Somalia to pursue the Al Shabaab terrorist group that is believed to be part of wider group of Al Qaeda. This was in response to kidnappings of the locals and visitors inside Kenya. The cost of prosecution cannot be underestimated either¹⁷¹. Under universal jurisdiction, any state can prosecute crime of piracy regardless of whether they have a direct nexus or not¹²⁰.It was on this

¹⁶⁸ Kraska J, and Brown W, *The Pirates of the Gulf Of Aden: The Coalition is the Strategy*, Stanford Journal of International Law,(2009), pp.282

¹⁶⁹Chalk Peter, *The Maritime dimension of International security; Terrorism, Piracy, and Challenges For United States*. (The Rand Institute, 2008) pp.14-19.

¹⁷⁰ Ibid.

¹⁷¹ Bowden Anna, *The Economic Cost of Maritime Piracy* (Working paper,2010)

basis perhaps, that Kenya and United Kingdom signed a memorandum of understanding for Kenya to prosecute pirates in 2008, and United States in 2009 following an increasing trend of captured pirates.¹⁷² The prosecution has left the country even more vulnerable to the attacks that have eventually made it not want to bear more burden than its share.

In the Caribbean for example, piracy originated in and was fuelled by old world rivalries. In the nineteenth century, piracy was indirectly stimulated and eventually suppressed by the economic and technical changes that were associated with the British industrial revolution.¹⁷³ Predation on merchant shipping in the Mediterranean Sea in early modern times was sustained not simply by ideological animosity and individual greed but also by economic rivalry between European nation States.¹⁷⁴

Alfred. Rubin, in the nineteenth century argues that some societies stigmatized as having been piratical were merely claiming or exercising a historical right to levy taxes on passer-by. When commerce was intense any ship that did not pay taxes, was captured and its cargo confiscated and the crew enslaved¹⁷⁵. British legal decision denied Borneo dikes a jurisdiction of their own to commerce in waters that they claimed as part of their territory. However, the approach raises questions on the origin and justification of such levies.

¹⁷²Kraska James, *Contemporary Maritime piracy: International Law, Strategy, and Diplomacy at Sea*, Santa Barbara, Greenwood Publishing group 2011, pp.670.

¹⁷³ J. L. Anderson, *Piracy and World History: An Economic Perspective on Maritime Predation* (La Trobe: University of Hawaii Press,1995)pp.179

¹⁷⁴ Ibid.

¹⁷⁵ Alfred h. Rubin, *The law Of Piracy* (New Port, 1988) pp.305-307.

Most of the literature on piracy and maritime security has shown that the total amount a company can expect pay as ransom is anywhere between \$283.6 million to \$639.1 million. Making piracy one of the most lucrative activity in the world. The most recent hijacking involved a *MV Faina* which was hijacked loaded with military equipment's worth 30M US dollars. The ship and its crew were hostage for nearly six months until release in February, 2009 after a ransom of 3.2m dollars was paid.

Piracy has also affected the fishing activity which has declined without mentioning the foreign investment which has been reduced due to the reduction of the tourism industry. Cruise ships have been avoiding the port of Mombasa. According to Kenya Tourism Board, between January and April 2010, tourism industry declined by 95%. The impact of tourism in Kenya can be linked to reduction of cruise liner ships that docked at the coast. According to the report released by Inchcape Shipping Services based in East Africa, in 2008, a total of 35 cruise ships called at Kenyan Ports. The number has since reduced to zero.

A 2011 report by Oceans beyond Piracy (OBP) suggested that the indirect costs of piracy were much higher and estimated to be between \$6.6 to \$6.9 billion, as they also included insurance, naval support, legal proceedings, re-routing of slower ships, and individual protective steps taken by ship-owners.¹⁷⁶ Another report from 2011 published by the consultancy firm Geopolicity Inc. investigated the causes and consequences of international piracy, with a particular focus on such activity off the coast of Somalia and East Africa. The paper asserted that what began as an attempt in the mid-1990s by Somali fishermen to protect their territorial waters has extended far beyond their seaboard and grown into an emerging market in its own right. Due to potentially

¹⁷⁶Gill, Sharon (20 January 2011). "Maritime Piracy Costs Global Community 12 Billion a Year."

