Hacettepe University Graduate School of Social Sciences

Department of International Relations

MARITIME PIRACY: CASE OF SOMALIA

Tülay Bozkurt

Master's Thesis

Ankara, 2012

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KABUL VE ONAY

Tülay Bozkurt tarafından hazırlanan "Maritime Piracy: Case of Somalia" başlıklı bu çalışma, 06 Haziran 2012 tarihinde yapılan savunma sınavı sonucunda başarılı bulunarak jürimiz tarafından Yüksek Lisans Tezi olarak kabul edilmiştir.

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06 Haziran 2012

Tülay Bozkurt

ACKNOWLEDGEMENT

First and foremost, I would like to thank to my thesis supervisor, Assoc. Prof. Dr. Özlen ÇELEBI, for her valuable guidance and advice. The supervision and support that she gave truly help me to progress smoothly and complete this thesis. Besides, I wish to express my sincere gratitude to Prof.Dr. Bülent ÇIÇEKLI and Assoc. Prof.Dr. Ali Kemal ÖZDEMIR who were abundantly helpful and offered invaluable assistance, support and guidance during the last phases of my thesis. I also would like to thank to all other esteemed lecturers of the Department of International Relations since this thesis bear on imprint of them.

The special thank goes to my dear husband, Kazım Bozkurt, for his understanding and precious support throughout this period. Having a three-year-old son, this thesis could not have been completed without his backing. Last but not least I wish to avail myself of this opportunity, express a sense of gratitude and love to my friends and my beloved parents for their lifelong support.

ÖZET

BOZKURT, Tülay. *Maritime Piracy: Case of Somalia*, Yüksek Lisans Tezi, Ankara, 2012.

Bu tezin temel iddiası üçüncü dünya ülkelerindeki azgelişmişliğin eski dünya için sözde asimetrik tehditler yarattığıdır. Bu topraklarda bir zamanlar doğrudan yönetim veya hammaddelerin sömürülmesi şeklinde var olan sömürü geçmişi, üçüncü dünya ülkelerinde deniz haydutluğu da dahil sistem karşıtı güçlerin ortaya çıkmasına neden olmuştur. Bu sömürü mirasının ortaya çıkardığı sonuçları idrak edemeyen eski dünya, sorunların ortaya çıkmasına neden olan temel nedenlere çözüm aramak yerine hala bu tehditleri caydırmakla zaman harcamaktadır. Deniz haydutluğu, bölgeye deniz ve hava kuvvetlerinin yığılması ile veya uluslararası hukuktaki boşlukların doldurulması ile çözülebilecek bir sorun değildir. Deniz haydutluğunun yaygın olarak bulunduğu ülkelerdeki halk etkin bir devlet otoritesinin yokluğu, kötü ekonomik şartlar, açlık ve kötü iklim şartları ile mücadele içindedir. Örneğin deniz haydutluğu faaliyetlerinin en yoğun görüldüğü Somali'nin güneyindeki bölünme, Puntland bölgesindeki belirsizlik ve Somaliland bölgesindeki nispeten sakin durumun yanı sıra, ülkedeki karışıklığı dengelemek için bulunan dış askeri güçler ve birbirini takip eden kuraklığın neden olduğu yaygın açlık ve fakirlik deniz haydutluğunun ortaya çıkmasına neden olan temel problemlerin çözümünün ne kadar zor olduğunu göstermektedir. Bu nedenle tez, deniz haydutluğunu küreselleşme ve sömürü mirasının azgelişmiş ülkeler üzerindeki etkisini eleştirmek amacıyla kullanmaktadır. Az gelişmiş ülkelerde son dönemde deniz haydutluğu saldırılarında görünen artışın arkasındaki sebepleri ararken, karşımıza bu ülkelerdeki temel ihtiyaçların karşılanması ile gelişmiş ülkelerdeki ikincil ihtiyaçların karşılanması arasında bir ilişki çıkmakta ve küreselleşmenin deniz haydutluğu saldırılarına doğru yönelimi ne denli artırdığını görmekteyiz. Tez kapsamında konu ile ilgili metodoloji anlatımı ve literatür taramasından sonra, deniz haydutluğu kavramının temel hukuki çerçevesi çizilmeye çalışılacaktır. Arkasından, deniz haydutluğunun son yirmi yılda neden tekrar yükselişe geçtiği ve çözümü için küresel düzeyde neler yapıldığı anlatılacaktır. Sonraki bölümde Somali'deki deniz haydutluğu, uluslararası tanımlara uymayan bu sözde devletin içinde bulunduğu ekonomik ve politik şartlar ortaya konularak değinilecektir. Son olarak, Somali'de deniz haydutluğu sorununun çözümü için ne gibi önlemler alındığı ve bunların neden başarısız olduğu incelenerek, sorunun tamamen çözümü için politika önerileri verilecek ve bu aşamada uluslararası sorumluluğun altı çizilecektir.

Anahtar Sözcükler

Deniz haydutluğu, Somali, azgelişmişlik, zayıf devlet, uluslararası sorumluluk.

ABSTRACT

BOZKURT, Tülay. *Maritime Piracy: Case of Somalia*, Master's Thesis, Ankara, 2012.

Justice, security and prosperity are indivisible: none of us can fully enjoy them unless we all do.

UK Department for International Development

The main claim of this thesis is that underdevelopment in the third countries creates so-called asymmetrical threats for the old world. The legacy of colonial existence, whether in the form of indirect rule or utilization of raw materials, developed anti-systemic forces, one of which is maritime piracy, in the third world. Unable to perceive the legacy of this colonial existence, the old world still insist on deterrence rather than curing the problem. Piracy cannot successfully be fought by only employing naval vessels and aircraft or by devising new tools to fill the international legal gaps. States of piracy prone areas suffer permanently from lack of efficient state authority, poor economic conditions, poverty and unfavourable climate. For example in case of the state of Somalia, which is one of the most piracy prone areas in the world, its disintegration in the south, uncertainty in Puntland and relative stability in Somaliland, and permanent existence of external military forces to stabilize the country on the one hand and widespread poverty and consecutive droughts on the other hand makes it difficult to successfully target the roots, or incentives, of piracy. Therefore the thesis uses the piracy activities as a method of criticizing the effects of globalization on and colonial legacy in underdeveloped states. In exploring the underlying motivations for the recent surge of piracy off the coasts of underdeveloped states, the thesis identifies a relationship between primary needs satisfaction within underdeveloped states and the satisfaction of secondary interests in developed nations, and explains how globalization may exacerbating the turn toward piracy. After lying down the methodology and a short literature review, the thesis discusses the legal framework for the term of piracy. Next, it considers how piracy has been dealt with at the global level and the reasons for its rise in the last two decades. In the following chapter, the thesis analyses the Somali piracy case by looking at this so called state's which is not consistent with the international definitions, economic and political situation and the measures taken against Somali piracy and the reasons for their failure. Finally policy recommendations will be provided including measures at global and regional level and the extent of global responsibility to overcome the problem of piracy off the Somalia will be questioned.

Key Words

piracy, Somalia, underdevelopment, weak state, international responsibility

CONTENTS

ABBREVIATIONS

AFC	Asian Financial Crisis
AIS	Automatic Identification System
AMISOM	African Union Mission in Somalia
ARF	ASEAN Regional Forum
ARS	Alliance for the Re-Liberation of Somalia
AU	African Union
BIMCO	The Baltic and International Maritime Council
BMP	Best Management Practices
CGPCS	Contact Group on Piracy off the Coast of Somalia
CTF-151	Combined Task Force-151
Djibouti CoC	Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden
DRC	Democratic Republic of Congo
EC	European Commission
EDF	European Development Fund
EEZ	Exclusive Economic Zone
EU NAVFOR	European Union Naval Force
FAO	Food and Agriculture Organization
FOC	Flag of Convenience
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GPS	Global Positioning System
HACGA	Heads of Asian Coast Guard Agencies
ICC	International Criminal Court
ICC-IMB	International Chamber of Commerce, International Maritime Bureau
IDPs	Internally Displaced Persons
IGAD	Intergovernmental Authority on Development
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
INTERTANKO	International Association of Independent Tanker Owners
IOTC	Indian Ocean Tuna Commission
IRC	International Red Cross
IRTC	Internationally Recommended Transit Corridor
ISC	Information Sharing Centre
ISPS Code	International Ship and Port Facility Security Code
IUU	Illegal, Unregulated, and Unreported
JCG	Japanese Coast Guard
K&R	Kidnap and Ransom
KSC	Kenyan Shippers Council
LDCs	Least Developed Countries
LMA	Lloyds Market Association
MCS	Monitoring, Control and Surveillance
MCSBM	Maritime Confidence and Security Building Measure
MSC	Maritime Safety Committee
MSC-HOA	Maritime Security Centre-Horn of Africa
NATO	North Atlantic Treaty Organization
NFD	Northern Frontier District
NGOs	Non-governmental Organizations

OiE	World Organization for Animal Health
PCASP	Privately Contracted Armed Security Personal
PERSGA	Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden
PMAESA	Port Management Association of Eastern and Southern Africa
PSI	Proliferation Security Initiative
RDP	Reconstruction and Development Programme
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery
RMSI	Regional Maritime Security Initiative
RPGs	Rocket Propelled Grenades
SDF	Self Defence Forces
SNM	Somali National Movement
SOLAS	Convention on the Safety of Life at Sea
SPM	Ship Protection Measures
SSDF	Somali Salvation Democratic Front
SUA Convention	Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TFC	Transitional Federal Charter
TFG	Transitional Federal Government
TFP	Transitional Federal Parliament
TNA	Transitional National Assembly
TNG	Transitional National Government
UIC	Union of Islamic Courts
UKMTO	UK Maritime Trade Operations
UN/DPKO	United Nations Department for Peacekeeping Operations
UNCLOS	United Nations Convention on the Law of Sea
UNDP	United Nations Development Program
UNEP	United Nations Programme for the Environment
UNIE	United Nations Independent Expert on Human Rights in Somalia
UNITAF	Unified Task Force
UNODC	United Nations Office on Drugs and Crime
UNOSOM	United Nations Operation in Somalia
UNPOS	United Nations Political Office for Somalia
UNSC	United Nations Security Council
WFP	World Food Programme

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INTRODUCTION

> Today, more than ever before in the history of mankind, everything is interrelated. Therefore the values and the prospects of contemporary civilization are everywhere subjected to great tests. Because of this, the future of the United States or the European Union is being decided in suffering Sarajevo or Mostar, in the plundered Brazilian rain forests, in the wretched poverty of Bangladesh or Somalia. Theoretically, almost everyone now knows this. But how does this knowledge find expression in practical policies? In the practical politics of each one of us?
>
> People today know that they can only be saved by a new type of global responsibility. Only one small detail is missing: that responsibility must genuinely be assumed.
>
> Vaclav Havel, 1994, the then President of the Czech Republic.

The initial euphoria evoked by the end of the Cold War has been systematically replaced by a growing sense that global stability has not been achieved, and has in fact been decisively undermined by transnational challenges, or "grey-area" phenomena. (Chalk, 2008, p. 2) Therefore the end of the Cold War brought with uncertainties and imbalances; end of anti-Western dictators but emergency of modern ones, emergency of new proxy states, expansion of gap between rich and poor both within the nation states and in the world, increased harshness and expansion of capitalism, more production of food and other products but at the same time more poverty and starvation, new opportunities either legal or illegal with more risks due to less predictability.

Besides these, a more global world has allowed for certain modes of political violence to unfold, threatening certain cultures and identities, and acts as a net polluter in the drive for profits and survival in an impersonal world of competition. The phenomenon of globalisation weakens some states while promoting the rise of actors and activities that challenge the "sovereignty" of states. "Traditional state driven threats begin to play second fiddle to dangers that reflect little of the state-versus-state paradigm. Both the aggressors as well as their targets have less relevance to states and their organised militaries, but often function as sub-state units (non-state armed groups with political and non-political agendas) targeting other sub-state units and even individuals. Thanks to easy access to many types of arms, ranging from pistols, light/heavy machine guns, and automatic assault rifles to anti-ship mines, handheld mortars, and rocket propelled grenades (RPGs)" (Chalk, 2008, p. 10-14) as a result of globalisation, armed actors increasingly feature as security threats and simultaneously present difficulties to traditional military forces called upon to contain unfamiliar threats (Vrey, 2010, p. 126).

However, the phenomenon of globalisation pushes also beyond the limits of the natural resources of the world and as Norwegian sociologist Johan Galtung, who pioneered the discipline of peace studies, argued “wars are often over resources” and that the “destruction of the environment may lead to more wars over resources.” Galtung suggests that the scarcity of resources, as a common source of conflict, has reached new dimensions through environmental degradation. Others agree that a shrinking resource base eventually leads to violent conflict when renewable resources such as arable land become scarce. They claim that environmental degradation, scarcity of renewable resources, and population pressures are an increasingly important new source of armed conflict, especially in developing countries. “War may well be the continuation of economics by other means. Small but influential groups thus come to have an economic interest in prolonged conflict. This viewpoint affirms that it can be misleading to associate war with complete collapse or breakdown of an economy” (Webersik, 2008, p. 48). Therefore, the threats of our days can also be interpreted as a reaction against globalisation.

As globalisation drives specialisation and the diffusion of production, the more vulnerable the international economic system becomes to threats and disruption. The growing globalisation nexus with economics and trade inherently draws more states into its fold and this goes for the maritime side as well given that sea based trade offers the all-important lowering of costs of international transportation through shipping. Growing numbers of actors (state and non-state) hold important stakes in the shipping industry as opposed to the national profile of earlier times (Vrey, 2010, p. 127).

The maritime domain is particularly conducive to many challenges for a more and more globalised world because of its vast and largely unregulated nature. Covering 139,768,200 square miles, most of this environment takes the form of high seas that lie beyond the strict jurisdiction of any one state, constituting an area that is, by definition, anarchic (Chalk, 2008, p. 2).

In certain locations, such as the Gulf of Aden and off the Somali coast further south towards Kenya (and lately even Tanzania and Mozambique), piracy threatens the important link between globalisation and secured maritime transport as a key variable in economic development (Vrey, 2010, p. 127). However, one should admit that this challenge, threat or whatever of piracy is also an unpredicted result of globalisation and unequal distribution of wealth among the individual states of globalised world. In his

speech at Seminar on “Piracy and armed robbery at sea: How best to protect seafarers?" Chairman of the European Parliament Transport Committee Brian Simpson admits that reality as follows:

> There is a clear connection between mounting prosperity and increasing international trade in one part of the world and political instability, failure of states, wars, insurgencies and growing poverty in others (Simpson, 2010).

“Even considering the division among the developed and developing countries, those countries affected by conflict and bad governance account for only a fifth of the population of developing countries, they include a third of those living in extreme poverty, half of children who are not in primary school and half of children who die before their fifth birthday” (Maxwell, 2009, p. 768). The figures for less developed countries are worse, and even inhumane.

As a consequence one of the problems that may arise as a result of globalization is the ideological polarization between developed and underdeveloped nations that stems from the desire for basic needs satisfaction. Those who reside within underdeveloped nations have interests tied to fulfilling their particular basic needs such as food and shelter. In nations in which people are better able to satisfy their basic needs, individuals may identify secondary interests, such as industry and trade, the pursuance of which may conflict with the enduring concerns of those in lesser developed nations whose goal remains limited to receiving what they need to survive. Current clash between those satisfying their society's secondary interests and those simply trying to survive by fulfilling their basic needs polarizes international community whose members pursue self-serving ends through almost any means. Developmentally challenged nations that find themselves in this situation run the risk of falling prey to their more self-sufficient and accomplished international neighbours. For the sake of self-preservation, citizens in the weaker nation will sometimes act out of desperation, resorting to illegal activities to obtain basic necessities while disregarding the international response to their actions. Domestic degradation is not always the result of mere internal political or economic strife, nor social dissatisfaction. Maritime piracy off the coast of Somalia is evidence that a combination of domestic factors coupled with the negligence of the international community can actually exacerbate domestic incapability to the extent that it becomes an international criminal incident with serious global significance. The rise of piracy exhibits the importance of the international effort to assist in nation building and therefore to help create domestic stability, so as to avoid such industries taking hold in underdeveloped regions (Anderson, 2010, p. 319-320).

Piracy is a growing and seemingly intractable problem in some ocean/sea areas of vital importance for the uninterrupted flow of international maritime trade and other sea born commercial activities. Today more than half of the world's annual merchant tonnage traverses Southeast Asian waters; its oceans and seas yield vast revenues in such industries as fishing, hydrocarbon extraction, and tourism. More than 60 % of Southeast Asians today live in or rely economically on the maritime zones (Bradford, 2005). The Gulf of Aden and the Suez Canal are used by more than 20,000 merchant ships every year; the strategic value of the transported goods in this areas is around 12% of the world production of crude oil, without considering other types of energy (i.e. liquefied natural gas and coal) (Tajani, 2009).

Taking the cost of piracy into consideration, we can say that the problem of piracy should not be exaggerated. However considering the side effects of piracy especially on those living at piracy-prone areas, it should not be underestimated either. The problem of piracy is complex and its solution requires a comprehensive solution encompassing the humanitarian, economic and political aspects of the problem. This will require both a correct interpretation of the problem and global political will to solve it. Therefore military existence in the piracy-prone areas is meaningless as well as has a deteriorating impact on the already complicated conditions in these parts of the world.

To provide a different approach to the problem of piracy the main research question is that "What causes Piracy? Is it simply a crime or a result of unbalanced distribution of prosperity of nations through globalization?" To be able to find an acceptable solution to the question, the thesis will try to provide a comprehensive approach to the piracy phenomenon. In the first chapter, the thesis questions, theoretical framework and research method will be focused on with literature review. In the second chapter legal and practical definitions of the concept of piracy shall be provided with reference to international conventions and customary international law and documents of International Maritime Organisation and International Maritime Bureau. In this chapter, the difference of piracy from other sea-born crimes shall also be demonstrated. In the following third part brief history of piracy activities in the world will be given and its recent history and reasons for re-emergency after the Cold-War shall be provided. Cost of piracy and measures taken at the national/regional and international level and shortcomings of the measures will also be analysed in this part. In the fourth chapter, unique case of Somali piracy shall be analysed with a background and justifications for piracy due to the fact that Somali piracy accounts for almost half of the piracy incidents

in the world. In that part after providing brief recent history of the Somalia, evolution of the country into a stateless shall be dealt with. Besides that economic, social and political conditions in Somalia will be explained and Place of Somali Piracy in the World will be defined. In the last chapter, measures taken to counter Somali piracy will be analysed and shortcoming of these measures will be evaluated. At the end of this part, policy recommendations for all parties will be provided.

CHAPTER – 1

DEFINITION OF THE RESEARCH QUESTION AND THE GENERAL FRAMEWORK OF THE THESIS

1.1. RESEARCH QUESTION

Main research question of this thesis is "What causes Piracy? Is it simply a crime or a result of unbalanced distribution of prosperity of nations through globalization?" To reach an answer to this question following ones shall also be questioned:

- To what extend does the current legal framework relevant for countering piracy?
- What is the amount of economic burden imposed by piracy and whether it is possible to calculate the exact cost or not? How about the humanitarian cost borne by those living at piracy-prone areas of the world?
- What is the extent of global responsibility for addressing root causes of piracy and what role should the international community play in helping to manage this problem?
- What are the chief land-based factors that contribute to modern-day piracy and how can these best be addressed?

1.2. THEORETICAL FRAMEWORK

Keeping above mentioned questions in mind, the thesis will be based on the dependency theory. While explaining the reasons behind the piracy phenomenon and exploring the questions above, the root causes of piracy will be evaluated from an incentive-disincentive perspective. However in this thesis, the effect of disincentives, the rationale for not choosing a certain way – in case of piracy not choosing a legal way of livelihood – is much more significant than the effect of incentives. The reason for this is that in the states of piracy prone areas, and especially in Somalia, possibility of getting a humane life is very difficult if not possible and there is constant political and economic uncertainty which is directly linked to underdevelopment. Therefore the thesis will include an approach from dependency theory to explain the issue as opposed to classical security studies. The thesis uses the piracy activities as a method of criticizing the effects of globalization on underdeveloped states. In exploring the underlying motivations for the recent surge of piracy off the coasts of many underdeveloped states, the thesis identifies a relationship between primary needs

satisfaction within underdeveloped states and the satisfaction of secondary interests in developed nations, and explains how globalization may exacerbating the turn toward piracy (Anderson, 2010, p.319). Such a perspective has been chosen because it makes it possible to fruitfully understand and predict the pirates' behaviour and the real aspects of the issue. In a sense, this thesis investigates the intersection of two very separate subjects, piracy and the underdevelopment in piracy prone areas in the world.

To understand the underdevelopment-piracy relationship, it is necessary to further elaborate the dependency theory with reference to studies on it. Studies from the dependency theory are concerned to a greater or lesser degree with theoretical aspects of the study of the Third World. Social Science showed little interest in Third World societies until after the Second Wold War and that sociologists then followed economists in believing that development would follow the same lines as in West European nations in moving from the traditional to modern stage. Dependency theory deplores the weakness of modernisation theory and inadequacies of theoretical analysis when applied to the Third World (Bailey, 1980, p. 512-513).

According to modernization theories, internal factors in the countries, such as illiteracy, traditional agrarian structure, the traditional attitude of the population, the low division of labour, the lack of communication and infrastructure, etc., are responsible for underdevelopment. Differences in structure and historical origin are considered of little importance; international dependencies are not taken into account. Suitable measures for backwardness are the modernization of the production apparatus, capital aid, transfer of know-how, so that the developing countries can reach the stage of industrialized countries as soon as possible. Development is seen as an increase of production and efficiency and measured primarily by comparing the per capita income. Consequently, a change of these endogenous factors is the strategy for development. The industrialized countries are the model for economy and society, and this model will be reached sooner or later. There is a continuum between the least and the most developed country and each country has its position on this line (Kuhnen, 1986, p. 12).

Similarly according to Rostow's Theory of Stages of Growth, which is one of the theories studied in the Kuhnen's study on different answers to the causes of underdevelopment, long-term economic development processes has of five ideal types of stages through which all societies pass:

- The “traditional society” has more than 75 per cent of the population engaged in food production, and political power is in the hands of landowners or of a central authority supported by the army and the civil servants.

- The “transitional stage” creates the preconditions for take-off by bringing about radical changes in the non-industrial sectors. Export of raw material gains momentum; a new class of businessmen emerges; and the idea of economic progress coming from outside spreads through the elite.

- The “take-off stage” brings a sharp increase in the rate of investment in the per capita output. This stage of industrial revolution is accompanied by radical changes in the production techniques. Expansion takes place in a small group of leading sectors at first and, on the social side, is accompanied by the domination of the modern section of society over the traditional one.

- The “drive to maturity” brings a spread of growth from the leading to the other sectors and a broader application of modern technology followed by necessary changes in the society at large.

- The “stage of high mass consumption” can be reached after attaining a certain level of national income and formulating an economic policy giving priority to increased private consumption (Kuhnen, 1986, p. 15-16).

Contrary to modernization theories which assume a staged development, according to the dependency theory, developing and underdeveloped countries are dependent countries. The economic and political interests of industrialized countries determine their development or underdevelopment. The goals are superimposed. Underdevelopment is not backwardness but intentional downward development. This is facilitated by domination of underdeveloped areas by industrialized countries as the consequence of different economic and technological levels and unequal power potential resulting from a different economic growth (Kuhnen, 1987, p.19). Furthermore in the underdeveloped areas, the capital is invested, not according to the needs of these countries, but according to the interests of industrial countries. The profit is transferred to the industrial countries whose development is based on the exploitation of underdevelopment areas. According to the revised version of this theory developed by Santos and Galtung, industrial countries invest in the production and export of raw materials in developing countries, influence with their potential of power the terms of trade in their favour, and thus perpetuate the international division of labour (Kuhnen, 1987, p. 20).

In his study “the Development of Underdevelopment” Andre Gunder Frank argues that underdevelopment is not something intrinsic defect of underdeveloped countries, but rather it has been developed by the colonial existence on these lands. Underdevelopment is not due to the survival of archaic institutions and the existence of capital shortage in regions that have remained isolated from the stream of world

history. On the contrary, underdevelopment was and still is generated by the very same historical process which also generated economic development: the development of capitalism itself (Frank, 1966).

Against this general idea that economic development occurs in a succession of capitalist stages and that today's underdeveloped countries are still in a stage, Frank underlines the simultaneous generation of capitalist system and underdevelopment in different parts of the world. For Frank, "…underdevelopment is not original or traditional and that neither the past nor the present of the underdeveloped countries resembles in any important respect the past of the now developed countries. He also underlines that in the underdeveloped countries economic development can now occur only independently of most of these relations of diffusion" (Frank, 1966). Therefore he is against the idea of external intervention to bring peace and prosperity to those areas lagging behind.

Frank basis his study on examining the establishment of colonial structure in Latin American countries, in particular Brazil and Chile, since the beginning of the sixteenth century in its historical context and suggests some hypothesis for development of underdevelopment. (Frank, 1966)

The first hypothesis is that in contrast to the development of the world metropolis (of the capitalist states) which is no one's satellite, the development of the national and other subordinate metropoles is limited by their satellite status. This hypothesis appears to be generally confirmed by the non-autonomous and unsatisfactory economic and especially industrial development of Latin America's national metropoles. (Frank, 1966)

A second hypothesis is that the satellites experience their greatest economic development and especially their most classically capitalist industrial development if and when their ties to their metropolis are weakest. This hypothesis is totally opposed to the generally accepted thesis that development in the underdeveloped countries follows from the greatest degree of contact with metropolitan developed countries. However Frank confirms this hypothesis by two kinds of relative isolation that Latin America has experienced in the course of its history. One is the temporary isolation

caused by the crises of war or depression[1] in the world metropolis. For example Sao Paulo began to build up an industrial establishment which is the largest in Latin America during the First World War and even during the Great Depression and the Second World War. The other kind of isolation which tends to confirm the second hypothesis is the geographic and economic isolation of regions which at one time were relatively weakly tied to and poorly integrated into the mercantilist and capitalist system. A corollary of the second hypothesis is that when the metropolis recovers from its crisis and re-establishes the trade and investment ties which fully reincorporate the satellites into the system, or when the metropolis expands to incorporate previously isolated regions into the world-wide system, the previous development and industrialization of these regions is choked off or channelled into directions which are not self-perpetuating and promising. On the other hand, the same process occurs even more dramatically with the incorporation into the system of previously unsatellized regions. For example, the expansion of Buenos Aires as a satellite of Great Britain and the introduction of free trade in the interest of the ruling groups of both metropoles destroyed the manufacturing and much of the remainder of the economic base of the previously relatively prosperous interior almost entirely. Manufacturing was destroyed by foreign competition, lands were taken and concentrated into latifundia by the rapaciously growing export economy, intraregional distribution of income became much more unequal, and the previously developing regions became simple satellites of Buenos Aires and through it of London. The provincial centres did not yield to satellization without a struggle (Frank, 1966).

Frank also argues that, to overcome underdevelopment a delinking from external dominance is required. However, it is important to underline that, radical theory of underdevelopment, which supposes fully breaking the link with the capitalist world has developed at the beginning of the de-colonisation period where the results of decolonisation have not been emerged yet. However, some more recent and moderate dependency theorists such as Fernando Henripue Cardoso and the recent studies of the Frank, are less severe in their critique of the capitalist world market. They argue that “some developments in the Third World are possible even given the ties of external dependence on the capitalist West” (Jackson and Sorenson, 2007, p.205).

[1] The crises of war or depression studied in this study include the European (and especially Spanish) depression of the seventeenth century, the Napoleonic Wars, the First World War, the depression of the 1930s, and the Second World War

A third major hypothesis derived from the metropolis-satellite structure is that the regions which are the most underdeveloped and feudal-seeming today are the ones which had the closest ties to the metropolis in the past. They are the regions which were the greatest exporters of primary products to and biggest sources of capital for the world metropolis and which were abandoned by the metropolis when for one reason or another business fell off. This hypothesis also contradicts the generally held thesis that the source of a region's underdevelopment is its isolation and its pre-capitalist institutions. This hypothesis is confirmed by the former super-satellite development and present ultra-underdevelopment of the once sugar-exporting West Indies, North-eastern Brazil, the ex-mining districts of Minas Gerais in Brazil, highland Peru, and Bolivia, and the central Mexican states of Guanajuato, Zacatecas whose names were made world famous centuries ago by their silver. Today all of underdeveloped regions in Latin America, like Bengal in India, once provided the life blood of mercantile and industrial capitalist development in the metropolis. These regions' participation in the development of the world capitalist system gave them, already in their golden age, the typical structure of underdevelopment of a capitalist export economy (Frank, 1966).

The last hypothesis also argues against the Theory of Balanced Growth which is one of the modernisation theories and sees the main obstacles to development in the narrow market and, thus, in the limited market opportunities. According to the theory of Balanced Growth, developed mainly by Ragnar Nurkse, the real bottleneck in breaking the narrow market is seen here in the shortage of capital, and, therefore, all potential sources have to be mobilized (Kuhnen, 1986, p. 14).

Frank argues that the expansion of the capitalist system over the past centuries effectively and entirely penetrated even the apparently most isolated sectors of the underdeveloped world. This is also a counter argument against the general idea that evident inequalities of income and differences in culture have led many observers to see "dual" societies and economies in the underdeveloped countries.

One of the studies on creation of dual societies and exploring the connection between colonial legacies and postcolonial development is “Colonial experience and postcolonial underdevelopment in Africa” by Mizuno and Okozawa. In their study Mizuno and Okozawa argues that many African colonies were governed by indirect rule of the colonial ruler which was required for the low-cost management of the colonies.

The colonial ruler empowered the chiefs in administrative, legislative, and judicial aspects, and local governance was based on informal customary law. Therefore, the chiefs were able to use their powers to serve their own interests (Mizuno and Okozawa, 2009, p. 407-408). The indirect rule divided indigenous people into two groups: a privileged ruling group and an unprivileged ruled group. The modal of Mizuno and Okozawa assumes that the ruled group can observe the total quantity of appropriated resources but cannot observe how the resources appropriated from them are divided between the colonial ruler and the ruling group. In this economy, excessive exploitation by the colonial ruler creates distrust among indigenous groups and a negative effect on postcolonial economic and political development. In the second stage of the model, the colonial ruler withdraws. The ruling group retains political power and controls the government. The extractive institutions built by colonial powers during the colonial period were inherited by the indigenous elite, and the resources of the masses were extracted by the elite as in the colonial period. In such a distrust situation, where the elite can exploit the resources of the population with discretionary powers, the expectation of producers that a large share of future output will be appropriated by the elite causes underinvestment and hinders economic development. This distrust originating from experiences in the colonial period is an important factor responsible for underdevelopment and political instability of postcolonial conflict in African states. Mizuno and Okozawa's examples are conflicts in Rwanda, Burundi, and Zanzibar. These cases are alike in that the colonial ruler gave superiority to one group over the other group and the ruled group revolted against the ruling group just before or after independence. In these cases, the postcolonial conflict had its roots in the colonial experience (Mizuno and Okozawa, 2009).

On the other hand Gendzier criticizes the conventional political development theory due to its enhnocentricism (Sachse and Eubanks, 1986). "In the period following the 1884 – 85 Berlin conference and the carving up of Africa into European colonies, traditional justifications for colonial rule are based on a mix of racial hierarchy, an unabashed sense of Western cultural superiority and a strong paternalist approach towards the subjects of European imperial rule. Comte de Gobineau's concept of an Aryan 'master race' (1853 – 55), Sir Richard Burton's musings on 'The Negro's Place in Nature' (1864) and Winwood Reade's Savage Africa (1864) were prominent contributions to the 19th century European mind-set that became the intellectual and political backdrop to colonisation and 'civilising' efforts following Berlin. In these works, a central theme is the uniformly inferior African" (Andreasson, 2005).

Hirschman's Theory of Unbalanced Growth also supports this superiority argument and paternalist approach. According to Hirschman, the real bottleneck for development is not the shortage of capital, but lack of entrepreneurial abilities. Potential entrepreneurs are hindered in their decision-making by institutional factors: either group considerations play a great role and hinder the potential entrepreneur, or entrepreneurs aim at personal gains at the cost of others and are thus equally detrimental to development. In view of the lack of entrepreneurial abilities there is a need for a mechanism of incentive and pressure which will automatically result in the required decisions. According to Hirschman, not a balanced growth should be aimed at, but rather existing imbalances— whose symptoms are profit and losses—must be maintained. Investments should not be spread evenly but concentrated in such projects in which they cause additional investments because of their backward and forward linkages without being too demanding on entrepreneurial abilities. Manufacturing industries and import substitutions are relevant examples. These first investments initiate further investments which are made by less qualified entrepreneurs. Thus, the strategy overcomes the bottleneck of entrepreneurial ability (Kuhnen, 1987, p. 15).

Following World War II the enormous destruction wrought by European governments at the heart of modern Western civilisation produced a crisis for the advocates of colonialism and of exporting the Western civilizational project onto Africans and other subject peoples. The most tangible result of this crisis was the process of decolonisation that reaches its peak, as far as Africans are concerned, in the early 1960s, when a majority of British and French colonies become independent. However withdrawal does not mean that Western interest in Africa has disappeared. If the lives of Africans themselves are not of great concern, access to the continent's natural resources, and now also to emerging entrepreneurial opportunities, continues playing an important role following decolonisation. For example, the USA is today increasingly interested in acquiring favourable long-term agreements on the continent's expanding oil and strategic mineral exports (e.g. cobalt, chrome, vanadium). To that end, a new round of American military expansion has begun, ostensibly as a part of its 'war on terror' (Andreasson, 2005, p. 975).

Relatively recent studies of Frank provide the examples supporting his theory. In these studies Frank argues against the western justifications for intervention, like bringing peace, democracy and freedom to the miserable nations of the third world. In his study "Third World War: A political economy of the Gulf War and the new world order" Frank

argues that the West created false pretexts for going to war in the Gulf: to protect the principle of world order, international law. He refers to a Herald Tribune news to indicate the impact of colonial legacy on the emergence of the Kuwait war, as;

> Stealing Kuwait was not simple greed or national hatred. Theft on a national scale [of what had been Iraqi before the British created Kuwait] had become the only possible access for war-devastated Iraq to … the modern standard of living that Western nations and small oil-producing emirates of the Gulf enjoy today as a matter of right … The aftermath of this almost suicidal drive to emerge from poverty and backwardness … was the motor (Frank, 1992, 271).

Frank also underlines that "many similar aggressions and violations of the both UN Charter and Resolutions including Indonesian invasion of East Timor and Irian Jaya with genocide, apartheid in South Africa, Iraqi invasion of Iran, have gone without any such response or even without any notice. Frank links this intervention with immediate economic reasons including oil and economic recession at home (in the US) and he mentions that intervention in the Gulf was not an immediate reaction but rather a ten-year-developed project of the USA. To underline the determination of the US, Frank continues as;

> Between the Iraqi invasion on 2 August 1990, and the start of American bombing on 17 January 1991, President Hussein gave clear indications of his willingness to negotiate an Iraqi withdrawal on at least six separate occasions. Three times he unilaterally took steps, which could have led to withdrawal. President Hussein made repeated statements indicating that he was serious about withdrawal, which would include Iraqi 'sacrifices', for a negotiated package deal. On more than one occasion. President Hussein and his foreign Minister Tariq Aziz also told the UN Secretary General of their desire for a negotiated solution. All these Iraqi and other initiatives came to nought, because the Bush Administration wanted and arranged for them to fail (Frank, 1992, 272).

On the other hand against the implicit economic plans of the US in the region, Frank argues that "the Gulf War offers no lasting political economic benefits and several more dangers. Probably more important than the wartime or post-war confidence of consumers at home in the USA, is the confidence of international capital and of allied governments elsewhere in the West. The more important effects of the recession and war will play themselves out via the reactions of private capital and the decisions by governments and central banks in Europe and Japan. Without an adequate economic base, military power is insufficient to keep a superpower afloat. On the contrary, the foolish use of military power may sink that power" (Frank, 1992, p. 282).

The noble aim "bringing peace and prosperity" in the years following World War II used as a new way to justify the West shaping African societies in its own interest. Since

then, it is primarily general societal deficiencies of the third world that have been emphasised. In the development literature, concepts such as 'neo-patrimonialism', 'perverse incentives' and 'rational choices', producing sub-optimal policy outcomes because of 'dysfunctional incentive structures', become predominant (Andreasson, 2005, p. 975). The link between internal problems and external solutions may appear less clear when the focus is on how domestic actors could perhaps act differently to escape underdevelopment.

An explanation from Immanuel Wallersteins's criticism of "liberal interventionism" may also shed further light on the question of how the solutions of the West have been miss-defined from the beginning. According to Wallerstein, liberal interventionism stood forward as the most dangerous enemy of African liberation movements in Southern Africa. As opposed to Africans willing liberation; the whites want to maintain the essentials of the status quo. The division of Africa coincided with the discovery and exploitation of Africa's wealth. This resulted in destruction of Africans in two different ways: in terms of intense work with inhumane working conditions and in terms of uprooting the people from the land. On the other hand Wallerstein considers the World War II as the turning point of Africa's destiny. The preference of the United States that the lesser powers like Great Britain and France, must not have colonial empire resulted in the decolonization of Africa after the World War II. The US rather preferred free trade or "informal empire" which necessitates political independence. Therefore during this process the US was the main supporter of liberation movements. (Wallerstein, 1977a, p. 489) He also affirms the US and Europe divide in one of his recent commentaries by naming them as "quasi-allies" (Wallerstein, 2005a). However with the liberation, the new African regimes were pushed towards internal radicalism and their new governing bourgeoisies more intensively participated as peripheral producers in the capitalist world economy. Indigenous left nationalist forces had been militarily supressed. Governments reluctant to respect the deal of decolonization had been overthrown. For Wallerstein, the massive intervention of the West into African affairs also was a result of economic stagnation. (Wallerstein, 1977a, p. 489-491). The west, and in particular, the US started to engage in Africa, to bring a "peaceful solution" which means the acceptance of Africa something less than their rights "peacefully" (Wallerstein, 1976, p. 328).

