Somali Piracy, 2002-2011:
The convergence of Routine Activity Theory and Regulatory Pluralism

A thesis submitted for the degree of Doctor of Philosophy of
The Australian National University.

Jade Alice Lindley
December 2013
Declaration

I declare that this thesis is exclusively the result of my own work.

Jade Alice Lindley
ACKNOWLEDGEMENTS

I would like to sincerely thank all of the knowledgeable participants who generously provided me with a fantastic platform of operational insight from which to expand my research.

To my supervisor Professor Peter Grabosky, thank you for your patience, generosity with your time, and support the whole way through. You have given me such a valuable education. Your wide-ranging knowledge has inspired me to think outside the box. I am appreciative for your perseverance in guiding me to constantly improve, providing me with access to your personal library, and for emailing journal and media articles that you know I will find interesting. I will be forever grateful for being your humble apprentice.

To my panel of advisors Professor John Braithwaite, Dr Jeremy Farrall, and Dr Heather Strang; thank you for your encouragement, insightful suggestions and tricky questions. John, you are a source of brilliant information, of which I am so grateful you shared with me. Jeremy, your knowledge of the UN inspired and guided me tremendously. Heather, your warm approach helped me understand how to meet the challenges I faced. Thank you also for being a sense of great comfort while I was based in the United Kingdom.

To my chapter reviewers, you disentangled my words and helped me put them back together. I did not make your job easy and for that, I am sincerely grateful. I asked for time away from husbands, wives, children, and from activities involving much more
enjoyment, but you all came through for me. I would also like to acknowledge Mr Garry Parsons for providing comments on an earlier draft. The scope of his comments was limited to checking the completeness and consistency.

I would also like to acknowledge other staff and scholars, past and present, at the Australian National University's Regulatory Institutions Network (RegNet) for always having their doors open and happy to discuss ideas over a cup of exotic coffee. RegNet's generous scholarship funding made my fieldwork dreams a reality.

To my husband Chad, you inspired, encouraged and motivated me through the entire journey and I am so grateful for your love and support. I could not have done it without you.
ABSTRACT

Maritime piracy off the coast of Somalia was first recognised as a global concern in 2008 after the hijackings of World Food Programme vessels. It remains a serious impediment to international maritime trade and a significant risk to seafarers. This thesis analyses Somali piracy from the perspectives of Routine Activity Theory and regulatory pluralism.

The supply of motivated offenders is all but guaranteed by a number of persistent factors. Somalia has suffered almost a quarter century of limited governance, weak rule of law, ongoing civil conflict, and a feeble economy with few opportunities for lawful employment. Vulnerable targets for piracy, not all of which are capable of self-protection, abound in the Gulf of Aden and off the Horn of Africa. Capable guardianship has also been lacking; there is no effective Somali state to safeguard shipping in the region, requiring the involvement of assistance from foreign naval forces.

Based on data from a range of sources, including published documents and in-depth interviews with representatives of industry, government, and international organisations, the thesis concludes that no one institution or policy will suffice to control Somali piracy. Accordingly, a number of different actors and institutions have a role to play in reducing the supply of motivated offenders, the vulnerability of prospective victims, and in enhancing guardianship. The thesis envisages a pluralistic model for the ideal configuration of institutions to control Somali piracy in both the immediate future and the longer term.
# TABLE OF CONTENTS

ACKNOWLEDGEMENTS

ABSTRACT

TABLE OF CONTENTS

FIGURES

TABLES

PHOTOS

BOXES

CASES

TREATIES

ABBREVIATIONS AND ACRONYMS

GLOSSARY

PART ONE: INTRODUCING SOMALI PIRACY

CHAPTER 1  INTRODUCTION

1.1 SOMALI PIRACY: ITS EMERGENCE ON THE INTERNATIONAL AGENDA

1.2 BRIEF OVERVIEW OF THE NATURE AND EXTENT OF SOMALI PIRACY

1.3 CENTRAL RESEARCH QUESTIONS AND OVERARCHING OBJECTIVE

1.4 THEORETICAL UNDERPINNINGS

1.5 METHODOLOGY OF FIELDWORK AND ANALYSIS

1.6 EXISTING LITERATURE

1.7 CONTRIBUTION OF THIS THESIS

1.8 THESIS STRUCTURE

CHAPTER 2  HISTORICAL PREFACE: A BRIEF HISTORY OF GLOBAL PIRACY

2.1 INTRODUCTION

2.2 HISTORICAL PIRACY: A BRIEF OVERVIEW

2.3 THE END OF AN ERA: SUPPRESSION AND PUNISHMENT

2.4 CONCLUSION

CHAPTER 3  THE CONTEMPORARY CONTEXT OF SOMALI PIRACY

3.1 INTRODUCTION

3.2 SOMALIA’S POLITICAL HISTORY

3.3 MILITIA GROUPS IN SOMALIA
FIGURES

Figure 1: Map of Somalia
Figure 2: Routine Activity Theory crime triangle
Figure 3: Population pyramid, Somalia, 2012
Figure 4: Population pyramid, Australia, 2012
Figure 5: Indian Ocean tsunami impact zone
Figure 6: The Somali coastline devastated by the 2004 tsunami
Figure 7: Aerial view of the aftermath of the tsunami, Harun, Somalia
Figure 8: Distribution of Somali piracy ransoms I
Figure 9: Distribution of Somali piracy ransoms II
Figure 10: Percentage of actual Somali piracy attacks, by vessel type, 2002 to 2011
Figure 11: Percentage of attempted Somali piracy attacks, by vessel type, 2002 to 2011
Figure 12: Percentage of total Somali piracy attacks, by vessel type, 2002 to 2011
Figure 13: Bulk carrier
Figure 14: General cargo vessel
Figure 15: Chemical tanker
Figure 16: Fishing vessel
Figure 17: Dhow
Figure 18: Lynn Rival yacht
Figure 19: Typical skiff
Figure 20: Sea routes between London and Mumbai via the Gulf of Aden and Suez Canal, compared to sea routes via the Cape of Good Hope
Figure 21: Satellite images of maritime transit routes around Somalia, December 2006 to December 2011
Figure 22: The expansion of Somali piracy operations
Figure 23: Attempted and actual Somali piracy attacks, by month, 2002 to 2011
Figure 24: Matrix of international community involved in counter-piracy response
Figure 25: Eligible Djibouti Code of Conduct nations

Figure 26: Distance from Somali coast considered high-risk due to piracy, by distance in nautical miles, 2002 to 2011

Figure 27: Flowchart of Somali piracy attacks

Figure 28: Decision making process after apprehending pirates

Figure 29: Somali piracy attacks, 2002 to 2011

Figure 30: Global piracy, 1992 to 2011

Figure 31: Hostages taken by Somali pirates, 2002 to 2011

Figure 32: Somalia piracy attacks, by location, 2002 to 2011

Figure 33: Comparisons between actual and attempted Somali piracy attacks, 2002 to 2011

Figure 34: Sea state 3

Figure 35: Average wind and sea conditions in the Gulf of Aden and off the Somali coast, by month

Figure 36: Optimal alternative routes in the Western Indian Ocean to avoid Somali pirates

Figure 37: Actual (left) and attempted (right) attacks, by average time of day

Figure 38: Internationally Recommended Transit Corridor

TABLES

Table 1: Somali piracy attacks, 2002 to 2011

Table 2: Interview categories, by participant location

Table 3: Suez Canal traffic, 2002 to 2011 (number)

Table 4: Historical trade routes that crossed Somalia and the Gulf of Aden

Table 5: Ten highest open registry flag states by the number of registered vessels and piracy attacks, 2002 to 2011

Table 6: Ten flag states most attacked by Somali pirates, by attack frequency, adoption of relevant treaties and status as an open registry, 2002 to 2011
Table 7: Ten flag states most attacked by Somali pirates, by legislation and penalties

Table 8: Somali piracy rate of attack, by attempted and actual, 2002 to 2011

Table 9: Naval coalition forces

Table 10: Comparison between the counter-piracy legislations from select IMO member states that responded to Circulars 2933 and 3154

Table 11: Global piracy, 1992 to 2011 (number)

Table 12: Status of the vessel when Somali pirates attacked, 2002 to 2011 (number)

Table 13: Piracy alerts

Table 14: World Meteorological Organization State of the Sea Code

Table 15: Average sea state, attacks and likelihood of success of Somali piracy, by month, 2002 to 2011

Table 16: Vessels by age and type, 2011

Table 17: Somali piracy attacks, by time of day, 2002 to 2011 (number)

PHOTOS

Photo 1: International Maritime Bureau, Wapping, London

Photo 2: International Maritime Organization Headquarters, Albert Embankment, London

Photo 3: Lloyd's Headquarters, Lime Street, London

Photo 4: Allianz Building, Gracechurch Street, London

Photo 5: Anchor, St Katherine’s Dock, London

BOXES

Box 1: US prosecution of a Somali pirate

Box 2: Spanish prosecution of two Somali pirates
CASES

Kenya
The Republic of Kenya v. Aid Mohamed Ahmed (and seven others), 2008
The Republic of Kenya v. Mohamud Mohamed Hashi (and eight others), 2009

Seychelles
The Republic of Seychelles v. Mohamed Ahmed Ise (and four others), 2010
The Republic of Seychelles v. Mohamed Ahmed Dahir (and 10 others), 2010
The Republic of Seychelles v. Abdukar Ahmed (and five others), 2011
The Republic of Seychelles v. Houssein Mohammed Osman (and 10 others), 2011
The Republic of Seychelles v. Mohamed Ahmed Ise (and four others), 2011

United States of America
The United States of America v. Mohammed Modin Hasan (and four others), 2010

TREATIES

United Nations
Convention relating to the Status of Refugees (1951)
Convention on the High Seas (1958)
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

**United Nations Security Council Resolutions relating to Somali piracy**

Resolution 733 (23 January 1992) S/RES/733
Resolution 751 (24 April 1992) S/RES/751
Resolution 1816 (2 June 2008) S/RES/1816
Resolution 1838 (7 October 2008) S/RES/1838
Resolution 1846 (2 December 2008) S/RES/1846
Resolution 1851 (16 December 2008) S/RES/1851
Resolution 1897 (30 November 2009) S/RES/1897
Resolution 1918 (27 April 2010) S/RES/1918
Resolution 1950 (23 November 2010) S/RES/1950
Resolution 2015 (24 October 2011) S/RES/2015
Resolution 2020 (22 November 2011) S/RES/2020
Resolution 2077 (21 November 2012) S/RES/2077

**International Maritime Organization Resolutions**

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1978)
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIS</td>
<td>Automatic Identification System</td>
</tr>
<tr>
<td>AMISOM</td>
<td>African Union Mission to Somalia</td>
</tr>
<tr>
<td>ARPCT</td>
<td>Alliance for the Restoration of Peace and Counter Terrorism</td>
</tr>
<tr>
<td>BMP</td>
<td>Best Management Practices for Protection against Somalia Based Piracy</td>
</tr>
<tr>
<td>CGPCS</td>
<td>Contact Group on Piracy off the Coast of Somalia</td>
</tr>
<tr>
<td>CTF</td>
<td>Combined Task Force</td>
</tr>
<tr>
<td>DPKO</td>
<td>Department of Peacekeeping Operations</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>EMP</td>
<td>Electromagnetic Pulsing</td>
</tr>
<tr>
<td>EU NAVFOR</td>
<td>European Union Naval Force</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization</td>
</tr>
<tr>
<td>ICU</td>
<td>Islamic Courts Union</td>
</tr>
<tr>
<td>IDPs</td>
<td>Internally Displaced Persons</td>
</tr>
<tr>
<td>IGAD</td>
<td>Intergovernmental Authority on Development</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>IMB</td>
<td>International Maritime Bureau</td>
</tr>
<tr>
<td>IRTC</td>
<td>Internationally Recommended Transit Corridor</td>
</tr>
<tr>
<td>MSCHOA</td>
<td>Maritime Security Centre - Horn of Africa</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>P&amp;I</td>
<td>Protection and Indemnity insurance</td>
</tr>
<tr>
<td>RPGs</td>
<td>Rocket propelled grenades</td>
</tr>
<tr>
<td>SAMI</td>
<td>Security Association for the Maritime Industry</td>
</tr>
<tr>
<td>SOLAS</td>
<td>International Convention for the Safety of Life at Sea</td>
</tr>
<tr>
<td>SUA Convention</td>
<td>Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation</td>
</tr>
</tbody>
</table>
Armed robbery against ships: '(a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;

(b) any act of inciting or of intentionally facilitating an act described above.'

Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships (Resolution A.1025(26), Annex, paragraph 2.2)

Exclusive Economic Zone: Exclusive Economic Zone is defined as 200 nautical miles from the coast, 12 nautical miles of which is considered territorial waters, applicable to member states that have adopted the United Nations Convention on the Law of the Sea.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flags of convenience</td>
<td>See open registry</td>
</tr>
<tr>
<td>Flag state</td>
<td>Generalised term used by the International Maritime Organization to refer to a country that is a member of the International Maritime Organization</td>
</tr>
<tr>
<td>Hawala</td>
<td>An untraceable money transfer system used in parts of Africa and the Middle East</td>
</tr>
<tr>
<td>Khat</td>
<td>An illegal, appetite suppressing drug with hallucinogenic effects common in Somalia and other African nations</td>
</tr>
<tr>
<td>Letters of marque</td>
<td>Licences authorising privateers to act on behalf of the issuing government</td>
</tr>
<tr>
<td>Member state</td>
<td>Generalised term used by the United Nations to refer to a country that is a member of the United Nations</td>
</tr>
<tr>
<td>Mothership</td>
<td>Vessels that have been hijacked, stripped and converted to phantom ships for pirate use</td>
</tr>
<tr>
<td>Open registry</td>
<td>A flag of convenience vessel that is registered to and therefore flies the flag of a country other than the country of ownership.</td>
</tr>
<tr>
<td>Phantom ships</td>
<td>Vessels registered based on false or inaccurate information</td>
</tr>
</tbody>
</table>
| Piracy                  | ‘(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:  

  (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;  

  (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;  

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;  

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).’ |
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refoulement</td>
<td>Article 101 of the Convention on the Law of the Sea</td>
</tr>
<tr>
<td></td>
<td>The expulsion of persons who have the right to be recognised as refugees</td>
</tr>
<tr>
<td>Target-hardening</td>
<td>Measures to reduce vulnerability to criminal attack</td>
</tr>
</tbody>
</table>
Figure 1: Map of Somalia

PART ONE: INTRODUCING SOMALI PIRACY
CHAPTER 1  INTRODUCTION

1.1 Somali piracy: its emergence on the international agenda

The World Food Programme (WFP) experienced four piracy attacks in 20 months between 2005 and 2007 while delivering humanitarian food aid to thousands of Somalis facing poverty. The fourth attack occurred on 25 February 2007 when Somali pirates hijacked WFP-contracted *MV Rozen*, a general cargo vessel flagged to Saint Vincent and the Grenadines that had just delivered 1,800 metric tonnes of food aid to Somalia.² After four weeks, the pirates released the crew unharmed after receiving payment of an undisclosed ransom. The hijacking report stated:

The ship departed Berbera [Somaliland] port after discharging 1,800 tons of UN food aid when it was hijacked by Somali pirates armed with automatic weapons. The Somali Coast Guard was informed and intercepted the ship. There was gunfire between the hijackers and the Coast Guard ship. None of the 12-crew members, six Sri Lankan and six Kenyans, were hurt. The Coast Guard could not board the ship due to strong resistance from the hijackers who were heavily armed. The ship was released on 2 April after paying a ransom.³ Those pirates avoided capture; therefore, they faced no prosecution or period of imprisonment. This is a common story of modern Somali piracy.

---


Somali piracy made global media headlines in 2007, though piracy had occurred in that region for many years. Reportedly, the Somali National Movement committed the first attacks in 1989 in response to the oppressive regime led by General Siad Barre. Despite many other attacks, those during the mid-2000s against the WFP vessels sparked major concern among the international regulatory community, the insurers and the shipping industry.

In June 2008, the United Nations (UN) Security Council adopted Resolution 1816, the first resolution in response to Somali piracy. The resulting counter-piracy measures have a strong focus of suppressing piracy by means of naval coalitions patrolling the affected region. UN Resolution 1814 specifically mentioned the WFP hijackings and illustrated the urgent need to protect the safe delivery of humanitarian aid to the region. Specifically, the Security Council urged member states and regional organisations to escort vessels delivering aid to the region. As a result of these efforts, according to the WFP, “there have been no pirate attacks on ships loaded with [WFP] food heading to Somalia since the escorts began.”

6 Ibid.: paragraph 11.
While it is true that vessels bound for Somalia have remained safe since 2007, all WFP vessels delivering aid to other countries in the region face continued threat of piracy.\textsuperscript{10} Pirates hijacked Togo-flagged *MV Sea Horse* approximately 700 kilometres off the Somali coast en route to the Indian port of Mumbai, where it was due to load WFP food destined for Somalia.\textsuperscript{11} The WFP-chartered United States-flagged *Liberty Sun* evaded attack while loaded with 27,000 metric tonnes of food bound for Kenya. In this instance, the pirates fired rocket-propelled grenades and automatic weapons at the vessel. After the vessel’s captain initiated evasive manoeuvres and increased speed, the pirates gave up chase.\textsuperscript{12}

### 1.2 Brief overview of the nature and extent of Somali piracy

Over the past decade, pirates have attacked in many locations across the world, particularly around developing nations in Southeast Asia, China, India, Bangladesh and coastal regions of Africa.\textsuperscript{13} In the 20\textsuperscript{th} century and early in the 21\textsuperscript{st} century, most piracy occurred in the Asian region around the South China Sea and the Malacca Straits.\textsuperscript{14} Most notably since 2002, piracy has emerged in the region around Africa.\textsuperscript{15} As the number of piracy attacks around Africa spiked and provoked significant intervention,
the number of piracy attacks in other areas also increased.\textsuperscript{16} Focusing only on Somali piracy, Table 1 shows the evolution of attacks over the ten-year study period from 2002 to 2011.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|}
\hline
\hline
18 & 21 & 12 & 48 & 22 & 51 & 112 & 218 & 219 & 237 & 958 \\
\hline
\end{tabular}
\caption{Somali piracy attacks, 2002 to 2011\textsuperscript{17}}
\end{table}

Examination of global attacks shows that many reported attacks occur while targets are anchored at port, and involve stealing food, supplies and money from the vessel. A piracy-prone region such as the Gulf of Aden supports between approximately 22,000 and 25,000 transiting vessels each year.\textsuperscript{18} Congestion is critical for the success of pirates, as it slows vessels and reduces their ability to evade attack. Approximately 90 percent of global trade is seaborne, much of which transits through the Gulf of Aden.\textsuperscript{19} Valuable commodities, such as oil and other fuels, traverse the region regularly.\textsuperscript{20}

Maritime piracy has a lesser financial impact on the international community\textsuperscript{21} compared to other transnational crimes, such as the drug trade and trafficking in persons.\textsuperscript{22} According to piracy expert Carolin Liss, despite a high number of attacks,

\textsuperscript{19} Rubrick Biegon, "Somali Piracy and the International Response" Foreign Policy in Focus, http://www.fpif.org/articles/somali_piracy_and_the_international_response.
\textsuperscript{20} Ibid.
\textsuperscript{21} The phrase 'international community' refers to the collective group of international organisations. In the counter-piracy setting, the international community refers to the United Nations and International Maritime Organization and government agencies collaborating with their international counterparts. It also refers to private industry, such as the shipping companies, insurance agencies and classification societies.
\textsuperscript{22} Carolin Liss, Oceans of Crime: Maritime Piracy and Transnational Security in Southeast Asia and Bangladesh (Singapore ISEAS Publishing, 2011).: 3-4
piracy does not pose a serious threat to all vital shipping lanes, nor does it cause a chronic financial burden for the shipping or insurance industry, compared with piracy in centuries past.\textsuperscript{23} While piracy emerged as a threat to vessels transiting by Somalia, the ongoing internal conflict and lack of governance take priority over dealing with the issue of piracy.\textsuperscript{24}

1.3 Central research questions and overarching objective

The objective of this study is to contribute to the academic discourse a criminological understanding of the onset, persistence and desistance of Somali piracy. Exploring and expanding the current knowledge of the onset of piracy and factors that contribute to its persistent nature is intended to inform measures to deter further offending. Despite some short-term successes in deflecting pirates, current measures lack holistic and sustainable approaches that support long-term solutions. A breakdown of cause and effect exposes the gaps and helps underpin an effective response. This thesis is structured around four integral research questions:

1. What motivates offenders of Somali piracy?
2. Are there risk factors that lead to victimisation of vessels?
3. Is the international community capable of guarding against Somali piracy?
4. What is the most appropriate institutional configuration for the effective control of Somali piracy?

Drawing on the objective central to this thesis, the assumption is that:

\textsuperscript{23} Ibid.: 3.
Reducing the number or vulnerability of the vessels considered suitable targets to victimise, and increasing the level of capable guardianship within the high-risk region, would reduce the number and motivation of would-be pirates, and by extension, Somali piracy attacks.

This research is intended to expand the understanding of what predicts piracy victimisation and how best to manage it. With such knowledge, prevention efforts targeting specific risk factors should reduce the incidence of piracy. The current counter-piracy framework lacks cohesion and fails to address piracy’s root causes. Furthermore, the counter-piracy measures do not address the availability of alternative legal employment options for would-be pirates, and provide no incentives to desist from piracy other than the threat of death or capture.

1.4 Theoretical underpinnings

1.4.1 Routine activity theory: a research framework

This research is framed within Lawrence Cohen and Marcus Felson’s routine activity theory. Routine activity theory implies that crime occurs upon the convergence of three elements: the presence of motivated offenders; access to suitable targets; and absence of capable guardians. According to Cohen and Felson:

A crime is highly likely when an offender and a target come together at the same place at the same time, and there is no one nearby to

---

control the offender, protect the target, or regulate conduct at the place.\textsuperscript{26}

These three elements form the conceptual foundation of this thesis.

Routine activity theory has undergone some development, and John Eck notes, "by itself, routine activity theory cannot explain problems...nevertheless, it can help develop a framework for understanding problems."\textsuperscript{27} Figure 2 shows the relationship between the three elements of routine activity theory, enhanced by Eck's outer crime triangle.

\begin{figure}
\centering
\includegraphics[width=0.5\textwidth]{routine_activity_triangle.png}
\caption{Routine activity theory crime triangle\textsuperscript{28}}
\end{figure}

Following Eck, explaining the problem of piracy requires consideration of both offenders and targets together at the same time and place, along with the absence of controllers to prevent the crime from occurring.\textsuperscript{29} Routine activity theory is successfully applied to various crime settings, providing justification for its inclusion and longevity.