substantial financial rewards, the report hypothesized that the number of new pirates could swell by 400 persons annually, that pirate ransom income could in turn rise to \$400 million per year by 2015, and that piracy costs as a whole could increase to \$15 billion over the same period.¹⁷⁷

According to a 2012 investigative piece by the Somalia Report, the OBP paper and other similar reports that attempt to calibrate the global cost of piracy produce inaccurate estimates based on a variety of factors. Most saliently, instead of comparing the actual costs of piracy with the considerable benefits derived from the phenomenon by the maritime industry and local parties capitalizing on capacity-building initiatives, the OBP paper conflated the alleged piracy costs with the large premiums made by insurance companies and lumped them together with governmental and societal costs.

The report also exaggerated the impact that piracy has had on the shipping sector, an industry which has grown steadily in size from 25,000 billion tones/miles to 35,000 billion tones/miles since the rise of Indian Ocean piracy in 2005. Moreover, the global costs of piracy reportedly represent a small fraction of total maritime shipping expenses and are significantly lower than more routine costs, such as those brought on by port theft, bad weather conditions or fuel-related issues. In the United States alone, the National Cargo Security Council estimated that between \$10–\$15 billion were stolen from ports in 2003, a figure several times higher than the projected global cost of piracy. Additionally, while the OBP paper alleged that pirate activity has had a significantly negative impact on regional economies, particularly the Kenyan tourism industry, tourist-derived revenue in Kenya rose by 32% in 2011. According to the Somalia Report investigation, the OBP paper also did not factor into its calculations the overall decline in

¹⁷⁷Owen, Jonathan, "*The Economics of Piracy*". *Geopolicity* (London: The Independent)(2011).

successful pirate attacks beginning in the second half of 2011, a downward trend largely brought about by the increasing use of armed guards.¹⁷⁸

Many believe that the impact piracy has on a country's economy, is mainly felt regionally, i.e., places such as Somalia, Nigeria, Indonesia, Tanzania, India and Bangladesh.¹⁷⁹ Somalia has a tactical advantage in the way they are able to become such a dominant figure in the piracy business. The coastline of Somalia is thirty-three hundred- kilometres (approximately 2,051 miles) and it borders one of the busiest and major trade routes in the world, the Gulf of Aden. The Gulf of Aden is the first step in which twenty thousand ships pass each year to go to and from the Suez Canal. Not to mention, approximately seventeen tankers carrying in the region of 6.3 million barrels of crude oil and petroleum products transit the gulf each day. This does not include the close to 30 percent of Europe's oil and gas that passes through the gulf.¹⁸⁰

The study has noted that the Gulf of Aden is one of, if not the busiest waterway in the world. Nearly 12 percent of the world's petroleum passes through the Gulf of Aden.¹⁸¹ It is extremely hard to determine the exact impact piracy has on the world economy. "There is no definitive breakdown of the true economic cost of piracy, either in absolute or relative terms."¹⁸² There have been many different figures thrown around predicting the approximate range of money,

¹⁷⁸Venetia Archer, Robert Young Pelton. "Can We Ever Assess the True Cost of Piracy?"

¹⁷⁹ Peter Chalk, Laurence Small man, Nicholas Burger, "Countering Piracy in the Modern Era," National Defence Research Institute (2009): 2.

¹⁸⁰Ndumbe J. Anyu and Samuel Moki, *Africa: The Piracy Hot Spot and Its Implications for Global Security*, Mediterranean Quarterly, vol. 20 No. 3 (Summer 2009) pp. 103.

¹⁸¹ National Security Council, *Countering Piracy off the Horn of Africa: Partnership & Action Plan*, (December 2008) pp. 4.