In his study "Rural economy in modern wold-society, Wallerstein also questions the dilemmas of the modern world with some moral questions: Why is there hunger amidst

plenty, and poverty amidst prosperity? He proposes to examine the modern world and its structure to find causes and the remedies of present dilemmas. He argues that "what distinguishes capitalism from prior systems is the orientation of production to capital accumulation via profit realized on a market – this market is, and has been from the beginning, a world market. This makes capitalism into a form of social organization whose prime object is its own perpetuation in an ever-expanding from. The major weapons in this process are increased efficiency of production and the denial of the desires of most people in terms of immediate consumption. Efficiency is translated into plenty and prosperity. Denial is translated into hunger and poverty." This is also closely related with the scope of the economy where the boundaries of the real division of labour have always been larger than that of any particular sovereign entity. Both different goods have been produced in different sectors of the world economy and the workers who produced these different goods have been paid differential wages which has been at one and the same time a means of transferring surplus from one area to another. Similarly the true market has always been the world market, within which some states were always acting to affect the terms of trade. As a result, Wallerstein defines the modern world system as an economic arena larger than any political unit, within which regions might be classified as performing the roles of core or peripheral areas (Wallerstein, 1977b, p. 29-31).

Wallerstein underlines the moral duty to overcome the dilemmas of the world system in which over five hundred years of its existence, the gap between the top and the bottom, the core and the periphery, has never gotten smaller, always larger. "The world system is not only polarized but polarizing, and that this reality is both morally and politically intolerable. For the countries at the bottom, there seemed nothing more urgent than figuring out how to improve their situation, and first of all economically. As for the countries at the top, they realized, however dimly, that the huddled masses yearning to breathe free presented a permanent danger to world order and their own prosperity" (Wallerstein, 2005b, p.1265-1267). Since the world is in a transition process and the issue is no longer whether or not we want to sustain a capitalist system, but what will replace it, the moral duty is pushing for a more democratic and egalitarian system. "We cannot construct such a system in the middle run. What we can do is to make possible the multiple political activities that will and up tilting the balance against a richer, better organized and far less virtuous group – those who wish to maintain or even reinforce another variant of the hierarchical, polarising systems" (Wallerstein, 2008, p. 61).

To conclude this part it is necessary to underline that the colonial and postcolonial experience of west created external dependency on colony territories in both political and economic terms. Destruction of the indigenous life style and culture, economic extraction, and forced integration into the international division of labour evaporated the self-sufficient national economies and created dependent populations. Asymmetric integration of satellite centres and peripheral areas in the colony caused structural changes in the peripheral societies: an economy oriented towards the requirements of the industrial countries and a functional dependency of the traditional sector on this export-oriented sector. Asymmetric integration also led to an extreme stratification, i.e., externally oriented elites and marginalized masses. Elites accept the norms and values of the industrialized countries and cooperate in maintaining a status quo. However the marginalized groups turned to be today's threats, criminals and rebels. In this thesis, a more recent and moderate form of dependency theory shall be referred which does not necessitate total splitting off from the developed world.

1.3. RESEARCH METHOD:

The method used in this study is analysing books, articles, reports, news, magazines, and electronic sources. Complementary to the written material on the subject, some of the participants of the International Maritime Organization (IMO) Committee on Piracy and Armed Robbery have been interviewed. Also interviews have been conducted with the members of the Turkish Naval Forces who are actively participated in the Joint Task Force operations. These interviews were conducted in Ankara in September 2011.

Statistical data and regular reports of the various maritime organizations, in particular International Chamber of Commerce, International Maritime Bureau, Piracy Reporting Centre (ICC-IMB Piracy Reporting Centre) and IMO have also been utilized to demonstrate the piracy-prone areas in the world and significance of Horn of Africa and South East Asia.

The main source of statistical data on piracy incidents is derived from the International Maritime Bureau (IMB) Live Piracy report and Annual Piracy reports. It provides data on all Piracy and Armed Robbery Incidents reported to the IMB Piracy Reporting Centre. However, it is important to note that IMB PRC is restrained by the volume of the piracy attacks it is permitted to report and document. Therefore there is always

missing data which lead to imperfect calculation of the dimensions of the problem and as a result this phenomenon creates methodological difficulties.

In some specific cases, especially in the case of Somalia, the problem of difficult access to local knowledge constrains the scope of the studies.

1.4. LITERATURE REVIEW

Considering the literature on the issue; although there are some studies, especially reports of international organizations including multi party approach, that focus on land based solutions and root causes of the problem, most of the academic research on the issue have been focused on analysis of the shortcomings of sea-based preventive measures and international legal gaps for countering maritime piracy.

The academic literature on the issue can be divided into many groupings: for example while those coming from a military background are focusing on military measures[2] that should be taken to solve the problem, and those with a legal background[3] stress the gaps in the international law and the necessary amendments that should be carried out for a concrete solution to the problem of piracy. The literature can also be grouped as those claiming piracy – terrorism nexus[4] and those who are against[5] such a link. It is also important to note that while most of the academics recognize the need for a grass-roots solution for the problem of piracy, many of them tend to state that as closing remarks of their study rather than deeply analysing them. Therefore, those sharing a curing approach rather than a punishing one are a small minority of all academics studying on the issue.

One of the leading strategists focusing on the security aspect of piracy, terrorism-piracy alliance and shortcomings in dealing with the problem is Martin Murphy. In his study "Dire Straits Taking on Somali Pirates", Murphy focuses on the so called terrorism and piracy alliance and puts his efforts to legitimize the intervention of Ethiopia and backing

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[2] Those focusing on the deficiencies of military measures and therefore recommends military solutions include; Thean Potgieter and Clive Schofield, Sam Bateman, James A. Boutlier,

[3] Those focusing on the legal gaps to counter maritime piracy include; Debra Doby, Mario Silva, Douglas Guilfoyle, Anete Logina.

[4] The examples who support piracy – terrorism relationship includes; Martin Murphy, Tara Helfman and Dan O'Shea, Rommel C. Banlaoi, Frederich Chew.

[5] For example the study of Danish Institute for International Studies on "Piracy, Maritime Terrorism and Naval Strategy, Ted Dagne's study on "Somalia: Current Conditions and Prospects for a Lasting Peace" and "Somalia: Prospects for a Lasting Peace" or Peter Pham's Anti-piracy, Adrift denies such a link between piracy and terrorism.

of US, however reluctantly, to Ethiopia in its own intervention. Despite this limited perception of the problem, Murphy emphasizes the importance of finding local solutions to the problem rather than only putting military efforts (Murphy, 2010).

Another recent study on piracy is Tara Helfman and Dan O'Shea's "Terrorism and Piracy: The New Alliance". As it is clearly understood from the title of the study, Helfman and O'Shea try to find a link between them and claim that pirate ransoms may be funding the next generation of Islamic militants. They claim that pirates in Somalia supply al-Shabaab with smuggled weapons in exchange for training and the use of ports in al-Shabaab-controlled territory (Tara Helfman and Dan O'Shea, 2011).

Rommel C. Banlaoi's "Maritime Terrorism South East: The Asia-Abu Sayyaf Threat" also studies a link between piracy and maritime terrorism. In his study, Banlaoi imagines a scenario like September 11 attacks by stating that: "Not only do pirates terrorize ships' crews, but terror groups like al-Qaeda could also use pirates' methods either to attack ships, or to seize ships to use in terror attacks at mega ports, much like the September 11 hijackers used planes." Banlaoi also refers to the declaration of the Singapore home affairs minister, Wong Kan Seng, who declared in 2003 that pirates roaming the waters of Southeast Asia should be regarded as outright terrorists. He also quatos his speech: "Although we talk about piracy or anti-piracy, if there's a crime conducted at sea sometimes we do not know whether it's pirates or terrorists who occupy the ship so we have to treat them all alike." In this way, Banlaoi tries to underline the so-called blurred areas between piracy and maritime terrorism and establish a nexus between them (Banlaoi, 2005, p. 71).

While these studies focus on terrorism and piracy link, the study of Francois Vrey focuses on relationship between piracy and other sea-born criminal activities like smuggling of arms, drugs and human trafficking and emphasizes the importance of creating law and order at African waters and securitizes the problem of piracy rather than addressing the humanitarian aspect of the problem (Vrey, 2010).

On the other hand the report of Danish Institute for International Studies on Piracy, Maritime Terrorism and Naval Strategy denies the link between maritime terrorism and piracy by stating in their study as that:

> The phenomenon of piracy has once again caught the attention of the media as well as governments, mainly because it has come to affect international shipping through the Gulf of Aden. Besides these real economic concerns, there are

> numerous speculations that (mainly international) terrorists may begin using the sea as a medium for their mischievous activities, for instance, by using ships as weapons or attacking vessels of high economic and/or symbolic value such as oil-tankers or luxury cruise liners—and that there are clear links between such maritime terrorism and piracy. Closer analysis, however, shows maritime terrorism to be a very minor problem and the links to piracy to be largely non-existent (Møller, 2009, p.5).

Similarly David Rosenberg's study on the Political Economy of Piracy in the South China Sea" denounces piracy-terrorism relationship from a different approach of purposes and ends. He states that there are significant obstacles to staging a successful terrorist attack at sea. First is that, targets are less accessible and a maritime terrorist attack would require very complex and expensive coordination of efforts. Besides that, an attack, even if successful, could be much less visible than a terrorist attack on land, compared with dozens of terrorist attacks against hotels, business centres and other land-based targets (Rosenberg, p:46). Rosenberg concludes his study as "to date, there has not been a clear relationship between piracy and terrorism" (Rosenberg, 2009, p. 49).

A legal evaluation study is Douglas Guilfoyle's "The Laws of War and the Fight against Somali Piracy: Combatants or Criminals?" In his study Guilfoyle questions whether the laws of armed conflict can be applied to piracy. By defining in legal terms the conditions to which laws of armed conflict are applied, he concludes his study that the laws of armed conflict are not applicable to the piracy cases or pirates (Gilfoyle, 2010).

Another legal evaluation study has been made by the Workshop on Suppressing Maritime Piracy: Exploring the Options in International Law. The workshop focused on the possibilities in the International Law for the prosecution of pirates and questioned whether International Criminal Court (ICC) can prosecute the pirates. The answer is negative and they concluded their study that for the solution of the piracy problem off the Somalia, a long term approach needed and it is necessary to rebuild the collapsed Somali governance structure (OEF, 2009).

Debra Doby's study "Piracy Jure Gentium: The Jurisdictional Conflict of the High Seas and Territorial Waters" also is mainly focused on the inadequacy of the UNCLOS "piracy" definition to resolve situations where States cannot take the necessary steps to eradicate piracy. The study examines the inherent restrictions contained in the United Nations Convention on the Law of the Sea definition of "piracy." It, also, examines the consequences of altering the UNCLOS definition to allow international naval vessels to

enter a State's sovereign territorial sea. However the study overlooks the UN Security Council Resolutions passed for purpose of tackling the problem by proposing that the United Nations Security Council might designate, after consultation with IMO, those States deemed incapable of policing their own territorial seas. Such designation might be reviewed at specified intervals and renewed, as necessary (Doby, 2010, p. 574). However, such a designation and its revivals have already been passed from the UNSC as UNSC Resolution 1816 and its successors for revival.

In this thesis, all approaches shall be treated equally and shall be analysed and criticized from an unbiased approach.

CHAPTER – 2

LEGAL FRAMEWORK OF THE CONCEPT OF PIRACY

2.1. DEFINITION OF THE TERM “PIRACY”

Piracy has long been regarded as a crime against the whole world. Before the adoption of the customary international law, pirates are named as *hostis humani generis*, which is a legal phrase meaning "enemy of all mankind”. Accordingly, every nation has the legal authority to establish jurisdiction over piracy and punish the offenders, regardless of the nationality of the perpetrator or victim. (National Security Council, 2008, p. 4)

In contrast to the claims of some of academia like Martin Murphy who claims that piracy is a kind of criminal activity unfamiliar to many Westerners (Murphy, 2010, p. 90), modern day piracy gets its roots from state supported piracy which is named as privateering and was very common phenomenon during the sea-wars among sea powers of the Europe until mid-19th century when it was outlawed and abolished with the Paris Declaration of 1856 (Paris Declaration, Article 1-4). However this kind of piratical activity is differs from today’s piracy in that it used to be state supported.

The term “maritime piracy” has been defined in different ways by different scholars, states, and organizations. Essentially, “piracy” is a term used to describe acts of armed robbery, hijacking, and other hostile acts against ships no matter it has been conducted in international waters or territorial waters. They are carried out with the intent of stealing valuables on-board or getting money from ship owners or other stakeholders by holding the ship or crew for ransom.

As mentioned previously, there are many academic studies that focused on the legal gaps for countering piracy. Even some of the scholars dedicated their entire thesis to the analysis of international law related to piracy and its effectiveness (for example see Logina, 2009). These studies interpret the failure of addressing the problem of piracy as a result of limitations in the international law. Although there are gaps in the international law for countering piracy, in this thesis, I am just going to refer these legal documents for the purpose of defining the term “piracy” rather than for criticizing the gaps. Reason for not criticizing these gaps is that, there are many international documents, even though they are not considered as legally binding as international conventions, providing a remedy for these gaps. For example, UNSC Resolution 1816

provides necessary basis for *States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, to* enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and to use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery. (UNSC Resolution 1816 Article 7 (a) (b))

Considering the piracy figures after the adoption of these UNSC Resolutions for countering piracy off Somalia, they proved to be a failure. Therefore, in parallel with the general claim of this thesis, all this documents shall be referred only for defining the term piracy.

2.1.1. Legal Definition: Definition of the term in the United Nations Convention on the Law of the Sea (UNCLOS)

The traditional international law defining piracy is contained in the 1982 Law of the Sea Convention (UNCLOS) and its predecessor the 1958 Geneva Convention on the High Seas, which is itself expressly declaratory of customary international law (UN Expert Report, 2008, p. 23)

After the codification of customary international law under UNCLOS, maritime piracy was accepted as one of a limited number of crimes[6] subject to universal jurisdiction which is punishable by any state regardless of the nationality of the victim or perpetrators. It is considered as one of the offences that all States obliged to cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state (UNCLOS, Article 100-107).

There is a tendency outside of legal circles to use the term piracy to refer to a range of crimes committed against or on seafaring vessels or on the water. Not all of these count as piracy by the strict legal definition, and therefore not subject to universal jurisdiction since these other crimes often fall within the jurisdiction of a territorial sovereign. (Ocean Earth Future, 2009, p. 7)

[6] Others include transportation of slaves, illicit traffic in narcotic drugs or psychotropic substances and unauthorized broadcasting from the high seas (UNCLOS, Article 100-107).

Article 101 of UNCLOS defines Piracy as:

> • any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
>
> (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;
>
> • any act of voluntary participation in the operation of a ship or of an aircraft with the knowledge of facts making it a pirate ship or aircraft; and
>
> • any act of inciting or of intentionally facilitating an act described in the two bullets above (UNCLOS, Article 101)

Mostly this definition is referred to as the only legally binding definition of piracy under international law. (Logina, 2009, p.5)

Since it is considered as an international crime, on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect (UNCLOS, Article 107). The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, property, subject to the rights of third parties acting in good faith (UNCLOS, Article 105).

A ship is considered a pirate ship if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship has been used to commit any such act, so long as it remains under the control of the persons guilty of that act (UNCLOS, Article 103)

If there is reasonable ground for suspecting that the ship is engaged in piracy a warship or other duly authorized ships clearly marked and identifiable as being on government service which encounters on the high seas a foreign ship has the right of visit to that suspected ship. In case of such a suspicion, the warship or authorized government ship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible

consideration. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained (UNCLOS, Article 110).

To be brief, piracy has three main components that make it different from other sea-born offences. Piracy is any act of illegal acts of violence or detention, or any act of depredation committed;

- for private ends;
- on the high seas or in a place outside the jurisdiction of any State; and
- by the crew or passengers of a private craft, against another vessel or persons or property aboard.

This definition has been criticized by many scholars and strategists for a number of limitations for intervention of other states (Guilfoyle, 2010, p. 149). Firstly definition provided above excludes the territorial, internal and archipelagic waters of states and only those actions against ships on the high seas in fact constitutes piracy, and the rest offences that fall within the ambit of national policing agencies (the geographic limitation). Considering, for example that 1/3 of the piracy attacks occurred claimed to be executed by Somali pirates occur at high seas which means that 2/3 of the attacks occurs at the internal or territorial waters of a Somalia (Doby, 2010, p. 571), implementation of piracy laws is not possible in these areas. Under the Law of the Sea Convention, those same illegal acts of piracy committed inside the territorial waters of a country;

> Do not fall under the definition of piracy, but are simply considered “sea robbery” under international law, and are dealt with by the laws of that country. Domestic laws seldom permit a vessel or warship from another country to intervene (Mario Silva, 2010, p. 570, endnote 117).

Therefore, when piracy occurs in the territorial waters of a particular state, pirates are subject to that state’s jurisdiction and capacity to prosecute (Mario Silva, 2010, p. 570, endnote 118).

On the other hand, despite the fact that laws of piracy do not permit the pursuit of pirates into territorial waters or the conduct of counter-piracy actions within the land territory of a foreign state, in case of Somali piracy, the relevant UN Security Council Resolutions have removed these limitation.

Secondly, the definition has also been criticized for not cover the internal seizure of vessels, and only being applied actions committed by the crew or passengers of a private craft, against another vessel or persons or property aboard i.e., the two ship limitation (Doby, 2010, p. 571, endnote 62). However, it seems irrelevant to mention such an excuse for the failure of addressing the problem of piracy, because almost all of the piracy attacks in our times occur from outside of the ship rather than internal seizure of vessels.

Thirdly, UNCLOS definition has also been criticized for not including a punitive article for those states not adopting the necessary national legislation for the enforcement of UNCLOS articles. UNCLOS imposes a duty on states to repress piracy and provides some powers of enforcement. However it does not include any punitive article for noncompliance with the adoption of national domestic legislation to implement the UNCLOS piracy provisions. Most states require a specific piracy offence in their national criminal law if they are to prosecute pirates in their own courts. Likewise, States need to consider whether their domestic law is sufficient to take action against inchoate piratical acts and vessels outfitted for piracy and intended to be used to commit piratical acts (UN Expert Report, 2008, Legal Appendix p. 2). However this point of view loses the real problem of underdevelopment and state weakness in piracy prone-states which is also the root cause of the problem itself.

The last point criticizing the definition is that it excludes actions committed for political ends. As it is going to be evaluated in detail in the following parts, the piracy is motivated by getting economic gain, which means that they are not politically motivated. This situation creates a dilemma for those studies calculating the economic cost of piracy, in particular, the cost of ransoms, and trying to find a relationship between acts of piracy and terrorism at the same time. Considering the backwardness, lawlessness and poverty in many of the piracy-prone areas, it is going to be misleading to construct a link between piracy and politically motivated acts. Politically motivated protestors have in recent decades, been found to have committed hijacking of ships. In any case, while for example Somali pirates continue to operate against randomly targeted vessels of different nationalities to compel private parties to pay large ransoms, there is no credible argument they are acting for anything other than “private ends” (Guilfoyle, 2010, p. 149).

2.1.2. Practical Definitions:

2.1.2.1. Definition of the International Maritime Organisation

While International Maritime Organization IMO accepts the definition of piracy as it is stated in Article 101 of UNCLOS, it also designs a new term to define the piracy activities occurred in a Sate's internal waters, archipelagic waters and territorial sea and to cover actual or attempted attacks whether the ship is berthed, at anchor or at sea: this term is armed robbery. Armed Robbery defined by the IMO in its 26th Assembly session as Resolution A.1025 (26) to close the gap in the geographical area of the UNCLOS definition of the term piracy. Therefore IMO uses the term "armed robbery against ships" to cover piracy-like offences taking place within the territorial sea of a State.

The IMO defines Armed Robbery in Resolution A.1025 (26), "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" adopted on 02 December 2009 as:

> "Armed robbery against ships" means any of the following acts:
>
> .1 any illegal act of violence or detention or any act of depredation, or *threat* thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, *within a State's internal waters, archipelagic waters and territorial sea*;
>
> .2 any act of inciting or of intentionally facilitating an act described above. (Code of Practice, Article 2.2)

Inclusion of armed robbery definition provides the necessary backing for the implementation of rules laid through IMO Resolutions and circulars to the armed robbery activities taking places within a State's internal waters, archipelagic waters and territorial sea. In this way, IMO expands the scope of its measures.

2.1.2.2. Definition of the International Maritime Bureau

"While legal definition is necessary to determine the State that shall prosecute the pirate, such a distinction is irrelevant in the eyes of the victim" (Abhyankar, 2002, p. 2) Therefore, in contrast to restricted UNCLOS Definition and wider IMO definition, International Maritime Bureau (IMB) has adopted a more all-encompassing definition of piracy regardless of the area of the act of piracy as;

> "An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act." (Abhyankar, 2002, p. 2)

The IMB's definition is broad and includes any attack or attempted attack on a ship, whether it is anchored, berthed or at sea. This definition has been adopted by the IMB as the majority of attacks against ships take place within the jurisdictions of States and piracy as defined under UNCLOS does not address this aspect.

The main discrepancy in this definition is the fact that the motivation of the perpetrator is neglected. It fails to differentiate attacks motivated by political agendas from those motivated by economic gain. The IMB's definition has further been criticised for also including attacks on ships anchored or berthed, which represent 58% of the actual attacks reported in 2009. The argument here is that the statistics tend to become blurred by the fact that hijackings of major ships fall under the same definition as small-scale mugging, representing most of the incidents on ships located in ports (Scheffler, 2010, p. 3).

However with the adoption of the IMO Resolution A.1025 (26), "Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships" in 2009, IMB has got rid of referring to its definition since its 2010 Piracy Reports and referred Code of Practice definition.

Apart from these definitions, IMO and IMB provide additional classifications according to the status of the piracy incidents. This classification provides three types of incident according to the extent to which the ship's journey is disrupted: Attempted acts of piracy, boarding and hijacking. An attempted piracy act occurs when pirates board a ship and abandon it empty-handed after being discovered, or in instances in which a ship is fired upon without being stopped. Instances of boarding entail actual boarding of a ship by pirates and theft (generally the personal belongings of the crew and/or goods carried for crew maintenance and en-route ship repairs). These incidents may involve violence against crew. The last type of piracy act, hijacking, consists in the seizure of the ship and its crew, the immobilization of the ship in a coastal area under the control of the pirates and a ransom being demanded in exchange for the crew members, the ship and its cargo (Zarzoso and Bensassi, 2011, p. 10).

It is important to note that both IMO and IMB underline that their documents uses such a definition for practical and statistical purposes and this definition does not create any international rule or law with regard to jurisdiction in cases of piracy.

2.1.2.3. Extension of the UNCLOS Definition through UN Security Council Resolutions in Somali Piracy case:

There are two exceptions to the jurisdiction of a flag state over a vessel: *ad hoc* consent authorized by a UNSC Resolution or in the case where bilateral or international agreements have been concluded that provide the boarding authority. The latter is the case of piracy through the UNCLOS. As mentioned above, Article 110 of UNCLOS explicitly provides that warships can visit a foreign flagged vessel on the high seas if reasonable grounds exists to suspect that the vessel is being engaged in piracy". *(Fink and Galvin, 2009, p.374-376)*

The second tool is the UNSC resolutions. As it is known, the Charter of the United Nations designates the UNSC as one of the principal organs of the United Nations, assuming the "primary responsibility for the maintenance of international peace and security" (Article 24(1)). It is granted two key roles in major areas concerning international peace and security: dispute settlement and peace and security maintenance and restoration. According to Chapter VII of the UN Charter, the UNSC has the power to "determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken ... to maintain or restore international peace and security" (Article 39 of the UN Charter.) It may also decide what non-military measures, such as economic sanctions and the severance of diplomatic relations, should be employed to give effect to its decisions, and take military action when the non-military measures have proved to be inadequate. (Article 41 of the UN Charter). According to the Article 41 of the UN Charter "such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations".

Unlike resolutions passed by the UN General Assembly, resolutions passed by the UNSC, particularly those adopted under Chapter VII, have legal effect. When the term "decide" is used, it contains the highest degree of binding force (Zou, 2009b, p. 587) According to Article 25 of the UN Charter, Member States agree to accept and carry out the decisions of the UNSC in accordance with the Charter. (Article 25 of the UN Charter) Furthermore, Member States have the duty to contribute to the maintenance

of international peace and security by providing material support to the UNSC, through the supply of armed forces, assistance and facilities, including rights of passage.

In accordance with the powers of the UNSC under Chapter VII of UN Charter to address threats to international peace and security, the UNSC designed a tool to address the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia's territorial waters, and lack of any other authority controlling the entire Somali territory and territorial waters: this tool is the Resolution 1816 (2008) and its successors. These series of resolutions gave other states cooperating with the Transitional Federal Government (TFG) of Somalia unprecedented legal authority to pursue pirates in the territorial waters of Somali State.

More detailed speaking, the UNSC decided that "for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary General, may:

> (a) enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and
>
> (b) use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery" (UNSC Resolution 1816).

So far the TFG has notified the following States: Canada, Denmark, France, Russian Federation, Spain, and the United States of America. The TFG has also notified the UN that the NATO Standing Naval Maritime Group and the European Union Member States naval vessels have been permitted to enter the territorial waters of Somalia for the purpose of their mandated anti-piracy functions. (UN Expert Report, 2008, p. 24). Thus, UN Security Council Resolution 1816 (2008) extends to the territorial sea of Somalia the law of piracy and the law relating to armed robbery at sea to prevent piracy attacks of the Horn of Africa as in particular of Somalia. The provisions in the UN Charter mentioned above constitute a legal foundation for the UN Member States to act in accordance with Resolution 1816.

Resolution 1816 authorises States, particularly UN Member States, to enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed

robbery at sea by all necessary means. While there are some conditions imposed upon the entry into Somali territorial waters and the use of necessary means, this authorization represents an audacious step taken by the UNSC which might affect the existing legal regime for the territorial sea. Under general international law, the territorial sea is recognized as an integral part of the territory of a State, which enjoys full sovereignty over it. This sovereignty extends to the air space over the territorial sea as well as to its seabed and subsoil. The inviolability of State sovereignty is well recognised in international law (Zou, 2009b, p. 587-9).

However for the purpose of addressing the concerns regarding that the Resolution 1816 shall create a law or right to enter into a State's territorial sea, The UNSC Resolution 1816 also stated in the preamble that "authorization provided in the resolution applies only to the situation in Somalia and shall not affect the rights and obligations under the Law of the Sea Convention, nor be considered as establishing customary international law". This statement carries the repercussions of the experience of extraterritorial actors in the case of Malacca Straits and South China Sea which shall be evaluated in the following chapters.

To implement this decision, cooperating States are requested to take appropriate steps to ensure that the activities they undertake do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State. Furthermore, the UNSC called upon "all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators or piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution" (Zou, 2009b, p. 585-586).

Resolution 1816 also urges "States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery" and "to cooperate with each other, with the IMO and, as appropriate, with the relevant regional organizations in connection with, and share

information about, acts of piracy and armed robbery in the territorial waters and on the high seas off the coast of Somalia, and to render assistance to vessels threatened by or under attack by pirates or armed robbers, in accordance with relevant international law".

UNSCR Resolution 1838 adopted 7 October 2008, reinforces resolution 1816 and in operative paragraph 9 of resolution 1838, the Council expressed its intention to review the situation with a view to renewing the authority in paragraph 7 of resolution 1816 for an additional period upon request of the TFG. In addition, the Secretaries- General of the UN and the IMO have also expressed their support for renewal of resolution 1816. Depending on this article a series of Resolutions have been passed by the UN Security Council to renew the authority contained in the article 7 of the UNSC Resolution 1816. These Resolutions are Resolution 1846 (12 months from December 2008), Resolution 1897 (12 months from December 2009), Resolution 1950 (12 months from November 2010). Besides that, Resolution 1850 of 16 December 2008 expanded the anti-piracy authorisation to include operations on land.[7]

Through these Security Council Resolutions, the State of Somalia has forced to shift its authority in its land and sea territory with the consent of puppet Transitional Federal Government (TFG) which has been established with external intervention and has no control over its territory. Somalia signed the UNCLOS in 1982 and ratified it in 1989, and it is therefore obliged to implement relevant provisions of the UNCLOS in the fight against sea piracy. However, considering the statelessness in Somalia, it seems pointless to accuse Somalia for failure to respect its treaty obligations. However, it is the easiest way to device a Security Council Resolution which will result in the intervention of the international community. Although the adoption of the UNSC Resolution 1816 and its predecessors created the fear that the Somali case could establish a precedent for the intervention by the international community in countries which lack effective law enforcement mechanism, response to such fears were very weak (Zou, 2009b, p. 588). For the purpose of addressing the concerns regarding that the Resolution 1816 shall create a law or right to enter into a State's territorial sea, The UNSC Resolution 1816 stated in the preamble that "*authorization provided in the resolution applies only to the situation in Somalia and shall not affect the rights and obligations under the Law of the*

[7] For a list of UNSC Resolutions related to situation in Somalia and a summary of measures contained in these resolutions, please sea Table 5.1 and visit http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2876225/

Sea Convention, nor be considered as establishing customary international law". This statement carries the repercussions of the experience of extraterritorial actors in the case of Malacca Straits and South China Sea which shall be evaluated in the following chapters.

2.2. DIFFERENCE BETWEEN MARITIME TERRORISM AND PIRACY

Taking these definitions of the act of piracy, either legal or practical, into consideration, it is also possible to identify the differences between piracy and maritime terrorism. Since it creates an obstacle to understand the reasons behind the challenge of piracy, it is necessary to draw this line between piracy and maritime terrorism and to clear what constitutes piracy and what constitutes maritime terrorism.

Jane's Intelligence Review defines maritime terrorism as 'the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change, in the maritime domain' (Chew, 2008, p. 74). According to basic elements of this definition piracy and maritime terrorism are two different offences – terrorists seek attention, inflicting as much harm and damage as possible to achieve their political objectives, whereas pirates simply seek economic gains; As Young and Valencia note, piracy is predicated on financial gain while terrorism is motivated by political goals beyond the immediate act of attacking a maritime target; the former will eschew attention and aim to sustain their trade while the latter will court publicity and inflict as much damage as possible (Chalk, 2008, p. 3). Pirates have no political motives or ideological drivers, despite the widespread assertion that piracy began in the earlier years of the last century in retaliation against and in response to European, Egyptian, Indian, Taiwanese, Thai, Korean, and Japanese trawlers (Rotberg, 2010, p. 3).

It has always been considered that piracy is done for the purpose of self-enrichment. However in the history piracy was both a means and an end: a means for certain states to weaken adversaries and enrich themselves and/or an end for the individual pirate who could stand to profit a great deal from the profession. The Elizabethan Sea Dogs were a means for the English Crown to fight Spain and protect itself. Their subsequent effect in repelling the Spanish Armada, in 1588, also increased the English Crown's willingness to use privateers. But, for the pirates and the privateers themselves, it was clearly an end in itself. For privateers like Drake, Raleigh, Cavendish and Cumberland, privateering was a way not only to enrich them, but also to make a career (Soysal, 2008; Varsami and Popescu, 2010, p. 46). However, as it is stated earlier, state

supported piracy, i.e. privateering, has been abolished since the Paris Declaration of 1856. Therefore, in today's understanding it is going to be misleading to say that pirates have political agendas besides their personal agenda.

We can restate that "piracy is, above all, an economically driven phenomenon" in two respects: This is true both with respect to those who engage in the practice – profit being the main objective – and those against whom attacks are directed, ship owners – where the desire to keep operating costs as low as possible has frequently outweighed imperatives for more concerted on-board security. This economic dimension is important in understanding the manifestation and evolving dynamic of piracy as well as for setting it apart from maritime terrorism, which is primarily aimed at leveraging or otherwise undermining the oceanic environment to secure political, ideological or religious imperatives (Chalk, 2009, p. 1). The debate has been renewed following the 11 September terrorist attacks on the US. For example in case of Somali pirates some argue that pirates could very well have links to terrorist organizations on land and that any ransom money eventually flows to financially support terrorist organizations. Trying to get clear evidence that links terrorist organizations to piracy is, however, not easy and this is confirmed by all major institutions and entities operating in the region. During an expert meeting on combating piracy in Rome a conclusion was reached on this matter that, '[t]here is to date no evidence of a link between piracy and terrorism in Somalia' (Alessandri, 2009, p. 6).

"Although there might be reasons to make an effort to try to view certain terrorist acts as piracy, as it provides another legal basis to act, analysis through this approach would arguably result in losing possible legal options to act against illegal violence at sea. For example, if the pirates conducting piratical acts off the coast of Somalia would be considered acting for political purposes, the international laws of piracy would not apply anymore. From a political point of view with regards to combating piracy there is thus no need to look for linkages between pirates and terrorists. Moreover, there is no conclusive evidence of a broader terrorist network or strategy" (Fink and Galvin, 2009, p. 375).

Another difference is the focus of acts of terrorism and piracy. Focus of terrorism is damage to property and/or injury to individuals for political reasons, while that of piracy is theft; terrorism attacks targets with symbolic significance, while piracy seeks targets with material significance (Logina, 2009, p. 21, footnote 39).

On the other hand talking with a military jargon distinction between piracy and maritime terrorism is clear in *means* and *effects*. In terms of *means*, pirates are usually associated with basic tactics/capabilities. Terrorists are associated with sophisticated tactics/capabilities. In terms of *effects*, piracy has traditionally been confined to the tactical level. Terrorism usually aims at achieving a strategic effect (Chew, 2008, p. 75-76).

To summarize this chapter it is important to underline that the only internationally recognized definition of the piracy contained in the relevant articles of the UNCLOS. The others are only the efforts of international community to extend the scope of legal definition in favour of some private groups. It is also vital to underline a red line between maritime piracy and terrorism to grasp the root causes of piracy.

2.1: Summary of Definitions of the term piracy

Legal Definition	Practical Definitions		
The UNCLOS and the 1958 Geneva Convention on the High Seas Definition	**IMO Definition**	**IMB Definition**	**UNSC Resolution 1816 (applicable only in Somalia case)**
Piracy must be committed on the high seas or in a place outside the jurisdiction of any state. A criminal attack within territorial waters of a State is under the jurisdiction of that territorial state and international jurisdiction does not apply.	Piracy must be committed on the high seas or in a place outside the jurisdiction of any state. A criminal attack within territorial waters is an act of armed robbery and not piracy.	Distinctions do not exist between attacks on the high seas and territorial waters.	Authority for the use of military force in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law within sovereign Somali waters and territory is provided upon the notification of Somali TFG.
Piracy necessitates a "two ship" requirement. Pirates need to use a ship to attack another ship. This excludes mutiny and privatising from acts of piracy.	Piracy necessitates a "two ship" requirement. Pirates need to use a ship to attack another ship. This excludes mutiny and privatising from acts of piracy.	The "two ship" requirement is abolished. Attacks from a raft or even from the quay are acts of piracy.	There is no specifically mentioned two ship requirement. However, since UNSC Resolution 1816 is designed to counter acts of *piracy* in the territorial waters of Somalia, it can be interpreted as having two ship requirements.
Piracy is committed for private ends. This excludes acts of terrorism and environmental activism.	Piracy is committed for private ends. This excludes acts of terrorism and environmental activism.	Piracy may not only be committed for private ends. Attacks on a ship for political or any environmental reasons qualify as piracy.	There is no specifically mentioned private/political end distinction. However, since UNSC Resolution 1816 is designed to counter acts of *piracy as contained in UNCLOS*, it can be interpreted as having private/political end distinction and thus private end requirement.
The acts of piracy, as defined in article 101 of UNCLOS, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft	Because pirate attacks have to be committed by the crew or passengers of privately owned vessels, attacks by naval craft fall outside the bounds of piracy.	The acts of government naval craft can be deemed as piracy in certain circumstances.	Since most of Somali pirates declared themselves as Somali coast guards, especially during the initial phases of the Somali piracy, there is a blurred area about the status of them. However, considering that there has not been any permanent government authority at the control of entire Somalia and that Somali pirates only requests ransom, rather than pursuing political ends, it can be interpreted that Somali pirates have private ends rather than political ones.

Source: Developed from Varsami and Popescu (2010).

CHAPTER – 3

PIRACY AROUND THE WORLD

The purpose of this chapter is to provide a brief history of piracy activities and evaluate the reasons behind the re-emergency of piracy in the contemporary are. Moreover, the question of "whether piracy is an international challenge or only a challenge for those having a stake in the continuation of world trade as opposed to those having a stake in the continuation of so called asymmetric threats" will be scrutinized.

3.1. BRIEF HISTORY

Piracy is one of the oldest of all professions. It is also considered as one of the earliest problems that seamen and all other mariners have to challenge in maritime areas. Piracy has been around since man first took to sea, a maritime scourge that appeared in historical records since before the building of the Egyptian pyramids. One of the earliest recordings of piracy is by the Thracians who, during antiquity, used the island Lemnos, in the Aegean Sea, as a safe haven when targeting merchant ships. But, piracy has, in all likelihood, existed as long as the oceans have been used for trade and transport. The Thracians might have been the first recorded pirates, but, all over the globe, up to the present day, piracy has been a recurring phenomenon, mostly on a rather small scale, but, at times, reaching levels that also incited a response. During the 10th and 11th centuries, the Vikings, who primarily targeted coastal areas, prompted heavier coastal defences and the Cretan pirates impelled the Venetians to re-route and alert their merchant fleet. The Mediterranean Sea, known as the cradle of civilization, is used to be also a pirate hot-spot (Varsami and Popescu, 2010, p. 46).

At any period in the history and as it is today, piracy in the ancient world flourished when there was a lack of central control, in areas beyond the reach of major powers such as the Egyptians, the Assyrians or the Mycenaean Greeks and limited possibility for legal way of earning life. However when analysing these periods distinction between pirates and privateers which has mentioned in the previous chapter has to be keep in mind where the latter is state commissioned private or commercial vessels, with a licencing document named as *letter de marque or commission en cours,* intimately connected to the role of the state (Topal, 2010, p. 102, Møller, 2009, p. 6).