\textsuperscript{27} Ibid.: 87.
\textsuperscript{28} Ibid.: 89.
\textsuperscript{29} Ibid.: 88.
within mainstream crime prevention applications. Despite the wide acceptance of routine activity theory, some criticism exists. Among others, C Ray Jeffery argued that there is a general lack of value for routine activity theory, stressing that it is a description of crime not an explanation and is plagued by ambiguity.\textsuperscript{30} Ronald Akers and Christine Sellers believe that the theory is flawed as it implies that any missing element of routine activity theory prevents crime, which may be untrue in certain situations.\textsuperscript{31} Elizabeth Groff conveyed that Cohen and Felson's theory implies a supply of motivated offenders, but pays little attention to the source of the offender's motivations.\textsuperscript{32} While these criticisms may reduce the explanatory power of the theory, its utility in various settings has endured. In contrast, Matthew Degarmo recognised that "routine activity theory views crime as a built-in feature of our social organization" such that "offenders are no different from other individuals...thus the motivation to offend is evenly distributed across the population."\textsuperscript{33} This opinion (supported in this thesis) is that the offenders are ordinary people who have been subjected to situations that increase motivation to offend, though relevant to this thesis, routine activity theory does not take into account the influence of poverty. Without suitable controls, people will react to their situation accordingly.


1.4.2 Regulatory pluralism: developing the most appropriate institutional configuration for effective control of Somali piracy

This research is informed by a regulatory pluralism paradigm. In 1995, Peter Grabosky argued that, “the traditional conception of governmental regulation has become obsolete.” Instead, “instruments of public policy appear increasingly to involve a blend of public and private resources.” Thus, regulatory pluralism stems from the idea that there exists a heterogeneous mix of actors that may or may not be striving for the same goal, in a formal or informal manner, with either the same or varying motivations. Governments may be less effective in undertaking some activities, which instead are performed by capable nongovernment agencies. Grabosky draws the conclusion that non-state actors could carry out some activities more efficiently than states.

Regulatory pluralism can be applied in a range of settings, as identified by Grabosky, including Somali piracy.

Benoit Dupont applied the idea of regulatory pluralism to a cityscape by assessing the role of private and public sector agencies in security regulation. This system of networks pools resources to increase effectiveness and decrease vulnerability. Dupont found that often there is no shared overall objective or value, but more a “myriad of overlapping interests brought together by informal, voluntary, contractual or regulatory

---

37 Peter N Grabosky, "Using Non-Governmental Resources to Foster Regulatory Compliance."; Peter N Grabosky, "Green Markets: Environmental Regulation by the Private Sector."; 422.
39 Ibid.: 168.
ties. Regulatory pluralism operates under three main auspices, the state, civil society (including citizens and community groups), and transnational institutions. The relationships are formed from overlapping interests, which contribute to and influence the activities of the actors.

Expanding on the role of transnational institutions, Dupont et al, as well as John Braithwaite and Peter Drahos discuss regulatory pluralism by considering the webs of dialogue between regulatory actors. They note that compliance with regulations is achieved moderately well. International treaties are a form of regulation and, as noted by Abram Chayes and Antonia Chayes, for the most part these work well without the need for sanctions to promote compliance. The use of international treaties to ensure webs of dialogue, however, relies on adoption of treaties by member states. Without such membership, there is less ability to develop webs of dialogue.

Regulatory pluralism is applicable in a range of settings to achieve a decentralised model of regulation. Since 2002, piracy sophistication has increased to include hijack and ransom as well as vessel seizure to steal cargo for future resale, and on occasion, the re-birthing of the vessel as a phantom ship involving reregistration of the vessel. Because of these increasingly sophisticated activities, a united, collective response was

40 Ibid.: 168.
44 Phantom ships are registered on the basis of false or inaccurate information International Maritime Organization, "Measures to Prevent the Registration of Phantom Ships, A.923(22) (29 November 2001)," London: International Maritime Organization.: paragraph 6.
strongly needed. The UN leads pluralistic activities conducted in and around the Gulf of Aden, comprising support from naval assets, the shipping industry and land-based programs. 46

A key factor of regulatory pluralism is that it provides a means of control in situations when traditional means may otherwise be lacking. Multi-lateralisation of policing can be more effective, particularly in dysfunctional and failing states. 47 Since Somalia has internal issues that prevent it from regulating effectively, a suite of regulatory actors participate to achieve a collective goal. A pluralistic approach emerged in the region involving increased involvement of insurance companies, shipping contractors and vessel owners to respond to piracy. Pluralistic regulatory controls may reduce the likelihood of non-compliers slipping through the cracks. Marine insurance underwriters highlighted their concern regarding inadequate government inspection of vessels in order to encourage better regulation of vessels operating under open registries. 48

Particularly in weak states, government control of such activities would be limited, since the decay of public and private institutions might limit the number of available actors that could contribute towards innovative security policies. The pre-existing dysfunction in Somalia emphasises the importance of establishing pluralistic control, where possible in collaboration with the new Somali Federal Government.

Increasingly, the globalised world is engaging in a collaborative arrangement to regulate and protect global enterprises, such as maritime trade. This approach parallels the surge of piracy in that region, particularly due to the unprecedented levels of violence and

46 Ibid.: 12.
sophistication employed. Private and public actors from around the world are contributing to the regulation and control of piracy, for varying reasons. This complex web of recurrent interconnections and linkages brings together actors on a voluntary, contractual or regulatory basis. The commercial shipping industry, in particular, has a direct interest in the safe passage of vessels. Driven by the trajectory of globalisation, most nations are bound by international treaties which establish standards and define appropriate conduct. These treaties rely on governmental participation and may be subject to national, company and individual sanctions. Counter-piracy networks function by pooling resources to increase effectiveness and decrease vulnerability and cost. Not all actors share overarching goals, despite interests overlapping informally and voluntarily; while the specific reason may differ, controlling Somali piracy is a clear goal.

1.5 Methodology of fieldwork and analysis

This thesis critically explores methods to deter pirates in operational practice, based on paradigms of routine activities and regulatory pluralism. It employed a qualitative methodology of primary interviews with professionals, business and government leaders working in various counter-piracy settings. In addition, it relied upon both published and unpublished research materials. The research also analysed quantitative

---


50 John Braithwaite and Peter Drahos, Global Business Regulation : 556.

data from the International Maritime Bureau (IMB), to measure pirate attacks during a 10-year period from 2002 to 2011.

1.5.1 Fieldwork methodology

Unpublished primary source material was critical to this study. The fast-paced changing nature of Somali piracy and responses thereto, meant that operational activities were lacking from published academic discourse. In order to gain an operational perspective, this research was based in part on interviews with professionals working within the counter-piracy space. The aim of these fieldwork interviews was to reach a wide-ranging cross-section of private and government representatives. A sample of representatives from the international community provided information, since interviewing all representatives was not feasible given time and geographical limitations, among other issues. While this method was not flawless, it provided valuable insight on the current situation of piracy.

Industry professionals provided operational insights, often unavailable in academic and journalistic literatures. Twenty-two interviewees formed an important dataset within this research. Between August and December 2011, 21 people were interviewed, with one final interview held in September 2012. The interviews sought to understand activities among professionals from various sectors contributing towards piracy control, including those involved in international maritime regulation, insurance, the shipping industry, private security contractors and academics. Thirty-seven invitations to participate in the research resulted in 22 participants, representing a participation rate of 59 percent. Of the 37 invitations, 10 potential participants agreed to be interviewed, but
geographic restrictions and busy work schedules prevented a meeting, while five invitees failed to respond. Eighteen separate interviews were conducted, five of which involved several participants and the remaining 13 were one-on-one interviews. In two separate instances, participants attended three interviews.

Participant selection and recruitment were challenging. It was evident that a snowball methodology design\(^52\) would be the most effective means to reach the widest field of possible participants. In order to interview the best-suited participants, scoping research sought to identify the role of the potential participant’s organisation in the counter-piracy space, the type of business conducted and its participation within the broader counter-piracy activities. Initially, a set of criteria was used to determine suitable participants. Organisations involved in counter-piracy were approached (via email) requesting interviews. In some cases, a specific representative was emailed directly. In many cases, this was an effective method, however in five cases this resulted in no response. Once an interview was secured, in most cases participants recommended other potential interviewees. Attempts were made to meet with each person recommended. Participants were located in Australia, the United Kingdom (UK), the United States of America (US), Germany, and Kenya. Geographic location limited the ability to conduct additional face-to-face interviews. Whenever possible, interviews were conducted face-to-face (13); email (two), telephone (two) and Skype (one) facilitated communication with those further afield. Information gained from interviews provided new insight into the issue of Somali piracy and its control that has not been possible from the extant literature. Table 2 outlines the participants by business type and location.

\(^{52}\) The snowball methodology involves identifying a participant and asking each participant to identify further prospective participants.
### Table 2: Interview categories, by participant location

<table>
<thead>
<tr>
<th>Location of interviews</th>
<th>Number of government interviews (regulators/operational law enforcement)</th>
<th>Number of private interviews (shipping industry/insurance/private security/academic)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Germany</td>
<td>-</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Kenya</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>UK</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>US</td>
<td>4</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>18</td>
</tr>
</tbody>
</table>

Many interview participants consented to full disclosure of their name, position title and organisation in which they work; these are provided in the text. Others are referred to as *anonymous personal communication*, with additional but limited information relating only to the interview date and location. The sensitive nature of counter-piracy information inhibited some interviewees from government and industry from agreeing to full disclosure; a select few chose to remain anonymous. While anonymity reduces the transparency and legitimacy of commentary provided, the ethical responsibility to preserve the anonymity of participants was paramount. Despite this, all participants were extremely generous with their time and the information they provided, giving insight into previously unpublished aspects of Somali piracy. All interviews were semi-structured; a predetermined set of open questions formed the basis of each interview, though several participants expanded the discussion beyond the initial questions. Topics covered in the interview questions included the role of and activities conducted by their organisation in the counter-piracy space. Interviews ranged from 35 minutes to four hours, with the average lasting approximately just over one hour.

Many criminologists gain much of their insight into criminal activity by speaking directly to offenders. None were personally interviewed in the course of this research.
Very rarely have Somali pirates been interviewed, for a variety of reasons, including, a lack of access, language barriers, the generally unsettled nature of Somalia, as well as ethical limitations. Interviews conducted with pirates are often limited to closed sources, and it is impossible to cross-reference information sought from the media or other sources. Mostly, journalists have conducted the few publicly released interviews with pirates. Somalia’s state of civil war posed a threat to the personal safety of the researcher, and University policy deemed it off-limits for travel to conduct face-to-face interviews. Pirates imprisoned in western countries would have been more accessible, though language, cultural and legal issues presented additional barriers. Due to these challenges, ethics approval to interview incarcerated pirates was not sought.

1.5.2 Secondary data sources

Published information contributes a large proportion of the data on which this research was based. To comprehend contemporary piracy and to frame it within a wider context, it is necessary to have an understanding of other related issues. These issues include maritime policies and regulations, the historical and political background of Somalia, challenges faced by the fishing industry, militia groups and organised crime, to name but a few. As such, information was gathered from books, journals, newspapers, published UN decisions, international regulations and some domestic maritime laws.

Reported maritime piracy attacks: a 10-year picture

The International Maritime Organization (IMO) and the IMB maintain a database of global piracy attacks; however, experts reference the IMB as it is the central reporting

53 See for example Bahadur, 2011.
repository, which forwards its data to the IMO.\textsuperscript{54} The IMO also receives duplicate data from other sources in addition to the IMB, such as local police authorities mandated to report to the IMO and IMB.\textsuperscript{55} Both organisations code their data in the same way, based on \textit{actual} and \textit{attempted} attacks reported by targeted vessels. The definition used to classify what constitutes an incident of maritime piracy differs somewhat between the IMO and the IMB. The IMO uses the definition provided by the UN Convention on the Law of the Sea (UNCLOS) which only applies to the high seas.\textsuperscript{56} The IMO later broadened the coverage of piracy to include \textit{armed robbery against ships} which applies in territorial waters.\textsuperscript{57} The IMB’s definition is even wider, namely:

\begin{quote}
 an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime with the apparent intent or capability to use force in the furtherance of that act.\textsuperscript{58}
\end{quote}

Although the IMB is the centralised repository for reporting piracy attacks, the IMO definition is more widely accepted by other UN agencies, in domestic legislation (by extension of UNCLOS) and in legal scholarship. Despite this, the use of IMB data is more common within academic scholarship, and this thesis exclusively consults IMB data sources.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{55} Ibid.: 1.
\item \textsuperscript{58} International Maritime Bureau, "Piracy and Armed Robbery against Ships: Annual Report 1 January - 31 December 2011," 2012.: 3.
\end{itemize}
\end{footnotesize}
The reliability of self-report data might be questionable. Underreporting and therefore undercounting piracy attacks are common, with no effective way of counteracting the problem.\textsuperscript{59} UK intelligence believes the actual number of piracy cases could be 2000 percent higher, while Australian intelligence believes it is more likely to be 20 to 70 percent higher than reported.\textsuperscript{60} As such, the data compiled by the IMB may only represent a proportion of all Somali piracy attacks, but what proportion is impossible to assess. While it is impossible to confirm the specific level of underreporting, the data still provide a rich source of insight. Notwithstanding an unknowable level of underreporting, the data provide valuable information about known \textit{modus operandi} of attack, which has remained consistent despite some spatial and temporal variation.

In the case of Somali piracy, a reasonable level of reporting reliability is inferred. Shipowners are encouraged to report incidents of both \textit{actual} and \textit{attempted} piracy attacks, which authorities then disseminate to alert other vessels transiting the region to prevent further attacks. Shipowners and their crews may be required to disclose all piracy attacks, in order to meet insurance and classification requirements.

Data on Somali piracy attacks chart trends in location, frequency and type of attacks from 2002 to 2011. These data are discussed in parallel with UN Security Council decisions; other regional events emphasise the impact of these external forces on piracy within the region. This provided insight into the factors that facilitate or inhibit Somali piracy, which could be included in future piracy prevention models.


\textsuperscript{60} John Pike, "Pirates". http://www.fas.org/irp/world/para/pirates.htm.
Evolution of international law on maritime piracy

Modern piracy has been a topic of interest throughout the world and throughout history. In recent years, the UN and other international organisations have shown interest in piracy, particularly as it relates to slowed progress with governance and development in Somalia. To attempt to resolve piracy, the UN adopted a number of decisions, mainly resolutions.

International organisations, such as the UN, the IMO, the European Union and the African Union have an interest in Somalia maintaining good order within its borders. Review of meeting minutes revealed piracy-related discussions that led to policy adoptions and amendments, and show the political will (or lack thereof) among involved member states. These decisions also highlight contributions and cooperative arrangements between specific member states, international organisations and experts.

The analyses of these decisions in this thesis show the evolution of the counter-piracy responses and expose the gaps in knowledge. It also includes factors contributing to decisions, including expert advice. Finally, these decisions highlight the ongoing challenges confronting the international community and the measures proposed to overcome them.

Case studies of prosecution transcripts

According to UNCLOS, member states may arrest suspected pirates, conduct investigations and prosecute. At the time of writing, Somali pirate prosecutions had

---

occurred in 22 countries, across all regions of the world. Many of those countries were involved in the interception of pirates. Commonly, a state prosecutes when the vessel ownership, registration or crew originate from that state. International counter-piracy law applies universal jurisdiction, which allows third-party states to prosecute pirates on behalf of other UN member states.

Generally, court transcripts provide valuable information that is rarely available through other methods. For the purposes of this thesis, the details of interest included:

- background of the accused;
- personal circumstances of the offender at the time of the alleged offence;
- factors that led to the alleged incident;
- information relating to co-accused; and
- in the event of conviction, judicial sentencing remarks, possibly with mitigating and aggravating factors that led to the sentencing outcome.

A small number of transcripts are available from Kenya, the Seychelles, the US, and the Netherlands. Review of a collection of court transcripts showed gaps in the judicial process, the intersection between international law and national legislation, and variation in penalties between jurisdictions. The literature suggests that many Somalis return to piracy upon the completion of their prison sentence or after acquittal in court. As such, the review of transcripts allowed a greater understanding of the judicial process and other problems faced during trials, such as accuracy of the testimony provided by the accused due to the quality of translation, the quality of evidence provided in court, and the age of the accused in the case of juveniles.
1.6 Existing literature

Literature on modern piracy is diverse and extensive. Disaggregated by larger subthemes, the literature reviewed principally relates to:

- the trend of Somali piracy attacks over recent years;
- the economic impact of piracy;
- the historical chain of events that led to the onset of Somali piracy, focusing on the weak governance in Somalia;
- the measures to control Somali piracy, such as international regulatory cooperation naval patrols, and private armed security; and
- issues surrounding the legal responsibilities and the international response.

The literature examined in the thesis was available from valuable open sources, such as the UN Security Council, IMO and the UN Development Programme (UNDP) as well as other international organisations’ meeting minutes, resolutions, circulars and reports. Other reports by sources within the maritime industry as well as academic journal articles, conference presentations, and online grey material sourced from Google Scholar, provided valuable information.

Publications relating to Somali piracy have increased in line with attacks on vessels. Academics, journalists, security experts and researchers release a wide variety of publications relating to piracy, mostly deriving from economic and legal disciplines. These publications are mostly descriptive or speculative with limited empirical findings. This led to a fragmented overview of Somali piracy and a reliance on estimated figures and assumption leading to inconsistencies. Published papers subject to peer review are therefore more reliable. However, they often lack operational on-the-ground
perspectives and timeliness. This thesis fills a gap and complements existing works by diversifying its information sources in the ways described previously to provide a criminological perspective on Somali piracy.

1.7 Contribution of this thesis

Success in countering piracy is a topical international agenda item. Despite some short-term success of various counter-piracy efforts, the ongoing threat of piracy affects international maritime regulators, the shipping industry, insurance agencies and consumers. As such, the effectiveness of the international response to Somali piracy is of great importance. The current counter-piracy model in practice has had some short-term success. Donald Puchala believes a reluctance to respond effectively to piracy only encourages pirates in their boldness and increases future activity.  

Contemporary criminological scholarship has identified elements that have led to the onset and persistence of Somali piracy. These elements could be useful in preparing a more effective response to deter pirates from continued offending. However, little research has sought to understand how these counter-piracy efforts could be made more effective. Accordingly, the findings reported in this thesis could deliver significant benefits to both criminological and maritime regulation scholarship, and could contribute to the formation and implementation of a more effective long-term solution to Somali piracy.

---

Extensive review of the literature failed to find comprehensive analyses of piracy bringing together the issues that relate to its onset, persistence and desistance, from a criminological perspective. This thesis adds to the academic scholarship a comprehensive examination and analysis of Somali piracy through a holistic lens. Specifically, it reveals what caused Somali piracy; why Somali piracy continues; and based on these findings, how to control it. It concludes that a holistic counter-piracy program based in a pluralistic regulatory model that is sustainable within the region, and managed by the region, provides the best opportunity for long-term success.

Academic scholarship aside, it is anticipated that the results of this research will have practical applications that will benefit international maritime regulators, insurance underwriters and the shipping industry generally. For international maritime regulators and the UN in particular, this research will be beneficial in better understanding regulatory practices undertaken by the international community to respond to piracy more effectively.

1.8 Thesis structure

The thesis comprises six parts. Part One is divided into three chapters providing a general overview into the issue of maritime piracy then delves specifically into Somali piracy. Chapter 2 provides a historical background of maritime piracy generally. It pays specific attention to the methods by which piracy was dealt with throughout various times and locations in history. It introduces methods used for the punishment of pirates and discusses whether they would be suitable to combat modern piracy. This section provides a general understanding of the evolution of maritime piracy. Chapter 3 gives
the reader a preface into the situation in Somalia, influenced by a quarter century of political oppression. This chapter addresses political factors, such as the governance failures and militia insurgencies currently operating in Somalia. It discusses the population structure in Somalia and vulnerability explained through the *youth bulge* concept. It also includes a recent history of environmental stressors in Somalia, including the 2004 tsunami and the 2011 drought. These factors contributed to the onset of piracy and show how the political and environmental state of Somalia exposes the region to piracy.

Part Two, consisting of one chapter, is concerned with the onset of Somali piracy. Chapter 4 answers the first central research question: *what motivates offenders of Somali piracy?* It draws upon factors that may have increased the motivation to commit piracy. Specific factors explored here include the concept of *greed and grievance* and the lack of alternative opportunities.

Part Three focuses on the persistence of Somali piracy and again consists of one chapter. Chapter 5 of the thesis discusses why piracy continues to occur, and explores factors that enhance vulnerability to victimisation. The second central research question drives the chapter, by asking: *are there risk factors that lead to victimisation of vessels?* In responding to this question, the chapter explores four main issues that could increase victimisation. These include features of a vessel that increase suitability for attack, the proximity of important trade routes to Somalia, and whether the use of alternate routes would decrease vulnerability to attack. In addition, it discusses whether the flag state of a vessel increases likelihood of victimisation, due to lack of adherence to international treaties and other shipping standards. Lastly, this chapter considers the influence that
weather patterns have on the ability of pirates to conduct their activities, thus addressing whether there are safer times of day and year when vessels could transit with reduced fear of attack.

Part Four, consisting of two chapters, considers deterring pirates through capable guardianship. Chapter 6 brings together the institutions involved in the counter-piracy response. This chapter addresses the third central research question, which seeks a response to the question: *is the international community capable of guarding against Somali piracy?* In answering this, Chapter 6 expands the counter-piracy matrix exploring public and private actors involved in the control of piracy. It details the role of international organisations, and their contributions including the UN Security Council, the IMO and naval patrols securing the region. It introduces the relevant international treaties and guidelines established to combat maritime piracy from a global front. Chapter 6 also recognises the important roles of private companies, such as maritime insurance underwriters and vessel classification societies that constitute an extra layer of regulatory oversight. The chapter provides insight into private armed guards and their role in the region. Lastly, it discusses the concept of *catch and release* by the naval assets patrolling the region. Chapter 7 explores the international community’s ability to control Somali piracy through prosecution and incarceration. This chapter identifies ongoing problems in creating a smooth judicial process in dealing with pirates. It discusses jurisdiction, adoption of relevant treaties conferring power of arrest and prosecution, and the introduction of the universal courts and prisons empowered to prosecute and incarcerate prisoners on behalf of other jurisdictions. This chapter introduces a case study of the Seychelles prosecutorial infrastructure, which is a well-structured and successful example.
Part Five presents the results of quantitative analysis. Chapter 8 analyses and interprets data on piracy, published by the IMB. Specifically, it trends Somali piracy from 2002 to 2011, explaining its nature and extent throughout that period. Divided into the three elements of routine activity theory, Chapter 8 shows a 10-year picture of piracy to understand its evolution, and ultimately to determine methods to more effectively control it.

