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TO CATCH A PIRATE: ANALYZING PROCESSES OF POLICY MAKING ON

MARITIME PIRACY

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ABSTRACT

TO CATCH A PIRATE: ANALYZING PROCESSES OF POLICY MAKING ON
MARITIME PIRACY

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There has been a resurgence of political and media interest in maritime piracy, specifically in the Gulf of Aden off the coast of Somalia. This is credited to a rise in the number of piracy attacks that have been committed in Somalia's coastal waters. In response to this rise in attacks there has been an increased deployment of military warships from as many as 30 different countries to the region in efforts to combat piracy. Although the problem of piracy has received much attention there has been little attention paid to the structural conditions within Somalia itself, such as the ongoing conflict, lack of basic infrastructure and the humanitarian crisis related to drought and famine. This may contextualize the problem of piracy and contribute to the motivations for piracy and be instrumental to understanding the rise of piracy in the region. This research examines how this militarized policy response has been initiated by analyzing the processes involved in creating, enacting, and enforcing policies on maritime piracy. Using Somalia as a case study, because of the increased interest in the region, an analysis was conducted to determine how the international political community (IPC) has come to identify piracy as a problem, and then create, justify and implement policies to address it. Drawing on an integrated theoretical frame, informed by works of Foucault (1980), Gramsci (1971), Becker (1963), Schur (1971), and McCombs and Shaw (1972), the formation, implementation, and enforcement of these policies were analyzed paying particular attention to the international level (IPC), state level (state

interests) and the individual level (US based trials of Somali nationals accused of piracy).

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CHAPTER I

INTRODUCTION

There has been a resurgence of global interest on the issue of maritime piracy[1]
since the early 1990s (Chalk 2008; Hong and Ng 2010; Rothe and Collins 2011),
specifically in the Gulf of Aden (Eichstaedt 2010; Bahadur 2011; Dua and Menkhaus
2012; Gardner 2012). This is due to the rise in piracy attacks in the coastal waters of
Somalia (International Maritime Bureau 2010). For example, of the 439 piracy attacks
reported to the International Maritime Bureau in 2011, 275 were credited to Somali
pirates (International Maritime Bureau 2011). Further reports indicate the violence used
during the commission of the attacks has considerably increased (Elliott 2007), leading to
Somali waters being described as "amongst the most dangerous waters in the world for
shipping" (Mayoyo 1999). The threat and increased attention paid to Somali piracy has
also been exacerbated by several high profile cases, one of the notable cases being the
2009 attempted hijacking of the US cargo ship the *Maersk Alabama*. In this case the
pirates fled, abandoning the cargo ship and taking its captain hostage. The matter was
resolved after intense negotiations that played out infront of the world's media, with the

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[1]United Nations Convention on the Law of the Sea Article 101 defines piracy as:
a) Any illegal acts of violence or detention, or any 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 other ship or aircraft, or against persons or property on board
such a ship or aircraft;
ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any
state;
b) Any act of voluntary participation in the operation of a ship or of an aircraft with
knowledge of facts making it a pirate ship or aircraft;
c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or
(b).

captain being rescued by military snipers who also shot and killed three of his captors (Eichstaedt 2010). The global media coverage of this incident, and other similar incidents in Somali waters (Eichstaedt 2010; Bahadur 2011), has brought piracy, an issue historically associated with legend and folklore (Chambliss 2004), into the present day, and has led to increased policy responses.

There has been an initiation of numerous policies by varying states, and international actors, such as the North Atlantic Treaty Organization (NATO), the European Union (EU), and the United Nations (UN), aimed at deterring and preventing future acts of piracy (United Nations Security Council 2006; United Nations Security Council 2007e; Eichstaedt 2010; NATO Allied Maritime Command 2010b; United Nations Security Council 2010e). These responses include an increase in the presence of military warships in many of the world's global shipping lanes (United Nations Security Council 2007e). There are warships from as many as 14 different countries floating in the Gulf of Aden and in and around the coastal waters of Somalia (Ha 2009) to protect international "peace and security" (United Nations Security Council 2008d; 2008e; 2008f; 2008g; 2008h; 2008i) and curtail the threat posed by Somali pirates.

Despite this increased interest and response to Somali piracy there has been little attention paid to the structural conditions within the country itself (Eichstaedt 2010; Rothe and Collins 2011) which has been argued to be instrumental to understanding the rise in piracy (Rothe and Collins 2011). The political, economic, and social instability within Somalia, which can be traced back to colonial powers (Ahmed and Green 1999), has left the country with a lack of central government, lack of basic infrastructure, and its people with no access to health care, food and water (Doria, Rothe and Mullins 2010).

Conditions, that have significantly worsened because of the recent drought and famine that has spread across the region (United Nations 2011), as well as the recent deployment of Ethiopian troops backed by the African Union in efforts to recapture control of the country from Al-Shabaab affiliated militant groups ("Somalia Forces..." 2012).

To date, little criminological attention has been paid to either the issue of piracy, or the policies created to address it. More specifically, there has been little criminological literature, on the processes of creating policies on piracy since the work of Chambliss' seminal address on state-organized crime to the American Society of Criminology in 1988 (Chambliss 1989). When maritime piracy is presented as a topic of importance it comes from disciplines outside of criminology, such as political science (Hastings 2009; Archibugi and Chiarugi 2011), international studies (Klein 2006; Chalk 2008), and security studies (Worrall 2000; Elliott 2007; Gibson 2009; Kraska and Wilson 2009a; Guilfoyle 2012; Spearin 2012; Van Ginkel and Landman 2012). Irrespective of the field of study, maritime piracy is most often discussed in the literature as a global security issue (Worrall 2000; Hawkes 2001; Klein 2006; Engels 2007). In addition, the focus are the piratical acts and the actors committing these acts, with narratives, analyses, and subsequent discussion often neglecting the contextual factors that link the issue of piracy to the structural conditions within the pirate's country of origin.

The purpose of this dissertation is to fill the void in the criminological literature by examining the processes involved with creating, enacting, and enforcing policies on maritime piracy. As piracy impacts many regions of the world, the focus here is narrowed to one region; the coastal waters of Somalia. There has been no other geographic region that has received as much global media attention as the Gulf of Aden,

and the coastal waters of Somalia (Collins 2012), therefore it is an appropriate region to select as a case study to analyze how the international political community (IPC)[2] has come to identify and label piracy as a problem, and create, justify, and implement policies to control it. The formation, implementation, and enforcement of these policies will be analyzed paying particular attention to the international level (IPC), state level (state interests), and then at the individual level, where individual accountability will be examined as it plays out in the prosecution of individual actors for acts of piracy.

This research examines whether the processes of policy creation, enactment, and enforcement have been driven by moral entrepreneurs (Becker 1963), such as private actors in the shipping industry, as well as politicians in the IPC who are advocating individual and state interests. These moral entrepreneurs, through the use of political rhetoric disseminated by the global media, are hypothesized to use techniques of agenda setting (McCombs and Shaw 1972) to characterize piracy and pirates in a manner that will create and reify a dominant understanding of the issue, what Foucault (1980) would term a 'regime of truth.' Furthermore, it is believed that this 'regime of truth' negates any alternate understanding of the issue of piracy, including the structural issues within Somalia.

Chapter I provides an introduction to the prevalence of piracy in Somalia, introducing the preferred policy response to the issue. Chapter II begins with a review of the literature on the importance of discourse in the shaping and creating of knowledge

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[2] The International political community is defined as "a collective conscience and identity based on the moral order of universalism and neo-naturalism," and is associated with international institutions, such as the UN, that represents a collective international identity, culturally, morally, and as it relates to state relations at the international level (Rothe and Mullins 2006:270).

and 'truth' about a particular issue or people. This chapter concludes with a review of the literature on modern day piracy. Chapter III presents the frame for this analysis which includes an integrated theoretical approach drawing from the fields of criminology and sociology, as well as literature on mass communications. Chapter IV provides a detailed discussion of the methods guiding this analysis: the case study approach utilizing content and discourse analysis. In addition, the data used are detailed followed by the limitations of this study. In Chapters V, I present a brief socio-political overview of the history of Somalia dating back to the country's independence in 1960 to contextualize the case study. Chapters VI and VII detail the findings from the analysis including a description of the discourse, changes in the discourse and the emergence of an anti-piracy response. Chapter VIII sets out the findings from the analysis of court transcripts from two US trials of eleven Somali pirates. This chapter also connects the anti-piracy policies initiated at the international level, with the reality of their enforcement at the interactional level. Chapter IX starts by situating the findings from the analysis within the theoretical frame, before examining the role of alternative discourses on piracy in Somalia as it relates to the dominant understanding of the issue. This chapter is followed by Chapter X which provides a summary of the research and suggested policy implications, before concluding this work.

CHAPTER II

LITERATURE REVIEW

Criminologists have long recognized that definitions of criminal behavior and the policies enacted to address these behaviors are highly politicized (Paternoster and Bachman 2001; Hagan 2010). Definitions of crime are not only directed by larger political and social happenings, but are initiated and justified to "suit ideological preferences, placate fears, and serve [the] electoral needs" of those in power (Hagan 2010:2). This process is especially apparent in establishing certain behaviors as criminal, as well as enacting the subsequent policies to address them (Becker 1963; Parenti 2008; Alexander 2010). The motivation for such social constructions of deviance are complex and multifaceted, but include providing a vehicle for social control (Hughes and Lawson 2011), as well as garnering public support for, and in some instances, public demand for political action (McCombs and Shaw 1972; Weitzer 2009; Woodiwiss and Hobbs 2009; Bonn 2010; Maguire and Singer 2010).

The criminological study of the policies enacted to address criminal behavior has exposed the relationship between politics and criminal justice policy (Bobo and Thompson 2006; Parenti 2008; Alexander 2010). One prominent example is the criminological analysis of the policies collectively referred to as the "war on drugs" (Alexander 2010). Justification for policies criminalizing drug use, such as crack cocaine, were established through the dissemination of conservative political rhetoric that emphasized the threatening and dangerous nature of the drugs and the individuals that used them (Irwin 1995; Logan 1999). Media reports asserted that "crack cocaine was

more potent, more addictive, and more likely to lead its users to acts of violence, crime, and desperation" (Logan 1999:117). The danger of drugs and drug use became the dominant discourse surrounding the issue, resulting in increased fear and providing the justification for passing legislation aimed at tackling the "drug problem."

Despite this discourse on drug use in the 1980s, evidence suggests that during this time period the reality was that drug use had in fact declined (Reinarman and Levine 1989; Jensen, Gerber and Babcock 1991; Beckett 1994). Not only was drug use on the decline but public opinion about drug use was found to increase only after the Reagan administration's declaration of "war on drugs" in 1982 (Beckett 1997). The focus of studies examining the discourse surrounding the enactment of drug policies, has not been the drug use itself, but the underlying purpose that these policies serve, specifically, whose interest they advance (Parenti 2008; Alexander 2010). Many arguments have been advanced in response to this question including securing presidential election success (Parenti 2008; Hagan 2010), distracting attention from social and civil arrest by refocusing national attention on a common threat (Barak, Leighton and Flavin 2006), but one of the most dominant arguments suggests the purpose is the demonization of specific minority groups (Lynch and Sabol 2004; Alexander 2010).

The study of the social construction of crime, specifically how certain behaviors are, and are not defined as criminal, is not limited to drug offenses, but rather includes a wide range of behaviors. These behaviors include, but are not limited to, family violence (Dobash and Dobash 1979; Davis 1987; Buzawa, Buzawa and Stark 2011; Garcia and McManimon 2011), rape and sexual assault (Brownmiller 1975; Burt 1980; Campbell 2005; Henderson 2007; Goetz and Jenkins 2010), white collar crime (Sutherland 1940;

Swigert and Farrell 1981; Kramer 1984; Clinard and Yaeger 2006), state crime

(Chambliss 1989; Barak 1990; Friedrichs 1992; Green and Ward 2004; Rothe 2009),

crimes of empires (Iadicola 2008; 2010; 2011) and terrorism (Chermak and Gruenewald

2006; Mythen and Walklate 2006; Henne 2010; Hill, Oliver and Marion 2010). This

literature draws attention to the politics and power of the state over the construction of

certain behaviors as criminal (Parnaby 2006; Clement and Barbrey 2008; Reno 2009;

Hughes and Lawson 2011), and recognizes that discourse, whether verbal or written, is

both political and social (Thompson 1991). Literature has highlighted the same

phenomenon at the international level by examining the mechanisms of international

social controls and justice, as well as the harms perpetrated on this level (Rothe and

Mullins 2006a; Rothe, Muzzatti and Mullins 2006; Iadicola 2008; Ross and Rothe 2008;

Iadicola 2010; 2011).

Discourse therefore, serves a greater function than communicating an idea from

the speaker to the listener. As indicated by the discussion of research on the US led war

on drugs, embedded in discourse are reflections of existing social structures, such as

hierarchies of power (as evident in social class systems), more subtle power differentials

based on access to social resources, as well as perceptions of social competencies

(Bourdieu 1982). According to Bourdieu (1982:58) language has a social context in its

genesis, and "legitimate language no more contains within itself the power to ensure its

own perpetuation in time than it has the power to define its extension in space." This is

especially important as it relates to the prominent discourse surrounding a particular

topic, such as piracy, and how it is constructed as criminal.

The earliest criminological work that addresses the issue of maritime piracy within the context of language and discourse on the matter is Chambliss' 1988 Presidential Address to the American Society of Criminology on state organized crime. In this address, Chambliss (1989) draws attention to the political, economic and structural nature of historical acts of piracy. Utilizing a socio-historical analysis, Chambliss (1989) asserts that states have historically sanctioned piracy when it is to their advantage both politically and economically. For example, Chambliss argues that during the 16th and 17th century, following the era of Spanish "exploration," many European countries including France, England, and Holland employed pirates to attack vessels transporting gold and silver from the Americas. In addition, by contracting with pirates the economic and political power that Spain and Portugal were quickly accumulating during this time period, could be better controlled, and although officially deemed illegal, pirate ships were granted passage through international waters by the very navies sent to fight them. In fact, during the 1500 to 1800s, almost every European state as well as the United States, were engaged in acts of piracy.

Chambliss (1989:187) through his analysis draws attention to the discourse surrounding piracy, as he asserts that during this time period states created a "legal fiction" where piracy was officially condemned, but unofficially sanctioned. Chambliss (1989) also notes that this era of state sanctioned piracy came to an end because of increased profits to be made from international trade, which meant that the security of international seas began to outweigh the fiscal gain possible from state-sanctioned piracy. During this time piracy was officially deemed criminal and individuals caught engaging in piratical acts were punished for the same behaviors that were previously sanctioned.

The framing of piracy as a crime is then reasserted because of the threat it then posed to what was considered an increasingly capitalist world economy.

Chambliss follows up this seminal work in 2004 with an analysis of the relationship between law and criminality. Here he provides a more detailed historical analysis of the involvement of state and state actors in piratical acts, tracing these behaviors back to the Viking era. Chambliss (2004:246) draws attention to the definition by states of piracy as the most "heinous crime," a definition that simultaneously existed as states continued to solicit seafarers to engage in piracy on their behalf. Individuals that were successful in their endeavors, acting in accordance with their states' interests, were pardoned for their crimes – piracy included – and rewarded with money, fame and sometimes status. Chambliss (2004) illustrates this by drawing attention to the English pirate Francis Drake who was employed by the Crown as a pirate and on his return to England was rewarded with a high level government position in Ireland. It was during this time period that England entered into treaties to end piracy with other European states, a time period that as previously mentioned, coincided with what was considered a growing capitalist world economy.

In addition to Chambliss (1989; 2004), other scholars have noted that there have been eras where piracy has been driven by the intersection of complex political and economic relationships reflective of "Old World rivalries" between states (Anderson 1995:175). The effectiveness of the Vikings in their conquests, as well as their practice of leaving survivors who could recount the brutality that they witnessed, threatened the sovereignty of nations (Burgess 2010). The reaction of states and communities was to increase fortification, as "local areas looked after themselves. Towns raised fortifications

and organized local defense: local lords recruited followers, built castles, and sought local dominance and independence" (Bradford 2007:63). Viking piracy was a threat to sovereign nations, however, the same behaviors perpetrated by European states were classified quite differently, falling under the guise of exploration and being directly related to the acquisition of Imperial global dominance.

The famous expeditions of Christopher Columbus that led to the colonization of the indigenous population in the Americas, as well as being a piratical act in itself, increased the occurrence of state sponsored piracy. The native populations provided a slave labor force for the purposes of mining and transporting the precious metals to benefit and enrich the Spanish and Portuguese settlers. Spain and Portugal's discovery led to decisions by other European states to take action to prevent the growth of wealth and power to become centralized to these two countries. Spain, in an attempt to secure a monopoly over its new found wealth and to increase the power of its Empire, refused to grant foreign interests license to travel to the Americas to share in the wealth. Spain however, was logistically unable to protect this large geographic area from other foreign interests (Marley 2011), which provided opportunities for other states, such as the English, French, and Dutch, to circumvent Spanish authority. It also provided the opportunity to forge alliances with pirates to appropriate the gold and silver being transported from the Caribbean to Spain and Portugal; a much more attractive and lucrative solution than war (Exquemling 1670; Chambliss 1989).

As other Empire's developed, they too sanctioned and utilized piracy in the furtherance of their economic dominance. For example, state-sanctioned piracy was instrumental in Britain's war with Spain and France (The Spanish Succession 1702-1713)

helping Britain secure victory (Thomson 1994). Elizabeth I of England perceived piracy as being a necessary tool that complimented the Royal Navy, and granted numerous commissions against Spanish trade. Piracy was viewed as "an ideal way to strike one's enemy and hide the blade" (Rankin 1969:4). These acts were commissioned by the state of England during a time of peace with Spain (Burgess 2010). The benefits of state sanctioned piracy therefore, extended beyond the acquisition of a ship's cargo, to include opportunities to test the efficiency of future naval captains against enemy warships during time periods leading up to war, providing experienced seafarers who could be used to man the vessels during war time, as well as draining enemy resources. Collectively, these benefits challenged state's governance of empire, while simultaneously enriching the state sponsoring the piracy. Additionally, piracy was often used as a mechanism to provoke an enemy state into declaring war before they would otherwise have been fully prepared to do so, a tactic that was used by England against Spain in 1702 (Dubner 1969; Burgess 2010).

The same behaviors that have historically constituted piracy have also been termed 'privateering.' Privateering is the term used for an armed vessel that is privately owned, that has formal authority from a state to attack a specified enemy ship during wartime, and appropriate its cargo in a regulated manner (Starkey, Heslinga and Moor 1997). Privateering is "a means of employing force and terror to achieve a political ends" (Burgess 2010:53). States through the implementation of privateering have been able to benefit from harassing, attacking, and stealing from enemy states, without having to commit the resources necessary to engage in war. There is also the benefit of what could be termed plausible deniability, in that states were able to deny their sanctioning of such

actions, and in some instances, actively pursue those engaged in privateering, by denouncing them as pirates (Burgess 2008). Very often, as was the case in sixteenth century England, conditions were provided to individual actors that not only commissioned them as privateers but provided direct orders as to their actions. By violating these conditions the privateer risked being denounced and labeled a pirate. This system, therefore, distinguished privateers from pirates by deeming privateers agents of the state and during wartime they were defined as combatants and soldiers. Privateers captured during wartime were treated and afforded the same protections as prisoners of war, and they could not be hanged. Pirates, however, were considered criminals and were afforded no such protections (Burgess 2010).

Ironically, privateering has historically coexisted with piracy, with one being state-sanctioned and the other condemned (Marx 1992; Thomson 1994; De Nevers 2007). Privateering was regularly sanctioned by states as they commissioned private vessels for the purposes of harassing enemy trade ships. States distinguished privateering from piracy by insisting that pirates existed independently of political ideologies; such as those held by states (Burgess 2010). To distinguish state-sanctioned acts of piracy (or profiteering), piracy for private gains has been historically defined as "violent maritime predation" (Anderson 1995:176), with pirates being likened to organized bandits, characterized as highwaymen of the sea robbing and attempting to rob vessels of their cargo (Chatterton 2006). The distinction is made based on the motive behind the act, with pirates being motivated solely for criminal purposes (Burgess 2010). Although a distinction can be made theoretically, in reality the difference between piracy and profiteering is minimal and lies in state definitions of the actors who profit from the act;

i.e. actors protecting state interests versus those threatening it (De Nevers 2007). State's influence over definitions of piracy, have also been recognized in criminological literature addressing the construction of the problem of piracy in Somalia (Rothe and Collins 2011; Collins 2012).

In 2011, Rothe and Collins provide an examination of piracy in the coastal waters of Somalia paying particular attention to the role of the IPC and the media in creating discourse that characterizes individual actors as threats to global security and trade. This analysis illustrates the role of power and discourse to create a truth that justifies the seemingly favored militarized response to piracy in that region. Rothe and Collins (2011) suggest that the current response in the Gulf of Aden masks the real motivations that undergird piracy; the structural conditions within the country of Somalia itself. Lack of basic infrastructure, warring factions, and political unrest create social disorganization, which is compounded by toxic waste dumping, and illegal fishing in Somali waters, culminating to create a criminogenic environment promoting piracy as a fiscally viable option. They conclude that to address piracy in this region, greater attention and resources need to be allocated to the structural problems within Somalia itself.

In a similar vein, Collins (2012) in an analysis of world newspapers, tests the framing of Somali piracy as a moral panic. Although, a moral panic is not established, it is concluded that the media representations of piracy in this region are greatly inflated in comparison to the actual occurrence of pirate attacks. In addition, the disproportionate amount of media coverage frames the issue of piracy in a certain way, focusing on particular aspects while neglecting others. In this case, pirates are portrayed as

"terroristic, bad, and evil," posing a threat to global security (Collins 2012:125), while ignoring the structural conditions within the pirate's country of origin; Somalia.

Criminological literature, albeit limited, does address the issue of piracy by focusing on broader structural conditions, a feature that distinguishes it from research on the issue of piracy from other fields of study. For example, the growing literature within security studies focuses on the threat posed by pirates operating in international waters (Elliott 2007; Chalk 2008; Gibson 2009; Kraska and Wilson 2009a; Kraska and Wilson 2009b). The issue emphasized here, is the ability to identify geographic areas that have an increased incidence rate of pirate attacks, termed "hotspots" (Lehr 2007; Kraska and Wilson 2009a). The geographic regions most often identified as piracy "hotspots" include the Horn of Africa, and the Strait of Malacca, Nigeria, and the South China Sea (Marley 2011). These areas are identified as being particularly dangerous to seafarers, their cargo, and vessels, as well as posing an overall threat to global shipping lanes (Chalk 2008; Alexander and Richardson 2009; Kraska and Wilson 2009b; Marley 2011). The dangers are often associated with geographic conditions. For example, Marley (2011) argues that piracy in the Strait of Malacca can be explained by its classification as a geographic chokepoint. This waterway is 500 mile long and less than two miles wide at its narrowest point. In addition, it provides the only sea route for ships passing from the Indian Ocean to the South China Sea. Similarly, other areas become "hotspots" for piracy as the surrounding land provides sanctuaries for pirate activity. These sanctuaries may result from internal conflicts and lack of state stability, as is the case with Somalia (Hastings 2009; Kraska and Wilson 2009a), or the areas are strife with violence as internecine fighting occurs over controlling local resources, which is the case with

regards to the fight for control of oil in Nigeria (Marley 2011). Although varying geographic regions are recognized to be piracy "hotspots," equal political and media attention is not paid to each area. Instead, some areas, such as Somalia, are given more attention.

Further literature on the issue of piracy, has focused on the losses that have occurred as a result of pirate attacks (Hawkes 2001; Koknar 2004; Lobo-Guerrero 2008). The focus here is twofold; the financial losses for commercial shipping and the constant threat of violent victimization for crews traversing piracy infested waters (Hawkes 2001). First consider the financial threat to commercial shipping and the impact that has on the global economy (Anderson 1995; Lobo-Guerrero 2008). The financial losses to commercial shipping are multifaceted, with losses incurred directly from the theft of cargo, ransoms of crews, and killing of crew members. Losses also result indirectly from the rise in liability insurance, both commercial and personal liability (Hawkes 2001; Chalk 2008; Lobo-Guerrero 2008), as well as the introduction of enhanced security measures (Nankivell 2004; Borger 2008). Although the financial losses stemming from hikes in insurance premiums are often mentioned in the literature, more often than not it is the financial and physical losses that result from violence, theft, and kidnappings of ships and their crew, that provide the focus for concern (Anderson 1995; Hawkes 2001). This is the focus, despite the reality of the costs associated with piracy. For example, a report by the Civil-Military Fusion Center indicated that only two percent of the total cost of piracy in 2011 went to the payment of ransoms (Rinehard 2012). Additionally, as noted by Collins (2012) reports from the International Maritime Bureau indicate that the number of seafarers killed by Somali pirates has remained relatively stable since 1991,

averaging less than two people per year until 2008 where it increased to four, and then to

eight people in 2011 (International Maritime Bureau 2011). This reality is emphasized

by statistics on accident related deaths on merchant and fishing vessels. For example, the

2005 International Maritime Organization report on deaths attributed to accidents and

complications with operating the vessels belonging to seven different countries[1] resulted

in 55, 585 reports of casualties that included 60 confirmed mariner deaths (International

Maritime Organization 2011). Furthermore, the number of fatalities that occurred in

2010 on commercial vessels in US waters alone totaled 43 (Chambers 2010) with 58

more deaths on average each year resulting from the commercial fishing industry

(Centers for Disease Control and Prevention 2010).

The individuals engaged in acts of piracy are portrayed as violent individuals who

operate alone, or as members of organized crime groups (Mak 2007; Eichstaedt 2010;

Bahadur 2011; Ulrichsen 2011). In his book *The Pirates of Somalia: Inside their hidden*

world, Bahadur (2011) details the networks, and composition of pirate groups operating

in Somalia. Bahudur (2011) argues that pirate's operate in groups within local, regional,

state and even international networks. These networks are said to be highly structured,

controlled by local warlords, and resourced by external funders located in other countries

that are barely traceable through intricate global financial systems. These hierarchal

structured networks employ many young men who engage in acts of piracy to obtain

large amounts of money individually, and on behalf of the warlords, and funders who

organize them. Despite these claims, there has yet to be any definitive evidence that

these networks are funded by wealthy foreigners, as suspects have yet to emerge or be

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[1]The countries include Denmark, Estonia, Germany, Norway, Spain, Sweden, and
Vanuata.

pursued in prosecutions, and instead those captured and prosecuted for piracy are those

engaged in the piratical acts themselves, often motivated to commit piracy to provide an

alternative to living in abject poverty (Eichstaedt 2010; Rothe and Collins 2011). Despite

this, these organizational networks of pirates are also argued to be funded, and/or

comprised and affiliated with terrorist groups (Alexander and Richardson 2009;

Eichstaedt 2010; Hong and Ng 2010; Murphy 2011).

Maritime pirates in certain regions of the world are said to be associated, and

working for, terrorist groups such as Al-Qaeda, Al Shabaab, the Palestine Liberation

Front (PLF), (Stankiewicz 2005; Murphy 2011), the Liberation Tigers of Tamil Eelam

(LTTE) (Sakhuja 2007), the Abu Sayyaf Group (ASG) (Banlaoi 2007), the Gerakan Aceh

Merdeka (GAM) (Chen 2007), and the Movement to Emancipate the Niger Delta

(MEND) (Nincic 2009a; Nincic 2009b; Marley 2011). Beginning with the 1985

hijacking of the *Achille Lauro,* an Italian cruise ship by members of the Palestine

Liberation Front (PLF) (Halberstam 1988) there is a body of research that has focused on

the use of marine craft in terrorist bombings and attacks (Stankiewicz 2005; Engels 2007;

Lehr 2007; Murphy 2007; Sakhuja 2007; Ng and Liu 2010). Although there is

consideration of past attacks such as the *Achille Lauro* (Halberstam 1988), the 2000

bombing of the North American naval vessel the *USS Cole* (King 2005), and the

explosion on board the *MV Superferry 14* that killed 116 people and injured 300 more as

it left Philippine waters in 2004 (Banlaoi 2007), the dominant theme is the potential

weaknesses in maritime security that may lead to future terrorist attacks. For example,

Hong and Ng (2010:51) draw attention to the vulnerability of global shipping lanes, and

the world's ports as potential victims of terrorist attacks. They assert that ships could be

used "in much the same way that planes were used as weapons in destroying the Twin Towers located in New York." Hijacked supertankers are transformed into "floating bombs" (Engels 2007:326). As Engels (2007:331) argues the label 'terrorism' carries the connotation that hijacked supertankers "when exploded in a port such as Singapore, Boston, or Galveston, would wreak more havoc than the bombs dropped on Hiroshima and Nagasaki during World War I." However, although there have been some instances where pirate attacks are linked with terrorist groups (*Achille Lauro* and the *USS Cole*), these attacks are happening infrequently, and are therefore, extremely rare. Engels (2007) also argues that it is only when piracy is made synonymous with terrorism does it garner attention in both political and public discourse. The discourse on piracy otherwise, remains relatively silent.

Pirates engaged in acts of terrorism are said to threaten not only the lives of the crews aboard the hijacked vessels, but the lives of other seafarers, port workers, and citizens in general (Engels 2007; Hong and Ng 2010), as well as world trade (King 2005). The potential threat of maritime terrorism to world trade is described by some as being "dire" (King 2005:235) with the welfare of coastal state economies being dependent on the security of maritime traffic that passes through African, Indian, Asian and American waters (Lehr 2007). The potential for marine terrorist attacks are also said to pose significant threat to much of the world's trade, as the majority of the world's cargo in oil and gas has to pass through the most dangerous waters for piracy, which if threatened has the potential to impede trade and impact world economic markets (Hong and Ng 2010).

Barnes and Olorunttoba (2005) draw attention to the fact that 90 percent of the world's cargo is transported by sea, but less than two percent of this cargo undergoes

inspection (Voort et al. 2003). Barnes and Olorunttoba (2005:522) argue that this is

compounded by the anonymity associated with ship ownership, especially so as maritime

practices allow ships to fly "flags of convenience" and there is a lack of transparency

with regards to the ship registration process. There is considerable variability by country

as to the requirement of proof for the purpose of registering a ship. The focus, therefore,

is the lack of security which provides very feasible opportunities for terrorist groups to

execute successful attacks.

It is also argued that inadequate maritime security facilitates the movement of

terrorist groups. For example, Roach (2004) asserts that Al-Qaeda have access to a

number of ships that they have used to transport operatives, commodities, explosives, and

money. Roach (2004:41) argues that inadequate maritime security creates opportunities

for the groups such as Al-Qaeda to transport "chemical or biological weapons, such as a

radioactive dirty bomb" into a marine port. The lack of marine and port security

therefore, is argued as being a significant tactical advantage to terrorist groups, and

potentially disastrous for would-be terrorist targets. In addition to having the ability to

use these vessels to target other vessels such as cruise ships and ports in terrorist attacks,

terrorist controlled ships serve to facilitate the expansion of terrorist groups, increase

their access to resources and better structure and build terrorist networks. Roach argues

that terrorist groups that have access to marine vessels have an alternative mode of

transport for operatives fleeing law enforcement following an attack, as well as moving

them to countries that are considered safe havens for such groups.

Based on the focus of an increased threat to global shipping, coupled with

assertions that piracy is a serious terrorist threat, further discussion addresses how best to

deter and curtail the problem of piracy (Chalk 2008; Edmonds and Palmore 2009; Gibson 2009; Ho 2009; Nincic 2009a). Current legislative and policy responses to maritime piracy are examined and explored for effectiveness (Klein 2006; Ho 2009; Kraska and Wilson 2009b; Onuoha 2009). There are critical examinations of international instruments such as those issued by the United Nations (Roach 2004; Hong and Ng 2010), regional instruments (Ho 2009; Bodini 2011), as well as examinations of the laws and policies of sovereign states (Archibugi and Chiarugi 2011). For example, Hong and Ng (2010), in an examination of the international legal instruments that have been developed to address maritime piracy argue for a more unified response to piracy. Some of their suggestions include the tightening of legal loopholes, providing a more unified set of rules and regulations that can be applied to all ocean waters, irrespective of state sovereignty, asserting that members of the IPC should ensure domestic piracy laws are current, and ensure jurisdictional rights to arrest and to prosecute individuals committing acts of piracy in their sovereign waters. Similarly, Archibugi and Chiarugi (2011) argue for the revision of national laws to more adequately address piracy, this they argue, would circumvent the killing of pirates as a response to alleged attacks, and ensure that those accused of piracy are subject to the due process of a trial. Independent, of the legal and policy suggestions, this body of literature seeks to expose the inadequacies in the current political, legal, and policy responses to piracy, and provide recommendations to remedy these inadequacies. However, there remains little to no mention of how or why certain policies have been implemented as the preferred response to the issue of piracy.

The review of the literature has indicated that there remains an absence of consideration of how piracy has come to be defined as a problem and how this has come

to impact the current political, legislative, and policy stance on addressing maritime

piracy. This coupled with the lack of criminological study of maritime piracy indicates

that there is a void in the current literature. Therefore, the purpose of this dissertation is

to fill the void in the criminological literature by examining the processes involved with

creating, enacting, and enforcing policies on maritime piracy. The following chapter

provides the framework used for this analysis, detailing an integrated theoretical

approach that draws on theories from different disciplines, and addresses different levels

of analysis.

CHAPTER III

THEORETICAL FRAME

Traditionally theory has been generated through the processes of invention (Tittle 1995), elaboration (Thornberry 1989), and integration (Liska, Krohn and Messner 1989; Wellford 1989; Barak 1997; Cullen and Agnew 2003). Theory invention makes reference to deriving a completely new and original idea (Tittle 1995), and theory elaboration consists of taking an existing specific theory and extending its propositions to their fullest potential providing the most comprehensive model possible (Thornberry 1989). Although there are proponents of these first two methods of theory generation (Hirschi 1979; Agnew 1992; Tittle 1995), the approach adopted here will be theory integration.

Theory integration can be defined in many different ways as there are many types of integration. Theoretical integration can be specific or general (Cullen and Agnew 2003), propositional or conceptual (Liska, Krohn and Messner 1989), static or dynamic (Barak 1997), single level or multi-level (Messner, Krohn and Liska 1989), as well as intra-disciplinary or inter-disciplinary (Wellford 1989). Theory integration in its most simplistic sense is the combining of two or more existing theories, concepts, and/or propositions into one more comprehensive model (Farnworth 1989; Barak 1997). An integrated theory may be constructed by fusing together theories that are closely related, or those that are considered competing theoretical models (Akers and Sellers 2004).

Here, a piecemeal method of theory integration was adopted using an interdisciplinary approach as well as drawing on theories that address different levels of

analysis. The piecemeal approach makes reference to piecing together different existing theories to create an integrated theory with enhanced explanatory power. This method can be used to address behaviors at one level of analysis (i.e. micro or macro), but it can also be used to integrate existing theories at different levels of analysis for the purposes of explaining a particular phenomenon (Barak 1990). Here the latter approach is taken to address the phenomenon of piracy by piecing together existing theories at different levels of analysis. This includes Foucault (1972; 1980) and Gramsci's (1971) theories of power, labeling and societal reactionary theories (Becker 1963; Schur 1971), and key concepts from communication studies, also termed 'news making criminology' (McCombs and Shaw 1972; Barak 1988; Barak 1994). A discussion of each theory is presented, followed by the integrated theory that is proposed as a frame for this research. This begins with a discussion of truth and discourse as it relates to the social construction of reality and Foucault (1972; 1980) and Gramsci's (1971) theories of power.

TRUTH AND DISCOURSE

It must first be recognized that the importance of discourse extends beyond the verbal and written communication of an idea to convey intricate power differentials within the hierarchies of social structure. Discourse is located within existing social and political systems and communicates ideas, realities, and truths that are representative of the power structures from where particular discourses originate and evolve. It is from these sources that discourse on a particular issue or phenomenon, such as piracy, gains legitimacy (Bourdieu 1982). Discourse therefore, serves the purpose of constructing a

social reality about what is known, understood, and disseminated about a particular

phenomenon. This construction of reality is what Foucault (1980) refers to as truth.