This distinction, together with the distinctions from other similar activities at sea mentioned earlier is very important to understand the phenomenon of piracy and not to distort from the real causes of the problem. In the sense of privateering piracy becomes a means for certain states to weaken adversaries and enrich themselves and/or an end for the individual pirate who could stand to profit a great deal from the profession. In this way, the pirates and states employing these pirates of ancient times act as rational actors maximizing their own profit either economic, political or social. The Elizabethan Sea Dogs were a means for the English Crown to fight Spain and protect itself. Their subsequent effect in repelling the Spanish Armada, in 1588, also increased the English Crown's willingness to use privateers. Between the years 1690-1730, the piracy deeds peeked, most notably in the Caribbean, the Mediterranean and off the coast of Madagascar (Varsami and Popescu, 2010, p. 46).

However, for any state that is more actively sponsoring piracy, there is a clear risk in losing control over it. In cases where the state was so weak that confrontation was not an option, as with Madagascar and Jamaica in the 18th century, the governments were eventually controlled directly by the pirates. Besides that, although pirates and privateers are valuable in times of war and useful in tapping competing states trade in peacetime, they may eventually become a liability (Topal, 2010, p. 102). "When England, during the reign of the Stuarts in 1604, sought a more stable peace with Spain, the privateers became an acute problem. Sir Walter Raleigh's sacking of San Thomé, in 1616, prompted the Spanish ambassador to demand compensation and the imminent execution of Raleigh. England abided, and Sir Walter Raleigh was condemned and executed in Whitehall, two years later. Hence, the unclear border between piracy and privateering has often been instrumental for states that suddenly needed to distance themselves from piracy. Conversely, the rise in piracy increased in peacetime (Varsami and Popescu, 2010, p. 46). Taking the negative side-effects of state-supported piracy during peace times, privateering was outlawed under the 1856 Paris Declaration. "The naval powers of 19th century outlawed piracy as a means of weakening the enemy. The struggle against piracy turned to be a constant concern of merchant countries which very early led to the adoption, against pirates, of the first example in history of an extraterritorial law and a universal crime. This stern approach made piracy almost disappear until 1990. Then piracy staged a comeback" (UN Expert Report, 2008, p. 13).

Until recently, piracy was a phenomenon in decline. Caribbean piracy was almost suppressed by the US at the end of the 20th century. However the most frequent piracy activities in 21st century were first seen in the South China Sea and in the Malacca Straits (Bateman, 2003, p. 2) when the reaction to rich ships passing in front of the poor reached its peak. Embedded in poverty the coastal regions of Southeast Asian countries in particular have become piracy hot-spots at the beginning of 21st century. Attacks in this area peaked at roughly 350 to 450 reported attacks per year during the period 2000-2004, and then dropped by almost half in 2005. Relative reduction in 2005 was attributed to effective and coordinated international action against the pirates. But in 2008-2009, piracy again skyrocketed, due almost entirely to the dramatic increase of piracy off the Coast of Somalia. Piracy is once again on the forefront of the international community's attention, as maritime trade is threatened and ransom payments to Somali pirates have risen to the millions of dollars (UNODC, 2010, p. 193). The significance of this increase off Somalia is interpreted as pirates getting more successful since they have greater access to weapons, enabling them more violent attacks. Besides that steady decline in Southeast Asia is explained as a result of increased involvement of more developed nations such as Japan and China, which assumed more active roles in order to protect their international industries (Anderson, 2010, p. 322-323). However such interpretations are very far from the understanding of the real problem; the poverty as a legacy of colonial exploitation and its implicit continuation.

3.2. FACTORS FOR THE EMERGENCE OF PIRACY IN THE CONTEMPORARY ERA

Causes of piracy are very complex and often require detailed analysis of the problem. Despite the fact that almost all studies lists different reasons for different areas[8] for the emergency of piracy, the one basic common driving force behind the maritime piracy is poverty and underdevelopment of these piracy-prone states and as a consequence limited availability of legal forms of work.

[8] For example Boutilier argues that while piracy phenomenon in Indo-Pacific region is mainly underpinned by increasing maritime volume, congested straits and competing maritime ambitions and thus affluence of targets, in Somalia or Horn of Africa and Red Sea, it was basically shaped by lawlessness and weakness of the coastal states (Boutlier, 2004, p. 1).

3.2.1. Global Factors

“Piracy is largely driven by poor economic conditions. The vast majority of lower-end piracy is largely motivated by poverty and disenfranchisement that afflicts vulnerable targets like fishermen and local traders. Sudden and severe impoverishment, especially among marginal coastal seafaring communities, makes piracy a viable way to meet basic need. In times of economic hardship piracy is still viable for some traditional maritime peoples. Economic duress makes impoverished fishermen more vulnerable to and available for recruitment by these pirate groups. Piracy will continue as long as poverty and unemployment persist In the Asia-Pacific region, as we will in the Horn of Africa, “maritime disorder prevails and this includes unregulated pollution of the marine environment, over-fishing, marine environmental degradation and widespread illegal activities at sea” (Rosenberg, 2009, p. 46) which means *de facto* continuation of foreign existence in these waters.

On the other hand, unfavourable weather conditions in piracy prone areas, coupled with infertile terra are another reason feeding piracy. These piracy prone areas contribute relatively little to global warming — accounting for less than 1 per cent of the world’s total greenhouse gas (GHG) emissions — but they are disproportionately affected by changing climatic conditions. The majority of these countries are located in regions already experiencing environmental stress. In addition, their economic weaknesses, including low levels of economic and human development, strong dependence on natural resources and climate-sensitive sectors as a source of local livelihoods and national income, render them particularly vulnerable to climate change and its catastrophic effects. It has been estimated, for example, that for every 1˚Celsius rise in average global temperatures, average annual growth in poor countries could drop by 2–3 percentage points, with no change in the growth performance of the developed countries. It is unlikely that LDCs will be able to meet the financial costs of climate change adaptation and mitigation without substantial external contributions from the international community (UNCTAD, 2010, p. ix).

“The frequency and intensity of extreme weather events in LDCs (e.g. droughts, extreme temperature and floods) have been increasing, with five times as many such incidents occurring during the period 2000–2010 as during the period 1970–1979. The number of people in LDCs affected by these extreme events has almost doubled, rising from 100 million during the period 1970–1979 to 193 million over the period 2000–2010. During the latter period, economic losses in LDCs resulting from natural

disasters amounted to an estimated $14.1 billion". As a result of climate change, many African LDCs may experience either greater or reduced rainfall. Both scenarios will adversely affect their economies and food security in the absence of significant adaptation efforts (UNCTAD, 2010, p. ix).

On the other hand the global proliferation of small arms – despite UNSC Resolutions banning arms trade – has provided pirates with an enhanced means to operate on a more destructive and sophisticated level. These munitions include everything from pistols, light/heavy calibre machine guns and automatic assault rifles to anti-ship mines, hand-held mortars and rocket-propelled grenades (Chalk, 2009, p. 3). Most commentators agree that ready access to these munitions—most of which are readily transportable, easy to handle, cheap, and durable—is one of the main factors contributing to the growing level of violence that has come to typify piracy in recent years (Chalk, 2008, p.14). However, such an excuse is irrelevant since almost all of this weaponry is originated from a variety of sources in Asia, Europe and America which means that those who complain about piracy also are the feeder of piracy.

On the other hand the dramatic increase in shipping traffic, i.e. availability of many targets and their attractiveness considered by some studies as one of the most important factor in dramatic increase in piracy. It is true that the history of international shipping has been that of expansion. The world has witnessed containerization, bigger ships, flagging out of ships. More and more seafarers have been provided from developing countries to ensure low cost of maritime transportation. Seaborne trade has doubled every decade since 1945 and World Maritime Fleet has been doubled since 1980. The size of ships was doubled and the total carriage capacity of the shipping industry was quadrupled (Sekimizu, 2010). It is estimated that 80% of all world trade, or about 5.7 billion tons of cargo is transported by sea. This maritime superhighway in the world economy is supported by a massive infrastructure, including ninety-three thousand merchant vessels with 1.25 million seamen bound for eight thousand ports (Rosenberg, 2009, p. 44, footnote 4). Similarly heavy use by seaborne commercial traffic of narrow and congested maritime chokepoints near areas of endemic maritime illegal activity and crowded with the existence of many small islands, such as the Malacca Straits, the Strait of Bab el-Mandab, the Hormuz Straits, the Suez Canal, North China Sea and the Panama Canal may seem to create another incentive for attacks (Topal, 2010, p. 105; Chalk 2008:10-14). For example a third of the world's trade and half of its oil transits through the Straits of Malacca and Singapore alone

(Kang, 2009, p. 1). However, can heavy maritime traffic be considered as a reason for emergence and dramatic increase of piracy? The answer is “no”. There are many congested areas like Istanbul and Canakkale Straits, where there is no incidence of piracy. Therefore high traffic is a flawed ground to explain piracy.

On the other hand flag of convenience phenomenon can be considered as both a reason for increase in piracy and a way of avoiding liability for maritime nations (Soysal, 2008). Harsh competitiveness imposed with limitless production in many sectors coupled with the availability of many service providers forced maritime companies to turn to other ways of reducing the costs of operation. One of the main growing trends has been the use of “skeleton crews,” both as a cost-cutting measure and as a reflection of more advanced navigation technology. Although this reduced manning is undoubtedly more efficient, ships with smaller number of sailors increased vulnerability and attracted the pirates as easy targets of hijacking (Chalk, 2008, Chalk, 2009, p. 10-14). Another cost-reducing but risk increasing factor is the flagging out of ships. Flagging out means registration of ships to a flag of convenience of another country where the taxes and other bureaucratic payments are very few when compared with the countries where ships controlled / managed. In 2010 Panama, Liberia and the Marshall Islands, who don't have navies and can't protect merchant ships from piracy, were among the flag states whose ships attacked most (IMB, 2011). However when we look at the statistics on countries where victim ships controlled or managed, we identify that Germany, Singapore, Japan and Greece are the top four countries. Therefore, the correlation between two variables cannot be reached due to the flag of convenience phenomenon. Since almost all of these flag of convenience states are weak states, it is not possible for them to take necessary measures against and the responsibility of attacks. BIMCO Representative Ropert Lorenz-Mayer underlines the importance of role of flag states in World Maritime Day speech as:

> There is also the fundamental issue of the role of flag states. Many states have committed naval vessels and we saw how the Korean navy took fast and effective military action when their citizens were threatened. But we don’t seem to see the same response from some of the major big shipping registries such as Panama, Liberia, or Cyprus (I could name more) when their ships are attacked. States, which have decided to earn major financial benefits by operating a convenient shipping register, should take their responsibilities for those who crew those ships seriously (Lorenz-Meyer, 2011).

Besides that, the ready willingness of ship-owners to pay increasingly large sums of money for the return of their vessels and cargoes has provided added incentive to

engage in maritime piracy. Somali pirates are projected to have netted at least $20 million in ransoms in 2008, with the negotiated deal for the release of the Saudi-registered Sirius Star allegedly running to an unprecedented $3 million. For many gangs, the prospect of windfall profits such as these far outweighs any attendant risk of being caught or otherwise confronted by naval and coast guard patrol boats (Chalk, 2009).

Considering the dimensions of the problem except for a couple of 'pirate hotspots,' the risk of experiencing a pirate attack is actually minuscule, and most attacks are distinctly minor, e.g. involving petty theft from ships in harbours or at sea. Piracy thus does not seem to have any significant impact on global shipping or world trade as most of the weaponry industry promote.

3.2.2. Local Factors

Local factors are closely linked with the global reasons for the emergency of piracy and cannot be clearly separated from them. However before analysing the local reasons in detail, one should keep in mind that at the heart of the reasons lays the underdevelopment and weak statehood in these countries.

Most of the countries in piracy prone areas are either have a very weak or no state. A failed or weak state is characterized by the almost complete breakdown of law and order and extreme poverty and unemployment. This, in turn, provides a fertile ground for the rise and activities of various illegal groups that might be involved in piracy. For example, Somali state collapsed completely in the early 1990s, leaving the area de facto stateless ever since and thus completely deprived of any coastguard or navy—and with a population with few other sources of income than illegal ones, including piracy. Current provisional government lacks authority over most of its territory. Besides that more than 40% of Somalis live in extreme poverty and almost 2/3 of households subsist on $ 2 per day. About 2/3 of Somali youths are without jobs. "The endemic anarchic situation in Somalia coupled with extreme poverty has directly contributed to the rampant scale of piracy that we are currently being witnessed off the Horn of Africa. In this country with no sovereign government in place, gangs have virtual free-run of the area, enjoying widespread latitude to enforce "rules" that further and protect their own vested interests" (Chalk, 2009, p. 3). Other underdevelopment/poverty related causes for the rise of piracy include incentives like

corruption of ruling authorities, arms proliferation, extremism, and pervasive impunity (Vego, 2009, p. 171).

As a result of weak statehood, another side effect emerges which also feeds piracy. Lax coastal and port-side monitoring play an important role in enabling low-level pirate activity, especially harbor thefts against ships at anchor. Problems of this sort have been particularly evident in Brazil, Nigeria, off the Horn of Africa and across South and Southeast Asia. In many cases there is either no functioning maritime police/coast guard presence at all or the units in place are devoid of adequate staff, boats, equipment and training (Chalk, 2008). UN Office on Drugs and Crime (UNODC) concluded that West African countries currently do not have the adequate legislative framework and enforcement capacities to address such a complex crime where legal obstacles are plenty and action requires important logistics and specialised know-how (UNODC, 2010a, p.16). The situation of lawlessness especially in Somali waters (which currently rank as the most dangerous part of the world in terms of pirate violence) is at the alarming level and this area has been declared all within 50 miles of the shore as an effective no-go area for maritime traffic (IMB 2011).

Another cause of piracy which is closely related with the weak statehood is the corruption of the national criminal justice. Corruption and dysfunctional systems of national criminal justice have encouraged official complicity in high-level pirate rings, which has directly affected the phantom ship phenomenon. According to the IMB, in the Philippines, Indonesia, China and Thailand—all states where pirate groups enjoy direct or at least partial access to co-opted or bribed members of the administration and bureaucracy—ships can be hijacked “to order” for approximately $300,000. These insiders not only provide invaluable information about ship movements and locations, they also ensure that gangs are kept informed about actions that industry or law enforcement are taking to counter their activities and provide help for the rapid discharge of stolen cargoes (Chalk, 2008,p. 10-14 and Topal, 2010, p. 105).

James Kraska in his groundbreaking study of Freakonomics of Maritime Piracy aveluates the modes of behaviour of different actors in piracy prone areas. He underlines a general conclusion as “in a variety of open as well as illicit markets, human conduct is shaped by economic incentives that may be monetized” (Kraska, 2010). Moving from this point, it is also possible to define the economic incentives for the increase of piracy during the last decade. Considering the economic level of all

these piracy prone areas, it is easy to reach some conclusions and identify the economically driven forces behind piracy.

One of the economically driven incentive for the re-emergency of piracy, specifically relevant to Southeast Asia, has been the lingering effects of the Asian financial crisis (AFC) that first broke with the forced devaluation of the Thai baht in mid-1997. This unprecedented event exerted a stronger “pull factor” on piracy, drawing more people (including members of national security forces as explained above) into maritime and other crime due to falling wages, higher food prices, and job losses. The crisis also deprived many littoral states of the revenue required to fund effective monitoring over their coastlines. These effects were particularly evident in Indonesia, an enormous archipelagic state that suffered acutely from the aftermath of the crisis. Many communities around the littoral states of Southeast Asia continue to experience the kind of pervasive poverty that encourages people to resort to piracy as an alternative means of livelihood (Dubai School of Government, 2011, p. 25). Indeed, since 1997, this country’s territorial waters have consistently ranked as the most pirate-prone in the world.

Another linked major issue for the re-emergence of piracy in all piracy-prone areas is mainly about the lack of sufficient legal ways of living. One of the basic means of substances for coastal population of these piracy-prone areas is fishing industry. As fishing is the principal source of income in these communities, decreased catches have further exacerbated the inhabitants’ already harsh economic conditions. However with the rapid increase of illegal, unreported, or unregulated fishing in these areas the fishing communities lost their jobs. For example, the South China Sea has provided abundant fisheries offering food security and employment opportunities for coastal countries for centuries. However, as coastal urban populations have grown and as fishing technology has improved, competition for shared fish stocks has intensified considerably. In addition to such developments, there is also massive illegal fishing, in the form of unregistered foreign vessels who “pirate” the seas. (Rosenberg, 2009, p. 50) Foreign fishing boats intruding in rich regional fishing grounds have become especially vulnerable and attractive targets for pirates who named themselves as coast guardsmen. Besides that most of these shores turn to be a an area of toxic waste disposal which has a very damaging effect on flora and fauna of both marine and coastal environment. As a result of this over exploitation of fishing stocks illegally by foreign fishing vessels for massive production and toxic waste disposal the fishing

communities have become unemployed and turned to other ways of getting income. This grim reality offers strong temptations for some people — who already possess the necessary maritime skills — to resort to piracy. In short, the continuing economic marginalisation of maritime peoples has created a labour pool very conducive for piracy.

Finally, piracy is still perceived to be socially acceptable in many of the coastal communities in this piracy hotspots and has been described as “an acceptable part of the local culture, a normal but illegal means of making money.” It is difficult to eradicate what is seen as an integral aspect of local culture, and an essential part of the local economy of coastal communities in these piracy hotspots (Dubai School of Government, 2011, p. 26). Even they are considered as doing something good especially for local fishermen. Some fishermen say the pirates appear to have had a hugely positive effect on their industry (Straziuso, 2010). They are also perceived as what Eric Hobsbawm called ‘social bandits’ in that they are supported by, and in return provide for, their local communities at the expense of foreigners (Møller, 2009, p. 11). In Somalia, piracy is even considered as one of the most reputable businesses; According to a convicted pirate, a single armed pirate can earn anywhere from US$6,000 to US$10,000 for a $US1 million ransom. This is approximately equivalent to two to three years’ worth of salary for an armed guard at a humanitarian agency and much higher than what a local business would pay (UNODC, 2010, p. 199). As a result pirates get married with the most beautiful girls, lives in luxury houses, drive the most expensive cars. In a state like Somalia where almost 70% of the population is living under the human living conditions, it is not surprising that pirates get such side benefits.

3.3. PIRACY TRENDS

Piracy trends can be analysed from different approaches like piracy prone areas, type and severity of attacks and weapons used, types of demands of the pirates. However one basic trend is that attacks appear to be escalating in *frequency*, *sophistication* and *severity gradually* and Somalia at the core of the problem in the recent years (Global Challenge, regional responses:21).

Most of the maritime traffic connects the most economically powerful regions in the world: North America-Europe, North America-Asia, and Europe-Asia. Routes linking Europe and Asia have the particularity of using specially narrow passages: the Straits

of Gibraltar, the Suez Canal, the Strait of Bab el Mandab between Yemen and Djibouti and the Straits of Malacca between Sumatra and Malaysia (Costa, 2009, p. 3). These passages suffer congestion problems and the countries flanking them are often politically unstable. It is not a coincidence that most congested areas are also most piracy-prone areas in the world. But it is important to keep in mind that there is a triple overlap among intensity of maritime traffic, poverty and piracy prone areas. Therefore it will be misleading to create a correlation only between piracy and maritime traffic without considering other pushing factors.

There is general agreement in the literature about the geographical concentration of piracy, i.e. so-called pirate hotspots. Historically, such hotspots have come and gone, but they tend to be quite durable in the recent years. This is because the emergence of piracy hotspots is closely related with what happens on the ground which means that pushing and pulling factors in our times is also durable presenting either challenges such as economic hardship, which push people into piracy, or opportunities pulling people in the same direction (for example, a sudden increase in shipping through their local environment) or a combination of challenges and opportunities such as may result from a political crisis or an armed conflict ashore which also leads to a relaxation of law enforcement at sea (Møller, 2009, p. 12).

Most comprehensive data regarding the piracy trends is collected by the IMP International Commercial Crimes (ICC) International Maritime Bureau (IMB) Piracy Reporting Centre (PRC). PRC was established in 1992 for the purpose of providing a free service to the seafarer on 24 hour working base in Kuala Lumpur, Malaysia as a response to escalating level of piracy. The PRC was established with the aim of raising awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders, etc., of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships. For the period before 1992 there is no available information about piracy attacks. Therefore the piracy trends shall be analysed according to the information provided at the piracy reports of PRC (IMB).

Current PRC statistics indicate that Somali is at the core of the problem. However the emergence of Somalia as the dominant global piracy hotspot is relatively recent occurrence. Significant international attention had previously been focused on the Malacca Strait between Singapore, Malaysia and Indonesia, and on the South China

Sea. Similarly, the permanent mix of violence and contested politics in the Gulf of Guinea had made piracy and armed robbery at sea off the western coast of Africa particularly concerning. However, since 2005, Somalia has emerged as the leading source of piracy attacks. The reality is that with the exception of piracy in waters off the coast of Somalia and armed robbery against ships within the territorial waters of some States in the Gulf of Guinea, the number of incidents of piracy and armed robbery against ships reported to the International Maritime Organization over the last few years has been steadily decreasing (Sekimizu, 2010). There has been a decline in attacks in the Malacca Strait and the South China Sea. Piracy in Asia and West Africa remains a serious concern, but in terms of raw numbers – i.e., hijacks, money involved and sailors affected – piracy from Somalia is by far the leading concern (Dubai School of Government, 2011, p. 21).

Looking at the total number of the actual and attempted attacks and their area of occurrence indicates both the increasing number of total attacks and increasing weight of Somali piracy. The number of actual and attempted attacks in 2006 was 239 and it increased to 445 in 2010 while the number of Somali piracy increased from 22 to 219 respectively. Increased numbers of reported attacks worldwide – both successful an attempted – have translated into rising numbers of seafarers being held hostage – while the number was 188 in 2006, the total climbed to 1050 in 2009 and 1181 in 2010. There is also an increasing ratio of attacks. For example for the years from 2003 to 2008, mean of attacks was 307, while for the last two years (2009-2010) this mean skyrocketed to 428 which stands for almost 40% increase in the last two years. (IMB 2010). Not only has the frequency of piratical attacks increased steeply since 2007 and even more dramatically in 2008, but the attacks have also become more daring, all of the attacks attributed to Somali piracy is being launched against ships on the move, while the majority of attacks in other parts of the world occur against berthed or anchored ships (IMB, 2010:9)

According to the most update official web page of the ICC IMB Piracy Reporting Centre, piracy prone areas are listed as the following:

- In the South East Asia and Indian Sub-Continent: The region is demonstrably the world's most dynamic in terms of maritime trade, ship construction, naval growth, competing maritime ambitions, contested oceanic claims, and terrorist activity (Boutilier, 2004, p. 1). Therefore the region is vulnerable to piracy

attacks. In this region most piracy prone areas are listed as: Bangladesh (most attacks reported at Chittagong anchorages and approaches), India (Cochin - attack mostly occurred while vessels at anchor), Indonesia (Anambas / Natuna / Mangkai / Subi Besar / Merundung islands area), Malacca Straits (the number of attacks has dropped due to the increase and aggressive patrols by the littoral states authorities since July 2005), Malaysia (Off Tioman / Pulau Aur / South China Sea), Singapore Straits, South China Sea (in the vicinity off Anambas / Natuna / Mangkai islands / Subi Besar / Merundung area) and Vietnam (Vung Tau)

- In the Africa and Red Sea: This region is the most piracy-prone areas of the world from where almost half of the total piracy attacks emerges. Until 2008 most attacks occurred off the eastern coast of Somalia, but in 2008 this was overtaken by the north coast of the same country, adjacent to the Gulf of Aden, at the entrance to the Red Sea and with the Suez Canal at the other end (Møller, 2009,:13). In this area the attacks of Somali pirates have spread and taken place very far reaching up to off Kenya, off Tanzania, off Seychelles, off Madagascar off Mozambique/Mozambique Channel and in the Indian Ocean and Arabian Sea / off Oman and off west coast India and off western Maldives). Other most piracy prone areas are Nigeria (Lagos and Bonny river), Benin (Cotonou), Guinea (Conakry), Cameroon (Douala Outer Anchorage) besides Gulf of Aden/Red Sea region.
- South and Central America and The Caribbean Waters: In this region Brazil (Vila do Conde and Santos) Peru (Callao), Venezuela (Puerto La Cruz) Haiti (Port Au Prince) are listed as the most piracy prone areas.
- Rest of the World: Other areas include Arabian Sea / Off Oman (Pirates believed to be Somali pirates extending their attack areas), Indian Ocean / Off Seychelles / Off Madagascar / Off west Maldives / Off Mozambique (Suspected Somali pirates attacking and hijacking vessels in these areas. Attacks also extend to west coast of Maldives, India and Minicoy island) and Iraq (Umm Qasr) (IMB, 2010, p. 19-22).

The severity of attacks also has increased regularly. Until recently pirates were armed with simple knives or pistols. However as a result of global proliferation of arms and thus increased availability and accessibility of them, pirates of today are equipped with AK-47s, M-16s, rifle grenades, and RPGs (Chalk, 2008, p. 10-14). In 2006 in 53

attacks out of 259, the pirates used guns and this number reached to 243 out of 445 attacks or from 22% to 55% respectively (IMB, 2010). However, this trend is not the same at all piracy prone areas. For example, compared with Somali pirates, Southeast Asian pirates are less violent, less organised, and ill equipped to mount greater operational range. Besides that all attacks off Somalia's coast were launched against steaming ships while majority of attacks elsewhere occurred against ships that were berthed or anchored. In contrast to violence during boarding on ships, considering harm to the captives, most of Somali pirates do not want to harm them because they are primarily motivated to obtain ransom. They also have a sanctuary on land in Somalia and in its territorial water from which they can launch attacks and conduct ransom negotiations. In other parts of the world, pirates are more likely to kill their captives because they lack the sanctuaries. For example, pirate attacks in the Strait of Malacca are aimed either to capture a ship or to seize its cargo (Vego, 2009, p. 171). As mentioned previously reason for this is that Somali pirates operate from a stateless territory, while in Southeast Asia states are rapidly modernising and strengthening the rule of law, in line with their own domestic characteristics.

The attacks also have turned to be more sophisticated as a result of technological development. Pirate groups have begun to use satellite phones to communicate with each other in remote areas off the shore and Global Positioning System/GPS to identify the location of targeted ships. They also use mother ships and fast boats which are being used to approach the targeted ship in remote areas. Previously, the activities of pirates were mainly concentrated within the 50 miles of the coast. Equipped with such sophisticated tools, now they are able to attack ships sailing almost 400-500 miles (Topal, 2010, p. 106) and even 1000 miles of the shore. Therefore another alarming development especially in Somali piracy has been the spread of the problem from the Horn of Africa across the Indian Ocean. This is also a side effect of the increased activities of international navies and naval task forces, along with the establishment of the Internationally Recommended Transit Corridor (IRTC) which have made this area much more difficult for pirates to operate within. Responding to the greater level of security off the north coast, pirates have shifted their activities back to the Indian Ocean and greatly expanded their range (Dubai School of Government, 2011, p. 24).

3.4. COST OF PIRACY

There are many studies focusing on the total economic cost of maritime piracy. Despite this fact, however, it is not possible to calculate the exact amount, due to data limitations, imperfect reporting on piracy and difficulty of disaggregating the effects of piracy on macroeconomic variables such as reductions in foreign direct investment, tourism, or commodity price inflation. As mentioned previously, the IMB is generally accepted as the primary source of information on piracy in the world. However, the IMB is restrained by the volume of the piracy attacks it is permitted to report and document. Due to these difficulties total cost of piracy cannot be known exactly but it is estimated at a very wide range between $1 and $16 billion per year Although this figure might appear unacceptable, it is generally viewed as an inevitable cost of doing business that, when measured against the annual value of maritime commerce, in fact, prohibitively onerous (Chalk, 2008, p. 15-16).

Besides that most analyses on the issue have focused on the direct costs they impose on the global economy as a whole in terms of upward pressures on shipping costs – including longer routes taken, routes taken, delays in ports, higher insurance rates, and costs which are passed on to consumer – less attention has been paid to their effect on the very countries in the region whose weakness gave rise to the piracy in the first place (Dubai School of Government, 2011, p. 30). Another missing part of the studies is humanitarian cost as a side affect of secondary economic costs imposed on local people, who have no access to the fruits of piracy and also deprived of international humanitarian aids due to piracy attacks on aid transporting ships.

One of the studies focused on the comparison of cost of war and cost of low intensity conflict (in the case of maritime piracy) has been conducted by Sami Benssassi and I. Martinez-Zarzoso. According to the study, piracy increases the cost of international maritime transport since higher premiums must be paid to crews sailing through dangerous waters, and the cost of insuring the goods shipped also increases. Alternatively traders can adopt longer and costlier trade routes or change alternative means of transport. The study concludes that the effect of ten additional vessels hijacked is associated to an 11% decrease in exports and the international trade-related coast of piracy is estimated to be around 28 billion dollars. The study also compares the cost of low intensity conflict like Somalia, to the cost of a full scale conflict (Afghanistan). The results of the study indicate that the estimated cost of war

almost doubles the cost of low intensity conflict (Zarzoso and Benssassi, 2008). Their empirical study also demonstrates that in case of foreign trade relations the only variable that statistically significant is the number of hijacks, whereas the number of attempts, the number of boarded vessels and total number of incidents are not statistically significant.

In economic terms cost of piracy can be classified as direct economic costs on the global economy and secondary economic costs on the regional economies of piracy hotspots. Humanitarian cost should be evaluated not by calculating total lost but rather by analysing the long term effects on human capital of these countries.

Direct economic costs include ransoms, increase in insurance premiums, re-routing of the vessel not to enter the piracy-prone areas, stolen cargos, delayed trips, deterrent security equipment, deployment of naval forces, piracy prosecutions and piracy-deterrence organizations. Recently hiring of private contracted armed security personnel which adds another direct economic cost has also been listed as one of the measures against piracy in the Best Management Practices developed by maritime private sector (OEF, 2010b, p. 1-2).

Increasing price of ransoms paid to release hijacked ships is one of the most important reasons for the increase in direct costs of piracy in recent years. Ransoming is the common option for the Somali pirates and pirates in other regions have more often stolen the vessel or cargo, rather than ransoming the value of the seafarer's lives and their ship (OEF, 2010a, p. 9). Comparing the cost of ransom payment with the value of the ship and its cargo, it is much more reasonable for ship owners to pay the demanded ransom for safe recovery of ships and crews. Besides that, since insurance premiums for ships transiting from piracy prone areas has been paid very high in advance, the shipowners do not hesitate to pay ransom money. Another incentive is the value of time. Fast ransom payment leads to early release, which many ship owners find preferable to protracted negotiation and then intervention by international forces that engender further delay. Time is money (Chalk, 2008). As previously mentioned, the ready willingness of shipowners to pay increasingly large sums of money for the return of their vessels and cargoes has provided added incentive to engage in maritime piracy. Pirates working out of Somalia got $238 million in ransom money in 2010, up from $177 million in 2009, according to the non-profit One Earth Future Foundation (OEF, 2010a). However the total cost of ransom is estimated to be

around doubled the value actually paid to pirates. The total coast is duplicated by a number of factors, such as: the cost of negotiations, psychological trauma counselling, repair to ship damage caused while it is held captive. In addition to ransom payment, ransoming process adds to total cost. The average period for ransoming process is about 40 days which creates additional costs due to delays of shipment (Chalk, 2010b. UN Expert Report, 2008).

Another cost of piracy is increased premium payments. Shippers purchase four main types of insurance as indemnity against piracy: war risk, kidnap and ransom (K&R), cargo, and hull. The most significant increase in premiums has been in 'war risk' and K&R. The Gulf of Aden was classified as a 'war risk area' by Lloyds Market Association (LMA) Joint War Committee in May 2008, and is therefore subject to these specific insurance premiums (OEF, 2010, p. 1). In 2005 when the Malacca Straits declared an Area of Enhanced War Risk by Lloyd's of London, the three affected littoral nations—Singapore, Malaysia, and Indonesia—immediately put in place a series of coordinated initiatives including joint maritime patrols, the creation of centralized databases to facilitate the rapid exchange of intelligence, the initiation of a nascent regime of airborne surveillance over the Malacca Straits and, remarkably, tentative moves to grant limited rights of hot pursuit into territorial waters to counter piracy in their respective territorial waters (Chalk, Smallman and Burger, 2009, p. 3). However in case of Somali piracy such an action is not possible due to lack of a ruling authority for the whole country.

The incidence of piracy has increased sharply in 2008, leading to a ten-fold rise in the cost of insurance premiums for ships and cargo plying the East African coastline. And even some analysis claims that the ship insurance rates rose to $ 20,000 per trip in 2009 from $ 500 in 2008 (Vego, 2009, p.171). Besides that it is widely believed that as many as 50% of pirate attacks are not reported, due to shipowners' fears that doing so will decrease the degree of perceived trust from potential customers and increase insurance premiums and result in costly post-incident investigations. (OEF, 2009, p. 2)

"Piracy is also a major threat to the sustainability of maritime transport and endanger the stability of coastal states in piracy prone areas (Kallas, 2010). As it is known, almost all of the industrialised countries have to rely on a maritime supply of energy resources and free and secure use of the vital shipping lanes to these regions. Due to the piracy, not all but some of the shipping companies have begun to consider avoiding

transiting the Gulf of Aden and the Red Sea/Suez Canal altogether, and redirect their ships via the Cape of Good Hope thereby adding some 3,500 miles per voyage from Rotterdam to the Persian (Arabian) Gulf. This adds tremendous cost and time to voyages almost 30% increase in total cost of a voyage (Topal, 2010, p. 108). Hence, a ship can make five instead six of trips per year. It also greatly increases the fuel consumption and costs (Zou, 2009b, p. 583). Besides that successful hijacking of a tanker has distorting effects on global macro-economic indicators. For example hijacking and diverting of the super-tanker SIRIUS STAR with its 300,000 tons of crude oil, on November 2008, led to 1.4% price increase of crude oil (Tajani, 2009).

Detouring is another source of cost while dealing with piracy. Because of the increased piracy in the Gulf of Aden and off Somalia's coast some shipping companies directed their ships to sail around the Cape of Good Hope thereby adding some 3,500 miles per voyage from Rotterdam to the Persian (Arabian) Gulf. Hence, a ship can make five instead six of trips per year. It also greatly increases the fuel consumption and costs. Because of detours of the ships around Cape of Good Hope and economic downturn maritime traffic through the Suez Canal was greatly reduced. The Suez Canal revenues have declined in the recent months because of decreased economic activity and the piracy threat into the canal approaches in the Gulf of Aden. The Suez Canal revenues are expected to fall from $ 5.1 billion in FY 2008 to about $ 3.6 billion in FY 2010 or 30% decrease in two years (Vego, 2009, p. 172).

Another cost is the deployment of Navy Forces to deter piracy. To combat Somali piracy the international community has deployed nearly three dozen warships to the waters off Somalia in three multinational task flotillas: the United States-coordinated Combined Task Force 151 (CTF-151), NATO's "Operation Allied Protector," and the European Union Naval Force (EU NAVFOR) "Operation Atalanta." They have been supplemented by additional vessels from China, France, India, Malaysia, and Russia, among others, which are not formally integrated into one of the three naval groups. However, the pirates have hardly been deterred by international naval presence and they have simply shifted their operations to areas which they know are not being patrolled, with strikes increasingly taking place on the high seas of the western Indian Ocean. In fact, attacks recently have taken place as far as 1,000 nautical miles from the Somali coast, and even the transit corridor in the Gulf of Aden that is supposed to be secured by international naval forces is not all that secure, since there have been incidences of attacks and hijackings in this area. Besides, there is a need for

questioning the sustainability of such a method of deploying naval vessels (OEF, 2010b, p. 1; Chalk, 2010b).

Piracy has also effect on human element of the maritime transport. The immediate and long term physical and mental traumas suffered by crews on ships which are attacked as well as captured are unquestionable. There is also traumas suffered by ships' crews' families and loved ones at home which is even worse. However it is ironic that a piracy victim says that "Personally don't feel any post piracy stress or trauma. Men are not born pirates, it is circumstances caused by political failure which encourages the growth of piracy" (Darch, 2010). On the other hand, governments whose citizens are crew members on hijacked ships can come under very considerable public, political and media pressure to do whatever is necessary to secure their early and safe release. These same governments will often and at the same time incur considerable diplomatic pressure from other governments and the international community *not* to take actions likely to give encouragement to hijackers or the wider criminal fraternity. Whichever way governments choose to act, the political costs for them in terms of domestic and international trust and credibility are often very high (UN Expert Report, 2008, p.31).

Besides the direct economic costs which are much more predictable and have global repercussions, piracy has secondary costs which are difficult to predict and mainly felt by the local people of piracy prone areas. Secondary costs include decrease in regional trade volume, food price inflation and reduced foreign revenue, boycotting of specific port facilities as a result of the frequency of attacks which has long term implications as deterioration of living conditions of the regional states in the piracy prone areas (Bowden et al) and reduced fishing incomes. Besides that, piracy can also undermine and weaken the legitimacy of the ruling groups by encouraging corruption among elected government officials. Illicit flow of revenue also affects an already complicated landscape, creating potentially new centres of power, with potentially adverse consequences for the sub regions (Chalk, 2008, p. 15-16).

However it is important to underline that to estimate the secondary costs it is necessary to look at the macroeconomic figures which are a very complicated issue with many factors. It is widely accepted assumption that insecurity decreases trade opportunities and when economic activities and measures declared to be taken to fight insecurity is transparent and enforceable, trade volume increases. However it is very difficult to disaggregate the effects of piracy on macroeconomic variables such as reductions in

foreign direct investment, tourism, or commodity price inflation. Since piracy often surfaces in poor, developing or weak states which are prone to political instability, it is only a estimation of what impact piracy independently has. Also the economic recession of 2008 was another complicating factor to determine whether changes in shipping behaviour is related to piracy, or an overall deflation of the industry. For all these reasons most of the studies on the cost of piracy focused on the direct economic costs rather than secondary ones. Despite this fact, it is possible to estimate some effects rather than figures about the secondary costs of piracy.