Part Six discusses the outcomes of counter-piracy analyses and comprises three chapters. Chapter 9 provides a summary of recent and current measures used to prevent and deter Somali piracy. It explores measures that could deter would-be offenders, decrease the vulnerability of vessels, and increase capable guardianship in the high-risk area. By looking at the capable guardians against piracy, it asks the final central research question: what is the most appropriate institutional configuration for the effective control of Somali piracy? In responding to this question, this chapter provides an overview of the relevant actors and institutions, and recognises the importance of regulatory pluralism as an underlying framework for a cooperative response to piracy.

Chapter 10 provides some outlook for the future of Somalia. It discusses measures to overcome piracy and the likely challenges to their implementation, but concedes that there is no panacea. Piracy has significant impact on Somalis and seafarers in particular, therefore a viable alternate means of legitimate income is required. Chapter 11 provides some final thoughts and concludes the thesis.
CHAPTER 2  HISTORICAL PREFACE: A BRIEF HISTORY OF GLOBAL PIRACY

2.1 Introduction

Throughout most of the 20th century piracy posed no significant threat to maritime trade. Recent Somali piracy threatens the global shipping industry passing through the Gulf of Aden. The nature of modern-day piracy involves greater violence and sophistication than ever before. The purpose of this chapter is to provide a brief historical account of the evolution of maritime piracy and responses to it. Furthermore, it draws upon historical counter-piracy measures and determines their applicability in countering modern piracy.

The first section of this chapter will show that while maritime piracy featured throughout history around the world, Somali piracy is a new phenomenon. Despite periods of suppression, the long and persistent history of piracy reflects a continuing challenge in combating it. Revisiting the activities of pirates of yesteryear could provide clarity in responding to modern-day piracy and have cross-regional applicability to Somali piracy.

Section two outlines lessons learned from counter-piracy measures and punishments for piracy throughout history. It concludes the chapter by confirming that historically, an effective response to piracy required a pluralistic regulatory response despite challenges in achieving positive outcomes, a theme that recurs in modern piracy control.

2.2 Historical piracy: a brief overview

Commentators say that maritime piracy is the oldest international crime, which sparked the first internationally harmonised response.\(^{64}\) John Mo notes that piracy started around the same time as ocean sailing, with pirates believing that violence and force was an acceptable avenue of enrichment.\(^{65}\) Crossing between the high seas and international borders, Mitchel P. Roth identified that "no form of international organized crime in the modern world illustrates the continuum of organized crime past and present like the ancient crime of sea piracy [sic]."\(^{66}\)

Piracy has occurred in many regions.\(^{67}\) The Mediterranean experienced piracy during Roman times, while pirates attacked the Hansa trade in the Baltic and North Sea around the turn of the 15\(^{th}\) century. The Caribbean experienced piracy from the 16\(^{th}\) to the mid-18\(^{th}\) centuries, while pirates attacked along the Barbary Coast during the 18\(^{th}\) and early-19\(^{th}\) centuries. Within the Indian Ocean and Western Pacific Ocean, piracy increased during the 18\(^{th}\) and early-19\(^{th}\) centuries.\(^{68}\) Piracy requires a vibrant maritime economy to thrive, which explains the piracy explosion in the 17\(^{th}\) and 18\(^{th}\) centuries in the Caribbean, as the Atlantic became a major avenue for trade.\(^{69}\) This is also true of modern piracy around the Straits of Malacca, the South China Sea and the Gulf of Aden.


\(^{65}\) John Mo, "Options to Combat Maritime Piracy in Southeast Asia.": 344.


\(^{67}\) Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.".: 1.

\(^{68}\) Ibid.: 1.

Piracy affects all active sea-going trading countries, with even the most powerful countries compelled to pay for the safe passage of their vessels through high-risk trade routes during earlier times.\textsuperscript{70} To varying extents, some nations tolerated and even encouraged some piracy to aid imperial ambition.\textsuperscript{71} During the 16\textsuperscript{th} and 17\textsuperscript{th} centuries in the Mediterranean, nations routinely tried to sabotage other shipping countries:

the English preyed on the Spanish, the Dutch on the English, the French on the Spanish, the English on the French and the Barbary states on everyone, except those who happened to be temporary allies.\textsuperscript{72}

Particularly during times of war, piracy was tolerated because it was economically and militarily useful for countries.\textsuperscript{73} During the 18\textsuperscript{th} century, the English, French, Spanish and the Dutch recruited privateers, who were essentially a form of legalised pirate, to aid the government during times of war.\textsuperscript{74} It was not until 1926 that the League of Nations drafted eight articles on the suppression of piracy.\textsuperscript{75} Thirty-two years later, in 1958, the articles were included in the first edition of UNCLOS.\textsuperscript{76} "Though never eliminated, and ever recurrent, piracy has been periodically suppressed."\textsuperscript{77} Powerful countries such as the UK and US controlled piracy through threat of force to ensure safe shipping lanes for their economy and trade to grow.\textsuperscript{78}

\textsuperscript{70} John Braithwaite and Peter Drahos, \textit{Global Business Regulation}: 420.
\textsuperscript{72} John Braithwaite and Peter Drahos, \textit{Global Business Regulation}: 419.
\textsuperscript{73} Ibid.: 420.
\textsuperscript{76} John Braithwaite and Peter Drahos, \textit{Global Business Regulation}: 419.
\textsuperscript{77} Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 1.
\textsuperscript{78} John Braithwaite and Peter Drahos, \textit{Global Business Regulation}: 420.
Patrick Lennox remarked that throughout every era in history, maritime piracy has evolved in somewhat of a wave-like or cyclic nature:

beginning typically with sporadic spates of small-scale attacks on soft targets especially in dangerous waters; then moving towards more intense, frequent, and well-organized attacks against less vulnerable and thus more valuable vessels...the intensity and frequency of their attacks then escalate to the point where they have the effect of choking the flow of seaborne commerce. 79

In previous times, maritime piracy progressed from being more a "nuisance than a menace" to "frequently...choke seaborne commerce almost completely." 80 This is similar to how modern Somali pirates evolved. Today's pirates are arguably more menacing compared to historical pirates. 81 Given that past behaviour is often the best indicator of future behaviour, useful predictions of the future of piracy may be drawn from history. 82 Awareness of piracy's evolution throughout history provides a foundation upon which the international community can build an appropriate response.

79 Patrick Lennox, "Contemporary Piracy Off the Horn of Africa," Canadian Defence and Foreign Affairs Institute (Calgary: Canadian Defence and Foreign Affairs Institute, 2008).
80 Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 2.
81 Ibid.: 1.
2.3 The end of an era: suppression and punishment

Though outlawed in some locations since Roman times, piracy has always persisted at some level.\(^8\) Several factors explain why piracy is challenging to combat and has led to its longevity:

- facilitators of piracy, such as weak or failed states and corrupt border officials;
- reliance on speed, deception and stealth; and
- lack of universal criminalisation of maritime piracy.

Between the 17\(^{th}\) and 19\(^{th}\) centuries, the British dominated much of the world. Their counter-piracy punishments during that period were applied across the British Empire. Attempts to overcome maritime piracy had varying success, but it may be possible to learn lessons from historical attempts and triumphs in suppressing maritime piracy.

2.3.1 Punitive measures

Somali piracy challenges the international community despite extensive attempts to control it. Some historical methods of maritime piracy control defied human rights and may therefore be unsuitable in today's counter-piracy response. This historical review aims to increase awareness and potentially inspire innovative methods to control modern pirates.

\(^8\) Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 9; John Braithwaite and Peter Drahos, *Global Business Regulation*: 419.
Annihilation

In response to Roman piracy, the methods employed from around the middle of the third to the middle of the second century BC involved merciless annihilation of pirates. 84 Angus Konstom notes that authorities ventured to every port from one end of the Mediterranean to the other, to capture and kill all pirates. 85 Mass executions were a successful piracy control measure. “The historical fact is that pirates were suppressed when they were sought out, hunted down and forcefully destroyed along with their strongholds and sanctuaries.” 86 Historically, political pressure led to punitive counter-piracy measures, namely annihilation, whereby merciless naval forces patrolled risky waterways aiming to intercept pirates. 87 For much of the 19th century, the world was relatively free of piracy once the British government determined that controlling piracy was a national interest and directed the British Royal Navy to suppress it. 88 Much success is achievable by patrolling high-risk piracy hotspots, as has been evident in recent years. The impact of the international naval presence in the Gulf of Aden and surrounding waterways has led pirates to shift their activities to areas within the region where there were fewer naval patrols. Though unlikely to suppress Somali piracy altogether, expanding naval patrols to the outer high-risk piracy zones has achieved some success.

87 Ibid.: 13.
Trial and execution

Throughout history, many countries publicly executed criminals and during the 18th and 19th centuries, this fate was commonplace for convicted pirates. They were much-anticipated events that would draw crowds of spectators. Pirates have always generated fascination among the public, and reports of pirate attacks, escapes, trials and executions produced great excitement.\(^9\) In London, “pirates, smugglers and mutineers were hanged after they had been sentenced to death by Admiralty [maritime] courts” at Execution Dock, Wapping, a riverfront neighbourhood between London Bridge and the naval yards.\(^9\) Accordingly:

On the day of execution, thousands lined the streets along the route to Wapping, waiting for the prisoners to roll by, lashed inside carts and escorted by guards and the Admiralty marshal.\(^9\)

In the early 18th century, the barbaric practice occurred in the River Thames, with the gallows situated just above the low-tide mark. Pirates’ corpses hung on the gallows until three tides washed over them.\(^9\) This practice was discontinued by the end of the 18th century.\(^9\) Today, Wapping is the location of the International Maritime Bureau headquarters (see Photo 1).


After execution, pirates' remains were either dissected, buried in unmarked graves or placed in a gibbet (a cage of chains or irons) and hung in a headland or promontory where they were left to rot. The hanged bodies of particularly notorious pirates would remain in ports to warn other pirates of their potential fate. To ensure they had no dignity at death, pirates hanged in gibbets were disallowed a proper burial. Pirates believed that without a proper burial their immortal souls could not achieve redemption. Some pirates' corpses remained this way for years.

Hangings were among many forms of execution used throughout history. Beheading was another means of controlling piracy, practiced in China and Germany among other

---

places. The heads of deceased pirates were displayed on poles to warn others, similar to the use of gibbets.\textsuperscript{98} This public form of justice, in combination with other methods of deterrence, meant the consequences of capture might be seen to outweigh the potential gains from piracy.\textsuperscript{99} Capital punishment is far less common in modern times. In very few nations, piracy remains punishable by death (see Table 10 in Chapter 7.2.2), though executions are rarely carried out.

### 2.3.2 Efforts involving some international cooperation

International cooperation is a significant element of current counter-piracy measures. Historically, however, while it was recognised that international cooperation against piracy would have been ideal, efforts to achieve cooperation met with little success. According to Puchala:

> Perennial rivalry among states tended time and again to foreclose any possibilities for collective action against piracy. The Barbary pirates, for example, preyed on European shipping – Spanish, French, English, Dutch, Venetian, Papal, and other – and treated all Christians alike, that is, as candidates for enslavement. Yet seldom was it possible for the Europeans to combine forces against these pirates because some or all of them were at war with one another almost all of the time.\textsuperscript{100}


\textsuperscript{100} Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach."; 12.
Some cooperation between England and Spain was achieved by King James I, who was "pragmatic and peace-loving and determined to make peace with Spain." In September 1603, King James I declared that those engaged in privateering against Spanish vessels would be tried for piracy. This forced English privateers to offer their services to the Dutch, who remained at war with Spain for a further five years. Privateering allowed pirates to conduct their activities legally while also providing them a legitimate and regular wage.

For much of the 19th century, piracy was on the decline due to well-armed navies enforcing the rule of law on the high seas. In 1818, at the Congress of Aix-la-Chapelle, the European powers gathered to discuss methods to stamp out piracy, however, they failed to reach a resolution. Further attempts were made in 1926 to suppress piracy through international cooperation, though the efforts gained little traction. It has nevertheless proven difficult to reach agreement on an international law about piracy. The delay in achieving international agreement until the 20th century shows the challenge in establishing control over piracy. The international community adopted many measures to suppress piracy; however, it is necessary for states to adopt and fully implement these measures for any impact to be realised. With international

102 Ibid.: 19.
103 Ibid.: 19.
cooperation comes compliance with standards set out and agreed to by all participating nations. Even today, universal agreement on counter-piracy measures is lacking.

Paying off pirates to maintain peace

In the 19th century, governments paid pirates to dissuade them from attacking vessels.\textsuperscript{108} According to Adrian Tinniswood, the British, French, Dutch, and later the Danes and Swedes supplied very generous amounts which in today’s money reach between £1.2 million to £144 million to maintain the peace.\textsuperscript{109} Although this differs from ransom payments to Somali pirates, it applies similar logic, paying pirates to ensure no one is harmed and to maintain the smooth running and good order of the shipping routes. It was determined that this method of payment to maintain peace was cheaper than “launching punitive expeditions.”\textsuperscript{110} By comparison, in 2010 it was estimated that US$1.3 billion was spent on naval patrols to prevent Somali piracy.\textsuperscript{111} When factoring into the calculation the cost of ransom payments, increased insurance, on-board counter-piracy deterrents, rerouting, prosecutions, and the cost of running international counter-piracy working groups, piracy is estimated to cost the international economy between US$7 and US$12 billion per annum.\textsuperscript{112} Drawing upon this earlier measure of paying pirates to maintain the peace could have a similar effect on modern piracy, but would be certain to encourage further recruitment into piracy.

\textsuperscript{108} Adrian Tinniswood, \textit{Pirates of Barbary: Corsairs, Conquests, and Captivity in the 17th-Century Mediterranean}: 279.
\textsuperscript{109} Ibid.: 279.
\textsuperscript{110} Ibid.: 279-280.
\textsuperscript{111} Anna Bowden et al., "The Economic Costs of Maritime Piracy," (Broomfield: One Earth Future Working Paper, 2010).
\textsuperscript{112} Ibid.: 25.
Amnesty

The earliest record of granting amnesty to pirates dates back to around 60 BC. Pompey pardoned pirates during the piracy scourge in the Mediterranean during that time. After earlier failed military efforts, Pompey’s response incorporated pardoning and relocating pirates inland, providing them with land to farm. Moving reformed pirates inland limited their opportunity to offend and gave them a legitimate form of wealth through farming.

The success of Pompey’s efforts in the Mediterranean may have inspired similar responses in later history. In 1717, the introduction of the Act of Grace sought to control piracy through amnesty. Attacks against British vessels led to the significant loss of British sailors’ lives, and as a result King George issued a royal proclamation decreeing that any pirate who surrendered to a British governor would be pardoned for all piracies committed prior to 5 January 1718. “It was hoped that those pirates who took advantage of the Act of Grace would return to being productive, law-abiding subjects.” Opinion among pirates was divided regarding the support of the pardon. Those who had entered piracy with profit in mind supported the pardon, while the Act of Grace angered diehard rebel pirates. Most pirates were happy to give themselves up while military and colonial personnel were ordered to seize pirates who failed to surrender. The government placed a bounty of £100 for pirate captains, £50 for senior pirate officers and £20-£30 for other pirate crew. The success of the pardon was inadequate to eliminate piracy, but it did have an impact; “King George’s pardon has

116 Ibid.: 226.
117 Ibid.: 229.
118 Ibid.: 226.
split the pirates’ ranks, causing the surrender of a great many of their best leaders and the scattering of so many others.”¹¹⁹

It is unknown what became of the pardoned pirates, whether they found legitimate jobs on land or worked as sailors for the government. There are some indications that other pirates eventually returned to plundering vessels.¹²⁰ Somali President Mohamud has the “intention…to offers amnesty to young pirates but not to pirate kingpins.”¹²¹ The applicability of amnesties today would almost certainly need to be combined with the provision of legitimate job opportunities for Somalis, assuming pirates were motivated by desperation and not greed.¹²²

**Privateering**

In the 18th century, states regulated piracy through short-term licenses for privateers, who earned a legitimate wage from the government.¹²³ Privateers were licensed by the government when issued with *letters of marque*. The English, French, Spanish and Dutch recruited privateers, which are essentially a form of legalised pirate.¹²⁴ According to Colin Woodard, privateers were “individuals who in wartime plunder enemy

---

¹¹⁹ ibid.: 248.
¹²⁰ ibid.: 259.
shipping under licence from their government." Privateering was a means of enhancing the government's military capacity by sailing with the government's fleet during periods of war, and a means to control piracy; if pirates were working with the government, they were not attacking the government's vessels. Privateering differed from piracy, as privateers were to adhere to the rules of war, and failure to do so would lead to their loss of legal status, and their redefinition as criminals. For their services, privateers received payment from their government, but were required to pay back between 10 and 20 percent of any recovered booty from vessels they attacked. In peacetime, when there was no need for privateers and the letters of marque were suspended, many privateers returned to piracy. Finally after 350 years of privateering, it was formally abolished in 1856 by the Declaration of Paris.

One commentator linked armed security forces used by current commercial vessels to the protection provided by privateers of yore. Privateers are companies of legalised pirates, which act for the organisation that pays for their services, similarly to the operation of armed security. The main difference is that contemporary private security firms do not plunder their adversaries.

Throughout history, a variety of measures sought to control piracy with varying success. Puchala noted that counter-piracy measures must be proactive, specifically:

Suppressing piracy required not only destroying pirates but also denying them sanctuary, and this amounted to both eliminating havens and hideouts and changing the thinking and calculations of people.

who sympathized with pirates or otherwise profited from dealing with them.\textsuperscript{127}

While there are many similarities between historical and modern-day piracy, care must be taken to ensure the wrong lessons are not learned.\textsuperscript{128} While many of the measures discussed in this section would defy current human rights and international standards, they provide context for measures to control modern piracy.

2.4 Conclusion

This chapter explained the historical legacy of maritime piracy control and provided insight into potential measures to suppress contemporary Somali piracy. Piracy requires a vibrant maritime trade to thrive and has, in some form, endured through time and across location. Two main strategies differentiate the methods used to control piracy. The first involved punitive measures sought to annihilate pirates, while criminal trials most often led to very public and retributive executions. The use of force eliminated pirates; today, such action would defy important international standards in human rights on land and at sea, though in many nations modern piracy is punishable by death.

The second strategy sought to control piracy through some form of early international cooperation. Some strategies included paying pirates to maintain the peace, granting amnesty to pirates, and the use of privateering. Although possibly controversial in the modern era as it would certainly encourage recruitment into piracy among those motivated by greed, pardoning provided a useful solution to piracy historically.

Granting amnesty may provide a useful solution by way of historical example to

\textsuperscript{127} Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 20.
\textsuperscript{128} Ibid.: 19.
relocate pirates inland and promote commercial agricultural or subsistence farming in place of piracy. It is unknown, however whether pirates would desist longer-term due to internal governance issues common in Somalia. While privateering is unlikely to return in modern times, privateers have been likened to private armed security guards that do not plunder their adversaries. These activities are more in line with the current responses to Somali piracy and could provide beneficial lessons transferrable to present day counter-piracy activities. Reviewing historical methods for punishing pirates revealed a recurring theme: to disrupt piracy networks, international cooperation is paramount.
3.1 Introduction

Somalia’s current state of affairs plays an important role in piracy. To develop meaningful responses to piracy, it is necessary to understand the underlying causes. This chapter shows that recent events in the country’s political history, the impact of internal militia groups and natural disasters played a role in shaping the nature and extent of piracy. Three core areas are explored; the first of which is the long running dictatorship of Siad Barre. This snapshot reviews Barre’s period of rule until his ousting in 1991, after which the UN began providing humanitarian aid. Subsequently, the UN supported the Transitional Somali Government (in power until August 2012) and the new Federal Government, financially, politically, and militarily.

Secondly, militia groups had a significant influence on recruitment into piracy. The militia group known as the Islamic Courts Union has controlled south-central Somalia since 1991, after the collapse of the Barre regime. Opposition to the Transitional Federal Somali Government led to conflict, though support for the transitional government forced the Islamic Courts Union to retreat. The traditional Islamic views of the Islamic Courts Union contributed to a significant reduction of piracy for much of 2006 during the short period of control over coastal piracy sanctuaries. Al-Shabaab is an offshoot organisation, formed after the Islamic Courts Union was defeated in 2006. Al-Shabaab’s links to piracy poses challenges to authorities in the region. There have been allegations that Al-Shabaab is also linked to terrorist organisation Al-Qaeda. This
section illustrates how the Islamic Courts Union briefly controlled piracy due to the fear of retribution they instilled in criminals.

Lastly, this section demonstrates how the numerous environmental disasters in Somalia may have motivated many to engage in piracy. It considers how environmental disasters might have caused internal displacement, leaving many homeless and jobless, increasing desperation and vulnerability. It also draws upon the theory of the *youth bulge*; similar to other poor countries; Somalia has a high proportion of young people. Delving into Somali history provides insight into potential motivations to commit piracy, which may better inform a pluralistic regulatory response. Reviewing these underlying vulnerabilities provides background for the remainder of the thesis.

### 3.2 Somalia’s political history

#### 3.2.1 The Barre dictatorship

Between the 1880s and the 1920s, Somalia underwent several changes in leadership. At various times within this period, the British, Italians, French and Dervish conquered parts of Somalia and what is now Djibouti.\(^{129}\) It was not until 1969 that Siad Barre established a stable, but oppressive regime. He favoured policies inspired by Vladimir Lenin and Karl Marx, strongly encouraging allegiance to the central authorities and forbade loyalty to traditional clans.\(^{130}\) During Barre’s 21-year rule, he created several national programs of reform with mixed results. An internal rift began to form.

\(^{129}\) See Appendix A for a full timeline of Somalia’s history.