Foucault (1972) asserts that the construction of discourse is threefold. First, there

is a statement of the issue or phenomenon. Secondly, a definition of the issue, and lastly,

there are rules as to how and in what manner the issue is discussed. This knowledge or

'truth' is then reinforced through societal institutions, through "systems of exclusion" that

leads to the manipulation, division, and even exploitation of what is known about a

particular phenomenon (Foucault 1972:219). Analysis of discourse therefore, does not

only include what is both explicated in the discourse itself, but also includes the

implications and effects which provides the framework for responses to the issue or

phenomenon at hand. The discourse therefore, provides what is known about the issue,

as well as what is accepted as the 'truth.' This 'truth' then provides justification for

subsequent policies that are initiated in response to piracy.

Foucault (1980:131) states that the acceptance, effectiveness and functions of

those with the power to define 'truth,' do not achieve this power based solely on the

language or discourse itself – the statement of 'truth.' Instead, it is the 'material reality'

of the 'regime of truth' that is located within the larger society, which in the case of

Somali piracy, makes reference to the IPC which creates this power. This 'material

reality' makes reference to the larger socio-historical context in which the process of

discourse construction occurs. In the case of piracy in Somalia the 'material reality'

makes reference to the IPC, including the political, social, and economic interests of

states. These interests and the interaction between international players provide the

'material reality' in which the 'regime of truth' is reified. This, in turn, guides the

manner in which the issue or phenomenon is addressed, i.e. the policies and responses to the issue of piracy.

Gramsci (1971) would call this 'regime of truth' surrounding an issue, a 'hegemonic discourse', as the language constructed around the phenomenon informs all "modes of thought and behavior" (Green and Ward 2004:3) creating what Gramsci (1971) referred to as a 'common sense' about the issue. Drawing on Gramsci (1971) this 'common sense' is then disseminated through culture, social institutions, and media creating a dominant understanding of the issue amongst the masses that lead to a general consenting towards the status quo. The 'hegemonic' group demonstrate a moral and intellectual power over the rest of society in creating a hegemonic discourse about a particular phenomenon, and have power not only over what is known, but the political and social responses that are then enacted in response to said issue (Rothe and Collins 2011). Further, the construction of a hegemonic discourse, simultaneously suppresses all alternative 'truths,' and removes the possibility that a genuine debate, informed by the "social origins of the public problems" will ensue (Rosenfeld 2002:5).

As argued by Foucault (1972; 1980) and Gramsci (1971) the construction of discourse and truth about a phenomenon does not occur in a political, social, and historical vacuum, rather it is situated within the power relations instrumental to the creation of the 'regime of truth' (Foucault 1980) about an issue. In addition, the construction of this 'truth' does not result from a process that gives equal voice to all interests, but instead represents the interests of those with most power, something that is especially relevant with respect to the representation of state and private interests. This 'truth' is then disseminated through formal and informal means of communication

including media. The media is therefore used as a vehicle for the reification of the socially constructed 'truth' about an issue through the use of certain techniques that will be discussed below, including agenda setting (McCombs and Shaw 1972), priming, and framing (Tuchman 1978; Lowery and DeFleur 1995; Bonn 2010).

AGENDA SETTING

Media is a powerful tool for the dissemination of discourse surrounding an issue, as it has considerable power over public opinion, and can be used as a tool for the reification of the 'regime of truth' (Foucault 1980). Media has long been used to aide in the social constructionism of the 'truth' about certain issues, and there has been considerable research examining the processes that lead to a certain event becoming crime news (Welch, Fenwick and Roberts 1997). Instrumental to this process are those actors in positions of power, such as politicians, and public officials, who provide primary definition of the crime early on in the social construction of the news coverage (Chermak 1994; Kasinsky 1994; Welch, Fenwick and Roberts 1997; Hawdon 2001). Politicians are positioned within the existing power structure, and through the use of rhetoric are able to disseminate information about a particular issue through the media (Beckett 1994). Political rhetoric makes reference to the "effective use of language, including figures of speech, by politicians for mass dissemination" (Bonn 2010:24). These primary definitions of crime are therefore, influenced by dominant ideology (Abercrombie, Hill and Turner 1980; Welch et al. 1997), or the 'regime of truth' surrounding the subject (Foucault 1980). These *primary definers* exercise their influence

over the construction of news surrounding an issue through their utilization of certain techniques, such as those demonstrated in the agenda setting hypothesis.

The agenda setting hypothesis provides that the media establishes some issues as being of great importance to the public through a process termed *transfer of salience* (McCombs and Shaw 1972). Issues of importance, such as behaviors like piracy, are given considerable focus and media coverage, whereas other issues are not given the same, if any, attention. This launches some issues into the public realm creating public discourse, while discourse remains silent on other issues. The public then becomes excited about this particular issue (Mansfield-Richardson 2000), which then introduces the issue into the realm of public debate and opinion (Hafez 2000). This process has been termed first-level agenda setting.

The second level agenda-setting further extends the first level process by framing the issue, and the actors associated with the issue or phenomenon, in a certain way. At this level, the media presentation to the public is done so in a certain way, the focus being on a particular aspect or characteristic, which leads to a slanted understanding of the issue. The media are able to attribute specific meaning to the issue, which then becomes central to the public perception of the issue (Tuchman 1978; Altheide 1997; Wanta, Golan and Lee 2004). The meanings, or qualities that are used to characterize the issue or the actors associated with the issue, can be either positive or negative. Consequently the resulting representation by the media of the issue is not objective (Entman 1993). Additionally, repeated focus on a particular issue increases its importance in public discourse (Lowery and DeFleur 1995; Altheide 1997). The process of second-level

agenda setting is associated with the two processes; that of *framing* and *priming* (Bonn 2010).

The process of *framing* makes reference to the "angle" the media uses when presenting the issue. This involves emphasizing particular characteristics or features of the issue, while intentionally minimizing, obscuring, or ignoring others. The *framing* of the issue is informed by the power structures surrounding the issue (Rothe and Overton 2010). In this case the "angle" selected by the news media is based on the ideology of the structures of power - *the primary definers* such as the IPC, as well as prior news stories about the same or similar issues that then provides a template for its presentation (Tuchman 1978). These characteristics and definitions are circulated by the media, and serve to create a dominant framing of the issue while simultaneously inflating the seriousness of the problem that then continues to govern the social construction of the issue (Welch et al. 1997).

In contrast, the process of *priming* makes reference to the individual response mechanism to the media presentation of the issue. By emphasizing a particular aspect of the issue, the media increases its public salience and evokes individuals to react to the information provided based on their prior memories or experiences. This process draws on the audience's pre-existing attitudes, prejudices, and beliefs about the issue (Lowery and DeFleur 1995; Bonn 2010). Individual responses, although varied, can lead to reactions of anger, outrage, or fear which are then used to justify subsequent policy change (Bonn 2010). Those located in positions of power, within the existing power structures, use these social reactions to support their own agendas (Welch 1996; Welch, Bryan and Wolff 1999). The very politicians, who initially provided the primary

definitions of the behavior to the media, are then called on, and subsequently justified in their initiation of policy solutions targeted at the problem. Politicians therefore use symbolic language to create and set the public agenda (Johnson, Wanta and Boudreau 2004). This public agenda includes the ability to create an issue, increase its salience, and offer feasible policy solutions which influence the public understanding and perception of the issue, as well as the relationship the politician now has with the issue (Elwood 1994).

In summation, the media processes of *framing* and *priming* are instrumental to reifying the regime of truth that is created by the interaction of "the systems of power which produce and sustain it" (Foucault 1972:109). Truth is generated through a process of selecting and interpreting only certain information about a subject as being factual that are informed by and reflective of the power structures surrounding the issue (Rothe and Overton 2010; Rothe and Collins 2011). This is accomplished through media processes of framing and priming an issue in a certain way to inform and support the wider societal 'regime of truth,' that is reflective of a wider social, political and economic context that may provide reasoning as to why piracy is labeled as a problem. Therefore, the process of labeling certain issues as wrong, deviant, or even criminal is instrumental to the enactment of policies created and justified to address a specific issue. The labeling process itself is central to the social reactionary perspective, a perspective that both examines and is critical of the relationships of power in the law-making process (Tannenbaum 1938; Becker 1963; Schur 1971). Key concepts and propositions from this perspective inform the theoretical frame for this study, and are therefore addressed in the following section.

LABELING/SOCIETAL REACTIONARY

The labeling of individuals as criminal and/or deviant is central to the societal

reactionary perspective that is critical to the nature of law, viewing the enactment and

enforcement of controls, such as policies and laws, as being political and consequently a

product of those who hold power (Becker 1963; Simmons 1969). This perspective argues

that criminals are made through a process of "tagging, defining, identifying, segregating

and describing" (Tannenbaum 1938:20). As asserted by Becker (1963) deviance is

socially constructed, and not based on an unvarying objective reality. It is not the quality

of the act itself, but rather the consequences of sanctions by others. Deviance, according

to Becker (1963), is simply the violation of rules prescribed by those in power, and it is

not the behavior that varies, but the labeling process itself. In addition, labels as defined

by official definitions or laws, and are not uniformly applied or enforced. The purpose of

this differential application is to elicit certain consequences that favor those who initiate

the label. The rules and the subsequent labels are created by a person or people that then

crusade for their initiation based on the principle of righting a societal wrong. The

motivations for such crusades are varied, but may include attempts to elevate or reduce

the social status of a particular group of people, or for the crusader to become, maintain,

and/or solidify their role as a professional rule maker. With each moral crusade that is

undertaken, a new set of people are labeled as deviant, people Becker terms "outsiders."

Outsiders in turn may either accept or reject the label, but more importantly they often

view themselves as being different from, or outside of, mainstream society. In addition,

they differentiate themselves based on morality, or belief systems. With every new group

of outsiders that are created, new policies are created to address their behaviors. Not everyone however, has the necessary access to the resources to initiate a moral crusade.

Schur (1971) asserts that collective rule-making occurs where the powerful societal groups create rules. These rules go through an organizational processing where social control agencies are tasked with enforcing the rules of the powerful against the powerless, which leads to interactions between individuals of different power differentials, and the labeling of those with lesser power as deviant by those with greater power. In the case of piracy, the moral entrepreneurs would be those crusading against the issue, such as politicians and public officials, who provide the primary definitions of the behavior. These primary definitions are expected to support the dominant ideology, or 'regime of truth' surrounding the issue, and it is expected that the motivations for the crusade will be in accordance with this 'truth.'

As already indicated, the processes used to create policies on maritime piracy are expected to be driven by moral entrepreneurs (Becker 1963). Through the use of political rhetoric, and media, it is predicted that these moral entrepreneurs will use both first and second level agenda setting to characterize piracy and pirates in a manner that creates a dominant understanding of the issue of piracy (McCombs and Shaw 1972), what Foucault would term a 'regime of truth,' ignoring alternative understandings of the issue that may result in different policy responses. The following chapter provides a detailed discussion of the methods used in this analysis, detailing the data and the research design employed, concluding with a discussion of the limitations.

CHAPTER IV

METHOD

This study utilized a qualitative case study approach. Additionally, content and discourse analysis was used. A qualitative approach was appropriate for this research as qualitative data seeks to achieve a deeper understanding of events through a variety of methods aimed at more flexible (Silverman 2007), in depth, "thick descriptions" (Geertz 2003:145), that situate knowledge in its historical, cultural, and social context (Haraway 2003). Qualitative data are not restricted to numbers and often focus on words and their associated meanings, as well as observations (Creswell 2007:201).

The case study approach is a technique defined as the "study of an issue explored through one or more cases within a bounded system" (Creswell 2007:73). The bounded system makes reference to a particular context or setting restricted by time and space. As indicated by Punch (1998:150), the general purpose of a case study is to "develop as full an understanding of that case as possible," and the analysis examines the phenomenon being investigated within its "real-life" context (Yin 2003:13). Case study analysis has many benefits, as it allows for a holistic (Yin 2003), and detailed (Stake 1995) examination of the issue being investigated, as well as employing an inductive data analysis (Merriam 1988; Stake 1995) with information emerging through the research process (Lincoln and Guba 1985; Merriam 1988; Cresswell 2007).

To glean an in depth understanding of the case selected for study; that of policy related to Somali piracy, both content and discourse analysis were conducted. Content analysis involves "establishing categories and then counting the number of instances

when those categories are used in a particular item of text" (Silverman 2007:158). This method allowed for the simplification and reduction of large amounts of data into smaller segments that can then be better organized (Marvasti 2004). This is appropriate for dealing with the large amounts of data in this study. Content analysis also provided the best frame for discourse analysis, as it allowed for the consideration of context surrounding the issue, as well as analysis of the language itself (Silverman 2005).

Discourse analysis makes reference to a range of different types of analyses including that of texts, interviews and recorded speech (Silverman 2005). As the types of data analyzed are heterogeneous, definitions of this technique vary, but for the purposes of this study Potter's (2004) definition was adopted. Potter (2004:203) defines discourse analysis as,

> An analytic commitment to studying discourse as *texts and talk in social practices*...the focus is...on language as...the medium for interaction; analysis of discourse becomes, then, analysis of what people do. One theme that is particularly emphasized here is the rhetorical or argumentative organization of talk and texts; claims and versions are constructed to undermine alternatives.

Important and relevant to the study of Somali piracy, is the emphasis that discourse analysis places on how participants in the discourse construct reality, as well as the processes that both successfully accomplish this, and undermine it (Silverman 2005). In addition, discourse analysis also "emphasizes the way versions of the world, of society, [and] events...are produced in discourse" (Potter 2004:202). Discourse analysis therefore, makes no assumptions that certain accounts are true or false reflections of reality.

Having presented the methods that were used in this research, the following section details the data that were used in the analysis. The data comes from many

different sources, including UN documents, media and press releases, as well as

transcripts from piracy trials. Detailed discussion of the primary data will be presented

first, followed by information on the secondary data.

DATA

Primary Data

Primary data were collected from the different UN branches including the General

Assembly (UNGA), the Security Council (UNSC), and reports by the UN Secretary

General. The timeframe for this analysis covers a twenty year time period; from 1992

and to March 2012. This time period was selected based on the history of Somalia with

1992 marking the year that the country entered an almost twenty year-long economic,

political, and social upheaval characterized by a lack of a functioning government (Rothe

and Collins 2011). These documents are available to the public and were accessed

through the UN website (www.un.org). The UNGA sessions are documented and made

available to the public through the UNGA website (www.un.org/ga). The resolutions of

the UNSC are documented and made available to the public through the UNSC website

(www.un.org/DOC/sc/index.html). Each year the UN Secretary-General publishes a

report providing details of the past years work of the UN as well as reporting on what

should be the considered for the future. In addition, the Secretary-General provides

reports to the UNGA and UNSC, as well as the United Nations Economic and Social

Council (ECOSOC). All of the reports are made available to the public through the UN

Secretary-General web page on the UN website (http://www.un.org/sg/sg_role.shtml).

The primary data collection yielded a total of 444 documents, and although the reports

for this time period were examined in their entirety, particular attention was paid to resolutions, assembly decisions, commentary, and calls for action on the issue of Somali piracy.

Supplemental analysis of documents from other sources, such as the North Atlantic Treaty Organization (NATO) press releases, the International Maritime Organization (IMO), and the International Maritime Bureau (IMB), private shipping companies, and the European Union were also analyzed for this time period. NATO was founded in 1949 for the purposes of safeguarding the freedom of its members and securing the North Atlantic area through the employment of political and military means (NATO 1949). There are 28 member countries situated in the US and Europe who collaborate using political, civilian, and military means to defend and deter against shared security threats (NATO n.d.). The IMO is the United Nations agency responsible for the safety and security of international shipping as well as addressing issues of marine pollution directly resulting from shipping (Collins 2012). The IMB is a nonprofit organization established by the International Chamber of Commerce in 1981, for the purposes of providing a venue for the exchange of information on maritime crime and fraud at sea for the private shipping industry (International Maritime Bureau 2005).

Data were also collected from the US trials of eleven Somali pirates in Norfolk Virginia. This data comes from the transcripts of two trials of Somalis accused of piratical attacks on the US warships *Nicholas* and *Ashland*. These transcripts were available through the United States District Court Eastern District of Virginia website (http://www.vaed.uscourts.gov), through the Public Access to Court Electronic Records (PACER) system. This system provides access to case documents that were included in

the trial, omitting information that was deemed private such as financial account numbers, social security numbers, names of minors, dates of birth, and home addresses (PACER 2012).

Secondary Data

Secondary data were analyzed to examine media coverage of the issue of Somali piracy. A secondary dataset was comprised combining data from a preexisting data set (Collins 2012) with newly collected data specific to this research. This provided information on the coverage of the issue of piracy in Somalia by some of the world's most prominent news sources, including newspapers and magazines. News media in print form was selected over news presented visually via film or television programming, or through audio, due to its wider availability from sources in different countries. The news sources used were from a range of countries including some that were expected to support the dominant framing of the issue of piracy; the US, the UK, New Zealand, Canada and Australia. Other news sources were selected because they were expected to provide an alternate discourse on the issue: Korea, Thailand, South Africa, Kenya, Mozambique, Zimbabwe, Israel, and regional news sources such as *Africa News, Garowe,* and *Aljazeera.* These sources were selected as they were expected to provide a different view point, or framing of the issue, than Western media. For example, *Al Jazeera* was selected as it was established fifteen years ago as the first independent Arab news channel to report on news in the region, and over the years it has expanded to provide news coverage on six continents including Africa (Aljazeera 2012). *Garowe* was selected for inclusion as again it is an independent news source based in the state capital

of Puntland and specializes in "publishing objective and timely Somali news from direct sources inside Somalia" (Garowe n.d.).

The media articles were located using the LexisNexis database that is available online, and also through specific news source's websites[1]. LexisNexis was selected as it provides access to world full text news sources from around the world that are "held in high esteem for their content and reliability" (LexisNexis 2012). The articles included in the LexisNexis database are major newspapers, news magazines, and trade publications. This allowed centralized access to specific newspapers that were selected as they would most likely represent the dominant discourse on the issue of piracy, as well as those that may provide an alternate understanding of the issue. Utilizing the LexisNexis database was also preferable to searching each different website for each individual newspaper source which would have been considerably more time consuming. In addition, this method ensured access to all news media for the desired time period as LexisNexis has extensive news media archives. This would not have been the case if each news media source had to be accessed independently, as many websites allowed access to archived articles for only a set period of time. For example in the preliminary stages of considering access to required media data, it was found that some new media websites only allowed access to archived articles that had been published in the preceding year, or ten years, and in some instances access was only allowed after paying for a membership. Furthermore, although the search was restricted to news media provided in English, the

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[1]This was done for approximately ten sources for two purposes: 1) to triangulate the data provided by LexisNexis, and; 2) to validate that the criteria used by LexisNexis for the inclusion in the results was an accurate representation of the actual news provided by these sources. This resulted in a 95 percent concordance rate.

LexisNexis database does provide translated versions of newspapers which allowed for data to be included in the analysis that would otherwise have been excluded.

The dataset was comprised by searching the publications for the following terms truncated with the word Somalia; pirate, piracy, and terrorism. Only publications that were available in English were included in the data. The data included a comprehensive representation of news publications on the issue of Somali piracy, for the time period beginning January 1992 and ending March 31 2012. Op-ed pieces, letters to the editor, and commentaries were excluded from the data as they often commented on prior stories that had already been included in the data. Further, duplicate stories were not included in the data if they shared the same article as previously included article in the data set, as was the case when news stories were picked up from a news service and then printed by more than one newspaper.

RESEARCH DESIGN AND CODING

Data were collected for a twenty year time period from 1992 until 2012 (the first three months). All primary and secondary data were first searched for discourse on piracy in Somalia. The search terms used in the analysis were pirate, piracy, and terrorism. These terms were selected to ensure that all discourse surrounding the issue was captured in the analysis. Each term was truncated and coupled with the word Somalia, and used to search the primary data: the UNGA annual report, UNSC reports to the General Assembly, the Secretary-General bi-annual reports to the General Assembly, the reports of the IMO, IMB, EU initiative and conference on piracy and NATO Civil Military Fusion Center news reports on the Horn of Africa region. If the issue of Somali

piracy was mentioned anywhere in a document then it was included in the preliminary data set. These documents were organized in chronological order from earliest to latest, and then read and coded for themes and patterns that emerged paying particular attention to the language that was both used and omitted in framing the issue.

The transcripts from the two piracy trials in Norfolk Virginia were downloaded from the website and an analysis was conducted on the language and discourse used by the various actors participating in the trial, such as the prosecutor, defense attorneys, witnesses, expert witnesses, the Judge and the defendants in the cases. The transcripts were organized chronologically, from the trial commencement date to the date of the sentencing hearing, and were examined for patterns and themes that emerged and identified. It was expected that the patterns that emerged would support those that emerged in the content analysis of the UNSC, UNGA, and Secretary-General documents, as the trials themselves represent the manifestation of the policies that have been created and enacted by the IPC, and are now being enforced.

The secondary data included 3, 253 media articles which were then analyzed for themes that emerged in the news coverage of the issue of Somali piracy. A categorical aggregation approach (Stake 1995; Creswell 2007), was taken where frames were categorized into dominant and sub-frames. The dominant frame represents the main framing of the issue, and the sub-frames represent secondary focuses in the news articles. The six themes that emerged from the data were 1) Threat to Trade, 2) Militarized Issue, 3) Individual Actors, 4) Terrorism, 5) Structural and 6) Arrest and Prosecution. Media articles that addressed the issue of Somali piracy as the act of an individual, or focused on providing coverage of a specific incident, or the product of rogue actors, were grouped

within the theme labeled 'Individual Actor.' Coverage that focused on the threat that

piracy posed to international trade were categorized under the theme 'Threat to trade.'

Media articles where the dominant coverage was on the need for, call for, or made

comments about a militarized response to the Somalia pirate were included under the

categorical theme of 'Militarizes issue.' When pirates and/or piracy were likened to or

directly associated with, or called terrorism, they were included in the category

'Terrorism.' When piracy was considered to be a product of the conditions in Somalia,

such as the lack of basic infrastructure, sanitation, and internal conflict, then they were

included under the thematic category termed 'Structural,' and when the focus was the

prosecution of individuals accused of piracy, or the need for a greater capacity, resources,

or facilities to prosecute pirates, they were categorized under the last frame 'Arrest and/or

Prosecution.'

LIMITATIONS

The qualitative method of case study analysis posed particular challenges. The

very purpose of case study analysis; the "study of an issue explored through one or more

cases within a bounded system" (Creswell 2007:73), limits the generalizability of the

findings to the case being studied (Glesne and Peshkin 1992; Silverman 2005) to the

policy decisions related to Somali piracy occurring in a twenty year period from 1992 to

March 2012. Although the findings of this study were expected to further the

understanding of how the IPC has come to identify and label piracy as a problem, and

form, justify, implement, and subsequently come to act on the current policies that have

been put in place to address the issue of Somali piracy, they cannot be generalized to

explain responses to piracy in other regions of the world. This is especially true as the underlying socio-historic, economic, and political conditions that undergird the issue of piracy in Somalia are different for other regions, such as Nigeria or Malaysia. Further, because a case study is bounded by time and space, the data included in this analysis is also bounded, meaning documents, media, and other informational sources on policy responses to Somali piracy will not be captured in this analysis. For example, the secondary data includes media articles that were available through the LexisNexis academic database and were triangulated through website sources that were available.

Other issues associated with using a case study method are validity and reliability (Silverman 2005) which center on the credibility of the findings as it relates to the ease in which they can be replicated. This credibility centers on the fact that "an act of analysis is an interpretation" where inferences are made from the data collected (Fielding and Fielding 1986:12). These inferences must be addressed through transparency and inclusivity, which guards against anecdotalism (Mehan 1979; Bryman 1988), and researcher bias (Merriam 1988; Silverman 2005). Additionally, triangulating the data by using multiple data sources and both primary and secondary data reduced threats to validity and reliability (Yin 2003; Silverman 2005).

There are also limitations associated with using the analytical techniques of both content and discourse analysis. Traditionally, content analysis is reliant on categories that have been designed prior to the analysis of the data. Critics assert that the concepts that are theorized to be found are easily done so, and other uncategorized concepts are overlooked (Atkinson 1992; Silverman 2007). In this case, although a content analysis technique was employed, a categorical aggregation approach was taken. This addresses

the above criticism as pre-determined categories were not used rather the data were categorized as themes that emerged from the data (Stake 1995; Creswell 2007). Criticism of discourse analysis revolves around the notion that very often during discourse there is more than one participant present which impacts the end result, i.e. what is said, and what is not said (Schegloff 1982). This is relevant to the analysis of the primary and supplemental data in this study, as although the official documents issued by the different branches of the UN (UNSC, UNGA, the Reports of the Secretary General, and the IMO), and the other organizations such as the IMB, the EU and NATO, were analyzed, the analysis was restricted to the documents made available. Documents and meetings that are not transcribed, or made available to the public could not be included in this analysis. Therefore, there is a possibility that the understanding of the socio-political relations impacting policy reactions to the issue of Somali piracy was limited.

Before presenting the findings from the analysis, a historical overview of Somalia is provided in the following chapter, paying particular attention to the economic, political, and social development of the country since colonialism.

CHAPTER V

CASE STUDY

The region known today as Somalia has a long history of divisiveness and conflict which can be traced back to its occupation by colonial powers (see Figure 1 for a current map of the country). The northern region was colonialized by Britain, the Southern region of Somaliland by Italy, and regions in the West were occupied by Ethiopia and France (Ahmed and Green 1999; Cliffe 2005; Rothe and Collins 2011). Although the northern and southern regions were unified in 1960, outbreaks of localized violence between opposition groups, has plagued the country and continues to do so until this day. Despite the decade immediately following independence remaining relatively free of violence, the goal of uniting the region and the Somali people into a single nation, largely failed and fueled the inter-state conflict with Ethiopia in the 1970s (Cliffe 2005).

Somali political and societal structure is complex operating along clan-lines and family lineage and by "dia-paying" groups referred to as *Jilib* or *Bah* (Ahmed and Green 1999). Dia-paying groups are contractual arrangements based on the payment of blood-wealth based on the settlement of feuds that developed within or between clans. It is the "the basic political and judicial unit of pastoral society" (Lewis 1961:6). This system impresses on families and clan groups a responsibility for resolving disputes resulting from acts committed by or against their own clan members. Throughout the colonial era, individuals, usually elders were appointed and paid to represent their groups in political and social decision making (Ahmed and Green 1999).

Figure 1.   Map of Somalia as Depicted in the United Nations Report of the Secretary General April 2011

Further compounding the heterogenous nature of Somali society are the different cultures, social structures, and languages of the clans. In the north they are nomadic pastoralists, who rely primarily on livestock, and in the south they are settled agro-pastoralists who rely predominantly on agriculture (Mukhtar 1996; Ahmed and Green 1999). The colonial occupation of the different regions also meant that Somalis in these two regions grew up in different and distinct territorial regions with different administrative traditions and languages. For example, in French occupied Djibouti they spoke French, they spoke English in Somaliland, Italian in Somalia, Amharic in Ethiopia, and in the inter-state areas hosted with Kenya (known as the Northwest Frontier District) they traditionally spoke a mix of languages including both Swahili and English (Ahmed and Green 1999). After Independence therefore, efforts to unite the region occurred solely in a geographic sense, as the nation remained divided economically, politically and socially along deeply embedded ancestral lines (Murphy 2011; Rothe and Collins 2011).

This division fueled early periods of conflicts during Somalia's first attempt at post-independence democratic governance, especially as the two distinct northern and southern regions had diverging interests and little contact economically. For example, the elites in the north were reluctant to recognize and deal with the south (Terdman 2008), and as a result became resentful of their underrepresentation in Mogadishu (Rothe and Collins 2011). During this time period, the military and the Somali National Army had largely been excluded from politics. This was contrary to the goal of the Somali military who garnered the support of the Somali people as they were credited with protecting Somali's borders with Ethiopia and Kenya (Terdman 2008). This provided the impetus, as well as the social environment for a coup d'état.

In 1969, President Abi Rashid Ali Shermarke was assassinated in a bloodless coup by General Siad Barre with the assistance of the Supreme Revolutionary Council (SRC); a group of ex combatants, military and police officers (Rothe and Collins 2011). Barre made promises to "cure all the country's ills" (Lewis 1994:150), and initially gained support from the country's people who welcomed the possibility of change (Africa Watch Committee 1990). However, almost immediately after seizing power, Barre, with the support of the SRC, arrested and detained leading members of the democratic regime, outlawed political parties, suspended the constitution (Terdman 2008), and abolished the clan system where even making reference to clan allegiances was deemed illegal (Lewis 1994; Human Rights Watch 2007). Barre instituted a new security agency, the National Security Service (NSS) who were responsible for monitoring offenses of "nepotism and tribalism" (Human Rights Watch 2007:10). This marked the beginning of Barre's regime, one that became increasingly corrupt, marred by political favoritism and oppression, with Barre placing himself in control of all aspects of power, and in effect creating an autocratic security state (Amnesty International 1990; Human Rights Watch 2007).

Additionally, during this era Somalia allied with the Soviet Union assuring the influx of Cold-war generated financial support, and created a state dependency on foreign aid that has been likened to a "castle built on sand" (Menkhaus 2006:80). Somalia's allegiances with the Soviet Union suffered seriously when Barre's government initiated an attack on the Somali populated Ogaden region of neighboring Ethiopia in 1977. The Soviet Union abandoned their support of Somalia, siding with the Marxist regime of Ethiopia (Menkhaus 2007), resulting in Somalia's military defeat by the Ethiopians in

1978 (Human Rights Watch 2007). Barre reacted strongly to the withdrawal of support

expelling all Soviet military experts and representatives from Somalia (Korn 1988;

Samatar 1988). Barre then looked to the West for support, and received considerable

backing from the US who helped provide the financial resources to expand the military

from 3,000 government troops estimated at Somali's time of independence, to 120,000 in

1982 (Hussein 1995). Financial support from the West however, decreased significantly

by 1989 as media and human rights groups began reporting on the massive abuses being

committed by the Barre regime against internal opposition groups (Human Rights Watch

2007).

Opposition groups had begun to form and strengthen along the deep rooted

ancestral patronage and clan lines that Barre had attempted to abolish. For example,

Barre's alienation of the Isaaq clan resulted in the formation of the Somali National

Movement (SNM) in 1981. The SNM then launched small-scale attacks against both

government and military targets within Barre's regime (Lewis 1994). In response Barre

initiated large-scale bombing attacks of villages and towns in the North, killing tens of

thousands of civilians as well as displacing approximately one million more (Gersony

1989; Lewis 1989; Human Rights Watch 2007). Despite Barre's efforts, his regime came

to an end when opposition groups formed a coalition (including the SNM, the United

Somali Congers (USC), and the Somali Patriotic Movement (SPM) and ousted Barre

from power (Davies 1994).

The vacuum created by Barre's departure resulted in intense internal fighting for

political and economic power in Mogadishu (Africa Watch and Physicians for Human

Rights 1992), with the different groups divided strongly along clan lines. As indicated by

Somali historian Ioan Lewis (2008:76),

> By destroying his country's economy through corruption and inefficiency, Siad
> [Barre] also promoted those conditions of scarce resources and insecurity on
> which clan loyalty thrives, since clan loyalty offers the only hope of survival.
> And by providing arms – directly and indirectly – Siad's legacy....ensured a wide
> and persistent prevalence of extremely bloody clan conflict.

As internecine fighting continued Mogadishu became divided into two zones,

approximately 300,000 Somali's lost their lives, many more were displaced, and to the

South in the more fertile lands, the city harvests were interrupted leading to an

"unprecedented famine" (Human Rights Watch 2007:13).

Between 1991 and 1997 multiple efforts were made, with the aid of the

international political community, to end the fighting and resolve the inter-clan warfare.

These efforts included a failed UN-negotiated ceasefire in 1992, which prompted the

initiation of the UN peacekeeping mission called the United Nations Operation for

Somalia (UNOSOM). In addition to deploying peacekeeping troops to the region in an

effort to stop the fighting, the mission was also tasked with protecting relief workers and

ensuring that humanitarian aid reached the tens of thousands of people dying of

starvation, relief that had previously been prevented from reaching those in need (Human

Rights Watch 1995; Human Rights Watch 2007). UNOSOM failed, but efforts were

renewed when the US headed a UN task force, referred to as UNITAF or Operation

Restore Hope, in 1992. In 1993, UNOSOM and UNITAF merged to form a new mission

UNOSOM II adding 30,000 troops to the cause (Human Rights Watch 1995), but they

were not any more successful than previous missions. In 1994 the US withdrew their

troops and the mission ended shortly thereafter in 1995 (Hirsch and Oakley 1995). This

left Somalia still in a state of political turmoil with more armed groups than before any

external intervention occurred (Waal 2007).

Negotiations in August 2000, known as the Arta negotiations led to the

implementation of the Somali Transitional National Government (TNG) that was headed

by a former minister of the Barre regime, Abdulkasim Salad Hassan, and consisted of a

parliament that was supposed to be representative of the clans warring for political

control (Human Rights Watch 2007; Murphy 2011). The TNG failed because of the lack

of support from local warlords, who having been excluded from the Arta negotiations

formed an opposing administration called the Somali Reconciliation and Restoration

Council (SRRC) that delegitimized the TNG. In 2004, following two years of talks

between the TNG and the SRRC, Kenya brokered a power sharing agreement between

the two sides which established the Transitional Federal Institutions which consisted of a

Transitional Federal Government (TFG), a Transitional Federal Charter (TFC), and a 275

member Transitional Federal Parliament (TFP) (Human Rights Watch 2007).

The TFG headed by newly elected President Abdullahi Yusuf Ahmed, who then

installed Ali Mohammed Gedi as Prime Minister, relocated from Kenya to Somalia in an

attempt to solidify their control of the region (Adow 2006). Immediately, however the

TFG divided with members settling in two different geographic areas (International

Crisis Group 2006). In 2004, the Islamic Courts Union (ICU) also came into being as a

group of clan-based courts that had been operating in Mogadishu since 1994, then

merged (Menkhaus 2006; Menkhaus 2007). The ICU gained considerable support from

the Somali people, but caused concern in the international arena due to possible

affiliations with terrorist groups (US State Department 2005). The US, spurred by the

bombings of the US embassies in Kenya and Tanzania, took the lead role in helping to establish a new alliance of warlords in Mogadishu called the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) that was supposed to aid in the capture of individuals responsible for the bombings. This effort backfired however, leading to increased support of the ICU, and the intense fighting between the two groups resulted in the defeat of the ARPCT in June 2006. The emergence of the ICU as a strong political and military presence in Somalia renewed international interest and backing of the then failing TFG (Human Rights Watch 2007).

Having increased its territorial control within Somalia, the ICU reorganized itself into the Council of the Somali Islamic Courts (CSIC) and was headed by Sheikh Hassan Dahir Aweys who was thought to be linked to terrorists by both the US and Ethiopia (Lacey 2006). Ethiopia was also concerned with the potential military threat the CSIC held over possibly uniting Somali communities residing in Ethiopia's Ogaden region, as well as Northern Kenya (International Crisis Group 2005). With support from the US, Ethiopia provided financial support as well as troops and military armaments to the TFG base in Baidoa. In 2006, several attempts were made through peace talks to broker stability, but despite these efforts both the CSIC and the TFG continued to organize and expand their militaries and the CSIC continued to expand its territory. Fearing an attack on the only remaining TFG stronghold Baidoa, the TFG with the support from the Ethiopian military increased its presence there, as well as in both Puntland and other areas of Somalia (Human Rights Watch 2007). The peace talks failed and the conflict continued in the region.

The IPC responded to the continued violence by authorizing military intervention in the region (United Nations Security Council 2006), which was seen to be in support of the TFG as well as the Ethiopian government. In response, the CSIC gave the Ethiopian military a week to leave the country, or threatened they would be forcibly removed (Yusuf 2006). The Ethiopian military ignored the CSIC and fighting broke out again, resulting in the expulsion of the CSIC from Mogadishu (Human Rights Watch 2007) into Southern Somalia (Pflanz 2007). The US, who prior to this had only offered verbal support of Ethiopia's military efforts, directly involved themselves in the fighting and launched several air attacks (Garamone 2007) and deployed Naval ships to ensure none of the CSIC supporters fled into the Gulf of Aden (Human Rights Watch 2007; Tomlinson 2007). In addition, Kenyan forces were also employed to ensure that militants did not find refuge by crossing the border into neighboring Kenya (Human Rights Watch 2007).