With regard to trade volume decreasing effect, piracy can have impact both on the origin countries and neighbouring states, i.e. a regional effect. Piracy decreases trade volumes by altering entire trading routes as a result of shippers use of alternative ports to pick up and deliver their goods. For example Kenya has argued to bear the economic brunt of Somali piracy. The Kenyan Shippers Council (KSC) has estimated that piracy increases the cost of imports by $23.8 million per month, and exports by $9.8 million per month. These costs are then redirected to Kenyan consumers. Gilbert Langat, Chief Executive of the KSC has estimated that piracy could push up the price of imported goods by 10%.60 (OEF, 2010a, p. 20-21). As a result both Somalia and Kenya faced with the reduced foreign investment (OEF, 2010b, p. 2) but at the same time less vulnerability to global competitiveness. In case of Malacca Strait where nearly 50% of the world's crude oil, 66% of its natural gas and 40% of the world's trade is transported through, littoral states Malaysia, Indonesia and Singapore's economies shall be most harmed by any blockages to trade, because of their utter dependence on maritime traffic for sustenance (Kang, 2009) which means that the system of dependency continues.

Another similar effect is the reduced tourism revenues. For example, tourism in Kenya, the Seychelles, Thailand, Singapore, Malaysia or Ghana has been reduced as result of expansion of piracy attacks as far as 1000 miles off the Horn of Africa. Cruise ships started to avoide some areas intentionally. For example the Kenya Tourist Board estimates that the number of tourists visiting Mombasa by cruise ships between January and April 2010 declined by 95%.74 The Seychelles has also indicated its tourism industry has been severely affected by piracy, particularly for activities such as boat charters(OEF, 2010a, p. 20-21, footnote:75).

Another secondary cost felt by neighbouring states' local people and has deteriorating effect on their life is the decline in the fishing sector. Although piracy has a positive impact on the fish stocks of some areas by deterring illegal fishing, a number of nations have also indicated that their fishing sector has declined in response to the threat of piracy. For example tuna catches in the south-western Indian Ocean, one of the world's richest fishing grounds, fell by 30 % in 2008. This had a major impact on Seychelles because some 40 % of its earnings came from fishing (National Security Council, 2008, p. 3). Despite the fact that fishing is incredibly important to these nations, some of the studies approached this aspect from a supply-demand approach. Such studies argue that the price of fish can be expected to actually increase if its supply reduces. That is, as piracy increases, and fishing fleets are unwilling to operate in certain areas, the supply and demand model for the fishing industry is expected to equilibrate, so that the price of fish increases, which may be a benefit to the fishing sector (Chalk, 2010b, footnote 8).

Cost to food price inflation is argued to be another effect of piracy. Almost 40% of piracy attacks have been on bulk carriers and general cargo vessels by which majority of the world's food staples (such as rice and grain) are carried (OEF, 2010a, footnote:67). Pirate attacks on these vessels have direct consequences on the price of food, as deliveries of food cargo is delayed, or in the case of perishable goods, lost. Such an effect is most severely felt by piracy prone states like Somalia, where over half of the food consumed is commercially imported (in addition to humanitarian food aid). In addition to that, "ship owners are refusing to carry goods to such areas which creasets shortages of basic goods such as rice, flour and sugar" Abdinasir Aw Kombe, a Somali businessman, said. In April 2010, a Somali food importer claimed that in less than a month, piracy had caused the price of a 50kg bag of sugar to increase from $30 to $34, wheat four from $18 to $22, and rice from $25 to $28.68 Such a rapid food price inflation in poor nations has the potential of leading to social unrest, riots, and potentially, conflict or severing of ongoing conflicts. Secretary General of the United Nations, Ban Ki Moon stated in November 2010: "Piracy… has had an immense impact on the economies of East Africa and also the wider world.…International trade routes are threatened and goods in the region as well as Somalia are becoming more expensive" (OEF, 2010a, p. 2). In addition to food traded, piracy also hampers the humanitarian aid deliveries in the Horn of Africa. About seven million Ethiopians and three million Somalis are dependent on humanitarian assistance in addition to other aid receiving states o the region like Sudan and Yemen. Despite the existence of such

figures which give an idea about the dimensions of the problem, most studies conclude that to estimate the effect of piracy on food price inflation is not possible due to difficulty of scientifically disaggregate the effects of piracy from general instability and state failure in countries harbouring pirates (Chalk, 2009).

As a last word about the cost of piracy, it is more important to focus on macroeconomic costs and humanitarian aspect of the problem rather than underlining the direct economic costs. As shown above, in economic terms, the impact of piracy is relatively small. News reports often cite fantastic figures in the billions, but in fact, when compared to the volume of international trade, these losses amount to little more than a rounding error. With the enormous number of vessels that traverse the Gulf of Aden, the risk of a pirate attack is only about 0.5%. On the other hand costs paid by the local people of the region are so much that it is not calculable and have long term repercussions (Murphy, 2010, p. 92). Such implications of the piracy have been felt most radically by the Somali case which is going to be elaborated at the following chapter under the humanitarian cost title.

3.5. MULTI-LEVEL ANALYSIS OF ANTI-PIRACY MEASURES

Piracy is a global phenomenon but not a global problem. In global terms it is only a limited number of international shippers' problem. However in local terms piracy affects the destinies of many local people. Therefore the problem of piracy necessitates a local response.

Although there are overlaps between different layers of anti-piracy measures, they can be classified as measures at international, regional and national levels. International measures are mainly the activities of states under international organisations like UN or EU or the initiatives of private sector like the IMB PRC. Such measures range from information sharing to, deployment of multi-national naval flotillas.

In terms of regional measures, cooperative responses are ranging between soft cooperation mechanisms like information sharing, sharing of experience and joint trainings and hard cooperation mechanisms like joint anti-piracy operations by law enforcement officers, establishment of regional training / information sharing centres. National measures are mainly related with capacity building of maritime law enforcement forces and strengthening of existing control and inspection with in the context of international and national regulations. However such national measures are

the case for states where national resources are sufficiently available and government authority exists. On the other hand for states like Somalia or Bangladesh, where there is no or very weak government authority and capacity, no effective measures against piracy are taken or the measures are only limited to cooperating with intenational navies. What is interesting about the all levels of measures is that almost all of them approach the problem to deter it rather than curing the core causes. Therefore all efforts concentrate on security aspect of the problem and prevention not on the solution of root causes. It is going to complicate the situation and be a drift from academic perspective to refer complo theories here for their failures. Therefore the general failures of these measures can be attributed to the constant lack of lessons learnt parts of these measures.

Since national measures mainly include individual efforts of those states in piracy-prone areas in the form of capacity building, upgrading of existing infrastructure and stricter enforcement of national and international legislation, they shall not be evaluated here and instead the impact of global and regional measures will be addressed.

3.5.1. REGIONAL MEASURES

Regional anti-piracy measures range from soft cooperation mechanisms like information sharing, sharing of experience and joint trainings to hard cooperation mechanisms like joint anti-piracy operations by law enforcement officers, establishment of regional training / information sharing centres. It is important to underline that the initiation of regional measures has mainly come from extra-regional actors like Japan and USA, who have vital interests in these regions.

As mentioned in the previous parts, Southeast Asia was the most piracy prone area until the midst of first decade of 21st century. The waters of this area are vital for international shipping and trade. This area is also world's one of the most congested shipping lanes. Besides that, vessels transiting this area have been the one of the clear targets of the maritime terrorist attacks like in the cases of February 2000 bombing of the Philippine ferry Our Lady Mediatrix, which killed forty people and wounded another fifty and December 2001 bombing of the ferry Kalifornia at the beginning of the 21st century. However, before the start of regional cooperative efforts in the Southeast Asia, almost all of the littoral states were engaging with upgrading their navy against each other due to interstate problems. Regional conflicts exacerbate the piracy problem by diverting forces away from protecting shipping and towards more immediate threats.

The United States, Japan, Australia, China, and India all maintain strong maritime forces and significant interests in Southeast Asia. Of these, the United States has historically been the guardian of Southeast Asian sealanes. However, until 2001 the United States focused nearly all of its attention on traditional military affairs and paid relatively little attention to the threats posed by non-state actors, particularly those pirates who hunted their victims within state waters (Bradford, 2004, p. 483-485).

On the other hand, taking these importance and imminent security threats into consideration, states of Southeast Asia were not so slow in forming channels of cooperation than in the previous years despite on-going maritime territorial disputes contributing to interstate tension in Southeast Asia, in particular among Indonesia, Malaysia, Brunei, the Philippines, Vietnam, China, and Taiwan. Therefore, the bulk of the new cooperation mechanisms have been oriented toward such transnational threats as piracy and maritime terrorism. Although considerable obstacles remain and states have not been equally proactive, commitments have been reinvigorated and several new arrangements created (Bradford, 2005, p. 67).

Clear statements of renewed interest in improving cooperation include the June 2003 "ASEAN Regional Forum (ARF) Statement on Cooperation against Piracy and Other Threats to Maritime Security" and the "Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime," which was endorsed by the January 2004 ASEAN Ministerial Meeting on Transnational Crime. More concretely, most regional shippers and nearly all major port facilities achieved compliance with the International Maritime Organization's December 2002 International Ship and Port Facility Security Code (ISPS Code) before or shortly after its July 2004 deadline. Also in 2004, Singapore acceded to the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (known as the SUA Convention). Singapore's accession was considered by many analysts as an important step toward wider regional acceptance of the SUA Convention (Bradford, 2005, p. 66-68).

On the other hand one of the most effective anti-piracy measures came from this region as a response to this gradually increasing threat. In November 2004 sixteen countries (the ASEAN members plus China, South Korea, Japan, Bangladesh, India, and Sri Lanka) concluded the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). It was mainly an output of the Japan efforts since Japanese vessels transiting this area was under the threat of piracy

attacks and the straits of Malacca are vital importance for Japanese trade and energy supply security. While many sealanes are important to Japan, those of Southeast Asia are of vital importance because they deliver strategic commodities such as petroleum, coal, uranium, grain, and iron ore and carry Japanese manufactured goods to Europe, Australia, the Middle East, and Africa. The Strait of Malacca alone carries 80 per cent of Japan's petroleum imports. Additionally, although Japan possesses highly capable maritime forces, its constitution restricts the Self Defence Forces (SDF) from operating as a traditional military (Bradford, 2005, p.482). But some sources argue that the agreement lay largely inert until the United States proposed the Regional Maritime Security Initiative (RMSI) in 2004 and the Joint War Committee of Lloyd's of London designated parts of the Malacca Strait a war zone for insurance purposes in 2005 (Murphy, 2010, p. 93). First months of this Japanese proposal was deadlocked due to disagreement about the location of ReCAAP Information Sharing Center (ISC) which would maintain databases, conduct analysis, and act as an information clearinghouse. Sensitivity of member states mainly stemmed from the possibility that the ISC might publish biased reports critical to member states. Taking the statistics of the IMB PRC which is located in Kuala Lumpur/Malasia in to account, most of the opposition came from Indonesia, with the accusation that PRC misrepresented incidents in Malaysia waters as having occurred on the Indonesian side of the Strait of Malacca because the center is located in Kuala Lumpur. However, Japan's efforts succeeded in securitization of the problem of piracy. The fact that members ultimately agreed to locate the ISC in Singapore demonstrates willingness to compromise in order to deter such maritime threats. However, the agreement does not obligate members to any specific action other than sharing information that they deem pertinent to imminent piracy attacks; furthermore, the ISC's funding is based on "voluntary contributions". (Bradford, 2005, p. 66-68)

According to the ReCAAP Agreement the general obligations of the contracting parties incudes making every effort to take effective measures in respect of the following:

> (a) to prevent and suppress piracy and armed robbery against ships;
> (b) to arrest pirates or persons who have committed armed robbery against ships;
> (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
> (d) to rescue victim ships and victims of piracy or armed robbery against ships. (ReCAAP Agreement, Article 3)

ReCAAP Agreement also included the acts of armed robbery to extend the area of cooperation by including in its preamble that;

> "Convinced that information sharing an capacity building among the Contracting Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,
> …
> Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,"

Cooperation externally enforced on governments in the region has led to the establishment, in Singapore, of a regional Information Sharing Centre under the ReCAAP Agreement. It was for the first time a formal and permanent platform for government-to-government information exchange on piracy and armed robbery against ships in Asia (UN Expert Report, 2008, p. 36). In addition to the centre, a programme to train coastguards has been launched. This initiative has remained very much region-driven and has already begun to make headway in combating acts of piracy. It is served as a good example of cooperation for other regions (Borg, 2009). Dialogue and information sharing have been enhanced, states seem firmly committed, and some states have begun to operationalize their maritime security cooperation. However, ReCAAP alone hasn't been successfull enough to eradicate Asian piracy (Bradford:66-68) since it focuses on the deterrence and contains no tools to solve the root causes of piracy.

Another extra regional actor actively engaging in the region to deter the Southeast Asian piracy has been USA. The US especially during the Bush administration put forward some initiatives some of which are regional and some are global in character for deterring maritime security threats. Such initiates included the Container Security Initiative (CSI), the Proliferation Security Initiative (PSI), and the Regional Maritime Security Initiative (RMSI). The RMSI is designed specifically for the Straits of Malacca and Singapore and it was out rightly rejected by the littoral states particularly Indonesia with the same accusation that the base of RMSI, reports from the Malaysia-based International Maritime Bureau (IMB), were inaccurate (Kang, 2009). Such initiatives provided the USA another ground for acting as the world's policeman and an opportunity to monitor the international maritime trade activities of individual states with a mask of monitoring activities of terrorists. The United States inflated the cause of maritime threats to use it as a pretext for counter-balancing China's sway in the South China Sea.

On the other hand bilateral approaches by the Japanese Coast Guard (JCG) have reached considerable success. The JCG has provided training, equipment and funding to all the coastal states of the South China Sea on the bilateral basis. (Rosenberg, 2008). As an example of the trilateral cooperation efforts Malaysia, Singapore and Indonesia formed the MALSINDO patrols to fight piracy in the Malacca Strait. Other regional efforts include the annual meeting of the Heads of Asian Coast Guard Agencies (HACGA), and the Cooperative Mechanism for Maritime Safety and Environment Protection in the Malacca and Singapore Straits. Such initiatives seem successful in decreasing piracy attacks in Southeast Asia from 2005 to 2009 (Banlaoi, 2005, p. 3-4). But in reality it was only the deployment of naval forces that led to shift in the epicentre of piracy away from Southeast Asia in recent years to Horn of Africa. In 2010, however, piracy experienced a resurgence in the region, because of the persistence of underlying conditions that make piracy an integral part not only of the local culture, but also of the local economy.

Until the beginning of 2005, piracy in the South China Sea has primary importance than any other piracy-prone areas of the world. Beginning from 2005, Somali piracy has taken the priority as a result of relative decrease in South China Sea piracy. Therefore the maritime sector has turned their attention to the Horn of Africa from the Southeast Asia since 2005. Regional initiatives to counter Somali based piracy are limited due to lack of capacity of this area's states. One significant initiative is the Djibouti Code of Conduct, which provides a framework for the regional mechanism for anti-piracy operations in the Horn of Africa. Since it is dedicated to piracy at the Horn of Africa this cooperation mechanism will be dealt with in the next chapter in detail.

As a general evaluation of the regional measures, increasingly involvement of external actors into the region forced regional states to deterrence measures for the sake of undisrupted international trade and as a result reduced the piracy activities against ships. However it is misleading to evaluate such initiatives as successes since the piracy problem continues to prevail in these regions and no tangible measures has been taken to counter root causes.

3.5.2. INTERNATIONAL MEASURES

International measures are mainly the activities of states under international organisations like UN or EU or the initiatives of private sector like the IMB. Such measures range from information sharing to adoption of new international rules at the International Maritime Organisation or deployment of multi-national naval flotillas. It is necessary to mention that although some measures seem sponsored by the international organisations, most of them are the result of pushes of private sector. It is also important to underline that most proactive measures like UNSC Resolution 1816 and its successors have been taken for the Somali piracy case which is also going to be dealt with in the coming chapters in detail.

One of the private sector sponsored measures is the Best Management Practices (BMP) which is a document endorsed by virtually all industry organisations and by the UK Maritime Trade Operations (UKMTO) and EU NAVFOR. It provides guidance to ships to avoid and deter being a victim of piracy. The BMP is addressed mainly to Somali based piracy and for the High Risk Area defined in the section two of the BMP document. Although advised not be considered as an alternative to Best Management Practices and other protective measures, BMP refers to International Maritime Organisation Maritime Safety Committee (MSC)'s relevant circulars which includes defensive security measures on board defined by the industry and developed and updated by the MSC for the use of privately contracted armed security personal (PCASP) (Sekimizu, 2010). IMO's MSC.1/Circ.1408 on Interim Recommendations for port and coastal States regarding the use of PCASP on board ships in the High Risk Area provides the base for the use of armed security personnel. This circular and its predecessors provide interim guidance and recommendations to be taken into account when considering the use of PCASP if and when a flag State determines that such a measure would be lawful and, following a full risk assessment, appropriate. Although it emphasizes that employment of PCASP is not an alternative to other anti-piracy measures, the circular and BMP provides a legitimate ground for the use of armed personnel.

The MSC also adopted an MSC resolution on Implementation of Best Management Practice guidance, which strongly urges all parties concerned to take action to ensure better implementation of these important measures, recognising the urgent need for merchant shipping to take every possible measure to protect itself from pirate attack and that effective self-protection is the key to avoiding, evading and deterring pirate

attacks. The resolution strongly urges all those concerned to take action to ensure that as a minimum and as recommended in the Best Management Practices: ships' masters receive updated information before and during sailing through the defined High Risk Area; ships register with the Maritime Security Centre Horn of Africa and report to United Kingdom Maritime Trade Operations (UKMTO) Dubai; and ships effectively implement all recommended preventive, evasive and defensive measures (IMO).

The MSC also agreed Guidelines to assist in the investigation of the crimes of piracy and armed robbery against ships, which are intended to be used in conjunction with resolution A.1025(26) Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. The guidelines are intended to assist an investigator to collect evidence, including forensic evidence, to support the submission of written reports which may assist in the subsequent identification, arrest and prosecution of the pirates that held the vessel and crew captive. Formats for crew statements and logging of evidence are included, as well as guidelines on recovery and packaging of exhibits such as blood, clothing and weapons (IMO).

IMO also established a dedicated Working Group on Maritime Security and Piracy to develop recommendations to Governments (flag, port and coastal States), to review of relevant IMO documents and provide guidance and recomendations to shipowners, ship operators and shipmasters on the measures to counter piracy.

The Piracy Reporting Centre (PRC) of the International Chamber of Commerce's International Maritime Bureau, based in Kuala Lumpur, Malaysia is another international initiative which provides a communications channel for ships under attack to seek assistance from nearby forces. The main objective of the PRC is to be the first point of contact for the shipmaster to report an actual or attempted attack or even suspicious movements thus initiating the process of response. The main aim of the PRC is to raise awareness within the shipping industry, which includes the shipmaster, ship-owner, insurance companies, traders, etc, of the areas of high risk associated with piratical attacks or specific ports and anchorages associated with armed robberies on board ships. The PRC works closely with various governments and law enforcement agencies and is involved in information sharing in an attempt to reduce and ultimately eradicate this crime (UN Expert Report, 2008, p. 35-36).

Some of the measures have been directed to the problem of prosecution of apprehended pirates. The UN has interfered these efforts at national and regional level

with resolutions obliging coastal States Parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to accept SUA offenders for prosecution unless they can explain why the Convention does not apply. In addition, the applicable UN Security Council resolutions reaffirm the power of navies to pursue pirates, in the case of Somalia even expanding these powers by authorizing pursuit on land (OFE, 2009, p. 3). These efforts of the international community only did nothing but exacerbated the situation.

So far, international and regional efforts have yielded some significant success to counter the problem of piracy but still more work is needed since these efforts don't address root causes. Although piracy manifests itself at sea, the roots of the problem are to be found ashore. This is a very complex aspect of the problem. Therefore comprehensive understanding of the problem is necessary with caution not to interfere whether through UN or individual nation states. Such an approach should include measures addressing the problems related with poverty, unemployment, corruption at all levels of the government, lack of natural disaster management capacity, lack of judicial capacity and so on. As long as the main concern of the current cooperation efforts continue to aim at operationalized security cooperation, these efforts shall result in failure.

CHAPTER – 4

UNIQUE CASE OF SOMALI PIRACY

BACKGROUND AND JUSTIFICATION OF PIRACY

> No arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death: and the life of man, solitary, poor, nasty, brutish and short.
>
> Thomas Hobbes, Leviathan, 1651

To understand today's Somalia and the current permanent disorder, it is necessary to trace this research to the colonial and recent history of the Somalia. Historical evaluation gives us the clues for the relationship between colonial history of Somalia and its current disorder. On the other hand it is also important to provide a general evaluation of Somalia's recent political, economic and social conditions to see the impacts of colonial legacy. This historical backdrop and analysis of the current conditions are also necessary to understand the extensive piracy phenomenon in this country. Therefore in the first part of this chapter, I am going to evaluate the colonial and recent history of Somalia and provide a general evaluation of political, economic and social situation in Somalia.

Before starting the history, it is also important to underline the strategically important location of Somalia, next to the Red Sea and Persian Gulf, and its role in shaping Somalia's fate. The region on the eastern coast of Africa, home to Somalia, is known as the Horn of Africa. Somalia runs east along the Gulf of Aden, where four percent of the world's oil is moved each day, and then southward along the coast, jutting out into the Indian Ocean in a domestic region known as Puntland. Finally, its border falls south past the war-torn lands surrounding the current latent capital Mogadishu (Anderson, 2010, p. 321-322). Located on such an important route from South East Asia to Europe, Somalia continues to experience almost all negative impacts of its location

4.1. HISTORY

4.1.1. Somali History during the Colonial Period:

Before the independence in 1960, the enlarged Somalia had been a colony since the Berlin Conference of 1885. Until the opening of the Suez Canal in 1869, the interests of the European colonial powers in the Horn of Africa were relatively limited and consisted of a few different treaties with local rulers. However, following the Berlin Conference in

1885, where the rules of the partition of Africa were laid down, the colonial powers started to define artificial frontiers of spheres of influence in the Somali-speaking region between them.

In 1897 the Somali-speaking region was divided between four colonial powers. Great Britain possessed the Protectorate of British Somaliland (from 1960 the North Western part of the Republic of Somalia, from 1991 the self-declared Republic of Somaliland) and the Northern Frontier District (NFD – from 1963 the North Eastern Province in Kenya). Italy colonised La Somalia Italiana (which became the UN Trusteeship of Somalia under Italian administration in 1950, from 1960 the Southern part of the Republic of Somalia). France possessed La Côte Française des Somalis (from 1977 Djibouti), and the regional colonial power Abyssinia (Ethiopia) colonised the Ogaden and later the Haud areas (still parts of Ethiopia) As part of the British, Italian and French empires, the Somali colonial states were gradually incorporated into the world economy and the two world wars (Kleist, 2004, p. 2).

All colonial powers had different interest in the region. For Britain, Aden was regarded as indispensable to the defense of British India, as a result of the growing importance of the Red Sea to British operations in the East. Therefore the Britain sought to gain control of the northern Somali coast as a source of mutton and other livestock products for its naval port of Aden in present-day Yemen. On the other hand, the French, having been evicted from Egypt by the British, wished to establish a coaling station on the Red Sea coast to strengthen naval links with their Indochina colonies and to counter Britain's zone of influence with an east to west expansion across Africa. In southern Somalia, recently unified Italy, ambitious to be a imperial power, was the main colonizer. Italians wanted crops in the form of plantation agriculture: bananas, sugarcane, and citrus fruits (Metz, 2009; Moyd, 2003, p. 544; Mohammed, 2009).

What the European colonialists overlooked was that the local threat to their imperial ambitions in the Horn of Africa which would come from an emerging power, the Ethiopia of Emperor Menelik II. Emperor Menelik II both managed to defend Ethiopia against European encroachment and succeeded in competing with the Europeans for the Somali-inhabited territories that he claimed as part of Ethiopia. In the following decade from 1887 and 1897, Menelik II successfully extended Ethiopian rule over the long independent Muslim Emirate of Harer and over western Somalia (the Ogaden). Thus, by the turn of the century, the Somali Peninsula, one of the most culturally

homogeneous regions of Africa, was divided into British Somaliland, French Somaliland, Italian Somaliland, Ethiopian Somaliland (the Ogaden), and what came to be called the Northern Frontier District (NFD) of Kenya (Metz, 2009).

“Between 1892 and 1899, both the Biritish and the Italians tried to consolidate control over their respective territories. Both the British and Italian projects were challenged by a formidable Somali resistance movement that emerged in 1899. This anticolonial rebellilon was led by Muhammad Abdullah Hassan, a religious leader from the north who attracted a huge following among like-minded Somali. This extensive resistance movement was not completely suppressed until 1920, at great and long-lasting human and material cost to northern Somalia. Although the Italians negotiated a separate understanding with Hassan in 1905, they felt constantly threatened by his supposed designs on the Benadir region until the movents’s final defeat” (Moyd, 2003, p. 544).

During the colonial rule, the officials of the three European powers established the rudimentary organs of colonial administration. Moreover, because they controlled the port outlets, they could levy taxes on livestock, thus continue to exploit Somalia in different ways. In contrast, Ethiopia was largely a feudal state with a subsistence economy that required its army of occupation to live off the land. Thus, Ethiopian armies repeatedly despoiled the Ogaden in the last two decades of the nineteenth century.

“The two decades between 1900 and 1920 were a period of colonial consolidation of Italian rule. Italy hoped to receive a substantial increase in its African territorial holdings after WW I as a reward for allying against Germany, but they were to be disappointed: the minor addition of Jubaland to their Somali possessions in 1925 marked the extent of their colonial gains in the region. Colonialism in Somalia underwent substantial change in the 1920s under Benito Mussolini’s fascism. These changes were manifested in authoritarian policies and repression of the Somali population, as well as a deliberate focus on attracting Italian settlers to the colony” (Moyd, 2003, p. 544)b

In 1936, Italian troops invaded Ethiopia from Somalia, then integrated Ethiopia, Eritrea, and Italian Somaliland into a unitary colonial state named Italian East Africa. “In 1940, after entering WW II on German’s side, Italian forces invaded British Somaliland, briefly holding the territory until British forces took it back the next year. The British then conquered all of Somalia, placing it under a British military administration. After the war, Italy had to renounce all claims to it African possessions. In 1948, after the Big

Four powers failed to agree on how to deal with Italy's former colonies, the United Nations granted Italy a trusteeship over the former Italian Somaliland. Somali nationalist agitation against Italian rule reached the level of violent confrontation in 1948, when a number of Italians and Somalis died in rioting in several coastal towns. Italy administered the territory until Somalia became an independent nation in 1960" (Moyd, 2003, p. 544).

During its colonial rule, the Italian project was to bring so-called modernisation model to its colony. However they overlooked the reaction of Somali nomadic society to the European-introduced modern Somali state. The European concept sees the state as responsible for individual rights; inherently, it does not recognize the nomadic system of justice, based on collective responsibility. Over the centuries, the Somali coastal area has entertained various outside rulers, who did not disturb the nomadic lifestyle or interfere in their clan-family politics, because they knew Somalis were used to being ungoverned and therefore suspicious of foreigners. However, everything changed when the Somali Peninsula and East Africa were dragged out of relative isolation into world politics. The Somali people have demonstrated, for centuries, as part of their tradition, a vigorous independence and unwillingness to surrender to a single political authority. Clan leaders never quite had the authority to enforce rules on all people; rather, their role was to remind people of the importance of strong clan consciousness, stressing ancestral pride, as the clan has been the integral part to their survival and existence since ancient times (Mohammed, 2009).

4.1. 2. Somali History after the Independence

Except the first years following the independence, Somalia's history has been marked by perpetual violence, military coups and assassinations. As a result of this volatility, there has been virtually no control of Somalia's borders for more than a decade. This lack of control, coupled with unstable and unworkable governments, has created a very dangerous situation for Somali security, seriously undermining the country's long term stability.

The recent history of the Somalia can be analized in three periods: First is the period starting from the end of colonialism in Somali territories in 1960 until the military coup of General Muhammed Said Barre in 1969. The second is the military regime period which started in 1969 and lasted in 1991 with the ousting of the General Muhammed Siyaad Barre. The last one is the civil war period which started just before the end of

military regime and still continoues. It is very difficult to separate these periods very strictly. There are some overlaps between these periods since the civil war started before the end of military regime and it was also a reason for the ousting of the military regime.

Somalia declared its independence in 1960 with the unification of the Italian and British territories. At the beginning of this period Somalia was touted in the West as the model of a rural democracy in Africa (Istikbal, 2009). However the success of democracy was a short-lived one and various parties have struggled for control of Somalia since its formation. The assassination of President Abdirashid Ali Sharmarke in 1969 was quickly followed by a military coup d'état in the same year, the army under Major General Mohamed Siyaad Barre took power, leading to what many call dictatorial rule by the military junta. Almost ten years of democracy was lost and it was time for Somalia to join many other African nations already ruled by military men (UN Expert Report, 2008, p. 10).

“During the period between 1969-1991, Somalia was ruled by military junta. The Somali state under Siyaad Barre rule is generally characterised as a classical neo-patrimonial system of domination, in which the traditional clan system pervaded political and bureaucratic structures. Traditionally, Somalis are divided into six patrilinear clan families—Darood, Hawiye, Isaaq, Dir, Digil and Mirifle—which are further subdivided into clans, sub-clans and lineages. The Somali state used the clan system to anchor itself in the society and to redistribute state funds. To fortify his power, Siyaad Barre developed an extraordinary talent in attracting international aid. He used the external funds to sustain his patronage networks within Somalia and thus to reinforce his own central power position” (Bakonyi, 2010, p. 241).

However the weakness of this neo-patrimonial order became apparent in the 1980s, when external aid reduced and forced Siyaad Barre to downscale the administrative apparatus and hence the redistribution network. Unable to integrate wider parts of the population through patronage, Barre started to concentrate the state in the hands of his own clan and his rule relied on violence. The opposition, however, was likewise articulated in clan terms and two guerrilla outfits formed on the basis of clan affiliation, the Somali Salvation Democratic Front (SSDF) and the Somali National Movement (SNM), started to attack violently the state at the end of the 1970s and the beginning of the 1980s, respectively (Bakonyi, 2010, p. 241).

“In 1988, the Somali and Ethiopian governments signed a peace accord to end hostility between the two countries. The peace accord recognised Ethiopian control over the Haud areas, meaning that a larger number of Somali refugees were forced to go to Somalia. Furthermore, the SNM attacked and briefly captured the biggest cities in the North-Western part of Somalia, and the government replied by full-scale assaults on the local population. The period between 1988 and 1992–93, characterised by intensified violence, endemic banditry and widespread looting” (Bakonyi, 2010, p. 240).

President Siyad Barre fled the Somali capital Mogadishu in January 1991, ending a 22-year rule, the country was flooded with hope for an opportunity to reverse its economic decline and restore a society without oppression and clan patronage. Instead, the government collapsed, and civil strife resulted in mass starvation as a result of disruption of agriculture and as many as 280,000 and for some other resources 500.000 deaths in 1991–1992 (Dagne, 2011, p. 25-26). Many observers were shocked by the scale of conflict and brutality in the Somali civil war, which lasted from 1988 to 1993 (Webersik, 2008, p. 48). The Somali state collapsed completely after the insurgents entered Mogadishu in January 1991. During the next two years, civil war spread to the rest of the country. After the collapse of the state, insurgents started to fight against each other and against the civilian population. Rebels, clan-based resistance movements and drought led to huge humanitarian crises in the southern and central regions of Somalia. Some sources estimated that by the end of 1992, half a million people had lost their lives due to violence and hunger, and an even bigger number of people had fled the country – estimated between 800,000 (UNDP, 2001, p. 59) and up to 1.5 million. More than 600,000 people fled to Ethiopia and placed at the isolated refugee camps in the deserts of Ethiopia (UNDP, 2001, p. 214). Kenya, Yemen, and Djibouti have been other destinations of escape. As many as two million Somalis were internally displaced in Somalia in 1992, although the number ‘dropped’ to 500,000 in 1994 and 200,000 in 1997 (UNDP, 2001, p. 60, Kleist, 2004, p. 7-8).

The beginning of the civil war in Somalia coincided with the gradual termination of the Cold War. Somalia lost strategic value for the US and other Western countries, which gradually withdrew economic support, credits, and aid programmes as a result worsened the already difficult civil war conditions.

The war also led to external intervention. The United Nations (UN) experienced its first humanitarian intervention with the case of Somalia. The US led UN intervention called

Operation Restore Hope was a total failure. The failed U.S.-led United Task Force (UNITAF) handed over the operation to the United Nations in May 1993. The U.N. effort was known as United Nations Operation in Somalia (UNOSOM) II. In May 1993, UNOSOM II coalition forces were attacked by one of the factions in Mogadishu. On October 3, 1993, after a 17-hour battle between U.S. troops and Somali factions in Mogadishu, in which 18 U.S. Rangers were killed, President Clinton ordered the withdrawal of U.S. troops from Somalia. In March 1994, the United States completely pulled out of Somalia. At the end of 1995, both the *International Red Cross* (IRC) and the UN had completely withdrawn from Somalia because of the volatile security situation (Dagne, 2011, p. 25-26). These efforts did not reach its goals of peace and state building, and the war continued after the withdrawal of the UN forces.

With the beginning of the civil war and after the end of the military regime, Somali history turned to be also the history of unsuccessful peace building efforts of various actors. There has been around 15 Somali reconciliation or peace conferences to bring an end to the fighting in Somalia since the early 1990s. Some were held under the auspices of or were supported by the United Nations, or governments in the Horn of Africa. Failures were mainly due to the competing efforts by international or regional actors and lack of government capacity to control the country. For example the initiative of the government of Ethiopia (the Sodere Process) in 1996 was failed as a result of a the new peace process of the government of Egypt (the Cairo Process) which started in 1997. Subsequently, the Cairo initiative failed when yet another peace conference was convened by Somali factions in Bosaso, Somalia in 1998 (Dagne, 2011, p. 25-26).

In February 2000, Intergovernmental Authority on Development (IGAD) approved a peace plan proposed by the government of Djibouti. In May 2000, the Somali Reconciliation Conference opened in Arta, Djibouti in which 400 delegates took part for several months of deliberation. Since this would be another attempt of to impose an externally supported government, the Arta process was boycotted by several powerful clans, as well as the governments of Somaliland and Puntland. On August 13, 2000, participants agreed to the creation of a Transitional National Government (TNG) and a Transitional National Assembly (TNA) but the TNG was unable to establish itself as an effective administration beyond a small area in and around Mogadishu. On August 26, 2000, participants nominated Abdulqassim Salad Hassan as president of the TNG. In October 2002, the IGAD launched another peace process, led by the government of

Kenya. During the international peace conference in Kenya between December 2002 and January 2005, a period of relative stability existed. One basic output of the conference was the formation of a Transitional Federal Parliament (TFP) and Transitional Federal Government (TFG) again. An estimated 350 delegates from different regions of Somalia participated in the opening session of the conference in the Kenyan town of Eldoret. The government of Somaliland boycotted the conference. In the first phase of the conference, the parties signed a temporary cease-fire, and agreed to respect and honor the outcome of the conference. The parties further agreed to establish a federal system of government and committed themselves to fight terrorism. In September 2003, the parties agreed on a Transitional National Charter, paving the way for a National Unity government (UN & WB Coordination Secretariat, 2008, p. 3).

After the location of TFG in Somalia in mid-2005, the political situation in Somalia underwent dramatic changes, and power relations were fundamentally reshaped by the rise of new actors. TFG has neither have nation-wide recognition nor the necessary capacity to control whole country.

There are several factors, foreign as well as domestic, which contribute to the situation in Somalia, but the two most important developments might be said to contain elements of foreign involvement as well as domestic grievances; the emergence of the *Union of Islamic Courts* (UIC) and the Ethiopian intervention. The inability of the transitional government to establish effective control allowed warlords and clan factions to dominate many parts of Somalia until late December 2006. Prior to the rise of the UIC in 2006, the TFG realistically controlled no more than a small area around the town of Baidoa with the remainder of Somalia, including the Somali capital Mogadishu, remaining in the grip of a variety of clans, gangs and warlords. In June 2006, the UIC seized Mogadishu and much of the south. The ICU consisted of a loose coalition of Islamic forces (both moderate and radical) with substantial support drawn from the large but politically marginalised Hawiye clan. The UIC rapidly expanded its influence through much of southern Somalia, seizing control of Mogadishu from the militias in September 2006 (Schofield, 2008, p. 102-104).

However with the Ethiopian intervention by the end of 2006, situation in Somalia deteriorated. The ouster from power of the UIC by Ethiopian forces in December 2006 created a security vacuum that was soon occupied by the more radical elements of the ICU's military factions. The moderate leadership of the UIC became marginalized,

splintered, and weakened over the past year. US, TFG, and Ethiopian officials labelled the entire leadership of the ICU as extremist and terrorist in 2006. Eighteen months later, however, the same governments supported the inclusion of some former ICU members in a U.N.-led peace process (Dagne, 2011, p. 25-26).

On the other hand, another peace effort, the National Reconciliation Congress, convened in the Hagaani district of Mogadishu on July 15, 2007, after being postponed twice for logistical and security reasons. The first phase of the conference ended on August 30, 2007. Somali Ambassador to Kenya Mohammed Ali Nur spoke optimistically about the results of the first phase of the conference at a news conference in Nairobi, Kenya: “I am happy to announce the declaration of peace agreement between major clans who are participating in the congress has already been signed. The transitional government has done and will continue doing its best to lead the process of reviving Somalia from the ashes of the vicious civil war.” Whereas the first phase of the conference focused on the resolution of clan conflicts and disarmament, the second phase focused on issues such as power sharing, governance, sharing of natural resources, sea piracy, welfare, and internally displaced persons (Dagne, 2011, p. 25-26).