¹⁸² Peter Chalk, Laurence Smallman, Nicholas Burger, *Countering Piracy in the Modern Era*, National Defence Research Institute (2009) pp. 2.

which has been lost due to this growing issue. This spectrum is anywhere from \$1 billion to \$50 billion, with the later value being way off the mark.¹⁸³

Several analysts believe the allocation of the world's resources used to combat the growing threat of piracy is not being utilized in the right manner. Piracy has not been declared, nor is considered a major economic threat; yet there are over 14 international navies dispatching ships to the Horn of Africa to combat these pirates. With the estimation of a daily operating cost per ship to be around \$50,000 a day, it does not appear the cost to combat this problem outweighs the impact the pirates have on the global economy.¹⁸⁴ This means that countries should be willing to put forth a financial effort towards military and diplomatic operations, focusing on a primary goal of ending or severely decreasing the threat of maritime piracy. Somali pirates make upwards of a couple million dollars in ransom money for each successful commercial vessel takeover. It does not seem countries around the world are taking the maritime piracy threat seriously when they are not even spending a third of what the pirates are making in ransoms to patrol the high seas. However, Boot notes that, the US and other naval forces stationed at the east African coast have not been given the kind of robust rules of engagement that are used in war zones example Iraq¹⁸⁵. Troops cannot just shoot armed enemy and so it becomes difficult to handle armed pirates that disguise themselves as fishermen.

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ Max Boot, *Pirates, Then and Now: How Piracy was Defeated in the Past and be Now*, Council of Foreign Relations , Vol. 88 No.34 , (2009), pp. 94

Another important factor in addressing economic concerns in relation to piracy is the cost of defensive measures. An example of defensive measures include hiring private security to sail with the vessel or installing defensive equipment such as the Long Range Acoustic Device (LRAD). The LRAD is a non-lethal defensive measure which emits a high frequency noise which can disorient and cause temporary loss of hearing for would be assailants.

The LRAD can also play warning messages in various languages. The Gulf of Aden and the Red Sea saw a 123 percent increase in pirate attacks from 2007-2008.¹⁸⁶ Ships transporting goods to and from the United States have been attacked in these waters. This makes piracy a global concern. If a ship were to fall under attack here, the financial obligations fall to the flag state of the vessel, various states of nationality of the seafarers taken hostage, regional coastal states, owner states, cargo owners, or destination states.¹⁸⁷ Attacks here can cause environmental damage as well and eventually cause an increase in vessel operating costs to provide sufficient support and defence.¹⁸⁸ According to Stephanie Hanson, Council on Foreign Relations, “there is no quantitative research available on the total cost of global piracy.” Some analysts suggest the cost is close to \$1 billion a year, while others claim losses could range as high as \$16 billion.

Not only is there a financial cost incurred from a maritime pirate attack, there is also the tragic human cost which cannot be overlooked. “Piratical attacks off the Horn of Africa constitute a

¹⁸⁶ Matthew Chambers, *“International Piracy and Armed Robbery at Sea,”* RITA Bureau of Transportation Statistics: Special Report (April 2010) pp. 1.

¹⁸⁷ National Security Council, *“Countering Piracy off the Horn of Africa: Partnership & Action Plan,”* (December 2008): 4.

¹⁸⁸ Matthew Chambers, *“International Piracy and Armed Robbery at Sea,”* RITA Bureau of Transportation Statistics: Special Report (April 2010) pp. 3.

threat to the lives and welfare of the citizens and seafarers of many nations.”¹⁸⁹ All it takes is one maritime attack to question seafarers’ confidence in the security in the global shipping lanes. “A single piratical attack often affects the interests of numerous countries, including the flag State of the vessel, various States of nationality of the seafarers taken hostage, regional coastal States, owner States, and cargo owner, transshipment, and destination States.”¹⁹⁰

4.2 Persistence of piracy in the EA coast despite efforts to curb incidences

Levinson observes that early accounts of piracy indicate that the Phoenicians, Greeks, Barbarians and Romans were no stranger to piracy both as offenders and victims. Opportunities for crime depended upon external forces to bring about balance.¹⁹¹ The study has therefore shown that maritime piracy is an age-old phenomenon that has posed challenges for mariners as long as ships have gone to sea. In ancient times, Julius Caesar was captured by pirates and held for ransom. In more recent times, but still in the historical past, peaks in piracy included the Barbary pirates, who operated from North Africa, in the 17th and 19th centuries. These pirates challenged merchant shipping from the Spanish Main (Spanish colonies in the Americas) to the Barbary Coast. In Asia, the famous “pirate queen”, Cheng I Sao, commanded a fleet of hundreds of vessels.¹⁹² Today, in several strategic “choke points”, like the Malacca Straights, and Suez Canal, large, slow-moving ships are still easily approached and sometimes boarded by armed pirates in much smaller agile and quicker boats.¹⁹³ As far as the prevalence of maritime piracy is

¹⁸⁹ National Security Council, “*Countering Piracy off the Horn of Africa: Partnership & Action Plan*,” (December 2008): 4.