Fighting included insurgency attacks, assassinations of governmental officials, attacks on police stations, as well as military convoys and bases (Human Rights Watch 2007). In March 2007 the African Union deployed troops from Uganda in an effort to provide some stability in the region (United Nations Security Council 2007d). Also in March the TFG made efforts to implement the first ever disarmament program, but instead of success, fighting spread and over 200 people were wounded and 20 military personnel working for the TFG were captured by the insurgency, executed and their burnt bodies dragged through the streets of Mogadishu (Hassan 2007). As the hostilities continued the impact on Somali civilians was devastating with hundreds killed and an estimate of 365,000 more fleeing the county's capital when there was a brief respite in

the fighting (Editorial 2007a; Editorial 2007b; United Nations Office for the

Coordination of Humanitarian Affairs 2007). There has been however, a complete

disregard for civilian life and international humanitarian law from Ethiopian forces, the

insurgency and the TFG, and the "suffering of hundreds of thousands of Somali civilians

was met with almost total silence" (Human Rights Watch 2007:35).

The fighting in Somalia did not cease in 2007, but continues to this day, with

renewed concern from international actors such as the US, over insurgency groups being

affiliated with terrorist groups (Bahadur 2011; Murphy 2011). In 2009, the mandate of

the TFG was extended, with the appointment of a new President, Sheikh Sharif Sheikh

Ahmed, but peace has not been secured in the region (Murphy 2011). The failure of the

TFG to gain control, has elicited further support from the Kenyan government who

pledged troops to fight Al-Shabaab in Somalia in October 2011 (Human Rights Watch

2012), and the African Union, who have continued to provide troops to the region, and in

early 2012 the UN sanctioned an 17,000 increase in troops dedicated to the mission in

Somalia (ANISOM) (Damon 2012).

The decades long hostility has had many adverse consequences for the Somali

people, including torture, executions, and indiscriminate killings (Human Rights Watch

2012), as well as leaving much of the country in a state of humanitarian crisis which has

been further compounded by the drought and subsequent famine that plagued the country

in 2011 (Internal Displacement Monitoring Centre 2012). For example, in August 2011

more than half of the Somali population, which is approximately four million people,

were in need of food aid (Human Rights Watch 2012). Furthermore, 80 percent of the

Somali population were without safe drinking water (Internal Displacement Monitoring

Centre 2012), and although the drought and famine has officially ended, there are approximately 1.5 million Somali's who have been internally displaced (Internal Displacement Monitoring Centre 2012), and a further 1000 refugees continue to arrive daily at the Kenyan border seeking protection from the violence (Human Rights Watch 2012). This population is without the most basic services, and is at high risk for disease, with dehydration and diarrhea being the leading cause of death of Somali people (United Nations Chidren's Fund 2012), and despite efforts by the international community to provide humanitarian assistance, insurgency groups attack aid workers and prevent the assistance from reaching those in need (Human Rights Watch 2012).

The political, economic, and social instability in Somalia can be traced back to colonialism, the legacy of which has left the country and its people with no central government, a lack of basic infrastructure, and a population that are not only plagued by violence, but are in a situation that can only be characterized as a humanitarian crisis (Rothe and Collins 2011; Human Rights Watch 2012). Having provided an overview of the socio-political history of Somalia, the following section provides the findings from the data analysis.

CHAPTER VI

FINDINGS

To begin a discussion of the findings it is necessary to first present the actual

occurrences of piracy attacks in Somali waters. The IMB, a non-profit agency associated

with the International Chamber of Commerce (ICC) organized for the purpose of

providing information to the private shipping industry, indicates that there has been a

significant increase in the number of pirate attacks in Somali waters since 1992.

Figure 2.   Number of Pirate Attacks as Reported to the International Maritime
            Bureau from 1992 to 2012
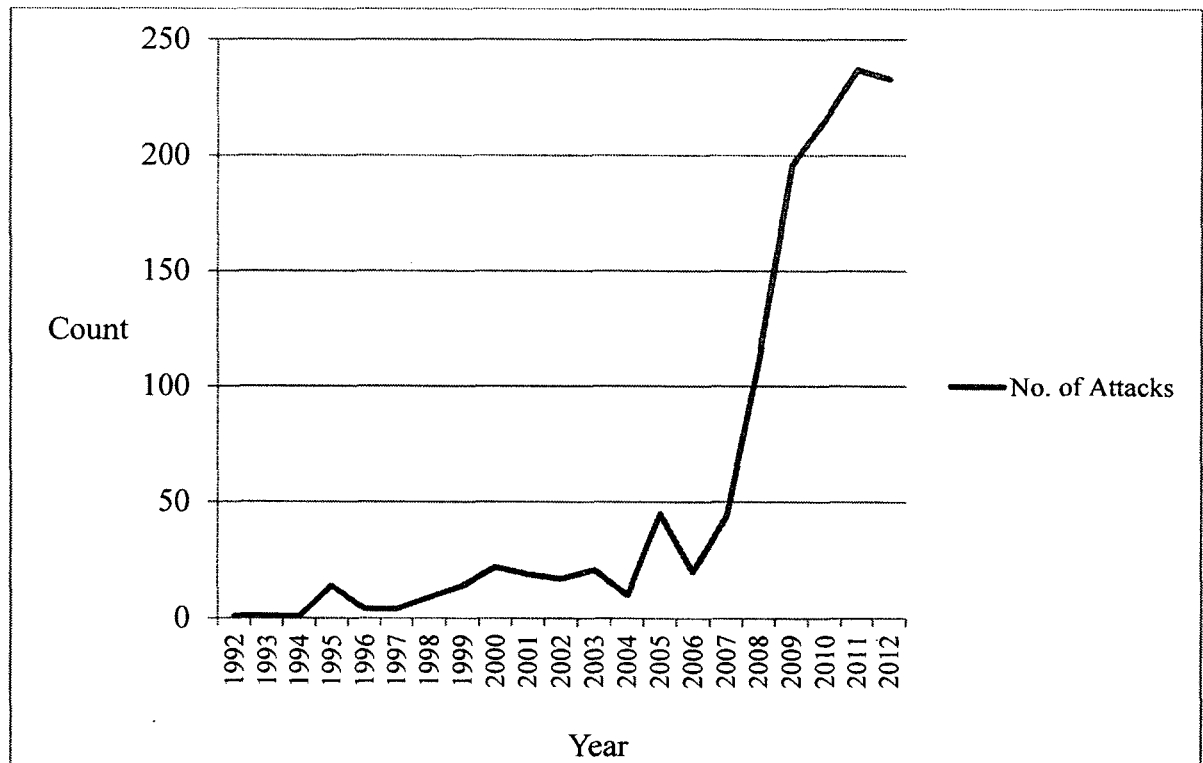
Figure 2 shows that there was one attack per year from 1992 to 1994, in 1995 there was

an increase in attacks to 15, followed by another decrease in 1996. The rates of attack

then fluctuate between four and 22 attacks per year for the next nine years, before they

dramatically increase in 2005 when there were 45 piracy attacks. There is another

increase in attacks in 2008, where the number reaches 111, more than double the number

of attacks for any preceding year. The number of attacks then continues to climb over the

course of the following three years amounting to 237 attacks in 2011, a number likely to

be exceeded by the number of reported attacks in 2012 with 233 attacks being reported

for the first six months of the year. The results from the primary data – the UN

documents – follow a similar pattern, mirroring the number of attacks reported to the

IMB.

Of the 444 documents retrieved in the final dataset, 129 specifically mentioned

the issue of Somali piracy or addressed the issue of piracy more generally as it applied to

the Gulf of Aden and/or the East African maritime region. Figure 3 shows the number of

documents addressing Somali piracy by year. The pattern is similar to that depicted in

Figure 2, where there are no more than four documents per year containing information

on the Somali pirates until 2005 when the number increases to six documents. The

number of documents then increases until it peaks in 2011 with 27 documents addressing

the issue. This appears to indicate that more UN attention is paid to the issue of Somali

piracy when there are more attacks reported to the IMB, i.e. more documents containing

information on the Somali pirate. As the documents came from different UN branches

some carry more significance than others. For example, a Security Council Resolution

would have greater impact and may result in specific action by member states, than a

press statement. Therefore, the issuing branch of the document is important to understanding the significance of the documents content.

Figure 3.   Number of United Nations Documents Addressing Piracy in Somalia
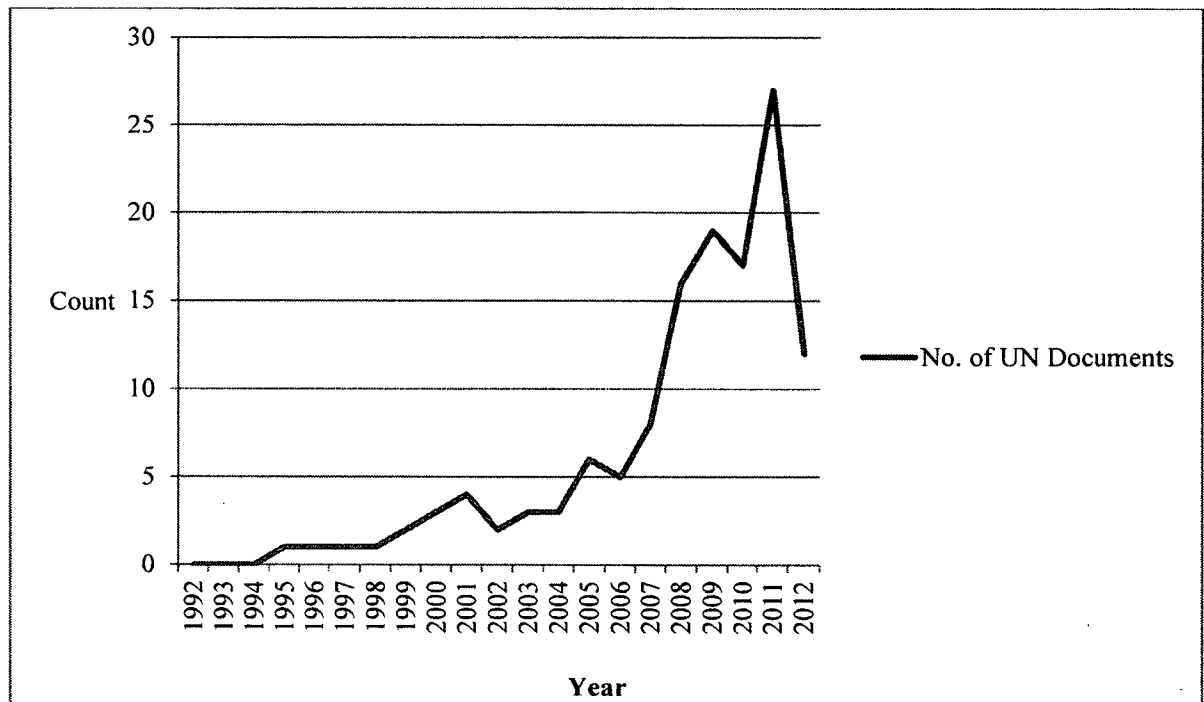
Table 1 shows an annual count of the documents addressing Somali piracy by the issuing UN branch including the Security Council and General Assembly resolutions, Reports from the Secretary General, letters between the Secretary General and the President of the Security Council, Statements from the President of the Security Council as well as Security Council Press Statements on the situation in Somalia. There are more documents addressing the issue of piracy in Somalia from 2005 onwards. The UNSC begins issuing resolutions in 2006 and continues to do so through 2012. In a similar vein, there is a considerable increase in the number of reports issued by the Secretary General

beginning in the year 2000, which then increases again in 2009 with nine reports. There

is little mention of the issue in letters between the Secretary General and the President of

the Security Council until the late 2000s. The same is true of Presidential and Press

statements from the Security Council, and the UN General Assembly addresses the issue

in no more than one report per year, making no mention of the issue in many of the

annual reports. Even if a document covers the issue of piracy in Somalia there is a

significant variation in the number of words dedicated to the issue. Some reports contain

only a few sentences on the issue, whereas others are multiple page reports dedicated

solely to this issue.

Table 2 provides the number of words addressing the issue of Somali piracy from

each of the UN branches. There were a total of 178, 410 words addressing the issue of

Somali piracy from 1992 to 2012 (the first three months 2012). With the exception of the

UNGA Reports of the Secretary General on the Oceans and Laws of the Sea[1], the data

indicate that all of the branches of the UN begin to discuss the issue of Somali piracy at

greater length in 2000.

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[1] In 1995 the United Nations General Assembly Report of the Secretary General on Oceans and Laws of the Sea provides an additional section to their annual report that is titled "Piracy and Armed Robbery at Sea" that contains general information about regions experiencing increased attacks. Prior to 2000 there is no specific reference to Somali piracy instead there are general conversations on the issue and its impact on maritime peace and security.

Table 1.   Number of United Nations Documents by Branch and Year

Year	Number of Documents by United Nations Branch							
	UNSC Resolutions	UNGA Resolutions	Oceans and Laws of the Sea Report of the Secretary General	UNSC Reports of the Secretary General	UNGA Report of the Secretary General on the State of the Organization	Letters from the Secretary General to the President of the Security Council	UNSC Press Statement on Somalia	UNSC Statements by the President of the Security Council
1992	0	0	0	0	0	0	0	0
1993	0	0	0	0	0	0	0	0
1994	0	0	0	0	0	0	0	0
1995	0	0	1	0	0	0	0	0
1996	0	0	1	0	0	0	0	0
1997	0	0	1	0	0	0	0	0
1998	0	0	1	0	0	0	0	0
1999	0	1	1	0	0	0	0	0
2000	0	1	1	1	0	0	0	0
2001	0	1	1	1	1	0	0	0
2002	0	0	1	1	0	0	0	0
2003	0	1	2	0	0	0	0	0
2004	0	1	2	0	0	0	0	0
2005	0	1	2	1	0	0	0	2
2006	1	0	2	1	0	0	0	1
2007	1	0	1	3	0	2	0	0
2008	5	1	2	4	0	1	1	0
2009	2	0	2	7	1	3	1	0
2010	4	1	2	9	0	1	0	2
2011	4	1	2	9	1	3	2	1
2012*	1	2	0	1	0	4	1	4
Total	17	11	26	38	3	14	5	10

*Data is limited to first six months of 2012

It is during this time period that the amount of words discussing the issue considerably increases until 2008 when there are several lengthy documents that specifically address the issue, such as the six UN Security Council resolutions issued in 2008 (1801, 1816, 1838, 1844, 1846, 1851) that total 5,047 words, a 2009 Report of the Secretary General specific to the issue of Somali piracy totaling 20,067 words, and the Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts that was 18,748 words. There remains relatively stable coverage from 2008 to 2011, and it decreases slightly in 2012. However, little emphasis can be placed on the decrease in 2012 as the data only represents the first three months of the year. Similar patterns also emerge from the results of the media coverage of the Somali pirate.

The data from the media on Somali piracy resulted in a total of 3,253 media documents addressing the issue. Figure 4 provides the number of articles per year as compared to the number of attacks as reported to the IMB. The data illustrates that the media follow a similar pattern to the number of attacks reported to the IMB, although the amount of coverage is disproportionate to the number of attacks. The data shows that there was little coverage of the Somali pirate from 1992 to 1998, followed by a small spike in coverage in 1999 with 86 news articles addressing the subject. There was then an increase in coverage in 2000 with 34 articles covering the topic, followed by a drop of coverage in 2001. This continues until 2004 when there is another increase in the number of media reports (n=37), however there is then a significant increase in 2005 where the number of articles jumps to 234.

Table 2.   Word Count by United Nations Document Source

Year	Number. of Words by Document Source							
	UNSC Resolutions	UNGA Resolutions	Oceans and Laws of the Sea Report of the Secretary General	UNSC Reports of the Secretary General	UNGA Report of the Secretary General on the State of the Organization	Letters from the Secretary General to the President of the Security Council	UNSC Press Statement on Somalia	UNSC Statements by the President of the Security Council
1992	0	0	0	0	0	0	0	0
1993	0	0	0	0	0	0	0	0
1994	0	0	0	0	0	0	0	0
1995	0	0	352**	0	0	0	0	0
1996	0	0	264**	0	0	0	0	0
1997	0	0	334**	0	0	0	0	0
1998	0	0	1616**	0	0	0	0	0
1999	0	6	1521**	0	0	0	0	0
2000	0	178	74	255	0	0	0	0
2001	0	323	574	66	58**	0	0	0
2002	0	0	2142	41	0	0	0	0
2003	0	272	1358	0	0	0	0	0
2004	0	123	1894	0	0	0	0	0
2005	0	201	1608	114	0	0	0	169
2006	26	0	1732	201	0	0	0	160
2007	98	0	1133	448	0	397	0	0
2008	5047	234	890	2326	0	560	19	0
2009	2410	0	1712	20067	91	1497	52	0
2010	4136	404	2094	40627	0	182	0	839
2011	8275	365	1755	29908	40	24142	186	68
2012*	214	248	0	311**	0	10324	95	1554
Total	20206	2354	21053	94364	189	37102	352	2790

*Data is limited to the first three months of 2012. ** Data about general regions, not Somalia specifically.

Figure 4.   Line Chart Depicting the Number of Actual Pirate Attacks as Reported to
the International Maritime Bureau and the Number of Media Articles for
the Time Period 1992 to 2012
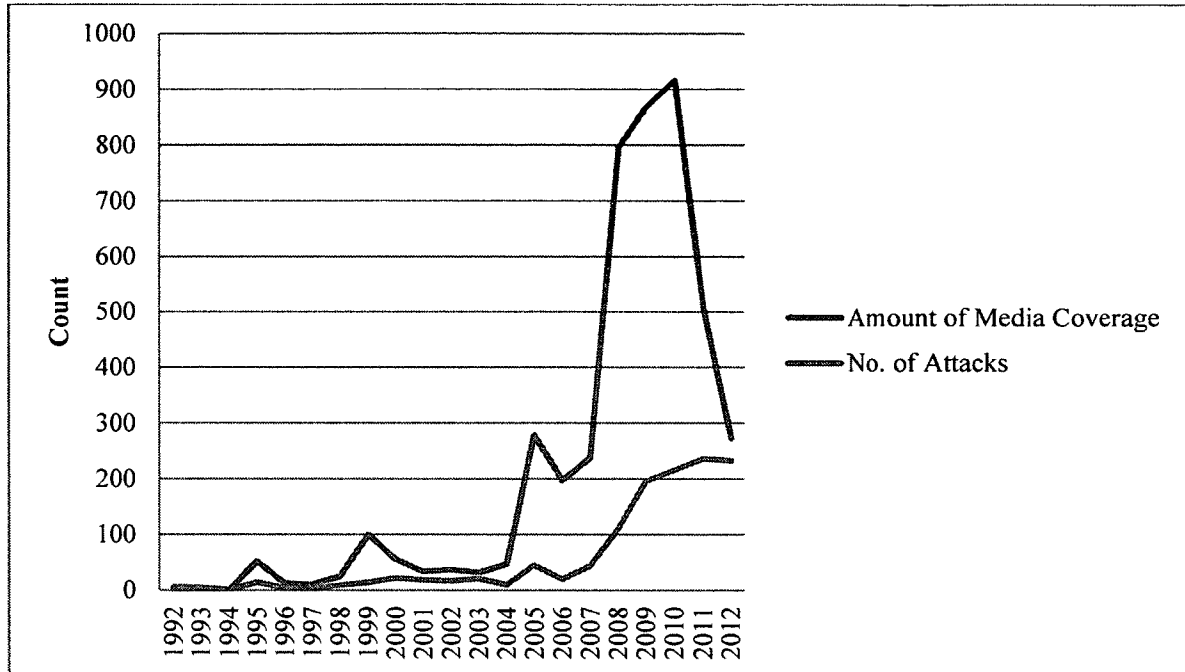
Then in 2008 there is a dramatic increase to 684 articles on the issue followed by 672 in

2009, and then 700 in 2010, before it drops in 2011 to 271 media articles on the issue of

piracy in Somalia The data therefore indicates that the issue of piracy appears to be of

minimal importance during the 1990s with little coverage of the issue, and becomes an

issue of greater importance in the 2000s, especially in and after 2008 when the number of

articles on the issue increase in number dramatically. This increase in media coverage, as

well as the coverage of the issue by the UN, suggests there is a reason for the increased

attention on the issue, such as the use of violence in the commission of the crime.

Results from the IMB indicate that from 1992 to 2012 the level of violence

attributed to the Somali pirate remains relatively low. As shown in Figure 5, the level of

violence perpetrated against crews averages 1.1 deaths per year, and does not exceed four

people in any given year until 2011 when it increases to eight people. Likewise, the

number of crew who sustained injuries also remains relatively low, averaging 1.7 peoples

sustaining injuries per year until 2010, before it increases in 2011 reaching its highest

with 32 people sustaining injuries. The relatively low rate of injury and death can be

explained by the modus operandi of the Somali pirate. Pirates operating in the region of

Somalia most commonly kidnap the crew for the purpose of ransom, opposed to piracy in

other regions where seizures of the ships or the cargo for the purposes of making sales for

profit, are the primary method (Hastings 2009).

Figure 5.   Level of Violence Perpetrated Against Crew as Reported to the
             International Maritime Bureau
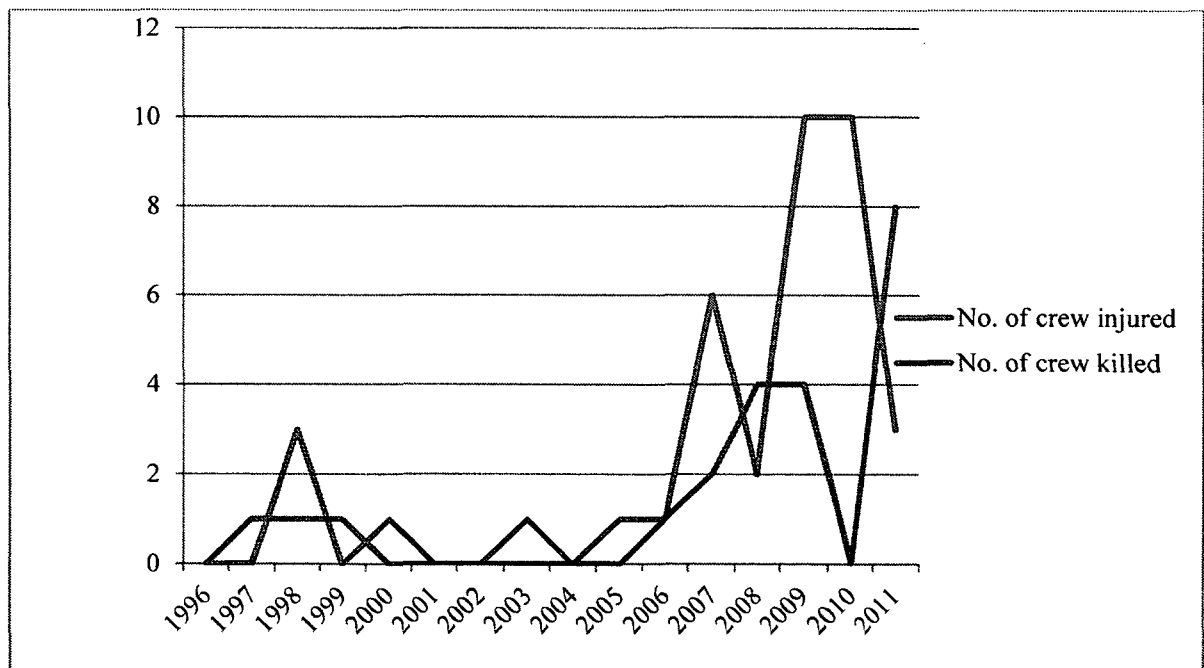
Additionally, the data from the IMB does not provide any contextual information on the incidents where violence occurred. For example, there is no information on whether the victim's behavior precipitated the violence, i.e. resisting the taking of the ship, fighting and/or using firearms against their attackers. Without, this information it is difficult to determine whether the actions of the crew precipitated or contributed to, the violence committed during the attack.

Table 3 depicts the number of crew injured or killed as a percentage of the total pirate attacks for Somalia for each year. This Table indicates that as the number of attacks increases the percent of violence decreases. For example, when there is a dramatic increase in the number of attacks in 2008 only 1.8 percent of those attacks resulted in a crew member being injured, and 3.6 percent of those attacks resulted in a crew member's death. In addition, when the number of attacks peaked in 2011, at 237 attacks, only 1.37 percent of those resulted in a seafarer being injured, and 3.38 resulted in a death.

Although any violence or death perpetrated by one person against another should not be marginalized, the level of violence committed by the Somali pirate compared to other regions of the world known for pirate attacks is relatively minimal. For example, the number of deaths attributed to pirates from other regions is consistently greater than those attributed to attacks in Somalia. Consider in 2006 there were six deaths attributed to pirates in the Philippines, three in the South China Sea and one by Somali pirates (International Maritime Bureau 2006). Similarly, in 2008 there were seven deaths attributed to pirates in the Philippines and four to those in Somalia (International

Maritime Bureau 2008). Further, there are other areas of the world where the rate of

injuries perpetrated by pirates against crew are consistently higher than those in Somalia.

Table 3:   Number of Crew Injured and Killed as a Percentage of Total Attacks in
            Somalia

Year	No. of attacks	No. of crew injured	No. of crew injured as percent of attacks	No. of crew killed	No. of crew killed as percent of attacks
1992	1	0	0	0	0
1993	1	0	0	0	0
1994	1	0	0	0	0
1995	14	0	0	0	0
1996	4	0	0	0	0
1997	4	0	0	1	25
1998	9	3	33.33	1	11.11
1999	14	0	0	1	7.14
2000	22	1	4.55	0	0
2001	19	0	0	0	0
2002	17	0	0	0	0
2003	21	1	4.76	0	0
2004	10	0	0	0	0
2005	45	1	2.22	0	0
2006	20	1	5	1	5
2007	44	6	13.64	2	4.55
2008	111	2	1.80	4	3.60
2009	196	10	5.10	4	2.04
2010	216	10	4.63	0	0
2011	237	3	1.37	8	3.38

One such area is Nigeria, where in 2007, 15 crew were injured (International Maritime Bureau 2007), in 2008 there were 44 (International Maritime Bureau 2008), and 32 in 2011 (International Maritime Bureau 2011). These numbers far exceed the numbers attributed to the Somali pirate (see Table 3).

The relatively low level of violence is further illustrated when the numbers of deaths caused by Somali pirates are compared with the number of mariner deaths in different countries and around the world. In 2005 statistics from the International Maritime Organization from seven different countries (Denmark, Estonia, Germany, Norway, Spain, Sweden, and Vanuata), indicate that there were 55, 585 casualties at sea attributed to accidents and complications of which 60 were confirmed mariner deaths (International Maritime Organization 2011). Furthermore, the number of fatalities that occurred in 2010 on commercial vessels in US waters alone totaled 43 (Chambers 2010). When comparing the level of violence credited to piracy in Somalia with violence committed during piracy attacks in other regions of the world as well as general statistics on mariner deaths, it appears that the policy response that has led to the increased military presence in the Gulf of Aden is not about the threat of, or previous perpetrations of violence against seafarers. To understand this disjuncture between the facts of the violent occurrences and the projected or claimed threat posed by the Somali pirate, the following section addresses the evolving discourse of piracy in Somalia, beginning with initial coverage of the issue from the media.

CHANGES IN THE DISCOURSE

From 1992 to 1999 there is minimal coverage of the issue of Somali piracy in the media. Media articles during this time period focus on the issue of piracy being a product of a few rogue actors. For example, in 1995, there is a small but visible increase in coverage of the issue of Somali piracy with 38 media articles covering the issue. This increase in media coverage can be attributed to an individual incident of piracy that received repeated coverage in the media; the attempted hijacking of a British-Canadian yacht, the *Longo Barda*. In this case, the pirates attempted to hijack the vessel but before they could board the vessel they were scared away by a Canadian Navy warship. Of the 38 articles, over 40 percent of the articles covered the attack focusing on the fear experienced by the passengers; "Mike Slade, the yacht's owner, who spoke to the crew by radio said: "They would almost certainly have been murdered but for the intervention of the Canadian navy"" (Chaudhary 1995:5). Another notable increase in coverage of the issue of Somali piracy occurs in 1999. There were 86 media articles covering the issue of the Somali pirate that year, a considerable increase over the previous year when there were only 16 articles. This can be linked to an event that emerged from the discourse; the killing of Alan MacLean on September 11, 1999.

Alan MacLean was a Scottish national who was sailing in a French yacht the *Correlation*, off the coast of Somalia with two other people. MacLean disappeared from the yacht and was initially considered to have fallen victim to murder by Somali pirates (McGowan 1999). Of the 86 articles addressing the issue of piracy in Somali coastal waters in 1999, 51 were about the case of Alan MacLean. Similarly, in 2000 there were 34 articles addressing Somali piracy and 25 were about this particular case. The data

from the media suggest that MacLean's family, especially his father were extremely

vocal about the disappearance of their son urging the British authorities to investigate his

killing. For example, the *Herald* in Glasgow reports that "Distraught father calls for

Interpol inquiry after Aberdeen adventurer killed on yacht is buried at sea" (Smith

1999:3), The *Daily Mail* in London reports that "Family seeks answers as Cook demands

inquiry into 'pirate' killing," (Brocklebank 1999:39), and in an interview reported by *The*

Independent (London), MacLean's father said "The boy died doing what he loved doing

but we just want to know the truth. We have got to keep pushing this. You cannot let it

go" (O'Sullivan 1999:3). Interesting to note, is that the story was carried by newspapers

almost exclusively from not only the West but the United Kingdom, with news outlets

such as *The Independent (London), The Times (London), The Aberdeen Evening Express,*

The Daily Mail and Mail on Sunday, The Herald (Glasgow), The Mirror, The Scotsman

and Scotland on Sunday, the Evening Standard, The Guardian (London), and the *Western*

Daily Press, as well as many more local, regional and national papers in England,

Scotland, and Wales. Also of significance, is that other cases, albeit less violent, that

have been directly connected to piracy in Somalia such as the hijacking of a Ukrainian

flagged fishing vessel (Redfern 1999) and the *MV Sea Johanna* with her Pakistani and

Tanzanian crew (Kwena 1999), garnered very little attention in the media during this time

period (with the exception of *Africa News* in Nairobi).

A significant change in the discourse, arguably the most dramatic, as presented in

the media occurs after the 2001 terrorist attacks in New York City, where piracy in

Somalia becomes increasingly framed as an issue associated with terrorism. Table 4

shows that the number of media articles addressing the issue of Somali piracy in general

prior to 2001 was 198, and after 2001 there were 3,055 articles. This indicates that the

issue itself has become significantly more newsworthy.

Table 4. Content Analysis of LexisNexis News Articles 1992 to 2012 (January 1 to March 31 2012)

Year	Threat to Trade	Military issue	Individual Actors	Terrorism	Structural	Arrest and/or Prosecution	Total
1992	1	0	3	0	1	0	5
1993	1	0	3	0	0	0	4
1994	0	0	0	0	0	0	0
1995	4	11	22	0	1	0	38
1996	5	1	2	1	0	0	9
1997	3	0	3	0	0	0	6
1998	7	0	9	0	0	0	16
1999	16	1	65	1	3	0	86
2000	5	2	25	0	2	0	34
2001	2	0	10	1	2	0	15
2002	12	2	3	1	2	0	20
2003	7	1	2	0	1	0	11
2004	20	3	10	2	2	0	37
2005	101	11	58	36	28	0	234
2006	99	41	11	6	20	0	177
2007	150	26	6	6	6	0	194
2008	359	233	38	10	44	0	684
2009	249	329	28	13	51	2	672
2010	296	226	116	15	31	16	700
2011	68	86	43	10	15	49	271
2012	6	25	2	0	3	4	40

In addition, there were only two articles that framed Somali piracy as being directly

associated with terrorism prior to 2001 (from 1992 to 2000 – an eight year period), but

after 2001 (from 2001 to 2012 – an eleven year period), this number dramatically

increases to 100 articles. This indicates that terrorism has become part of the discourse on piracy in Somalia. Typical stories from media articles where piracy is equated with terrorism read "There is an emerging strain of terrorist piracy which desperately needs to be addressed. These people have replaced their cutlasses with Kalashnikovs (Editorial 2004:24), "Seafarers becoming new target of international terrorists" (Darling 2004:13), "an attempt to hijack a luxury American cruise ship off the coast have reinforced fears that the country is spiraling out of control as a centre for al-Q'aida terrorism" (Doyle 2005:25). Pirates are described in the media as "turn[ing] supertankers into floating bombs" (Barling 2003:12), "[as] very gruesome characters, using high speed boats, AK-47s, and rocket launchers" (O'Sullivan 1999:3), as "guerillas and gangsters" (Watson 1992:A3), and as "Islamic insurgents" (Norton-Taylor 2008:40).

Additionally, the news media stories framing the issue of the Somali pirate as being connected to, or synonymous with terrorism, are predominantly from Western media outlets. For example, of the 100 articles framing the issue of piracy in Somalia being connected to terrorism after 2001, with the exception of 13 articles they all came from regional, national and tabloid news media in the UK (*The Herald* (Glasgow), *Scotland on Sunday, The Observer, The Independent* (London), *The Independent on Sunday, The Guardian* (London), *Daily Telegraph, The Express, The People*), Tasmania (*Hobart Mercury*), South Africa (*Business Day*), the US (*The New York Times, Wall Street Journal, USA Today, The Advertiser*), New Zealand (*Sunday Star*), Australia (*Sunday Herald Sun, Daily Telegraph* (Sydney), *The Australian* (Australia)), and Canada (*The Toronto Sun, National Post, The Toronto Star*). There are relatively few publications from news media outside of the West until the late 2000s, and when they do

address the issue of Somali piracy it is focused on the militarized response that has been initiated to curtail the problem and not about the issue of terrorism. For example, the results indicate there are 25 articles from the *Jerusalem Post* about piracy in Somali coastal waters, all of which were published from November 2008 onwards, and only four of those connect the issue of piracy to terrorism.

Other news outlets that may have provided an alternative discourse on the piracy, include *Africa News* who published two articles on piracy being related to terrorism, however the framing was very different from the media in the West as the focus was not the increased threat posed by pirates having connections with terrorism, but the detrimental impact of the policies employed to fight this maritime terrorist threat on seafarers who are being held hostage for ransom in Somalia, asserting that "17 Kenyans are being held by Somali pirates and maybe in greater danger because of reports of a US led attack on Somalia following reported terrorist connections to the Unity of Islam" ("Kenya; 17..." 2001). In addition, coverage from *Garowe Online* presents a different view of Islamist political factions operating within Somalia, such as the Hizbul Islam, who after seizing a pirate stronghold in Harardheere vowed to banish the pirates and "take more pirate towns along Somalia's coast" ("Hizbul Islam..." 2010). Further compounding this absence of alternative discourse are the results from the search of stories from *Al Jazeera,* an independent broadcasting company owned by the state of Qatar and known for its willingness to provide and report on dissenting news (Aljazeera 2012), that resulted in there being no stories on the issue of Somali piracy prior to 2005, when there four for that year and then very few afterwards (n=44), none of which frame it as a maritime terrorism threat.

As the discourse of piracy being equated with terrorism begins to strengthen, an additional framing of the issue as being associated with organized crime also begins to emerge. Beginning prior to the September 2001 terrorist attacks in 1995, media accounts of the issue begin to frame piracy in the region as being the behaviors of organized criminal networks. Somali pirates are alleged to be operating in groups as evident in some of the headlines and bylines. For example, in May 1995, the *Deutsche Press-Agentur (BC Cycle)* label pirates "armed militias," in June 1999 *Africa News* provides that "Ransoms to piracy militias are increasing, say sailors" (Mayoyo 1999) and that "Those paying pirates to secure the release of seamen and vessels are commercializing piracy and establishing a piracy network that will be very difficult to dismantle" (Mayoyo 1999). Later, in 2001 after the 9/11 attacks, *The New York Times* asserts that pirate militias are "spill[ing] into the Gulf of Aden" (Lacey 2001:2), *The Sunday Herald* calls them "organized gangs of seaborne pirates" (Mackay 2005:13), and in November 2005, *The Sunday Herald* also asserts that "The Royal Navy has vowed to hunt and pursue gangs of pirates in Somalian waters who have brought terror to the area for the past nine months" (Mackay 2005:1). By choosing words such as "gangs" "militias" "organized" and "network," and increasingly framing the piracy in this manner, the media promotes the discourse that pirates are not individuals acting opportunistically, but rather large networks of organized criminals acting systematically to secure large ransoms.