In 2008, fighting between insurgent groups and Ethiopian-TFG forces intensified, and by late 2008, the TFG had lost control of most of south-central Somalia to insurgent groups. In May-June, 2008, TFG and the Alliance for the Re-Liberation of Somalia (ARS) officials met in Djibouti under the auspices of the United Nations. Officials from the United States, Europe, the African Union, the Arab League, the Organization of Islamic Conference, and regional governments took part as observers during the talks in Djibouti. The parties agreed on a wide range of issues, including cessation of hostilities and a commitment to find a durable peace agreement. The parties agreed to support the deployment of a United Nations peacekeeping force and the phased withdrawal of Ethiopian forces from Somalia. The agreement, however, links the withdrawal of Ethiopian forces with the deployment of a U.N. peacekeeping force, although Ethiopian forces have already withdrawn from some areas. In addition, in November 2008, the Ethiopian government announced that its forces would pull out of Somalia by the end of 2008. In January 2009, Ethiopian forces completed their withdrawal from Somalia. The parties also agreed to provide unhindered humanitarian access to civilians in need and to establish a Joint Security Committee to ensure implementation of security arrangements and create an interim joint security force. The

parties established a High Level Committee, chaired by the United Nations, to deal with political, justice, and governance issues. The Djibouti agreement is complicated and has repeatedly been undermined by infighting within the TFG, insecurity, the growing influence of insurgent groups, and limited support by the international community. Neither the integration of moderate Islamic forces in the TFG nor the withdrawal of Ethiopian troops from Somalia at the beginning of 2009 resolved the situation. The TFG forces, under the leadership of President Yusuf, were weak, ineffective, and seriously debilitated by defections (Dagne, 2011, p. 12-13).

In September 2010 Mohamed Abdullahi MOHAMED, a dual US-Somali citizen who lived in the United States from 1985 until his return to Somalia in October 2010, was selected as the new prime minister. The creation of the TFG was based on the Transitional Federal Charter (TFC), which outlines a five-year mandate leading to the establishment of a new Somali constitution and a transition to a representative government following national elections. In January 2009, the TFP amended the TFC to extend TFG's mandate until 2011. Somali principals in September 2011 agreed to a political roadmap that aims to institute a political transition by August 2012.

Somalia's failure on the international stage results from the country's inability to maintain neither an operative central government, nor a central bank, meaning there is no functioning economy for almost two decades. Long periods of peace talks and conferences so far have proved to reach no lasting peace agreement since they impose the wishes or the models of the external powers.

4.2. WHAT DRIVES PIRACY IN SOMALIA?

Obviously, an accurate analysis of the root causes which contributed to the reappearance of piracy is not simple, but to be brief, and as far as Somalia is concerned, we can classify them up as pushing and pulling factors.

4.2.1. Pushing Factors: Somalia as a Weak State

> Poverty, lack of employment, environmental hardship, pitifully low incomes, reduction of pastoralist and maritime resources due to drought and illegal fishing and a volatile security and political situation all contribute to the rise and continuance of piracy in Somalia. This situation will remain so until there is an effective and simultaneous action taken against the pirate trade and an alternative means of income support mechanism implemented to replace it; otherwise criminal activity, in some shape or form, will continue to take priority as a means of generating income among the armed militias of Somalia (UN Expert Report).

For nearly twenty years, Somalia has been a very weak state, a virtual black hole in the international community, divorced from the world economy, regional and global institutions, and the rule of law (UN Expert Report, 2008, p. 33). It has been a country known for both its bitter internal struggle between moderates and extremists and its lack of external validity since 1991. But why did Somalia fall into a bloody civil war after the overthrow of Siyad Barre's dictatorial regime? Why did a society that is believed to be extremely resilient and adaptive to its harsh environment become vulnerable to natural disasters, such as droughts and floods? Some academic research has been devoted to answer this question. One answer came from environmental security literature in two opposing forms: One holds that conflict arises primarily because of resource scarcity; for the other it arises out of resource wealth and attending economic agendas. Looking to the Somali calamity for answers, we find that areas of resource wealth are often flash points of conflict, but that other factors, such as ethnicity, economic stake in the perpetuation of war, and the fractured nature of clan relations, are perhaps even more important in sustaining violence (Webersik, 2008, p. 48). Another comes from dependency theory which underlines the significance of colonial legacy in the history of ex-colony and its disturbing effects. However, opposing theories to explain the situation in Somalia will not be dealt with here. Instead the situation will be explained with lying down the current figures of the country. A research on Somali Piracy cannot be complete without a reference to facts and figures of that country. The reason is that living conditions and political situation in Somalia has the equal and even sometimes more impact on Somali people and the way they live as its history does.

This part of the chapter will be explained with a reference to characteristics of a weak statehood since, Somalia has long been characterised as the weakest state of the world despite the efforts of international community. Besides that the collapse of Somalia as a functioning state is the key reason for the deterioration of maritime security and expansion of piracy in the Horn of Africa region. The absence of a permanent national government for almost twenty years has led to ongoing civil violence, economic hardship, poor social conditions, and the displacement of several million Somalis. It has become increasingly difficult for international agencies to provide aid to Somalia in light of the recent troubles with piracy and hostility towards foreigners. An upsurge of civil violence in the southern part of the nation has created further destabilization and threatens any potential improvements to Somalia's condition. On the other hand intervention by foreign countries aimed at assisting Somalia in restoring a central government and in quelling internal strife has only served to further

exacerbate the domestic conflict. Ethiopia's intervention in 2006 only led to more chaos and instability in the country, with humanitarian, political, and security conditions further deteriorating across south-central Somalia (Silva, 2010, p. 559). Therefore, it is necessary to evaluate some literature weak statehood.

It is widely accepted that state is the ultimate authority in the international system. The inability of a state to maintain effective control and provide security for its citizens creates a serious dilemma for the international system and its desire to respect state sovereignty.

According to the general principles of international law, each state has the right to conduct its domestic affairs without interference from any other state. The 1933 Montevideo Convention on the Rights and Duties of States identifies some of the fundamental legal characteristics of a state (Silva, 2010, p. 559). These legal characteristics include: a permanent population; a defined territory; and a government capable of maintaining effective control over its territory and conducting international relations with other states or gaining international recognition.

However, some countries raise strong concerns about the adequacy of this traditional definition. As a result, the concept of the "weak state" has emerged. A "weak state" is defined in general as states incapable of creating domestic order. Statelessness is a case of extreme weakness involving a more-or-less complete breakdown of domestic order. Examples include Somalia, Rwanda, Liberia and Sudan (Jackson and Sorenson, 2007, p. 306).

A weak state can also been defined as one which, though retaining legal capacity, has for all practical purposes lost the ability to exercise it. ... [T]here is nobody which can commit the State in an effective and legally binding way, for example, by concluding an agreement" (Silva, 2010, p. 560). A weak state possesses no control over the use of force by coordinated institutions, no functional governmental authority, no security for its residents, and no control of its borders.

Both from political and legal perspective, weak states possess specific geographical, political, and functional characteristics (Silva, 2010, p. 560). Geographically, weak states are essentially associated with internal and endogenous problems, despite incidental cross-border impacts. Politically, weak states face an internal collapse of law

and order. Functionally, weak states lack bodies capable of representing them at the international level and lack the capacity for accepting external influence.

Many of the researchers focus on the role of functioning states as serving for the preservation of the international system and the disturbing affect of the weak states by threatening the very structure of international relations. They also blame these weak states for unbridled criminality, humanitarian disasters, domestic conflicts, and for being breeding grounds for terrorist groups (Silva, 2010, p.559). In Somalia the failure of the state to provide good governance, security and respect for rule of law is at the very heart of the country's endemic conflict (Silva, 2010, p. 554) However it is more important to find underlying reasons for Somalia being a weak state, rather than drafting a classification of states according to their capability to govern. Therefore it is necessary to look at inside and question that being a weak state necessarily leads to being a threat for all world or being breeding ground for terrorism. Somalia case has been accepted as one of the prime contemporary example of a weak state besides Rwanda, Liberia and Sudan (Jackson and Sorenson, 2007, p. 306 Silva, 2010, p.559). In the following paragraphs, I am going to elaborate the question of reasons behind Somalia for being a weak State.

In political, economic and social terms Somalia fits the model of a weak state.

4.2.1.1. Political Situation

Despite the formation of the Transitional Federal Government (TFG) of 2004 and the efforts of the TFG to establish itself in Mogadishu, Somalia still does not have an effective central national government which controls the entire country.

Instead it has three administrations with differing objectives: i) the TFG which aims to be the national government; ii) Government of Somaliland which aims to be the government of an independent Somaliland; and iii) Government of Puntland which aims to be the government of the semi-autonomous region of Puntland (UN Expert Report, 2008, p. 11).

The effectiveness of central government and public institutions in three regions (Somalia, Puntland and Somaliland) is severely limited by weaknesses in policy and law-making and in implementation. Without coherent and public service-oriented policies and laws (and their implementation) – and without the financial and human resources to sustain these – effective and accountable central government in Somalia

seems impossible (UN Expert Report, 2008, p. 11). All three governments experience the similar problems: Formal government structures and systems are weak, especially below the top level of ministries and senior officials. At the same time, informal systems of governance are excessively influential, at the expense of the development of the formal systems. Besides that the skills base of civil servants and government appointees is low, due partly to a 'brain drain' of skilled Somalis to the private sector and abroad. Government and public institutions tend to be top heavy and have too few capable mid-level or junior staff. The TFG civil service, for example, has a ratio of approximately one junior or subordinate member of staff for every two managers.

One manifestation of this statelessness has been the complete absence of any coastguard or navy to patrol the coastal waters (APF, 2009, p. 8). Besides that, in 2008-2009, an estimated 40% of the police force, trained by the United Nations, left the force due to lack of payment. Some donor governments have withheld funds and their technical support pledged to the TFG due to lack of transparency and human rights abuses.

Permanent fighting within the TFG, weakened the TFG (Dagne, 2011, p. 12). It is entirely dependent on foreign troops from the African Union Mission in Somalia (AMISOM) to protect its small enclave within Mogadishu, but otherwise administers no territory; even within this restricted zone, it has shown no functional capacity to govern, much less provide even minimal services to the citizens (Pham, 2009, p. 3).

As a result of state weakness, levels of public service delivery are very low in all sectors, most importantly in health and education as well as in employment generation, due to a combination of small budgets, high spending on security and a lack of emphasis on service delivery. Approximately half of the budget was allocated to security and defence. Moreover government and institutional infrastructure is weak, especially in south- central Somalia and Puntland. Too few government buildings are adequately furnished and equipped. Only about a quarter of the some 235 government owned buildings in Mogadishu are furnished (UN Expert Report, 2008, p. 12).

Moreover clan-based identities have fragmented the population and led to formation of small fiefdoms and competition among them. Today, even the broad-based clan alliances of the early 1990s have fragmented into sub-sub clan units. Conflicts are no more taking place between clans but rather within clans. Inherently unstable, the clans and sub-clans often experience rapid transitions in leadership. For example, in the

capital city of Mogadishu, multiple groups compete and have competed politically and militarily for neighbourhoods and even particular streets. The effort to control Mogadishu is heightened by its status as a port, which affords considerable financial opportunities to those in power. With an estimated 1,500 clans throughout the country, each vying for its voice to be heard, Somalia has been undergoing a period of great transition and uncertainty. The advanced social fragmentation of the Somali society has made it difficult or even impossible to base an administration on clan representation. Today, personal economic interests override clan affiliation, as a Somali development worker rightly observes: “Somalis are only loyal to their own interests.” In addition, the creation of an administration by a small urban-based elite would exclude those clans who lack the political or economic means to access valuable resources, so that the probability of renewed civil conflict remains (UN Expert Report, 2008, p. 14).

As a result of lack of a capacity, porous borders allow illegal arms to flood into the country helping to feed the insatiable appetites of the warlords despite the UN Security Council general arms embargo placed on Somalia since 1992. There is increasing evidence that the weapons, ammunition and military equipment being employed by the Somali pirates are imported into Somalia in violation of the arms embargo. (UN Expert Report, 2008, p. 24)

There has been no control over Somalia’s borders for more than a decade. This has greatly contributed to the instability and insecurity of Somalia and continues to pose a serious threat to Somalia itself and to neighbouring states, including Kenya, Ethiopia and Yemen (UN Expert Report, 2008, p. 21). Similarly, no meaningful security body has been able to replace the Somali army following its collapse in 1991. Opposition groups have undermined virtually every attempt at replacement, essentially converting soldiers into domestic mercenaries. The absence of designated policing authorities has created an “on-going security vacuum [that] has encouraged the clan violence and anarchy that make Somalia a global poster child for a “weak state” politically, economically, and socially (Silva, 2010, p. 558).

4.2.1.2. Economic Situation

Somalis have been traders throughout history – not least along the African coast and across the waters to the Arabian peninsula (UN Expert Report, 2008, p. 24). Prior to the onset of civil war that started in 1990, Somalia was a major exporter of agricultural

products, including livestock, molasses and fruit, and also sea foods and it was an importer of manufactured goods and petroleum products. Its traders were also active in transit trades of goods and foodstuffs to Ethiopia and northern Kenya. Since the 1980s, Somalia experienced stagnant per capita output, accompanied by the deterioration of physical infrastructure, a decline in the quality of public services, severe macroeconomic imbalances, and negative growth between 1988 and 1990. The civil war has destroyed much of Somali's physical infrastructure, brought an end to the production of fruit and molasses for export and significantly reduced other economic activities as well. The war, coupled with piracy, also terminated the strategic importance of Somalia, in particular Mogadishu, as a trans-shipment port. Tabel 4.1 indicates that according to the liner shipping connectivity index of UNCTAD, Somalia is one of the least connected country to global liner shipping networks. One consequence of this permanent disorder and lack of any ruling government is that macroeconomic data post-1990 are very scarce (UN Expert Report, 2008, p. 29, Somalia Joint Strategy Paper, 2007, p. 12-16).

Table 4.1: Liner shipping connectivity index of Somalia, annual, 2004-2010[9]

Liner shipping connectivity index							
	2004	2005	2006	2007	2008	2009	2010
Somalia	3.09	1.28	2.43	3.05	3.24	2.82	4.20

Source: UNCTADstat

In economic terms Somalia is also a weak state. Today, as many of the studies reveal clearly, Somali people are in a very intense economic hardship and one of the poorest populations of the world, the 6th poorest country among (see table 4.2).[10] (UNCTAD, 2010). 81 % of people are poor (Alkire and Santos, 2010, p. 48).

[9] The table presents the liner shipping connectivity index (LSCI), which indicates a country's integration level into global liner shipping networks. The index base year is 2004, and the base value is on a country showing a maximum figure for 2004 (UNCTADstat).

[10] Forty-nine countries are currently designated by the United Nations as "least developed countries" (LDCs). These are: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, the Central African Republic, Chad, the Comoros, the Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, the Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, the Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, the Solomon

Although no concrete data can be provided regarding current socio-economic conditions in Somalia, some estimates shed light on under what type of conditions around 9 million Somali people are living in this country.

Somalia is a country with a population of 9.8 million in an area of 637,657 square km. Birth rate is 43.7 births per 1000 population, 5th highest in the world. Regarding the death and infant mortality rates, Somalia is among the worst ten countries in the world. Life expectancy at birth is 49.6, again amongst the worst ten countries in the world. Regarding the social and economic indicators, the situation has been worsened during the last five years. Per Capita GDP is 600 US $, 220th among 225 states. Somalia's formal economy is mainly dependent on agriculture (65%) (UNCTAD, 2010).

Table 4.2: Top 10 LCDs in terms of incidence of extreme weather events 1980-2010

Top 10 LCDs in terms of incidence of extreme weather events 1980-2010					
	Drought	**Extreme temperature**	**Flood**	**Storm**	**Total**
Bangladesh	5	19	80	142	246
Haiti	7	0	39	29	75
Ethiopia	12	0	47	0	59
Madagascar	5	0	6	43	54
Mozambique	11	0	26	17	54
Nepal	5	4	33	6	48
United Rep. of Tanzania	8	0	31	4	43
Somalia	11	0	30	1	42
Sudan	8	0	29	1	38
Malawi	6	0	26	1	33
Total	**78**	**23**	**347**	**244**	**692**

Source: UNCTAD, 2010, the Least Developed Countries Report 2010 – Towards a New International Development Architecture for LDCs.

The demographic pressures increased after four years of consecutive dry seasons threatened food security and water supplies. The absence of a government since 1991 and constant conflict has completely undermined Somalia's formal economy. Despite these challenges, Somalia's GDP was estimated at $5.8 billion for 2010. Large exports of livestock, telecommunications and wire transfer businesses to handle remittances contribute significantly to the economy. As the autonomous Somaliland and Puntland

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Islands, Somalia, Sudan, Timor-Leste, Togo, Tuvalu, Uganda, the United Republic of Tanzania, Vanuatu, Yemen and Zambia (UNCTAD, 2010, p. iv).

regions develop, disparities between these regions and the rest of Somalia increases (Failed State Index, 2007).

The contribution of manufacturing to GDP in the late 1980s was no more than 5% and it remains very low today. The share of services is around 25%. According to the latest estimates exports value is US$300 million and main exported goods include livestock, bananas, hides, fish, charcoal, scrap metal. Imports value is around US$800 million and main imports include manufactured goods, petroleum products, foodstuffs, construction materials (Digby, 2010, p. 9). Since traditional way of living is mainly pastoralism livestock has been the most important productive sector of Somalia and closely linked to commercial and export-orientated processing and marketing structures. Around 2 million animals are exported each year, accounting for about 60% of Somalia's employment opportunities and generating about 40% of GDP and 80% of foreign currency earnings. Taxation of livestock trade and export is one of the major revenue sources for the regional administrations in Puntland and Somaliland. However the revenue from the livestock has dramatically reduced due to civil war. Opportunities to market and export agricultural goods are hampered by the absence of credible control and certification systems, in particular non-compliance with the World Organization for Animal Health (OiE) sanitary standards, and by related livestock export bans. Similarly, banana exports that represented the second foreign currency earner collapsed and practically stopped after the El Nino floods of 1997/98 (Joint Strategy Paper, 2007, p. 13).

Additionally, looting became a widespread phenomenon and most troops and traders involved in the lucrative trade in looted goods during the civil war (Bakonyi, 2010, p. 241-242, Dagne, 2011, Summary). A Somali man tells how the looting is common in Somalia as;

> After the government's collapse we faced regular lootings, killing, droughts. The looters ate everything except the people. They were from our clan and from other clans, but they were not organised in militias, only small groups of young men (Bakonyi, 2010, p. 248).

The structure of the economy remains similar to the pre-1991 period. The economy is dominated by agriculture, which accounted for some 64% of GDP in 1991. About half of this was generated by the livestock sub-sector and around 37% from crops and fruit (Joint Strategy Paper, 2007, p. 12-16). Somalia's conflict has destroyed much of the country's agricultural infrastructure since 1991. Besides that soil degradation caused by

natural phenomena for example drought and floods which in turn is exacerbated by overgrazing, deforestation (uncontrolled firewood and charcoal production for domestic use and exports) and human population pressures (settlements and refugee and IDP camps) led to less efficient forms of agriculture. Prior to the civil war Somalia was a major exporter of agricultural produce and seafood. Somalia's trading partners included the neighbouring countries of Kenya and Ethiopia. The civil war destroyed Somalia, deprived its people of their homes and livelihoods, and created a parallel economy driven by piracy (Silva, 2010, p. 557).

Today, it is estimated that from 46 to 56 % of Somalia's land area can be considered permanent pasture. About 14 per cent is classified as forest and approximately 13 per cent is suitable for cultivation, but most of that area would require additional investments in wells and roads for it to be usable. Soil degradation in Somalia is very common due to poor land use. Proper land use and good soil management is therefore key to the development of agriculture in Somalia on which the livelihoods of the majority of the population depend (UNEP, 2005, p. 133).

With the combination of these deteriorating factors, today, over three million Somalis depend on food aid and as roughly 70% of the population was considered undernourished. However pirate attacks have hindered humanitarian aid deliveries which is particularly damaging to millions of Somalis who depend on international relief. The World Food Programme (WFP) transports by sea between 30 and 40,000 tons of food aid into Somalia every month (UN Expert Report, 2008, p.29). The WFP describes Somalia as 'one of the most dangerous places in the world', with probably the greatest humanitarian needs in relation to the size of its population. On the other hand the problem gets worse when the ships or lorries are assaulted. Therefore not only arrival of the aid but also its storage and distribution is a great problem in Somalia. After WFP aid arrives in port (Mogadishu or Merka) it is stored. Officials must then make sure that it is not looted and deliver it to the people who really require it. However, food distribution within Somalia has suffered greatly because of local power struggles, often with senior government officials involved. Other challenges include securing a reliable transport contract and getting through various checkpoints and past militias (Potgieter and Schofield, 2010, p. 99-103).

After years of consistent humanitarian assistance to Somalia, by April 2006 almost two million Somalis were on the brink of famine that was also fuelled by the worst droughts

ever to hit East Africa. After pirates had seized a number of WFP food shipments (including rice intended for victims of the Asian tsunami) the WFP was forced to re-route much of its relief supplies overland for a while, through Kenya to southern Somalia, at far greater cost (Potgieter and Schofield, 2010, p. 100).

Besides that, one of the most important economic activity of Somalis, fishing, has been destroyed by foreign fishing vessels, by those using Somali waters as a cheap toxic waste disposal area and by natural disasters. The collapse of the Somali state removed not only a government capable of imposing its writ on the Somali people, but also effaced any vestige of effective sovereignty over the longest coastline in Africa one with rich fisheries in the adjacent territorial waters and exclusive economic zone (Pham, 2009, p. 1).

During the period between 1970–2000, both artisanal and industrial fishery sectors, assisted by several bilateral and multilateral investments, have progressed to a point of almost total development, covering the entire coastline. Pre-war, major shore based installations servicing fishery communities were extensive. Industrial fishery production was lowest in 1982, with 3 900 t of fish and 436 t of lobster reported, and highest in 1985, when production reached 11 940 t of fish and 462 t of lobster. In 1989, exports of fishery products earned US$ 15 million per annum. However, the civil war arrested the steady growth of this trade. Following the civil war of 1991, which left the entire fishing infrastructure in ruins, most of the fishery cooperatives lost their fishing equipment and are in a poor state, and require skills training skills and new fishing gear (FOA, 2005, p. 7).

The law of the sea accords coastal States sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of its jurisdictional waters. Coastal States have the right to enforce, consistent with the law of the sea, their fishing laws by taking such measures such as boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance with their laws and regulations (UN Expert Report, 2008, p. 27; Baykal, 1998, p. 128-129, UNCLOS).

In the absence of any coastal authority to protect Somalia's fishing rights, and faced with ecological disaster in the wake of the 2004 Indian Ocean tsunami, fishermen in Somalia began turning to piracy as a means of survival and retribution. The fishing used to be a crucial source of income for the Somalis inhabiting the coastal areas. However genuine economic hardship and a sense of grievance against foreign

exploitation of Somalia's maritime resources provided an incentive to assault on these intruders and also a ground to legitimize their acts in the eyes of their communities (Doby, 2010, p. 562, footnote 13). The underequipped Somali fishers cannot compete with the foreign vessels, and because of the lack of a Somali coast guard, other than the pirates, there is no one that can keep the unwarranted fishing at bay (Sorenson, 2008, p. 41). Reports document Robin Hood-like accounts of fishermen-pirates sailing out in skiffs to "retake" fish caught by foreign trawlers in Somalia's territorial waters. Some argue against such a cause and effect relationship between illegal fishing foreign ships and rise of piracy on the grounds that some piracy activities take place beyond the 200-mile exclusive economic zone of Somalia (Pham, 2009, p. 5-9). But the figures don't show the reverse. According to the report of Food and Agriculture Organisation (FOA), it is estimated that some 700 foreign-owned vessels originate from within the immediate region, including Kenya, Pakistan, Saudi Arabia, Sri Lanka and Yemen and further afield, including Belize, France, Denmark, Honduras, Japan, South Korea, Spain and Taiwan are engaged in unlicensed and unregulated fishing in Somali waters, exploiting high value species such as tuna, shark, lobster and deep-water shrimp (UNEP, 2005, p. 129; Vrey, 2010, p. 125 High Seas Task Force, 2006; Doby, 2010, p.562; FAO, 2005).

This illegal, unregulated, and unreported (IUU) fishing in the offshore, as well as in the inshore, with the difficulties it causes for legitimate Somali fishermen, causes great problems for monitoring, control and surveillance (MCS) of the Somali EEZ. It is impossible to monitor their fishery production, in general, let alone the state of the fishery resources they are exploiting.

As a result, Somali pirates don't see themselves as the pirate. A pirate interviewed by the New York Times said: "We don't consider ourselves sea bandits. We consider sea bandits those who illegally fish in our seas and dump waste in our seas and carry weapons in our seas. We are simply patrolling our seas. Think of us like a coast guard." The article continues -- "Somalia's central government imploded in 1991, casting the country into chaos. With no patrols along the shoreline, Somalia's tuna-rich waters were soon plundered by commercial fishing fleets from around the world. Somali fishermen armed themselves and turned into vigilantes by confronting illegal fishing boats and demanding that they pay a tax" (İstikbal, 2009; Zijlma, 2012).

Somali offshore areas are relatively productive, traditionally under-utilised and therefore a magnet for foreign poachers. It is highly unlikely that these resources are being fished sustainably. Foreign fishers have engaged in destructive fishing practices, endangering Somali fishing stocks and have also aggressively sought to chase local fishermen away from productive fishing grounds, using high-pressure or boiling water hoses and even firearms for this purpose. Some reports estimate the value of illegal catches from Somalia's maritime jurisdiction at between $90 million and $300 million a year, and that foreign fishing vessels come from all around the world. Many of these foreign vessels are equipped with anti-aircraft cannon and machine guns to defend themselves against Somali pirates who patrol the coast, seizing vessels and kidnapping crews, for which they demand ransoms (High Seas Task Force, 2006, p. 81). Here, it is necessary to underline the irony that nations contributing warships to anti-piracy efforts are in some cases directly linked to the foreign fishing vessels "stealing Somalia's offshore resources" (Straziuso, 2010).

The situation has further deteriorated as a result of the dumping of toxic and harmful waste in the sea, on the shores and in the hinterland. The law of the sea requires the coastal State to adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping and to ensure that dumping within its waters is not carried out without the express prior approval of the competent authorities of the coastal State (UNCLOS Article 1, Article 55-75). Somalia is one of the many Least Developed Countries that reportedly received countless shipments of illegal nuclear and toxic waste dumped along the coastline. Starting from the early 1980s and continuing into the civil war, the hazardous waste dumped along Somalia’s coast comprised uranium radioactive waste, lead, cadmium, mercury, industrial, hospital, chemical, leather treatment and other toxic waste. Most of the waste was simply dumped on the beaches in containers and disposable leaking barrels which ranged from small to big tanks without regard to the health of the local population and any environmentally devastating impacts. The tsunami of 2004 stirred up hazardous waste deposits on the beaches. Contamination from the waste deposits has thus caused health and environmental problems to the surrounding local fishing communities including contamination of groundwater. Many people in these towns have complained of unusual health problems as a result of the tsunami winds blowing towards inland villages. Natural disasters are short-term catastrophes, but the contamination of the environment by radioactive waste can cause serious long-term effects on human health as well as severe impacts on groundwater, soil, agriculture and fisheries for many

years.(UNEP, 2005, p. 128; Vrey, 2010:125). Nick Nuttall, spokesman for the United Nations Programme for the Environment (UNEP), says: "Somalia has been used as a waste ground for hazardous waste since the early 1990s. There is radioactive uranium waste — the main garbage - and heavy metals like cadmium and mercury. There is also industrial waste, hospital waste, chemical waste and whatever you want" (New African, 2010). Wallerstein explains this illegal activity with the internalisation of externalities like toxic wastes, through high taxes. Since the cost of production in EU and in other developed states has dramatically increased as a result of taxing of toxic waste, the companies turned to other areas of world out of reach of their national law to get a competitive advantage (Wallerstein, 2005b, p. 1271).

The international community is fully aware that this illegal activity has been going on for nearly two decades but has taken no action against it. In 1992, European Union member countries and another 168 countries signed the Basel Convention of Transboundary Movements Control of Hazardous Wastes and their storage. This imposed strict regulation on disposing waste in an environmentally sound manner, but it somehow significantly increased disposals off Somalia's coast (New African, 2010). Organised crime groups in Italy were linked to this, apparently offering waste disposal services to European companies at a very cheap rate[11]. The pirates believe they are the only option to curtailing this injustice as in the case of illegal fishing.

Other important factors that ruin Somali economy and living conditions include natural disasters. While the tsunami of 26 December 2004 did its worst damage in South-East Asia, the giant waves also travelled across the Indian Ocean to East Africa. Somalia was the African country worst affected by the 2004 tsunami - and many livelihoods were destroyed. In 2004, tsunami came at a time when many parts of the country were beginning to recover from four years of consecutive drought (2000-2004) and periodic floods. The impact of the tsunami therefore posed a further assault to an already vulnerable population. The coastline of Somalia is 3,898 kilometres long and about 55 per cent of its population lives along this coastline. The tsunami resulted in the death of

[11] Industrialised countires generate about 90% of the world's hazardous waste. The amount of waste crossing national frontiers is increasing and it is likely to continue, due to the high growth of industries in developed countries accompanied by a high increase in the production of hazardous waste. Some European firms are known to be engaged in the business of dumping hazardous waste in Africa. The primary cause of this is cost. It has been estimated that it costs as little as $2.50 per tonne to dump hazardous waste in Africa as oppesed to $250 and even sometimes $1000 per tonne in Europe (UNEP, 2005, p. 134; İstikbal, 2010).

some 300 people and extensive destruction of shelters, houses and water sources as well as fishing gear. The livelihoods of many people residing in towns and small villages along the Somalia coastline, particularly in the northern regions, were devastated. The tsunami disaster coincided with the peak of the fishing season which increased the number of those affected (UNEP, 2005, p. 128).

The Tsunami also leads to serious public health problems. Access to safe water was already a significant problem in Somalia, aggravated by the destruction and looting of water supply installations during the civil war. This situation is compounded by erratic rainfall patterns that exacerbate both drought and sporadic flooding. It is estimated that 65 per cent of the population does not have reliable access to safe water throughout the year. After the Tsunami, freshwater bodies and fishery breeding grounds were contaminated with the saline water. Wells located in the coastal areas where seawater has penetrated have become clogged or buried by sand washed in by the giant waves, resulting in brackish and polluted waters. The sea water also invaded the porous rocks thus contaminating the underground water with salt. This situation created a serious public health threat for the coastal communities depend on surface and groundwater for survival (UNEP, 2005, p. 132).

On the other hand, permanent political disorder in Somalia poses a major obstacle for the establishment of a comprehensive health care system. The situation has inevitably resulted in an almost complete lack of any comprehensive nationwide health system. Most health care offered by NGOs and religious organisations or by the private sector in urban areas. Malaria is endemic, and is the leading cause of death in children under five. Tuberculosis infection rates are amongst the highest in the world, with 1 in 270 people infected and an estimated 25,000 new cases every year; prevalence is particularly high among young men. HIV and AIDS prevalence is currently estimated at less than 1% (Somalia JSP, 2007, p. 12-16).

All this negative developments created an illegal economy, including piracy, in Somalia supported by those having a stake in the continuation of disorder. The scarcity of vital resources resulted in permanent “elite wars” to gain control over fertile land, cash crops, commercial centres, and valuable infrastructure. These wars also resulted in unjust distribution of the benefits among different groups. “In the process of redistributing resources, some groups benefited greatly while others suffered tragically” says University of Pennsylvania African Studies Centre Director Lee Cassanelli. Clan

affiliation has become a *sine qua non* for daily survival. In turn, violent conflict emerges and leads to diminished domestic production and foreign assistance, thus creating scarcity. This is a good explanation for the question why the southern part of the country, which is considered to be relatively rich in resources, has experienced continuous insecurity while the relatively arid northern regions, in particular the breakaway state Somaliland, where livestock are the main economic base, have been more stable (Webersik, 2008, p. 50-51).

Similarly, some businessmen and faction leaders benefit from the lawlessness in Somalia, doing well out of war, particularly with regard to the charcoal export business. Without a functioning authority that could restrict the trade, charcoal is being produced in Somalia on a large scale, leading to forest cover loss and sand dune encroachment. Most of the charcoal is exported for a large profit to Arab countries. Largely urban-based elites benefit from the trade, while local communities are left out from this lucrative business but suffer most from its adverse environmental impact. Others, including hotel managers and shipping agents, make large profit margins with aid contracts. Airports charge humanitarian flights fees but do not offer services such as air traffic safety or logistical support. Foreign companies and aid agencies have to calculate up to half their budget for security services. In this respect, they have a role in shaping conflict in Somalia. Additionally, aid money is often diverted and used for the acquisition of arms and ammunition. Many businessmen, enriched themselves during the era of the United Nations Operation in Somalia in the early 1990s.

Above all, countries that participate in the arms trade have little interest in a politically stable Somalia. Rather, some countries such as Ethiopia have deliberately jeopardized peace processes in the past. These countries are likely to continue interfering in the reconciliation process unless the current Transitional Federal Government proves that it does not pose a threat to neighbouring countries.

4.2.1.3. Humanitarian Situation

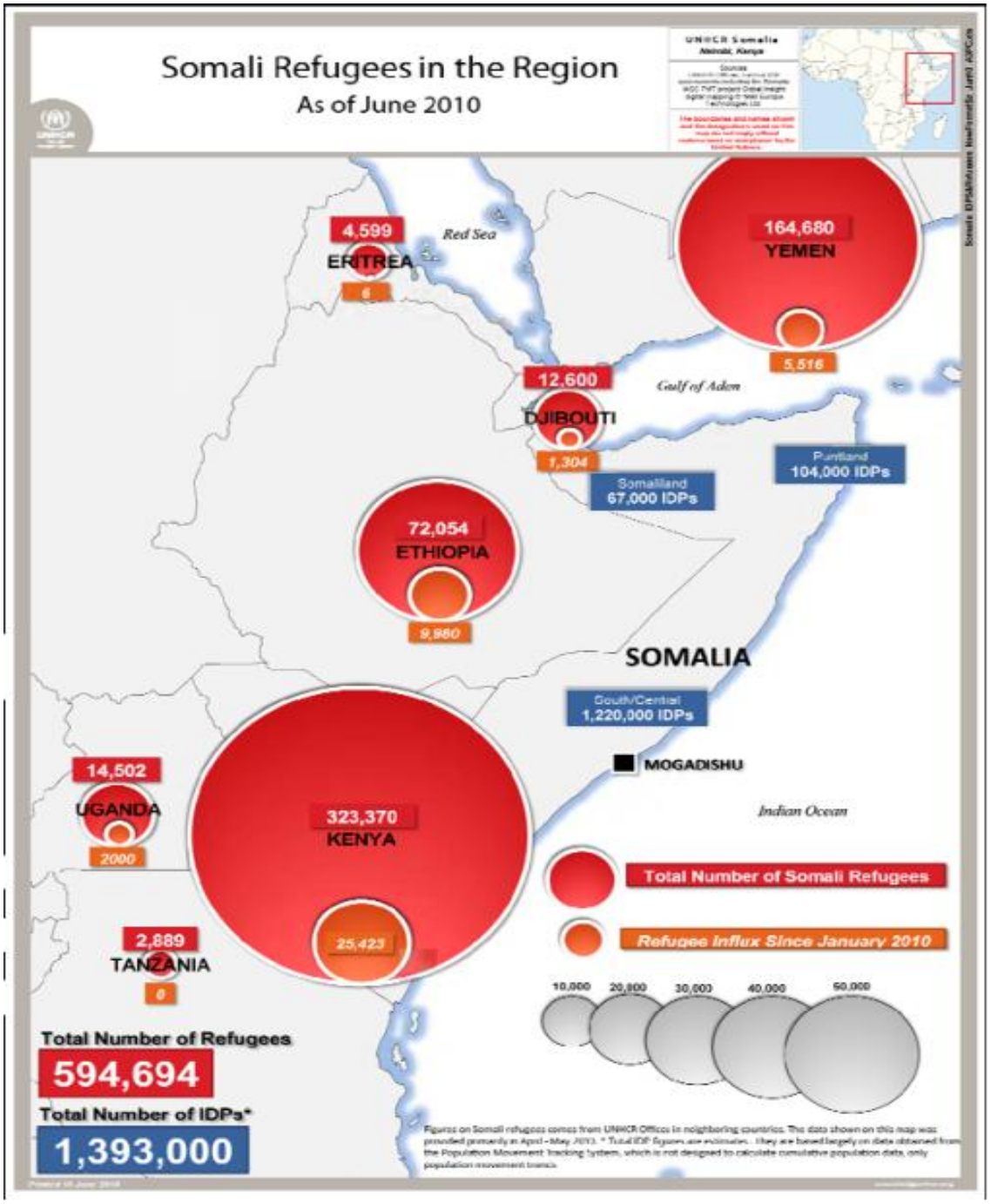
The humanitarian effect of the ongoing conflict in Somalia is substantial and widespread. Somalia is considered as one of the least developed, low-income, food-deficient countries and as insufficient comparable data exist, it does not appear in the UNDP's Human Development Index of 177 countries. A quarter of the children die before the age of five. The country has one of the highest maternal mortality rates in

the world. Less than a quarter of Somalia's children go to school, and the country is about to become Africa's least literate (Bradbury and Healy, 2010, p. 119).