¹⁹⁰ National Security Council, “*Countering Piracy off the Horn of Africa: Partnership & Action Plan*,” (December 2008) pp. 4.

¹⁹¹ David Levinson, *Encyclopaedia of Crime and Punishment*, Vol. 1(2002), pp.1143

¹⁹² Nincic, D. 2009. *Maritime piracy in Africa: The humanitarian dimension*. African Security Review Vol. 8 No.3(2009) pp.1

concerned, the period 2008 to 2009 will be remembered for a surge in piracy not seen in generations. Piracy and armed robbery have threatened vital sea lines of communication and trade interest, and the severity of the crisis has compelled relevant role-players in the international community to actively pursue solutions to the problem.

Until the alarming increase in attacks and hijackings in the East Africa coast waters in recent years were reported, few people were actually aware that maritime piracy had continued into the current era. Since early 2008, Somali pirates gained worldwide attention and interest. Of the almost 300 ships that were attacked in 2008, 111 were around the Horn of Africa and in the Gulf of Aden.¹⁹⁴ Since 2009, attacks continued and a number of ships from various nations were seized. In dramatic fashion, pirates use fast-moving skiffs to pull alongside their prey and scamper on board with ladders or grappling hooks. Once on board, they hold crews at gunpoint until a ransom is paid, with amounts varying normally between US\$1 million and US\$2 million, but even as high as US\$4 million.

Christopher argues that towards the end of 2008, the dramatic standoff between US naval warships and Somali pirates demanding a US\$20 million ransom for a hijacked Ukrainian ship loaded with Russian tanks specifically highlighted and focused the world's spotlight on piracy in the Gulf of Aden.¹⁹⁵ The hijacking south east of Mombasa, Kenya, of the *Sirius Star*, a Saudi super tanker carrying two million barrels of oil, also towards the end of November 2008, furthermore stressed the prevalence and danger of piracy around Africa's east coast. In this particular case, a ransom of \$25 million for the release of the vessel was claimed, although an

¹⁹⁴Wilson, B. 2009. *Effectively confronting a regional threat: Somali piracy. Conflict Trends* 1:1.

¹⁹⁵Christopher D, *Somali Piracy and Terrorism in the Horn of Africa*, Scarecrow press Maryland, 2012,pp.43-48

amount of \$3 million was eventually paid to the pirates.¹⁹⁶ Another incident that specifically highlighted the reality and dangers of piracy on the east coast of Africa occurred in mid-April 2009 when Captain Richard Phillips of the *Maersk Alabama* was dramatically rescued by US Navy SEALs during which mission three Somali pirates were killed.¹⁹⁷

Generally, African waters harbour important seaways of growing maritime insecurity, namely the coast off the Horn of Africa and the Gulf of Aden (east coast of Africa), and the Gulf of Guinea (west coast of Africa). It should also be noted that until recently, maritime piracy has been largely prevalent in Asia, but in 2007 the number of pirate attacks in Africa surpassed those in Asian waters. Attacks have been largely concentrated in waters off the coast of Nigeria and Somali, but are not limited to those areas.¹⁹⁸ Of special importance is that maritime insecurity in general, and in African waters in particular, has been growing at a disturbing rate and threatens the global flow of goods and services across the world's shipping lines. In this regard, globalisation and maritime trade show a close interface since the bulk of international goods and services – more than 80 per cent – travel by sea.¹⁹⁹ In view of this, Potgieter rightly argues that pervasive maritime insecurity is a significant threat to security in Africa, to its development, to the shipping around Africa's coast and to maritime resources.²⁰⁰

The phenomenon of maritime piracy along Africa's coastal areas is indeed of great strategic and political-economic interest – specifically since globalization and maritime trade show a close

¹⁹⁶ *Ibid*

¹⁹⁷ *Ibid*

¹⁹⁸ Corbett P, *A Modern Plague of Piracy*, Offshore and maritime publication,(2009), pp.34-35

¹⁹⁹ Vreÿ, F. 2009. Globalization and maritime economics: Securing the maritime landscape. *Strategy Insights* 17(9): 1.