Also of significance in the media is the considerable coverage of some high profile piracy attacks, beginning in 2008 when there were two high profile commercial vessels that were pirated, the *MV Faina, and the MT Sirius Star*. The *MV Faina* an Ukrainian ship, carrying 33 soviet T-72 tanks, rifles and heavy weapons (Rice 2008), is

often credited with being the first case to draw serious attention to the issue of piracy as the ship was on route to south Sudan via Kenya in direct contravention of an arms embargo when it was pirated. Closely following the pirating of the *MV Faina,* the *MT Sirius Star,* a Saudi Arabian tanker loaded with two million barrels of crude oil was pirated off the coast of Somalia. The supertankers were seized eight hundred and fifty kilometers east of Somalia, at that time these incidents were the furthest from shore that a piracy attacks had occurred (Bahudar 2011).

Then in April 2009 there was the attack of the *Maersk Alabama.* This was the first US cargo ship to be pirated in two hundred years (Bahudar 2011), and garnered considerable media attention. In this case, pirates armed with automatic weapons approached the vessel, boarded the ship, crew members fought off the pirates and regained control of their vessel. The pirates fled on a life boat but took the Captain hostage. The Captain was held hostage for five days before US armed forces (Navy SEAL snipers) killed all but one of the pirates and freed the captain. The lone remaining pirate was taken into US custody and transported to New York for trial (International Maritime Organization 2009b; Bahudar 2011). The media provided day by day coverage of the five day standoff and subsequent rescue of the ship's Captain. For example, the *Irish Examiner* reports "A US destroyer and a spy plane kept close watch in the high-seas standoff" (Editorial 2009a), and *Africa News* reports on the reaction in the US claiming "analysts to be "red-faced with anger" at the audacity of the pirates," and one admiral is quoted as having said "This is an attack on sovereign interests of the United States" (Editorial 2009e).

The narrative changes when the pirates are stopped by US naval forces, and the coverage focuses on their success in thwarting them and rescuing the Captain. This is reflected in *The London Guardian* who reports that "Armed Somali pirates meet their match" (MacAskill and Rice 2009:19), and *The Washington Post* reports "Kill the Pirates" (Editorial 2009c:A15). In addition, the attack of a US ship is also used as evidence of the problem of piracy being a threat to international shipping and trade. For example, the *Christian Science Monitor* suggests the case "casts a bright spotlight on increasingly insecure shipping lanes" (LaFranchi 2009:2), and *The Washington Times* states that "more force is needed to counter piracy" and the "only sure way to deal with them is to kill them. Piracy is on the rise on the high seas, but governments – including ours – are not taking the threat seriously" (Editorial 2009d:A16). This case is reported as having "thrown the spotlight on piracy at sea" (Editorial 2009b), and coupled with the two aforementioned cases in 2008, is used to illustrate the threat to international shipping lanes and commercial trade.

In October 2009, two retirees, Paul and Rachel Chandler, from England who were yachting around the world, were also taken captive by Somali pirates. The couple were held hostage for over a year and in a similar manner to the aforementioned case of Alan MacLean, there was a lot of media coverage of this case. For example, of the 116 cases in 2010 where the media frame was about individual actors, 34 articles detailed the couple's ordeal, the conditions they faced, the bartering over the requested ransom amount, and the involvement of a Somali-British taxi driver in negotiating their release in November 2010. The media coverage of this case was predominantly from news media

sources in the West, and there was no mention of it in the news media thought to represent alternate discourse on the issue.

In a similar manner there were four high profile cases in 2011: the failed attack of the UK cruise ship *MV Spirit of Adventure* in January (Williams 2011), the hostage taking of a Danish family including their three children from a yacht in Somali waters (The Nation 2011), the kidnapping of a French women from the beach of a Kenyan resort (Brown and Pope 2011), and the killing of four US citizens by pirates during an exchange with US commandos (Pflanz and Flood 2011). The sensationalism of these stories draws attention to the menacing nature of pirates in Somalia who killed "in cold blood" (Pilditch 2011:6), "slaughter[ed] four American hostages" (Editorial 2011), and kidnapped "three Danish children" (McConnell 2011:28). These cases collectively fuel fears of Somali piracy, as well as the need to better protect those at sea.

Interestingly during the same time period *The Nation,* publishing stories in Nairobi Kenya, reported that United States forces descended in a region of Somalia near Harardheere, a region notorious for pirate activity and detained three Somali youth for questioning;

> The marines are said to have used a helicopter to reach the remote location....five armed soldiers descended from the chopper and immediately handcuffed three Somali youth that were next to a vehicle being repaired following a breakdown....the three men [were then] flown by the American marines to a navy ship, off the coast....the American's kept the Somali men on a large ship for three hours and asked them whether they were pirates. Having responded that they were not pirates, they were asked other question such as where the pirates spend when they receive ransom money and who controlled the nearby Haradhere town...The group was told that the American marines has their photos and that they were wanted men (Khalif 2011).

This story was not covered at all by media in the West, rather it was only covered by *The Nation (Nairobi), Al Jazeera,* and *Africa News.* This is indicative of the absence of

discourse in the media on the impact of piracy and external interventions aimed to assist with the piracy problem, on the Somali people. Instead the focus is the impact it has had on victims from the West, the security risk of maritime terrorism, as well as the threat it poses to international shipping and trade. This dominant focus was also reflected in the results from the UN, who not only propagate facts, but react to the media coverage of the issue.

THE UNITED NATIONS

Like the findings from the media, the coverage of the issue of piracy in Somalia by the UN, was also minimal during the early 1990s with the only commentary on the issue being included in the Report of the Secretary General on the Oceans and the Laws of the Sea. Prior to 1995, the report took the form of a bulletin and did not contain information on maritime security and therefore omitted any information pertaining to piracy. Beginning in 1995, the report contains a subsection titled "Piracy and armed robbery at sea" (United Nations General Assembly 1995:43) which provides general information on the issue of piracy and the regions most impacted by it. In 1996 and 1997, the reports are more detailed and provide the heading "Crimes at Sea" of which "Piracy and armed robbery at sea" is a sub section where again general regions are mentioned opposed to specific countries, i.e. East Africa instead of Somalia. At this time, the issue of piracy in Somalia is part of a larger discourse of concern for pirate attacks in the South China Sea, the Strait of Malacca, the Indian Ocean, East and West Africa, and South America (United Nations General Assembly 1998), and has not yet emerged as an area of particular importance or concern.

In 2000, the year following the aforementioned death of Alan MacLean, there were three UN documents covering the issue of Somali piracy (United Nations General Assembly 2000a; United Nations General Assembly 2000b; United Nations Security Council 2000). The IMB provides case information for many of the piracy attacks in their annual report, however only a few specific cases were included in the discourse on piracy by the UN, and in a Report of the Secretary General on Somalia (United Nations Security Council 2000), specific reference is made to the case of Alan MacLean as part of a list of examples given to illustrate increased concern over the general security situation in Somalia. The example of Alan MacLean's pirate attack is grouped with examples of kidnapping and hostage taking, killings, firing on planes transporting humanitarian aid to the country, and the targeting of non-governmental organizations for grenade attacks (United Nations Security Council 2000). The fact that the case of Alan MacLean garners enough importance to merit attention in a UN document is of significance. The pressure exerted by MacLean's family on the British government, through their vocalization in the media, led the British Foreign Secretary Robin Cook to exert further pressure on the French authorities to investigate the death of MacLean (Frew 1999), and even the Private Secretary to the Prime Minister, Philip Barton asserted "The Prime Minister is very concerned to ensure a full investigation into Alan's death does take place" (Fletcher 2004:23).

As a result of the investigation, the original story proffered by the skipper of the yacht, a French national, alleging that the yacht had been attacked by five Somali pirates who had shot MacLean as he tried to protect the yacht, was called into question. The skipper said that MacLean had been shot while trying to fend off the pirates with a

didgeridoo after they had boarded the vessel. His body had then been "buried at sea" in order to avoid its deterioration in the heat (Frew 1999:39). The event was not reported until five days later when the yacht docked in Yemen, however Yemeni authorities, found no evidence to corroborate the skipper's story, or that shots had been fired (Seenan 1999:8). Despite this the yacht and its skipper were permitted to return to France where British authorities exerted pressure on the French government, in cooperation with INTERPOL, to investigate the matter further. The investigation concluded with French authorities asserting that although the skipper's behavior was suspicious there was no evidence directly linking him to the murder of Alan MacLean (Murray 2011:7).

It seems that the IPC, was influenced by the pressures from the West because of the death of a Scottish man – the previously mentioned resulting media attention (media situated in the West), and political pressure (the Western governments of the UK and France) – and the case of Alan MacLean gained international recognition and importance and was used as an example of the poor security situation in Somalia, and it was the first case offered as an example of the increased threat that piracy poses to international shipping and trade (United Nations Security Council 2000). The irony being that the death of Alan MacLean cannot be attributed to Somali pirates with any degree of certainty.

Following the case of Alan MacLean there was a considerable change in the discourse on the Somali pirate. The 2000 Report of the Secretary General on the Oceans and Law of the Sea (United Nations General Assembly 2000a), is the first to mention Somalia as a specific area of concern for piracy, reporting the number of attacks that have occurred there as indicated by the IMB. As indicated in Table 5, there are three specific

attacks mentioned by the UN in 2001. These cases all involve fishing vessels from different nations; France and Russia (although the flag state was Belize for the two Russian owned ships), who were hijacked when trying to leave port in Somalia. Men with guns boarded the vessels and held "the 29 crew members and the fishing boats for illegal fishing and demanded a ransom for their release" (International Maritime Bureau 2001:50). The UN acknowledges these vessels were involved in illegal fishing but draws attention to the forcible detention of seafarers in the region being a continuing problem, instead of the actions of the trawlers.

In 2002, the UN draws attention to an attack of a commercial vessel for the first time. This vessel was from the Democratic People's Republic of Korea, the *MV Jenlil* and was pirated when it was underway by "Somali militiamen" (International Maritime Bureau 2002:20). In a Report by the Secretary-General on the situation in Somalia, the UN draws attention to the continued threat to security that piracy in the region poses, and this case is cited as an example. This is particularly significant as this vessel was a tanker that usually would have been carrying cargo such as crude oil, and therefore extremely expensive. However, in this case the ship was empty, but despite this, the mentioning of it reinforces the focus of the UN as being the threat piracy poses to international shipping and trade.

During this time period there was also increased attention on the issue of piracy from groups that represent the interests of private shipping. This begins just before 2000 and includes groups such as the previously noted International Maritime Bureau (IMB) acting in the interests of the private shipping industry (International Maritime Bureau 2005).

Table 5.   Vessels Specifically Mentioned in the UN Documents

Date	Source	Name of Ship	Type of Vessel	Flag State	Cargo
2000	Report of the Secretary-General	The Correlation	Yacht	France	n/a
2001	Report of the Secretary-General	Horrizon I	Fishing boat	Belize (Russian owned)	Fish*
2001	Report of the Secretary-General	Horrizon II	Fishing boat	Belize (Russian owned)	Fish*
2001	Report of the Secretary-General	Bahari Kenya	Fishing vessel	Italy (Kenyan owned)	Fish
2002	Report of the Secretary-General	MV Jenlil	General cargo	North Korea	Empty
2003	Report of the Secretary-General	Limburg	Tanker	France	Crude oil**
2005	Statement by the President of the Security Council	MV Semlow	General Cargo	St. Vincent and Grenadines	Rice (WFP vessel)
2006	Report of the Secretary-General	MV Semlow	General Cargo	St. Vincent and Grenadines	Rice (WFP vessel)
2006	Report of the Secretary-General	Torgelow	General Cargo	St. Vincent and Grenadines	Food and Fuel (WFP vessel)
2007	Report of the Secretary-General	MV Semlow	General Cargo	St. Vincent and Grenadines	Rice (WFP vessel)[a]
2007	Report of the Secretary-General	Torgelow	General Cargo	St. Vincent and Grenadines	Food and fuel (WFP vessel)[a]
2007	Letter dated from the Secretary-General to the President of the Security Council	Rozen	General Cargo	St. Vincent and Grenadines	Food aid
2007	Letter from the Secretary-General to the President of the Security Council	Victoria	General Cargo	Jordan	Food aid
2007	Report of the Secretary General	Rozen	General Cargo	St. Vincent and Grenadines	Food aid[a]
2007	Report of the Secretary General	Victoria	General Cargo	Jordan	Food aid[a]
2008	UNSC Resolution 1851	MT Sirius Star	Tanker	Liberia	Crude oil
2009	Report of the Secretary-General	MV Faina	Ro-Ro	Belize (Ukrainian owned)	Weapons

*Were attacked after being accused of illegal fishing in Somali waters.
** A confirmed terrorist attack launched from Yemen, and therefore not technically Somali piracy.
[a]A duplicate of a specific case of piracy in another document.

Data from the IMB is cited by the UN as a means of identifying certain regions in the world that are hazardous for shipping. In addition, other influential lobbying groups acting on behalf of private shipping lobbied for action from the IPC to counter piracy in the region. Two such groups are the International Shipping Federation (ISF) and the International Confederation of Free Trade, who in 1997 urged the International Maritime Organization (IMO) to act to prevent further attacks against private vessels (International Shipping Federation/International Chamber of Shipping 2004). In 1998, The International Chamber of Shipping and the Seaman's Church Group, two groups who have considerable influence through lobbying, called for UN action to address the issue of piracy (Rothe and Collins 2011; Collins 2012).

It is after the increased pressure from these groups who represent the interests of private shipping, that the issue of Somali piracy becomes more prominent in the UN documents as the IPC has been urged to institute "new mechanisms to eradicate piracy, and for the issue to be kept prominently on the agenda of the United Nations" (United Nations General Assembly 1998:14). Furthermore during this time period, the Maritime Safety Committee (MSC) a technical committee of the IMO, formed various expert missions to different countries to discuss the issue of maritime piracy (International Maritime Organization 1999). The influence of the IMB and these groups are not limited to updating the UN on areas that may pose risk for piracy, rather they have considerably impacted the discourse and therefore the perception of Somali piracy by linking it with terrorism.

In a similar manner to the findings from the previously presented media data, prior to 2002 piracy in Somalia remains a distinct issue from terrorism for the UN.

The only mention of terrorism as it relates to Somalia by the UN is limited to the internal conflict within the country. For example, prior to 2002 the factious groups operating in Somalia are referred to as "militia" and the activities of these groups are referred to as "banditry and other criminal acts" (United Nations Security Council 2000:6). It is the United States, following the attacks on New York City on September 11, 2001, that first apply the label of terrorism to groups operating in Somalia. As indicated in a 2001 Report of the Secretary General on the situation in Somalia, "on the 24 September, a Somali-based organization, Al-Itihad Al-Islamiya, was included in the United States list of 27 organizations suspected to have terrorist links" (United Nations Security Council 2001:8). However, the IMB are the first to directly link terrorism to piracy.

There is a distinct change in the discourse that occurs between 2000 and 2002, where the distinction between piracy and maritime terrorism begins to become blurred. This is evident in the 2000 IMB annual report, the first report to ever mention the issue of terrorism, where a distinction is made between the number of deaths attributed to piracy in the year 2000, and those associated with terrorism – specifically resulting from the bombing of the *USS Cole* a US navy vessel that was bombed killing 17 sailors, and the bombing of the French Supertanker, *The Limberg,* which resulted in one person being killed and 38 injured (International Maritime Bureau 2000; International Maritime Bureau 2002). However, in the 2001 IMB annual report the threat of maritime terrorism is taken into consideration and linked to the attacks on US soil,

> After the September 11 terror attack in the US, much concern has been directed towards the security of ports and ships. It is not impossible for hijackers or terrorists to hijack ships particular LNG, LPG or large tankers to undergo suicide missions for their cause (International Maritime Bureau 2001:17).

In 2002, further evidence of the linking of piracy to terrorism is made by the IMB, who urged the IPC, as well as seafarers to take the issue of maritime terrorism seriously (International Maritime Bureau 2002). The distinction between acts of piracy and terrorism is further weakened in the 2003 IMB report that, under a section titled "Pirates should be regarded as terrorists," provides a quotation from Singapore's Home Affairs Minister Wong Kan Seng who argues "There should be no distinction between pirates operating for personal gain and terrorists with political motives. The motives of these attackers are impossible to judge until they are caught" (International Maritime Bureau 2003:24). Here the issue of piracy is directly equated to maritime terrorism.

Furthermore, during the 2003 annual meeting of the International Chamber of Shipping, and the International Shipping Federation there was significant concern over the issue of maritime terrorism, there was a review of the industry efforts to better counter terrorism, and a greater need for governments to take their part in such efforts seriously was emphasized (International Maritime Organization 2003). It is following the concern from interests that represent private shipping that piracy becomes more and more frequently linked with terrorism.

Then in March 2002, the issue of maritime terrorism is linked to piracy for the first time by the UN where in a Report of the Secretary General on the Oceans and the Law of the Sea, it is asserted that "Maritime security can be threatened by a terrorist attack and also as a result of other criminal activities at sea, for example, acts of piracy and armed robbery against ships" (United Nations General Assembly 2002:26), and a separate section is added to the report dedicated to the "prevention and suppression of acts of terrorism against shipping" (United Nations General Assembly 2002:27). In

2004, the General Assembly issued a resolution linking piracy and terrorism urging member states to adopt legislation "ensuring that there is a proper framework for responding to incidents of armed robbery and terrorist acts at sea" (United Nations General Assembly 2004c:8). The Report of the Secretary General on the Oceans and Law of the Sea for the same year, also asserts that the "United Nations has been requested by the General Assembly to study ways and means to promote further, under its lead, a more comprehensive and coherent response" (United Nations General Assembly 2003:33) to the issue of maritime terrorism.

In 2004, the General Assembly, based on information from the IMB, asserts that the rise in piracy, especially the "kidnappings of crew are largely the work of militia groups in politically vulnerable areas" (United Nations General Assembly 2004b:41). In 2005, the General Assembly issues another resolution, urging member states to ensure they have suitable frameworks to address both piracy and terrorism. From 2004 onwards the majority (94 percent) of the documents issue by the UN that address the issue of Somali piracy, include at least one sentence about the threat of maritime terrorism, and in 2008 the UNSC asserts that "the territorial waters of Somalia [are] one of the most dangerous places in the world for marine vessels" (United Nations Security Council 2008b:6). In addition, when discussing piracy it increasingly becomes grouped with behaviors such as international terrorism, terrorist acts against shipping, trafficking of weapons of mass destruction, trafficking of narcotics, psychotropic substances, nuclear materials, and the smuggling of arms and people (United Nations General Assembly 2006a; United Nations General Assembly 2007). Specific to the threat of terrorism is the linking of piracy to "extremist elements such as Al-Shabaab [who] are alleged to have

terrorist associations" (United Nations Security Council 2008c:29). This strengthens the linking of the two behaviors, a threat that is further compounded by the framing of the issue of maritime piracy as being a threat to international shipping and the delivery of humanitarian aid.

In 2005, the UN draws attention to the pirating of two World Food Program vessels, on their way to victims of the 2004 Tsunami in Somalia. These vessels were carrying rice, food, and fuel, and are mentioned in 2005, 2006 and 2007. They were on their way to Bossaso when they were attacked by pirates who then held the ships for ransom. The UN condemns the hijackings of the world food program vessels "particularly of ships carrying humanitarian supplies to Somalia" (United Nations Security Council 2005a:2), but then continues by saying "The Council urges the TFIs, regional actors and relevant international organizations to work together to address this problem" (United Nations Security Council 2005:2) situating piracy in this case (that of vessels carrying food aid versus commercial vessels), as a problem for Somalia and other regional influences, and not the IPC.

Later in 2007, there are two further attacks of World Food Program (WFP) vessels, the *Rozen* and the *Victoria.* The first ship, *Rozen,* had already deposited its cargo in Berbarra and was attacked by armed men after having left port, and then taken for ransom. The second ship, *Victoria,* a UN chartered World Food Program vessel, was attacked by heavily armed men, but the attack was averted when their distress signal was received by a passing boat and the Merka port authority dispatched two armed boats that intercepted the attack. The UN discusses these later attacks of WFP vessels in conjunction with the threat of piracy to commercial shipping asserting that "The rise in

the frequency of pirate attacks has resulted in higher shipping costs and a significant

reduction in the number of cargo vessels in the water" (United Nations Security Council

2007a:3). In a letter from the Secretary General to the President of the Security Council,

the Secretary General concludes with a strong call, one that echoes a prior statement from

the Security Council, for all member states operating in the region to act to deter piracy,

encouraging

> United Nations Member States with naval vessels and military aircraft operating
> in international waters and airspace adjacent to the coast of Somalia to be vigilant
> against piracy and to take action to protect merchant shipping, especially vessels
> being used to transport humanitarian aid (United Nations Security Council
> 2007a:3).

The concern of the Security Council and the Secretary General of the International

Maritime Organization is expressed specific to "keeping shipping lanes of strategic

importance and significance safe and open to international maritime traffic and thereby

ensuring the uninterrupted flow of traffic" (United Nations General Assembly 2005b:10),

and later in 2007 it is said to be "threatening commercial shipping" (United Nations

Security Council 2007a:3). The threat of piracy in Somalia therefore has become

threefold by posing a threat to; 1) commercial shipping, 2) the safe deliverance of

humanitarian aid, and, 3) international security through supposed links with terrorist

groups. These threats amplify the supposed need for an anti-piracy response, which is

even further emphasized by focus on three high profile cases.

In 2008 there were two high profile commercial vessels that were pirated, the

MV Faina, and the MT Sirius Star. As previously mentioned, the *MV Faina* a Ukrainian

ship carrying 33 soviet T-72 tanks, rifles and heavy weapons (Rice 2008), is often

credited with being the first case to draw serious attention to the issue of piracy by the

IPC. The reasoning being that this particular attack combined both the crime of piracy and that of arms trafficking (Bahudar 2011). Interestingly, the UN offers the *Faina* case as an example of the sophisticated attacks being launched by organized pirate networks. A particular pirate gang, the "Mudug piracy network" (United Nations Security Council 2009c:2), is credited with this attack and the UN offers this case as evidence that a more "robust approach in the fight against piracy and armed robbery at sea off the coast of Somalia" is necessary (United Nations Security Council 2009c:2).

The *MT Sirius Star* case is also of considerable significance as it is used as an example in a resolution issued by the UN Security Council (Resolution 1851), where the Council expresses they are "gravely concerned by the dramatic increase in the incidents of piracy and armed robbery at sea off the coast of Somalia" and that the pirates have become "more sophisticated and daring and have expanded their geographic scope, notably evidenced by the hijacking of the M/V Sirius Star 500 nautical miles off the coast of Kenya" (United Nations Security Council 2008i:1). The last case is the April 2009 attack of the *Maersk Alabama*. This was the first US cargo ship to be pirated in two hundred years (Bahudar 2011), and garnered considerable media attention. This case is not mentioned in the primary data, but is reported on by the IMO who provide the details of the case.

Between 2008 and 2012 there is an increase in UN documents solely dedicated to the issue of Somali piracy. Of considerable importance is a 2011 UNSC Report of the Special Advisor to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia. This report was requested by the Secretary General for the purposes of comprehensively assessing the threat of the Somali pirate, through the appointment of a

Special Advisor, Jack Lang (United Nations Security Council 2011a). The report is an extensive document reporting on the seriousness of the situation, gaps in the current response, as well as directions for the future. With regards to the seriousness of piracy in Somali coastal waters it is reported that the attacks in Somalia have experienced an "intensification of the violence of attacks (first weapons of choice are AK-47 automatic assault rifles and RPG-7 rocket launchers)" (United Nations Security Council 2011a:13), and the rhetoric of piracy being associated with maritime terrorism is further perpetuated. The report asserts that

> Today, the relocation of the pirates to the south of Somalia in areas controlled by Al-Shabaab suggests that there are ad hoc agreements guaranteeing tranquility for the pirates in return for a portion of the ransom money (which could reportedly reach 30 percent) (United Nations Security Council 2011a:15).

This assertion is said to further compound the security situation in Somalia, increase the recruitment power of insurgency militias, as well as actively breach the arms embargo that the UN has affected on Somalia for over a decade. However, the statement associating piracy in Somalia to Islamic terrorism is footnoted in the report and the corresponding text provides that this information "needs to be confirmed" (United Nations Security Council 2011a:15). This significantly undermines the legitimacy of this claim.

The discourse surrounding the threat of the Somali pirate is not limited to being equated with terrorism, but rather a parallel complimentary discourse that is not completely distinct from the discourse on terrorism, emerges which links piracy to organized and transnational crime, and compounds the threat of the Somali pirate. This begins, in November 2000, when the General Assembly adopted the United Nations Convention against Transnational Organized Crime (United Nations General Assembly

2000a), which became available to member states for signature in December 2000 and entered into force in 2003. Following the adoption of this international legislation, the issue of piracy becomes increasingly incorporated into definitions of organized crime. This begins in 2001 when the phrase "organized crime" is adopted as part of the discourse on piracy in the Report of the Secretary General on the Oceans and Law of the Sea. In the section titled "Crimes at Sea" piracy is grouped with "smuggling of migrants and illicit traffic in drugs or firearms" as often being "the work of organized criminals" (United Nations General Assembly 2001b:11). Furthermore, in the same report for the year 2002, this discourse is expanded upon through the addition of the assertion that "Many of these criminals are the work of organized criminals whose global reach and evasion of national controls threaten the security and the stability of all States and make effective national measures and global action imperative" (United Nations General Assembly 2002:26). This is expanded further in 2006 as demonstrated in the following exert,

> Today's challenges to maritime security increasingly comprise more nontraditional threats, such as terrorist acts against shipping, trafficking in weapons of mass destruction, piracy and armed robbery at sea, illicit traffic in narcotic drugs, psychotropic substances and nuclear substances, and smuggling of people and arms (United Nations General Assembly 2006a:27).

Later in 2008, the increased incidences of piracy in the region of Somalia are linked explicitly with "well-organized criminals" who are touted as possibly being responsible for "some of the more sophisticated attacks" (United Nations General Assembly 2008a:18). In support of this claim the Secretary-General cites a prior 2001 report that contains assertions from the IMB proclaiming that "Hijackings, according to the Bureau, are the work of organized criminals since they require a degree of

organization that only the international crime syndicates can muster" (United Nations

General Assembly 2001a:36). By the end of 2008, piracy has become labeled as a threat

to maritime peace and security through its labeling as a "transnational organized crime"

(United Nations General Assembly 2008b:3). In addition, piracy has been directly

associated to the financing of armed groups, and as a result violates the UN sanctioned

arms embargo on the country. For example, in a 2008 UNSC Report of the Secretary-

General on the situation in Somalia, an update on the security situation includes the

following discourse on piracy;

> The Monitoring Group on Somalia continues to note persistent violations of the
> arms embargo in an environment of general lawlessness and lack of
> accountability and has also noted the role of piracy and armed robbery,
> kidnapping and ransom payments in financing violations by armed groups (United
> Nations Security Council 2008a:5).

This concern is reinforced by the Security Council in Resolution 1844 where the role of

piracy is again associated with the financing of armed groups (United Nations Security

Council 2008g:1). Later UN documents dedicated solely to the issue of piracy in

Somalia, provide further information on how such organized crime networks operate, and

start terming them "pirate militias" (United Nations Security Council 2009c:2).

In 2009, the UN provides information on what are termed the "most important

pirate groups" in Somalia. These militia groups are said to have their origins in fishing

communities that reside along the Somali coast. These groups follow clan-based social

structures and operate around two main piracy networks; one in Puntland and the other in

the South of the country in the Mudug region. In Puntland, it is asserted that there are

groups operating in Bossasso, Qandala, Caluula, Bargaal, Garacad, with the largest being

in Eyl. The UN states that the largest groups "rival established Somali authorities in

terms of their military capabilities and resource bases" (United Nations Security Council 2009c:2). There are also allegations that the authorities in these regions are working in cooperation with the piracy groups because of the control they exert in the region (United Nations Security Council 2009c).

In 2011, Special Adviser to the Security Council on legal issues related to piracy off the coast of Somalia, Jack Lang, provides considerable information on how piracy has become a form of organized crime, stating "piracy has in essence become an organized, lucrative and attractive criminal activity, undertaken for heinous ends" (United Nations Security Council 2011a:12). Examples of the increased organizational capacity of these pirate militias are evident in

> increasing use of "mother ships" to backstop attack skiffs, global positioning satellites (GPS), Automatic Identification System (AIS) data, satellite telephones and counterfeit detectors; organization of refueling at sea of captured ships for the trip to Somalia [as well as] logistical support provided in the negotiation of ransoms and the holding of hostages (United Nations Security Council 2011a:13).

All of which are asserted to be increasing the power of piracy groups/militias, as well as replacing legitimate economies in Somalia with illegitimate ones fueled solely by piracy. This is evident in Lang's argument that the emergence of this illegitimate economy has increased the prevalence of other behaviors that are either criminal or undermine the legitimate economy. These behaviors include "money-laundering, destabilization of the real estate sector, [and the] trafficking of weapons and migrants" (United Nations Security Council 2011a:16). Piracy is argued to have created a security vacuum and provided the necessary conditions that promote other criminal enterprise.

The grouping of piracy with other organized criminal behaviors, also leads to increased calls for actions by various UN branches for the use of/and need for legal

instruments to better counter the problem of piracy with some international legal instruments offered as examples of successful tools for prosecution. The international instrument most often used as an example is the United Nations Convention against Transnational Organized Crime, and the protocols thereto. Arguments are made that this Convention should inform responses to piracy for the purposes of the "tracking and disruption of financial flows to piracy and drug trafficking ringleaders, as well as support for more thorough investigations into unexplained wealth, are also necessary" (United Nations Security Council 2011f:14). The discourse on piracy is extended during this time period beyond the individual pirates and the pirate militias, to include those that facilitate acts of piracy as well as those that finance it, as the UNSC

> *Underlies* the importance for…courts to have jurisdiction to be exercised over not only suspects captured at sea, but also anyone who incites or intentionally facilitates piracy operations, including key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks (United Nations Security Council 2011e:4).

This reinforces the discourse that suggests Somali piracy is an organized criminal behavior involving a multitude of actors who launch sophisticated operations to acquire ransoms that are lucrative enough to attract such complex criminal networks.

The resulting discourse on Somali pirates frames them as dangerous individuals operating in organized criminal groups with far reaching networks connected to terrorism, which threatens international peace and security, global trade, and the transportation of humanitarian aid. This discourse provides the justification and calls for, an anti-piracy response to protect against this constructed threat. The following chapter will provide an overview of the different actions taken by different interests; state,

regional, and international, to the issue of piracy in the Gulf of Aden. These actions will be presented as they relate to the discourse and their sanctioning by the UN.

CHAPTER VII

FINDINGS: THE ANTI-PIRACY RESPONSE

The response to the threat of piracy in Somalia and the Gulf of Aden developed

over time and has been initiated by many different actors. This chapter provides an

overview of these responses, the parties involved and the discourse from the data that

either has initiated, supported, or justified these responses. The chapter concludes with

an examination of the varying prosecution practices initiated by different states involved

in the anti-piracy response.

THE INTERNATIONAL NAVAL RESPONSE TO PIRACY

During the 1990s there is little action to fight piracy in the coastal waters of

Somalia, however, there is repeated urging by the UN General Assembly for member

states to become party to the 1988 Convention for the Suppression of Unlawful Acts

Against the Safety of Maritime Navigation (SUA) and a related Protocol that was ratified

in 2000, as well as to abide by the Convention on Oceans and Laws of the Sea

(UNCLOS) (United Nations General Assembly 1998:24). The UNCLOS provides for the

repression of piracy on the high seas, and in what is termed the "exclusive economic

zone," an area of sea that a state has exclusive rights to for the purpose of exploration,

marine resources, as well as energy production. This area usually stretches about 200

nautical miles from the edge of the states' territorial waters (United Nations Convention

on the Laws of the Sea 1982:Article 56). States' territorial seas fall under their national

jurisdiction and acts of piracy and armed robbery should therefore be prosecuted under

domestic laws. The 1988 Convention is a multilateral treaty that requires states to make offenses under the Convention punishable under their domestic laws and also requires them to extradite offenders for prosecution when necessary, as well as submit them for prosecution. It is often touted as being a more useful instrument for the prosecution of piracy than the UNCLOS, but it is dependent on states being signatories (United Nations General Assembly 1998:25). The urging of member states to sign the 1988 Convention, coupled with calling for member states to report incidents of pirate attacks to the IMO (United Nations General Assembly 1999), and implementing IMO issued guidelines for the preventing piracy attacks (United Nations General Assembly 2000b), are the extent of the actions of the UN to fight piracy up until 2001. There were however, recommendations from the IMB to the private shipping industry, to engage in self-protection efforts against piracy attacks.

Beginning in 2000, the IMB informs the UN of preventative measures that can be utilized to combat piracy, and in a 2000 Report of the Secretary General "anti-piracy measures such as the development of an on-board satellite tracking system specially designed to locate ships at sea or in port" are recommended (United Nations General Assembly 2000a:21). Prior to 2002, the IMB only endorsed one anti-piracy device, ShipLoc. This is a satellite tracking device that not only tracks the position of the vessel, but provides an alert system if the ship is hijacked (ShipLoc 2010). Beginning in 2002, the number of devices endorsed and recommended by the IMB considerably increases to include satellite tracking devices, high pressured hoses, electrical fences that carry a 9000 volt pulse that prevents unauthorized boarding of vessels, as well as unarmed aerial vehicles equipped with cameras (International Maritime Bureau 2005). All of these

devices are recommended as successful deterrents to piracy attacks. This marks the beginning of the emergence of a private security industry orientated around providing protective measures that the shipping industry can buy for protection against piracy. The idea that self-protective measures are necessary for seafarers and ships is supported by increased regional and cooperative efforts that are initiated during this same time period.

Corresponding with the findings on the change in discourse on piracy in Somalia that occurred after 2001, the first significant counter piracy initiative, the Combined Maritime Force (CMF) CTF 150, a joint task force initiated by the US (Combined Maritime Forces 2012a) was established. In 2001 the CMF launched Operation Enduring Freedom for the purpose of fighting terrorism, and because of the possibility of a maritime terrorism attack, as indicated in the discourse, the threat of piracy was part of the mission (Van Ginkel and Landman 2012). The CTF 150 mission was, and remains to "promote maritime security in order to counter terrorist acts and related illegal activities, which terrorists use to fund or conceal their movements" (Combined Maritime Forces 2012). Participation in this task force is voluntary with members serving for four to six months each before membership rotates. There have been many members including, Australia, Canada, Denmark, France, Germany, Italy, Republic of Korea, Netherlands, New Zealand, Pakistan, Portugal, Spain, Singapore, Turkey, and the United Kingdom, all of these states being actors outside the region.

The attacks of World Food Program vessels, also garnered a response from the IPC, as following the earlier attacks, those that occurred in 2004 and 2005, the WFP ceased sending aid ships to Somalia, and instead sent all relief via trucks on land – a much more expensive form of delivery (United Nations Security Council 2007c). In

November 2005, the IMO Assembly adopted resolution A24/979 which brought the

problem of Somali piracy to the attention of the UN Security Council, and made a direct

appeal to "Governments to increase their efforts to prevent and suppress acts of piracy

and armed robbery against ships" (International Maritime Organization 2006:4),

including setting up initiatives to actively monitor, deter, and fight this criminal behavior

(International Maritime Organization 2006).

In addition, building on the aforementioned emphasis placed on the need for self –

protective measures, British shipping company NUMAST began to utilize private

security companies and armed escorts to ensure vessel safety. There has also been

considerable debate over the use of armed security onboard vessels, with a number of

states permitting its use. States that have allowed armed security include Cyprus,

Denmark, Finland, Germany, Italy, Greece, Hong Kong, India, the Netherlands, Norway,

Spain, the UK, and the US (Oceans Beyond Piracy 2011). The use of armed security was

also endorsed by the IMO and the International Transport Workers Federation, as well as

some insurance companies for the purposes of reducing premiums ("Piracy: IMO..."