Challenging the Barre rule, the ‘Somali Revolution’ emerged in 1986 when clans formed dissident groups opposed to the regime. Mark Bradbury et al. stated:

> During the civil war in the late 1980s Somalia’s entire legal, judicial and law enforcement system collapsed, human rights abuses escalated, and international and locally accepted norms and rules were systematically violated.\(^{131}\)

After a series of attempted coups, on 26 January 1991 Barre was finally driven from office, and civil war worsened.\(^{132}\)

In the early 1990s, Somalia had a failing economy and was in great need of humanitarian aid. In 1992, the UN stepped in and declared Somalia a humanitarian crisis.\(^{133}\) In the years to follow, Somalia experienced weak state governance, famine, poverty and unemployment.\(^{134}\) The UN sent peacekeeping troops to control the conflict, but these attempts failed in the capital Mogadishu and the fighting continued. Some argue that UN efforts succeeded in securing peace in rural areas. The UN and international community learned valuable lessons about attempting to create peace through force in Somalia.\(^{135}\) Power remains fragmented as the fighting continues between clan-based groups and militia forces, as discussed in later sections.

Years of conflict in Somalia left the country with a huge supply of automatic weapons and those trained in using them. UN Resolution 751 enforced an arms embargo to

\(^{131}\) Ibid.: 42. \\
\(^{132}\) Ibid.: 42, 49. \\
\(^{134}\) Mark Bradbury, Ken Menkhau, and Roland Marcha, "Human Development Index: Somalia 2001," (Nairobi, 2001). : 34. \\
control the supply of weapons into Somalia in an attempt to end the civil conflict.136 The impact of the oppressive Barre regime coupled with the supply of weapons could have motivated Somalis to engage in illegitimate activities.

3.2.2 The Transitional Federal Government: Somalia’s eight-year interim leadership

Somalia has been on the Security Council’s agenda since 1992. The UN Secretary-General observed that instability, lawlessness and a lack of effective governance in as the root causes of piracy.137 Despite working with the UN to re-establish a centralised government since then, Somalia continues to be in turmoil. In his June 2004 report on Somalia, the UN Secretary-General introduced the road map created by the Intergovernmental Authority on Development (IGAD). The road map established the Transitional Federal Charter and the Transitional Federal Government (TFG).138 The purpose of the road map was to allow the TFG to reach achievable milestones towards peace and governance. Ted Robert Gurr suggests that while a centralised government is ideal, ongoing conflict in Somalia means that deferring to the clan-based system might be more effective.139

---

The UN and its member states supported the TFG financially, politically, and militarily; however the TFG remained unstable and functioned ineffectively. On 21 March 2011, the Contact Group on Piracy off the Coast of Somalia concluded that the TFG had limited success and ability to improve governance and strengthen the rule of law because of continuing civil conflict and piracy. Despite enduring efforts, during and after the TFG’s eight-year rule, Somalia remains in a state of crisis. Somalia often ranks as the least-functioning country on the UNDP Human Development Index and the Transparency International Corruption Perception Index. The Transparency International rank implies that bribery and corruption overburden the new Somali Government. This not only impedes development but also weakens any potential piracy control mechanisms developed within Somalia. Corruption also prevented the TFG from adequately addressing piracy whilst in power. In October 2011 and again in August 2013, it was reported that Somali senior officials received bribes in exchange for the release of pirates held on remand. It appears that corruption in various forms is
embedded within Somali culture. This causes strain on international relations, particularly given the degree of concern over misappropriation of aid money donated to Somalia. Corrupt officials challenge internal, regional and Security Council efforts to rebuild governance and rule of law in Somalia.

Neither the TFG nor the new Somali government have had control over all regions in the country. It has limited power in the southern and central areas of the country, due to militia, and no power in the autonomous states of Somaliland, Puntland, Galmudug or Jubaland. The Somali government controls most of the 18 administrative regions, though local secular warlords run some areas. After the demise of the Barre regime, Somaliland, and more recently Puntland, Galmudug and Jubaland declared autonomy as self-governing regions. Somaliland suffered because of the Barre regime, causing the state to seek autonomy in 1991. Despite the north-western region of Somaliland declaring itself independent, it is informally recognised as a separate country, but it has remained relatively stable since 1991.

note that it is likely that Somaliland will secede from Somalia.\textsuperscript{152} The success of Somaliland indicates that despite historical and present-day challenges, governmental restoration might be achievable for the new Somali Federal Government.\textsuperscript{153}

In 2006, the militant group Islamic Courts Union, tried to gain control over the TFG’s region. Ethiopian troops fought the Islamic Courts Union and regained control of the region by the end of the year. Soon after, the Security Council adopted Resolution 1744, which authorised African Union Mission to Somalia (AMISOM) peacekeepers to operate initially for six months.\textsuperscript{154} Each year since 2006, the Security Council has extended AMISOM’s mission.\textsuperscript{155} Despite intermittent conflict erupting, the TFG maintained control because of strong support from the African Union, the UN, and regional nations.

The Security Council has remained focused on developing stability in Somalia and meets periodically to discuss its situation. On 11 May 2011, the President of the Security Council noted:

The Security Council reiterates its grave concern at the continued instability in Somalia which has led to a multitude of problems, including terrorism, acts of piracy and armed robbery at sea off the


\textsuperscript{153} Peter Reddy, "Peace Operations and Restorative Justice: Groundwork for Post-Conflict Regeneration" (Australian National University, 2006): 317.


coast of Somalia, hostage taking and a dire humanitarian situation, and reiterates the need for a comprehensive strategy to encourage the establishment of peace and stability in Somalia through the collaborative efforts of all stakeholders.\textsuperscript{156}

The Security Council has committed to addressing the problems stemming from limited governance in Somalia. Resolution 1816, the first piracy focused Security Council decision, emphasised the need to establish peace, since piracy and the conflict on land both contribute to the ongoing insecurity.\textsuperscript{157} The TFG agreed to a comprehensive peace process for Somalia in September 2011. After two days of intense negotiations between the international community and representatives from the TFG and the semi-autonomous regions, the Secretary-General announced that they agreed on another "detailed road map for completing the...transitional period."\textsuperscript{158} An outcome of the September 2011 negotiations was that Somalia was to establish a 200 nautical mile economic exclusive zone (EEZ)\textsuperscript{159} to define its jurisdiction consistent with international law. According to Philip Hollihead from the IMO, establishing an EEZ is the first step towards creating a long-term solution for the protection of the Somali coastline and underwater environment.\textsuperscript{160} Somali President Mohamud believes his country established


\textsuperscript{159} A state’s EEZ is defined as 200 nautical miles from the coast, 12 nautical miles of which is considered territorial waters, applicable to Member states that have adopted the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Somalia claimed 200 nautical miles as territorial waters in 1972. Somalia has not formally established an EEZ nor has it ratified UNCLOS. UN Security Council mandated Somalia to adopt an EEZ in December 2011, to no avail.

their EEZ in 1988, though the Security Council disagrees that this goal has been realised.\textsuperscript{161}

While the international community continues to support Somalia, significant progress was made in early August 2012, when Somalia made a landmark decision by approving its first constitution in 52 years.\textsuperscript{162} Among the priorities of the new Somali Federal Government to be enacted in the first term of the parliament was to end piracy and terrorism.\textsuperscript{163} The news of a new constitution was indeed positive, though it could take some time to see any changes after many years without effective government. As suggested by Paul Collier, with the adoption of the new constitution, aid providers should increase substantial technical assistance to help implement the reforms.\textsuperscript{164}

Rebuilding Somalia from within is a long-term solution to controlling piracy and the establishment of a new constitution is encouraging.


3.3 Militia groups in Somalia

3.3.1 The impact of the Islamic Courts Union on Somali piracy

The Islamic Courts Union (ICU) militia group, which formed from two smaller Islamic sects in the mid-1990s, controlled much of southern Somalia prior to 2006. ICU enforced a strict Islamic philosophy and traditional Sharia laws. This seemed to result in reduced robberies and drug-dealing, and the reintroduction of healthcare and education. By providing services that had collapsed during the civil war, the ICU gained popularity among locals. In 2006, the ICU’s occupation over southern Somalia was challenged by the Alliance for the Restoration of Peace and Counter Terrorism (ARPCT). The ARPCT was run by local secular warlords and was financially backed by the US Central Intelligence Agency. The ICU defeated the ARPCT and gained control over further ground, including Harardhere, a known sanctuary for pirates. Once the ICU had wider control over Somalia, its strict policies expanded.

During the ICU’s occupation in 2006, guardianship increased, resulting in a dramatic fall in piracy off the coast of Somalia. Taking control of the pirate capital of Harardhere, the ICU prevented pirates from leaving the coast and punished those involved in piracy. Piracy contravenes Islamic beliefs, therefore the ICU sought to control it among other crimes common among pirates including smoking cigarettes, drinking.

---

169 Ibid.
alcohol, owning pornography and distributing khat - a common appetite suppressing drug with hallucinogenic effects.\textsuperscript{171} Traditional, punitive Sharia law, affected pirates’ motivation to offend.\textsuperscript{172} According to Donna Nincic, the ICU used brutal force to punish and demotivate offenders from piracy.\textsuperscript{173} Severe penalties including public executions and severing offenders’ hands were common.\textsuperscript{174} The ICU sent militia groups armed with:

- machine guns and anti-aircraft guns to central Somali regions to crack down on pirates based there. Islamic fighters even stormed a hijacked, [United Arab Emirates]-registered ship and recaptured it after a gun battle in which pirates — but no crew members — were reportedly wounded.\textsuperscript{175}

During the six month rule of the ICU, a decrease in motivation to offend and increased guardianship led to a drop in the incidence of piracy from 48 attacks in 2005 to 22 in 2006. From a routine activity theory perspective, the ICU achieved a reduction in piracy, though their methods of prevention and deterrence were problematic. The Security Council urged that order be restored in Somalia, and by 31 December 2006, the ICU militants retreated to the Kenyan border.\textsuperscript{176} In the months that followed, piracy attacks continued to rise as they had before the ICU period of control.

\textsuperscript{174} Ibid.: 10
The ICU militia continues to control parts of south-central Somalia. The ongoing conflict in these regions remains a challenge for international aid agencies and the smooth running of the new Somali government.\textsuperscript{177} Despite the success of the ICU in briefly controlling piracy, the measures were inhumane and unsustainable. During its rule, the TFG sought continuing counter-piracy assistance from the UN, to restore peace and a sense of security within Somalia.\textsuperscript{178} Possibly, due to the distance from the coastline, or the strict crime control regimes imposed by the ICU, few pirates operate from the region controlled by the ICU. Ironically, the ICU’s method of control, which experienced some success while only short-term, is unacceptable to the international community.

3.3.2 The impact of Al-Shabaab on governance in Somalia

Al-Shabaab (meaning ‘The Youth’ in Arabic) is a militant group that controls much of the southern parts of Somalia.\textsuperscript{179} Imposing traditional Sharia laws in a brutal fashion at times, the group is an offshoot of the ICU, linked to Al-Qaeda since February 2012.\textsuperscript{180} Al-Shabaab has made humanitarian efforts very challenging by closing roads and ports, and by preventing entry into Somalia for aid relief.\textsuperscript{181} In some cases, representatives of humanitarian agencies have fled due to intimidation, kidnappings, and killings.\textsuperscript{182}

Although the group did not initially identify as terrorists, the US regarded their

\begin{itemize}
\item[\textsuperscript{177}] Sarah Percy and Anja Shortland, \textit{The Business of Piracy in Somalia.}: 5.
\end{itemize}
activities as terrorism. Al-Shabaab gained strength throughout 2011 and 2012, much to the concern of regional authorities. These concerns were vindicated by the terrorist attack on a shopping mall in Nairobi in 2013.

The suggestion that Al-Shabaab is directly involved in Somali piracy is inconclusive. Nevertheless, much of the recent piracy as well as kidnappings and killings of Kenyans and other foreigners was blamed on Al-Shabaab. The literature reveals that an operational link might not currently exist, but pirates are increasingly launching operations and recruiting from within the Al-Shabaab region, suggesting some form of support. Mark Kirk believes Al-Shabaab receives a cut of pirates’ ransoms, noting:

The Kenyan government now estimates that roughly 30 percent of ransoms, totalling more than $50 million, are funnelled to the East African Al-Qaeda/Al-Shabaab Islamic terrorist groups that run the largest terror training camps in the world.

Jay Bahadur questions a direct link between pirates and Al-Shabaab as these ties may reduce the likelihood of receiving ransom payments. Karine Hamilton agrees, “the two phenomenon are distinct from each other in terms of geography and practice [sic].” It is illegal in most countries to transfer funds to terrorists. While Al-Shabaab may not be directly involved in piracy operations, they are believed to facilitate

---

187 Jay Bahadur, Deadly Waters: Inside the Hidden World of Somalia's Pirates.: 49.
weapons trafficking into Somalia used by pirates.\textsuperscript{189} Transporting weapons into Somalia defies the 1992 UN arms embargo, though authorities have had difficulty finding evidence of illegal weapons trafficking in the Al-Shabaab region.\textsuperscript{190} Pirates’ \textit{modus operandi} reflects highly organised efforts, suggesting links with Al-Shabaab, though possible, conclusive evidence of their link does not exist. Implicit support of Al-Shabaab for piracy is plausible. Comparative research into the parallels between pirates and terrorists reveal that while pirates are uninclined to conduct politically motivated attacks on vessels presently, their association with groups, such as Al-Shabaab and Al-Qaeda suggests that crossing over into terrorism is foreseeable.\textsuperscript{191} Since it emerged, suggestions that Somali piracy funds the Islamic extremist groups of the region persist, despite lacking evidence.\textsuperscript{192} Links between the two groups raises concern within the international community about Al-Shabaab hindering counter-piracy measures within their territory. Plans to construct a prison to accommodate the growing number of pirates imprisoned in neighbouring countries raises questions as to whether the group


might stage a prison raid and release the prisoners.\textsuperscript{193} Al-Shabaab’s implicit support motivates pirates to continue their activities.

Most contiguous states oppose the ongoing conflict and piracy in Somalia. In October 2011, backed by the six-nation East African regional group, IGAD, Kenyan troops and the Somali National Army advanced into the south-central areas of the country with a long-term mission to overcome Al-Shabaab. After holding the capital, Mogadishu, for three years, the militia group lost ground and relinquished control.\textsuperscript{194} In late October 2011, \textit{Operation Linda Nichi}, a joint statement signed by Kenyan and Somali leaders, sought to remove the threat of a common enemy, Al-Shabaab.\textsuperscript{195} On 22 February 2012, the allies took control of the south-central cities of Baidoa and Beledweyne, deep within Al-Shabaab territory.\textsuperscript{196} The alliance of Kenya with western allies in attempting to control the group may have triggered terror events committed in the Kenyan capital, late September 2013.\textsuperscript{197} According to New York Times journalists, Al-Shabaab has proven its business acumen, having been involved in:

- Illicit ivory, kidnappings, piracy ransoms, smuggled charcoal, extorted payments from aid organizations and even fake charity drives
- pretending to collect money for the poor — the [Shabaab] militant group has shifted from one illegal business to another, drawing money

from East Africa’s underworld to finance attacks like the recent deadly siege at a Nairobi shopping mall.\textsuperscript{198}

As long as Al-Shabaab maintains a stronghold over parts of Somalia, regaining control and developing the country from within will remain a challenge. While aid organisations, such as the International Committee of the Red Crescent and United States Agency for International Development (both based in Nairobi) continue to work with Somalia, the withdrawal of \textit{Médecins Sans Frontières} due to Al-Shabaab demonstrates the perceived risk and actual threat of the group.\textsuperscript{199}

3.4 Environmental factors that created a suitable environment for Somali piracy

3.4.1 Youth bulge theory and the onset of Somali piracy

\textit{Youth bulge} is a theory that predicts social unrest and violence when high proportions of young people exist within a population. Specifically, youth bulge occurs when “young adults, aged 15 to 29 years, comprise more than 40 percent of all adults.”\textsuperscript{200} Social scientists developed the theory of youth bulge in 1985 as a tool to predict unrest and potential security threats.\textsuperscript{201} A simplified explanation for youth bulge is “too many


young men with not enough to do” causing “violence in numbers.” Youth bulge is common in developing, conflict/post-conflict, fragile and failed states within sub-Saharan Africa, Southern Asia, the Middle East, and the Pacific Islands. Somalia’s population has a high proportion of young people; the population of 9.6 million has a mean age of 17.5 years coupled with life expectancy of 51.2 years. Population pyramids (see Figures 3 and 4) show the proportion of a population divided into four-year age groups and separated by gender for Somalia and by way of comparison, Australia for that same year.

Figure 3: Population pyramid, Somalia, 2012

![Population pyramid, Somalia, 2012](http://www.nationmaster.com/country/so/Age_distribution)

---


78
Somalia’s population contains a large proportion of young people. This is in stark contrast to Australia, a typical western democracy, where the greatest proportion of the population is in the middle to older age group. A high proportion of any age group places increased pressure on opportunities and services available to that cohort. In Somalia, the high youth population limits available education and employment opportunities, which may explain why many young people have chosen to engage in piracy.\textsuperscript{208} In criminology, \textit{age invariance theory} posits that young males aged between 14 and 25 years are the most prone to criminal offending.\textsuperscript{209} Together with the youth bulge in Somalia, similar to other developing countries, the disproportionate size of the youth cohort is likely to be a strong predictor of antisocial behaviours.

\textsuperscript{207} United States Census Bureau, "Australia: 2010" http://www.nationmaster.com/country/as/Age_distribution.
\textsuperscript{208} Lionel Beehner, "The Effects of 'Youth Bulge' on Civil Conflicts". http://www.cfr.org/society-and-culture/effects-youth-bulge-civil-conflicts/p13093.
Youth bulge strongly correlates with civil unrest due to political and social challenges. Studies indicate that throughout history, “cycles of rebellion and military campaigns in the early-modern and modern world tended to coincide with periods when young adults comprised an unusually large proportion of the population.” According to Lionel Beehner, “between 1970 and 1999, 80 percent of civil conflicts occurred in countries where 60 percent of the population or more were under the age of thirty.” The situation in Somalia indicates that if not piracy, young men would be prone to engage in some form of dissident activity. Weak political institutions increase susceptibility of recruitment into gangs, rebel forces and terrorist cells. In 2007, 67 countries were experiencing youth bulge, of which 60 had social unrest and violence; Somalia was among these 60 countries.

Whilst youth bulge is a predictor for social unrest, it is not the sole explanation. Factors, such as poverty, corruption and poor governance also contribute to unrest and violence. “If young people are left with no alternative but unemployment and poverty, they are increasingly likely to join a rebellion as an alternative way of generating an income.”

Youth bulge compounds pre-existing issues, such as low education, which creates an oversupply of poorly educated youth competing for jobs. Youth bulge can be an asset


211 Ibid; Richard P Cincotta, Robert Engelman, and Daniele Anastasion, The Security Demographic: Population and Civil Conflict after the Cold War.; 44.


in some countries to aid economic development because of the high proportion of working age people in the population. In Somalia, however, few opportunities exist; conflict and devastated infrastructure have reduced educational and employment opportunities. Therefore, the youth bulge has increased pressure on working age adults to find employment.

Somali piracy is generally associated with young men. However, according to a representative from the international community, women are also recruited into piracy networks due to limited employment choices for women. Somalia is a patriarchal society where traditional women's roles are encouraged; therefore, women face additional barriers to employment. The same interviewee noted that because of the drought, famine and great earning potential provided by piracy, a group of 15 women, aged between 18 and 40 years, cook for hostages aboard hijacked vessels. Piracy provides an opportunity for employment and as such, it may be likely that more women could be attracted to piracy gangs.

3.4.2 The 2004 Boxing Day tsunami: the devastation of the coastline

The Boxing Day tsunami devastated parts of South East Asia, India and Africa, including Somalia. The affected area (see Figure 5) was extensive, and Somalia endured swells breaking onshore between two and four metres in height, more than seven hours after the first impact in the epicentre.

---

217 Ibid.: 42.
219 Ibid.
The tsunami affected approximately 650 kilometres of the Somali coastline. The region that sustained the greatest damage stretched from Xaafuun in the north to Garacod in the south (see Figure 6).\textsuperscript{221} Eyl and Hobyo, two piracy hubs, are located along the stretch that was most affected.


\textsuperscript{221} Ibid.: 128.
The tsunami caused approximately 300 deaths and destroyed more than 18,000 homes in Somalia alone. Somalia has experienced drought, floods and other devastation in recent times, and the tsunami was yet another impact slowing the recovery progress (see Figure 7). The United Nations Environment Programme also noted that “wells were submerged and contaminated by seawater and debris, and food items were washed away.” This tsunami occurred as the country were recovering from four years of consecutive drought and periodic flooding. The impact of the tsunami, worsened by chronic instability in Somalia, created vulnerable internally displaced persons (IDPs), who were, by extension, exposed to piracy recruitment.

---

224 Ibid.: 128.
225 Ibid.: 128.
The tsunami occurred during the fishing season destroying a large number of boats and fishing equipment, and is believed to have motivated fishermen to engage in piracy.\textsuperscript{227} As such, this likely accounted for the sharp rise in piracy in 2005 (see Figure 29). Early pirate attacks were limited to within 200 nautical miles of the coast of Somalia. By 2005, pirates expanded their operations into the Gulf of Aden and well into the Indian Ocean.\textsuperscript{228} Attacks outside this zone indicated that pirates were engaging in long-range operations targeting commercial vessels, not just small fishing boats. Piracy provided employment opportunity in a climate where environmental disaster worsened pre-existing vulnerability.

\textsuperscript{226} Ibid.: 128.
3.4.3 Drought: the internally displaced persons crisis

Somalia, Ethiopia, Kenya and Djibouti all suffered greatly from the 2011 drought. More than 13 million people were affected by the drought, mostly within Somalia, with more than 40 percent of the population in crisis and 750,000 Somalis at risk of death. In response to the drought, the World Bank committed to a long-term project and dedicated nearly US$2 billion to assist Somalia to recover sustainably and protect its people from future droughts. The World Bank assistance sought to boost “crops and livestock production through improved land management and efficient irrigation techniques.” In collaboration with other organisations, health, nutrition and sanitation were the focus of improvement in refugee settlements at a cost of around US$30 million. The drought added further strain to the pre-existing environmental conditions.

The Security Council reported that water rights were previously a source of ongoing conflict between nomadic groups. “Inadequate distribution of water and increasing scarcity and widespread misuse and mismanagement of water poses serious threat to sustainable development.” Because of constant relocation, nomadic groups may be less protective of the environment around them. Waris Dirie and Cathleen Miller

231 Ibid.: paragraph 10.
233 Ibid.: paragraph 12.
believe nomads contribute to deforestation by cutting trees to create pens for their animals, while Abdullahi Elmi Mohamed attributes deforestation to the production of charcoal sold to the Gulf states. In the rural regions of Somalia, deforestation further compounds the pre-existing environmental stressors and therefore worsens poverty. Environmental degradation increases the probability of poverty and with it, desperation. The drought threatened the lives of many and piracy presented an opportunity to alleviate the strain. Furthermore:

"The drought is making a real impact on the desperation of Somalis – young men are moving to the coast driven by greed, hopelessness and desperation. This is probably the reason why there have been so many failed piracy attacks of late – these men are not well known to the sea. This has been verified by the prison phone calls that have been made – many phone calls have been made to areas in Somalia that are in the south-west and the north. They are the 'B Team' of pirates – they are not very good so they get caught."