²⁰⁰ Potgieter, T, *The lack of maritime security in the Horn of Africa: Scope and effect*. Strategic Review for Southern Africa Vol.1 (2009) pp.66

interface. This makes the sea lanes off the Horn of Africa and the Gulf of Aden, the utmost importance as much of the flow of maritime traffic along the African coast travels through these busy lanes or regions.

According to Onuoha, pirate attacks have increased both horizontally and vertically around the Somali coast, extending to east African coast. Horizontally, pirates have acquired weaponry and high-tech gadgetry that put them in a position where they are able to launch attacks as far as the Gulf of Aden and deep into the Indian Ocean. The weapons that they use range from automatic weapons to rocket-propelled grenades, while they also rely on global positioning systems and satellite phones to carry out their attacks. Their mode of operation often involves the use of large “mother ships” (mostly converted fishing vessels), which follow the targeted ship and on approaching the target, they dispatch smaller speedboats that move in closer to enable the pirates to board the ship. Vertically, attacks have increased in the sense that all kinds of vessels, including cargo vessels, bulk carriers, tankers, fishing vessels, sailing yachts and tugboats are targeted. Even vessels from the UN’s World Food Programme have not been spared from pirate attacks.²⁰¹ Against this background, Wambua states that previously vessels keeping at least 50 nautical miles from the coast were considered safe from pirate attacks, but the range has increased to at least 200 nautical miles.²⁰²

In view of the above, shipping, oil and insurance firms have been impacted along the east coast of Africa by a significant and long-term increase in pirate attacks mounted against off-shore

²⁰¹Onuoha, F, *Sea piracy and maritime security in the Horn of Africa: The Somali coast and Gulf of Aden in perspective*. African Security Review Vol.18 No.3, (2009) pp.36.

²⁰²Wambua, P.M, *Enhancing regional maritime cooperation in Africa: The planned end state*. African Security Review Vol.18 No.3 (2009) pp. 49.

platforms, tankers and cargo vessels travelling through the shipping lanes. Such attacks have amounted to global losses of up to US\$16 billion annually.²⁰³ Piracy off the east coast of Africa obviously has some serious implications for international trade. The global merchant shipping supply line was impacted through a steep rise in insurance premiums. Several companies even suspended transits through the Suez Canal, rather sending their ships around the Cape of Good Hope, thereby incurring an additional 10 to 14 days of transit time. Revenue for the Suez Canal dropped from US\$426 million in 2007 to US\$391 million in 2008 as a result of piracy, in addition to the worldwide financial meltdown.²⁰⁴

Historically it should be noted that attacks on vessels off the east coast of Somalia is not a new phenomenon, but a more structured form of piracy that emerged in the mid-1990s.

In some instances, fishermen got dismayed at the inability of the central government to protect their country's fishing resources and started to take matters into their own hands. They then realized that robbing foreign vessels was a lucrative way of making up for lost income.²⁰⁵ In other instances, pirates claimed that they were the authorized "coastguard" patrolling the 200-nautical-mile exclusive zone of Somalia and east Africa thus were charged with the responsibility of protecting Somalia's fishing resources.

Wilson observes that Fishing vessels were attacked for purportedly poaching in Somali waters and the Indian Ocean with ransoms demanded for the release of the boats and their crewmen.²⁰⁶ Early in 2006, the "Somali coastguard" captured nine Yemeni fishing boats and

²⁰³International Security Network. *Private security takes to the sea. Op. cit.*

²⁰⁴Wilson, B. 2009. *Effectively confronting a regional threat: Somali piracy.* Conflict Trends 1:1.

²⁰⁵Nincic, D., *Maritime piracy in Africa: The humanitarian dimension.* African Security Review (2009) pp.18.