2011). Additionally, the International Transport Workers Federation and the IMB

launched a campaign for ships coming to ports and Southern areas of Somalia to travel

under armed escort ("War zone..." 2005), measures that have become more and more

commonly used for ships travelling through high risk areas for piracy. It is following this

plea from the IMO and the increased use of self-protection measures by the private

shipping industry that the UNSC began to take action in 2006 by passing resolutions

giving member states unprecedented legal authority to actively pursue individuals

engaged in acts of piracy.

In 2006, the UNSC expresses its concern about the increasing acts of piracy and frames it as a threat to "international peace and security in the region" (United Nations Security Council 2006:2). In 2007, the UNSC passed resolution 1772 encouraging member states with both naval vessels and military aircraft in the region to be "vigilant to any incident of piracy…[and to take] appropriate action to protect merchant shipping" (United Nations Security Council 2007e:2). In addition, the IMO called for "the further engagement of the United Nations Security Council to promote and facilitate the international community's efforts to combat acts of piracy…in particular, ships carrying humanitarian aid to the country" (International Maritime Organization 2007a:4). The UN expressed further condemnation and concern related to the hijacking of aid vessels in 2006, and 2007 (United Nations Security Council 2005a; United Nations Security Council 2007a), but no action was taken. The IMO, beginning in 2007 however, were more vocal about the attacks on aid ships, arguing that these attacks have "become a common pattern" (International Maritime Organization 2007c:1), and "show a worrying increase" (International Maritime Organization 2007b:1).

Then in July 2007, the heads of both the IMO and the WFP released a joint communique, with the WFP Executive Director Sheeran, saying "Close to 80 per cent of WFP's assistance to Somalia is shipped by sea but, because of piracy, we have seen the availability of ships willing to carry food to the country cut by half" (International Maritime Organization and World Food Program Joint Communique 2007). The two organizations called for a coordinated effort for the purposes of fighting piracy, which included permission for ships defined under Article 107 of the UNCLOS (military warships and government ships), to enter Somali territorial waters to protect both

merchant and relief vessels (International Maritime Organization and World Food Program Joint Communique 2007). Shortly following this communique, the President of France "announced that his country would be prepared to send warships to protect humanitarian supplies, especially assistance provided by the WFP, for a period of two months" (United Nations Security Council 2007b:5), and also called for the other member states to follow this initiative. Other states that sent warships included Canada, the Netherlands, and Denmark (World Food Programme 2008).

The efforts to protect WFP vessels became more organized with the launch of the North Atlantic Treaty Organization's (NATO) naval Operation Allied Provider in 2008 at the request of the UN Secretary General. The NATO Operation included marine patrols to act as a deterrent to would-be pirates (NATO n.d.). This Operation was replaced in March 24, 2009 by Operation Allied Protector which led to five NATO ships being dispatched to the Gulf of Aden with the object of deterring piracy (NATO Allied Maritime Command 2010b). Although the original catalyst for NATO involvement in the counter-piracy efforts was the protection of vessels delivering humanitarian aid, the justification offered for the NATO presence has become centered on the threat of piracy to international shipping and trade as indicated by emphasis placed on the importance of the Gulf of Aden as a route for trade with "22,000" ships per year transiting through there on their way to countries all over the globe" (NATO Allied Maritime Command 2010b:1). This is in accordance with action from the UNSC who then started calling for a greater anti-piracy response to protect merchant shipping.

In 2008, the UNSC adopted six further resolutions (1801, 1816, 1838, 1844, 1846, 1851) stating piracy was a threat to international peace and security (United Nations

Security Council 2008d; 2008e; 2008f; 2008g; 2008h; 2008i). These resolutions gave UN forces unprecedented legal authority to pursue pirates, and to combat piracy member states, were and still are, encouraged "to take part actively in fighting piracy," citing the IMO's concern about the threat to international shipping as reason for the action. For example, the US, the UK, France, and Panama introduced a draft resolution to the UNSC for the specific purposes of combating piracy for ransom in Somali coastal waters – this resolution authorized nations in cooperation with the Somali Transitional Federal Government to use "all necessary means" to fight Somali piracy (United Nations Security Council 2008e:3). Furthermore, in resolution 1816, the IMO quarterly reports are argued to "provide evidence of continuing piracy and armed robbery in particular in the waters off the coast of Somalia" (United Nations Security Council 2008e:1).

Here the UN has authorized a military response to the problem of piracy and as a result all regional organizations in cooperation with the Somali TFG are permitted to use military vessels and aircrafts to combat, seize, and dispose of boats, vessels, arms, and equipment used in the commission of acts of piracy (United Nations Security Council 2008h). Additionally, Resolutions 1816 and 1838 extended jurisdiction into Somali territorial waters by asserting that piracy in the region is a threat to international peace and security and that all member states should intercept piracy occurring in these waters as well as prosecute those responsible for such acts (United Nations Security Council 2008e; 2008f).

In response to the first three resolutions passed by the Security Council (1814, 1816, 1838), Canada, Denmark, France, India, the Netherlands, Russia, Spain, the UK, and the US became active in the counter-piracy effort by deploying warships to the Gulf

of Aden (United Nations Security Council 2008h). The number of states involved though has vastly increased with the passing of subsequent resolutions and in addition, the European Union made a commitment to providing escorts for ships delivering humanitarian assistance, and on the "15 September, the European Union General Affairs Council established a coordinated unit tasked with supporting the surveillance and protection activities" (United Nations Security Council 2008a:12). A plan was also approved for implementing a "military coordination action, which will comprise a coordination cell based in London" (United Nations Security Council 2008a:12), which also included a naval operation.

On the 10th of November 2008, the Council of the European Union adopted decision 2008/851/CFSP. This mandated the commencement of a naval operation in December 2008, referred to as EU naval forces Somalia (EUNAVFOR) or Operation Atalanta. The maritime resources dedicated to this effort initially included five frigates, two maritime patrol aircrafts, and 1,200 personnel (United Nations Security Council 2009c), with a mission of "bringing to an end acts of piracy and armed robbery at sea which may be committed in areas where EU Operation Atalanta is present, and the general deterrence, prevention and repression of acts of piracy and armed robbery" (United Nations Security Council 2009c:7). The sanctioning of these actions originated from the aforementioned UNSC resolutions 1816 and 1838 that were passed in 2008. This was the first maritime operation ever to be launched by the EU (Van Ginkel and Landman 2012).

The EU Atalanta operation was different from the NATO operation in that it allowed for cooperation with other missions (Van Ginkel and Landman 2012). This is

evident in the establishment of Operation Atalanta's Maritime Security Centre Internet

portal located inside the operational headquarters of the EU. In addition, a second

communication facility has been established with a specific web-application designed for

the sharing of politically sensitive material, termed MERCURY, which allows for real-

time communication instrumental to the cooperation between Atalanta and other naval

forces for the purposes of most effectively countering piracy (United Nations Security

Council 2009a:3). In 2009, the UN praised EUNAVFOR for the

> significant disruption of successful pirate attacks in the Gulf of Aden. A
> significant number (68) of suspected pirates have been captured by Operation
> Atalanta and transferred to Kenyan authorities for subsequent prosecution (United
> Nations Security Council 2009a:3).

The initial mandate for Operation Atalanta was to deploy naval forces in areas

that were most at risk for piracy within 1.4 million nautical square miles, which limited

the mission to 500 nautical miles off the coast of Somalia (United Nations Security

Council 2009a). In 2009, in a Report of the Secretary General, it was reported that the

Operation had been extended to include more than 20 vessels and aircrafts and an

increase in personnel to 1,800 workers – with as many as 12 naval ships from different

EU states operating at any one time (United Nations Security Council 2009d). In 2010,

the EU expanded their mandate to incorporate the UNCLOS definition of piracy, so

instead of focusing on specific high-risk areas for piracy, EU forces can now fight piracy

in a larger maritime area (Council of European Union 2010; 2012). In 2011, the

resources increased again to include 32 vessels from 11 states and an average of four

aircraft (United Nations Security Council 2011d). Atalanta's mandate has been most

recently updated to specifically include permissions to operate in "Somali internal waters

and Somali land territory" (Council of European Union 2012:1).

Also in 2009, the Combined Task Force 151 was established. This US led international naval coalition whose mission it is "to disrupt piracy and armed robbery at sea and to engage with regional and other partners to build capacity and improve relevant capabilities in order to protect global maritime commerce and secure freedom of navigation," was initiated to replace taskforce CTF-150 which was said to be limited in its ability to fight maritime security in the area because of its focus was on terrorism, not piracy. Therefore, a specific task force was needed for the purposes of fighting piracy under the authorization of UN Security Council resolutions 1816, 1838, 1846, 1851, and 1897. The CTF-151, patrols the Internationally Recommended Transit Corridor (Combined Maritime Forces 2012b). The Combined Maritime Force consists of 25 states, but it is a less stringently organized cooperation than NATO or the EU, especially as it relates to operational coordination and capacity (Van Ginkel and Landman 2012). Specific member states involved with the task force have included Australia, France, Germany, Italy, Pakistan, Canada, Denmark, the Republic of Korea, Singapore, Turkey, and the UK (United Nations Security Council 2009d). Again, the UN has praised this initiative as having "successfully deterred several pirate attacks, responded to emergency calls from vessels in distress and seized large quantities of contraband, including weapons, drugs and paraphernalia" (United Nations Security Council 2009a:6). To assist cooperative efforts to fight piracy there have been significant efforts to institute means to coordinate and share information.

Shortly following the pirating of the *MV Sirius Star* in 2008, the UN Security Council called for the coordination of anti-piracy efforts in Resolution 1851, which subsequently led to the establishment of the Contact Group on Piracy off the Coast of

Somalia (CGPCS) on 14 January 2009 (United Nations Security Council 2011d). The purpose of this group is to "facilitate discussions and the coordination of actions among States and organizations aimed at countering piracy off the coast of Somalia" (United Nations Security Council 2011d:4). There are four working groups set up for the purposes of exchanging and coordinating ideas, information, and response strategies with a range of regional and international actors (Contact Group on Piracy off the Coast of Somalia 2012).

Working Group 1, chaired by the United Kingdom and Northern Ireland, focuses on regional capacity building, a forum for dialogue for military contributors, and identifying resource deficiencies, specifically inadequacies in military capabilities (United Nations Security Council 2011d). The primary focus of Working Group 2 is the legal instruments framing the anti-piracy response. In conjunction with the United Nations Office on Drugs and Crime (UNODC), this group has provided guidance and understanding to member states and organizations on the legal issues associated with piracy, as well as focusing on the successful prosecution of suspected pirates. They have also developed a legal framework for the transfer of convicted Somali's to serve their custodial sentences in Somalia. Working Group 3, convened by the US, has focused on strengthening the awareness of the private shipping sector. With the support of the IMO, the priority here has been the self-awareness of shipping, the use of private armed security companies for the purposes of evading piracy when possible, and to self-protect. Working Group 4, which was convened by Egypt has focused on information sharing, specifically with the public via the media. Additionally, in July 2011 the CGPCS

established Working Group 5 with a mandate of following the financial flows associated with the direct and indirect funding of piracy (United Nations Security Council 2011d).

Another coordination effort specific to naval forces ensuring a shared mission is the Shared Awareness and Deconfliction (SHADE) group that was established in December 2008. This is a joint venture by EU naval and Combined Maritime Forces and has been established for the purposes of "sharing best practices, conducting informal discussions and "deconflicting" the activities of those nations and organizations involved in military counter-piracy operations in the region" (United Nations Security Council 2009d:6). The membership of SHADE has grown considerably to include 26 nations, in fact at the December 11th meeting (22nd meeting) there were 115 representatives from 27 nations' militaries, law enforcement agencies, various governments as well as private shipping. Initially this group convened on a monthly basis, however more recently they meet on a tri-monthly basis to discuss the synchronization of operations, resource sharing, and cooperation (Combined Maritime Forces 2011). As indicated by the UN, this group has established a designated area for transit in the Gulf of Aden, the aforementioned Internationally Recommended Transit Corridor (IRTC), that allows warships to better patrol and deter against acts of piracy. In early 2009, the corridor was amended to include lanes that go both east and west bound and was moved further from established fishing areas (International Maritime Organization 2009a). Figure 6, is a map taken from the EUNAVFOR Maritime Safety Centre depicting the area known as the IRTC.

Figure 6.   The Internationally Recommended Transit Corridor
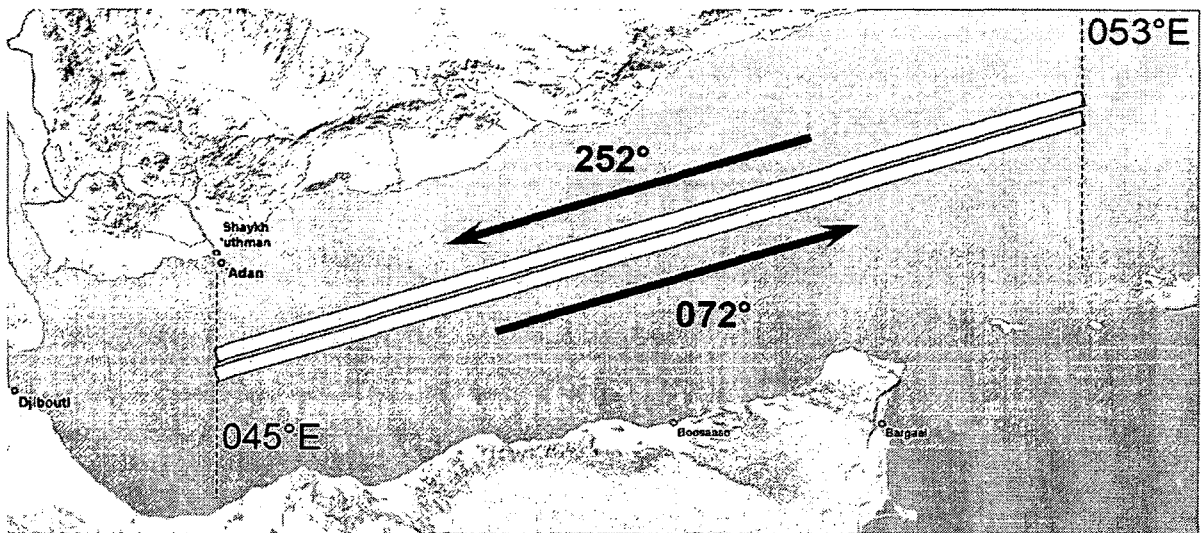
Further coordination efforts include an office set up by the UK Maritime Trade

Organization (UKMTO), the Maritime Security Centre – Horn of Africa (MSC-HOA),

the NATO Shipping Center (NSC), and the Maritime Liaison Office in Bahrain

(MARLO). The UKMTO, has also established an office in Dubai that acts as a liaison

for merchant vessels with military forces operating in the region, it also acts as an

information gathering center for the EU and the Combined Maritime Forces. This office

is the primary contact for ships in distress in the area, and they then contact other

organizations and states navies to coordinate a response. The MSCHOA purpose is the

safeguarding of private shipping, and is equipped with an extremely powerful internet

portal that allows for EU forces to have a dialogue with the international merchant

shipping community, communicating their locations while traversing through the Gulf of

Aden (United Nations Security Council 2009a). The NSC is also NATO's primary

communication facility with the private shipping industry providing warnings against

piracy as well as counter piracy information (Van Ginkel and Landman 2012). The last of these efforts is the MARLO office, which acts as a liaison between the Combined Maritime Forces and the commercial maritime community in the Middle East with 27 nations in participation including seven in the Horn of Africa. This office is also the secondary point of contact for ships in distress after the UKMTO (United Nations Security Council 2009c). Information is shared via the EU introduced MERCURY communication system (Van Ginkel and Landman 2012). These information sharing offices are touted as being necessary not only to the security of shipping, but to keeping private shipping abreast of the changing nature of the actors involved.

In August 2009, NATO's Operation Allied Protector became Operation Ocean Shield and has extended the mission to include regional capacity building (NATO 2013). This regional capacity building makes reference to "assist[ing] regional States, upon their request, in the development of their own ability to combat piracy in full complementarity with existing international efforts" (United Nations Security Council 2010c:6). The "regional capacity building" is therefore, specific to fighting piracy that threatens international shipping lanes. NATO Operations however are limited in their capacity to transfer pirates for prosecution as they are dependent on memorandums of understanding with states in the region. In cases where the flag state of the vessel that was pirated does not want to pursue a prosecution of those accused, as is their right under international law, NATO has been forced to release the suspects (Guilfoyle 2012).

Additionally, in 2009 there were two subsequent resolutions passed by the UNSC (1872 and 1897), four in 2010 (1910, 1918, 1950, 1964), four in 2011 (1976, 2010, 2015, 2020), and one in 2012 (2036). The UN reinforced the condemnation of piracy in many

of these resolutions and extended the permission to member states to enter Somali territorial waters for the purpose of deterring, capturing, and prosecuting piracy, as well as applauding the efforts of member states and other regional organizations and joint efforts, for actions taken to combat piracy (United Nations Security Council 2009e; 2009f). This has led to the involvement of many actors involved in varying degrees in the fight against piracy as depicted in Table 6.

There are many private actors involved in the anti-piracy response, including the previously discussed IMB and the IMO. In addition to being the UN branch for specifically dealing with the issues related to oceans and laws of the sea, as well as regulating international shipping, the IMO has been instrumental in implementing a Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden. Frequently referred to as the Djibouti Code of Conduct, it was adopted in January 2009 as a central instrument for building a regional capacity for dealing with piracy, as well as information sharing. This instrument includes agreements on operational conduct including rescuing of ships that have been hijacked, seizing vessels, interdiction, and prosecuting those accused of piracy. Information is shared through regional reporting and exchange centers in Kenya, The United Republic of Tanzania and Yemen. This instrument has also promoted regional workshops, such as an October 2009 workshop in conjunction with the United Nations Office on Drugs and Crime, INTEPOL, and the Information Sharing Center, a function of Re CAAP[1] that was held in the Seychelles (United Nations Security Council 2009d).

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[1]ReCAAP is the acronym for the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP Information Sharing Centre 2011)

Table 6.   Actors Involved in the Counter-Piracy Efforts in the Gulf of Aden

0 = Activity planned or in development X = Activity implemented	Maritime operations	Information sharing	Rule of Law capacity building	Operation capacity building	Industry self-protection
Contact Group on Piracy off the Coast of Somalia (CGPCS)	X	X	X	X	X
Djibouti code of conduct	X	X	X	X	
European Union	X	X	X	0	X
Independent deployers	X	X			
International Maritime Bureau - Piracy Reporting Centre		X			
International Maritime Organization		X	X	X	X
INTERPOL		X		X	X
Kampala Process	X	X	X		
League of Arab States		0			
Malacca Straits Patrols	X	X			
Maritime Organization of West and Central Africa	0	0	0	X	
New York Declaration					X
NATO	X	X		0	X
Port and Coastal Nations	X	X	X		
Shared Awareness and Deconfliction (SHADE)	X	X			X
Strategy for the Danish Counter-piracy Effort	X	0	X	0	0
African Union	0	0	0	0	
The Eastern and Southern Africa – Indian Ocean Regional Plan of Action		X	X	0	
Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships (ReCAAP)		X		X	X
United Kingdom Marine Trade Operations (UKMTOs)		X			X
United Nations Developments Programme (UNDP)			X	X	
United Nations Office on Drugs and Crime			X	X	X
United Nations Political Office for Somalia		X	0		
UNSC/General Assembly Secretary General	X		X		
World Maritime Day	0	0	0	0	0

Other organizations including non-governmental organizations, such as the Baltic International Maritime Council (BIMCO), with a mission statement that promotes the interests of commercial shipping and free trade (Baltic International Maritime Council

n.d.), have also become involved in the war on piracy, as well as various law enforcement agencies. INTERPOL have been actively engaged in providing for the exchange of intelligence through the INTERPOL I-24/7 global secure communication network, which provides for the sharing of information with national and regional police agencies, the UN, IMO, as well as naval forces and representatives from the private shipping industry. INTERPOL has also opened an office in the port of Mombasa in Kenya that is equipped with the I-24/7 communication system. There are presently efforts to place a similar office in Mogadishu. In addition, the IPC in an effort to protect private shipping has initiated the New York Declaration, which sets out the internationally recognized best management practice for the protection of merchant ships against pirate attacks. Nine countries have signed this declaration; Bahamas, Liberia, the Marshall Islands, Panama, Cyprus, Japan, Singapore, the UK, and the US. The UN asserts that these "signatures now account for more than 50 per cent of the world's shipping by gross tonnage" (United Nations Security Council 2009d:8).

Beginning in 2010, the UN established the Trust Fund to Support Initiatives of States to Counter Piracy off the Coast of Somalia, or more frequently referred to as the 'Trust Fund', as a mandate of the CGPCS to "help defray the expenses associated with prosecution of suspected pirates, as well as other activities related to implementing the Contact Group's objectives regarding combating piracy in all its aspects" (United Nations Office on Drugs and Crime 2011). According to the Best Management Practices for Protection against Somalia Based Piracy (2011) there are measures that private shipping companies should take to better secure their vessels. These measures include enhanced watch keeping, vigilance, and keeping lookout, enhanced protection of, and controlling

access to the bridge, razor wire, water spray and foam monitors, maneuvering practices, closed circuit television, upper deck lighting, alarms, citadels and/or safe muster points.

There are several member states that have actively engaged in the fight against piracy off the coast of Somalia independently. There are as many as ten states operating with varying degrees of coordination with other co-operations in the Gulf of Aden, including China, India, The Islamic Republic of Iran, Japan, Kenya, Malaysia, Saudi Arabia, South Africa and Yemen, Republic of Korea, and the Russian Federation (United Nations Security Council 2009d; United Nations Security Council 2011d). There are approximately 30 to 40 warships actively fighting the war on piracy in the Gulf of Aden and Somali territorial waters, an area that spans 2, 000,000 nautical miles (Apps 2010) an area that is roughly 1.5 times the size of Europe (Van Ginkel and Landman 2012). As indicated above, the efforts to counter piracy are greater than the number of military vessels deployed to the shipping lanes to protect commercial shipping. As indicated by the Special Advisor on Legal issues related to Somali piracy Jack Lang, who comments on the complex nature of the current response,

> The large number of actors implicated in the fight against piracy can at times be dizzying. Using the orchestra as a metaphor, each instrument must have a score that is in harmony with the ensemble, while the ensemble, in turn, must be led by a conductor (United Nations Security Council 2011a:46).

As indicated above the number of actors involved in fighting piracy in the Gulf of Aden and Somali coastal waters are vast, and include international, regional and national actors, all of whom are engaged in varying degrees with cooperative agreements, information sharing, and military deployment. These actors however, are not just state governments but also involve private shipping interests, international law enforcement agencies, as well as non-governmental organizations. The discourse indicates that many

of these actors became involved following the action of the UNSC that began in 2006, with resolutions that conveyed authority to those with interests in the issue of Somali piracy, to actively instigate counter-measures to prevent, deter, and punish those involved in piracy. Although the focus of the anti-piracy response up until this point, has been the development of a militarized deterrence based solution to acts of piracy in the Gulf of Aden and Somali coastal waters, as a consequence of these policies there has also developed recognition from the IPC for a greater capacity to prosecute pirates captured by military forces.

PROSECUTIONS

The first mention of the issue of prosecution is in 2006 in a Report of the Secretary General on the Oceans and Laws of the Sea. In this report, states in the region surrounding Somalia are urged to prosecute individuals charged with piracy (United Nations General Assembly 2006b). The UNSC first mentions prosecuting piracy in 2008 (Resolution 1846) where they urge member states 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" (United Nations Security Council 2008h:4). It is after this date that there is increased focus on building the international and national capacities for the prosecution of the Somali pirate.

In 2010, the Secretary General issued a report specific to the "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" (United Nations Security Council 2010a:1). This report calls attention to the fact that the UNSC has sanctioned states who

are cooperating with the Somali Transitional Federal Government to fight piracy in and around Somali coastal waters, and under Resolution 1816, issued in 2008, to "cooperate in determining jurisdiction in the investigation and prosecution of persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia" (United Nations Security Council 2008e:3). The Secretary General also notes that under the SUA Convention, parties should "create criminal offences, establish jurisdictions and accept delivery of persons responsible for, or suspected of, seizing or exercising control over a ship by force or threat thereof or any other form of intimidation" (United Nations Security Council 2010a:13). Furthermore, the General Assembly issued a resolution (United Nations General Assembly 2010), urging all states in cooperation with the IMO to adopt legislation as a means of actively combating piracy and armed robbery at sea, and in 2010 the UNSC expressed concern that "the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecutions of suspected piracy" (United Nations Security Council 2010d:2). As a result of this focus, the number of prosecutions, and the number of states involved in pursuing prosecutions began to increase.

In 2010, the Secretary General reported that there were 528 prosecutions ongoing in ten different countries; Kenya, the Seychelles, Somalia, Maldives, Yemen, the Netherlands, the US, France, Spain, and Germany. Many of the prosecutions that have occurred in regional states (i.e. Kenya) resulted from arrests or apprehensions executed by a different state's naval forces, who then transferred the accused to that state for prosecution. In a 2011 Report to the Security Council, the Secretary General noted a sizable increase in the number of prosecutions of individuals suspected of piracy, with

over 1,000 suspected pirates being prosecuted or awaiting trial as of October 3, 2011, in

20 different states; Belgium, Comoros, France, Germany, India, Japan, Kenya,

Madagascar, Malaysia, Maldives, the Netherlands, Oman, the Seychelles, Somalia, the

Republic of Korea, Spain, the United Arab Emirates, the United Republic of Tanzania,

the US, and Yemen (United Nations Security Council 2011d). Table 7 provides an

overview of the number of prosecutions by state, as reported by the Secretary General in

2011. This indicates that prosecutions are being pursued by both regional actors and

international actors. Although international law, coupled with the sanctioning of the

UNSC has allowed many members states to pursue their own prosecutions, there still

remains huge inconsistencies in state's responses to prosecuting the Somali pirate.

There are considerable inconsistencies with regards to the apprehension of suspected

pirates. Many states release suspects they have apprehended asserting they have

insufficient evidence to launch a prosecution under their domestic laws (United Nations

Security Council 2010a). In 2010, the UN Secretary General reported that

> the commanders of the European and NATO naval forces off the coast of Somalia
> estimate that around 700 suspects apprehended by the ships under their command
> have been released between January and June 2010" (United Nations Security
> Council 2010a:14),

termed "fast-track arrest-and-release episodes" (Archibugi and Chiarugi 2011:232).

Other reasons for release include naval forces inability to find another state willing to

accept the transfer of the suspect for trial, lack of transfer agreements with regional states,

and the adoption of policies that release the suspects and seize the weapons (United

Nations Security Council 2010a).

Table 7.   Prosecutions of Somali Pirates by State as Indicated by the UN in 2011*

Country	Number Held	Notes
Belgium	1	
Comoros	6	
France	15	
Germany	10	
India	119	
Japan	4	
Kenya	119	50 convicted
Madagascar	12	
Malaysia	7	
Maldives	34	Awaiting deportation in absence of law under which to prosecute
Netherlands	29	5 convicted
Oman	12	All convicted
Seychelles	64	41convicted
Somalia – Puntland – Somaliland – South Central	290 94 18	Approximately 240 convicted 68 convicted Status of trial unclear
Republic of Korea	5	
Spain	2	
Tanzania	12	6 convicted
United Arab Emirates	10	
United States	28	8 convicted
Yemen	120	All convicted
Total States: 20	1011	

*The information is taken from the Report of the Secretary-General on the modalities for the establishment of specialized Somali anti-piracy courts (Unite Nations Security Council 2011b:27-28). The UN acquired this information from situation reports from the International Maritime Organization and from the Department of Peacekeeping Operations of the United Nations Secretariat.

In addition, there have been accounts of some states taking more extreme measures. Naval forces from Russia and India have been accused of taking a more violent approach and opening fire on suspected pirates, killing them as well as the kidnapped crew, before sinking the hijacked trawlers. For example, having captured the ten pirates accused of

hijacking the oil tanker *MV Moscow,* the Russian navy are reported to have released the ten men "300 miles off the coast without water, food and any navigation device" with no means to safely reach shore (Archibugo and Chiarugi 2011:232).

As many Western states are reluctant to prosecute individuals for piracy unless they were directly victimized in the attack, and Somalia does not have the infrastructure to prosecute themselves, other states in the region have been urged by the IPC to provide venues for prosecutions and accept suspected pirates for trial. These states include Kenya, Mauritius, and the Seychelles (Oceans Beyond Piracy 2011). For example, the Secretary General reports in 2010, that Kenya has launched 14 prosecutions of 123 piracy suspects since 2006. Of these prosecutions, nine involved suspects transferred from the EU, three from the US, and two from the UK. In June 2010, with the assistance of the UNODC, a brand new piracy court opened in Shimo La Tewa, Mombasa, and as a result Kenya has become the primary receiver of persons accused of piracy for trial. In March 2010 however, Kenya gave a six month notice to Canada, China, Denmark, the EU, the UK, and the US, that they were withdrawing from their agreement to receive and prosecute individuals for piracy, but the UN reports that despite this they continue to accept suspects from naval forces on an ad hoc basis. The Seychelles also accepts suspects of Somali piracy for prosecution from naval forces from Denmark, the EU, the US, and the UK. This is based on a recent understanding with the Transitional Federal Government, Puntland, and Somaliland that those convicted of piracy can be transferred back to Somalia to serve their sentence. There are further negotiations with Mauritius to accept piracy suspects for prosecution from the EU, and currently there are plans to

consider the capacities of both the United Republic of Tanzania and Maldives for similar arrangements (United Nations Security Council 2011b).

Considering the complexity, the vast number of actors and interests involved in the anti-piracy response, it would be expected that the number of piracy attacks in the Gulf of Aden and the Somali basin would have significantly decreased. Examining more recent statistics on the number of piracy attacks reported to the IMB, as depicted in Figure 1, the number of attacks continues to rise from 2008 to 2011 (the seeming drop in 2012 is a result of the data only being available for the first three months of that year). In addition, the UNSC Special Advisor on legal issues related to piracy off the coast of Somalia asserts in his 2011 report to the Security Council that "the number of attacks in absolute terms has nonetheless continued to grow" (United Nations Security Council 2011a:20), and that less than 10 percent of pirates are apprehended, and nine out of ten of those that are apprehended are not prosecuted (United Nations Security Council 2011a).

Complicating matters further, there are a number of prosecutions taking place outside of the region (United Nations Security Council 2010a). In 2010, the Secretary General reported there were 40 prosecutions taking place outside of the region. These cases tend to involve attacks that merit strong national interest (i.e. it involved crew who were state nationals), and as a result those accused of piracy are transported to that state for the purposes of prosecution (United Nations Security Council 2010a). Two such prosecutions are those of eleven Somali men prosecuted in Virginia in the US, for acts of piracy, as well as a range of additional charges that will be discussed in detail in the following chapter.

CHAPTER VIII

FINDINGS: THE SOMALI PIRATE ON TRIAL

The international response to the problem of piracy in Somali coastal waters revolves around deterring piracy attacks through the deployment of military warships to patrol the international transit corridor and capture anyone caught pirating a vessel. The implementation of these policies have resulted from the discourse that frames piracy as being synonymous with terrorism, perpetrated by pirate militias and being a threat to international shipping and trade. To highlight how this discourse at the international level is enacted and enforced at the interactional level, data from the trials of Somali men for the crimes of piracy is presented. Drawing from these cases the anti-piracy policies are brought from the abstract construction of the discourse itself, to its reality in the trials of individuals arrested and prosecuted for the crime of piracy.

Data were collected from two piracy trials held in Norfolk Virginia, in March 2010 where eleven individuals were charged with several crimes: 1) Piracy under the Law of Nations; 2) Attack to Plunder a Vessel; 3) Assault with a Dangerous Weapon in a Special Maritime Jurisdiction; 4) Conspiracy to Use Firearms During a Crime of Violence; and, 5) Use of Firearm During a Crime of Violence. Subsequent counts were added to the indictment during the course of both trials, increasing the number of charges from five to 18. The data collection resulted in a total of 452 documents, 276 from *US v. Hasan et al.* (2011a), and 176 from *US v. Said et al.* (2012). Included in the documents were the indictments, warrants, motions, responses, judgments, orders, sentencing documents, as well as transcripts from the hearings in the courtroom. Some of the

documents were sealed and consequently unable to be included in the analysis. For example, pre-sentencing reports were sealed as they were said to include personal information about the defendants so they were not included in the analysis. Approaching the cases in chronological order, the charges included in the indictment will be presented, beginning with the case of the *United States v. Hasan et al.*

THE USS NICHOLAS CASE

According to the indictment, on March 31st 2010, five Somali men; Mohammed Modin Hasan, Gabul Abdullahi Ali, Abdi Wali Dire, Abdi Mohammed Gurewardher and Abdi Mohammed Umar were accused of attacking a US warship involved in the counter-piracy mission (Combined Task Force 67), the *USS Nicholas* from a small skiff (15 to 20 feet in length) in the Gulf of Aden. Having identified three vessels suspected to be involved in piracy on its radar, the warship changed course with the purposes of intercepting them. Three of the Somali's approached the *USS Nicholas,* in a small vessel, came alongside the warship and opened fire (fired three shots), the *Nicholas* returned fire on the vessel (approximately 40 rounds). The small craft (the pirate's vessel) then attempted to flee the warship which then pursued it for approximately 45 minutes before the engine on the skiff cut out. US navy personnel then boarded the skiff taking the three defendants into custody; handcuffing and blindfolding them before taking them onboard the *USS Nicholas* where they were photographed, their clothes cut off their bodies and then they were medically examined while they were naked – all of which without the ability to communicate with them in their native language of Somali. Another skiff (later identified and referred to as the mother ship) was tracked by radar and pursued by the

warship. When the warship came up alongside the 30 to 40 foot vessel, it was boarded and the other two defendants were taken into custody. During their detention on the ship, one of the Somalis' allegedly confessed via satellite phone to an interpreter to being a pirate and engaging in piratical acts. Later, when an interpreter was brought to the warship in person, all five defendants denied being engaged in acts of piracy. The defendants were subsequently transported back to the US for prosecution. The trials resulted in the conviction of all five Somali men for acts of piracy, and they each received life sentences for piracy plus an additional 80 years for the other charges, all of which is to be served in the US federal prison system.

It is important to note at this point, that although absent from the discourse at the international level, many of the navies involved in the anti-piracy effort engage in a practice that attempts to disguise the identity of their warships making them more enticing as a possible target for piracy. This is done by changing the lighting on the ship as described by the commanding officer of the *USS Nicholas* Mark Kesselring during his testimony,

> We had modified our lighting so we would look more like a merchant vessel.
> Really it's not dramatically different, we look pretty similar out there. In my
> experience, really only a military person would notice the difference in the
> lighting schemes unless you spent a lot of time at sea. But we had modified them
> so we looked more like a merchant, yes (US v Hasan et al. 2011n:18)

This suggests that the naval response extends beyond simply patrolling and deterring would be pirates, to providing targets for the purposes of directly engaging pirates increasing the possibility of confrontation. In this case the prosecutor argued that the defendants were attracted to the *USS Nicholas* because it looked like a merchant vessel. This marks the beginning of the questionable practices, directly related to the lack of

specificity in how member states should pursue matters of arrest, detention, and prosecution of foreign nationals charged with piracy in domestic courts. Another issue arose related to pre-trial detention.

Before the commencement of the trial, the defendants were detained in custody and denied bail as it was said to be,

> convincing that [the] Defendant[s] represent a danger to the community, and that there is no condition or combination of conditions that will reasonably assure the safety of the community. The Court also FINDS by a preponderance of the evidence that Defendant[s] represents a risk of flight, and that no condition or combination of conditions will reasonable assure the return of Defendant[s] for further proceedings (US v Hasan et al. 2011b:2).