Regarding the basic human rights of children, women and other vulnerable groups, the situation is getting worse. In Somalia where 50% of the population is below the age of 18 and some 20% are under the age of 5 children are at extreme risk mainly as a result of under-nourishment with global acute malnutrition running at between 10% and 20% and lack of protection. Somalia has signed neither the Convention on the Rights of the Child nor the protocols on children affected by conflict. Two generations of children have had no real access to education and the Somalia is at the bottom of the African rankings with the primary school gross enrolment rate of 22% in 2003-04. Girls represent only about a third of total enrolment and are also subject to high dropout rates. Adult literacy is estimated at 20%. Women and girls are particularly vulnerable to the consequences of insecurity. With traditional structures and coping mechanisms breaking down, limited financial resources require decisions on where money is spent; in most cases, the priority goes to male children and men. Many girls marry or are forced to marry before the age of 14 and the practice of female genital mutilation is widespread (Somalia JSP, 2007, p. 12-16).

Refugees and internally displaced persons (IDP) are other sources of problem. There has been a continuous outflow of refugees and migrants to neighbouring countries (UNODC, 2010, p. 196). Somalia generates some of the highest numbers of displaced people and refugees in the world. According to the figures of the Found for Peace Organisation's Country Profiles for 2011 the refugees and internally displaced people score of Somalia remained at the highest possible score as conflict continues while more than two million Somalis either live in refugee camps in neighbouring countries or in the Diaspora in industrialised countries. In 2009, more than 120,000 Somalis sought refuge in neighbouring countries including Yemen, Djibouti, Ethiopia, Eritrea, Uganda, Kenya and Tanzania (UN Expert Report, 2008, p. 10). Figure 4.1 indicates the dispersal of Somali Refugees in the region as of June 2010.

Figure 4.1: Dispersion of Somali Refugees in the region.



Source: Dagne, 2011, p. 31

The country's instability and violence has resulted in gross human rights abuses, and has undermined attempts to deliver international aid to those in need. The human rights situation in Somalia continues to be characterized by indiscriminate violence and frequent attacks against civilians, including arbitrary detention of human rights

defenders, arbitrary arrests and extrajudicial killings of journalists, as well as sexual and gender- based violence. (UN Expert Report, 2008, p. 10) According to Amnesty International, “rape, killings and looting have become widespread. Entire neighbourhoods have been destroyed.” A number of Somali journalists covering the crisis in Somalia have been assassinated by insurgents and security forces over the past 18 months. Dozens of humanitarian and human rights advocates have been killed, injured, or imprisoned. Because of these targeted attacks, many human rights advocates and journalists have fled Somalia to neighboring countries for safety. Somalis working for international NGOs and foreign media have also been attacked by insurgents and TFG/Ethiopian security forces (Dagne, 2011, p. 5).

On the other hand, human trafficking and smuggling are as endemic as other criminal activities like piracy, and has been going on for much longer. The overwhelming majority of trafficked persons are women and children, often for the purpose of prostitution. A smaller number of males are trafficked to work under slave-like conditions. Children are also conscripted as child soldiers. Approximately 20,000 people are smuggled out of Somalia each year. Most are from Ethiopia and South Central Somalia and they cross the Gulf of Aden into Yemen from where many move on to Saudi Arabia and Europe. Many of the smuggled people are asylum seekers. The boats that take them across the Gulf are often inadequate and it is common for passengers to be thrown into the sea in rough seas to lighten the load, or when the Yemeni Coast Guard is spotted. After arms and drugs, trafficking in human beings is the best source of income for organised crime (UN Expert Report, 2008, p. 21). According to the UN Independent Expert on Human Rights in Somalia (UNIE) and humanitarian organisations, human trafficking is rampant in Somalia. Although it is forbidden in Shari’a and customary law, no unified policing to interdict such practices and no authoritative legal system to prosecute traffickers exists, while the full extent of it is hidden by the chaotic internal situation. Reports indicate that militias traffic women and children for sexual exploitation and forced labour to destinations in the Middle East, Europe and Africa (USDS, 2006).

A direct correlation exists between piracy activities off the coast of Somalia and Somalia’s status as a weak state. The country’s extreme poverty, lack of domestic security, and other factors that have contributed to its weak state status have fuelled the prevalence of piracy in the region. Actions by the international community to address the piracy problem have helped, but as long as Somalia remains a weak state,

piracy will continue to be a problem in the region, and will likely increase (Silva, 2010, p. 577-578).

The maritime activities and threats evident off the Horn of Africa are therefore necessarily set against the backdrop of the disintegration of Somalia as a functioning state, deep-seated and ongoing internal conflict, poverty and humanitarian disaster, coupled with regional instability and a record of unsuccessful international interventions that have tended to exacerbate rather than address Somalia's problems (Potgieter and Schofield, 2010, p. 86).

Piracy off the Horn of Africa is not just a maritime problem. It is a problem of lawlessness that begins on land, moves out to sea, and is felt the world over. The response of the international community in dealing with it has been wholly inadequate. In fact, in the absence of a coherent response to the problem of piracy, Somalia's Transitional Federal Government has begun accepting donations from an as-yet-unnamed Muslim state for the establishment of a military force to combat piracy in Puntland. Puntland, which is believed to be rich in natural gas and oil deposits, is a strategic area for more reasons than piracy alone. The mysterious nature of these donations is somewhat troubling, as it could hinder the growth of a transparent, independent government in Somalia (Helfman and O'Shea, 2011, p. 33).

To conclude it is necessary to sum-up this part by underlining that the situation of extreme poverty affecting a third of the population, internal conflicts, widespread corruption and, in some cases, the connivance of local institutions result in the rise and spreading of criminal groups and create "safe havens" for pirate activity (Tajani, 2009).

If the problem continues to be largely ignored, Somalia's downward spiral will continue – probably exponentially. This will very quickly have impacts on countries within the region. In the longer term, economic and political instability will surely spread beyond this in ways which will have consequences for the wider Middle East, Africa and in due course the wider world (UN Expert Report, 2008, p. 33).

Piracy in Somalia is deeply rooted in a number of socio- economic factor, predominantly poverty, hunger and civil insecurity of the coastal population. Puntland is currently the epicentre of piracy. This is due in no small part to the fact that vessels can be identified and targeted much more easily as they travel through the Gulf of Aden (UN Expert Report, 2008, p. 14).

4.2.2. Pulling Factors: Piracy as a Growth Industry

Key to the success of Somali piracy is based on a three-pillar system of location, opportunity, and profits (Helfman and O'Shea, 2011, p. 30).

The region on the eastern coast of Africa, home to Somalia, is known as the Horn of Africa. Somalia runs east along the Gulf of Aden, where four percent of the world's oil is moved each day, and then southward along the coast, jutting out into the Indian Ocean in a domestic region known as Puntland. Finally, its border falls south past the war-torn lands surrounding the current latent capital Mogadishu (Anderson, 2010, p. 321-322).

The length of the Somali shore line (2,100 nautical miles, more than 3,500 km) is very difficult to control and the geographical shape of the Gulf of Aden where the Bab el Mandeb Strait forms a "bottle-neck" for maritime traffic flows. Therefore passage through the Red Sea and Suez Canal where ships have to reduce their speed provides a facilitating factor for pirates to attack on ships. The volume of these flows is extremely high and the Gulf of Aden and the Suez Canal are used by more than 20,000 merchant ships every year. The strategic value of the transported goods is also very vital for world economy. Around 12% of the world production of crude oil is shipped on this route, without considering other types of energy (i.e. liquefied natural gas and coal) (Tajani, 2009). In addition, many fishing vessels also traffic the water to fish, especially tuna. So, it is not surprising that most maritime nations are concerned with the Somali piracy. Such a high traffic and strategic importance creates a forcing factor for transporters to pay the demanded ransom since all major shipping companies insure their ships against piracy. As a cyclical manner, payment of ransom creates an impetus for pirates to continue their business.

However can high traffic be a good justification alone for the high rate of piracy in this area? The answer is off course "no". For example Turkish Straits, where marine traffic is very high, serves for the passage of 50.000 vessels every year, but there is no reported piracy incidence in this area. Therefore it is necessary to underline the interaction between high marine traffic and, for example, lack of law and order or absence of an effective capacity to cure the problem of piracy in Somalia.

Besides being a criminal activity, piracy is also a growth industry and creates an alternative parallel economy with revenue that exceeds that currently available to Somalia's regional and local governments. As analyst Ken Menkhaus has noted:

> [W]hat began as a genuine grievance on the part of local fishermen quickly morphed into an enterprise by militia leaders, who saw an opportunity to earn easy cash by demanding fees from foreign fishing ships for "licenses" to fish in waters near territory they controlled. ...Somali piracy is a textbook case of a shift in the motives of an armed group from grievance to greed (Pham, 2009, p. 1, footnote 5).

It is a means of generating income and getting an esteemed position in the society. In a country where legitimate business is difficult, almost 50% of the work force is unemployed; the dangers of engaging in piracy are not more than the weight of the potentially massive returns. Pirate groups can easily raise their manpower since there is no shortage of willing recruits for the business. Like in other parts of Africa, the Somali youth and coastal people have become active in piracy as a new means of earning income. Piracy offers real employment and revenue earning opportunities in a country where civil war has brought almost all legitimate economic activity to a standstill and where the incapable governments appear to regularly lack funds necessary to pay the salaries of its soldiers, police and other employees. A convicted pirate admits that a single armed pirate can earn anywhere from $6,000 to $10,0004 for an $US 1,000,000 ransom. This is approximately equivalent to a two to three year salary for an armed guard at a humanitarian agency and much better than a local commercial enterprise would pay (UN Expert Report, 2008, p. 31).

Probably around 1400 Somalis are actively engaged in piracy. The economic motive for these people is obvious. As a 39-year-old Somali pirate explained to a Kenyan journalist, 'my life has changed dramatically because I've received more money than I ever thought I would see, in one incident, $250,000 . . . it is incalculable how much money I have made . . . I buy cars, weapons, and boats . . . having a good time'. Similarly a Somali man from Putland region says: Pirates have money; they have power and they are getting stronger by the day. They wed the most beautiful girls; they are building big houses; they have new cars; new guns" (Kraska, 2010, p. 114). The increase in piracy can therefore be ascribed to pushing factors like the lack of coastal and port surveillance, law and order enforcement, the poverty and the desperation of the Somali people and, no doubt, to pulling factors like getting a very large sum of income and esteem in the society (Potgieter and Schofield, 2010, p. 96-97).

Piracy in Somalia created its informal economy with its own rules. Though clan politics does not drive piracy in Somalia, this phenomenon emerged from within the clan structure. The ransom money makes its way into the stream of commerce of clan society in Somalia and into the economy of surrounding nations. Highly organized groups divide labour among;

- the “brains” or ex-fishermen who have seafaring skills, know the sea and able to operate hi-tech marine equipment, GPS and military hardware
- the “muscle,” or ex-militiamen who fought in various Somali conflicts,
- “computer geeks” or the technicians who are proficient with laptop computers and satellite phones.
- the leadership, which funds and organizes the enterprise—and pays off local officials (Kraska, 2010, p. 114; Digby, 2010, p. 9).

The system involves hundreds of people, each earning a share of the ransom. First, the individual pirates get paid. The size of the share earned by every pirate follows a strict scale. The first pirate on board a ship that is successfully hijacked earns a bigger cut. To facilitate and sustain this industry an entire support industry has developed including mariners most of which are ex-fishermen, accountants, negotiators, intelligence provides, and hospitality workers (Doby, 2010, p. 563; Kraska, 2010, p. 114, Homan and Kamerling, 2010, p. 71). Such a system and division of labour is vital in the whole process since a vessel hijacking, which is followed by ransom negotiations and the release of the vessel, typically unfolds over a period of about 70 days (Kraska, 2010, p.114).

Another facilitating factor is that pirates don’t need to launder ransom money for two reasons: First is the Somali financial system, known as ‘hawala’. In its 2004-2005 Money Laundering and Terrorist Financing Typologies Report, the Financial Action Task Force (FATF) described alternative money transfer systems, such as hawala, as a “financial service that accepts cash, cheques and other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message or transfer or through a clearing network to which money/value transfer system belongs” (APF, 2009, p. 8). It works through trust and honour, and carried out without

documentation, bypassing banks and other financial institutions. It encourages trust between people and pirates exploit this, making it impossible to track ransom money. As a result of such facilitating and pulling factors, phenomenon of piracy have increased very sharply in Somalia leading to a booming industry and it certainly is very lucrative in a country whose economy was destroyed by permanent conflict. Secondly ransom received as cash can move high-end traditional real estate markets. In neighbouring Nairobi, for example, Somali pirates and their front men have invested heavily in places like Eastleigh (dubbed “Little Mogadishu”), Pumwani, Juja Road, Parklands, Ngara, and the Nairobi Central Business District. One 26-year old Somali named “Samo,” bending to his parents’ will, sought “retirement” after he made about $116,000 in two heists. He told a reporter for the Seattle Times that he was “looking around” Nairobi for investment opportunities to maintain his nouveau riche lifestyle. “I know people who are buying shops, hotels, properties (Kraska, 2010, p. 114).

There are a number of groups involved in piracy. These groups are formed according to clan and sub- clan lines and members from other clans accepted into the groups if they have a particular skill that may be required or they need extra numbers. The most active groups involved in piracy are from the Darood or Hawiye clans. Since most of the pirates are ex-pastoralists with little or no knowledge of the sea, they employ fishermen to forego using their skiffs at sea and use them to assist the pirates, who will be paid far more than they can earn at fishing (UN Expert Report, 2008, p. 17).

Today the centre of piracy in Somalia is Puntland. Puntland is the area of Somalia situated on the “horn” of the continent and facing the Gulf of Aden to the north and the Indian Ocean to the east. The region of Puntland is vast, comprising one-third of the total land mass and half of the coastline of Somalia (Kraska, 2010, p. 112).

In this region, piracy is penetrating all levels of society including government structures at both senior and junior level. Some press reports have suggested that the pirates are being controlled and directed by the Islamic insurgents in south-central Somalia. There is no evidence, however, to support this assertion, and during the six months the Union of Islamic Courts was in power, the leaders took measures to end piracy and other criminal activities. On the other hand, some other argue against such a drop on the grounds that during the six-month rule, the UIC only take measures to rescue those ships owed by the supporters of UIC. Contrary to that claim, in November 2008, a general call was declared by Sheik Hassan Aweys calling on the pirates to end their

criminal activities, and other insurgent leaders threatened to take military action against the pirates (Dagne, 2011, p. 21).

In Puntland region, piracy has become socially acceptable, and even fashionable. Since even the police, the security services, and the government have benefited financially from piracy, they have tended to turn a blind eye out of piracy. Corruption is prevalent at all levels of the government (Kraska, 2010, p. 112). Although Puntland is economically better off than the south of Somalia, injection of around $100 million (for 2011 only) makes a difference. Given that the Puntland's general economy only is estimated to something around USD 20 million, it is quite apparent that the piracy is vital for the Puntland economy. Therefore controlling piracy is not high on the priorities of the government. In 2008, pirates collected around US$30 million – three times the budget of the region of Puntland from where many of the attacks originate. Shipping firms, and sometimes governments, are prepared to pay these sums since they are relatively small compared with the value of the ship (APF, 2009, p. 8). Injection of this amount fuelled a construction boom in this region. In Eyl, a whole support industry has developed to provide logistics and catering services to pirates on board the captured ships that are predominantly held in this area (UN Expert Report, 2008, p. 32). According to some sources, the rise of a wealthy pirate class in a politically and economically weak Somalia might cause Puntland to become a 'pirate state'. Although unopposed and rampant piracy is corrosive to the credibility and authority of legitimate government and institutions of the State, traditional clan and other societal structures and morals and ultimately to the prospects of Somalia's early reintegration into international trade and the international community of nations (UN Expert Report, 2008, p. 30) a number of Puntland ministers are suspected of being involved in piracy and its attendant activities. "A pirate hub like Eyl, tailor-made for pirates and their hostages is a safe haven for pirates and little is done to stop it. The town becomes a hive of activity when a hijacked vessel arrives. Pirate 'accountants' and 'negotiators' with laptops appear and commence with negotiations, while special arrangements are being made to look after the hostages" (UN Expert Report, 2008, p. 17). In this region there are also a couple of factors which work in favour for anyone who wish to turn to piracy. Puntland is relatively calm compared to South and Central Somalia. The lengthy bargaining procedures demand a certain infrastructure: a safe harbour, accommodation for the hostages, reliable communication and a minimum level of logistics, which require a secure environment (Sorenson, 2008, p. 21).

Additionally, the threat of Somali piracy has had another unanticipated positive economic impact, thus a reason for the society to overlook piracy. Fishermen and sportsmen report that fishing stocks in the region have increased enormously across all species over the last year. As discussed above before piracy emerged as a major threat, foreign fishing longliners roamed the Somali shores. Laying out miles of line along the fertile coastline, the ships would kill everything from the bottom of the ocean to the side of the ship. Since piracy is rampant now, large poaching vessels are finding other waters. Now with fishermen catching more fish, the retail price for fish along the shores of the Indian Ocean from Mogadishu in Somalia to Malindi in Kenya are down—drawing more people to buy (Kraska, 2010, p. 112). Taking into account that food security is a major African security issue with its large coastal population and their critical dependency upon fisheries in the surrounding oceans, piracy has been as good for Somalia's fishermen as it has been bad for international shipping (Vrey, 2010, p. 122).

In addition to these pushing factors some Somalis view the piracy as a foreign problem with little impact on their daily life. Some argue that the piracy problem will continue as long as the ship owners are willing to pay the pirates ransom. In the face of difficult economic conditions and a growing humanitarian crisis, many Somalis resent the fact that the piracy problem has received a great deal of international attention. Some Somali community leaders contend that some Somalis get involved in criminal activities in order to survive, while many others have made these kinds of criminal activities a lifetime profession (Dagne, 2011, p. 14-16).

As those having interest in the continuation of conflict mentioned in the economic evaluation part, there are also some international groups that benefit from piracy. Although piracy has always been on the cost side of the carriers and consumers in general, it is at the revenue side of some groups. Piracy benefited some insurance companies, as business has boomed for those offering "kidnap and ransom" insurance policies over the past two years. Insurance premiums for commercial shipping which must pass through the Gulf of Aden have soared tenfold over the course of the past year, adding yet another drag to an already sluggish global economy (APF, 2009, p. 8). For example the UK-based company Hiscox prices its policy at $15,000 for a single trip through the Gulf of Aden. The readiness to pay large ransoms, with funds provided by insurance plans, has further encouraged pirates. Some $60m in ransom money was paid out last year (New African, 2010).

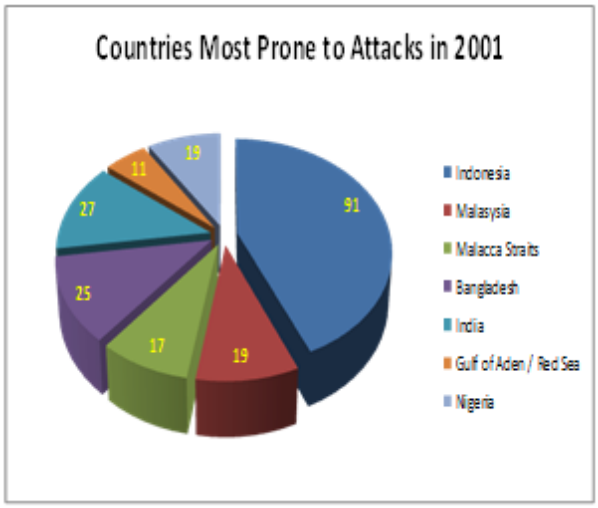
Piracy is a profit-generated enterprise and until there are no more profits to be made, other economical enterprises become more lucrative or the probability of success goes down so significantly that it is not worth the effort, the piracy attacks will continue to exist. The piracy has meant an expansion of the choices available to parts of the Puntland communities. Hence, to seriously address the piracy would mean that the choices available to the people of Puntland must be further expanded to include businesses which also offer an income. Since no legal business can possibly compete with the piracy concerning the direct earnings, the incentives for the piracy must be eradicated (Sorenson, 2008, p. 35). Therefore at the heart of solving piracy problem lies creating alternate income-earning activities for Somalis and strict implementation of "name and shame" method for those exhausting Somali marine resources and polluting Somali waters (Silva, 2010, p. 577-578).

4.3. WEIGHT AND DISTINCT FEATURES OF SOMALI PIRACY: IS IT REALLY A GREAT PROBLEM?

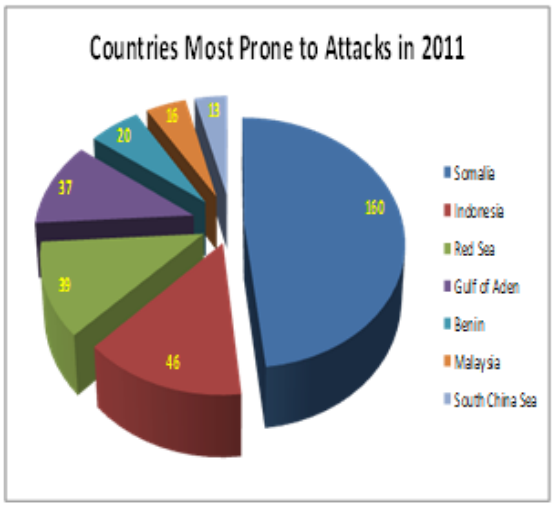
The latest figures of the ICC- IMB Piracy and Armed Robbery Against Ships Report gives us some idea to understand the extend of the piracy activities off the Somali coasts. Therefore, in this part, IMB's Annual Report for 2011 on Piracy and Armed Robbery against Ships (shortly IMB Piracy Report 2011) will be referred. Here, it is important to note that according to the IMB Piracy Report 2011, in addition to piracy attacks took place off Somalia, those took place off Gulf of Aden, Red Sea, Arabian Sea, Indian Ocean and Oman are attributed to Somali pirates. Therefore while evaluating the weight of Somali Piracy, all attacks occurred in these areas are summed up (IMB, 2011, p. 6).

From January to December 2011, 237 reported piracy incidents out of 439 are attributed to Somali pirates. This figures means around 54% of the total piracy attacks are operated by Somali pirates. In 2001 the number of attacks at Somalia and Gulf of Aden was only around 20 which count for more than ten fold increase in the number of attacks. During the last year 470 seafarers have been taken hostage, 10 kidnapped, three injured and eight reported to be killed. Figure 4.2 show the dramatic increase of Somali piracy during the last ten years. The east and south coast of Somalia including the Arabian Sea have recorded 160 attacks. A Further 37 attacks in the Gulf of Aden, 39 in the southern Red Sea and a hijacking in the territorial waters of Oman have been reported.

Figure 4.2: Countries Most Prone to Attacks in 2001[12] and 2011[13]



Source: Abhyankar, 2002, 9



Source: IMB Piracy Report, 2011, 110

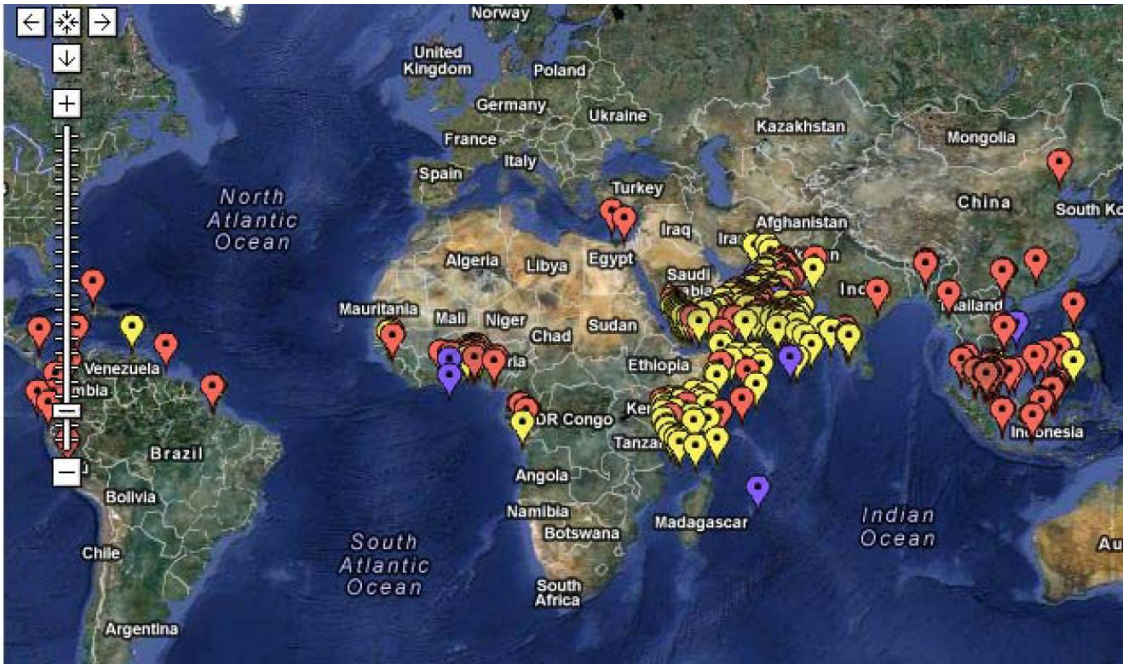
Figure 4.3 indicates the dispersal of actual, attempted attacks and suspicious vessels all around the world. In this period 28 vessels have been successfully hijacted. By the end of last year, suspected Somali pirates held 11 vessels for ransom with 193 crew members of different nationalities as hostages (IMB Piracy Report, 2011, p. 8-12). A record was set in January 2011, with over 700 people being taken hostage. (European Commission, 2012, p. 2)

An interesting incident is that when the Union of Islamic Courts (UIC) took power in June 2006 the piracy activity dropped sharply. When the UIC fell in December after the Ethiopian backed intervention, the same year the piracy spiked, which indicate that many people are dependent on piracy as their main source of income (Sorenson, 2008, p. 20).

[12] Seven areas in the first chart shared approximately two-thirds of the total numbers of attacks, i.e. 218 from a total of 335 reported attacks in 2001

[13] Seven locations in the second chart recorded 75% attacks from a total of 439 reported attacks in 2011.

Figure 4.3: All Actual and Attempted Attacks and Suspicious vessels in 2011.



Source: IMB Piracy Report, 2011, p. 110.

Although the Somali pirates, for the past five years, have been operating according to the same principles, the type of targeted ships evolved in time. The first ships boarded were Spanish and Danish fishing trawlers that were fishing tuna close to the Somali coast and they boarded a ship claiming that, due to the lack of a coastguard, they had to enforce the sovereign rights in the territorial waters and exclusive economic zone of Somalia (Sorenson, 2008, 17). Today, pirates attack various types of vessels including general cargo, bulk carrier, all types of tankers, Ro-Ro, container carrier, fishing vessels, sailing yachts, dhows and tugboats indicating the opportunistic evolution of the piracy phenomenon in a decade (IMB, 2011, p. 20). Besides that, piracy activities started to disrupt the transition of vessels operating within the framework of humanitarian programmes, particularly the World Food Programme, which supplies essential aid to the displaced populations in Somalia (Costa, 2009).

In contrast to the pirates in the Malacca Straits who have often given up the vessels as soon as they have taken easily accessible valuables, which without difficulties can be sold, ransom negotiations for a vessel hijacked by Somali pirates can last for around

six months. This is one of the unique characteristics of Somali piracy. Such a long term detention is also facilitated by existence of sanctuaries on land in Somalia and in its territorial waters from which pirates can launch attacks and hold hijacked ships for indefinite lengths of time during ransom negotiations. Pirates in other parts of the world are less likely to have such sanctuaries. Most pirate groups have also a sufficient network and organisation both to know where safe harbours are to be found and they have the possibility to control several harbours (Ploch, 2011, p. 10).

The methodology of the pirate attacks, from transport preparation, weapons preparation, target identification and subsequent hostage negotiation has improved and sophisticated with practice and reinvestment of funds from ransom payments. When piracy begun in 2000, the only means of targeting vessels was for pirate skiffs to sit some 50 nm off the East coast of Somalia and wait for a suitable, low speed, low freeboard, small crew vessels to come into view. This still remains a principle means of targeting merchant vessels (UN Expert Report, 2008, p. 18).

Today, Somali pirates are using hijacked ocean going fishing vessels, dhows and hijacked vessels with low ransom value to conduct piracy operations. These vessels are equipped with satellite phones to communicate with their beneficiaries inland. While the pirates still use the ‘mother ship’ system, many observers also believe that some of the pirate groups combine AIS interception and satellite positioning systems (GPS) to identify and track their intended target. Thanks to such sophistication, pirates are able to hijack ships even within the tight operational confines of the Gulf of Aden and amidst the increasing number of foreign warships. They are very precise in knowing just where one ship will be. Some commercial captains also report that pirates transmit fake distress calls, clearly intended as bait. Similarly, manoeuvres to mimic the signature of NATO Forces have been noted, with the probable intent of tricking ships into thinking that certain positions are safe. The Somali Pirates also seem well-informed about the positions of their prey (UN Expert Report, 2008, p. 19, Sorenson, 2008, p. 20).

Moreover, improvements in capacity allowed pirates to carry out attacks at great distances from the Somali coast. Skiffs launched from these hijacked vessels intercept and attack vessels resulting in some vessels being successfully hijacked. Depending on the characteristics and compliance of the victim vessel, pirates can board and commandeer a vessel in less than 20 minutes from the initial attack (National Security Council, 2008, p. 5). Pirate groups typically operate from "go-fasts" -- powerful, light

vessels capable of going 70 miles per hour -- carrying AK-47s, anti-personnel mines, heavy machine guns and rocket-propelled grenades (Chalk, 2010). These weaponary is likely obtained through the constant and largely unimpeded stream of illegal weapons transiting through Somalia in violation of the 1992 United Nations embargo on arms into Somalia (U.N. Security Council Resolution 733 (1992). However it is contrary to interest of pirates to intentionally harm the hostages needed to leverage the maximum ransom, or actually disable the ship because they need it to bring their hostages to the coast near their safe havens ashore (National Security Council, 2008, p. 5).

These equipped vessels usually hunt for vulnerable vessels with a low freeboard traveling under 15 knots during daylight (National Security Council, 2008, p. 5) As a result of such a sophistication, the geographical area threatened by Somali pirates is also extending regularly, comprising the region from the southern part of the Red Sea in the west to 76˚ East longitude and beyond in the east. Incidents in the past have also been reported off the coast of Oman / Arabian Sea in the North extending southward to 22˚ South. These coordinates cover a vast area including Gulf of Aden, southern Red Sea, off Yemen, off Oman, Arabian Sea, off Kenya, off Tanzania, off Seychelles, off Madagascar, off Mozambique, Indian Ocean, Off the Indian West Coast and off Maldives west coast (IMB, 2011, p. 20; New African, 2008, p. 44-45; UN Expert Report, 2008, p. 18).

Such an extension of pirates' area of operation is also a direct result of deployment of foreign naval forces in this region. Current international naval presence in the area involves warships from the United States, European Union Naval Force (EU NAVFOR), the United Kingdom, France, Russia, China, India, Japan, and several other countries which assembled in an unprecedented effort to prevent hijackings and other attacks on commercial vessels in the Gulf of Aden and other waters near the Horn of Africa. As a response pirates have simply shifted their operations to areas which they know are not being patrolled. Such an extension of area also proves that deployment of warships are not a long-term cost effective method of providing commercial vessels with protection from Somali piracy. The challenge is so considerable that comprises an area of more than two million square kilometres of waters off the East African coasts alone (INTERPOL, 2010) supported by well equipped and strongly armed bases scattered

along the Indian Ocean coast of Central Somalia and Puntland, Eyl, Hobyo and Haradheere.

In this period, most of the attacks involved the use of weapons which is a cause of griat concern to the merchant navy fleet, as it poses a serious threat not only to injury and death of seafarers but also to the ship, cargo and environment. In 201 incidences out of 245, Somali pirates used guns to intercept, board and hijack vessels. However this phenomenon has also provided a good justification for those barking for the deployment of more naval forces and employment of Privately Contracted Armed Security Personnel at IMO meetings (IMB, 2011, p. 20).

At the time of writing, pirates had officially hijacked a total of 13 vessels and taken more than 200 crew hostage up to March 31, 2012, with 87 attacks reported. Compared to previous years 13 successful hijackings out of 87 attacks is a very low ratio. Such a decrease in the ratio of successful hijackings can be explained by the existence of naval forces. However it leads us also to the conclusion that, anti-piracy measures don't deter pirates but rather decrease their success which means that pulling and pushing factors for the continuation of piracy are still prevail (IMB).

The most dramatic increase during the last decade has been in the number of pirates. Such an increase cannot be de-coupled from the direct impact of deteriorating economic and political situation. Somali pirates have been growing in numbers over the years. "Five or six years ago, there were less than 100 pirates. Today there are between 1,100 and 1,200 pirates." says Andrew Mwangura, the East African coordinator of the Seafarers Association Assistance Programme (New African, 2008, p. 45).

There is also an increasing trend in the ransom amounts. Ransom payments are the lifeblood of Somali pirates: each ransom paid further emboldens these pirates and perpetuates the threat. The average ransom paid in 2005 was $150,000. According to UNODC, in 2011, pirates made some $170 million in ransom money for hijacked vessels and their crews which means $6 million average ransom for this year. That figure represents an increase since 2010, when ransoms paid amounted to over $110 million (UNODC, 2012).

CHAPTER – 5

UNIQUE CASE OF SOMALI PIRACY

MEASURES, FAILURES AND RECOMMENDATIONS

5.1. WHAT HAS ALREADY BEEN DONE? THE PROCESS OF TRANSFORMING A HUMANITARIAN PROBLEM INTO A SECURITY PROBLEM

For almost a decade the world has been engaging in a process of solving problem of statelessness in Somalia in general and the problem of Somali piracy in particular. However with the inclusion of different interests, this process has gone away from its basic purposes and focused on it as a security problem, rather than a humanitarian one. Therefore all measures, either regional or international, have no wider purpose like peace building or state capacity improvement, but rather they serve for only continuation of maritime trade in the region. Such a shift in the perception of the basic problem resulted in unsuccessful peace building efforts and anti-piracy measures. Today, those engaging in the solution of the piracy problem are no longer dealing with basic reasons behind the problem or aiming at curing the humanitarian disasters being experienced for more than two decades. Rather, they are putting their efforts to deter piracy by deployment of more and more naval forces or by use of armed security personnel onboard vessels. There are even some studies that recommend the occupation of the country from which the pirates operate as the only technique which seems to be 100% effective (Varsami and Popescu, 2010, p. 48-49). This ill-comprehension of the problem results in absolute failure, and does nothing but worsens the situation. In the following paragraphs, measures taken at three levels to solve the problem of piracy will be evaluated with their deficiencies.

5.1.1. International Measures

Before starting the sea-based measures, it is necessary to underline the limited and improper nature of measures taken on land which include foreign interventions, a series of UN Security Council Resolutions without any power for enforcement, trainings rendered to so-called Somali forces. As mentioned in the previous parts, recent history of Somalia is also the history of unsuccessful peace-building and political settlement efforts and military interventions of the international community. Since the beginning of the civil war at the beginning of 1990's, international community felt a great responsibility to tackle the statelessness problem in Somalia. This included two failed

military interventions, one in 1993 code-named as Operation Restore Hope of a US-led, United Nations multinational force, Unified Task Force (UNITAF), the other at the end of 2006, the Ethiopian intervention. As explained in the above parts, these interventions did nothing but deteriorated the situation in Somalia (Dagne, 2011, p. 9).

Besides that, international community reacted through UN Security Council Resolutions. These UNSC Resolutions included the arms embargo that was established in 1992 by Resolution 733 but never complied especially by the neighbouring countries. Unlimited access of Somali pirates to all types of weaponry shows that arms embargo is not complied and weapons are available when necessary. Therefore, the UNSC must also monitor the enforcement of its resolutions and find smart punitive sanctions for those in breach. As an timid response to this permanent breach and having learnt the lessons from the previous experiences, U. N. Security Council Resolution 1725 of December 6, 2006 called for "all Member States, in particular those in the region, to refrain from any action in contravention of the arms embargo and related measures, and should take all actions necessary to prevent such contravention." Moreover, the Security Council expressed its "willingness to engage with all parties in Somalia who are committed to achieving a political settlement through peaceful and inclusive dialogue, including the Union of Islamic Courts" (UNSCR 1725). The Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the Inter-Governmental Authority for Development (IGAD) and the African Union to establish "a protection and training mission in Somalia." Moreover as a response to failed Eithopian intervention U. N. Security Council Resolution 1725 specifically stated that countries bordering Somalia "would not deploy troops to Somalia" (Dagne, 2011, p. 9).

On February 20, 2007, the U.N. Security Council passed resolution 1744 reiterating its support for the Transitional Federal Institutions and authorizing the African Union to establish a mission in Somalia. At the African Union Summit in late January 2007, several African countries including Ghana, Nigeria, Burundi, Uganda, Malawi and later on Guinea and Djibouti pledged to contribute troops for a peacekeeping mission in Somalia. This shows a policy shift from the support of an individual country to intervine to a multinational task force. Resolution 1744 calls for "a national reconciliation congress involving all stakeholders, including political leaders, clan leaders, religious leaders, and representatives of civil society." The resolution, while it welcomed the withdrawal of Ethiopian troops from Somalia, did not include a provision that restricts

the participation of Somalia's immediate neighbours in the peacekeeping operation as resolution 1725 did. The Security Council unanimously adopted Resolution 1772 on August 20, 2007, authorizing the African Union to maintain its operation in Somalia for an additional six months. The resolution also authorized peacekeeping forces on the ground to take all necessary measures to support and protect those involved in the Reconciliation Congress. Observers argue that without a negotiated settlement with groups still outside the TFG, it will be difficult to maintain peace and stability in Somalia. In late July 2010, at the 15th Assembly of the Heads of State and Government of the African Union in Kampala, Uganda, the African Union agreed to send an estimated 4,000 more troops to strengthen AMISOM (Dagne, 2011, p. 10).