²⁰⁶Wilson, B., *Effectively confronting a regional threat: Somali piracy.* Conflict Trends (2009) pp.

claimed that they were illegally fishing in the waters off Somaliland. Taiwanese and South Korean fishermen were lured into Somali waters in pursuit of lucrative yellow-fin tuna, which likewise led to incidents of piracy, but from the Somali side it was claimed that they were merely protecting their own fishing resources and that the perpetrators were, therefore, “fined”.²⁰⁷ This eventually turned into a situation of Somali attacks on whomever they came across with no differentiation between nationalities and without bothering to know where the ships were heading to. It thus led to an organized crime that has impacted Somalia and east African coast countries negatively. The significance of attacks became evident when a Dutch-operated container ship outmanoeuvred pirates attacking it with rocket-propelled grenades 450 miles east of Dar es Salaam on the open sea on 7 December 2008.²⁰⁸

4.3 Effects of modern maritime piracy in the East Africa Coast

The effects of maritime piracy can be classified into two categories: Direct and Indirect effects. Direct effects may include robbery and ransom payments due to losses of safe and cash money, losses of ships and cargo and additional pay for crews. Indirect effects are for example security costs incurred in the fight against piracy and higher insurance premiums in the dangerous areas. Because of piracy, shipping companies attract additional costs of transport due to additional security measures. Piracy force shipping to take expensive measures, such as hiring security guards, crew training and defensive equipment; in certain regions, insurance costs can increase due to the threat of piracy. According to Munich Re Group, it is far more difficult for

²⁰⁷Potgieter, T. 2009. The lack of maritime security in the Horn of Africa: Scope and effect. *Strategic Review for Southern Africa* Vol.1 (2009) pp. 69

²⁰⁸Ibid.

the insurers to reduce the incurred loss then for their clients.²⁰⁹ If the insurance companies get aware of a new increase of piracy in some dangerous waters, then it is a fact that the insurance premiums will rise. Shipping companies have insurance, but according to the IMB, kidnap and ransom premiums will rise higher and higher. Today, according to the IMO, US \$1.5 million dollar is estimated for ransom money per attack. A possible effect could be that shipping companies avoid servicing in piracy-prone areas or that they change their steaming routes.

If risks continue in Southeast Asia, shippers may instead sail south of Indonesia to avoid the dangerous region and increase their prices to finance longer routes. Procedures of the IMO change continuously. The official warning today is to sail 250 nautical miles of the East coast of Africa. This will lead to non-optimal economic routes and a price increase of maritime transport.

Luft stated that piracy is especially dangerous for energy markets. Most of world's oil and gas is shipped through the dangerous piracy-prone regions. Targets of piracy attacks include most classes of vessels. Though, when it comes to cargo, chemical product tankers are one of the most interesting targets. In relation with the increased competition in energy markets, this can also have an effect on world's oil price. This could be a dramatic consequence of attacks on oil tankers where pirates pump fuel to their own vessels.²¹⁰ Today, this has become a serious coordinated business at the East of Africa. In the end, the consumer will pay these kinds of additional costs.

²⁰⁹ Munich Re Group (2006) Piracy- threat at sea: A risk analysis. Online: http://www.munichre.com/publications/302-05053_en.pdf

²¹⁰ Luft, G. & Korin, A, *Terrorism Goes to Sea*. *Foreign affairs*, Vol. 83, No. 6(2004) pp. 61

According to OECD (2003), pirate attacks against vessels can be used as a political tool to disrupt vessel passage through certain maritime bottlenecks.²¹¹ This is especially true in the case of the strategically important Malacca Straits where most Middle-East oil exports to Asia and most commerce between Asia and Europe pass. Due to fear of bottlenecks and changing steaming routes, it will lower the liability of maritime transport. It could create the need to count with higher inventory levels due to the potential piracy to cause bottlenecks in world's delivery systems.

4.4 Conclusion

It is clear that East Africa Coast piracy displays different characteristics from other forms of contemporary piracy; this is also true for the motivation underlying EA pirate attacks. Piracy emanating from EA predominantly lies on what motivates an offender. Offenders usually choose the victim that requires the least amount of effort.

This is unlike piracy in other nations, where the majority of attacks are motivated by theft, either of crew belongings, ship equipment, cargo, or a combination of these. However seizures for ransom are not unique to Somalia, there have been similar cases in countries such as Indonesia and Nigeria. What is unique about EA is that nearly all of the incidents emanating from EA are motivated by seizure for ransoms.