Before the drought, the WFP was already providing aid to Somalia. WFP delivers food aid to more than half the Somali population, equating to approximately 4 million people. While aid is likely to continue for years to come, the development of agriculture by providing seeds and fertiliser should reduce reliance on imports, aid

---

delivery, and potentially boost the economy. Developing sustainable opportunity for Somalis would likely reduce recruitment into piracy as increased opportunity for legitimate employment becomes available.

### 3.5 Conclusion

This chapter illustrated that piracy is a result of problems on land. Somalia’s troubled political history has damaged the fabric of society and left behind a supply of automatic weapons, creating an environment suitable to engage in illegal activity, including piracy. Following the long-running dictatorship of General Barre after his demise in 1991, the UN sought to re-establish governance through the Somali road map, which established the TFG and set out achievable milestones towards peace and governance. The UN provides ongoing support to the new Somali government aiming to eliminate inhibitors of development, such as corruption. The introduction of Somalia’s first constitution in 52 years indicates a positive step forward for governance, despite the new Government having limited success in rebuilding the country one year on.

The combined history of Somalia provides context to what may have motivated many to engage in piracy. The ICU’s brief control and reduction of piracy in 2006, unwittingly following a routine activity theory framework, showed that their strict Sharia policies, whilst defying human rights, brought greater guardianship based on an Islamic approach led by Somalis, reducing motivation to offend. While there is conflicting evidence about the extent of Al-Shabaab’s involvement in piracy, it is likely that the group support

---

pirates at least implicitly. Peacekeepers regaining Al-Shabaab-held territory could facilitate the new Somali Federal Government to have greater control and allow it to regain rule of law and stability. However, there is encouragement to give traditional clans a greater role in the leadership in Somalia.

Environmental factors may have also contributed to the motivation to piracy. The theory of youth bulge predicts violence and the circumstances in Somalia and offshore provides the opportunity to offend. A high proportion of young people, faced with a lack of alternatives, provides a sizable pool of potential recruits. Environmental disasters, namely the tsunami and drought, caused IDPs seeking opportunities to alleviate poverty. Drought, famine, poverty, and ongoing civil unrest are factors likely to have contributed to the onset and persistence of piracy. The combination of the issues presented in this chapter demonstrates that piracy is a result of a vulnerable environment, increasing the susceptibility of recruitment due to helplessness.
PART TWO: ONSET
CHAPTER 4 WHAT CREATES A MOTIVATED OFFENDER?

4.1 Introduction

A wealth of literature attributes Somali piracy to decades of hardships. The purpose of this chapter is to examine piracy in the context of the motivated offender element of Cohen and Felson’s routine activity theory. This chapter asks: what motivates offenders of Somali piracy? To examine this question, the chapter unravels the potential macro factors that may motivate many into piracy, within the environment explained in Chapter 3. It implies that the conditions in Somalia contribute to the motivation of offenders. Knowledge gained from this chapter may inform measures to reduce offending behaviour.

This chapter explores how greed and grievance motivate pirates. First, under the grievance subheading, this chapter discusses how illegal, unreported and unregulated fishing and toxic waste dumping contributed to the collapse of the Somali fishing industry in the mid-1990s. These factors produced poverty and famine, which act as motivators to engage in piracy. Second, the greed paradigm explores how gangs and militia encourage piracy to persist due to the possibility of reward, with clans and criminal groups serving as recruiters.

---

4.2 Question 1: What motivates offenders of Somali piracy?

Routine activity theory suggests that motivated offenders seize an opportunity to offend when there are suitable targets and the absence of capable guardians.\textsuperscript{241} Somali piracy, according to this theory, is enabled by the presence of motivated offenders.\textsuperscript{242}

According to rational choice theorists, the \textit{greed and grievance} paradigm is a unified concept that explains conflict and rebellion.\textsuperscript{243} As noted by S. Mansoob Murshed and Mohammad Tadjoeddin, "the greed versus grievance hypotheses may be complementary explanations for conflict."\textsuperscript{244} According to Paul Collier and Anke Hoefler, countries with abundant natural resources have a higher risk of conflict and rebellion and as Degarmo explained, crime becomes a built in feature of the social organisation.\textsuperscript{245} Examples include Sierra Leone and Angola fuelled by diamond conflicts, Colombia due to the drugs trade and Cambodia in response to illegal logging.\textsuperscript{246} Similarly, Somali piracy is likened to these rebellions by the common role grievances play in fuelling conflict.

Despite Somalia experiencing conflict for many years, it is possible to disentangle the grievances that motivate piracy. For Somali fishermen-come-pirates, it is widely

\textsuperscript{241} Ibid.: 589.
\textsuperscript{242} Ibid.: 589.
\textsuperscript{244} S Mansoob Murshed and Mohammad Zulfan Tadjoeddin, "Reappraising the Greed and Grievance Explanations for Violent Internal Conflict," 2007.
\textsuperscript{245} Matthew Degarmo, "Understanding the Comparisons of Routine Activities and Contagious Distributions of Victimization: Forming a Mixed Model of Confluence and Transmission."
\textsuperscript{246} Paul Collier and Anke Hoefler, "Greed and Grievance in Civil War," 2000.
reported that rebellion in the form of piracy erupted in response to illegal fishing and toxic waste dumping, resulting in depleted fish stocks. Unlike the Malacca Straits, where piracy has a long history, Somalia does not have a historical tradition of piracy. The depleted fish stocks reduced employment opportunity and led to poverty, making piracy a relatively attractive alternative.

The common motivator into piracy for many Somalis transitioned from grievance to greed. While pirates initially attacked vessels due to grievances over depleted fish stocks, increased success and high ransom payments switched their motivation to greed. These changes also motivated militia groups to participate in piracy, with increasing sophistication, organisation, violence, and frequency of attacks. Dr Peter Lehr, lecturer in terrorism studies at the University of St Andrews, commented that:

> Since the Somali fishermen cannot now engage in a meaningful way of living, raising an income to sustain themselves, they have now to go to piracy as an alternative to raise money to make a living. But although initially that was the cause, what one sees subsequently happening is that people, or certain people who are not themselves pirates, began financing piracy as a way of making business. And therefore they would purchase weapons, they would hire these fishermen, tell them to go and hijack, of course at a fee, and therefore

---


the ransom paid goes to them. So it became like an industry, it became like a sector in itself, whereby now people are talking in terms of investing money to get the returns.\(^{250}\)

It is common that situations of rebellion are inspired by a grievance, but continued by greed.\(^{251}\) Motivated solely by greed, militia groups involved in piracy have undermined the initial cause.\(^{252}\) Collier and Hoeffler believe grievance and greed can coexist, which is a likely reflection of the continuation of Somali piracy.\(^{253}\)

### 4.2.1 Grievances motivating Somali piracy

#### Illegal, unreported and unregulated fishing

Somali fishermen settled their grievances of illegal, unreported and unregulated (IUU) fishing and toxic waste dumping through violence. Culprit vessels were threatened with guns to pay ‘taxes’ to the local fishermen.\(^{254}\) Interviews with the earliest Somali pirates, such as Boyah\(^{255}\) expose that their intentions were to threaten the offending vessels into refraining from IUU fishing and toxic waste dumping.\(^{256}\) Over time, the so-called Robin Hood pirates became more menacing, organised and widespread. Fishermen took


\(^{251}\) PM Regan and DA Norton, "Greed, Grievance, and Mobilization: The Onset of Protest, Rebellion, and Civil War."


\(^{255}\) Jay Bahadur, *Deadly Waters: Inside the Hidden World of Somalia's Pirates.*: 273, Name has been changed.

\(^{256}\) Ibid.: 16.
advantage of their seafaring and weapons handling skills, making them effective pirates.\textsuperscript{257}

IUU fishing practices left Somali waters barren.\textsuperscript{258} Jeffrey Gettleman observed that IUU fishing was “really destructive” stating that fishing vessels would “vacuum the bottom of the ocean floor, suck[ing] up rocks, plants, [and the] habitat of fish and lobsters.”\textsuperscript{259} Lobster fishing was common off the coast of Eyl until reefs were disturbed which destroyed lobster breeding grounds.\textsuperscript{260} Somali fishermen responded to IUU fishing and other unsustainable fishing to “protect their marine resources [by] capturing fishing vessels and charging them a tax.”\textsuperscript{261} More effective policing of Somali waters might have prevented pirates from responding to grievances by taking matters into their own hands.

Abandonment of fishing licences opened Somali waters to IUU fishing. Authorities issued some licenses to foreign fishing companies, though after the collapse of the country in 1991, limited oversight of licences led to widespread IUU fishing. In the absence of a functioning state, local warlords issued fishing licences, but failed to

\textsuperscript{260} Jay Bahadur, \textit{Deadly Waters: Inside the Hidden World of Somalia's Pirates}: 16.
effectively police fishing catches.\textsuperscript{262} Somali warlords saw an opportunity to profit by selling false fishing licences to trawlers.\textsuperscript{263} Warlords hired local fishermen to “intimidate and extort money from foreign fishermen who were unwilling to purchase [licences].”\textsuperscript{264} The additional vessels fishing under false licences put further stress on the marine habitat. Unsustainable fishing practices, worsened by the greediness of the warlords, provoked fishermen to respond aggressively, and pursue piracy.

Despite awareness of IUU fishing among the international community and Somali officials, the problem is ongoing. A report compiled by the Monitoring Group on Somalia and Eritrea details the ongoing IUU fishing inside territorial waters.\textsuperscript{265} The 2013 report noted that, some Somalis provide private security to hundreds of illegal fishing vessels, mainly Iranian and Yemeni-owned.\textsuperscript{266} Estimates say tens of thousands of tonnes of illegal catch were fished from Puntland’s coastline between 2012 and 2013.\textsuperscript{267}

**Toxic waste dumping**

The international community recognises that illegal toxic dumping is a partial cause of piracy. During the 1990s, many companies made deals with local warlords to dump


\textsuperscript{263} United Nations Secretary-General, "Report of the Secretary-General on the Protection of Somali Natural Resources and Waters, S/2011/661 (25 October 2011)": paragraph 43.


\textsuperscript{266} Ibid.: Annex 3.1, paragraph 2.

\textsuperscript{267} Ibid.: Annex 3.1, paragraph 2.
their toxic waste along the remote Somali coastline.\footnote{Advisory Council on International Affairs, "Combating Piracy at Sea: A Reassessment of Public and Private Responsibilities," 2010 http://www.aiv-advies.nl/ContentSuite/upload/aiv/doc/webversie_AIV_72_ENG(2).pdf.: 14.} Given the dysfunctional government during that time, the agreements made by warlords had no legal foundation. Toxic dumping in foreign territorial waters, without prior consent of the receiving state, defies UNCLOS. Stronger governance and greater control over Somali territorial waters may have prevented waste dumping. Bilateral agreements allow waste dumping in foreign territorial waters. Section 5 of Article 210 in UNCLOS authorises states to mutually agree to dispose of waste from one state within another's territorial waters or EEZ.\footnote{United Nations, "Convention on the Law of the Sea": Article 210(5).} Licences issued by warlords would not have constituted a mutual agreement, making the dumping unlawful under UNCLOS.\footnote{Ibid.: Article 210(5).} Though Somalia adopted UNCLOS in 1989, warlords acting on behalf of the state render any agreements to toxic dumping in Somali territorial waters, non-legally binding.\footnote{Ibid.: Article 210(5).} Today, these treaties provide greater oversight of the fishing practices; but greater oversight is needed to achieve tight control.

In the wake of the 2004 tsunami, Somalia experienced further toxic environmental damage. Barrels washed onto Somali shores, leaking their toxic substances, poisoning marine life and drinking water.\footnote{Advisory Council on International Affairs, "Combating Piracy at Sea: A Reassessment of Public and Private Responsibilities," 2010 http://www.aiv-advies.nl/ContentSuite/upload/aiv/doc/webversie_AIV_72_ENG(2).pdf.: 14.} There is no clear evidence to suggest that barrels containing toxic substances washed onto shore are from earlier toxic waste dumping. Instead, they were more likely to have been cargo from vessels destroyed by the tsunami. The poisoning of marine life caused by the toxic waste resulting from the

Regardless of motivations, initially some pirates may have been unaware that their activities were illegal. According to a UNODC representative, it is unknown whether earlier pirates realised that their activities beyond the Somali territorial waters defied international laws.\footnote{Glenn Ross, "Pers. Comm #02, 16 August; Consultant to United Nations Office on Drugs and Crime," (Perth, 2011).} It is unclear whether pirates understood the concept of international and territorial waters. A US Government representative stated that a lack of awareness of international sea borders could explain why early fishermen-turned-
pirates attacked vessels beyond the 12 nautical mile territorial zone.\textsuperscript{278} Regardless of their ignorance, the pirates’ activities are illegal.

**Review of allegations of illegal, unreported and unregulated fishing and toxic waste dumping**

Studies conducted over several years sought to verify the allegations of IUU fishing and waste dumping within Somali waters. The evidence from these studies has been mixed, though there was indication that IUU fishing and toxic waste dumping affected the area somewhat.\textsuperscript{279} Resolution 1976 commissioned the Secretary-General to verify IUU fishing and waste dumping claims in Somali waters.\textsuperscript{280} The Secretary-General’s report considered existing field reviews conducted by UN agencies, expert interviews, input from UN member states, regional organisations and fisheries management organisations.\textsuperscript{281} Results confirmed the UN’s initial findings of IUU fishing and toxic waste dumping claims. However, the inability to collect further information prevents detailed confirmation of these allegations.

The Secretary-General highlighted the lack of monitoring and law enforcement in Somalia, which makes it vulnerable to criminal activities, including IUU fishing, dumping of toxic waste, and piracy.\textsuperscript{282} To limit crime within Somali territorial waters, it was deemed necessary for an EEZ to be established and to increase oversight of coastal

\textsuperscript{282} Ibid.: paragraph 61.
activities, as encouraged by the Security Council.\textsuperscript{283} The report concluded that because of limited information, it would not be possible to conclusively determine whether IUU fishing and waste dumping had occurred.\textsuperscript{284}

### 4.2.2 Greed motivating Somali piracy

The \textit{modus operandi} of Somali pirates differs from piracy operations elsewhere. Their primary motivation is hijack for ransom. According to a representative from the international community, Somali piracy has evolved into an effective business model of hijack for ransom by young men armed with AK-47s willing to risk their lives.\textsuperscript{285} The desire for enrichment is a strong motivation to offend. As one pirate stated:

\begin{quote}
The first time I was involved in hijacking a ship was 2003. It must have been Arabian; there were 18 Yemeni crew... We held it for two weeks, then some Somali and Arab mediators stepped in to negotiate. We were convinced to take $50,000 as compensation... That inspired us and gave us an appetite for hunting ships... In fact, my life has changed dramatically because I’ve received more money than I ever thought I would see. In one incident, I got $250,000, so my life has changed completely. It is incalculable how much money I have made... With the money, I buy cars, weapons, and boats. I also like having a good time and relaxing... I have employees doing the business for me now. I am a financier. I get my money and I don’t...
\end{quote}


\textsuperscript{284} United Nations Secretary-General, "Report of the Secretary-General on the Protection of Somali Natural Resources and Waters, S/2011/661 (25 October 2011)": paragraph 63.

have to leave Eyl. I have not gone to sea to hijack in recent months.

My group goes to the sea and I manage their finances. I buy speedboats and weapons, whatever they need [sic].

This, and other similar comments, supports the suggestion that the focus among pirates has shifted from motivation by grievances to motivation by greed. The lack of empirical evidence to support continuing indignation over IUU fishing and toxic waste dumping implies that greed motivates today's Somali pirates. Somali militia groups and gangs have been increasingly associated with piracy, engaging in more violent and sophisticated attacks. Militia and gangs seek out opportunities for profit, which is further indicative of the onset of motivation by greed.

**Increasing ransom payments**

Each year, Somali piracy ransom demands increase, putting pressure on the shipping industry to better prepare in case of ransom payout. War risk insurance is now essential for vessels transiting the Gulf of Aden and Horn of Africa regions. Not all ransom payments are disclosed, but experts believe the average ransom payment has increased from roughly US$300,000 in 2002 to almost US$5 million in 2011, averaging US$3.96 million in 2012. Between April 2005 and December 2012, pirates have received

---


between US$339 million and US$413 million in ransoms.\textsuperscript{289} In April 2011, US$11 million was paid to release oil tanker \textit{Irene SL}, and in early 2013, US$13 million was paid to release \textit{MT Smyrni}.\textsuperscript{290} Substantial ransom payments motivate further recruitment into Somali piracy. In 2010, it was estimated that approximately 1,400 to 1,500 Somalis engaged in piracy in some way.\textsuperscript{291} By early 2012, the figure had more than doubled to 3,500.\textsuperscript{292}

There is a very strong case against paying ransoms to pirates. There is widespread concern that paying ransoms inspires further piracy attacks. The annual per capita income in Somalia is around US$600, while a pirate’s estimated earnings from one ransom payment is around US$10,000.\textsuperscript{293} Payment of ransoms may be contributing to increased demands, greater violence, and longer periods of hostage detainment. Jack Lang’s report (the Lang report) commissioned by the Security Council, found that:

As a result of growing pressure by the instigators of piracy, the remoteness of areas of operation, and the increase in ransoms sought,


the level of violence involved during attacks, detention and ransom
negotiation tends to be higher. With the steady increase in ransoms
demanded, the average period of detention is also growing, now
standing at 120 days.294

Estimates reveal the cost of undertaking a piracy operation is between US$30,000 and
US$70,000.295 The return must cover the costs outlaid, as well as providing payment to
those involved.296 Several factors influence the ransom payment including:

- ship size, age and value;
- value of the cargo;
- ‘going rate’ at the time;
- nationality of crew;
- profile of owner/manager;
- pirates’ disposition;
- owner’s approach; and
- government interference.297

Ransoms are divided according to hierarchy. A recovered piracy document from 2010
indicates that participants receive shares according to each pirate’s contribution and

294 Jack Lang, "Report of the Special Adviser to the Secretary - General on Legal Issues Related to Piracy
295 Ibid.: paragraph 96; Noah Shachtman, "Exclusive Interview: Pirate on When to Negotiate, Kill
when-to-negotiate-kill-hostages/
296 Jack Lang, "Report of the Special Adviser to the Secretary - General on Legal Issues Related to Piracy
Off the Coast of Somalia "Lang Report", S/2011/30 (24 January 2011)": paragraph 96; Noah Shachtman,
"Exclusive Interview: Pirate on When to Negotiate, Kill Hostages",
position within an operation. Homad Knaup cited by Irina Bronshteyn developed a ransom distribution chart (see Figure 8).

Figure 8: Distribution of Somali piracy ransoms

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Pirates</th>
<th>Government Officials</th>
<th>Pirate Bosses</th>
<th>Investment in Future Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>30%</td>
<td>30%</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 8 shows that pirates and government officials equally receive the greatest proportion of the ransoms. Piracy bosses receive 20 percent and invest the final 20 percent in future piracy operations. Mary Harper reported a similar division of assets, shown in Figure 9, which additionally shows ransom payments to the local community. Helping the community financially may be a strategy to discourage the local community members from turning the pirates over to authorities.

---


300 Ibid.

As shown in Figures 8 and 9, considering 30 percent of ransom payments are distributed among pirates and their bosses, the increase in ransom demands is necessary to share among the increasing number of participants. It is unclear how the ransom payments are spent, though research suggests money laundering is commonly involved in the process, as explained in Chapter 9.4.4. While ransom payments remain high and employment opportunities remain limited, the cost-benefit equation for Somalis likely favours piracy.

**Greed encouraging militia and rebellion gangs to evolve into piracy**

While early Somali pirates were motivated by revenge or grievance, there are suggestions that recent pirate recruits were never disgruntled fishermen. Research suggests that piracy gangs now consist of “armed members of the warlords’ militias,

---

302 Ibid.
local fishermen and young unemployed men."304 Once the highly profitable business model was established, other groups with assets, such as spare vessels and weapons likely modelled it. Piracy escalated from small-scale ‘mom and pop’ operations to loosely organised criminal gangs, and finally to big business organised crime involving offshore financiers over a relatively short period.305

Some traditional Somali clans provide a source of recruitment into militia groups, gangs, and piracy. Though a small number of pirates are recruited through traditional clans, the majority are recruited through other gangs, warlords’ militia and from refugee camps clans. Originally, a few local warlords and clans were responsible for piracy recruitment within Puntland (Eyl, Gara’ad and Laasqoray) and more recently, in Central Somalia (Harardhere and Hobyo).306 “The pirate gangs consist of armed members of the warlords’ militias, local fishermen and young unemployed men.”307 There is a strong kinship within family and community in Somalia; the opportunity to earn a profit to support the family would motivate many into piracy.308

---

Many IDPs, driven by greed, joined piracy groups, but their lack of seafaring skills is reflected in unsuccessful piracy attempts. Somalis reportedly journey from coastal villages and inland to join piracy groups. It appears that some recruitment for pirates occurs within refugee camps, preying on IDPs. IDPs recruited from refugee camps would likely be motivated to improve their situation through any means. The 2011 drought caused displacement of many, forcing them into refugee camps. Holihead from the IMO believes many IDPs “are moving to the coast driven by greed, hopelessness and desperation.”

While most pirates are young men motivated by limited alternative opportunities as well as by the prospect of reward, the success of piracy hinges on the ‘big fish’ to finance the operation. Motivated by greed, piracy leaders organise and finance piracy operations, recruiting young people lacking other options. Gangs of disaffected individuals who band together are at risk of being adopted by groups with more antisocial agendas. As stated by a representative from the international community:

There are maybe 100 to 200 jobs available to young men who [have not] become pirates. At this stage, there are no real jobs due to the lack of infrastructure but the jobs will come when the restoration of

313 Jay Bahadur, Deadly Waters: Inside the Hidden World of Somalia's Pirates.: 120.
the country is achieved... At the moment, there are a lot of people hanging around the cities as there are [few] other options.315

Recruitment into piracy provides opportunities and requires few criteria to meet. In an interview with pirate leader Boyah, Jay Bahadur uncovered that the “sole criteria for a recruit is that he has to own a gun and be ‘a hero, and accept death’ - qualities that grace the CVs of many local youth.”316 This is further echoed in other research which suggests that recruitment into piracy is “basically open to any Somali with a firearm or a...skiff.”317 According to Sarah Percy and Anja Shortland, civil war and AMISOM created a “ready supply of small arms and those experienced in their use.”318 The remnants of the conflict in Somalia have resulted in piracy, but greed is motivating pirates to continue offending.