AMISOM's mission included supporting dialogue and reconciliation in Somalia, provide assistance to Somali government to enable them carry out their functions, reestablishment and training of all inclusive Somali security forces, supporting the disarmament and stabilization efforts; facilitating, humanitarian operations, including the repatriation and reintegration of refugees and the resettlement of IDPs.

On the other hand, some efforts have been put for the reconstruction and development of the Somalia which are also failed due to lack of state authority and coordinating and monitoring institutions. To this purpose the action on land is mainly coordinated between the TFG, the authority of Somaliland and Puntland and the United Nations in addition to number of large international NGOs. UN prepared a framework document named as UN Transitional Plan (UNTP), which is a common plan for all UN agencies, funds and programmes in Somalia. This plan is firmly based on objectives set out in the Reconstruction and Development Programme (RDP), the five year national plan for Somalia, which was produced by a Joint Needs Assessment for Somalia carried out by the UN, the World Bank and Somali representatives (UN Expert Report, 2008, p. 38). The base document, the RDP, is built around three pillars of deepening peace, improving security and establishing good governance; investing in people through improved social services and creating an enabling environment for private sector-led growth to expand employment and reduce poverty. The UNTP has used these pillars as the basis for their planning and has identified 5 overall outcomes which are strengthening of key federal, Somaliland and Puntland institutions; improved service delivery by local governance in selected locations; improved security and protection under the rule of law; better access to education and health; improved food security and economic opportunities (livelihoods) (UN Expert Report, 2008, p. 39). It is

important to underline that all these documents are based on the fragmented Somalia not a unitary one. Therefore none is serving for a united Somalia.

As seen above the International community has launched programmes, projects and operations in Somalia since 1991 for solving the Somalia problem as a whole (UN Expert Report, 2008, p. 40). As such, the international community has not yet addressed piracy as a separate element in its programming. The main reason that the International Community has not been able to tackle piracy at sea, is that the International Community has not addressed piracy on land. All the efforts to soleve the piracy problem off Somalia are sea-based and therefore lack a comprehensive approach (UN Expert Report, 2008, p. 40). For many years, various government, international organizations, inter-governmental organizations and non-governmental organizations have provided advice, guidance and warnings regarding piracy off Somalia. These include the International Maritime Organization, Maritime Port Authority of Singapore, U.S. Maritime Administration, the U.S. Navy's Office of Naval Intelligence (ONI) in Washington and Maritime Liaison Office in Bahrain (MARLO Bahrian), the UK Maritime Trade Organisation Dubai (UKMTO), the ReCAAP Information Sharing Centre Singapore, the International Maritime Bureau's Piracy Reporting Centre Kuala Lumpur, and BIMCO (UN Expert Report, 2008, p. 3). In the following paragraphs, these measures will be dealt with, with their basic deficiencies.

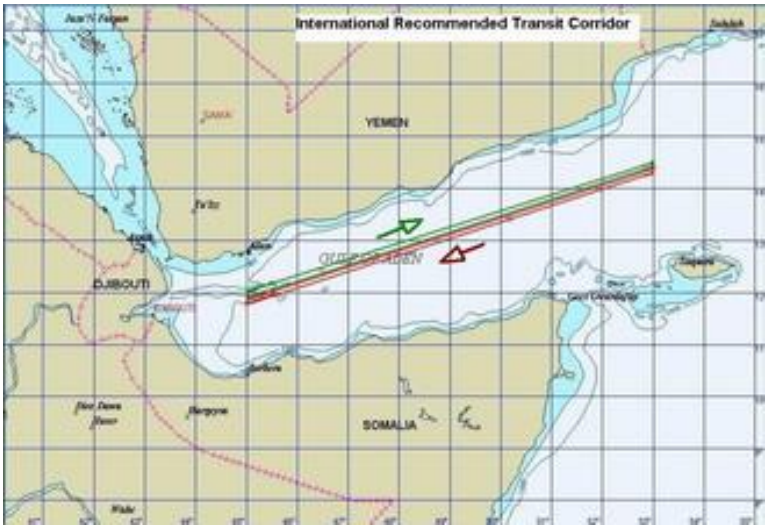
Measures at sea mainly includes deployment of naval forces within the context of UN Security Council Resolutions, employment of contracted security personnel, establishment of the Internationally Recognized Transit Corridor for secure navigation off Somalia, self-protection measures of vessels and regional cooperation mechanisms like the Djibouti Code of Conduct.

International community started to consider sea based measures since July 2005 when for the first time in the history of the UN World Food Programme (WFP) a ship carrying emergency relief for Somalia was hijacked. The ship was carrying food aid for 28,000 survivors of the December tsunami and the food would have fed them for two months. Soon, other ships carrying food aid were also attacked or captured and in one case a crew member was killed when attempting to prevent pirates from boarding. In late 2005, the UN WFP suspended all shipments of humanitarian assistance to Somalia off Somali waters along Africa's east coast until security would improve. During the second half of 2006 there was a significant drop in piracy attacks, but in 2007 pirate activities

resumed with vigour. Shipping companies were hesitant to provide ships to transport WFP aid without armed escorts. After three ships carrying WFP aid were attacked off Somalia in 2007, the WFP and the IMO made a joint appeal for coordinated international assistance on 10 July. International counter piracy operations therefore started with a naval escort system in November 2007, when France decided to send an individual mission to escort WFP ships, followed by missions by Denmark, Canada and the Netherlands. Since then not a single ship loaded with WFP food heading to a port in Somalia has been attacked (Homan and Kamerling, 2010 p. 71).

While it principally targets foreign ships, piracy also affects regional trade and shipping. Therefore various national and multinational counter-piracy missions from both regional countries and countries around the world now patrol the Gulf of Aden. This national and multinational military presence operates with the wording of relevant Security Council resolutions endorsing the use of 'all necessary means' or 'all necessary measures' at sea *and on land* to suppress piracy (Guilfoyle, 2010, p. 142).

Figure 5.1: The Internationally Recognized Transit Corridor



Source: MARLO.

However 2008 saw a surge in piracy attacks on commercial shipping, and as a response, the United Nations Security Council passed five separate resolutions dealing with Somali piracy in 2008- more resolutions than on any other subject. Each of these was passed pursuant to Chapter VII of the UN Charter, under which the Council may authorize the use of military force against threats to international security. The UN Security Council passed resolution 1816 and later in 2008 UNSCR 1838, which encourages the international community to actively participate in the management of

security in the Gulf of Aden and off the coast of Somalia and gave permission, for a period of six months, to States cooperating with Somalia's Transitional Federal Government (TFG) to enter the country's territorial waters and use "all necessary means" to repress acts of piracy and armed robbery at sea, in a manner consistent with international law. The resolutions also stipulate the legal framework for actively targeting the pirates (UNSC Resolutions 1816 and 1838). These resolutions noted that it was passed with the consent of the government of Somalia "which lacks the capacity to interdict pirates or patrol and secure its territorial waters." Resolution 1851 of December 2008 authorized nations to "undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea for one year, thus broadening the scope of permissible "hot pursuit (Kontorovich, 2009). Jointly, these resolutions constitute building blocks to legitimise the response to piracy off the Horn of Africa (Vrey, 2010, p. 129). It is also a successful securitization process of problem of piracy. Moreover, pursuant to UN Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. The UN Security Council turned piracy into an international security concern through resolutions. The UN thus acted as a forum to bring together and articulate the concerns of international actors and then created a legitimate framework for willing UN members to take action (Vrey, 2010, p. 129).

Following resolutions adopted since 2008 are mainly dealing with the extension of the mandate stipulated in Resolutions 1816, 1838 and 1851 and prosecution of pirates. Table 5.1 presented below summarizes the main points of the UNSC Resolutions dealing with Somali piracy. Multilateral organizations including the EU and NATO are since then represented in the area. Similarly The US-led *NATO* Coalition of the Willing Combined Taskforce 150 (CTF-150), responsible for conducting maritime interdiction operations associated with Operation Enduring Freedom in Afghanistan, commenced counter-piracy operations in August 2008. Since October 2008, NATO used two standing maritime groups deployed off Somalia's coast: Operation Allied Provider served as temporary protection for the World's Food Program (WFP) aid shipments in the area. That operation ended in December 2008 (Vego, 2009, p. 172-175).

Table 5.1: UN Security Council Resolutions dealing with Somali piracy

UNSC Resolution	Focus of Resolution
1814 (May 2008)	States and regional organisations to coordinate actions to protect World Food Program maritime convoys
1816 (Jun 2008)	To promote greater international cooperation against piracy off Somalia and to assist the Transitional Federal Government (TFG) in fight against piracy
1838 (Oct 2008)	For states to actively involve themselves in fighting piracy by deploying naval vessels and aircraft to the affected area; reiterated the UNCLOS stipulations on piracy.
1846 (Dec 2008)	The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1982 may be used in the extradition and prosecution of pirates.
1851 (Dec 2008)	Reconfirmed 1816, promoting special agreements with states and regional entities to take custody of captured pirates and most importantly, extended operations onto Somali land territory if deemed necessary.
1897 (Nov 2009)	Expressed the concern that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off Somalia and invited states and regional organizations to conclude special agreements or arrangements with countries willing to custody of pirates in order to embark law enforcement officials from the latter countries and extended the authorization as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008) granted to States for a period of twelve months.
1918 (Apr 2010)	Affirmed the failure to to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia and called on all States to criminalize piracy under their domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia and requested the Secretary-General to present to the Security Council within 3 months a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia,
1950 (Nov 2010)	Extended the authorization as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008), as renewed by resolution 1897 (2009), granted to States for a period of twelve months.
1976 (Apr 2011)	Decided to urgently consider the establishment of specialized Somali courts to try suspected pirates, calls states individually or in cooperation with regional organizations, UNODC and INTERPOL, to examine their domestic legal frameworks for detention at sea of suspected pirates and support Somalia in judicial and detention related projects.
2015 (Oct 2011)	Called Somalia and other states to establish specialized anti-piracy courts with the possibility of consult with of international assistance to Somalia, including the provision of international personnel, that would be required to help make such courts operational.
2020 (Nov 2011)	Decided to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by paragraph 7 of resolution 1897 (2009), and paragraph 7 of resolution 1950 (2010), granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for a period of twelve months.
2039 (Feb 2012)	Decided that AMISOM shall establish a presence in the four sectors (1. Mogadishu and Middle and Lower Shabelle regions, 2. Middle and Lower Juba regions, 3. Gedo, Bay and Bakool and western part of Hiraan regions, 4. Galgudud, Mudug and part of the Hiraan regions) set out in the AMISOM strategic Concept of 5 January, and AMISOM shall be authorised to take all necessary measures as appropriate in those sectors and coordinate with the Somali security forces to reduce the threat posed by Al Shabaab – which has already been declared as a terrorist group – and other armed opposition groups in order to establish conditions for effective and legitimate governance across Somalia. An interesting detail is the decision to take the necessary measures to prevent the export of charcoal from Somalia, whether or not such charcoal originated in Somalia.

Source: Developed from Vrey, 2010, p. 128 and web page UNSC Resolutions on piracy off the coast of Somalia.

Also in August 2008 Operation Enduring Freedom's combined forces established 'a maritime security patrol area ['MPSA'] in international waters off the Somali coast'. Running through the MPSA is an internationally recognized transit corridor (the 'IRTC'), established in August 2008 by the United Kingdom Maritime Trade Organization. In January 2009 the Coalition established Combined Taskforce 151 (CTF-151) based at Manama/Bahrain, with an exclusive mandate to escort ships passing through the Gulf of Aden against piracy and including sea assets from the USA, the UK, Pakistan, India, Turkey and Canada. Moreover, countries from the Middle East region like Iran and Saudi Arabia have sent ships to the region, and a group of eleven Arab countries has also announced the establishment of an anti-piracy naval task force to prevent piracy from spreading into the Red Sea and Suez Canal (Costa, 2009; Topal, 2010, p. 122-123, Turkish Naval Forces).

As regards the European Union's works within the context of the UN Security Council Resolution 1816 on combating piracy off the Somali coast and under Resolutions 1814 on the protection of vessels chartered by the World Food Programme (WFP) and bound for Somalia, the Council of the European Union on 15 September of 2008 decided to establish a Coordination Unit in Brussels with the task of supporting the surveillance and protection activities carried out by some Member States off the Somali coast (Costa, 2009). Primary initiatives came from France with operation Alycon with the purpose to protect the *World Food Program's* (WFP) ships to Somalia. Operation Alycon replaced in December 2008 by the EU NAVFOR Somalia operation Atalanta. (Sorensen, 2008, p. 8) The EU NAVFOR Atalanta is the EU's first-ever naval operation (Borg, 2009). The Commission also set-up a programme that will run from 2009 to 2011, which is to be funded from the Instrument for Stability, and which will deal with security issues in some critical maritime routes. This, too, should assist in suppressing the efforts of pirates. EU NAVFOR established online center known as Maritime Security Center-Horn of Africa (MSC-HOA) for transiting ships for recording their movements voluntarily and to receive updated threat information. As of 1 February 2009, information for mariners using the IRTC is available through this secure website administered by the MSC-HOA. At the beginning the EU NAVFOR Atalanta included forces from the United Kingdom, France, Spain, Germany, Greece, Sweden, Italy Denmark and the Netherlands. The force comprises of about 20 ships and 1,800 personnel.

The EU has also defined specific programmes for a total of some EUR 280 million, directed to the medium-to-long term in order to help addressing the root causes of such crimes at sea, such as the "Somalia Special Support Program", to develop governance, education, rural development and the productive sectors; the "Commission's Assistance to Somalia" in support of Somali police forces and AMISOM; and the "Instrument for Stability" to support the implementation the Djibouti Code of Conduct (Borg, 2009). Besides that EU provided financial support to AMISOM in order to increase, in particular, the efficiency of the Somali police force and to combat any abuse and serious violation of human rights and set up a military mission to contribute to training of Somali security forces (Simpson, 2010). To date, these initiatives seem to contribute the solution of the problem marginally.

Besides CTF-151 and EU NAVFOR Atalanta countries, several other states have also sent ships to the region, including China, Russia (sent two destroyers in December 2008, the first expedionary deployment of naval forces since 1949), Saudi Arabia, South Korea, Malaysia, Australia, Japan and the United Arab Emirates (Vego, 2009, p. 172-175).

All these efforts are welcomed by the international community and international organizations dealing with Somali problem in general and Somali piracy in particular. In her speech delivered at the World Maritime Day, WFP Executive Director Josette Sheeran underlined her appreciation of deployment of naval forces to escort WFP vessels as; "*…That's why when we called on the world to secure our vital food shipments to Somalia in October, 2007, and the world responded, it saved lives. Since November 2007, WFP has been able to transport 605,000 tons of life-saving cargo directly to Somalia, largely unhindered, due to the provision of escorts by France, Denmark, the Netherlands (two rounds), Canada, NATO and EU Operation Atalanta. We are extremely grateful to the EU, NATO and other nations that committed themselves to providing naval escorts to ships carrying WFP food assistance. Your assistance has meant that no ship carrying WFP food into* Somalia has been hijacked" (Sheeran, 2011).

Although these initiatives have met with some success, ensuring the delivery of WFP relief supplies to African Union (AU) peacekeepers stationed in Somalia and successfully thwarting several attempted hijackings, their overall utility is somewhat questionable. Moreover, the number of hijacked ships has increased since the

deployment of these warships to the region. Somali piracy cannot successfully be fought by only employing naval means. The reason for this is two-fold. First, the inherent structure of any systematic piracy, to which the Somali piracy belongs, makes it difficult to stop the practice by merely focusing on impeding pirate vessels. The deployment of naval frigates will only ever be able to address piracy at its end point, on the sea, rather than at its root, on land. Piracy has always been in need of at least one safe port, from where it can seek refuge, refit, and, most importantly, unload and trade the loot. In case of Somali piracy this need served for mainly bargaining process on the land. Historically, as well as today, piracy has only been permanently stopped when it has been approached from a multitude of angles which means that both the pushing factors and pulling factors must be dealt with. As long as piracy remains a lucrative business and as long as people have very limited or no chance of livelihood in the legal form, piracy will always exist (Sorenson, 2008, p. 8). In late August 2010, U.S. Ambassador to the United Nations, Susan Rice, stated during a U.N. Security Council debate on piracy that "ultimately, only security and stability in Somalia will resolve the root causes of the current piracy problem" (Dagne, 2011, p. 14-16). Similarly, the report by the Canadian Defence and Foreign Affairs underlines the impossibility of sustaining deployment of warships in the area as:

> If Somali piracy is going to be combated using solely sea-based tactics it will require a critical mass of warships and their air assets to maintain a constant presence in the region. It is possible that the largest and most diverse unplanned gathering of warships in recent history that is ongoing in [the Gulf of Aden] will constitute such a critical mass. However, it would be wishful thinking to expect this sort of a presence to continue for any prolonged period given the cost of modern naval deployments. [The Gulf of Aden] is a large body of water, and warships are not a long-term cost effective method of providing commercial vessels with protection from Somali piracy (Pham, 2009, p. 5-9).

Second is that the area to be monitored is very huge, over a million square miles. While the two dozen or so cruisers, destroyers, frigates, and other surface combat vessels which various countries have dispatched to the region have made for great political theatre and may have even proven useful in escort duty along narrowly defined sea lanes, there are simply not enough of them to make a real dent in the operations of the pirates. And even if there were enough warships to conduct adequate counter-piracy operations—just to control the more heavily trafficked shipping lanes in the area would require a force at least twice as large as currently deployed—it is doubtful that the commitment is sustainable over the long term. After all, with the bill for just the European Union Naval Force (EU NAVFOR) anti-piracy Operation Atalanta expected to total over $300 million this year, how long will the naval powers of the world tie their

assets down in and, in these hard economic times, spend their increasingly scarce resources on the troubled waters off the Horn of Africa? (Pham, 2009, p. 5-9). In her speech delivered at the World Maritime Day, WFP Executive Director Josette Sheeran expresses her concern about the extension of operation area of pirates as; "*…today we are faced with new challenges. The presence of Somali pirates in an ever expanding area is of great concern because they threaten not just food bound for directly for Somalia, but our food transiting through the ports of Mombasa (Kenya), Dar es Salam (Tanzania) and Beira (Mozambique) for vital operations in Zimbabwe, the DRC and other places with great humanitarian needs"* (Sheeran, 2011). Moreover, in waterways that are not very narrow, convoys with insufficient warships to escort them may even be counter-productive, as it forces merchant ships to sail in a pre-defined pattern, usually within a narrow sea lane, thus 'gathering the prey' for the pirates and depriving civilian ships of the protection that dispersal makes available (Møller, 2009, p. 21-22). Similarly convoying merchant vessels is difficult to implement. Many of the larger shipping companies have vessels that travel at far greater speed than most of the smaller vessels. To slow down the bigger vessels is not an option, since they then would lose valuable time which makes escorting a non-sustainable method against piracy (Varsami and Popescu, 2010, p. 48-49).

Despite the long-term ineffectiveness Security Council Resolutions and impossibility of sustaining naval forces some researchers argue for more power of for those states engaging in anti-piracy operations off Somalia. For example in his study "Somalia: State Failure, Piracy, and the Challenge to International Law" Silva argues that: *"…the Law of the Sea Convention permits the boarding and confiscation of pirate vessels and the arrest of crew members, but only proportionate force may be used to interrupt an act of piracy. International law does not permit firing upon and sinking pirate vessels. Therefore, if meaningful anti-piracy policies are to be implemented, a Security Council resolution is needed to authorize attacking pirate vessels, even if it involves entering the territorial waters of a sovereign state, which is currently a violation of international law"* (Silva, 2010, p. 577).

Besides that, prosecution of pirates has become a major problem since these operations helped arrest significant number of pirates. Resolution 1851, adopted on December 16, 2008, invited states to make special agreements with other nations in the region to facilitate prosecution of piracy. In February 2009, the U.S. Navy arrested 16 suspected Somali pirates. In December 2008, the Indian Navy reportedly arrested

23 Somali and Yemeni pirates. Moreover, the Russian Navy also arrested a number of suspected Somali pirates (Dagne, 2011, p. 14-16). Since NATO has no common legal framework to arrest pirates, nor any mechanism to transfer them to a third party for trial and as a response to emerging need to prosecute pirates, the US, UK, Denmark and the EU have all concluded agreements for the transfer of captured pirates to Kenya and later to the Republic of Seychelles for trial. The win-win idea was that Kenya, located close to Somalia, would benefit from much needed Western dollars to cover the cost of trials and incarceration. The world community would gain a cost-effective place to park the accused and convicted. Although such agreements are a step in the right direction, the Kenyan judicial system needs additional support to bring such pirates to trial. So far, these arrangements have failed. Kenya's judicial system is notoriously inefficient engaging with about 800,000 various criminal cases; its jails are filled to capacity. Moreover, countries must enact appropriate domestic legislation to enable the prosecution of pirates. Building the capacity of regional States by training police, prosecutors and prison administrators to deal with piracy suspects are the primary necessities (Chalk, 2010b; Silva, 2010, p. 572-573). By the end of March, 2011, 740 suspected and convicted pirates are in detention in 13 countries; almost half of them are in Somalia itself (Fedotov, 2011). Recently, the first new prison in 30 years opened in Somalia. And with funding from the British Government, UNODC is about to refurbish and upgrade a prison in Puntland where Somali pirates convicted in other countries can be transferred to serve out their sentences. However, there is still need for capacity building, and more importantly a government authority for successful finalization of these trials. On the other hand, the practise of catch-and-release continues to constrain the efforts to deter piracy. Due to lack of necessary domestic laws, many of the naval ships released the pirates after keeping for some period. This problem necessitates the adoption of necessary laws at Somali level, as well as at the level of other nations.

5.1.2. Regional Measures

As explained above, response by the international community to the increasing number of pirate attacks was limited to deployment of naval forces in the region. This limited scope raised the questions on whether encouraging regional cooperation among the countries affected by piracy is a better solution for the problem. Since the regional states has a good example of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery (ReCAAP) which is established in 2006 among the littoral

states of the Strait of Malacca and other Asian governments for coordinating responses to piracy and sharing best practice among law enforcement and security personnel, they could have utilized this experience. However there was a great constrain for the success of such an initiative when compared to Malacca Strait case: Somalia is a weak state. The regional countries are weak and their naval capabilities are inadequate (Vego, 2009, p. 172-175).

Despite this fact, the IMO-sponsored sub-regional meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States (shortly Djibouti Meeting) was held in Djibouti from 26 to 29 January 2009 and was attended by 17 (out of the 21) States in the region. In addition, 12 States from outside the region; four United Nations bodies and programmes; nine intergovernmental; and three non-governmental organizations attended the meeting as observers.[14]

The Meeting adopted the following resolutions,

- Resolution 1, on Adoption of a code of conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden (shortly Djibouti CoC) ;

[14] The Djibouti Meeting was attended;
- by delegations from the following States: Comoros, Djibouti, Egypt, Ethiopia, France, Jordan, Kenya, Madagascar, Maldives, Oman, Saudi Arabia, Seychelles, Somalia, South Africa, Sudan, United Republic Of Tanzania, Yemen.
- by observers from the following States: Canada, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Nigeria, Norway, Philippines, Singapore, United Kingdom, United States
- by representatives from the United Nations and the following United Nations bodies and programs: United Nations Department for Peacekeeping Operations (UN/DPKO), United Nations Office on Drugs and Crime (UNODC), United Nations Political Office for Somalia (UNPOS), World Food Program (WFP),
- by observers from the following intergovernmental organizations: European Commission (EC), International Criminal Police Organization INTERPOL, League Of Arab States, Regional Co-operation Agreement on Combating Piracy and Robbery Against Ships in Asia-Information Sharing Centre (ReCAAP-ISC), Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA) African Union (AU), Intergovernmental Authority on Development (IGAD), North Atlantic Treaty Organization (NATO), Organization of the Islamic Conference,
- by observers from the following non-governmental organizations: The Baltic and International Maritime Council (BIMCO), International Association of Independent Tanker Owners (INTERTANKO), Port Management Association of Eastern and Southern Africa (PMAESA)

- Resolution 2, on Technical co-operation and assistance;
- Resolution 3, on Enhancing training in the region; and
- Resolution 4, on Expressions of appreciation. (IMO, 2009)

Djibouti CoC was signed on 29 January 2009 by the representatives of Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania and Yemen and became effective on that date. It left open for signature at IMO Headquarters by other countries in the region. The main purpose of the Code is to promote the implementation of those aspects of UN Security Council resolutions 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008) and of UN General Assembly resolution 63/111, which fall within the competence of IMO. The signatories to the Code have agreed to co-operate in the investigation, arrest and prosecution of persons, who are reasonably suspected of having committed acts of piracy and armed robbery against ships, the interdiction and seizure of suspect ships and property on board such ships; the rescue of ships, persons and property subject to piracy and armed robbery and the conduct of shared operations, both among signatory States and with navies from countries outside the region, such as nominating law enforcement or other authorized officials to embark on patrol ships or aircraft of another signatory. In addition, the Code provides for sharing of related information, through a number of centres and national focal points using existing infrastructures and arrangements for ship to shore to ship communications (i.e. the Regional Maritime Rescue Coordination Centre in Mombasa, Kenya and the Rescue Coordination Sub-Centre in Dar es Salaam, United Republic of Tanzania) and the regional maritime information centre, in Sana'a, Yemen. The signatories also undertook to review their national legislation with a view to ensuring that there are laws in place to criminalize piracy and armed robbery against ships and to make adequate provision for the exercise of jurisdiction, conduct of investigations and prosecution of alleged offenders (IMO, 2009; Vego, 2009, p. 175).

In resolution on Technical co-operation and assistance, the Djibouti Meeting requested States, IMO, the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), the European Commission (EC), the Regional Co-operation Agreement on Combating Piracy and Robbery Against Ships in Asia, Information Sharing Centre (ReCAAP-ISC) and the maritime industry to provide assistance, either directly or through IMO, to those States, which require support in the effective implementation of the Djibouti Code of Conduct. It further recommended the

establishment of a regional training centre in Djibouti for the purposes of promoting the implementation of the Code in the third resolution on enhancing training in the region. The last resolution is nothing more than appreciation, the offer of the Government of Djibouti to host a regional training centre within the scope of the Code; and recommended that the Secretary-General takes appropriate action to establish it. (Djibouti CoC). The IMO also established Djibouti Code of Conduct Trust Fund as a multi-donor trust fund for the implementation of the Djibouti code of conduct and received contributions from France, Japan, the Marshall Islands, the Netherlands, the Republic of Korea and Saudi Arabia.

So far, the actions by regional countries and international community aimed to drastically reduce the threat of piracy to the safety of maritime traffic at some critical parts of the international trade failed to sufficiently impress pirate groups and their leaders and enablers ashore (Vego, 2009, p. 175). Since piracy is a result of poverty amogn coastal communities and it generates income, the measures cannot be successfull if they don't adress root causes.

5.1.3. Self-protection Measures

As following steps of measures at global and regional level which focused on the securitization of the problem, self-protection measures focused on the commercializing and marketing aspect. This evaluation shows how interconnected the whole process is: First the problem lay down, then it has been securitized by the international community and lastly it has been commercialized. I think this is the simple process at the backdrop of the Somali deadlock and last part of this process, commercializing, shall be evaluated below.

Apart from triggering government action, the dramatic increase in piracy off the Horn of Africa has prompted initiatives on the part of the private sector. These initiatives are mainly based on the self-protection of vessels through use of armed security personnel or protective equipments installed on the vessels. As a solution to the problem, many researchers recommended public-private partnerships aimed at better commercializing and marketing communication and defensive technologies such as ShipLoc (a basic satellite tracking device that has been endorsed by the International Maritime Bureau), SecureShip (a non-lethal electrical perimeter fence designed to prevent unauthorized boarding) and long-range acoustic devices that emit loud disorienting blasts of sound (Chalk, 2009).

Many of the studies also sponsored the use of certified third-party security providers with firearms as an effective deterrent to pirate attacks off the Horn of Africa (National Security Council, 2008, p. 9). However all these recommendations overlooks the possibility of escalating the problem. Moreover they also recommend that these security providers should operate in compliance with applicable coastal, port, and flag State laws. However in a country where there is no permanent and capable government and no nationwide rules, it is not possible to talk about coastal, port, and flag State laws.

Despite all these complicated aspects, the recommendation to use armed guards received support from the opportunists without any delay. For example, UK-based firms that offer commercial protection services have said they would be willing to provide military-trained personnel—both armed and unarmed—to help safeguard ships transiting the Gulf of Aden. Likely, a U.S. security contractor has made similar overtures in addition to offering at least one boat to undertake dedicated escort duties for tankers and freighters passing through the region. At the beginning, such offers received no demand from the shipping companies largely because the asking price is beyond what most owner-operators are willing to pay, especially when weighed against the relatively low probability of actually being attacked. The cost of a three-man security detail, for instance, runs to around $21,000 a day. However it is important to underline that this offer received no demand not because of its legal implications but rather due to its cost considerations which means that no one takes in to account that employing maritime security contractors poses problems on several fronts. To give some examples, the use of armed guards would have immediate ramifications for the right of innocent passage, authority of the armed guard to board the pirate vessel (under UNCLOS, only warships that are clearly identified as being in the service of a sovereign government retain this right) or the distribution of responsibilities / liabilities in case of death or injury to an innocent party as a result of an exchange involving security contractors (Chalk, Smallman and Burger, 2009, p. 4-5). Besides that, employment of armed guards could increase the danger for the crew, environment and the ship.

Despite the fact that major commercial shipping firms and key nongovernmental stakeholders argue that any possible deterrent benefit from using security contractors is far outweighed by their attendant costs and that a far more preferable approach is to safeguard shipping through combined state and industry efforts, the international

community under the umbrella of IMO was very quick to find solutions for such reservations. Widespread use of flags of convenience also facilitated this process and calmed down the traditional flag states who do not want to allow armed personnel on vessels they register. Thus, origin states transferred the liability of using armed guards to flag of convenience states. IMO's circulars numbered MSC.1/Circ.1405/Rev.1, MSC.1/Circ.1406/Rev.1 and MSC.1/Circ.1408 on Revised/Interim Recommendations for Port and Coastal States Regarding the Use of Privately Contracted Armed Security Personnel (PCASP) on Board Ships in the High Risk Area legitimized the employment of armed security personnel onboard. The circulars provide interim guidance and recommendations to be taken into account when considering the use of PCASP if and when a flag State determines that such a measure would be lawful and, following a full risk assessment, appropriate. Although it is indicated in the circulars that the interim guidance and recommendations "are not intended to endorse or institutionalize" the use of PCASPs, it provides a framework for the employment of them, thus implicitly legitimizes and approves this process. Moreover, the IMO gets rid of the responsibility by emphasizing that "if a flag State decides to permit this practice, it is up to that State to determine the conditions under which authorization will be granted" and that "the use of PCASP should not be considered as an alternative to Best Management Practices (BMP) issued by the shipping industry and other protective measures" (ISF, 2011; IMO).

It is important to underline that in many cases, merchant vessels have been able to fend off pirates or avoid attacks using relatively simple practices - such as increased surveillance, transiting at night, charging fire hoses, using long-range acoustic devices that emit loud, speeding up and evasive manoeuvring (Chalk, Smallman and Burger, 2009, p. 5). Vessels with low power and low freeboard require additional measures to avoid capture by employing boarding obstacles such as razor wire, and rehearsing lockdown procedures. Such measures are organized and formulated in the Best Management Practices for Protection against Somalia Based Piracy (BMP) produced and supported by mainly the shipping industry and naval forces[15]. Fourth version of the

[15] BMP is produced and supported by

- BMP Signatories including; BIMCO, Cruise Lines International Association, International Chamber of Shipping, The International Group of P&I Clubs, International Maritime Bureau, International Maritime Employers' Committee Ltd, the International Association of Dry Cargo Ship-owners, the International Trade Association for the Shipmanagement Industry, International Association of Independent Tanker Owners, The International Shipping

BMP (BMP 4) is published in August 2011. It provides assistance to ships to avoid, deter or delay piracy attacks in the High Risk Area, which is defined as the area bounded by Suez and the Strait of Hormuz to the North, 10°S and 78°E. BMP bases its recommendations on the experience and data collected by Naval/Military forces. The three fundamental pillars of the BMP is based on; 1. registering at Maritime Security Centre Horn of Africa (MSCHOA) by submitting "Vessel Movement Registration Form" prior to entering the High Risk Area to ensure the ship's safe passage through dangerous zones, 2. Reporting to UK Maritime Trade Operations (UKMTO), the primary point of contact during an attack, by sending "Vessel Position Reporting Form - Initial Report", 3. Implementing The Ship Protection Measures (SPMs) described in BMP. BMP also underlines that self-protection measures are not limited to the physical mechanisms employed on board, but also include procedures, pre-planning, communications etc. (ISF, 2011, p.v).

In general, all measures - including regional, international and self-protection measures - did nothing but increased the cost of shipping for those companies operating in this part of the world. International measures served for the interest of global powers to continue existence and extend their spheres of influence in different parts of the world. There are always some groups who benefit from these problems and thus only sponsor the solution which serves their interest. For example use of armed guards shall serve for the security agencies and arms industry. On the other hand, self protection measures serves for, to some extent, the interest of ship builders and IT sector since these measures necessitates different ship building designs, equipments and new tracking systems. Regional measures to some extend can be successful provided that they are initiated by the regional states without interference from outside.

Federation, International Transport Workers Federation, The International Parcel Tankers Association, Joint War Committee, Joint Hull Committee, Oil Companies International Marine Forum, The Society of International Gas Tanker and Terminal Operators, The Mission to Seafarers, The World Shipping Council.

- Naval/Military Forces/Law Enforcement Organisations inculding; Combined Maritime Forces, EU NAVFOR, INTERPOL, The U.S. Navy Maritime Liaison Office, Maritime Security Centre Horn of Africa, NATO Shipping Centre, Operation Ocean Shield and the UK Maritime Trade Operations. (BMP 4, p:72-85)

5.2. WHAT SHOULD BE DONE? POLICY OPTIONS TO ADDRESS PIRACY PROBLEM OFF SOMALIA

As an anticipated misperception of the reasons behind the Somali piracy, the international community failed in finding a solution for the problem. Despite the fact that Somali piracy is a maritime problem, its origins are on land. This is a very much repeated sentence while analysing the Somali piracy problem. However the applied measures do not consider this aspect and rather focus on deterrence. As an immediate reaction against piracy, a lot has been done at sea by the international community, but little has been done on land despite the fact that deployment of naval assets to the region did nothing but increased the number of hijackings and victims and that there are a significant number of studies focusing on the land-based solutions. The study of the International UN Group on Piracy off the Somali Coast's recommendations are defined according to the coverage area of four different circles: recommendations that apply only in Puntland and the remaining coastal area of Somalia; those that involve the whole territory of Somalia, because they depend on the general situation; others will need the cooperation and the commitment of the regional states, the main victims of piracy; and lastly, some of them will necessitate an exceptional and common effort by the international community and they are organized in three categories: short, med and long term impact (UN Expert Report, 2008, p. 41). Another example is conclusions of the workshop on *Suppressing Maritime Piracy: Exploring the Options in International Law* which emphasizes that *"…long-term solution to piracy would seem to require capacity-building at the domestic level. Piracy is an extension of land-based violence, itself rooted in weak state institutions, poverty, domestic lawlessness and corruption"* (OEF, 2009, p. 15).

Similarly Dr Joe Borg, Member of the European Commission Responsible for Fisheries and Maritime Affairs underlines that *"an end to piracy will only be brought about if the rule of law is restored and, more fundamentally, if the underlying causes of piracy are effectively tackled. …in the case of Somalia, any action on piracy off the country's coast must be accompanied by a long-term strategy to bring peace and stability to Somalia and its people. The lawlessness which now prevails in Somalia constitutes a serious threat to regional stability and to international peace and security. Diplomatic activity, potentially also involving neighbouring countries, must be pursued."* during his speech at Seminar on piracy and armed robbery against shipping on 21 January 2009

as the Vice-President of the European Commission Antonio Tajani did at the same event (Borg, 2009; Tajani; 2009).

In the remarks of the UN Secretary-General Ban Ki Moon at launch of World Maritime Day theme for 2011: "Piracy: Orchestrating the Response", we can also find similar messages conveyed to the international community;

> "More needs to be done. We need to move beyond the impressive deterrence efforts, and to make sure that they are carried out in concert with the other elements of the strategy, on land. We need to support alternative livelihoods and the rehabilitation of coastal fisheries. We need to develop Somali capacity to deal with piracy-related activities on land and in its territorial sea. This must be linked to the broader efforts to develop Somalia‟ s police and coast guard, as well as its justice sector, to ensure that persons suspected of acts of piracy are prosecuted" (Ki-moon, 2011).

However there are also some studies who explicitly recognize the main reasons behind, but still promote military options. From the academicals, Vego underlines that the main causes of piracy are predominantly political, economic, and social. Hence, the long-term solution can be found only if the international community and regional governments make a concerted efforts to solve the root causes of piracy. However, he sponsors the continuation of the military existence in the area by underlining a need for a decisive use of one's military forces to ensure the safety of maritime traffic in the pirate-infested area. He further sponsors the use of lethal force against pirates and attacking on pirate bases and installations ashore (Vego, 2009, p. 76-78). But Vego loses the point that deployment of more naval forces in the area only enlarges the pirates' area of operation. Besides that Vego disregards the civil casualties in case of a land operation.

Similarly, the US National Security Council's Countering Piracy Off the Horn of Africa: Partnership & Action Plan admits that *"...piracy off the Somali coast is only one manifestation of the tragic events Somalia has experienced for almost 20 years. Consequently, long-term actions to establish governance, rule of law, security, and economic development in Somalia are necessary to repress piracy fully and sustainably in the region." (National Security Council, 2008, p. 1213)* However US National Security Council still sponsors the use of force as "*Piracy at sea can only be abated if pirate bases ashore are disrupted or dismantled. We have obtained appropriate authority from the United Nations Security Council and agreement from Somali authorities to do so"* (National Security Council, 2008, p. 12). The USA is very quick in forgetting the humiliating "Operation Restore Hope" case.