Although entitled to a bail hearing under domestic law, the possibility of bail was not practical or feasible based on the circumstances of the defendant's apprehension, i.e. non-English speaking foreign citizens forcibly removed and detained first on a warship, and then in federal custody, and therefore undermines rules of due process. Also of interest was the Assistant United States Attorney's description of this as being an "open and shut case" (US v Hasan et al. 2011c:2), and then filing a motion to classify the case as complex denying the defendants right to a speedy trial (extending it beyond the 70 day limit) based on the need to collaborate with the *USS Nicholas* in the presentation of evidence, that evidence may be classified, and the need for a Somali interpreter. The motion was granted by the court (US v Hasan et al.2011d). Following the granting of this motion the prosecution brought additional charges against the defendants, all of which were allowed by the Judge.

As this was the first time that individuals had been charged with the crime of piracy in the US in over one hundred years, amendments were made to the charges in the pre-trial stage of the case. In July 2010, the indictment was amended to include ten

additional charges: 1) Act of Violence Against Persons on a Vessel; 2 and 3) Two counts of Assault with a Dangerous Weapon in the Special Maritime Jurisdiction; 4 and 5) Two counts of Assault with a Dangerous Weapon on Federal Officers and Employees; 6) Conspiracy Involving Firearm and a Crime of Violence; 7) Use, Carry and Possession of Firearm In Relation to Crime of Violence; 8) Use, Carry and Possession of Destructive Device in Relation to Crime of Violence; 9) Carrying an Explosive During the Commission of a Felony; and, 10) Conspiracy to Carry an Explosive During the Commission of a Felony. All of which were felony offenses. Motions were made by several of the defense attorneys to dismiss the indictments as the *USS Nicholas* destroyed the skiff that the defendants were found in and as a consequence evidence that supported the charges was not available for trial. The motion argued that,

> At no time did any of the three defendants board or even attempt to board USS NICHOLAS until they were forcibly brought aboard by crew members while restrained in handcuffs and while blindfolded. The fishing boat was then completely destroyed by gunfire, burned and sunk. USS NICHOLAS then continued its mission with the three defendants on board under restraint. The small boat was then searched at night and was intentionally destroyed by gunfire, burned and sunk (US v Hasan et al. 2011e:2).

The defense argued that the Government intentionally destroyed evidence that was the basis for their case, especially as no inventory or video recordings were made of the vessels before they were blown up. This is indicative of the practices of many different states operating in the Gulf of Aden, who after having captured suspected pirates, blow up their skiffs, burn off the vessel's fuel, and then dump the boat's contents into the water (Rice 2008; Eichstaedt 2010). This would not be an accepted policy when prosecuting other forms of crime in the US domestic court system, and puts the defendants at a significant disadvantage in presenting a defense.

The US Navy's reasoning for the destruction of the vessels was their inability to properly secure them to transport them, and that they were under time constraints as they needed to refuel their vessel. However, although a video recording was not made of the evidence (i.e. the skiff and the items found on it that supposedly implicated the defendants as being engaged as pirates), one was made of the destruction of the vessel, and furthermore the defense counsel points out the recording lasts the full 23 minutes necessary for the skiff to sink into the ocean, so the *urgency* of refueling may not have been quite so urgent.

Another defense attorney argued that the actions of the defendants did not constitute the offence of piracy as the defendants did not board, take control of, or steal from the *USS Nicholas* (US v Hasan et al. 2011f), and another argued that the additional counts added to the indictment, specifically counts that allege violations of 18 United States Code section 924 –the crimes of Conspiracy Involving Firearm and a Crime of Violence, the Use, Carry, and Possession of Firearm in Relation to a Crime of Violence, Use, Carry, and Possession of a Destructive Device in Relation to a Crime of Violence – did not apply under the special maritime jurisdiction of the US or under the laws of the high seas (US v Hasan et al. 2011g). Therefore, the US did not have jurisdictional authority to bring these charges against the defendants. The broad nature of the anti-piracy policies at the international level which authorizes member states to prosecute under domestic laws, leaves many of these issues unspecified and open to the individual interpretation of the presiding Judge, albeit based on case precedent, that is in the case of piracy at best, antiquated.

In addition, further motions were made to suppress the alleged statements made by three of the defendants. These motions question the legality of the US Navy's behavior in this case. For example, one of the defendants, according to the Governments case, admitted to being a pirate and engaging in piratical acts. The defendant allegedly indicated his complicity by communicating via drawing, which was again not available for trial as it was described by the Naval officer involved as "a scratch piece of paper I had in my pocket" (US v Hasan et al. 2011g:202). Other reasons for questioning the legality of the Navy's actions included the defendant's inability to speak, read, or understand English, not being read their rights (violation of the fifth amendment), as well as them being forcibly removed from their boat, handcuffed, blindfolded, stripped naked, and then detained without fully comprehending their situation. For example, defendant Ali's defense council provided,

> For several days, the defendants were kept handcuffed and blindfolded while being detained on the ship and surrounded at all times by armed men. At one point, Mr. Ali was handcuffed with his hands crossed over his head in a painful position for several hours. Mr. Ali has never been to school and cannot write in any language. He can speak Somali, but does not speak English. He has never been to the United States of America, has no experience with our customs or traditions, and has no familiarity with our judicial concepts or system (US v Hasan et al. 2011h:2).

The defense attorney for defendant Gurewardher alleged that he was abused when he was in US custody, stating "he was physically and verbally abused and threatened, interrogated, and ultimately coerced into making a false statement of certain activities that have been used in part to form the basis of the charges now pending against him" (US v Hasan et al. 2011j:2). In a similar manner, Defendant Umar's defense argued that,

> Umar was taken from his boat, handcuffed, placed on his stomach, stepped upon, and kicked numerous times after his capture. He was then held in a room aboard the USS Nicholas for four days until being formally interviewed through an

interpreter hired by the Navy. During the interrogation, the interpreter was physically in the room with Umar. Umar, however, had difficulty understanding the interpreter. In response to Umar's protestations of his innocence, the interpreter repeatedly stated he did not believe him. The interpreter told Umar that he must confess and admit to being a pirate or the Navy would throw Umar overboard into shark-infested waters (US v Hasan et al. 2011k:2).

Defendant Hasan also asserted that he did not speak English, had a very limited education, but also did not know his date of birth and believed himself to be under the age of 18 years, at the time of the alleged offense (US v Hasan et al. 2011i). As a result his attorney argued the US had not followed the proper procedure required for prosecuting a minor under the Juvenile Justice Act. Despite these motions, the Judge ruled to proceed with the Governments case, but did suppress statements made by the defendants before April 4th 2010, which included the confession by satellite phone. Interestingly, the discourse on the Somali pirate at the international level calls for the implementation of venues for the prosecution of piracy, but does not set out specific policies for the treatment of the population most likely to be arrested for the crime, that of Somali citizens and in many instances Somali youth.

The Government's case was dependent on testimony from US Navy personnel, including the Naval Criminal Investigative Service (NCIS), all of whom were employees of the US government. During testimony provided for the prosecution, many of the US Navy personnel testified that during the course of his detention on the USS Nicholas defendant Gurewardher, after having confessed to being a pirate to an interpreter via satellite phone, became the "favorite" on the USS Nicholas. He earned this title because he smiled a lot at the naval personnel and often greeted them by making the thumbs up hand gesture. Furthermore, in initial exchanges with the crew of the Nicholas, where he communicated with hand signals, he was given juice and oranges by Navy personnel.

However, when the interpreter spoke with him at a later date and conveyed to the crew that he believed the suspect to be lying, he was not given juice or an orange. Although not explicitly stated, the provision of fruit and juice seemed to be offered as a reward for cooperating with the piracy investigation. This is further illustrated by defendant Gurewardher's confusion about the seriousness of his situation when he was transferred into the custody of the FBI, as indicated by Lieutenant Hutchins (state's witness), "He said he wants to come back to the NICHOLAS. I said, well, ask him why. And he said, Because I like it" (US v Hasan et al. 2011l:76).

Although it was suggested that a Navy warship may not be best equipped for interrogating suspects in a crime, it was dispatched as part of an anti-piracy mission and it would not be unreasonable for procedures, policies, equipment, and personnel to be in place to deal with the capture of individuals suspected of piracy. This is especially important as the ship was equipped with investigative tools but they were not utilized in this case. Navy personnel testified that videotaping equipment was available to them, but they did not use it for the purposes of recording the conversations between the defendants via satellite phone with the interpreter, which allegedly resulted in a confession from one of the defendants. They also did not record the individual interrogations that took place later onboard the *Nicholas*, in an area that admittedly was equipped with videotaping capabilities (US v Hasan et al. 2011l). An intelligence officer was onboard the vessel and he took written notes of the initial conversations via satellite phone with the interpreter and the NCIS officer. However, in his testimony he said he was not required to take notes in subsequent interviews as "that was part of the criminal investigation. I was there

strictly in an intelligence capacity, and it was not for –my presence was not required" (US v Hasan et al. 2011e:220).

Additionally, the defense counsel, when cross-examining the witnesses for the prosecution, established that the US Department of Justice became involved very early on, when the first three defendants were taken into custody, making the decisions related to videotaping and destroying evidence "not a maritime or war decision, but a decision regarding a criminal case which they intended to prosecute as early as April 1st" (US v Hasan et al. 2011l:127). This said, testimony from the interpreter (a US citizen born and raised in Somalia) indicated that the defendants would have had no concept of the US criminal justice system, as he had no understanding of it when he emigrated to the US in 1994 (when he was 26 years old). Furthermore, during the interrogation of the defendants no attempt was made by the NCIS investigators to describe the US justice system or the procedural requirements necessary for detention, interviewing or making statements that can be later used in a prosecution – such as rights contained in the Miranda warning (US v Hasan et al. 2011m). Again, the disjunction between the anti-piracy policies promoted as effective deterrents for piracy, is undermined by procedural confusion, the lack of the defendant's comprehension of the domestic justice system at the interactional level, and most importantly the neglect displayed by the investigative personnel in communicating any of these things to the suspects.

The linking of terrorism to piracy at the international level also manifests itself in this trial despite the defendants having no known links to terrorism. For example, the Government in their preliminary questioning of the NCIS Agent onboard the *USS Nicholas,* one of the first witnesses to testify, asking about the reason for his presence and

the US warships presence in the Somali region, asks "Can you tell the court, what is Al-Shabbab?" the Agent replies "It's a terrorist group that operates primarily in Somalia, although they're branching out all over East Africa now, and they're known to be associated with Al-Qaeda" (US v Hasan et al. 2011l:242). This is described as being one of the "operational concerns" (US v Hasan et al. 2011l:243), when assigned to that region of the world. In addition, when the NCIS Agent was asked what the concerns of the captain during the pirate attack itself were, he asserts,

> Multiple things. Primarily the safety of the crew and his ship, obviously. Secondly, is this – to include that, is missing vessel going to swing back on us, you know, try and rescue their mates, is this a terrorist attempt by Al-Shabbob, lots of unknowns" (US v Hasan et al. 2011l:246).

As this was a jury trial, introducing the threat of terrorism when discussing the defendants near the beginning of the trial, labels them as dangerous and threatening actors. Furthermore, when the NCIS agent testified about interviewing one of the defendants, he told the court

> I told him that everyone had already been honest about the situation; nobody blames him from wanting to make money for his family; that many Somalis have two choices, join the terrorist group Al-Shabbob, or be a pirate, and I told him that many people believe he's Al-Shabbob, a terrorist, and I wanted to help him convince people he was not (US v Hasan et al. 2011m:27).

This shows, that despite having no relevance in this case, not only is maritime terrorism mentioned as having been a potential threat to the *USS Nicholas,* but also as an interrogation tool to procure a confession of piracy from the defendants.

Also testifying on behalf of the state was an expert witness on piracy, the Counter-piracy Branch Chief for the Office of Naval Intelligence, whose job was to

> provide intelligence to U.S. decision-makers to include the President, the National Security Council, policymakers in the Office of Secretary of Defense and the State Department to coalition partners in NATO and the European Union, and [to]

provide information to Naval forces to include military commanders, fleet commanders, strike group commanders and Navy ships (US v Hasan et al. 2011o:490).

This witness worked in conjunction with the UK Maritime Trade Organization and the IMB and in talking about piracy in Somalia he testified that

The beauty of piracy from an intelligence analysis perspective, first off, it's a regional activity that's having a global impact. It's affecting freedom of the seas and it's having a negative effect on global commerce (US v Hasan et al. 2011o:496).

This illustrates the broader focus of the anti-piracy response, that of the protection of global shipping and trade, which as in the case of the policies at the international level is justified by a discourse on the dangerous and violent nature of Somali piracy. For example, when asked how many ships have been fired upon by Somali pirates, the Counter-piracy Branch Chief for the Office of Naval Intelligence answers "Approximately 280" (US v Hasan et al. 2011o:496). In discussing the modus operandi of those engaged in Somali piracy he indicates that the presence of an RPG is indicative of piracy, as

It's significant because in the region it's not uncommon for fisherman to also be armed with AK-47s. And we've seen incidents where merchant ships may get too close to their fishing area, and in response those fisherman will shoot at them with an AK-47 (US v Hasan et al. 2011p:761).

This witness confirms that based on his reviewing of the material that this incident was consistent with a pirate attack, despite there being only four shots allegedly fired by the defendants, no RPG and only a few AK47 rounds found on the attack skiff but no AK47.

The state also asked this witness to provide an example of an evolving trend specific to piracy in Somalia, and he states that a

Perfect example with an evolving trend is related to the use of motherships. What we see know is Somali pirates, when using motherships, will employ the use of a

30-foot whaler, fishing vessels and dhows. And what we've seen recently that we believe may be an evolving trend is the use of hijacked large merchant ships that are being used as motherships to attack other ships (US v Hasan et al. 2011o:504).

This seems to contradict the evidence in the case as there was no confirmation from the defendants, who were on different skiffs, that they knew each other. The second skiff was only pursued after the first was apprehended, and it could not be confirmed with any certainty that the defendants knew each other prior to the incident. This witness also contended that although his job is focused on piracy in general, "Nearly almost every day that, every minute of the day is primarily devoted to Somali piracy" (US v Hasan et al. 2011p:751), demonstrating to the court and the jury that the problem of piracy in Somalia is very serious and widespread.

As with the discourse at the international level, the Counter-piracy Branch Chief for the Office of Naval Intelligence also commented on the increasing costs incurred by private shipping as a result of piracy, "the industry as far as increase in costs. There are estimates from 1 billion to $16 billion" (US v Hasan et al. 2011p:757). He also testified to the amount of ransoms paid since 2005 as being $160 million for 150 ransoms. Here, as with the discourse at the international level, the private shipping industry is being framed as the victim of piracy.

The discourse found at the international level that frames piracy as an organized crime also makes it into the trial transcripts as the Counter-piracy Branch Chief for the Office of Naval Intelligence asserted that the business model for piracy is that of organized crime, with someone funding the pirate attack; "an investor who is financing the operation oversees the procurement of those supplies and equipment" (US v Hasan et al. 2011p:812). Despite this testimony, the witness does not claim that the attack on the

USS Nicholas was in any way associated with organized crime; rather this was used to characterize Somali pirates in general. This again puts the defendants at a significant disadvantage, as they have been associated with Al-Shabaab, organized crime, RPGs, AK47s, and as posing a threat to private shipping, global trade, crew, ships and cargo, all before the facts of the case have even been heard. This disadvantage was even further compounded by the defendant's general lack of comprehension of many terms and concepts used during the trial.

When the defendants testified (four of the five did so), even with the aid of an interpreter there were difficulties with ensuring they fully understood everything. For example, one defendant did not know what months of the year were as indicated in the following interaction with his attorney, who asked him the following;

> Q. Do you understand the months of the year?
> A. I do not understand.
> Q. Do you know what we call March is?
> A. March? Tell me. I do not know.
> Q. Okay. I'm trying to refer to a date in the past, a time.

There also seemed to be considerable difficulty in conveying certain concepts;

> Q. Did the bad men give you a ladder, Mr. Dire?
> A. What do they call ladder?
> Q. You don't know what ladder is either?
> A. No, I don't. (US v Hasan et al. 2011p:1130-1131).

The defendants did present their understanding of the events, and they denied being pirates and claimed they were forced to engage in piracy after having been kidnapped.

For example, when defendant Ali testified he claimed

> we were fishing, we found two lion fish, we had two lion fish in the boat. Then all
> of a sudden two boats came to us. They shot, they fired shots. They came into our
> boat and then they beat us.
> Q. How did they beat you?
> A. Very bad. Very bad.

> Q. What else did they do to you?
> A. Well, when they beat me up very badly, then they blindfold me, they handcuff me.
> Q. What else happened?
> A. That's what happened. They beat us. (US v Hasan et al. 2011q:31)

It was following this attack that the defendant asserted his hands were bound behind his back and left for an unknown period of time, long enough that defendant Ali said "that [his hands] started swelling" (US v Hasan et al. 2011q:32), and then forced into another boat. At some point they were then placed back into their original vessel (although it is not clear whether it was the same or a different vessel from the defendants testimony), handed weapons, given instruction on how to use them, and then told to attack the *USS Nicolas.*

> Q. What happened after they threw the guns in and told you to go to the light?
> A. Well, they told us go to that light.
> Q. And what happened?
> A. Well, Mohammed said, well, I cannot drive this boat.
> Q. Did he ever drive the boat?
> A. He did little bit, and then he could not drive any more.
> Q. Were -- the other people, what did they do?
> A. Well, when Mohammed was unable to drive the boat and we were in the middle between the lights and the boats, then they start shooting us.
> Q. Who started shooting?
> A. The other men who were actually force us.
> Q. The other men that were shooting, what were they doing? Were they driving the boat? What were they doing?
> A. Which boat?
> Q. The men that gave them the gun?
> A. Yes.
> Q. How far away were they from you?
> A. They were very close. Little bit.
> Q. What happened after they were shooting at you?
> A. Well, then the other side the lights, they told us to go, then they began shooting back. (US v Hasan et al. 2011q:35).

This explanation of events was confirmed by the other three defendants. Interestingly there was no medical evidence submitted that could of confirmed the defendants story, (i.e. showing marks on his wrists from being bound).

The defense also arranged for a witness in support of one of the defendants who could confirm that he was indeed a fisherman. This witness testified from Mogadishu and confirmed that one of the defendants was a fishermen employed by him through another man, and was using his vessels for the purposes of fishing for "lion fish" (sharks) and selling them at the Hamar market in Mogadish. This witness testifying from Mogadishu, also confirmed that the boat known to be used by the defendant had gone missing in March 2010, and was still missing. He also said that five other individuals worked with the defendant on the fishing boat, and that these men were not involved in piracy. The witness also asked for his boat back and compensation for the taking of his crew (US v Hasan et al. 2011q). This illustrates that the anti-piracy response which has been initiated for the purposes of deterring acts of piracy should be questioned. As the question becomes, who are the anti-piracy policies deterring if when individuals are arrested and prosecuted for engaging in piratical acts their fate is not known to people back in Somalia? This disconnection between the purpose of the policies and the reality of their implementation is again emphasized in the defendant's comments to the court during their sentencing hearings.

All of the defendants were found guilty and sentenced to life in prison for the charge of piracy, and an additional 80 years for the other charges to be served concurrently, as well as a $1,300 special assessment fee. The defendants were each asked whether they wished to make a statement to the court prior to their sentencing, and

each of the defendants obliged. Defendant Hasan stated "I am sorry that I have been accused of these crimes" (US v Hasan et al. 2011r:48). Defendant Ali asserted "I do not accept what's been convicted of me here. I am being judged on the basis of something I did not commit" (US v Hasan et al. 2011r:57). Defendant Dire stated "Well the only statement that I'd like to make is that I did not commit this crime and I am not accepting the outcome of this case" (US v Hasan et al. 2011r:62). Defendant Gurewardher said "Well, I, I find the crime that I was found guilty on is unjust" (US v Hasan et al. 2011r:68). Defendant Umar addressed the court and said;

> DEFENDANT UMAR: Well, I do have a question for you.
> THE COURT: Yes, sir?
> DEFENDANT UMAR: Well, it seems to me that you're going to sentence me life sentence?
> THE COURT: Is…I'm not sure that's a question. It sounds like a statement, Mr. Umar.
> DEFENDANT UMAR: Yes, that's – the statement that I'd like to make: I did not kill anyone. I did not rob anybody. I didn't attack anybody. I like to be told the reason that I am found guilty on this case (US v Hasan et al. 2011r:74).

All of the defendants maintained their innocence and in some instances even seemed confused by the outcome of the sentencing hearing, which in many ways is characteristic of their reaction to the proceedings as a whole. In addition, they have all appealed their convictions and are now awaiting an appeal hearing. This outcome is very different from the case involving the *USS Ashland,* which is still pending due to appeals based on matters of law.

THE USS ASHLAND CASE

The second case, the *US v. Said et al,* involves six Somali nations; Maxamad Cali Saciid (aka Mohammed Said), Mohammed Abdi Jamah, Jaamac Ciidle, Abdicasiis

Cabaase, and Mahamed Farraah Hassan. These six Somalis were accused of opening fire on a US naval ship, the *USS Ashland,* with the intent to pirate the vessel for ransom. As in the previous case, the Somali men were taken into US custody onboard the *Ashland,* and then transported back to the US to face criminal charges. In this case, one of the defendants, Jaamac Ciidle – also referred to as Jama Idle Ibrahim – made a plea agreement with the prosecution which resulted in convictions for the attack and plunder of a vessel (Title 18, United States Code, Sections 1659), and an act of violence against persons on a vessel (Title 18, United States Code, Sections 2291(a) 6 and 2, and the use of a firearm during the crime of violence (Title 18, United States Code Sections 924(c)(1)(A)(iii) and 2. The defendant received a sentence of 360 months (30 years) to be served in the United States Bureau of Prisons. Contrary to the Judge's decision in the *USS Nicholas* case, the Judge dismissed the charges of piracy against the remaining five defendants on the 17th of August 2010, as they did not board the vessel and therefore their actions did not meet the definition of piracy. The government appealed this decision, and the case was placed in abeyance pending a decision from the Fourth Circuit Court. The appeal court made its decision on May 23, 2012 reversing the District court's decision and in response the defendants have filed a writ of certiorari with the US Supreme Court, and currently the issue is still pending. This shows that there is still legal uncertainty as to how these policies that have been initiated at the international level, should be implemented at the interactional level (US v Said et al. 2012).

It seems that despite anti-piracy measures having been implemented to deter piracy in Somali waters at the international levels, piracy continues to flourish in the region. This may be related to the disjuncture between the broad policies that exist at the

international level and the realities of their implementation at the interactional level. In

the following chapter the findings contained in the preceding three chapters (VI, VII, and

VIII) will be contextualized and analyzed using the integrated theoretical frame.

CHAPTER IX

CONTEXTUALIZING THE FINDINGS: THE RELEVANCE OF THE INTEGRATED

THEORETICAL FRAME

The preceding three chapters have provided a detailed overview of the discourse on piracy that emerged from the data addressing the issues and events that have been important in shaping this discourse. This chapter will examine the findings through the theoretical lens proposed in Chapter IV. Employing an integrated theoretical frame, it was theorized in Chapter IV that the processes used in creating policies on maritime piracy were expected to be driven by moral entrepreneurs (Becker 1963). These moral entrepreneurs would then use political rhetoric as well as the media, through the practice of first and second level agenda setting, to characterize pirates and piracy in a way that creates a dominant understanding of the issue (McCombs and Shaw 1972). This is what Foucault (1980) would term a 'regime of truth,' and Gramsci (1971) a 'hegemonic discourse.' Through this process all alternative understandings of the issue are lost, as is the possibility of the enactment of alternative policies to address the problem of Somali piracy.

Piracy first emerges as an issue because of pressure from the private shipping industry on the IPC, to respond to the threat of maritime piracy in the region. Organizations representing the interests of private shipping, such as the International Shipping Federation (ISF), the International Federation of Free Trade, the International Chamber of Shipping, the National Union of Marine, Aviation, Shipping, and Transport Officers (NUMAST), the International Transport Federation, the Seamans Church Group,

as well as the IMB exerted pressure on the UN to do something to protect private

shipping from the threat of piracy. This is demonstrated by the Secretary General who

reports

> Seafarers consider that the international community and the international shipping
> industry have failed to provide effective responses to the growing threats posed by
> piracy and armed robbery attacks against merchant ships. They believe that the
> absence of any concerted of coordinated action to tackle the problem means that
> merchant shipping is becoming an increasingly attractive target not only to
> traditional "pirates" and armed robbers but also to terrorists (United Nations
> General Assembly 2005a:28).

This pressuring and lobbying from the private shipping industry began in the late 1990s

(Rothe and Collins 2011) when there was increased reporting to the IMO on the issue.

However, prior to 2001 there was little in the discourse about the issue of piracy in

Somalia by the IPC and the media. The pressure from the IMB as well as the various

agencies representing private shipping, are acting as moral entrepreneurs (Becker 1963)

as they are the first to define piracy in the region as being a threat to international

shipping and trade. For example, pressure from the Maritime Safety Committee (MSC),

a technical committee of the IMO led to the formation of expert missions to different

countries to discuss the issue of maritime piracy (International Maritime Organization

1999). As a result of these missions, as well as several IMO sponsored workshops that

occurred in 1999, there was increased pressure from the IMB for the IMO to create an

international code for the purposes of investigating and prosecuting piracy. In response

the IMO tasked the MSC with preparing a preliminary instrument detailing procedures

for investigating acts of piracy and armed robberies against ships (International Maritime

Organization 1999), which was then adopted by the IMO in 2001 (International Maritime

Organization 2001). Additionally, in response to the pressure from the IMB, the

International Shipping and Port Facility Security Code (SOLAS) entered into force on July 1, 2004 (United Nations General Assembly 2004a:25). Therefore, through the process of labeling those engaged in acts of piracy as a threat to international shipping these interests are acting as primary definers of the issue. Additionally, it is during this time period that media began to characterize pirates as being "dangerous" (Redfern 1999), "gruesome characters" (O'Sullivan 1999:3), "Islamic insurgents" (Norton-Taylor 2008:40), and being a threat to seafarers, cargo, ships and ports. Emphasizing this primary definition of the issue – pirates as dangerous, threatening actors – is the high profile case of Alan MacLean, who was a victim from the West, making its way into the international discourse on the issue helping legitimize this particular understanding of piracy in Somalia.

The pressure from the shipping industry on the IPC was given greater credibility because of the two high profile terrorist attacks on the *USS Cole* in 2000, and the oil tanker from France, the *Limberg*, in 2002. This coupled with the 9/11 terror attack in New York, led to an abrupt shift in the discourse to what Engels (2007:328) terms the "rhetoric of floating bombs." Immediately following the attacks in New York, the US was the first to apply the label of terrorism to Somalia, identifying the Al-Itihad Al-Islamiya, as one of the "27 organizations suspected to have terrorist links" (United Nations Security Council 2001:8), however it is the IMB that first links the issue of piracy and terrorism, again urging the IPC to act to protect international shipping and trade (International Maritime Bureau 2001; 2002).

The labeling of pirates as terrorists enters the discourse of the IPC through the IMB. The IMB then provided information to both the Security Council and the General

Assembly, urging them to take the matter of maritime terrorism seriously (United Nations

General Assembly 2002), calling for a "more comprehensive and coherent response"

(United Nations General Assembly 2003:33). In fact, the discourse extends beyond the

mere labeling of pirates, but elevates the seriousness of piracy in the Gulf of Aden and

the Somali basin, to being a worthy threat that merits inclusion in the US led 'war on

terror.'

The IPC, as a result of the pressure from the IMB and other organizations

representing the private shipping industry, adopts a dominant discourse on the issue one

that associates pirates with terrorist groups and organized crime, and even go as far as

grouping piracy with the trafficking of weapons of mass destruction (United Nations

General Assembly 2006a), all of which pose a threat to international shipping and trade.

This is evident not only in the increased attention on the issue by the IPC (see Table 1

and 2), but also in the assertions of the Special Advisor to the UNSC on the legal issues

related to Somali piracy, who asserts that pirates are being harbored by the terrorist group

Al-Shabaab despite acknowledging there is no evidence to support this assertion (United

Nations Security Council 2011a). This constructs a primary definition of the 'truth'

about the Somalia pirate; that they are terrorist operatives, with connections to elaborate

organized crime networks, and are a "clear and present danger." If piracy goes

unaddressed it has the potential to "cripple global trade" (Murphy 2007:70). This 'truth'

then becomes a 'regime of truth' or what Gramsci (1971) would term a 'hegemonic

discourse,' as the language constructed around the phenomenon, that of terrorist, militia,

organized criminal, heinous, dangerous militants, informs all "modes of thought and

behavior" (Green and Ward 2004:3) about piracy in Somalia. This knowledge or 'truth'

is then reinforced through societal institutions, through "systems of exclusion" that leads

to the manipulation, division, and even exploitation of what is known about a particular

phenomenon (Foucault 1972:219), one such institution being the media.

This same discourse or 'regime of truth,' that of Somali pirates being analogous

with complex organized crime networks associated with fundamental Islamic terrorists, is

reified in the media through the continued labeling of Somali's engaged as piracy as

being threatening and dangerous actors (Barling 2003; Darling 2004; Editorial 2004;

Doyle 2005). This is evident not only in the dramatic increase in media coverage of the

issue following 2001, (from 198 articles to 3,055), but in the discourse on Somali piracy

being dominated by the threat of maritime terrorism. This is directly relevant to agenda

setting (McCombs and Shaw 1972) as the media is establishing the issue of Somali piracy

as one of great importance by framing the issue, as well as the actors associated with the

issue, in a certain way. This is accomplished by the media emphasizing particular

characteristics of the issue of Somali piracy, such as labeling pirates as "pirate militias"

(Lacey 2001:2), "Islamic insurgents" (Norton-Taylor 2008:40), as well as terrorists

(Tinning 2001).

Important to understanding possible explanations for the discourse is what

Foucault (1980) would term the 'material reality' of the 'regime of truth' which locates

the processes involved in constructing a discourse on the Somali piracy within the larger

social-historical context. In addition to the IPC, the 'material reality' includes the

political, social, and economic interests of states and their interactions which not only

constructs the 'regime of truth' but also reifies it. In this case the 'material reality' is

largely informed by the international political economy in which the interests of private

shipping are vested. The focus for them is the maintenance of the global shipping lanes and the protection of international trade. The threat therefore, is less about that of individual violence perpetrated against crew, and more about the threat to the economies of states, transnational and multinational corporations, associated with global trade. The primary definers of the issues, in this case, not only include the influential organizations acting on behalf of commercial shipping, but political actors from other states. The preservation of a global trade through the protection of vital shipping lanes is serving as the motivation for creating the discourse, as states economic interests are intersecting with the larger global political economic system that is driven by capitalist markets (Underhill 2000). Within this context, or 'material reality,' the safety of shipping lanes that border the Somali coast are instrumental to ensuring state economic interests and corporate profit making is protected.

Policies of capital accumulation that impact trade, are situated within the wider context of global markets, this is especially relevant to the issue of piracy as 90 percent of world trade is transported by sea (Engels 2007). Petras and Veltmeyer (2001:11) provide that in a globalized world the "widening and deepening of the international flows of trade, capital, technology and information [operate] within a single integrated global market." This explanation of the globalized market undergirds the discourse, understanding, policy creation and practice, disseminating culture, ideology, and values through capitalist development at the global level (UNRISD 1995; Watkins 1995; Petras and Veltmeyer 2001). It is reflective of the existing power relations, which are structured, repetitious, and self-reproduced (Hörnqvist 2010), by the "states of

domination" (Foucault 1997:283). Specifically, by forces located in what has been termed the Imperial West (Petras and Veltmeyer 2001).

Although reference made to the Imperial West sometime includes states located in Western Europe (Petras and Veltmeyer 2001), it is the United States that overwhelmingly dominates as the decision maker with regards to the processes of economic, political, and cultural integration (Iadicola 2008; 2010). This provides an explanation for the dominance of the discourse on maritime terrorism as it relates to the threat of piracy in Somali coastal waters. Also, note that the US, as do other states in the West have considerable influence at the UN, as they are one of the five permanent member states of the UNSC[1]. The US therefore, has unequal access, power, and control over the structures and international organizations that facilitate the flow of international capital and commodities. These flows are not mutually beneficial to all states, but can be better understood as "singular concentration and unidirectional flows towards imperial-based corporations" (Iadicola 2008:5). These corporations then dominate not just the global market, but the patterns of trade that ensue, as well as methods of enforcement and

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[1] As noted by scholars of empire and crimes of empires, the most recent and powerful empire today is the United States (Iadicola 2008). As argued by Iadicola (2010) it was not until the "hard imperialist" military policies executed and enforced by the George W. Bush administration, that the term Empire became more often linked to the US. Although these US imperialist policies existed prior to this time period, they were often cloaked in multinational treaty agreements, such as those of the North Atlantic Treaty Organization (NATO), the Organization of American States (OAS), and Southeast Asia Treaty Organization (SEATO). Despite, there being reluctance to acknowledge the US's status as Empire (Iadicola 2008) the US's has become "the controlling center of the global empire" (Steinmetz 2005:341). This has facilitated the US in its indirect influence over states at a global level, which includes exerting control over the creation and reification of political and social discourse. Therefore, issues and behaviors, such as piracy, that threaten the US Empire are likely to be met with discourse and policies that justify and initiate the deployment of military resources to maintain imperial control.

control through the employment of unidirectional military and security strategies. This argument is supported by the findings that the actors who first engaged in military action against the Somali pirate are situated in the Imperial West, such as France for the purposes of protecting World Food Programme vessels (United Nations Security Council 2007b), the Combined Maritime Task Force (Combined Maritime Forces 2012b) led by the US, and NATO an alliance of countries from North America and Europe (NATO 2013). States peripheral to the Imperial West join the fight against piracy only afterwards and under the direction of, and organized by, states in the West. The most prominent example being Somalia itself, as it is with the cooperation of the Transitional Federal Government (TFG) that UN member states are given the authority to enter Somali territorial waters for the purposes of fighting piracy, but the TFG is an UN installed government that does not have widespread legitimacy within Somalia, and consequently it is a product of the existing international power structures, or 'material reality' (Foucault 1980) that is being imposed on the Somali people. Therefore, the interests of commercial shipping, as well as states in the West, through the existing global power structures have created a 'regime of truth' (Foucault 1980), as well as successfully guided the "intra-organizational exercise of power" (Hörnqvist 2010:18) in the risk management of the Somali pirate.

The inflation of the threat of the Somali piracy in the discourse also has greater political significance for certain states, and is influenced by narratives from countries that are acting in their own political self-interest, one such example is the role of the US as it relates to the larger discourse on terrorism. The creation of a dominant discourse on the issue of piracy that emphasizes the perceived threat of terrorism falls within the scope of

a larger discursive regime on terrorism that emerged after the 9/11 attacks in the US. It was the US, acting as primary definers of the issue of terrorism, who stressed the real possibility of a maritime terrorism attack. For example, in 2002 the White House issued the National Security Strategy of the United States, where they grouped piracy with other egregious behavior such as terrorism, slavery, and genocide (White House 2002). Furthermore, in the 2005 the Bush administration issued the National Strategic for Maritime Security (NSMS) which asserted that "the safety and economic security of the United States depends upon the secure use of the world's oceans" (Silverstein 2005:180). As argued by Engels (2007:133) this "discursively linked piracy with premeditated political violence" strengthening the discourse on maritime piracy. In 2007, the US initiated the Policy for the Repression of Piracy and Other Criminal Acts of Violence at Sea, which again, equates piracy with terrorism. By blurring distinctions between piracy for "private ends" and acts fueled by political ideology, two motivations that have historically been kept distinct[2], they are implying that a single policy is needed to effectively address both behaviors.

The characterization of piracy as terrorism by the US is echoed by the promoting of the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) as a means to address the problem. Both the IMO and the Secretary General repeatedly tout the SUA as being a more useful instrument for the prosecution of piracy than the UNCLOS (United Nations General Assembly 1998). Interestingly this begins in the late 1990s, prior to the 2001 terrorist attack on US soil, but

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[2]The UNCLOS defines piracy as for "private ends" and it has been interpreted as being a non-political act for personal profit, whereas common definitions of terrorism argue it is the use of violence against noncombatants for the purposes of manipulating or pursuing political or ideological ends (Singh and Bedi 2012).

in 2002 the US provides that the SUA is the best legal tool for addressing both piracy for private and political ends, as "The combination of illicit activity and violence at sea might...be associated with...terrorism" (White House 2007). Scholars studying the problem of piracy in Southeast Asia have argued that by fusing together terrorism and piracy as one issue, it allows stronger states, such as the US, to exert power over weaker states forcing them to sign the Convention which extends state jurisdictions over international waters and also mandates cooperation between states for the purposes of prosecuting suspected terrorists (Young and Valencia 2003). Young and Valencia (2003) conclude that this provides the opportunity for states in power to covertly gain extra-jurisdictional power over acts of terrorism.