4.3 Conclusion

The greed and grievance concept explained violence and rebellion as macro causes that motivated Somalis into piracy. It linked the causes of grievances in Somalia, namely IUU fishing and toxic waste dumping in the mid-1990s, to the onset of piracy as a result of depleted fish stocks. While empirical evidence fails to confirm the nature and extent of overfishing and toxic waste dumping, these are likely causes of grievance-based piracy.

Furthermore, it revealed that profits earned through Somali piracy likely contributed to the evolution to greed-motivated piracy. The shift from piracy motivated from grievance to greed shows the motivation among Somalis to commit piracy has a greater impact locally, despite limited local infusion of ransom payments. Low income, and few legitimate employment opportunities in Somalia attracts many to piracy. Increasing ransom payments and recruitment by militia groups is indicative of piracy inspired by greed. The increase of ransom payments presents a strong argument for the lasting motivation high number of recruits into piracy.
PART THREE: PERSISTENCE
CHAPTER 5  WHAT CREATES A SUITABLE TARGET?

5.1 Introduction

The purpose of this chapter is to explain the suitable target element of routine activity theory in relation to Somali piracy. Access to suitable targets in the Gulf of Aden and off the Horn of Africa, helps explain the persistence of piracy. This chapter answers the question: are there risk factors that lead to the victimisation of vessels? In doing so, it explores risk factors that enable pirates to hijack vessels for ransom. This chapter discusses the four factors that make targets of piracy suitable.

The first section shows risks relating to specific types of vessels. Identifying specific vessel-types that are at the greatest risk of piracy could assist shipping companies in applying relevant target-hardening measures. This section analyses attacks by vessel type and explores reasons for their increased vulnerability.

The second section reviews risk factors associated with transport routes commonly used through the Gulf of Aden and off the Horn of Africa. This section determines why the Gulf of Aden and other transport routes around the east coast of Africa enable pirates to access suitable targets. It outlines the history of the Gulf of Aden and describes how piracy challenges the viability of the Gulf as a modern-day conduit for trade; the Gulf may therefore require securing to preserve its importance as a global trade route. To avoid piracy, many vessels reroute their journey around the Cape of Good Hope, adding significant cost and time. This section also shows other measures used by vessels to alter their routes in avoidance of piracy attacks. Undeterred by displaced vessels, the
pirates’ enduring motivation has led to a change in their *modus operandi* to attack vessels transiting further from the Somali coastline.

The third section considers policy-related factors that could place certain vessels at risk, specific to maritime flag states. It reviews whether lax policy controls and legal loopholes make vessels from certain states vulnerable to victimisation. This section looks closely at vessels belonging to open registries, commonly referred to as flags of convenience, to determine whether vessels registered to those flags face greater risk of piracy attack.

The fourth section considers weather patterns that could increase risk of piracy victimisation. Small skiffs used by pirates cannot operate in treacherous weather. Analysing weather patterns throughout the year reveals when and how piracy is affected and by extension, the safest times for commercial vessels to travel. A reduction in risk of piracy would be possible by altering the routine activities of vessels transiting the region.

**5.2 Question 2: Are there risk factors that lead to victimisation of vessels?**

Somali piracy occurs due to the opportunity provided by the proximity of busy shipping transit lanes namely through the Gulf of Aden and surrounding transit route. Routine activity theory holds that a crime results from the convergence of a suitable target, a motivated offender and the absence of capable guardianship. Or as the adage goes,
"opportunity makes the thief." Preventative measures undertaken by vessels could reduce feasibility of piracy attack. This section explores the risks that increase vessels’ vulnerability to victimisation, by drawing on evidence from published literature, statements from experts and IMB data.

5.2.1 Vessels suitable to piracy victimisation

The shipping industry has attempted to minimise vulnerability to piracy by identifying potential risks. Collaboration within the shipping industry developed guidelines that identified areas of risk aboard vessels, the Best Management Practices for Protection against Somalia Based Piracy (BMP). The purpose of the BMP guidelines is to provide vessel owners and operators an industry perspective on potential risks of piracy. These guidelines are neither mandatory nor legally binding. There is support from the IMO and others, which strongly recommend that vessels adopt the measures set out in the BMP guidelines to prevent risk of piracy. The following section tests the measures presented in the BMP guidelines to prevent attacks against available public sources, as well as expert opinion, to determine the accuracy of the advice provided to seafarers.

In the 10 years from 2002 to 2011, an average of 15,887 vessels transited the Gulf of Aden each year (see Table 3).
### Table 3: Suez Canal traffic, 2002 to 2011 (number)\textsuperscript{322}

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Carriers</td>
<td>2,681</td>
<td>3,212</td>
<td>3,359</td>
<td>3,741</td>
<td>3,676</td>
<td>3,886</td>
<td>4,048</td>
<td>3,166</td>
<td>2,781</td>
<td>2,601</td>
<td>33,151</td>
</tr>
<tr>
<td>General Cargo</td>
<td>1,706</td>
<td>1,741</td>
<td>1,787</td>
<td>1,739</td>
<td>1,670</td>
<td>2,101</td>
<td>2,069</td>
<td>1,862</td>
<td>1,618</td>
<td>1,395</td>
<td>17,688</td>
</tr>
<tr>
<td>Container</td>
<td>4,549</td>
<td>5,211</td>
<td>5,928</td>
<td>6,559</td>
<td>6,974</td>
<td>7,718</td>
<td>8,156</td>
<td>6,080</td>
<td>6,852</td>
<td>7,178</td>
<td>65,205</td>
</tr>
<tr>
<td>Other Vessels*</td>
<td>858</td>
<td>1,034</td>
<td>843</td>
<td>945</td>
<td>919</td>
<td>974</td>
<td>941</td>
<td>869</td>
<td>935</td>
<td>653</td>
<td>8,971</td>
</tr>
<tr>
<td>Total</td>
<td>12,267</td>
<td>13,997</td>
<td>15,175</td>
<td>16,554</td>
<td>16,831</td>
<td>18,507</td>
<td>19,009</td>
<td>15,456</td>
<td>15,736</td>
<td>15,336</td>
<td>158,868</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15,887</td>
<td></td>
</tr>
</tbody>
</table>

* 'Others' category is undefined, though it is likely that fishing vessels and dhows make up a high proportion as they are otherwise excluded. They are well represented in the region.

Since the *modus operandi* of Somali pirates is to attack steaming vessels, *slow and low* vessels are at greatest risk of attack.\textsuperscript{323} Slow vessels include various cargo vessels that steam below 18 knots (33 kilometres per hour).\textsuperscript{324} While most vessels can travel at speeds over 18 knots, reaching top speeds of 25 knots, the average vessel speed is 15 knots.\textsuperscript{325} The top speed of vessels depends on their cargo weight and other factors, though reported data indicates that vessels steaming at a speed over 18 knots avoid piracy attack.\textsuperscript{326} As such, steaming at a speed below 18 knots is a risk factor for piracy. Low vessels are those at greater risk of being boarded by pirates as their freeboard\textsuperscript{327} is less than eight metres in height.\textsuperscript{328} The BMP guidelines fail to identify the types of vessels considered *low*; however, Mr Hollihead from IMO, clarified the following vessels are considered low:

- bulk carriers;

\textsuperscript{324} Ibid.: 7.
\textsuperscript{327} The freeboard of a vessel is the distance between the water and the working deck [Transport Canada, "Freeboard" Government of Canada, [http://www.tc.gc.ca/eng/contact-us.htm#general](http://www.tc.gc.ca/eng/contact-us.htm#general)].
- chemical tankers;
- containers;
- dhows;
- fishing vessels;
- general cargo vessels;
- product tankers; and
- tankers (general).\textsuperscript{329}

While low and slow vessels are at greater risk, "a large freeboard alone may not be enough to deter a pirate attack."\textsuperscript{330} Those listed vessel types are low, although fishing vessels and dhows travel at higher speeds. Reported piracy data was analysed in this thesis to verify the accuracy of the risk to low and slow vessels (see Figures 10 to 12). Analysing the attacks against these vessels determined the accuracy of the risk of piracy on low and slow vessels.

Figure 10 shows the \textit{actual} or successful piracy attacks reported over the study period from 2002 to 2011, by vessel type. The Piracy Reporting Centre within the IMB collates the reported attacks data.


Figure 10 shows the ten most attacked vessel-types over a 10-year period and identifies that piracy attacks occurred more against general cargo vessels compared to any other vessel (n=56, 22%), followed by bulk carriers (n=48, 19%). The vessels most frequently attacked are almost all slow vessels, except fishing vessels (n=40, 16%), yachts (n=15, 6%) and dhows (n=12, 5%) totalling 27 percent. Most commonly attacked vessels are low. Taking into account the number of transits through the region by various vessel-types, one can determine the relative exposure to risk. General cargo vessels were attacked more than any other vessel types. Based on the number of general cargo vessels that transited the region, 0.76 percent were attacked (n=56 attacks, n=17,688 vessels transiting), while bulk carriers had a 0.32 percent relative exposure to risk (n=47 attacks, n=33,151 vessels transiting).

Figure 11 shows the attempted or unsuccessful attacks reported against various vessel types from 2002 to 2011. Against Figure 10, this provides a comparison of targeted vessels that were able to evade attack.

**Figure 11: Percentage of attempted Somali piracy attacks, by vessel type, 2002 to 2011**

Figure 11 shows similar results to Figure 10. Bulk carriers were targeted for attack in 26 percent of cases (n=181), followed by container vessels (n=104, 15%) and tankers (n=102, 14%). Further, Figure 11 shows that low and slow commercial vessels were the six most common vessel types for attempted attacks. The relative exposure to risk was greatest for bulk carriers compared with any other vessel type, at 0.55 percent (n=181 attacks, n=33,151 vessels transiting). While tankers and container vessels were targeted for attack just over 100 times each, exposure to risk was greater for tankers than for container vessels (n=33,853 vessels transiting, 0.3%; n=65,205 vessels transiting, 0.16%; respectively).

---

Ibid. 116
Figure 12 shows both the successful and unsuccessful, or the total piracy attacks reported from 2002 to 2011 by vessel type. This provides a clear overview of vessels targeted.

**Figure 12: Percentage of total Somali piracy attacks, by vessel type, 2002 to 2011**

![Graph showing percentage of piracy attacks by vessel type](image)

Across all vessels targeted, Figure 12 shows the vessels victim of the greatest number of attacks are bulk carriers (n=229, 24%), general cargo (n=140, 15%), and chemical tankers, tankers and containers (n=117, 12%; n=113, 12%; n=112, 12%, respectively). While this was the case for overall attacks, the relative exposure to risk was greatest overall for general cargo vessels (n=140 attacks, n=17,688 vessels transiting, 0.79%), followed by bulk carriers (n=229 attacks, n=33,151 vessels transiting, 0.69%). Looking back to factors that influence ransom payments in Chapter 4.2.2, general cargo vessels may have the highest relative exposure to attack due to the likelihood of ransom payment. Further research would be required to understand this fully. Figure 12 also shows the top five vessel types that are most prone to piracy attack fall into the low and

---

333 Ibid.
slow category. Figure 12 confirms the warning made to low and slow vessels in the BMP guidelines.334

This analysis shows that vessels with a low freeboard and slow speeds are at greater risk of piracy, with general cargo vessels at greatest risk. Countering these risk factors to reduce the threat of piracy may be a challenge for the commercial shipping industry. A freeboard could drop below eight metres once the vessel is laden with cargo. Heavily laden vessels are at greater risk of tipping if they increase speed or engage in evasive movements, as would be needed to evade an attack. Reducing the cargo to increase the freeboard height diminishes profits, particularly when profit margins are already low. Based on these factors, the analysis reveals that the most laden commercial vessels are suitable targets for piracy attack.

The BMP guidelines recommend travelling at speeds over 18 knots for vessels in high-risk areas.335 Faster speeds require higher energy consumption, which would have environmental and economic costs. Vessels carry fuel required to arrive at the destination without additional stops enroute. Travelling at faster speeds would burn fuel faster, thus requiring extra fuel adding significant cost and weight.336 Travel at higher speeds and reduced load weight may allow vessels to evade piracy attack, though according to piracy expert Giles Noakes from BIMCO, the actual risk of Somali piracy is “probably .00something” indicating low probable risk.337 This is further confirmed by

335 Ibid.: 6.
data presented earlier in this section. While this may be the case overall, the risk would be invariably higher for some vessel types, namely cargo vessels.

**Commercial Vessels**

Commercial vessels are at highest risk of piracy attack, with cargo vessels and bulk carriers among the highest relative exposure to risk of all vessel types. While attacks may occur against other vessels, there are many commercial vessels transiting the high-risk zone with both vessel and cargo of high value. Many of the vessels commonly attacked in the region have many similar characteristics (see Figures 13 to 15). Bulk carriers, general cargo vessels and chemical tankers are large vessels similar in their design and slow moving, placing them at greater risk of piracy.

Bulk carriers were victims of piracy attacks on 229 occasions (24%) of the total attacks during the 10-year study period (see Figure 12). Bulk carriers (see Figure 13) commonly transport goods including cereals, coal, ore, and cement and typically have a crew of around 20 to 30 on a large vessel, but often as few as eight for a smaller vessel.\(^{338}\) The fewer the crew aboard a vessel, the greater the risk of an attack. Pirates would likely have an idea of the likely crew size aboard a vessel based on previous experience and in some cases, interception of vessel intelligence.

---


119
Although similar to the bulk carriers, general cargo vessels are stacked with large containers (see Figure 14). General cargo vessels are often between 80 and 160 metres in length. Vulnerability to piracy is greater the longer the vessel, as this increases the number of available scaling points. Fewer crewmembers are required to operate cargo vessels during transit, which in turn places a cargo vessel at highest relative exposure to risk of attack. From 2002 to 2011, Somali pirates attacked 140 (15%) general cargo vessels (see Figure 12).
From 2002 to 2011, Somali pirates attacked 117 (12\%) chemical tankers (see Figure 12). These vessels transport chemicals in bulk, including acids and crude oil by-products.\textsuperscript{342} Chemical tankers are the third most commonly attacked vessels. The low freeboard and slow speed of chemical tankers increases the risk of piracy. Political motivations to commit piracy may place chemical tankers at greater risk of hijack, although most attacks in recent years have been driven by the desire for financial gain.

\begin{figure}[h]
\centering
\includegraphics[width=0.8\textwidth]{Figure15.png}
\caption{Chemical tanker\textsuperscript{343}}
\end{figure}

Collectively, of all vessels attacked by pirates, chemical tankers make up the largest proportion of any other vessel-type transiting the region, though the relative exposure to risk is 0.35 percent (n=117 attacks, n=33,853 vessels transiting). Repeatedly victimising similar vessel types would increase pirates’ confidence in methods of attack and the knowledge of the crew’s approximate response time. Somali pirates are opportunists, though the high proportion of large vessels shown in this section are victimised due to the combination of low and slow characteristics.

Fishing Vessels and Dhows

Fishing vessels and dhows - traditional sailing vessels local to the region - have low freeboards. Comparing attempted and actual attacks of fishing vessels (n=40 and n=15, respectively) and dhows (n=12 and n=2, respectively), if either of these vessels are targeted, it is highly likely to result in an actual attack. While having low freeboards, fishing vessels and dhows generally travel at high speeds. Fishing vessels and dhows are common in the Gulf of Aden and surrounding region, and have little protection against piracy attack, supported by data in Figures 10 and 11. The relative exposure to risk for total piracy attacks on fishing vessels is greater than dhows (n=52 attacks, n=8,971 transiting vessels, 0.61%; n=14 attacks, n=8,971 transiting vessels, 0.16%, respectively). Sixteen percent of all vessels attacked by Somali pirates are fishing vessels (see Figure 10). Figure 16 shows a typical fishing vessel.
Figure 17 shows a typical dhow commonly found around India, the Arabian Peninsula and Eastern Africa. Dhows are used for trade on short journeys.345

There is strong evidence that Somali pirates hijack fishing vessels and dhows to rebirth as motherships and use in future piracy operations.347 Fishing vessels and dhows are

---

346 Ibid.
347 Ibid.
most suitable for pirate motherships as they are large enough to hold many pirates and launch fast skiffs used for the attacks, while remaining inconspicuous within the region. While only two and five percent of all attacks occurred against dhows and fishing vessels respectively, there is opportunity for increased risk to these vessels due to the recent trend for piracy networks to attack and convert them into motherships. Due to the abundance of dhows and fishing vessels in the region, they do appear unsuspicious therefore provide a cover for pirate motherships. Authorities face a constant challenge to detect pirates, as many operate from rebirthed fishing vessels and dhows and claim to be fishermen when intercepted.348

Yachts

Somali pirates increasingly threaten yachts transiting the region. Data show that about half of all attacks against yachts are successful (actual attacks n=15, attempted attacks n=14). Yachts are the fifth most commonly attacked vessel type (see Figure 10). There are several reasons yachts may be at greater risk of attack. In particular, yachts generally have fewer crewmembers than large commercial vessels, allowing pirates to more easily overpower the crew and hijack the vessel. The relatively small size of yachts compared with a commercial tanker makes them easier to board, despite the ability to travel at high speeds. Yachts are generally expensive, which, coupled with the aforementioned factors, make them relatively attractive targets.

Yachters frequently transit the islands in the Indian Ocean, including the Seychelles, Mauritius and the Maldives, and African countries, such as Madagascar and Tanzania. The region is a known hotspot for attacks on yachts. Among others, in 2009 the Lynn Rival, owned by British yachters Paul and Rachel Chandler, was attacked enroute from the Seychelles to Tanzania. Figure 18 shows the Lynn Rival, which authorities found abandoned off the coast of Somalia. An undisclosed number of armed pirates overcame the couple at approximately 11pm. Their yacht was abandoned when the pirates transferred the Chandlers to another vessel. The attack against the Lynn Rival made international headlines and continued to raise concern for the Chandlers, who were held hostage for 13-months. After release, the Chandlers repaired their yacht and headed for the Caribbean.

Figure 18: Lynn Rival yacht

---

350 Ibid.: 35.
In 2011, the International Sailing Federation released an alert through the Maritime Security Centre - Horn of Africa advising yachts to avoid the Western Indian Ocean, Arabian Sea, Somali Basin and Gulf of Aden. Despite this alert, many yachts continue to navigate the region.

The threat: skiffs

Understanding the vessels used for attack provides insight into the pirates’ strengths and weaknesses. Typically, pirates conduct their operations from small skiffs powered by an outboard engine. Due to the high speed of skiffs, if vessels ignore pirates’ signals to stop, pirates would likely take chase and attempt to board the vessel. Figure 19 shows an ordinary skiff of a type commonly used in a piracy attack. According to three piracy trial transcripts from the Seychelles Supreme Court, pirate vessels often do not fly a flag and are unregistered. While these vessels are fast, their small size reduces their ability to operate well in all sea conditions. As such, pirates may have trouble attacking steaming vessels in poor conditions. The impacts of weather and sea on piracy attacks are discussed later in section 5.2.4.

353 International Sailing Federation, "Danger of Piracy," 62011),
357 The Republic of Seychelles V. Houssein Mohammed Osman and 10 Others, Supreme Court of Seychelles, Criminal Side No. 19 (2011); The Republic of Seychelles V. Abdkar Ahmed and Five Others, Seychelles Supreme Court, Criminal Side No. 21 (2011); The Republic of Seychelles V. Mohamed Ahmed Dahir and 10 Others, Seychelles Supreme Court, Criminal Side No. 51 (2010).
5.2.2 The Gulf of Aden as a major transport route

This section explores the risk of piracy attack along the routes through the Gulf of Aden and off the Horn of Africa. It provides historical background of the Gulf of Aden and clarifies the significance of the Gulf of Aden by connecting the Suez Canal to the Mediterranean and Red Sea. The Gulf of Aden is a major trading route used by many commercial vessels. This section analyses the risk of piracy in these regions and shows navigational displacement of vessels as a measure to prevent attack.

The Gulf of Aden’s legacy as a trade route

The Gulf of Aden has a rich history as a location of important global trade. It facilitates trade due to the geographical positioning of the Gulf of Aden, connecting east and west, as well as north and south. Increased international trade has seen a commensurate increase in shipping. Despite the risk of piracy attack, the route has remained one of the busiest global shipping lanes.

---

Figure 19: Typical skiff

---

Securing the Gulf of Aden is important to ensure the safety of international vessels and their cargo. The risk of piracy has forced many shipping companies to reroute their vessels around the lengthier Cape of Good Hope route, increasing the duration and cost of the voyage. Table 4 shows that historically, the Gulf of Aden has been an important trade route.

Table 4: Historical trade routes that crossed Somalia and the Gulf of Aden\textsuperscript{359}

<table>
<thead>
<tr>
<th>Ancient trade route</th>
<th>Route</th>
<th>Period of operation</th>
<th>Impact on the Gulf of Aden</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incense Route (overland)</td>
<td>The Incense Route, the main route for trading Indian, Arabian and East Asian goods, connected ports in Egypt, Northeast Africa, Asia, the Mediterranean and the Middle East</td>
<td>Until 2\textsuperscript{nd} century</td>
<td>The Incense Route was one of the first established and most important overland trade routes in history, relying on the Gulf of Aden for access to the Mediterranean from Africa and the Middle East.</td>
</tr>
<tr>
<td>Incense Sea Route</td>
<td>The Red Sea was a trading point for Egyptians, venturing to the ‘Land of Punt’ (Puntland) for the exotic wood.</td>
<td>24 BC</td>
<td>After one of the earliest recorded piracy attacks in Asia, the Romans destroyed Aden and favoured the Western Abyssinian coast of the Red Sea.</td>
</tr>
<tr>
<td>Silk Road</td>
<td>The Silk Road was an important trade route as it connected the eastern and western worlds. Along this route, silks travelled from Asia to Europe across both land and sea.</td>
<td>Until 15\textsuperscript{th} century</td>
<td>Somalia was on the northern overland route of the Silk Road, which connected with many distant countries, bringing from Somalia frankincense, aloes and myrrh.</td>
</tr>
<tr>
<td>Spice Route</td>
<td>The Spice Road connected Europe with the southern parts of Asia.</td>
<td>Until 15\textsuperscript{th} century</td>
<td>The Gulf of Aden was a conduit for trading of cinnamon, cassia, cardamom, ginger, and turmeric.</td>
</tr>
</tbody>
</table>

These trading routes, used from the earliest time, rely on the Gulf of Aden to connect the world via sea. Despite the risk of piracy, vessels choose the Gulf of Aden due to the direct access it provides to the Mediterranean Sea through the Suez Canal. This re-

establishes the need to explore measures to secure it against piracy attacks because of its ongoing role in maritime commerce.