²¹¹ OECD (2003) Security in maritime transport: Risk factors and economic impact. Maritime Transport Committee (MTC) of the Organization for Economic Cooperation and Development (OECD)

Analysis of the IBM on efforts by the international community to control piracy shows that although these efforts have stepped up since the escalation of piracy in the Gulf of Aden and the Indian Ocean, piracy emanating from EA has not reduced; on the contrary, it has continued to escalate dramatically.²¹² Therefore despite international community consensus allowing for international naval access to the territorial waters and the sovereign territory of Somalia, and a steady increase in the response of authorities' to distress calls from merchant vessels, has continued to grow at an alarming rate since 2008. Moreover, reports suggest that more recent attacks are more threatening. However, from 2011, the number of hijackings dwindled when Kenya's Defence Forces (KDF) entered into Somalia to pursue Al Shabaab, a militia group that was responsible for Kenya's Tourists and citizens hijacking; though many scholars have chosen not to give Kenya a credit for her effort in fighting piracy.

²¹² IMB, *Piracy and Armed Robbery Against Ships*, Annual report, London: ICC, 1999) pp.3

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The United Nations, along with the United States, have been working diligently on determining the correct approach to successfully stopping the threat of maritime piracy. As outlined throughout this chapter, the most successful way to defeat this threat is by a combination of diplomatic and military means. The results will not be noticed overnight. It will take several years to witness any sort of decrease in maritime attacks. The International Maritime Bureau (IMB) keeps an up to date detailed record of each maritime attack that takes place. Since the reappearance in the 1990's of maritime piracy, the recorded number of attacks has varied widely.

This study has revealed that piracy is a real and ever growing threat to seafarers. Further, the findings have shown that piracy has had a large impact not only physically, but financially on society as a whole. Efforts to combat this international problem have fallen short. The use of military forces temporarily suppressed piracy as did diplomatic measures. This further supports the notion that combinations of strong military and diplomatic efforts are needed to effectively combat global piracy.

This paper focused on shedding light on the impact of piracy, and it did just that. In searching for a definitive number in terms of the financial impact of piracy on the globe, it was found that such a number does not exist. Rather, with a great hesitation to report actual pirate attacks for fear of a rise in insurance premiums, companies have made defining the financial impact of piracy a true

challenge. However, what research does provide is the notion that the world's economy cannot function smoothly so long as piracy constantly threatens its security. East African coast imports, exports, fishing and trade has been affected immensely. The research for this study suggests that even though it is difficult to pinpoint the exact economic impact of global piracy, it is obvious that it does have a negative impact worth resolving.

The study observes that a quick review around the globe reveals the maritime piracy in some key locations through isolated vulnerable waters. Incidences of piracy off the coast of Somalia near the Gulf of Aden and East Africa increased dramatically and represented more than a half of total cases of piracy in the world.

What has been a consistent theme throughout this discussion is that in order for counter- piracy effort to be more successful, a more comprehensive approach is required and that is the presence of capable guardian. International navies and coast guards must continue to actively team up with regional partners to conduct maritime operations. Regional law enforcers must also be included on board.

Analysis of the IBM on efforts by the international community to control piracy shows that although these efforts have stepped up since the escalation of piracy in the Gulf of Aden and the Indian Ocean, piracy emanating from Somalia has not reduced; on the contrary, it has continued to escalate dramatically.²¹³ Therefore despite international community consensus allowing for international naval access to the territorial waters and the sovereign territory of Somalia, and a steady increase in the response of authorities' to distress calls from merchant vessels, piracy has

²¹³ IBM, Piracy and Armed Robbery, Against Ships , Annual Report, London :ICC, 1999,pp.3

continued to grow at an alarming rate since 2008. Moreover reports suggest that more recent attacks are more threatening.

Analysis of IBM on information on evasion tactics adopted by vessels under attack found that targeted vessels which used at least four evasion measures have consistently been able to evade boarding by pirates. However even with the industry drafted Best Management Practices (BMP4), which strongly encourages the use of non-lethal evasion measures, it is clear that merchant vessels are not using sufficient evasion measures²¹⁴. In fact, in nearly half the cases attributed to Somali pirates, the vessels do not report using any evasion tactics.