As repeated in many of the studies, the measures for the solution of Somalia originated piracy must based on a comprehensive strategy. In this thesis possible measures will be analysed under three headings: 1. measures to strengthen state capacity, 2. Measures to facilitate economic activity and, 3. measures to create a sense of international responsibility. Since all these measures will improve the humanitarian aspect of the problem in the long term, measures for this aspect will not be dealt with separately. It is also important to underline that all three type of measures are complementary of each other rather than being substitutes. As long as they applied simultaneously, peace, order, and security can come to Somalia and the surrounding region.

5.2.1. Strengthening State Capacity

At the heart of the Somali piracy problem lies stateless as the main root cause. As explained in the previous sections, Somalia has no government authority controlling its entire territory since the collapse of the Siad Barre regime in 1991. Somalia history has been the history of failed governments established mainly with the backing of the external actors, thus having no local support. As a result land-based violence, corruption and lawlessness have become prevalent. Until this void in the state governance is filled, Somalia will continue to fail in acting as a responsible actor of the international community. Therefore, all possible efforts should be made to establish an effective state, law and order and peace in Somalia and thus end piracy off this region. The question is *HOW* can this be possible?

First of all, to avoid the mistakes of the past, the international community should recognize the fact that continuing to insist on imposing their style of government on Somalia since Somalia has its of historical traditions of government which might contradict with the so-called modern state governments. Therefore, preferring between a loose federation of Somalia or establishing a unitary state, or something uncommon to the West should be left to Somalis rather than to the wishes of external powers. However, to minimize the risk of elite rule, only those people who truly represent their people and are able to deliver peace and economic prosperity should be allowed for government authority. Since Puntland, in the northeast, stands at the centre of the piracy problem, direct anti-piracy measures should focus on this area (Murphy, 2010, p. 95-96; Webersik, 2008, p. 55-57).

Furthermore previous experiences showed that measures imposed by external actors with use of force against pirates and other illegal groups in Somalia are considered as a cause of further violence and led to accusations that the west is once again "intent" on destroying innocent Muslim lives (Chalk, 2009). Similarly, governments established with foreign backing failed due to lack of local support. Therefore, first action to be carried out is to get the local support and to develop and strengthen a spirit of nationhood among the people for success of all measures. To this end, all citizens should be included into the process of political reforms by developing national targets addressing the needs of Somalia as a whole, without discrimination among different groups. Reconciliation among different groups and interests is the key for any government to be established in Somalia. Some studies propose that putting political pressure on TFG may bring a solution for political and humanitarian crisis in Somalia (Sorensen, 2008, p. 9). However, a government without any capacity to act on entire territory and has no local support could do nothing but fails. For the inclusion of all groups clan representation can be used as a tool. In spite of the radical fragmentation of society, kinship remains important in Somali politics. Clan representation can mean a fairer power-sharing arrangement between all six major as well as the minority clans. For this reason, a functioning administrative arrangement has to be based both on constitutional or formal rules that are widely accepted, as well as on "traditional" forms of representation (Webersik, 2008, p. 55-57).

Although Somali piracy is a menace to the shipping industry and is upsetting the current international order, the group which loses the most from the pirate activity is the people of Somalia (Sorenson, 2008, p. 9). However, Somalis, unaware of the long term repercussions of the current situation, view the piracy as a foreign problem with little impact on their daily life. Despite such a widespread perception, some members of the communities speak out openly and directly against piracy. Since piracy is undermining the traditional leadership influence of clan elders, including Muslim imams, they are actively encouraging the youth not to become involved in piracy (UN Expert Report, 2008, p. 11). The religious leaders condemn piracy and advised their communities not to support this action. They advise people not to be attracted by the wealth of the pirates and have declared that any marriage to a pirate is regarded in their eyes as null and void and breaches the Islamic law (UN Expert Report, 2008, p. 18; Dagne, 2011, p. 14-16). Besides that, Somali diaspora have a stake in a stable Somalia where there may be many opportunities for business and investment. Most of the studies on Somalia reveals that the groups most capable and best positioned to handle the piracy

problem are the Islamic factions and the clan elders. According to senior leaders of the Islamic Courts and independent observers the Islamic Courts dealt with this problem effectively when they were in power until their ousting by TFG and Ethiopian forces. Such criminal activities are opposed by Islamic groups mainly for religious reasons. Therefore Islamic leaders and clan elders may be considered as a means to resolve the political and security problems facing Somalia. There were good examples in the past. For instance, one of the facilitators of the Djibouti talks was a Somali man on a U.N. Terrorism List. According to U.N. officials, that man is no longer on that List. This example shows that, the west has to be more cautious when dealing with terrorism and give up listing all Islamic leaders or those who contradicts with their targets in their terrorist lists. Rather, the extreme elements should be integrated into the normal path of politics with a Somali-led solution of a coalition including TFG, Islamic Courts, Somaliland, Puntland, and other moderate Somali forces. Such a coalition is likely to get more support of the Somali population rather than a peacekeeping force. Not to raise the voice of extreme elements against presence of foreign forces, the coalition can be assisted by neighbouring countries without direct intervention (Dagne, 2011, p. 14-16).

After the setup of the government, first thing to be done is to uncover and condemn possible government-piracy connection, thus picking up pirates from the new political formations of Somalia. This can be reached through the famous “name and shame” policy of the West. Also sanctions against leaders and influential beneficiaries of piracy must be applied (UN Expert Report, 2008, p. 43). Exclusion of those in connection with pirate and other criminal groups can easily promote public confidence in government and support government efforts to overcome criminality.

The establishment of the state of law in the whole Somalia is a necessary condition for the success of a development initiative in Puntland and coastal areas. This state of law must progress in parallel with the capacity building efforts, as an important condition to allow the state to control its territory (UN Expert Report, 2008, p. 43). A nation-wide coalition will need capacity to solve the problems of Somalia. This capacity is necessary to protect the people from the insurgents, enter into a law-making process and provide a secure environment for national development. In particular all these improvements in capacity are basic requirements for solving piracy problem off Somalia. Management of both land and maritime domain requires adoption of necessary international rules and relevant implementing national laws. The legal and

political framework necessary to disrupt and dismantle piratical organizations ashore must be adopted (National Security Council, 2008, p. 7). According to the UN Convention on Law of the Sea while coastal states have greater rights in adjacent waters under UNCLOS, they also have increased responsibilities. They have to maintain safety in their waters, protect the marine environment, and generally maintain good order at sea. The prevention of marine pollution, illegal fishing, and criminal activity at sea, such as piracy and the various forms of smuggling, are now as much a part of national security as is defence against military threats (Bateman, 2003, p. 2).

On the other hand previous examples proved that reply with foreign military presence has only deteriorated the security situation and in piracy case, enlarged the area of operation. Such an approach addresses piracy at its end point—on the sea—rather than at its root—on land. Preventing pirate attacks is both safer and more cost effective than interrupting attacks in progress or rescuing hostages after an attack has occurred (Vego, 2009, p. 172-175; Chalk, Smallman and Burger, 2009, p. 7). But there are still some groups that insist on planning of a major counter-piracy operation to be conducted by a joint/combined task commander without considering its impacts on the perceptions of Somalis. However, rather than continuing intervention by foreign warships which is not a sustainable option, a Somali maritime law enforcement authority can be established. This capacity can be created by registration of pirate mother ships and skiffs for public duty with a freeboard signed and covered as coast guard of Somalia. Furthermore young pirates might be directed to the course of coast guard officers to thwart the Somali piracy career path (Chalk, 2010b; UN Expert Report, 2008, p. 43). As mentioned previously, regional states signed the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the western Indian Ocean and the Gulf of Aden promoted by the International Maritime Organization to facilitate regional coordination. What these states lacked were not only the material resources to recruit, train, and equip more robust coastal security forces, but also the knowledge and experience to actually do so (Pham, 2009, p.5-9). In addition, these states having a raw capacity lack resources to maintain and operate their ships. Therefore the response capacity of Somali Coast Guard and regional states must be improved with intense training, technical assistance and equipment and financial support provided by the international community. Shipping industry should establish a fund to transfer the money allocated for the self-protection measures like employment of armed guards to the efforts to improve the coastal monitoring

capabilities of all the littoral states in the vicinity of the Horn of Africa/Arabian Peninsula (Chalk, 2009; Chalk, 2010a).

Besides that establishment of a shore monitoring system using local communities to look out for boats suspected to be involved in piracy, illegal fishing or illegal dumping can be considered for public involvement of the process. Coast guard forces would be both more sustainable from the fiscal point of view and precisely because they would concentrate on the littorals, have a more manageable area of responsibility than the naval forces which are currently sailing all over the western Indian Ocean (Pham, 2009, p. 5-9). This idea is also repeatedly advised by the United Nations Secretary-General Ban Ki-moon to the Security Council on different occasions as:

> In the interests of a durable solution to piracy and armed robbery off the coast of Somalia, it is important that local coast guards in the region, where possible, are assisted in ways that will enable them to constructively play a role in anti-piracy efforts conducted off the coast of Somalia and the surrounding region. As part of a long-term strategy to promote the closure of pirates' shore bases and effectively monitor the coastline, I therefore recommend that Member States consider strengthening the capacity of the coast guards both in Somalia and the region (Ki-moon, 2011).

To achieve maximum local support, this force must be tasked not only dealing purely with piracy problem but also with some classic coast guard functions like protecting natural resources, fishing rights or maritime rescue. Its officers must have the ability to enforce national maritime laws with wide powers of arrest over both foreigners and national citizens. To this end relevant national acts should be enacted and international conventions regulating maritime areas and rights should be adopted. In the long run, these developments can decrease the number of pirates by employing them as official coast guards and raise public awareness along with more support. Some incidences show how important the local support is: to cite an example, an ad hoc local militia composed of fed-up citizens from the fishing communities at the very tip of the Horn of Africa rose up and seized a dozen pirates and three boats whom they handed over to Puntland authorities (Pham, 2009, p. 5-9).

In addition to local support, support of regional states for the strengthening of state capacity should be included into the process of capacity building. Since there is a multilateral agreement serving for regional cooperation, the Djibouti CoC, possibilities of bilateral cooperation should be looked for. Networked cooperation arrangements may enable states to cooperate in most direct areas and maximizes the impact of efforts. Networks of coast guard authorities also increase trust and understanding

between all their members. Simply increasing the number of bilateral agreements within the region expands the network and binds regional states more thoroughly into ever greater cooperation. Such networks also decrease an external involvement in the region and as a result receive more local support. Coast guards may offer advantages over navies for cooperative activities. They might overcome sensitivities that inhibit naval cooperation and provide a means of conducting law enforcement in areas where the use of naval vessels may aggravate the situation. Moreover cooperation among coast guards on maritime issues is an important maritime confidence- and security-building measure (MCSBM) and a recognized building block for greater regional stability. Cooperation between coast guards may offer benefits not available with naval cooperation. Coast guard vessels may appear less intimidating and in periods of tension may be less provocative than warships. One good example for network cooperation is experienced in the Straits of Malacca. After bilateral patrols, the trilateral Strait of Malacca patrols – involving Singapore, Indonesia, and Malaysia – constitute a cooperation network that developed from an informal network of bilateral agreements without external leadership. In fact, it seems that one motivation for their development was to exclude direct involvement of external actors (Bradford, 2004, p. 4-6, 80-84).

5.2.2. Facilitation of Economic Development

The widening gap between the "haves" and "have nots" makes the situation worse in Somalia. “Haves” are those benefitting from the criminality or having access to government structures or aid deliveries. “Have nots” are the rest of the population.

Since almost all of the anti-piracy measures lack a comprehensive approach to the problem, it is not ironic that piracy is almost at its peak when the foreign military presence reached to unprecedented levels. As long as poverty prevails in Somalia, piracy will find a suitable ground to expand. Therefore all measures have to include a pillar aiming to alleviate poverty in the country. Poverty reduction can be provided either through quick and robust economic incentives to lure the unemployed away from piracy and other criminal activities (Dagne, 2011, p. 14-16) or medium and long term development programs which seems more sustainable. Such a development program should include components serving for 1. Elimination of incentives for the piracy, 2. Facilication of economic activity including small-scale industry, agriculture, fishing and trade 3. Preparation of professional development schemes and introduction of improved employment opportunities (Varsami and Popescu, 2010, p. 48-49, UN Expert Report, 2008, p. 43).

For the development of economy in a legal way, incentives for the continuation of piracy have to be eliminated. In the current situation when the value of piracy in Somalia measured against legitimate occupations such as fishing, it seems very high. Since piracy is a profit generating enterprise the piracy attacks will continue to exist until there are no more profits to be made or the probability of success goes down so significantly that it is not worth the effort. No legal business can possibly compete with piracy concerning the direct earnings from ransom payments (Varsami and Popescu, 2010, p. 49). As a specific amount of ransoms are reinvested to piracy, and to boost infrastructure and employment in coastal regions, piracy receives no public objection, thus sustains itself and continues to grow (Chalk, Smallman and Burger, 2009, p. 7). Therefore pirate revenues must be disrupted and ransom money must be traced. Due to the fact that ransoms are generally not wired but currently paid in used dollar notes, it is necessary to develop local capacity for tracking of ransom (UN Expert Report, 2008, p. 43).

In his study Freakonomics of Maritime Piracy, Kraska explains piracy by applying simple neoclassical microeconomic model of rational utility-maximization. Kraska recommends that “in order to arrest the growth in piracy, the costs and risks of engaging in the crime have to go up and the anticipated benefits must go down.” Therefore he continues “any serious attempt to break the “Freakonomics” of Somali piracy should focus on building the capacity for policing and self-governing the Puntland region, which operates on a budget of $18 million per year” (Kraska. 2010, p. 117). Hence, the flow of ransoms must be broken by capacity building at government level. This capacity improvement process should focus on law enforcement, intelligence gathering, tracking of money flows and better court system to prosecute the pirates.

It is important to support livelihoods in Somalia to solve the problem of piracy. To address the livelihood needs of the ex-pirates new and legal forms of employment have to be created. The piracy has meant an expansion of the choices available to some parts of the Somali people. Hence, to seriously address the piracy would mean that the choices available to the people of Somalia, in particular to Puntland must be further expanded to include businesses which also offer an income (Varsami and Popescu, 2010, p. 48-49). However creation of new employment opportunities requires facilitation of economic activities including small-scale industry, agriculture, fishing and trade.

Economic activity can be facilitated through public incentives and investments and secure business environment. Public incentives may include direct financial support, tax exemptions and low interest loans. Investment on reconstruction of transport infrastructure and banking system may pave the way for revitalisation of economy. This investment program primarily focuses on the coastal areas and in the whole Puntland, to prevent Puntland becoming a pirate state and to create conditions for business security. Besides that secure business environment necessitates establishment of minimum state of law throughout Somalia which would allow business, trade and other economic activities to flourish.

Commerce may offer one of the best causes for optimism and prove to be Somalia's salvation. Despite the lack of a coherent infrastructure or governance, commerce is gradually beginning to drive forward an agenda which could bring the various clans to work together. Somalia currently thrives on two principal business programmes – telecoms and the popular stimulant Khat (leaves from a shrub that grows in the region, and is chewed like tobacco). Besides that export of livestock, bananas, hides, fish, charcoal, scrap metal has the potential to grow. Given that necessary infrastructure and secure environment for investment is provided, all these sectors may stimulate the creation of new jobs. Current rejuvenation in the construction sector and also a deep conviction in certain sectors of the business community have the potential to improve economic figures (Liasi, 2005). Such developments should be supported with donors from the international community through UN programs rather than foreign direct investment.

Moreover incentives must be given to local coastal societies to cease supporting pirate gangs that, in many cases, provide these communities with their only economic lifeline. Fishing seems as one of the best options. However, major capital investments are required to re-develop the entire fishery industry, including processing and marketing aspects. There is a primary need for assisting the fishery communities to regain their means of livelihood, and strengthen their capacity to earn income and to generate employment. In July 2008, then-United Nations Special Envoy Ould-Abdallah stated that "*because there is no (effective) government, there is so much irregular fishing from European and Asian countries."* The Special Envoy argued that it is important to tackle these illegal activities by some countries, and not to solely focus on the problem of piracy (FOA, 2005, p. 7-8). To tacking this looting problem, Somali waters including territorial waters and exclusive economic zone (EEZ) have to be adequately monitored

and regulated. Moreover, those giant ships looting Somali resources and coming from all around the world must not be left only to the law enforcement and surveillance capacity of Somali coast guard. During his speech at Seminar on piracy and armed robbery against shipping Dr. Joe Borg, Member of the European Commission Responsible for Fisheries and Maritime Affairs suggests that Somalia, for instance, can join the Indian Ocean Tuna Commission (IOTC) and thus obliged to adopt standards to ensure better governance of fishing in its EEZ. He also accepts signing of a Fisheries Partnership Agreement with Somalia on many pre-requisites that are currently missing in terms of stability and administrative capacity (Borg, 2009). Membership of Somalia to international associations or signing of fisheries agreements may be have a positive impact for the integration with international community. However, this declaration still accuses Somalia for being looted not the European or Asian ships. Furthermore, it lists conditions for signing of fisheries agreements which implicitly approves the continuation of looting or contaminating Somali waters as long as conflict continues. So, to support Somali fishery, the West has to give up its permanent long term calculations over Somali waters.

An economy that relies on the export of primary commodities, such as livestock, bananas, sorghum, maize, and fish is vulnerable to environmental disasters, such as droughts and floods. But other variables, such as low incomes, low GDP, and poor educational standards, can also weaken the economy. On the other hand pirates are those who are politically and economically excluded in the absence of a functioning government. The main accentuating force behind the localized conflict is economic exclusion. Accordingly, local communities hardly benefit from the trade since the highest profit margins are at the wholesale and export level. But these communities bear the brunt of adverse environmental effects, such as sand dune encroachment, loss of grazing areas, and environmental degradation. Being excluded from profitable kin and patronage networks and deprived of their main livelihoods, pirates began claiming their fair share in an illegal form. Looting of aid deliveries is another manifestation of this exclusion. Since the period of Said Barre the aid deliveries were disrupted and never reached the people in need (Webersik, 2008, p. 55-57). Therefore, these groups should be integrated into the society. The integration process must be facilitated through creation of labour-intensive jobs, vocational training for unemployed youth, support to youth groups, engagement with Somali diaspora for greater socio-economic benefits of Somalia and support to pastoralists in Puntland (UN Expert Report, 2008, p. 43). This integration can help also terminate the unproven claims of

international warlords that pirates may become party to groups that use Somalia to launch international terrorist attacks (Very, 2010, p. 129). Since Somalia's current economic situation does not ensure the necessary conditions for new livelihood opportunities, international aids must directed for improvement of employment opportunities.

5.2.3 Creating a sense of international responsibility

In fragile states, development cannot be achieved simply by disbursing aid. Similarly, use of force has only serves for deterioration of the existing instable situation. It is apparent that UN-led actions or other regional initiatives proved to be failure since they don't reflect the realities of piracy off the Somali coast (Silva, 2010, p. 578). The solution cannot and must not be found by a single country alone no matter how powerful the country is but requires concerted action of international community (Vego, 2009, p. 76-78). International community must declare further commitments supporting political settlement, strengthening Somali state in carrying out its core functions, reviving economic activity and improving job opportunities.

A stable and crime-free Somalia may begin to emerge to the extent that the international community can help Somalia strengthen the rule of law in society. To this end, the West does not need a piracy policy; it needs a Somali policy – one that recognizes basic sources of instability (Kraska, 2010, p.117). It is also necessary that international efforts are coordinated and targeted to these main gaps in Somali economy, security, and governance.

But, why must the international community be committed to solve such a tenacious problem of upgrading Somalia's status from that of a weak state,? The simple answer is that, because they have to. As mentioned in the introduction, the Gulf of Aden and the Somali coast is one of the most heavily trafficked maritime parts in the world. An estimated 16,000 ships pass annually, and many of the major shipping companies have vessels passing through at one point or another. It is a must for those using such an important route. Since the requirement was a material one, the international community acted in a superficial way without evaluating the problem in detail. As a result in the space of little more than four months, the EU deployed a naval flotilla to the region, with contributions from the UK, the Netherlands, Spain, France, Germany and Greece; the United States helped to establish a dedicated combined task force (CTF-151) to coordinate international maritime patrols along predefined corridors in the

Gulf of Aden; several other governments sent frigates to the region, including among others Russia, India, China, Saudi Arabia, Malaysia, and South Korea; and the United Nations Security Council passed three resolutions (1816, 1846, and 1851) that collectively sanction all "cooperating" states to take whatever actions necessary to disrupt pirate attacks emanating from Somalia's territorial and maritime space (Chalk, Smallman and Burger, 2009, p. 3). However there was missing point: ethical responsibility to solve the Somalia problem as a whole. In the following paragraphs, ethical responsibilities of international community will be explained with great emphasis on non-interference.

To fulfil its ethical responsibilities as well as international obligations, international community must actually insert Somalia within the international priorities. Ultimate goal have to be establishment of a competent and sustainable state in Somalia and full integration of Somalia into the community of nations (UN Expert Report, 2008, p. 44).

Since political consensus building has to be left to the local people, initial steps of the international community must assist political settlement rather than a direct intervention. To provide political stability, ethical responsibilities as well as UN Security Council Resolution 733 require strict application and monitoring of arms embargo against Somalia imposed by the UN in 1992. Illegal arms trade serves for continuation of criminality of any kind and there are many western stakes for the flow of arms into the Africa in general and Somalia, in particular.

Assisting for economic development of Somalia which will in turn contribute the political stability must be the following step. Studies reveal that areas with extreme levels of poverty are at high risk of civil war. When economic incomes increase, the risk of war decreases irrespectively of the levels of ethnic diversity. Similarly, "wealthier societies are better able to protect assets, thus making violence less attractive for would-be rebels" (Webersik, 2008, p. 55-57).

On the other hand problems of illegal fishing and toxic dumping in Somali waters must outlawed not only in Somali laws but also in the laws of those states whose ships looting and polluting Somali waters. This can be easily ensured by strict aversive regulations in these flag-states. Besides that, international organisations can condemn such infringements. The UN and the European Commission on behalf of the EU must carry out a full investigation of toxic waste dumping and illegal fishing along the Somali coast and limit the operation of such companies through high monetary penalties or

license revocation (Simpson, 2010). However, political will at state and international level is a must for success of such a measure.

As mentioned in the previous chapter, another problem with regard to assuming responsibility in piracy cases is the flag of convenience (FoC) phenomenon. According to statistics, the flag states most affected by Somali piracy are Panama, Marshall Islands, Bahamas, and Liberia. This is because most ships sail under these so-called flags of convenience, to avoid certain forms of taxation. However, by reviewing the IMB piracy statistics, with reference to the managing countries of the ships, a better representation of which states are actually concerned with Somali piracy can be obtained. Germany, Singapore and Greece are over represented in the statistics of Somali piracy. This might have contributed to the difficulty the shipping industry have had in coordinating a response to the Somali piracy. Therefore those companies operating under flag of convenience to escape high taxes, thus lack the flag state support has to assume the burden of Somali piracy (Varsami and Popescu, 2010, p. 48-49). In addition to shipping companies, FoC states should also share the burden. Four flag states – Panama, Marshall Islands, Bahamas, and Liberia – account for a significant number of commercial vessels. At the moment, these governments are not fully engaged in all aspects of Somali problem or piracy problem in particular.

Another responsibility of the international community is to include Somalia into the political, economic and security framework of the region. Inclusion of Somalia to regional relations can be maintained through formal bilateral and multi-lateral agreements in different areas of cooperation including fight against piracy. Previous examples showed that direct intervention through expanded right of hot-pursuit in the territorial waters and on the land proved to be fruitless and may raise concerns over state sovereignty over these areas (Topal, 2010, p. 121-122). The states in the greatest danger from unchecked piracy off the Somali coast are those of the surrounding region. For this reason they must be involved in the struggle against piracy and do their best to accept, support and respect Somalia as a partner in the struggle for regional political and economic stability, and security (UN Expert Report, 2008, p. 43). Signing of Djibouti CoC is a good start and cooperation in the struggle with piracy may spill other areas of law enforcement including fight against human trafficking, trafficking of drugs, arms, maritime pollution and illegal fishing. Such a comprehensive approach to regional problems may increase confidence among regional states and also serve to improve their law enforcement and policing capacity.

However taking the low economic figures of the regional states, regional maritime cooperation has been limited by a lack of resources. Therefore, regional efforts have to be financially supported by extra-regional actors like UN and IMO and by private sector. The role of the IMO in securing and developing Somalia's maritime sector, in cooperation with other relevant UN partners, could play an important part in alleviating the conditions that encourage people to turn to piracy. The Straits of Singapore and Malacca were once of the world's piracy hot-spots. Today, thanks to agreements fostered by the IMO, States in the region have developed effective frameworks for cooperation in policing the situation. The IMO has been developing similar measures off the coast of Somalia since 2005 (Ki-moon, 2011). However IMO has to give up implicit approval of use of armed guards onboard the ships which has the potential to escalate the situation. On the other hand, global shipping companies need to accept greater responsibility in helping to ameliorate this situation. Given the high insurance rates skyrocketed after 2005 or the cost of rerouting ships around Cape of Good Hope which would underpin the cost-effectiveness of maritime shipping as the most economic transport mode, bringing order to Somali waters and the surrounding region would dramatically reduce cost of passing from this area (Very, 2010, p. 129).

Another issue is deterrent prosecution of pirates by means of a sustainable mechanism for bringing captured pirates to justice while respecting their basic rights. Legal reforms may hold out the promise of deterring people from turning to piracy, but it is at least as important to improve law enforcement and the judicial system. This may both entail such measures as better training for the police and the coastguard and reforms to the legal and penal systems. Given that piracy is transnational, measures would often need to be of bilateral or regional scope too (Møller, 2009, p. 20). Somalia's current judicial system lacks the capacity for prosecution and fair trial of pirates. On the other hand agreements signed with Kenya and Seychelles to receive and prosecute suspected pirates are not wise long-term solutions (Pham, 2009, p. 5-9). To deal with the prosecution problem, some studies still insist on providing support to those states that have already demonstrated a willingness to prosecute pirates and addressing the concerns of states that have evinced an unwillingness to prosecute by working with them to reform national laws to make prosecutions more convenient and less risky. They also further recommends establishment of a regional or international court which could play in anti-piracy efforts when domestic prosecutions prove inadequate to suppress piracy (OEF, 2009, p. 15-16). However what is really needed and sustainable is that until the necessary capacity is built in Somalia, international community must

support Somali judicial system by providing training for judges, assistance for drafting of necessary legislation and collections of evidences in cases of piracy attacks. These supporting activities also must be carried out under the auspices of international organization without any direct involvement of a single state (APF, 2009, p. 10). Besides that capacity building must be in the form of training but not as a direct inclusion of international experts to assist national courts or coast guard tasks. In this regard, primary concern should be the fair and efficient trials and humane and secure imprisonment in Somalia itself (Fedotov, 2011). As an alternative manageable solution for international community may be to provide strong backing for one of the Somali proto-states, and start a program for recycling pirates from the most organised pirate group as pirate-fighting coast guards. This would ensure national ownership of the piracy question, increase the general knowledge of the business and make an important contribution to impeding the piracy. The idea seems controversial, but given the extent of the Somali piracy, any future Somali coast guard will at least in part consist of some of the former pirates. This solution would have the advantage of being relatively cheap and creating an area of stability in a strategic region for international trade (Zarzoso and Bensassi, 2011, p. 21; Sorenson, 2008, p. 43).

To sum up this chapter, it is necessary to underline the importance of non-intervention into the local life of Somalia and of assuming the responsibility of unfair exploitation of Somali resources during and after the colonial period by the West. Since Somalia, like other Third World countries, carries the burden of bed governance, harsh exploitation of natural resources and disruption of its local social structure and values of the colonial period and de facto continuation of exploitation in the contemporary era, the Western policies should focus on providing a remedy for this colonial legacy.

CONCLUSION

When I first started to think about submitting a thesis proposal on maritime piracy, my initial ideas were mainly shaped by my experience in and impression of IMO's Maritime Safety Committee, sub-committee on piracy and armed robbery in 2008. Since mainly the interest of maritime industry is presented in this committee, rather than states or people, my first perception of this problem was that "piracy is a menace for the world and it has to be suppressed no matter what the measures are, and that individual states and international organizations have the legitimate right of interfering these piracy-prone areas, since they create an unjustifiable threat for the welfare of other nations." However, when I started to read books and articles on the issue, my perception of the maritime piracy has gradually changed. I have, in time, understand that, maritime piracy, like other so-called asymmetric threats, is not just a criminal activity, but rather a result of colonial legacy on these lands and manifestation of reaction to continuation of exploitation through different means.

Turning back to the basic question of this thesis which is "What causes Piracy? Is it simply a crime or a result of unbalanced distribution of prosperity of nations through globalization?" it is necessary to give a concrete answer.

As the example of Somalia clearly revealed, piracy is not a criminal activity that must be suppressed through use of force, but rather it is a result of colonial rule and its repercussions in the post-colonial period. Deprived of basic needs and values, Somali people, like others in other piracy-prone areas, turned their direction to piracy.

In this thesis, piracy has a symbolic place. It can easily been replaced by illegal migration, arms trade or trafficking of drugs. In all these examples, there are some groups having an interest in the continuation of the problem. For example through illegal migration and unregistered utilization of work force in the industrialized countries, these countries continue de facto exploitation of work force and slave trade. This labour exploitation sometimes takes legal form. A very specific and interesting example has been provided during the writing of this conclusion part at the training on intermodal transport in Europe. According to the information given during the training, the exploitation of third world labour is realized through the transfer of labour-incentive production centres to ex-colonies due to its low cost. Therefore, to understand the piracy phenomenon in the world, it is necessary to trace its roots back to colonial period and draw some conclusions on the extend of international liability for the

emergency of piracy and international responsibility for the solution of cruel conditions in these states.

It is not a coincidence that, all asymmetric threats against the old world come mainly from the third world countries which were used to be colonies. Every researcher studying on third world recognizes the fact that that colonialism is morally wrong and it has long term destabilizing effects on these states. However, what is missing in most of the academic research is the fact that, these studies don't reveal this relationship between colonial legacy and emerging threats against the old world.

"Colonialism, after all, is a political system in which an external nation takes complete control of a territory in another area of the world. Moreover, the colonized people do not invite the colonial power, nor do they have any say in how they are governed". Although some studies suggest that "since colonialism was practiced differently throughout Africa, the consequences of colonial rule will differ from colony to colony" (Explore Africa) the long term effects of the colonialism is the same. Whether in the form of direct or indirect rule or settler, colonial existence disrupted local way of living totally in terms of political, social, economic aspects of the life.

Colonial rulers imposed their government systems undemocratically where decisions and policies were made with little or no input from local population and without their consent. Since the local traditions of ruling were different from those of colonial ruler, the local governments were considered as having no administrative capacity. On the other hand the colonial period left also an economic legacy of ruined and looted lands. Colonial regimes concentrated on finding and exploiting the most profitable natural resources in each colony. In mineral-rich colonies, the emphasis was placed on mining in others on the exploitation of agricultural products for generating wealth for the colonial power in Europe and the local colonial ruler. The exploitation was facilitated through policies of forced labour in order to provide adequate labour for mines and plantations. This situation has been continued during the decolonization period through preferential trade agreements. Similarly colonial legacy also disrupted the local social fabric by imposing different ways of living for those cooperating with the colonial power. Thus the traditional bonds of society have been broken down and conflicting interest in the society have emerged. Those against the colonialism are suppressed by local people cooperating with the colonial ruler. Families were often split up by migration. For example, men recruited to work in mines and on plantations often had to leave their

families behind. By the end of colonial era, extended families turned to be the nuclear family. Rapid urbanisation resulted in changes in economic activities and occupation, and in changes in the way people lived. These changes often challenged existing values, beliefs, and social practices and exacerbated through the disappearance of local education systems which considered backward and needs to be enlightened and civilized (Explore Africa).

In the period of decolonization, third world felt almost all negative impacts of this colonial legacy. Since all local forms of living were destructed and decolonization was an upheaval against the colonial way of living, the ex-colonies faced with destructive forces of the world system. They could neither turn back to their pre-colonial period nor could incorporate into the prevalent conditions of the world. This phenomenon created anti-systemic forces including piracy.

This suggestion might seem to contradict with early periods of dependency theory. However, it is important to underline that, radical theory of dependency which supposes fully breaking the link with the capitalist world has developed at the beginning of the de-colonisation period where the results of decolonisation have not been emerged yet. However, some more recent and moderate dependency theorists such as Fernando Henripue Cardoso, are less severe in their critique of the capitalist world market. They argue that “some developments in the Third World is possible even given the ties of external dependence on the capitalist West” (Jackson and Sorenson, 2007, p.205).

In this context; it is normal that policy recommendations provided above at the end of the last chapter does not require fully splitting off from the ex-colonies but rather focuses on the burden sharing between the ex-colony lands and the ex-colonial powers responsible for the current situation on these lands. Splitting off totally from the west may also lead the ex-colonial power to refrain from its historical moral liabilities. What is necessary to fully functioning and comprehensive solution requires honest political will of international community without considering private interests. This means that, politicians should de-couple their policies from the private interests of those having interest in the continuation of conflict.

Regarding one of the secondary questions on “to what extend does the current legal framework relevant for countering piracy”, this thesis indicates that dealing with gaps in international law for countering piracy seems irrelevant. UNSC Resolutions on Somali

originated piracy provided remedies for gaps in the international law. However, these measures yielded no concrete positive result but rather resulted in escalation of the problem. Since the formulation of the problem was wrong, the formulation of the solution was also wrong. This is why at the chapter on legal framework; I constrained the research only for defining the term piracy, rather than focusing on gaps in the international law.

As a response to the second question of "what are the chief land-based factors that contribute to modern-day piracy and how can these best be addressed?", the thesis focused on the problems on land, especially on the problems regarding the political, economic and humanitarian conditions in piracy prone areas among which Somalia has a significant position. In case of Somalia, volatile political situation since the independence, the role of colonial legacy in Somali history, economic figures, widespread looting by foreigners and inhumane humanitarian conditions emerged as the leading factors towards the piracy.

The thesis questioned the economic and humanitarian cost of the piracy as a third question. The thesis revealed that, in economic terms, although total cost of piracy seems very high, with a very wide range between $1 and $16 billion per year, it is not more than an inevitable cost of doing business and when measured against the annual value of maritime commerce. Therefore, it is necessary to underline that the problem is somehow exaggerated by those having a stake in the continuation of piracy problem. This conclusion is also confirmed by the studies on the issue. On the other hand, it is underlined that the humanitarian cost borne by those living at piracy-prone areas of the world is the area which necessitates more attention than the economic cost.

Regarding the last question on the extent of global responsibility for addressing root causes of piracy and the role of the international community in assisting to manage the problem, it is underlined that it is not only an moral responsibility of the West but also a material liability of it emanating from its colonial past and current looting of Somali waters. It is important to highlight again that, Somali piracy has started as response to looting of Somali fishery resources and dumping of toxic waste into Somali waters. Somali waters are very rich fish stocks and tuna fish, mackerel and skipjack being the most highly priced species. During the 70s and 80s the Somali fishermen were enjoying a good and reliable internal and international market and high income. These resources have started to be looted with the beginning of the civil war by the

opportunistic big fishing companies coming from the Europe and Asia. On the other hand the civil war also created another gap for those opportunists to exploit Somali waters through dumping of toxic waste which is almost a hundred times more expensive to dispose this waste in Europe. Since disposal of toxic waste has been internalised through taxing and thus increased the cost of production, the western companies have started to lose their advantage over other centres of production. This internalisation process resulted in the pollution of areas out of their concern.

As an international responsibility, all these illegal activities of European and Asian flagged vessels have to be revealed and condemned at the international platforms like IMO meetings where all maritime industry and the member states are represented. European Union's name & shame policy which is widely used as a weapon against third countries or under graded flags, or creation of a mechanism like the black and white lists for those companies engaging in fisheries can be a good start for stopping the exploitation of Somali waters. Limiting the operation of such companies through high monetary penalties or license revocation can also help decrease such illegal activities. The key for the success of these policies is the political will at state and international level. Those representatives of the whole world population against the inequalities of the capitalism have to be empowered for more democratic and egalitarian world system (Wallerstein, 2008, 62).

The weak statehood or the statelessness should not be turned to an opportunity. Rather, bono fide members of the international community must put their efforts to perverse the rights of Somalia against the lootings and facilitate the trade of valuable resources of Somali on equal terms of trade. Declaration of Somali EZZ can be a good start to preserve Somali fishing rights and marine environment. Additionally, inclusion of pirates into coast guard posts may both decrease the number of pirates and increase the monitoring and law enforcement capacity in Somali waters. To fulfil its ethical responsibilities as well as international obligations, international community must actually insert Somalia within the international priorities list. Ultimate goal have to be establishment of a competent and sustainable state in Somalia and respect of international community to Somali's rights.

However, as mentioned earlier, as long as some groups having an interest in the continuation of piracy problem exists, piracy will continue to exist and be presented as a great security problem. The enormous interest of the private sector for the solution of

problem should not be considered surprising. Their motivation is not implicit. Since conflicts provide a market for them, private sector including, insurance companies, private security companies, traders of legal and illegal arms for the ships and pirates respectively have stakes in both continuation of conflict in Somalia and piracy off Somali coasts. Therefore, there is a need cooperation of international community with common sense and good faith rather than opportunistic assaults like a vulture.

To be brief, it is necessary to underline the importance of non-intervention into the local life of Somalia and of assuming the responsibility of unfair exploitation of Somali resources during and after the colonial period by the West. Since Somalia, like other Third World countries, carries the burden of bed governance, harsh exploitation of natural resources and disruption of its local social structure and values of the colonial period and de facto continuation of exploitation in the contemporary era, the Western policies should focus on providing a remedy for this colonial legacy and its continuation with other means.

For further study, labour exploitation can be another area of research to understand the impact of colonial legacy in the creation of so-called threats for the West. Such studies will probably reach the similar conclusions but with interesting findings.

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