The Suez Canal

The Red Sea and Nile River have been important trade routes for millennia. However, construction of the Suez Canal made the biggest contribution to international trade in the region. Construction of the Suez Canal began in 1859 and took 10 years to complete. The artificial waterway underwent several enlargements over many years, though it remains a single lane passage. Once opened, the Canal changed international trade by reducing the duration of a cargo ship’s voyage between Europe and Asia by almost three weeks. As such, the Suez Canal, which connects Europe with the Indian Ocean via the Gulf of Aden, became an integral part of modern sea trade. Figure 20 shows the distance between Mumbai and London traversed via the Suez Canal compared to the longer journey around the Cape of Good Hope.

---

361 Ibid.
The single lane of the Suez Canal is only 205 meters wide, forming a 'chokepoint'. As such, the Red Sea and the Gulf of Aden are often filled with slow moving and bottlenecked vessels, which leaves them vulnerable to piracy. The risk of piracy because of the clustering of inactive vessels is common in the Malacca Strait near the busy Singapore port, another chokepoint vulnerable to piracy attacks. Despite the significant risk of piracy, economic advantages influence the continued use of the Canal.

‘per piracy incident’ cost of approximately US$82.7 million.\textsuperscript{365} As the shipping industry already suffers from low profit margins, the impact of piracy is a significant financial burden.

**Opportunity for piracy due to access to the Gulf of Aden**

Access to busy transport lanes facilitates piracy. As noted previously, in the 10 years from 2002 to 2011, an average of 15,887 vessels transited the Suez Canal and the Gulf of Aden, providing abundant opportunities for pirates to attack. The Gulf of Aden, major ports along the east coast of Africa and Red Sea, as well as islands in the Indian Ocean, attract a constant supply of vessels. All else equal, the proximity of Somalia to vessels via these access points increases the risk of attack.

Marine transport routes are intended to avoid problem areas, such as reefs and sandbanks. Strict navigational routes are inapplicable to maritime transport on the high seas; unlike air travel, marine transit routes are flexible, consistent with the principle of the *freedom of the high seas*.\textsuperscript{366} They also allow commercial shipping companies to gain competitive advantage by travelling along a favoured route in order to save time or fuel consumption.\textsuperscript{367} Faster routing intelligence is regarded as shipping trade secrets. The risk of Somali piracy forced some vessels to alter their course. Figure 21 shows satellite images illustrating the shift of maritime traffic from December 2006 to December 2011.

Somali piracy has caused vessels to alter their transit routes. In Figure 21, the blue colouring shows vessel movement, a yellow line shows increased vessel movement, and the red area represents very frequent vessel movement. There is a clear shift in marine traffic when comparing the traffic each year from 2006 to 2011. Specifically, in 2006 the map shows that along the coastline of Somalia, there is a yellow line, indicating that vessels frequently traversed that route. By 2008, that space was only showing blue colouring and by 2011, the area reveals no vessel movement, represented by blank white spaces; increased piracy reduced the number of transiting vessels in the region.

from 2006 to 2011. Figure 21 shows that vessels altered their route to avoid or at least to minimise the risk of piracy attack along the Somali coast, which suggests the risk of piracy indeed caused rerouting of vessels further offshore.

By 2008, vessels began to alter their courses away from the Somali coast to avoid piracy. From 2002 to 2006, piracy occurred close to the coastline, where many vessels commonly transited. Vessels rerouted further out to sea to minimise the risk of attack and to be closer to the guardianship provided by naval patrols. Displacement shown in Figure 21 confirms that vessels altered their routes to minimise risk of piracy attack. Marcus Felson and Ronald Clarke note that “reducing opportunities does not usually displace crime...even crime which is displaced can be directed away from the worst targets, times or places.”

Counter-piracy measures have driven pirates to seek out more potential targets, in areas with fewer capable guardians.

There has been a noticeable trend of outward movement from the coastline of Somalia and expanding beyond the Gulf of Aden. Pirates are attacking in a region more than 1,200 nautical miles (2,222 kilometres) from the Somali coast towards the Arabian Sea to the north, Tanzania to the south, and beyond the Seychelles Islands to the east (see Figure 22).

It is clear from Figure 22 that there has been a significant shift in the location of piracy operations to maximise attacks and minimise risk of disruption by authorities.\textsuperscript{371}

Transport routes influence the suitability, by way of availability, of a target. To reduce risk of Somali piracy, vessels could avoid the region. The changes in routes indicate that vessels displaced their routine activities to minimise risk of piracy (see Figures 21 and 22). Despite relocation, many vessels remain suitable targets for attack, as pirates are following their prey away from the Somali coast. More pirates operating in a larger region increases ships' vulnerability to attack. It also shows that pirates remain motivated to attack, unfazed by vessels relocating further from the coast to avoid victimisation. This analysis clearly conflicts with the statement made by Felson and


\textsuperscript{371} See Appendix C for a further Google Earth image showing specific attacks in the piracy hotspots within the Horn of Africa, Gulf of Aden and surrounding regions in 2011.
Clarke, that “reducing opportunities does not usually displace crime.”372 When offenders remain motivated, the potential targets continue to be suitable. In the absence of adequate guardianship, piracy attacks are likely to displace and persist.

5.2.3 Flag state policy and legal protections

This section reviews whether certain countries - or flag states - could be exposed to an increased risk of piracy. Comparative analyses in this section show whether vessels of certain flag states are attacked more frequently than others particularly when the vessels are flagged to open registry states. Flag states differ in their policies of shipping compliance and policing of policies, as well as variations in legal coverage of piracy. This section aims to determine whether flag states’ policies and compliance with those policies increase risk of piracy.

Every country, whether coastal or landlocked, has the right to flag oceangoing vessels.373 It is the duty of the flag state to enforce jurisdiction over that vessel, whether in its territorial waters or on the high seas.374 Vessels can be owned and flagged by different countries. Vessels may also be flagged to open registries, commonly referred to as flags of convenience,375 or countries with international registries, such as France and Germany.376 As a result, states with open registries often have a larger fleet than many other flag states.

374 Ibid.: Article 94.
375 A vessel belonging to an open registry or flag of convenience is one that flies the flag of a country other than the country of ownership.
Somali piracy is not an act of terrorism motivated by political objectives.\textsuperscript{377} Despite analysis showing that pirates attack some flags more frequently than they attack others, pirates are not motivated to attack certain flags. Rather, pirates are motivated to attack vessels that appear suitable for attack, such as low and slow vessels.\textsuperscript{378} A Seychellois trial transcript involving the \textit{Topaz} confirms this belief:

Both parties accept that pirates hijack ships for a financial ransom. On the fateful day, they were on the high seas waiting to chance on any ship that came by and not in particular the \textit{Topaz}. No evidence on record tends to suggest that \textit{Topaz} or the government of Seychelles was being targeted.\textsuperscript{379}

Politically motivated terrorism aside, this section analyses whether pirates attack certain flags and identifies contributory factors making those flags vulnerable. Since the UN and IMO urge adoption of relevant treaties, this section explores whether adoption of those treaties lowers risk of piracy attacks and guides states in the aftermath of an attack. Examination of the risk of piracy on vessels flying certain flags provides valuable insight into possible protective measures that vessels may adopt.

\textbf{Open registries and risk of Somali piracy}

Commercial vessels often have interested parties from across the globe: owners from one country, flagged by another, crewed by yet another and containing cargo exported

\textsuperscript{379} The Republic of Seychelles \textit{V. Mohamed Ahmed Dahir and 10 Others.}: paragraph 42.
and imported from several nations. The flag state holds jurisdiction, responsibility and
decision-making over the vessel, cargo and crew. Since international piracy laws
have universality, any country may claim legal jurisdiction. When a vessel is
victimised by pirates, the flag state may decide whether to investigate and prosecute.
If the flag state lacks the necessary infrastructure and legislation to prosecute, the pirates
are likely to be released without any charges. In such cases, other jurisdictions could
investigate and prosecute. The lack of legal infrastructure might increase risk of attacks
on vessels flagged to those countries based on the perceived low risk of prosecution.

Open registries often operate in developing countries seeking to gain market share of
foreign investment by offering advantages for their shipping services. By flagging a
vessel to an open registry, a shipowner minimises its fees payable to charter the vessel,
making it cheaper with fewer formalities than registering a vessel to a developed
country. Panama has the largest registry of foreign vessels. Some advantages of
registering a vessel under the Panamanian flag include:

- low costs and discounts for fleet registrations of three or more vessels;
- no minimum tonnage for vessels registrations;
- no nationalities restrictions, any person or company may register a vessel under
the Panama flag;
- quick and efficient registration process;

---

381 House of Commons, "Piracy Off the Coast of Somalia," House of Commons Foreign Affairs
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf.: paragraph 82;
383 C J Chivers, "Seized Pirates in High-Seas Legal Limbo, with No Formula for Trials," The New York
formula-for-trials.html?_r=1&emc=eta1.
• dual registration in another flag state;
• no requirement to have re-survey by a member of the International Association of Classification Societies before registering; and
• tax-free environment on income generated in international trade.\textsuperscript{384}

Open registries have a negative connotation of having limited regulation over their vessels. Dating back to the 1920s, open registries emerged as a way to avoid strict regulation by re-flagging a US vessel to Panama.\textsuperscript{385} Despite the original purpose of open registries, today there are mixed suggestions as to whether open registries adhere to high standards and assert regulatory control over vessels flagged to them.\textsuperscript{386} In 2007, the Committee of the Paris Memorandum of Understanding on Port State Control, sought to resolve speculation about poorly operating flags by introducing the \textit{black-grey-white} list.\textsuperscript{387} This list publicises the operating standards of flags, which shames flags in order to induce them to meet international operational standards. Vessels flagged to an open registry must be classed by a classification society and have Protection and Indemnity (P&I) third party liability cover, like all vessels from all flag states.\textsuperscript{388} Open registries reportedly adhere to the necessary checks and balances, but operate at a lower cost, according to a representative from an international shipping

advocacy company.\textsuperscript{389} This accounts for why approximately 49 percent of all registered vessels are flagged by open registries (open registry flagged vessels \( n = 19,084 \), total vessels registered \( n = 38,988 \)).\textsuperscript{390} As well as having the largest fleet of foreign vessels, Panama has the largest number of vessels registered to it compared to any other flag state \( ( n = 6,413 ) \) (see Table 5). China has the largest fleet of a non-open registry with 2,030 vessels registered to its flag.\textsuperscript{391} Pirates attack vessels flagged to open registries more than other flags, though as Table 5 shows, the relative exposure to risk is similar to that of vessels flagged to countries not operating open registries.

*Table 5: Fifteen highest open registry flag states by the number of registered vessels and Somali piracy attacks, 2002 to 2011*\textsuperscript{392}

<table>
<thead>
<tr>
<th>15 Flag states most prone to piracy</th>
<th>Vessels attacked* (n)</th>
<th>Vessels victimised* (n)</th>
<th>Open registry?</th>
<th>Vessels transiting the Suez Canal (n)*</th>
<th>Vessels attacked* (%)</th>
<th>Vessels victimised* (%)</th>
<th>Total relative exposure to risk (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panama</td>
<td>36</td>
<td>136</td>
<td>Yes</td>
<td>3701</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>13</td>
<td>20</td>
<td>Yes</td>
<td>473</td>
<td>3</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Malta</td>
<td>12</td>
<td>43</td>
<td>Yes</td>
<td>967</td>
<td>1</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>11</td>
<td>59</td>
<td>Yes</td>
<td>954</td>
<td>1</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Liberia</td>
<td>10</td>
<td>74</td>
<td>Yes</td>
<td>2491</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>St Vincent and the Grenadines</td>
<td>10</td>
<td>11</td>
<td>Yes</td>
<td>194</td>
<td>5</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>Taiwan</td>
<td>10</td>
<td>2</td>
<td>No</td>
<td>20</td>
<td>50</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>Yemen</td>
<td>10</td>
<td>7</td>
<td>No</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Thailand</td>
<td>9</td>
<td>8</td>
<td>No</td>
<td>64</td>
<td>14</td>
<td>13</td>
<td>27</td>
</tr>
<tr>
<td>India</td>
<td>7</td>
<td>10</td>
<td>No</td>
<td>140</td>
<td>5</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Italy</td>
<td>5</td>
<td>19</td>
<td>No</td>
<td>349</td>
<td>1</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Greece</td>
<td>5</td>
<td>15</td>
<td>No</td>
<td>564</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Singapore</td>
<td>6</td>
<td>30</td>
<td>No</td>
<td>844</td>
<td>1</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

\textsuperscript{389} Ibid.


\textsuperscript{391} Ibid.

* Attacked vessels refer to those where pirates have boarded and/or hijacked the vessel. Victimised vessels are those where vessels have been shot at or pirates have attempted to board, but have been unsuccessful in boarding and hijacking.

** This figure is an average based on the available data of a five-year period from 2007 to 2011.

While Taiwanese vessels show a higher percentage of *actual attacks* (50%) compared to other flags, there is somewhat consistent *victimisation* of vessels between all flags (ranging from 3% to 13%). Other non-open flag states, Thailand and India, experienced a comparatively high percentage of *victimisation* and *attack* against other flag states across the board. Among open registries that transited the Suez Canal, Saint Vincent and the Grenadines experienced the highest relative exposure to risk of pirate attacks (11%). All other open registries were exposed to risk during less than 10 percent of the transits. Most flag states in Table 5 were able to deflect pirates resulting in low percentages of risk of *actual attack* across those that transited the Suez Canal. Similar results were found across all flag states; therefore, the results in Table 5 show the risk of Somali piracy does not increase for vessels flagged to open registries. There is indication, however, that some non-open flag states have higher relative exposure to risk of *victimisations* and *attacks* by pirates. Overall, the highest exposure to risk from 2007 to 2011 was realised by non-open registry Taiwan (60%). Taiwan also realised the highest actual attacks (50%) relative to exposure, while vessels flagged to non-open registry Thailand (13%) experienced the greatest exposure to victimisation among all vessels transiting the Gulf of Aden.

Flag states with large fleets of vessels have an increased number of attacks because of a higher proportion of vessels transiting the oceans. Based on this, the countries with larger fleets should therefore be more active in their response to piracy. Often, the vessel owner, flag state and crew belong to differing nations, complicating the due
diligence and onus of responsibility to protect against risk of attack. The analyses and conclusions drawn from Table 5 suggests that pirates attack vessels flagged to open registries at a greater frequency due to the high presence of vessels from those flags in the high-risk regions. One may thus conclude that pirates attack vessels without taking into consideration the vessels’ flag; therefore, flags with larger fleets are at greatest risk of attack.

Adoption of relevant international treaties and risk of piracy

Led by the Security Council and the IMO, the international community strongly encourages member states to adopt piracy-relevant treaties to contribute towards counter-piracy. This section analyses the relationship between the adoption of relevant treaties and the risk of piracy over a 10-year period. By way of caveat, some nations are excluded from this analysis, only the flag states whose vessels are most often attacked by Somali pirates are included. Assessing adoption of international conventions and domestic counter-piracy legislation among flag states, including open registry states, indicates whether failure to adopt certain policies increases risk of piracy.

International treaties act as a safeguard to protect the rights of a member state, their citizens and property. The purpose of treaties relating to piracy also provides the adoptive state with the necessary tools to develop national laws and policy consistent with international law. There are a number of treaties relevant to maritime piracy:

- Convention on the Law of the Sea (UNCLOS);
- International Convention for the Safety of Life at Sea (SOLAS);
- International Ship and Port Facility Security Code (ISPS);
• United Nations Convention against Transnational Organized Crime (UNTOC);
• Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships;
• Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation (SUA);
• Convention on the High Seas;
• International Convention on Standards of Training, Certification and Watchkeeping for Seafarers; and
• Measures to Prevent the Registration of Phantom Ships.

The international community strongly encourages adoption of relevant international treaties to meet the status quo by observing the same rules and protections. Based on this encouragement to comply, the assumption is that if member states fail to implement counter-piracy measures contained in relevant treaties, the risk of attack increases. It also implies that the ability to resolve piracy effectively in the aftermath of attack is lower.

This analysis involves the 10 most frequently attacked flag states from 2002 to 2011. In addition to the reported number of attacks, Table 6 shows adoption of relevant IMO and UN conventions, and open registry status. At the time of writing, there are 170 IMO member states and 193 UN member states; each of those listed in Table 6 are members of both the IMO and the UN.393

Table 6: Ten flag states most attacked by Somali pirates, by attack frequency, adoption of relevant treaties and status as an open registry, 2002 to 2011

<table>
<thead>
<tr>
<th>10 Flag states most attacked</th>
<th>Vessels attacked (n)</th>
<th>Rate of attacks (%)</th>
<th>UNCLOS</th>
<th>SUA 1988</th>
<th>2005 SUA amd.</th>
<th>SOLAS</th>
<th>UNTOC</th>
<th>Open registry?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panama</td>
<td>172</td>
<td>18.9</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Liberia</td>
<td>84</td>
<td>8.8</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Acc*</td>
<td>Yes</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>70</td>
<td>7.3</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Acc</td>
<td>Yes</td>
</tr>
<tr>
<td>Malta</td>
<td>55</td>
<td>5.7</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>44</td>
<td>4.6</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Singapore</td>
<td>36</td>
<td>3.7</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>33</td>
<td>3.4</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bahamas</td>
<td>28</td>
<td>2.9</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Italy</td>
<td>24</td>
<td>2.5</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>St Vincent and the Grenadines</td>
<td>21</td>
<td>2.2</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Total Somali piracy attacks 2002-2011</strong></td>
<td><strong>958</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* 2005 SUA Convention amendment

Accession to a treaty is the act of joining a treaty by a party that did not take part in its negotiations.

Table 6 shows the flag nation with the highest number and rate of attacks from 2002 to 2011, respectively, is Panama (n=172, 18.9%), followed by Liberia (n=84, 8.8%) and the Marshall Islands (n=70, 7.3%). Of those 10 flag states listed in Table 6, the states that have been attacked by Somali pirates least is Saint Vincent and the Grenadines (n=21, 2.2%). When looking at the 10-most attacked flags, all have adopted UNCLOS, the most important international maritime treaty. The flags in Table 6 consistently

---


adopted all policies, except for the 2005 SUA Convention amendment, which was only adopted by three flags. Results show that attacks occurred regardless of whether victimised flag states adopted all relevant policies.

Seven of the 10 most commonly attacked flag states are open registries (see Table 6). Despite adoption of relevant treaties adherence to the policies may be lax. Whilst the four most attacked flags are open registries, Hong Kong and Singapore were victims of attack in 44 and 36 cases, respectively, and neither are open registries. It is impossible to determine whether the risk of piracy is indicative of poor counter-piracy strategies aboard, despite adoption of relevant international treaties.

Based on the analysis reflected in Table 6, there is no clear link between the lack of adoption of relevant treaties and the risk of piracy attack. Panama, an open registry, has recorded the highest number of piracy attacks from 2002 to 2011, while having adopted all the major treaties except for the 2005 SUA Convention amendment. By comparison, Hong Kong, not an open registry, was the fifth most attacked flag state with 44 piracy attacks from 2002 to 2011 and adopted all but the 2005 SUA Convention amendment. Encouragement from the international community to adopt counter-piracy treaties assists in preparing for and dealing with piracy. The implementation of these treaties can, however be costly and impose obligations that some states would find difficult to meet. While treaties provide guidance and suitable frameworks, the analyses show that the adoption of treaties relevant to piracy does not decrease risk of piracy attack.

---

Domestic counter-piracy legislation and risk of piracy

According to UNCLOS, flag states have legal jurisdiction over their vessels and are responsible for resolving any legal issues that arise.\(^{397}\) Complications could prevent a state from prosecuting when there is no domestic piracy law, or the law inadequately reflects the modernised international counter-piracy legal standard.\(^{398}\) Piracy has exposed the inadequacies of domestic counter-piracy legislation in many countries, in particular Somalia. The necessity of relevant counter-piracy legislation is paramount to control piracy through prosecutions and so, the UN strongly encourages legal modernisation.

To resolve the problem of inadequate domestic legislation against piracy, the IMO sought to review its members' legislation. On 23 December 2008, the IMO requested all members' counter-piracy legislation be submitted for review.\(^{399}\) Forty-four countries submitted their counter-piracy legislation for review to IMO and UN Division for Ocean Affairs and the Law of the Sea (UN/DOALOS), a further 12 submitted their legislation only to UN/DOALOS. Five provided their counter piracy legislation only to UNODC.\(^{400}\) Referring only to the 10 most attacked flag states by Somali pirates from 2002 to 2011, Table 7 shows those member states that provided their counter piracy legislation for review and where available, the relevant penalties.