The creation of the CMPD demonstrates the importance of monitoring the changing nature and trends of contemporary piracy. The CMPD has been a valuable tool for uncovering the nature and trends in the past decade, demonstrating that the dominant form of piracy changed in the study decade. Throughout history, piracy morphs over time and place.

The CMPD analysis of the global character and trends of contemporary piracy indicates that while there are different types of piracy in the study period; the dominant form of piracy that has emerged over the last decade is the type emanating from East Africa Coast. This raises a number of questions: What spurred on piracy in East Africa coast – a country with no history of piracy? Why is EA coast piracy different? Why has EA coast piracy escalated in recent years?

²¹⁴ Ibid.

5.2 Recommendations

Based on the research and findings of this study it is suggested that future research in piracy should focus on monitoring global piracy patterns and continue to undertake in depth analysis of the context for the various manifestations of contemporary piracy. The continued monitoring of piracy across the globe along the format of the newly created CMPD will allow a systematic analysis of the manifestations and modus operandi of piracy as it changes in location and nature, allowing a more targeted response to the problem. Ideally the future monitoring effort will be cooperative with agencies which have access to victim reports on piracy, such as the International Maritime Bureau, allowing a better and more consistent quality of data across recorded cases. The United Nations Resolutions of August 2008, encourages all States and regional Organizations fighting piracy and armed robbery at sea to consider creating a coordination centre that will disseminate information relevant to piracy.

Without a consistent, empirical data collection effort and analysis infrastructure, the subtle changes of piracy tactics, nature, and trends remain a best guess. Therefore it is suggested that together with continued collection and cataloguing of piracy data, there is a need for a contemporary piracy typology. Such a typology will assist in targeted response measures based on empirical evidence. No doubt any piracy typology will require periodic updating to maintain its relevance and value as a tool to assist counter piracy responses in light of changes in piracy.

Piracy will never be completely eradicated but through diplomatic and military means the threat can be greatly reduced. The owners of the commercial vessels must continue to report any and all activities of maritime piracy they witness. If they are boarded and requested to make a ransom

payment, the owner of the vessel must report all the details to the IMB. The IMB keeps detailed records of each attack in order to establish trends and assistance in eradicating the threat of maritime piracy. While the overall impact of piracy has yet to be determined, the fact remains that sea piracy, either directly or indirectly, affects citizens on an international level. Although this problem will likely never be completely eradicated, it is necessary, through means of collaborative diplomacy and military forces; to work together internationally in order to decrease the impact maritime piracy has on global society.

The study has shown that Somalia has been the epicentre of piracy in East Africa. Kraska points out that any long term solution to the regions piracy threat requires addressing lawlessness in Somalia.²¹⁵ The region's fight of piracy has been centred on prosecuting pirates and mobilizing naval forces. However, to get to the root causes of the problem in EA, International Community must focus on helping the nation build a functional political system.²¹⁶ The world report on piracy shows that, there must be a paradigm shift from the perpetrators to enablers of piracy to end this menace. Moreover, modern national anti-piracy legislation is needed in regard to questions concerning the establishment and exercise of jurisdiction²¹⁷. National Law might be unclear, untested or even inadequate concerning piracy and the investigation and trail could be complex due to the translational aspects but this should not be seen as an obstacle.

²¹⁵ Kraska James and Brian Wilson, *Fighting Piracy: The Pen and The Sword*, world Policy Journal, Sage Publication Inc.(2008),pp.47-52

²¹⁶ The World Bank, *Ending Somali Piracy: Go After the System Not just pirates*,2013 pp 31-44

²¹⁷ Gakii James, *Kenya's Piracy Prosecutions*, the American journal of International Law, Vol. 104, No. 3, (2010), and pp. 416-436.

Regional cooperation is required especially among the East African States. Sharing of information is a critical element of success. A regional grouping purely based on economic integration without a political agenda example security is difficult to sustain.²¹⁸ An example of this is the Indian Ocean Rim Association for regional Cooperation (IOR) which had 14 members that was formed to strengthen economic grouping but did not put security agenda as a priority. The Regional cooperation should therefore come out strongly on the matters of security and more so piracy in east Africa.

²¹⁸ Kelegame Saman, Indian Ocean Regionalism; Is there a Future? Economic and Political weekly, Vol. 39 No. 23, 2002, pp. 2422-2425

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