The 9/11 attacks provided the vehicle for the US to launch a discourse on a maritime piracy threat in the coastal waters of Somalia to further their counter-terrorism agenda in the region (the CTF-150). This reification of this discourse by the media coupled by the pressures from the private shipping industry depicts pirates in Somalia as an emerging strain of terrorist piracy who have "replaced their cutlasses with Kalashnikovs" (Editorial 2004:24). This understanding of the issue is further solidified by the media coverage of high profile cases, such as the *Maersk Alabama,* that depicted the pirates, as dangerous Muslim youth, armed with RPGs and AK47s, preying on innocent crewmen from Western states, employed in legitimate business. This attempted kidnapping for ransom could not have supported the imagery of the dangerous Islamic threat more had it been purposely choreographed for international news media.

During the same time period where media coverage of the issue significantly increases, and the UN starts passing resolutions (2006-2008), the US began to provide

money (approximately $100,000 a month from the Central Intelligence Agency (CIA), to an alliance comprising of warlords in Somalia called The Alliance for the Restoration of Peace and Counter-Terrorism (ARCPT) for the purposes of overthrowing the Islamic Courts Union (ICU) (Mazzetti 2006). The ICU is a group of clan-based courts that had been operating under sharia law in Mogadishu since 1994 (Menkhaus 2006; 2007). The ICU gained considerable support from the Somali people, and were attributed to bringing relative peace to the region for a short period of time, but because of concern about them being possibly affiliated with terrorist groups from the IPC, driven largely by the US (US State Department 2005), the ICU were forced to defend themselves against the ARCPT leading to further conflict in the region (Human Rights Watch 2007). Although there was supposedly some evidence that Somali was a transit point for arms going to Al-Qaeda, the Bush administration did acknowledged the evidence they had on the issue, did not justify military intervention in the region (Menkhaus 2004:68).

Further conflating the issues of piracy and terrorism, the US led Combined Taskforce interventions began with the CTF 150 and the CTF 151 which suggests that identical units employing the same tactics can and should, be used to fight piracy and terrorism. This suggests that the US, in pursuing their own political interests rooted in the 'War on Terror,' blurs the distinction between pirate and terrorist, and because of the US's positioning as a prominent global power, or even Imperial power (Iadicola 2008), have had considerable influence on the construction of discourse on the Somali pirate. Interestingly, and missing from the 'regime of truth' on the Somali pirate, is that when the ICU came into power in 2006 they publically declared the crime of piracy haram

(sinful), and took a proactive role in suppressing acts of piracy providing parameters for punishment under sharia law (Singh and Bedi 2012).

Here I suggest that the US as the imperial power with considerable global influence, acting on the "possibility" that pirates will launch a terrorist attack, something that has been established as being very unlikely, with only two terrorist attacks being mentioned in the discourse, transforms the discourse from being centered on the actual occurrence of attacks, to one focused on the risk of an attack. There then becomes an explanatory discourse surrounding this 'truth' about piracy where supporting assertions about this 'truth' are provided. For example, the discourse centers solely on Islamist militants being associated with pirate groups which then transforms the issue of piracy attacks into the risk of "pirate militias" engaging in a maritime terrorism bombing/attack. This is strengthened by the IPC's continued assertion that pirate groups are funded by, provide funding to, and have been provided safe havens by terrorist groups – specifically Al-Shabaab (United Nations Security Council 2011a). The issue of the Somali pirate then becomes a problem of risk assessment and management, what has been termed actuarial justice (Feeley and Simon 1994; Ericson and Haggerty 1997; Mythen and Walklate 2008), whereby suspect populations are identified, classified and then managed through assessing their potential for perpetrating harm (Zedner 2009).

This is also supported by findings from the media as the majority of coverage on the threat of maritime terrorism following 2001 comes from states in the West: *The Independent (London), The Times (London), The Aberdeen Evening Express, The Daily Mail and Mail on Sunday, The Herald (Glasgow), The Mirror, The Scotsman and Scotland on Sunday, the Evening Standard, The Guardian (London), Western Daily*

Press. News media located in the periphery (i.e. states outside the West) who may present an alternative understanding of the issue are relatively quiet on the issue of the Somali pirate. For example, *Al Jazeera* had little coverage of the issue and *Africa News* emphasized the detrimental impacts of the policies that have been initiated to deter piracy in the region ("Kenya; 17..." 2001). The examination of the detrimental impact of the policies, that arguably have their origins in the West, is also reflective of larger global power relations, where the external intervention is *done* to the 'problem' state, a pattern not dissimilar to colonialism.

Somali pirates, through their labeling as terrorists, have been identified and assessed as posing a significant risk first by the organizations with interests in commercial shipping, then by states who have vested political and economic interests (i.e. the US), and then by the IPC. However, as indicated the threat of maritime terrorism is not very "real", and is shaped by calculations, fears, and speculations from subjective actors, which has been propagated by the media. The media has created what Gramsci (1971) referred to as a 'common sense' about the issue that leads to an understanding that is slanted, this creates a need for action to address this perceived threat. Therefore, the discourse of maritime terrorism, or pirates associated with organized crime networks becoming the "scourge of the shipping lanes" (Editorial 2003:T08), becomes the only understanding of the issue and also provides the justification of a response that is in proportion to the constructed threat posed. The discourse shaping the need for the response then evolves into a discourse centered on the safety of shipping lanes, trade, and ports where "keeping shipping lanes of strategic importance and significance safe and open to international maritime traffic and thereby ensuring the uninterrupted flow of

traffic" (United Nations General Assembly 2005b: 10) becomes a central focus. This is emphasized by NATO who asserts that their involvement in the war on piracy is to protect the "22,000" ships per year transiting through there on their way to countries all over the globe" (NATO Allied Maritime Command 2010a:1).

The emergence of this particular form of response is directly related to the 'regime of truth' or 'hegemonic discourse' about the Somali pirate, which provides the justification for the militarized response. By framing piracy as a sophisticated and violent "transnational organized crime" (United Nations General Assembly 2008b:3) operating in networks that include "pirate militias" (United Nations Security Council 2009c:2), engaged in "lucrative and attractive criminal activity, undertaken for heinous ends" (United Nations Security Council 2011a:12), the justification is extended to include the construction of piracy as a crime of violence, threatening seafarers with violent weapons, potential injury and death. However, the statistics on rates of violence, as well as the number of terrorist attacks actually perpetrated provide a very different reality to that which is presented in the discourse.

Statistics from the IMB show that the threat of violence is considerably low (see Figure 4). In fact, Somali pirates are responsible for no more deaths than pirates in other regions of the world, and significantly less deaths than those caused by accidents in the continental US alone (Chambers 2010). Furthermore, any increased violence towards crew, could be explained by the increased likelihood that they are armed, and that there is an increased chance of a confrontation with one of the many warships patrolling the region. The threat of terrorism is also greatly exaggerated in the discourse as according to data collected from the RAND terrorism database, only two percent of terrorist attacks

occurring over the last thirty years, have been perpetrated against maritime targets, none of which can be attributed to Somali pirates (Chalk 2008). As indicated by Møller (2009:23) "maritime terrorism has so far been a very minor problem." The two terrorist attacks, the *USS Cole* in 2000 and *Limberg* in 2002, receive little coverage in the discourse, as both cases were mentioned only once by the UN and neither in connection to the threat of Somali piracy/maritime terrorism. It has also been established that the motivation for piracy in Somalia is for the purposes of hijacking for ransom (Hastings 2009), something that has been recognized by the IPC. For example, in 2010 the UNSC recognizes that the motivations for Somali piracy are the economic and structural conditions within the country itself (United Nations Security Council 2010e), and not to launch maritime terrorism attacks. However, it is the "possibility" of such an attack happening that shapes both the discourse and the militarized policies that have been implemented in response to this understanding of the issue. This slanted 'truth' and its reification by the media creates one understanding of the issue while simultaneously ignoring any other possible "truths" that may provide a different understanding of the issue.

Although the UN is directly involved in the overall security situation in Somalia (ANISOM), it does not directly link the structural conditions within Somalia with the issue of piracy in the region until July 2008 when the Secretary General reports on the ongoing dispute between Somaliland and Puntland. This report draws attention to a dispute over an area called Las Aanod which has caused both sides to increase their focus on building their military capacities. This

> has created a security vacuum elsewhere in the area of "Puntland", which, along with the lack of payments to police and militias working for the Government, has

led to increases in piracy along the coastline, in kidnapping and in threats to take hostages (United Nations Security Council 2008b:5).

Then later in October 2008, the Security Council acknowledges that

> peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia(United Nations Security Council 2008f:2).

Later, in 2009 the Secretary General reports on the actions of the International Contact Group on Somalia, when addressing piracy in the region, stressing to the UN that a "comprehensive approach to its underlying causes" is needed (United Nations Security Council 2009b:15). This is echoed in a 2009 report on the situation in Somalia where the Secretary General states

> I am encouraged, in this regard, by the response of the international community in combating the scourge of piracy off the coast of Somalia. Although the problem of piracy will not go away without a comprehensive resolution if the country's political and security crisis, the current international efforts has alleviated the scourge. The international community, however, must provide the necessary leadership and resources to help bring stability to Somalia (United Nations Security Council 2009b:23).

The IPC, albeit after the militarized response has been initiated, begins to examine the root causes of piracy in Somalia.

Beginning in 2009, the causes of piracy begin to become more often included in documents on piracy, although significantly less coverage is provided than that afforded to the dominant understanding of the issue. The UN begins to acknowledge that piracy cannot be addressed through the implementation of a maritime response alone, instead as indicated in a report by the High Representative of the EUNAVFOR operation Atalanta "Piracy is likely to remain a serious threat until restoration of law and order makes serious progress ashore. Like its partners, the European Union acknowledges it is only

ashore that the root causes of piracy can be addressed" (United Nations Security Council 2009a:4). However, this alternate discourse becomes blurred with the dominant discourse on the issue, the militarized response. For example, in November 2009, the Secretary General in a section titled "Addressing the root causes of piracy off the coast of Somalia" focuses not on the motivations for piracy, such as the poverty, lack of infrastructure, and high unemployment plaguing the Somali people, but the deterrence based initiatives taken by Somalia to address the problem of piracy. These efforts include increased maritime policing capacity, investigations, prosecutions, and convictions, media propagating the dangers associated with piracy as well as the need for new prison facilities to house the increased number of convicted pirates. The UN collectively refers to the need for these types of deterrence based mechanisms as "capacity building," a term that is the used in the discourse for the purpose of addressing the "root" causes of piracy (United Nations Security Council 2009c). This approach marginalizes the discourse that recognizes the conditions within Somalia as contributing to the problem of piracy, ignores emphasis on taking preventative measures, and instead compliments the deterrence based militarized policies that have already been implemented by the IPC.

In 2010, after military patrols have been operating in the Gulf of Aden and Somali coastal waters for over three years, the UN makes its first statement explicitly relating the historical political instability in the country of Somalia with the problem of piracy, asserting that

> Acts of piracy and armed robbery at sea off the coast of Somalia are a symptom of the instability and lack of rule of law in Somalia. The lack of effective government has persisted since the overthrow of the government of Siad Barre on 31 January 1991. This situation has had a profound negative impact on the

population which has not enjoyed the benefits of the rule of law for two decades (United Nations Security Council 2010a:9).

This issue has been marginalized in the discourse coming secondary to the military response to protect global shipping lanes. The marginalization of this alternative discourse on the issue is also reflected in the media analysis as there were only 212 articles where the dominant frame was that of the structural conditions within Somalia (see Table 3), representing only 6.5 percent of the total media coverage. When media articles did frame the issue of piracy as being related to the country's structural issues, there was considerable variation in the focus of the coverage. For example, there were some articles centered on the poverty and conflict in Somalia asserting that there is "no substantial government capacity and the result is that people are running roughshod, on and off the coast" (Richard Bethell, quoted in Lacey 2001:2). A 2008 article from *The Guardian (London)* provides that, "True or not, there is little doubt that piracy is fuelling a conflict between weak Somali government and Islamic insurgents" (Norton-Taylor 2008:40). Although there is acknowledgement of this discourse at the international level, it is marginalized and secondary to the dominant understanding of the issue. The same pattern of marginalization of this alternate discourse emerged at the interactional level in the US trials.

There was limited acknowledgement of the situation in Somalia in the US piracy trial, *US v Hasan et al.,* despite it having a significant impact on the life experiences of all of the defendants, a fact that emerged in the pre-sentencing hearings. Although the presentencing reports for the five defendants tried in Norfolk Virginia for the pirate attack of the *USS Nicholas* were sealed and therefore could not be examined in this analysis, during the sentencing hearing reference was made to the lives and conditions

experienced by the defendants growing up in Somalia. In discussing Defendant Hasan's

formative years the Judge asserted,

> The presentence report reflects in some detail the defendant's early years in
> Somalia, the family situation, apparently having no father that was there with him
> as he grew up, and the war that he grew up in, the fighting, his family living in a
> refugee camp since, as he reports, his village was raided by Ethiopians a few
> years ago (US v Hasan et al. 2011r:50).

Defendant Ali's presentence report contained similar background information,

> The court has considered the conditions of being raised in what he describes as a
> nomadic village and living in a tent as a refugee with his family, the fact that he
> reports that his life in Somalia was hard, and that all of the food and clothing
> provided to he and, to him and his family, or much of it, are, perhaps, reviewing
> his statements, was provided by the United Nations as aid (US v Hasan et al.
> 2011r:58).

Also indicative of the lack of infrastructure in the country was the health of the

defendants, as emphasized by the medical condition experienced by Defendant Umar as

summarized in an address to the court by the Judge, "Mr Umar...at approximately 22

years old you broke your hip, did not receive proper medical treatment, and that resulted

in you walking with a limp" (US v Hasan et al. 2011r:76). Interestingly, these conditions

were not brought into evidence for the purposes of understanding possible motivations

for the piracy attack, but instead as background factors garnered in the presentence

report. Specific to the conditions within the country are the links between piracy and

fishing, another factor that emerged later as a peripheral discourse about the issue.

Somali people are, and historically have been, a pastoral society, but there also

existed, prior to 1991 a small fishing industry. This is related to the fact that Somalia has

the longest coastline in all of Africa stretching over 3, 330 kilometers (United Nations

Security Council 2011c), an area that is as long as the eastern seaboard of the United

States. During Siad Barre's regime funds were provided for the purposes of expanding

the fishing industry. These funds encouraged the settlement of nomadic families along

the coast, and funded the purchasing of vessels and fishing supplies, and as a result the

fishing industry developed dependent on resource rich waters (Murphy 2011). Following

the ousting of Siad Barre in 1991, the fishing industry became largely unorganized and

unprotected and therefore vulnerable to illegal fishing from foreign trawlers (Eichstadt

2010), and because of the presence of a continental shelf Somali waters are an important

breeding ground for many migratory fish species. The absence of a legitimate

government and the country's weak institutional controls, have left the waters vulnerable

to illegal fishing (United Nations Security Council 2011c), forcing Somali fisherman to

take action to protect themselves (Bahudar 2011).

An acknowledgement of the possible linking of illegal fishing being a catalyst for

piratical acts does not emerge in the UN documents until 2001, ten years after the ousting

of Barre, and during the same time period when the dominant discourse began to emerge.

The 2001, Secretary General Report directly links the two issues by asserting

> Piracy and forcible detention of sailors on trawlers fishing illegally in Somali
> territorial waters has continued. Two fishing vessels, said to be Russian-owned,
> were detained by a militia leader in the Kismayo port on 10 March. On 2 August,
> a fishing boat sailing under the Italian flag with a Kenyan crew was seized with a
> full catch and taken to the northern port of Eyl (United Nations Security Council
> 2001:8).

Little else is done to address illegal fishing, but for a few short mentions of the issue by

the UN in 2004 and 2005 (United Nations General Assembly 2004c; United Nations

General Assembly 2005b), until the UNSC passed five resolutions specific to authorizing

action to counter piracy in Somali waters. The last resolution (1851) passed in December

specifically addresses Somalia's sovereign rights over their natural resources, including

fisheries (United Nations Security Council 2008i). However, the stealing of fish as a

possible motivations for piracy does not emerge from the discourse until 2009 when the

connection is implied through Secretary General's claim that "the most prominent pirate

militias today have their roots in the fishing communities of the Somalia coast" (United

Nations Security Council 2009c:2). This is later expanded on in a report on Somalia in

December 2010, where the Secretary General calls for a holistic approach to the issue of

piracy,

> with the view to effectively addressing its underlying causes and other equally
> serious threats which affect the livelihood and well-being of the Somali people, in
> particular, illegal fishing and the dumping of toxic substances and waste of the
> coast of Somalia" (United Nations Security Council 2010b:4).

In recognition of the connection of piracy and the fishing industry, the Special

Advisor to the Security Council on issues related to piracy off the coast of Somalia, Jack

Lang, advocates for the need to address the underlying causes of piracy especially as it

relates to the economic development of both Somaliland and Puntland (United Nations

Security Council 2011a). Lang also asserts that one of the reasons for the development of

piracy in the region was the need for "Somali population to protect its territorial waters

and marine resources against illegal fishing," however he also asserts that "the nexus

between piracy, on the one hand, and illegal fishing…on the other, continues to be

invoked without having been proven to date" (United Nations Security Council

2011a:12). The little attention paid to the issue is in spite of the numerous firsthand

accounts from self-professed pirates claiming that the motivation for piracy is to prevent

foreign interests trawling for fish in Somali territorial waters. For example, in an

interview in 2010 with journalist Peter Eichstaedt (2010:30), and a man called Ismail

asserts "They collected our animals from the seas," he says, "When we tried to fish, we

didn't get anything, we became very angry. Everyone was coming. Where can we get our fish?"

The extent of the problem is addressed in a 2011 report where the Secretary General acknowledges that there are several reports estimating that a "large number of foreign-flagged vessels [are] engaged in unlicensed and unregulated fishing in the area" (United Nations Security Council 2011c:10). The seriousness of the issue is supported by the results from a 2002 study by the University of British Columbia who found that of the 60,000 tons of fish caught in the Somali waters, 50 percent were taken by foreign vessels (United Nations Security Council 2011c).

In 2011, the Secretary General recognizes the historical impact of illegal fishing on the fishermen of Somalia by stating that after the fall of Siad Barre's regime in 1991,

> foreign-flagged industrial fishing trawlers began encroaching on the resource-rich Somali waters. Local accounts purport that these vessels frequently engaged in intentional collisions with local fishermen in Somali waters, leading to the destruction of fishing gear, injuries and even deaths of local subsistence fishers (United Nations Security Council 2011c:11).

This behavior has largely gone unmonitored and without sanction or punishment, contributing to the reduction in legitimate opportunities for the Somali people to earn a living. There also seems to be a disregard for the political motivations associated with revenge for the foreign interests stealing Somali resources. As indicated by Hari (2009:2)

> European ships have been looting Somalia's seas of the greatest resource: seafood. More than 300 million [USD] worth tuna, shrimp and lobster are being stolen every year by illegal trawlers...We have destroyed our own fish stocks by overexploitation – and now we have moved on to theirs.

Despite this, discussion of illegal fishing in Somali waters continues to be marginalized, and in some instances, dismissed by the IPC. For example, the Secretary General concludes in his 2011 report on the protection of Somali natural resources, that "due to a

lack of a formal monitoring, these claims cannot be verified" (United Nations Security Council 2011c:12). The irony here is that many of the states engaged in the fight against piracy are also involved in illegal fishing in Somali coastal waters. For example, in 2008 article from the *Sydney Morning Herald* it is argued that

> there are now warships from India, Malaysia, Britain, the US, France, Russia, Spain, and South Korea in the region shepherding merchant shipping and pursuing pirates, but largely ignoring the illegal foreign fishers (Levett 2008:8).

This sentiment is acknowledged as it relates to the focus of the response that has been initiated to combat piracy. For example, in 2011, the President of the Puntland Non-State Actors Association (PUNSAA), the military forces involved in the war on piracy are "protecting illegal fishing vessels but not protecting fishermen" (Noor 2011). The distinction between fishermen and pirates is also blurred in many instances as suggested by the United Nations Office on Drugs and Crime who provide that "The majority of apprehended 'pirates' are released at sea, in part because you never know if naval interceptions are of regular fishermen" (Mangan 2011). Note that the defendants in the *USS Nicholas* case were also Somali fishermen who alleged they were trying to make a living from shark fishing when they kidnapped and forced into piracy (US v Hasan et al. 2011a).

Often coupled with the issue of illegal fishing, is that of illegal dumping in Somali waters. The discourse is relatively quiet on the issue of dumping in Somali waters until 2010, when the UN Security Council includes a statement in resolution 1950 stressing the "importance of preventing, in accordance with international law, illegal fishing and illegal dumping, including toxic substances" in Somali waters (United Nations Security

Council 2010e:1). Additionally in 2010, the Secretary General reports that the African

Union Peace and Security Council urged the Security Council to,

> approach the issue of piracy off the coast of Somalia in a holistic manner, with the
> view to effectively addressing its underlying causes and other equally serious
> threats which affect the livelihood and well-being of the Somali people, in
> particular, illegal fishing and the dumping of toxic substances and waste off the
> coast of Somalia (United Nations Security Council 2010b:4).

There is however, little discourse specific to dumping in Somali waters in spite of the

2004 Tsunami that revealed the vast amount of toxic waste that had been dumped in the

Somali waters, as much of it washed up on the shore (Eichstaedt 2010).

In 2011, the Secretary General issued a special report on the protection of

Somalia's natural resources and waters. This report attempted to address the allegations

of both illegal fishing and toxic dumping that "have been used by pirates to justify their

criminal activities" (United Nations Security Council 2011c:1). In this report the

Secretary General acknowledges the framework set out by the UNCLOS that asserts that

dumping in territorial seas of another nation without their express permission, is in

violation of the Convention. In addition, States are "required to take all measures

necessary to prevent, reduce and control pollution of the marine environment from any

source, including pollution by dumping" (United Nations Security Council 2011c:9).

This report also acknowledges that there has been a long history spanning at least 20

years of allegations of dumping different types of waste including "radioactive,

hazardous and medical, on land and in Somali waters" (United Nations Security Council

2011c:12). However, as is the case with illegal fishing, the Secretary General asserts that

these allegations cannot be confirmed (United Nations Security Council 2011c), despite

there being reports from legitimate sources, such as INTERPOL, that illegal dumping in

Somali waters continues to occur (INTERPOL 2008; 2009). There was also considerable visual evidence of the extent of the dumping in Somali waters following the 2004 Tsunami that impacted many coastal states surrounding the Indian Ocean.

On December 26th 2004, there was an earthquake off the island of Sumatra in the Indian Ocean that registered 9.3 on the Richter scale. This earthquake generated a tsunami that had devastating effects, causing flooding in coastal states from Somalia to Indonesia including, but not limited to Sri Lanka, India, the Maldives, Thailand, Myanmar, Malaysia, Kenya, Madagascar, Somalia, the United Republic of Tanzania, and the Seychelles. The waves swelled to heights of 10 to 30 meters or more as they hit the shore. This destroyed much of the fishing industry in Somalia (United Nations General Assembly 2005a), as well as revealing large amounts of waste, including toxic waste that was washed up on Somali beaches. The only mention prior to 2011 of the tsunami exposed waste, pertains to the threat of piracy to World Food Program vessels transporting food aid to tsunami victims (United Nations Security Council 2005b:2).

In 2011, the Secretary General reported on a mission to Somalia by the United Nations Environment Programme (UNEP) who reported on the state of three coastal sites where there were reports of toxic waste. Although the mission concluded there was no evidence of toxic waste, there was an "urgent need for a more comprehensive assessment of alleged dumping of illegal toxic waste in Somalia both on land and at sea" (United Nations Security Council 2011c:15). As indicated by the UN access to sites of illegal dumping remain limited, which prevented the ability to substantiate claims of dumping in Somali waters (United Nations Security Council 2011c). The economic conditions within Somalia are not limited to threats to the fishing industry, but extend to larger

humanitarian issues such as droughts that have plagued the country, the worst being the most recent drought in 2011.

There is considerable UN discourse on the drought and famine that impacted Somalia in 2011; however, this discourse is separate from that on piracy. In the summer months of 2011 the Horn of Africa experienced a drought that has been characterized as being the worst to hit the region in sixty years. There had been very poor rains for the four years preceding the drought which culminated, causing poor annual crops, the death of livestock, and a spike in the cost of food prices (Food Security and Nutrition Analysis Unit 2011). This situation led to a famine that had devastating effects on not only the already weak and failing Somali economy, but on the civilian population as well. In 2011, the United Nations Office for the Coordination of Humanitarian Affairs reported that 3.7 million people were in crisis with approximately 30 percent of children in the region being extremely malnourished. Over two million Somali's were displaced from their homes, and a further four million were in need of food aid (United Nations Office for the Coordination for Humanitarian Affairs 2012). Those displaced from their homes were without the most basic services, such as water, food, and access to sanitation which significantly increased their risk for disease. This is emphasized by the fact that the leading cause of death in Somalia is dehydration and diarrhea (United Nations Children's Fund 2012). In addition, 80 percent of the Somali population were without safe drinking water (Internal Displacement Monitoring Centre 2012), a situation that continues until today.

As indicated by the UN, the famine itself resulted from the intersection of severe drought, poor governance, ongoing and prolonged fighting, as well as dramatic increases

in the prices of food and water. These conditions echo those that came together to cause the famine of 1992 which resulted in approximately 1.5 million people facing starvation and 5 million being dependent on food aid. During this time period it is estimated that almost one third of Somali children died of starvation (Clark 1992). Many people left Somali between 1995 and 2010 for neighboring countries in search of security and a better life, and for those that remained, traditional coping mechanism had been eradicated, and internal displacement was common. Interestingly, the conditions resulting from specific humanitarian crises, the drought, famine, and the tsunami, are absent from the discourse on piracy completely in the UN, media, and court transcripts.

The discourse on the Somali pirate does not acknowledge the structural conditions within the country of Somalia as being a possible "root cause" for piracy until 2010 (United Nations Security Council 2010e). The conditions of poverty, no basic infrastructure including lack of healthcare, education, sanitation, and prolonged periods of drought and famine as well as continued conflict (Rothe and Collins 2011), create a criminogenic environment where piracy becomes a fiscally viable option. Further, illegal fishing and toxic waste dumping in the region has compounded the issue. These factors, marginalized in the discourse, provide an alternate understanding of the motivations for acts of piracy in the region, and the discourse of 'truth' about the Somali pirate and the policies enacted to address them are being enforced *on* the Somali people, ignoring the root causes motivating these crimes.

As argued by Green and Ward (2009) characteristics of weak and failing states, are more conducive for the perpetration of crimes of opportunities which lead to the redistribution of wealth. In situations where state control mechanisms have collapsed and

there exists continued periods of conflict, and there is increased social disorganization, opportunistic crimes become more common (Rothe and Ross 2010). The chaos that is characteristic of social disorganized environments can spark criminal behaviors (Howden 2009), and in areas of conflict, institutional control mechanisms break down as well as legitimate forms of social control and alternate opportunities arise as individuals and groups form to provide structures for criminal behaviors (Mullins and Rothe 2008b). The etiological conditions within Somalia therefore, are typical of an environment favorable to the perpetration of opportunistic crimes, including that of piracy.

There is recognition by the IPC of the long history of fighting and instability in the region, as

> Acts of piracy and armed robbery at sea off the coast of Somalia are a symptom of the instability and lack of rule of law in Somalia. The lack of effective government has persisted since the overthrow of the government of Siad Barre on 31 January 1991. This situation has had a profound negative impact on the population which has not enjoyed the benefits of the rule of law for two decades (United Nations Security Council 2010a:9).

It must be noted that this recognition comes after the 'regime of truth' about the Somali pirate had been established and after the initiation of the military response. This acknowledgment therefore comes too late, and is over shadowed by the existing 'hegemonic discourse' on the Somali pirate. This alternate discourse was also supported by the data from the court transcripts as two of the defendants in the *USS Nicholas* case spent much of their lives in refugee camps, dependent on international aid for survival (US v Hasan et al. 2011r).

The connection between the conditions within the country, the desperation of the Somali people to obtain what is necessary to meet their basic needs, with the pull of piracy as a fiscal opportunity appears, to be a more plausible explanation for motivations

for piracy than terrorism and organized crime. As noted by scholars of organized crime (Clinard and Yeager 1980; Hashim 2006; Green and Ward 2009) economically driven crimes have benefits that extend beyond the individual to groups and even to communities. It is unlikely that ransoms from piracy are fueling international terrorist groups, rather it is more plausible that the funds from piracy are distributed to surrounding communities in Somalia (United Nations Office on Drugs and Crime 2010:1), providing buffers against the poor conditions, and fueling the drive towards further criminality.

> Jack Lang also draws attention to the failing economy in Somalia,
>
> The economy, which basically depends on export of livestock (camels, sheep) to the Gulf countries, remittances from the diaspora and port operations, is gradually relying on support for the pirates by entire villages" (United Nations Security Council 2011a:13).

The economic situation is identified as providing motivations for the involvement in, and support of an alternate pirate driven economy. As indicated by Lang, the only way to negate the lure of the pirate economy is to promote the perception that piracy is an activity at odds with the social and economic development of the country. He asserts that

> Somalia's sovereignty over its land and sea resources should be restored. At least three areas of activity meet these criteria: fishing, port activities and livestock exports. These sectors are also sources of unskilled employment and, therefore able to harness the idle population that could otherwise be exploited by the pirate leaders (United Nations Security Council 2011a:29).

This suggests that there is an acknowledgment that the structural conditions within the country are providing the motivation for piracy. The discourse recognizes the importance of economic opportunities, as piracy is an economic venture in direct competition with legitimate business (United Nations Security Council 2011a). This is again supported by the finding that initial increase in piracy attacks were focused in part on targets that

contained food supplies (World Food Programme 2007). This is reflective of the conditions within Somalia with one–half of the food aid was being diverted to contractors, various militant leaders and local UN staff (Rothe and Collins 2013).

The economic motivation for piracy are also connected to other alternate discourses that have been marginalized, such as illegal fishing and dumping, as after all, the majority of Somali pirates are either an ex-militia fighters or local fishermen (Parry 2008). These motivations extend beyond the opportunistic motivations for piracy and provide political motivations, separate and distinct from the ideological motivations of terrorism, in what Green and Ward (2009:1) would term a "dual purpose" crime: politically and economically motivated. As surmised by President Ahmed Hussen of the Canadian Somali Congress in an interview with CBC News,

> When you see the coverage of piracy, in most of the national media, you don't hear much about the $300 million annually that's lost by Somali fisherman in illegal fishing done by foreign interests. You also never hear about the cost that cannot be estimated, the negative costs of toxic waste… What is hard to comprehend is why the outside world [is] turning a blind eye to foreigners fishing illegally in Somali waters and poisoning them with toxic waste…And as can be expected, the starving people who've been robbed have retaliated with some countering of their own. The attacks on foreign ships, Somalis say, started as a reaction to foreign pillages trying to put their fishermen out of business (Radio Canada 2009).

This is also reflected by the establishment of a Volunteer Coastguard of Somalia. This was formed by local fishermen to patrol Somali waters using speedboats to try to dissuade the dumpers and trawlers, or at least levy a "tax" on them (Hari 2009). Therefore, the illegal dumping and fishing in Somali waters can be viewed as a "'resource swap' with Somalis taking $100 million annually in ransoms while Europeans and Asians poach $300 million in fish" (Jasparro 2009:2).

The etiological motivations that provide a more plausible explanation of the motivations for piracy are marginalized in the discourse, and absent from the policies that have been created, enacted and enforced in response to the "problem" of the Somali pirate. The current response has failed to address the root causes of the problem, i.e. the structural conditions within Somalia and a state in crisis, and instead have advanced the interests of West, (specifically the US and the 'war on terror'), as the ideologies that are guiding the militarized policies of external intervention. These policies are embedded in political and economic concerns: in terms of the global economic market and disruption to foreign domestic corporate profit-making (Rothe and Collins 2013). The 'regime of truth' about the Somali pirate being a threat to international peace and security through affiliations with Islamic terrorist organizations, provides the foundation for policies that serves to aid the ongoing global economic order. As indicated by Jasparro (2009:1), they

> [m]ask deeper problems of unfairness in international economic order... Of the countries that contributed naval vessels to the anti-piracy operation, half are nations engaged in fishing in the Indian Ocean with a vested interest in deterring piracy.

This stratified economic order is also reflective of the socio-political history of Somalia, which can be traced back to colonialism, where the then patterns of external conquest, are being extended through piracy policies that permit external interference. Mirroring patterns of colonialism the dominant economic and political powers (those in the West) have enacted policies that expand their territories constructing a "Leviathan that [has] overarched its social domain and imposed hierarchical territorial boundaries, both to police the purity of its own identity and to exclude all that was other" (Hardt and Negri 2000:xiii).

Despite being able to trace the present instability in Somalia back to colonialism, there was no acknowledgment of its historical impact on the existing conditions within the country and its potential impact on motivations, direct or contributing, for piracy. The UN does not mention the origins of political, social and economic division in the country, or the impact of intervention (or non-intervention) from colonial powers of old, or states that have held power throughout Somalia's history. For example, there is no mention of the Cold war interventions from both the Soviet Union and the US, either as it relates to the initial financial support from the Soviet Union in the early stages of Barre's regime, or the US support following Somalia's war with Ethiopia (Hussein 1995; Human Rights Watch 2007). The impact, positive or negative, of external intervention is missing from all the discourse and ironically drives the existing policies that have been put into place to deter acts of piracy off the coast of Somalia.

The anti-piracy policies that have been initiated in response to the dominant discourse on the issue of Somali piracy involve over 50 different actors, including at least 20 individual states deploying military forces "to take part actively in fighting piracy" (United Nations Security Council 2008e:3). These policies not only relegate the conditions within the country to being secondary to anti-piracy efforts by creating only one understanding of the issue, but they have created a policy response that is costly to sustain. The 'war on piracy' is reliant on funding from various sources, but when compared to the direct cost of piracy the amounts being spent far outweigh the ransoms being paid, as well as the monies being spent on addressing the root causes of the problem , i.e. the structural conditions within the country itself. The following section provides an overview of the cost of the anti-piracy response for 2011, comparing it to

monies spent on ransoms and the humanitarian situation within Somalia for the same year.

THE COST OF PIRACY JUXTAPOSED BY THE COST OF POLICIES TO DETER AND CONTROL

According to the IPC, the large number of actors involved in the fight against piracy resulted because of the threat of piracy for ransom in the Gulf of Aden and Somali coastal waters. In 2011 the NATO Civil-Military Fusion Center released a document indicating the cost associated with piracy for 2011. The chart has been reproduced in Figure 7. For the year 2011, the total cost associated with fighting piracy in the region was $6.6 billion USD, with only two percent of that total cost going towards the payment of ransoms. The other expenses include increased boat speeds (40%), insurance premiums (10%), security equipment (17%) and re-routing ships (9%). The costs are divided between state governments and the shipping industry itself, with 80.5 percent of these funds coming from the shipping industry and 19.5 percent from the state governments. The militarized response to the piracy in Somalia has been extremely costly, with a total cost of $6.6 billion USD in 2011 alone. When compared to the direct cost of piracy for the same year, that of the ransoms which totaled $160 million USD (Oceans Beyond Piracy 2011), it is clear that the response has become more expensive than piracy itself.

Figure 7.   Counter-Piracy Spending for 2011 as Depicted by Oceans Beyond Piracy
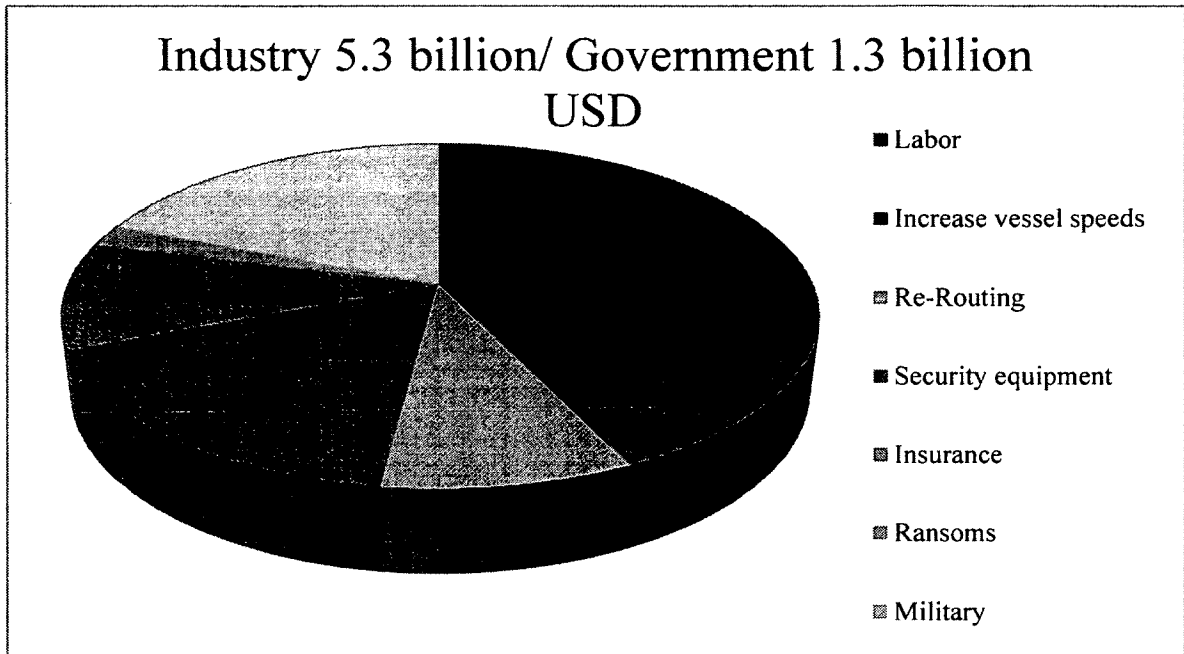

Table 8 provides the amount spent on each of the anti-piracy responses as

indicated in a report by Oceans Beyond Piracy, a non-profit, privately funded,

independent organization operating out of the US. Note that 2, 710 billion USD dollars

was spent on increased speeds. Increasing vessel speeds increases fuel consumption, and

therefore expense. This is deemed necessary as travelling at 18 knots or faster makes it

more difficult for pirates to board – as no vessel has reported being hijacked traveling at

speeds of 18 knots or more. An additional 1,270 billion USD were spent on the military

operations in the Gulf of Aden as more than 30 countries provided military vessels,

personnel, and equipment for counter-piracy operations. There was an additional $486-

681 million USD spent on re-routing vessels.

Table 8.   The Economic Cost of Piracy in 2011 as Determined by Oceans Beyond
             Piracy

SUMMARY OF COSTS	
1. Increased Speeds	$2,710 million
2. Military Costs	$1,270 million
3. Security Guards and Equipment	$1,060-$1,160 million
4. Re-Routing	$486 - $681 million
5. Insurance	$635 million
6. Labor	$195 million
7. Ransoms	$160 million
8. Prosecutions & Imprisonment	$16.4 million
9. Counter-piracy organizations	$21.3 million
Total Economic Cost of Piracy in 2011	$6.6 - $6.9 billion

The most frequent re-routing has ships staying close to the Indian coastline avoiding the

high risk areas for piracy (Oceans Beyond Piracy 2011), but other reports have indicated

that prior to 2011 some ships were re-routed around the Cape of Good Hope (The South

African Cape Peninsula) at a cost of $2.4 to $3 billion USD per year (Odeke 2011). A

further $195 million USD was spent on labor as seafarers are entitled to be paid double

the normal wage for transiting through high risk waters for piracy.

Anti-piracy organizations also incurred costs totaling $21.3 million USD. There

are several different organizations with different contributors who have been involved in

providing monies for the fight against piracy. Since the implementation of the Trust fund

in 2010, they have committed to several projects totaling approximately $7 million USD (United Nations Security Council 2011b). This fund is dependent on donations from member states, and in 2011 because the fund had been significantly depleted, the UNSC under Resolution 1976 urged member states to contribute financially to the fund which resulted in donations in the amount of $4.7 million USD (see Table 9).

Other funds totaling $11.9 million USD were provided by the United Nations Office of Drugs and Crime (UNODC) through their Counter Piracy Program (CPP) which was launched in 2009 (United Nations Office on Drugs and Crime 2011). The CGPCS working group meetings also carried a price tag of $1.218 million in 2011, as many of the initiatives that result from the meetings are paid for by the Trust Fund but the meetings themselves are not. Further funds came from the Djibouti Code of Conduct which received a total of $1.25 million USD towards fighting piracy (see Table 9). The majority of this funding is derived from the bilateral donations and the IMO (Oceans Beyond Piracy 2011). In addition, the UN Development Programme – Somalia, provided funds specifically for the purposes of conducting an assessment of maritime security needs in Puntland and Galmudug amounting to $321, 000 USD. Additionally, there were considerable financial contributions made by organizations representing the private shipping industry.

In 2011, funding for the anti-piracy cause came from several agencies representing private shipping. Save our Seafarers, an organization established in 2011 dedicated to bringing awareness to both the economic and the human costs associated with piracy, provided $187, 057 USD.

Table 9.   Trust Fund Contributors for 2011 as Indicated by Oceans Beyond Piracy

Total Financial Contributions to the Trust Fund, 2011: $4.7 million	
European Union	$1.48 million
United Arab Emirates	$1 million
Norway	$750,000
France	$500,000
Netherlands	$400,000
Belgium	$150,000
Abu Dhabi Port Company	$200,000
DP World	$100,000
E. Marine Co.	$100,000
Philippines	$25,000
Total Financial Contributions to the Djibouti Code, 2011: $1.25 million	
Japan	$1 million
Saudi Arabia	$100,000
Marshall Islands	$100,000
Netherlands	$50,000
Total Financial Contributions from Organizations that Represent Private Shipping	
Save Our Seafarers	$187,057
Maritime Piracy Humanitarian Response Programme	$188, 325
The Seaman's Church Institute	$100,000
PiraT Project	$460,400
Oceans Beyond Piracy	$1.02 million

The Maritime Piracy Humanitarian Response Programme, an organization that was

established in September 2011 for the purpose of assisting seafarers with the trauma

associated with being kidnapped, or taken hostage, dedicated $188,325 USD. The Seaman's Church Institute provided $100,000 USD for assessing the trauma associated with piracy attacks for crew members, the PiraT Project, a German organization that focuses on implementing non-military solutions to strengthen anti-piracy protection measures, contributed $460,400, and Oceans Beyond Piracy dedicated $1.02 million USD.

A further $635 million was spent on insurance, a number made larger by shipping companies not only having to insure against kidnap and ransom, but also because regions associated with piracy have been classified as war zones. The two major types of insurance specific to piracy are war risk and kidnap. War risk insurance makes reference to areas that have been identified by the Lloyd's Market Association (LMA) Joint War Committee in London. As of January 2011 the areas designated as war risk zones include the Gulf of Aden, the Indian Ocean, the Red Sea, and the Gulf of Oman (Oceans Beyond Piracy 2011). Kidnapping and ransom insurance protect the crew but it does not include the hull or the vessel which require separate insurance. This type of insurance is often used in addition to the war risk insurance as it covers "fees for public relations, negotiators, medical and psychological treatment, ransom delivery costs, and travel costs for hostages' families" (Oceans Beyond Piracy 2011:14). Insurance against piracy in recent years has been said to be among the "fastest growing business" (Lowe 2011), and the Senior Executive for Lloyd's Market Association (LMA), Neil Roberts, estimates that insurance against piracy has cost the industry an additional $160 million dollars in premiums (Bockmann 2011).

Important to note is that marine insurance companies also reified the discourse on piracy, but by doing so reaped large economic benefits in the increased premiums paid by shipping companies. This is evident by the LMA Joint War Committee in London designating the Gulf of Aden as a war risk area and as a result requiring vessels traversing through the region to have a specific type of insurance. In 2006, Lloyd's deemed that distinguishing between the risk of terrorism and that of piracy was too difficult so policyholders would have to get one type of coverage to guard against both. In 2011, insurance premiums totaled $625 million USD, compared to $160 million USD pirates secured in ransoms (Oceans Beyond Piracy 2011), making insurance companies not only one of the most influential primary definers of the issue, but one of the biggest benefactors capitalizing on the perceived threat of the Somali pirate. Insurance premiums however, can be reduced by self-protective measures, such as private security. The majority of the costs addressed above have been associated with preventative and deterrence measures utilized in the war on piracy, and much of which have arguably created a corporate industry that benefits economically from the war on piracy.

In 2011, there was $1.06 to $1.16 billion USD spent on private security measures as an increasing number of shipping companies and vessel owners are actively seeking means to protect their vessels when traveling in high risk areas for piracy. Compliance with the Best Management Practices is estimated to be at 80 percent, and based on this_ estimation, Oceans Beyond Piracy (2011) suggest that between $533,609,653 and $629,248,653 was spent on these devices in 2011 (see Table 10 for details of breakdown of cost). The cost of employing armed security on a vessel has been estimated to be $50,000 USD per ship, per transit. Other private security measures include anti-piracy

devices, electric fences, high pressured hoses, unarmed aerial vehicles, and private armed

security (International Maritime Bureau 2005), all of which were promoted as being

necessary to protect ships, by the same organizations who pressured the IPC to act

against piracy in the first instance; primary definers of the issue such as the IMB.

Table 10.   Cost of Security Equipment for 2011 as Presented by Oceans Beyond
             Piracy

Security Equipment	Average Cost/Ship/Year	Total Cost in 2011	
		Lower Bound	Upper Bound
Razor Wire	$12,796	$434,552,160	$434,552,160
Electrified Barrier	$1,529.80	$3,247,000	$9,741,000
Warning Signs	$4.50	$286,538	$286,538
Acoustic Devices	$21,000	$44,572,500	$133,717,500
Sandbags	$1,424.16	$48,364,473	$48,364,473
		$533,609,653	$629,248,653

This suggests that this anti-piracy protection industry is reliant on the continued threat of

the Somali pirate and like the current military response is driven by corporate profit

making and the policies of economic growth in the West, such as that of capital

accumulation. There are also additional indirect costs that are incurred by the private

security companies themselves, such as accreditation fees. For example, the main

accreditation company, the Security Association for the Maritime Industry (SAMI)

charges $3,824 per year. There were approximately 76 private security companies who

paid for accreditation in 2011, which amounted to $290, 624 in costs for that year

(Oceans Beyond Piracy 2011). SAMI is not the sole accreditation agency therefore this is a very conservation estimation of costs of this nature.

Furthermore, at the interactional level, although the full cost of conducting a trial is not available for analysis, certain costs can be extrapolated from the court transcripts and more general research on trial and incarceration expenses. Each of the five defendant's attorneys, were private attorneys appointed by the court. These attorneys were paid a rate of $125 per hour (US v Hasan et al. 2011l). Based on the duration of the case, where proceedings began on April 20, 2010 and ended on July 13th 2012 (although the appeal is still pending) being approximately over two years, it can be estimated that the cost incurred for defense counsel representation would have been $292,500 per defendant. This was calculated based on an estimated 20 hour work week of eight hours per day (although it is acknowledged that the number of hours would vary dependent on what the attorneys were doing – i.e. in trial, preparing for trial), for the full 117 weeks of the case duration, especially as the trial itself lasted approximately two weeks at an estimated cost of $70,000 for all five defendants. For five defendants this creates a cost estimate ranging from $70,000 to $1,462,500 in attorney fees alone. This does not include any additional costs that may have been incurred such as paralegal fees, expenses such as mileage, filing fees, and photocopying fees, translator fees, court costs, salaries for prosecutors, paralegals, court reporter/s, court bailiffs, the Judge, juror expenses, and administrative support staff. Some of these costs can be approximated by looking at costs associated with cases that are similar in seriousness, such as a murder or homicide case.

In a study of court costs associated with the prosecution of a murder case in North Carolina, Cook, Slawson, and Lori (1993) found that a day in Superior Court in North Carolina would result in an expense of $1,093 per day. This includes the salaries for a senior Judge, Court Report, Bailiff, and Deputy Clerk. They also included estimates of hourly rates for prosecutorial office staff, including the prosecutor and assistant prosecutor. They found that an hour of a prosecutor's time would costs approximately $83 per hour, and the assistant prosecutor would get $56 per hour. It must be noted that these are very conservative estimates given the high profile nature of the piracy trial, and the date of the study. Therefore, based on these estimates the cost associated with the trial alone would be at least $132,384 for two weeks of trial, which amounts to $202,384 when combined with the defense attorney's fees. This excludes preparatory work, motion hearings, any time spent on the case outside of the courtroom or the costs associated with incarcerating the suspects for the duration of their sentences.

Additional costs can be estimated based on general prison statistics. According to the Virginia Department of Corrections it costs $25, 129 to house an inmate for one year (Vera Institute of Justice 2012). The defendants in this trial were each sentenced to life in prison plus 80 years for their offenses. Although the life expectancy for an adult Somali male is 48.86 years (Central Intelligence Agency n.d.), the life expectancy of an adult male in the US is 76.05 years (Central Intelligence Agency n.d.a). Although, research has indicated that incarceration decreases life expectancy because of increased stress, and exposure to communicable disease, as well as other health risks such as psychological disorders and mental health illnesses (Hogg et al. 2008), it is likely that the defendants' life expectancy would be increased by their incarceration in the US. Here,

the median point (62.5 years) between the Somali and US life expectancy for an adult

male was used to appropriate the cost of incarcerating one of the defendants in the US.

Therefore, a conservative cost estimate to house the defendants for the duration of their

sentence for each defendant would be $1,570,563, totaling $7,852,813 for all five

defendants. Although these estimates are speculative, they do not account for other

expenses such as prison programming such as education and work programs,

transportation back and forth to trial, and healthcare pre and post-trial. It can be

estimated that the cost of trying five Somali citizens in court and subsequently

incarcerating them for life terms in the US would at the very minimum range from

$8,055,197 to $9,447,697. Ironically none of these monies have been directed towards

addressing the root causes of Somali piracy. A point that is better emphasized

considering that an average annual family income in Somalia is $140 (World Vision

2013), so the same money spent on prosecuting five Somali's in the US for piracy could

have supported between 57, 516 and 67,484 Somali families for a whole year in Somalia.

The money dedicated to the humanitarian situation in Somalia for 2011 comes

from separate funding sources than those associated with the 'war on piracy.' This again

separates the issue from the larger structural context in which it is occurring.

Additionally, the amount of money spent of the humanitarian response in 2011 was $4.5

million USD (Rinehard 2012). This is only a fraction of the amount spent on fighting

piracy - $6.6 billion USD (Oceans Beyond Piracy 2011). This large amount of money

does nothing to address the motivations for piracy in the region, which as indicated by

Andrew Mwangura, the head of the East African Seafarer's Assistance Program "is

poverty" (Eichstadt 2010: 116). This is concisely demonstrated by Geoffrey Egbide, the

brother of a ship's Captain taken hostage and freed by pirates commenting on the

problem of piracy in Somalia, in his following comment;

> When a man is destitute, he will do anything to survive. It is a desperate
> situation in Somalia. It is a place where might makes right. In Somalia, if they
> can hijack a ship and get one million dollars, then it is something right for them to
> do (Eichstadt, 2010:99).

The policies in place are reactive instead of proactive and are designed to deter

potential attacks through the increased military presence, as well as to hold those caught

accountable for their actions. Founded in the criminological perspective of deterrence

these policies are designed to deter specific individuals at the interactional level from

future offending, as well as other would-be offenders by solidifying the normative

response to Somali piracy at the international level by making an example of those who

have been caught in the act. There has however, within the criminiological literature,

been longstanding criticism of the efficacy of deterrence based policies.

Deterrence based policies operate on the assumption that the offender makes a

cost versus benefit analysis before committing a crime, but research has shown that this

varies with a person's social location leading to different decision making processes.

Those with the most to lose are more likely to opt out of criminal behavior (Mullins and

Rothe 2008a). In the case of Somalia, there is little to lose for the people living in

conditions of prolonged conflict, poverty, and humanitarian crisis. This is supported by a

comment made by the head of the East African Seafarer's Assistance Program, Andrew

Mwangura, "desperate people take desperate measures...most [pirates] don't know how

to swim, yet they go two hundred miles out to sea" (Eichstadt 2010:118). Also the

effectiveness of a general deterrence depends on people having knowledge of the fate of

those being made example of; those being prosecuted for piracy. The data from the court

transcripts of the Somali citizens in Norfolk Virginia, also illustrates that at the interactional level, the deterrence based policies that have been implemented at the international level are flawed. In this case not only did people in Somalia seem to be unaware of the defendants whereabouts when they were captured by US naval forces (US v Hasan et al. 2011q), but the defendants themselves did not seem to understand what was happening to them when they were being sentenced: "I did not kill anyone. I did not rob anybody. I didn't attack anybody. I like to be told the reason that I am found guilty on this case" (US v Hasan et al. 2011r:74).

The IPC's enactment and enforcement of policies grounded in the deterrence perspective, for the purposes of preventing piracy ignores the complexities of the motivations for Somali piracy and reinforce the larger discourse, or 'regime of truth' that has dominated the understanding of the Somali pirate. The marginalization of any alternative discourse on the issue, has narrowed the understanding of the issue, and even regulated the Somali people and the conditions within the country, as secondary to the dominant understanding of the issue. This is supported by the minimization of the issues of illegal fishing and toxic waste dumping the root of the political and economic motivations for the crime, in favor of the dominant discourse, that of labeling the Somali pirate as a terrorist and a threat to global shipping lanes.

The understanding of the Somali pirate, as well as the processes involved in the creation, enactment, and enforcement of policies to address the issue, are situated within a wider context of the political economy that advances the global economic interests and state self-interests associated with international trade. This was initiated by interests that represent the private shipping industry coupled with the US who used the rhetoric of the

maritime terrorism to advance their own political agenda associated with the 'war on terror.' These interests created a dominant understanding of the issue which has shaped and justified the overly militarized policy response. The discourse that shaped the initiation of policy responses at the international level, has influenced their enforcement at the interactional level. However, the trials in the US also demonstrated the disjunction between the motives driving these policies at the international level and the reality of their enforcement. The current anti-piracy response that has been initiated and enforced has also led to the marginalization of any alternate understanding, and ignored the etiological factors that undergird the "real" motivations for piracy.

The next and final chapter provides a summary of this research, including discussion of possible policy change, as well as some concluding thoughts about piracy in the coastal waters of Somalia and the policies enacted to prevent it.

CHAPTER X

SUMMARY AND CONCLUSION

The purpose of this research was to determine how the IPC has come to identify and label piracy as a problem and how policies have been created, justified, and implemented to control it. Here, I have examined the processes of policy creation, enactment, and enforcement paying particular attention to the IPC, state interests, as well as individual accountability as demonstrated in the prosecution of eleven Somali men for crimes of piracy in the US. Using an integrated theoretical frame I have shown that the policies that have been created and implemented in response to the issue of piracy in the coastal waters of Somalia have been shaped by the global power structures that inform policy enactment at the international level – interests that represent private shipping, as well as specific states who have their own political interests in the region, that of capital accumulation and fighting terrorism.

These primary definers of the issue have acted as moral entrepreneurs, equating Somali pirates to terrorist, organized crime, and pirate militia, labeling and emphasizing them as being inherent threats to all seafarers, including humanitarian efforts, international peace and security, but most importantly to the security of global trade. This construction of the Somali pirate has created a dominant understanding of the issue that has increased pressure on the IPC motivating them to act in response to the seriousness of the situation, a seriousness that has been constructed by those defining the issue. This has not only ignored and marginalized other understandings of the issue that may better address the real motivations for piracy in Somali waters, but has led to control

policies that are ineffective, extremely costly, and has produced an anti-pirate private industry (insurance, self-protection devices, and armed security) that is now reliant on the continued threat of Somali piracy.

In Chapter 1, I drew attention to the increased political and media focus on the issue of piracy in Somali coastal waters. As a subject usually associated with historical legend and folklore, a cursory glance at the media including coverage of high profile cases such as the *Maersk Alabama*, indicated that Somali piracy had become a notable issue. I then discussed the increased militarized response involving at least 14 different countries (Ha 2009) which has been implemented to control piracy in the region. Attention is then paid to the poor humanitarian and structural conditions within Somalia, something that is seemingly missing from the current criminological literature on the subject. Then in contrast to the current literature that focuses on piracy as a threat to global security and is informed by disciplines outside of criminology, I emphasized the importance of this research as a means to examine the processes involved in the creation, enactment and enforcement of these anti-piracy policies, something which had not yet been done.

Chapter II provided an overview of the literature on piracy in Somalia. Beginning with a discussion of the political nature of law making, the importance of discourse was presented as it legitimates certain understandings of an issue. I also addressed, that with the exception of a few works including Chambliss' seminal work on state-organized crime, the political processes involved in creating laws on modern day piracy are notably absent from the literature. Instead, the focus of the literature has been, and continues to be, the threat to global security posed by piracy, which includes it being of particular

concern in specific regions of the world, it posing a threat of violence and death to seafarers, ships and crew, the economic cost posed by the crime, and it being connected with terrorism and the threat of a maritime terrorism attack.

In Chapter III, the benefit of using an integrated theoretical approach was presented followed by an overview of the integrated theoretical frame used in this study. This is an integrated frame that adopts a piecemeal approach informed by different theories that allowed for an examination of the policy creation process at each level of analysis; the international, state, interactional/individual levels. Included in this frame were theories on truth and discourse from Foucault (1972; 1980) and Gramsci (1971), agenda setting (McCombs and Shaw 1972), and labeling and societal reactionary theories (Becker 1963; Schur 1971).

Chapter IV provided the methods used in this research which included a case study approach utilizing content and discourse analysis. This chapter also provided a detailed overview of the data, research design and the coding. Data were used from various sources to ensure that each level of analysis was addressed including primary data from the UN, court transcripts and supplementary sources, as well as secondary data from the media. The limitations of this research design were also discussed in this chapter.

In Chapter V, I provided a detailed historical overview of the socio-political instability in Somalia beginning with Independence in 1960. This provided the context for the problem of Somali based piracy, and included describing the many different conflicts that have plagued the country since colonialism and the changes in leadership that have led to the lack of centralized government that is representative of the situation

to this day. Importantly, this also included an overview of the actors that have been party to the conflicts, attempts at external intervention, as well as the larger political context in which such interventions have occurred (i.e. Cold war relations). In this chapter, I also brought attention to the impact that these prolonged periods of political instability, warring factions, government corruption, and lack of basic infrastructure has had on the Somali people which includes millions killed, millions displaced, and thousands more living in inhumane conditions.

Chapter VI marks the beginning of the presentation of the findings from this research. Overall, I found that the policies created, justified and enacted in response to piracy in Somalia, were not proportional to the threat of violence posed to seafarers, ships, and ports. Rather, the policies are a result of increased pressure placed on the IPC by interests that represent private shipping, who through their labeling of pirates as evil, dangerous, and violent actors, as well as equating them with organized crime and terrorist networks have created an understanding of the issue of piracy that is slanted. In addition, the larger policy agenda of the US led 'war on terror,' compounded this slanted understanding of the issue of Somali piracy. This provided the justification for external intervention in a region alleged to have ties with Al-Qaeda terrorist networks.

The coupling of piracy with terrorism has led to the creation of a dominant perception that Somali pirates are a legitimate threat, and subsequently this has provided the reasoning for the placement of military operations in the region. In establishing this discourse the primary definers of the issue placed pressure on the IPC to act to protect shipping, by lobbying and propagating the discourse that Somali pirates are dangerous, terrorist actors through the media. This reification of the one truth about the Somali

pirate both ignored and marginalized other possible understandings of the issue – political and economic motivations from illegal fishing, toxic dumping, and the poor infrastructure within the country itself. This has led to the initiation of policy responses that are reflective of the dominant understanding of the issue and subsequently a militarized response has been initiated involving over 50 international, national, regional, and state actors.

Ironically, this very response has been initiated by interests that represent private shipping – the primary definers – for the purposes of protecting global shipping lanes and corporate profit making through the maintenance of states-self economic interests, and resulted in the creation of an anti-piracy industry (insurance, protection devices, and private security), that benefits financially from the threat of piracy. Therefore, the definers of the issue now have a vested economic interest in the continued discourse of the 'threat of the Somali pirate.' The growth of the anti-piracy corporate industry is driven by the same forces that undergird the militarized response to piracy, capital accumulation and corporate profit making however, despite the underlying reasons for this particular policy response I have demonstrated there are significant issues regarding its effectiveness in controlling the piracy in the region.

Predicated on deterring piracy, the deployment of warships to the Gulf of Aden for the purposes of patrolling the International Transit Corridor, has not decreased the number of pirate attacks in the region (see Figure 2). Instead, the number of attacks has remained high with the level of violence increasing which may be directly attributable to the increased military presence itself. In addition, the IPC has recognized that the deterrence based response is not working, as less than ten percent of pirates are captured,

and nine out of ten of those that are apprehended are not prosecuted (United Nations Security Council 2011a).

Furthermore, at the interactional level, the arrest and subsequent prosecution of those accused of piracy in Somalia are inconsistent which undermines the certainty with which a policy is executed. The inconsistencies of the administration of this anti-piracy policies are also undermined by the various domestic laws of different jurisdictions (if laws are even in place) pursuing prosecutions, the difference in sentences, as well as the practices of the different navies involved in the war on piracy (i.e. catch and release versus transferring suspects for prosecution). Extended beyond the specific deterrence of particular individuals prosecuted for a particular incident of piracy, the intention behind a deterrence based policy is to act as a general deterrence to others, by making an example of some (Gibbs 1975; Nagin and Pogarsky 2001). As shown in the piracy trials in the US, this policy of general deterrence is fundamentally flawed if the consequences of committing acts of piracy are not communicated to the population it is intended to deter. In the *USS Nicholas* trial no one knew that the defendants had been arrested and transferred to the US to stand trial for acts of piracy, or that they were convicted and sentenced to life in prison plus 80 years. The only thing that was known was that they had disappeared while fishing and they were considered missing. This emphasizes the disconnection between the policies that were initiated by the IPC, and the reality of their implementation at the micro level. I suggest this is directly related to the 'regime of truth' about the Somali pirate that has been created, which provides for only one understanding of the issue, ignoring all alternate truths which has suppressed the importance of the context of this crime – that of the structural conditions within Somalia.

Given the findings from the research the following section provides some policy suggestions that take into account the alternate understandings of the issue, such as the political instability within the country of Somalia and the decimation of the country's fishing industry compounded by the illegal fishing and toxic dumping.

POLICY IMPLICATIONS

The rationale behind initiating such responses to piracy is 'preemptive' in nature, taking the form of increased naval patrols, increased security onboard merchant vessels, as well as post-responses to include prosecuting individuals captured in the course of attempting or committing, acts of piracy. These policies are designed to decrease opportunities for piracy through the initiation of situational deterrence while ignoring the structural conditions within Somalia itself that facilitate the instances of piracy. Such a focus can be said to be distortive and inappropriate, as it addresses the symptoms of structural injustices, i.e. piracy, instead of providing access to justice to the Somali people by addressing the root causes of the problem – the existing political, economic and social injustices within the country itself, that are reflective of the larger global stratification system, as the framing of pirates as dangerous individuals with associations with terrorist groups, "masks deeper problems of unfairness in international economic order" (Jasparro 2009:1-2). This provides little assistance in addressing the broader motivational factors for piracy.

Notably, there is a need to remedy these structural injustices through comprehensive effective bottom-up preventative measures. These measures should address the infrastructural weaknesses within the state of Somalia, as well as the

inequities in which justice is applied in the global setting, (i.e. the current focus on capital accumulation in initiating militarized policies to protect global shipping lanes). These policies need to address the context of piracy as being the product of a weakened and failing state itself, which facilitates a criminogenic environment that makes piracy a viable source of survival.

Alternative policies should build on the alternate discourse about the Somali pirate, and switch the focus to the people of Somalia. This can only be achieved by better addressing the structural conditions within the country of Somalia, and acknowledging and addressing the inequities in the current international policies on maritime piracy. Preventative measures should not only acknowledge the structural conditions within the state of Somalia but put in place measures to address them. These structural conditions revolve around the country's lack of central government which has caused continued internecine violence, poor infrastructure, unstable institutions, a weakened or failing economy, as well as the lack of access to basic humanitarian needs, such as food, water, and healthcare (Doria, Rothe and Mullins 2010). The IPC should focus both time and resources on assisting the Somali people in structuring and organizing their society. This does not mean however, that apparatus prevalent in Western societies, such as a centralized government, or formal judiciary, is necessarily appropriate for the Somali people (Eichstaedt 2010).

What has been largely neglected in the discourse on Somali piracy is recognition that Somalia is a clan based society, and as a result there exists different forms of justice and justice systems. In Somalia, there are four main justice systems in place 1) Xeer, which is customary laws that is administered by clan elders and has no formal legal code

rather it is administered based on what the elder feels is the best solution for the problem; 2) religious driven legal systems through the administration of Sharia law, 3) Italian common law, a legacy from colonialism, and 4) English common law, again a legacy of colonialism (US Library of Congress n.d.). Although not all aspects of these four distinct legal systems and their laws have been retained, they all still have influence for certain offenses and in different regions of the country. Therefore, when addressing the problem of piracy and urging the initiation of justice mechanism such as courts, laws, and prisons, there needs to be acknowledgement of the complexity of legal systems that already exist. These systems hold legitimacy with the Somalia people, so implementing Western influenced laws and court systems may not necessarily hold credibility as instruments to be respected and revered.

Recently, the Somali parliament passed legislation recognizing piracy as a crime. This legislation also puts in place mechanisms for pirates convicted abroad to be transferred to Somaliland for prosecution. This has been initiated in response to pressure at the international level for Somalia to put in place procedures for the prosecution of their own people. This new legislation carries a maximum prison term of 25 years for the crime of piracy. Given the underlying mechanisms motivating such acts, any policy or formal response should be proportionate to the social threat of the crime as well as address the underlying etiological factors, if it is to reduce such criminality. The current response is not fiscally viable or proportionate to the harm done (25 years or life in prison in the US (US v Hasan et al. 2011a). The issue of proportionality is further undermined by issues of consistency as many of the foreign warships patrolling the Gulf of Aden and the Indian Ocean treat captured pirates differently – some regularly detain suspected

pirates, but others are quickly released because governments are reluctant to bring them to trial.

Furthermore there are huge inconsistencies in the response to the Somali pirate with different forms of "justice" administered by the different countries that have naval forces patrolling the Gulf of Aden (Eichstadt 2010; Archibugo and Chiarugi 2011; Bahadur 2011), and for those who are prosecuted there are huge variability in the sentencing. In the US, the five individuals found guilty of acts of piracy were convicted and sentenced to life in prison ("Convicted Somali..." 2011) those in France received between four to eight years (Somali Pirates... 2011), and prosecutors in Germany are seeking eleven and a half years for the seven recently brought to trial (Reuters 2012). Kenya's participation in prosecuting Somalis accused of piracy has presented additional issues and allegations of human rights violations.

For example, the jail in Mombasa hosts an increasing number of individuals accused of acts of piracy. While being detained, they are often subject to human rights violations and are without due process (Archibugi and Chiarugi 2011). The accused are subject to overcrowding, not allowed to contact their families, practice their religion, provided inadequate medical care and questionable access to adequate defense attorneys. Furthermore, being accused of piracy can lead to discrimination in jail with reports detailing other inmates targeting alleged pirates for beatings (Eichstadt 2010). These inconsistencies need to be addressed before further efforts are made to institute a criminal justice response within Somalia for the prosecution of piracy. These mechanisms need to be initiated by the Somali people for the Somali people, free of intervention from foreign parties advancing their own self interests.

There should be a break from the pattern of intervention from external states advancing their own self-interests, that of capital accumulation and corporate profit making, and a greater focus on Somali driven policies to address piracy in the region. This means that the IPC should acknowledge that the TFG is in itself is a problematic institution as it has been initiated and put in place by the IPC, and therefore historically and presently, continues to lack credibility in Somalia. What is necessary, however, is assistance in ensuring basic humanitarian needs are met, that would allow Somali's to think beyond the necessities of surviving each day, so they are better able to collaborate with the IPC in providing a direction for their future. By diminishing the needs associated with basic survival, such as the need for food, water, income, and freedom from violence, then the dominant motivational trend for piracy, that of poverty, will simultaneously be addressed. It would also make more economic sense for the IPC to redirect resources away from a militarized response and allocate them towards providing for basic humanitarian needs, such as water, food, and sanitation.

The policy suggestions made here would require considerable change at the international level, specifically with regards to the intersection of political, economic and state self-interests within an already stratified global capitalist system. However, although significant barriers exist and a complete structural overhaul is, in many ways, an unrealistic expectation, the problem of piracy in Somalia will continue to flourish without change. What is maybe a more practical suggestion, is changing the discourse on the Somali pirate to include the aforementioned issues of injustice in the global economic order, including the recurrent abuses of Somali natural resources by the same interests engaged in the 'war on piracy.' In addition, there should be acknowledgement in the

discourse that terrorism and piracy are two very different and distinct behaviors with pirates in Somalia committing crimes of opportunity driven by economic need. There is no evidence that they are associated with, being sponsored by, or are terrorist organizations. This current and slanted understanding of the Somali pirate needs to be dispelled. These changes in approach to the Somali pirate may then undermine the current rhetoric supporting the anti-piracy response and lead to policy change.

Here I have provided some, albeit few, policy suggestions that may help better address the issue of the Somali pirate, however it must be noted that there were some limitations that extended beyond those previously discussed in the methods chapter as they related to the case study method (i.e. issues related to generalizability). What became apparent during the course of the research was the limited ability to present the perspective of the Somali pirate as it relates to motivations for piracy and their experience of the policy response that has been initiated. Although some insight into this matter was highlighted in the court transcripts, the five Somalis being prosecuted for piracy were only given voice within a very structured Western criminal justice system. This indicates, as did my review of the literature, not only that both the subject of maritime piracy and the processes initiated in response to them are relatively understudied, but that what is known is one-sided. Therefore, many possibilities to expand the findings of this dissertation in future research still remain.

POSSIBILITIES FOR FUTURE RESEARCH

Prosecutions of Somali pirates in jurisdictions outside of Somalia are a relatively new phenomena. Further research could expand on the findings from this analysis of the

court transcripts of the two US based trials and compare and contrast them with proceedings in different jurisdictions. This may provide a deeper understanding of the enactment of these policies at the individual level, as well as highlight some of the inequities in the practical administration of the policies initiated at the international level. This research could include interviews with Somali's convicted of piracy as what is missing from much of the research on piracy is the perspective of those charged with committing the crime. Although this research was able to provide some insight into the perspective of those tried for piracy, gaining a greater insight in the life experiences of these men, as well as their perceptions of the justice response to their crimes would be invaluable to understanding maritime piracy in Somalia. This would be particularly useful in understanding individual motivations for the engagement in the crime, the impact of their capture on their family and communities, and perhaps even undermine the discourse that paints these individuals as organized criminals with associations with terrorist networks.

Other research could compare the discourse about the Somali pirate as illustrated in this research, with discourse on piracy in other regions. This would be especially interesting considering the proximity of Somalia to the Gulf of Aden an area that is of strategic importance to shipping and trade (NATO Allied Maritime Command 2010b). Other regions such as Nigeria, would prove an interesting comparison as much of the piracy and violence surrounding the area revolves around disputes over the resource rich Niger Delta, where corporate interest is accessing oil (Marley 2011).

Larger questions related to international justice, the political and economic influence on the initiation of such justice mechanisms, and the impact that such justice

initiatives has on states subject to these mechanisms, would also be of interest. The policies on piracy have redirected focus and resources away from the humanitarian situation in Somalia to the anti-piracy response. This in many ways has created a situation where an already vulnerable population i.e. the people of Somalia, have been inadvertently re-victimized by the policies intended to protect against piracy.

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