Table 7: Ten flag states most attacked by Somali pirates, by legislation and penalties\(^{401}\)

<table>
<thead>
<tr>
<th>Flag state</th>
<th>Provided counter-piracy legislation for review?</th>
<th>Legislation</th>
<th>Associated penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Bahamas</td>
<td>Yes</td>
<td>Commonwealth of The Bahamas’ Penal Code, Chapter 84, Section 404: Piracy</td>
<td>Convicted offenders of piracy or of any crime connected with or relating or akin to piracy, shall be liable to be tried and punished according to the law of England.</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Yes</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Italy</td>
<td>Yes</td>
<td>Italian Maritime Code, Article 1135: Piracy. Other offences relating to piracy:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Article 1136 (Ships under suspicion of piracy);</td>
<td>• Anyone who commits an act of depredation to the detriment of the crew and the vessel, or violence shall be imprisoned for between 10 and 20 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Article 1137 (Robbery and extortion committed by the crew along the Republic coast);</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Articles 1138 (Seizure of the ship or the aircraft); and</td>
<td>• Suspicion of intention to commit piracy shall attract a punishment of between 5 and 10 years imprisonment.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Article 1139 (Agreement in order to take possession of the ship or the aircraft.</td>
<td>• Seizure of a vessel shall be punished by 10 to 20 years imprisonment in relation to piracy and between 3 and 12 for other clandestine purposes.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Intention to seize a ship may attract a penalty of a maximum of 3 years imprisonment.</td>
</tr>
<tr>
<td>Liberia</td>
<td>Yes</td>
<td>Chapter 15, Sub-Chapter C – Armed Robbery:</td>
<td>Offenders convicted under Section 15.32 or 15.33 are liable for 20 years imprisonment and parole after a minimum of 12 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Section 15.32 Armed Robbery; and</td>
<td>• If during the act the convicted threatens to commit or commits rape, the convicted is sentenced to life imprisonment with the possibility of parole at the age of 90 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Section 15.33 Hijacking.</td>
<td></td>
</tr>
</tbody>
</table>

\(^{401}\) United Nations Division for Ocean Affairs and the Law of the Sea, "National Legislation on Piracy".
• If death was the result of the criminal act, the convicted shall be hanged to death or receive life imprisonment without parole.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>The Criminal Code (Amendment) Act (Act No. XI of 2009). Definition of piracy; Sub-title IVB of piracy – Section 328N</th>
<th>Convicted pirates shall be imprisoned for 30 years, unless they caused death, in which case their punishment is life imprisonment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malta</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Panama</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Singapore</td>
<td>Yes</td>
<td>Piracy by Law of Nations (Admiralty Offences (Colonial) Act 1849), Section 130B: A person who commits piracy who does any act that by the law of nations is piracy</td>
<td>Punished with life imprisonment and caning with not less than 12 strokes. But if while committing or attempting to commit piracy he murders or attempts to murder another person or does any act that is likely to endanger the life of another person he shall be punished with death.</td>
</tr>
<tr>
<td>St Vincent and the Grenadines</td>
<td>No</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Table 7 shows available legislation for the ten states in which Somali pirates most frequently attacked vessels. While not all within the list submitted their counter-piracy legislation for review, it is assumed that all countries listed in Table 7 have modern operational counter-piracy legislation. Failure to respond to the UN’s request for reviewing legislation may suggest a lack of domestic laws or a lax attitude towards counter-piracy policy and legal regulation in those countries, including open registries such as Panama and the Marshall Islands. Conversely, failure to provide legislation for review may have no association with the lack of piracy legal and regulatory framework within the country.
International law provides that member states are able, but not required, to prosecute a pirate under their domestic legislation.\textsuperscript{402} To facilitate the increased prosecution of pirates, the UN and IMO have encouraged all states to develop a “comprehensive legal regime to prosecute pirates, consistent with international law.”\textsuperscript{403} All counter-piracy legislation shown in Table 7 meets the UN and IMO requirements. In operational terms, there is reasonable confidence that should a piracy prosecution take place in the countries listed in Table 7, it would be successful. Compared to another state where the legislation does not meet the UN and IMO requirements, prosecution is less likely, leading to the catch and release of pirates. The use of international courts has aided the prosecution of pirates involving flag states with limited legislation over counter-piracy as was discussed in Chapter 7.2.1.

This section has sought to show the relationship between Somali piracy and piracy-relevant policies. In particular, it sought to show whether vessels from states with open registries were more prone to piracy attack compared to those of other flag states, due to perceived lax policies and their reputation as lacking regulatory control. While the knowledge base may be insufficient to be certain, data suggest that the adoption of legal policies do not protect vessels from piracy attack. Nevertheless, control through regulation maintains the good order of vessels. Adherence to relevant policies should still be encouraged.

\textsuperscript{403} International Maritime Organization, "IMO Legal Committee Supports Follow-up to Deepwater Horizon and Montara (15 - 19 November 2010)," 15 - 19 November 2010, http://www.imo.org/MediaCentre/MeetingSummaries/Legal/Pages/LEG-97th-Session.aspx.: Legal Committee 97th Session.
5.2.4 Weather patterns conducive to piracy attack

This section reviews weather and the seasonal patterns to expose risk of Somali piracy attacks. Furthermore, it analyses data to discern the accuracy of the impact of seasons on the victimisation of vessels and to understand the seasons that present the highest risk for vessels transiting the Gulf of Aden and Horn of Africa.

Seasonal weather patterns affect pirates' ability to attack vessels. The media illustrated that an impending change of season would impact on the pirates' motivation to attack.404 Poor weather caused by monsoons in the region leads to treacherous oceanic conditions, which limits the pirates’ ability to board vulnerable targets from their small skiffs. To understand the impact of monsoons on piracy, this section analyses frequency of attacks and months in which attacks occurred. The data interpretations identify the safest months for vessels to traverse the region.

There are four seasons in Somalia; however, there is some dispute across the literature as to which months the seasons include. Rob Englebreton, from the Marine Meteorology Division of the Naval Research Laboratory, in California, identified the Somali seasons as:

- Northeast Monsoon, from December to March;
- Transition season, from April to May;
- Southwest Monsoon, from June to September; and
- Transition season, from October to November.405

405 Ron Englebreton, "Arabian Sea/Gulf of Aden Winds - S/W Monsoon Somalia" Naval Research Laboratory Marine Meteorology Division,
By contrast, researchers Mark Bradbury et al. and Robert Hadden identify the seasons in Somalia according to the following:

- **Jilaal**, dry season from December to March;
- **Gu** rains, from April to June;
- **Haga’a/ Xaga’a**, dry season from July to September; and
- **Deyr** rains, from October to November/December.\(^{406}\)

The monsoons cause poor weather off the coast of Somalia, which reduces suitable conditions for attack. Both monsoon periods originate around India and move westwards towards Somalia across the western Indian Ocean, where the pirates operate.\(^{407}\) During the southeast monsoon between June and September, the warm current surrounding Somalia moves north-eastward, while between December and February during the northeast monsoon, the reverse occurs causing coastal waters to move in a south-westerly direction.\(^{408}\) The monsoons cause an ocean process called the Somali Current.\(^{409}\) These ocean processes make the seas rougher and limit the ability for small skiffs to traverse the region safely. By contrast, it has little impact on larger commercial vessels commonly targeted by pirates.

Table 8 breaks down the seasons into months, as portrayed by Englebreton, and shows the total piracy attacks for each period from 2002 to 2011. The success rate is

---


\(^{408}\) Ibid.

\(^{409}\) See further discussion on the Somali Current in Chapter 10.2.1.
determined by calculating the percentage of the successful attacks from the total attack occurrence.

Table 8: Somali piracy rate of attack, by attempted and actual, 2002 to 2011\(^4\)

<table>
<thead>
<tr>
<th>Season</th>
<th>Month</th>
<th>Total attacks (n)</th>
<th>Actual attacks (n)</th>
<th>Attempted attacks (n)</th>
<th>Attack rate (%)</th>
<th>Average success (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Northeast Monsoon</strong></td>
<td>January</td>
<td>81</td>
<td>21</td>
<td>60</td>
<td>26</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>February</td>
<td>59</td>
<td>15</td>
<td>44</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>March</td>
<td>125</td>
<td>27</td>
<td>98</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td><strong>Transition Season</strong></td>
<td>April</td>
<td>116</td>
<td>40</td>
<td>76</td>
<td>34</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>May</td>
<td>102</td>
<td>21</td>
<td>81</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td><strong>Southwest Monsoon</strong></td>
<td>June</td>
<td>61</td>
<td>8</td>
<td>53</td>
<td>13</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>July</td>
<td>46</td>
<td>8</td>
<td>38</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>August</td>
<td>50</td>
<td>14</td>
<td>36</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td></td>
<td>September</td>
<td>64</td>
<td>21</td>
<td>43</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td><strong>Transition Season</strong></td>
<td>October</td>
<td>91</td>
<td>32</td>
<td>59</td>
<td>35</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>November</td>
<td>106</td>
<td>28</td>
<td>78</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td><strong>Northeast Monsoon (cont.)</strong></td>
<td>December</td>
<td>57</td>
<td>19</td>
<td>38</td>
<td>33</td>
<td>24</td>
</tr>
</tbody>
</table>

Table 8 suggests that during the southwest monsoon, piracy is less successful. The lowest rate of attack was June (13%), the first month of the southwest monsoon. The month with the highest rate of piracy attack is October (35%), during the transition season. The transition seasons have higher total attacks as well as higher attack rates than the months during the monsoons (April n=116, 34%; May n=102, 21%; October n=91, 35%; November n=106, 26%). The October/November transition season has a higher rate of attack (30%) compared to the April/May transition season (28%). Table 8 also confirms that from 2002 to 2011, the southwest monsoon period had a greater impact in reducing the occurrence of piracy compared to the northeast monsoon months.

This conclusion drawn from Table 8 also reveals that the safest month to transit the

---

high-risk region is June, when the attack rate was the lowest as, most likely; fewer pirates are operating due to poor oceanic conditions. As such, vessels were more frequently able to avert attack.

Figure 23 is a graphical representation of the actual and attempted attacks, by month during the 10-year study period from 2002 to 2011.

*Figure 23: Attempted and actual Somali piracy attacks, by month, 2002 to 2011*

Figure 23 shows that March has the highest number of attempted attacks, however as shown in Table 8, a modest attack rate of 22 percent. Overall, the transition seasons have high rates of piracy attack, though May was notably lower given the high attempted attacks (attempted attacks n = 81, attack rate = 21%). Generally the poor weather associated with the southwest monsoon begins towards the end of May, which reduces the rate of attacks during that month.412

This section has confirmed that during the monsoon seasons, piracy attacks are fewer. It is clear that some months during monsoon pose a lower risk of vessel attack than other months, such as March and May, which have low success rates considering the high total attacks (attack rate = 22% and 21%, respectively).

According to the BMP guidelines, if one area decreases in piracy attacks due to the monsoonal impacts, there are likely to be increases in other areas, such as Kenya and Tanzania, both unaffected by the monsoon seasons. Future research may determine spatial and temporal displacement of piracy in other parts of Africa, due to the monsoons affecting the Somali coast for parts of the year.

5.3 Conclusion

The purpose of this chapter was to discuss the suitable target element of routine activity theory in relation to Somali piracy. Access to suitable targets undertaking routine activities through the Gulf of Aden and off the Horn of Africa, helps explain persisting attacks of piracy. This chapter answered the question: are there risk factors that lead to the victimisation of vessels? In doing so, it explored risk factors that enable pirates to hijack vessels for ransom. Literature and data analyses determined that many factors contribute to creating suitable targets of piracy. Commonly assumed risk factors that make vessels vulnerable to piracy include vessel type, transport route, flag state and weather conditions. Most increase suitability as potential targets of piracy. Results indicate that a suitable target is vulnerable to piracy attack when incorporating the following factors:

---

**Vessel type:** Low and slow vessels are at highest risk, in particular general cargo vessels and bulk carriers.

**Transport routes:** The Gulf of Aden, Red Sea, ports along the Northeast African coast and the islands set in the Indian Ocean, provide a channel through which suitable targets transit, and become bottlenecked, presenting an opportunity for pirates to attack.

**Flag states:** While vessels flagged to open registries are at greater risk due to larger fleet size transiting the region, policy and legal safeguards are in place; therefore, they are at no greater risk than a vessel flagged to a developed country, such as Australia.

**Weather conditions:** During the monsoon periods but particularly during the months of April, September, October and December, the success rate of piracy attack is the greatest. Vessels transiting the region during those months should be particularly vigilant.

These findings confirm and enhance risks identified by the international community and within the BMP guidelines, providing additional operational advice to seafarers about risk factors and measures to minimise those risks of piracy.
PART FOUR: DESISTANCE
CHAPTER 6 ARE THERE CAPABLE GUARDIANS REGULATING AGAINST SOMALI PIRACY?

6.1 Introduction

This chapter identifies the guardians involved in counter-piracy and the measures they employ. Due to the global impact of piracy, the international community has come together to attempt to restore order in Somalia. The purpose of this chapter is to explain the capable guardian element of routine activity theory in relation to piracy. It questions: is the international community capable of guarding against Somali piracy?

In answering this question, the chapter reveals activities that contribute towards preventing pirates from hijacking vessels for ransom. It canvasses the counter-piracy measures taken, the agencies involved, and their unique roles as anti-pirate guardians.

The first section provides a matrix of the agencies currently involved in counter-piracy.

The second section describes the most prominent international organisations and their specific role in piracy control. Specifically, this section explores the activities undertaken by the UN, various central agencies, such as the IMO, and naval patrol coalitions. It discusses the types of activities conducted and any interconnection between organisations working to combat piracy.

The third section discusses private measures to combat piracy. Increasingly, private armed security is relied on by commercial vessels to prevent piracy attack. This section explores the benefits of private armed security and the potential downsides. It also discusses the role informal regulators, such as insurance companies and vessel classification societies, play in the prevention and control of piracy.
Finally, the gaps in the counter piracy response are discussed, focusing on the ongoing problem of *catch and release*.

### 6.2 Question 3: is the international community capable of guarding against Somali piracy?

The international community reacted to the spike in Somali piracy by adopting several strategies aimed at regaining control in the affected region. Those strategies have undergone changes since their inception, evolving along with piracy itself. The international community consists of a wide range of stakeholders interested in creating safe and secure transit routes through the region, and in bringing pirates to justice. While the international measures delivered some success, factors such as financial limitations, lack of political will, and the vastness of the seascape where pirates operate inhibits long-term, sustainable achievement. The international community has the capability to regain control within the region, though it faces several challenges. The piracy control strategies rely on ongoing support from governments and private entities. A holistic strategy comprised of measures that target specific aspects of piracy, namely decreasing the supply of motivated offenders and the intensity of their motivation, protecting suitable targets, and providing greater strength through enhanced guardianship, should have the most enduring impact on the region in the long-term.
6.2.1 The counter-piracy matrix

Somali piracy is a global issue commanding and receiving an international collaborative response. There are several international organisations, governments, nongovernment organisations, private companies, think tanks, media groups and academics playing a role in the counter-piracy response. Finite financial resources, the instability in Somalia and the lack of priority given by many nations to countering piracy impedes the effectiveness of these efforts.

The pursuit of pirates requires a great investment of time and financial resources. Reasons for participating in counter-piracy activities may differ among stakeholders. Some may participate to protect their oil trade interests while others may seek to protect the livelihoods of their seafarers. The agencies operating in the counter-piracy space do not all link together; instead, they form a collection of contributors, or actors. Figure 24 shows a matrix of organisations involved in countering piracy and the specific roles they undertake.
Figure 24: Matrix of international community involved in counter-piracy response
d
<table>
<thead>
<tr>
<th>Initiative</th>
<th>Naval Operations</th>
<th>Vessel Self-Protection</th>
<th>Relieving the plight of Counter-piracy</th>
<th>Regional response</th>
<th>Somali engagement</th>
<th>Rule of Law</th>
<th>Coordination</th>
</tr>
</thead>
<tbody>
<tr>
<td>African Union</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>African Union Mission in Somalia (AMISOM)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact Group on Piracy off the Coast of Somalia (CGPCS)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declaration Condemning Acts of Violence Against Seafarers (Washington Declaration)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Djibouti Code of Conduct</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern and Southern Africa - Indian Ocean (ESA-IO) Regional Strategy and Regional Plan of Action</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>European Union (EU)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial Action Task Force</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Deployers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indian Ocean Commission</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intergovernmental Authority on Development (IGAD)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Contact Group on Somalia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Convention on Standards of Training, Certification and Watchkeeping for Seafarers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Maritime Bureau (IMB) Piracy Reporting Centre (PRC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Maritime Organization (IMO)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Seafarers Assistance Network (ISAN) SeafarerHelp</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>International Transport Workers' Federation and the International Bargaining Forum High Risk Area</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>INTERPOL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kampala Process</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>League of Arab States</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maritime Labour Convention</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maritime Piracy Humanitarian Response Programme</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New York Declaration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Atlantic Treaty Organization (NATO)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port and Coastal Nations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Anti-Piracy Prosecutions Intelligence Coordination Centre</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Save Our Seafarers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shared Awareness and Deconfliction (SHADE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strategy for the Danish Counter-Piracy Effort 2011-2014</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training Awareness and De-confliction (TRADE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combined Maritime Forces (CMF)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Kingdom Marine Trade Operations (UKMTO)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Nations Development Programme (UNDP)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Nations General Assembly</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Nations Office on Drugs and Crime (UNODC)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Nations Political Office for Somalia (UNPOS)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Nations Security Council</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>World Maritime Day 2011 - &quot;Piracy: Orchestrating the Response&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Activity implemented | Activity planned or in development | No activity implemented or planned |

The matrix shows that activities vary among actors, with only one group involved in each activity listed in Figure 24: the Contact Group on Piracy off the Coast of Somalia. These organisations contribute varying levels of financial support, maritime aid and capacity building, but in order to operate collectively, they all share information to some extent. Information sharing is one of the most important elements of the greater response to piracy. Resolution 1816 urged states to “cooperate with one another, with the IMO and...with relevant regional organizations.”\textsuperscript{415} With a pluralistic paradigm, actors may complete different tasks, but contribute towards the same goal, as shown through the combined efforts in combating piracy in Figure 24. The following sections detail the roles of some of the organisations central to the counter-piracy response.

\section*{6.3 The counter-piracy community of regulatory agencies: United Nations, its subsidiary organisations and their member states}

The United Nations organisation incorporates various bodies that work towards achieving the collective goals of its 193 member states. In relation to Somali piracy, these collective goals encourage adoption of relevant treaties and domestic legislation, the provision of naval assets in the high-risk region, prosecution and incarceration of pirates within that state, and the ceasefire and capacity development within Somalia. The collective efforts dealing with piracy have prompted several member states to adopt and update their membership to international treaties, and to create or amend relevant domestic laws.

6.3.1 The United Nations treaties

In 1926, the League of Nations drafted eight articles for the international suppression of piracy.\textsuperscript{416} Thirty-two years passed before those eight articles were included in UNCLOS in 1958 by the recently founded United Nations.\textsuperscript{417} Definitional challenges impeded the articles from being passed sooner. In 1982, the fourth version of UNCLOS was adopted, superseding the previous three versions.\textsuperscript{418} The current 1982 version of UNCLOS incorporates the most effective elements from earlier versions. Of all marine treaties, UNCLOS is the most important.

UNCLOS provides the international community with the definition of maritime piracy; article 101 states that piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;


\textsuperscript{417} John Braithwaite and Peter Drahos, \textit{Global Business Regulation} : 419.

UNCLOS does not have a definition for armed robbery against vessels at sea. The definition of armed robbery at sea was originally provided in the 2002 version of the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. The definition for armed robbery against ships was updated in 2010 to mean any of the following acts:

(a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;

(b) any act of inciting or of intentionally facilitating an act described above.

The major limitation of UNCLOS is the lack of inclusion of ‘territorial waters’ in defining maritime piracy. By definition, maritime piracy only occurs on the ‘high seas’. As such, the UNCLOS definition forbids vessels to enter foreign territorial waters in an attempt to pursue and intercept pirates; instead, according to the definition, armed robbery at sea could only occur in territorial waters. Further complicating this, once a pirate vessel enters territorial waters, maritime piracy by definition, no longer applies.

---

as the act no longer occurs on the high seas. As such, pirates could seek sanctuary from counter-piracy patrols in territorial waters, as these regions are pirate-safe zones.

Territorial waters are the 12 nautical mile zone (22 kilometres) off every coastline. The UN and the Somali Government authorised temporary access of naval vessels into their territorial waters to control piracy. Access to territorial waters gives naval patrol greater opportunity to intercept pirates close to shore.

The IMO SUA Convention is also relevant to piracy; however, it makes no specific mention of ‘maritime piracy’ or ‘armed robbery against ships’. The convention makes mention of acts that may endanger the crew or the safe navigation of ships. The SUA Convention provides jurisdiction to act against activities that threaten peace within territorial waters, though adoption is required. The SUA Convention allows a UN member state to investigate and extradite criminals for crimes committed in another member’s territorial waters. The Convention has relevance in the counter-piracy space by providing the capable guardians, by way of naval coalitions, the authority to fight piracy within territorial waters.

6.3.2 United Nations Security Council resolutions

The UN has a wide variety of bodies that are collectively participating in the counter-piracy response. The Security Council has a central role in the adoption and implementation of international decisions in conjunction with its member states. A number of these decisions are intended to combat piracy and promote peace and

425 Ibid.: Articles 7(2) and 11(1).
sustainability in Somalia. Norwegian foreign affairs representative and former chair of the Contact Group on Piracy off the Coast of Somalia, Carl Salicath, suggested that up to 25 percent of vessels are disregarding guidance set out in the UN treaties, giving rise to piracy attacks. Specifically, “commercial ships following these practices are, with a very few exceptions, not hijacked...[The UN treaties] are designed, even if pirates become technically more sophisticated...to prevent hijacking.”

The Security Council has an important role in countering piracy through the development of resolutions by harmonising the response to piracy. The introduction of these resolutions led to a greater understanding and awareness of piracy, challenges faced, and the means to control it. There is a consensus among the academic community, policy makers and the international community that increased peace, governance and guardianship ashore should contribute to improved counter-piracy efforts at sea.

Continued UN support for long-term measures, such as coast guards and re-establishing the rule of law should enable governance and increase capable guardianship.

The Security Council responded to requests from the TFG and member states to respond to piracy. The Security Council introduced Resolution 1816, the first relating to piracy, in June 2008. In that resolution, the Security Council emphasised its concern about the:

> threat that acts of piracy and armed robbery against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, the

---


428 See Appendix D for the evolution of Security Council resolutions in relation to Somali piracy.
safety of commercial maritime routes and to international navigation.\footnote{429 United Nations Security Council, "Resolution 1816, S/RES/1816 (2 June 2008)": preambular paragraph 2.}

Through Resolution 1816, the UN’s goal was twofold. It strongly urged the TFG to improve governance within Somalia, with the support of the international community and UN member states. It also made a strong commitment to control piracy. The specific purpose of Resolution 1816 was to reduce the opportunity for pirates to attack by increasing guardianship in the high-risk region. The Security Council authorised member states cooperating with the TFG to fight piracy by:

- entering Somali territorial waters; and
- using all necessary means to repress acts of piracy and armed robbery.\footnote{430 Ibid.: paragraph 7.}

This in reality translated to air and sea patrols of the region to intercept and prevent piracy attacks. By early 2009, naval coalitions from the European Union Naval Force (EU NAVFOR), the North Atlantic Treaty Organization (NATO), and the Combined Task Force (CTF) as well as other naval vessels from non-allied countries, positioned themselves in the Gulf of Aden and along the Somali coastline. To reduce the risk of attack, the naval coalition escorts vessels transiting the region, as further explained in section 9.4.2.

The anticipated outcome of paragraph seven of Resolution 1816 was to deny Somali pirates the opportunity to intercept vessels and threaten attack.\footnote{431 Ibid.: paragraph 7.} The result of increased guardianship by the naval patrols has motivated pirates to construct more innovative
means of attacking vessels. Pirates responded by increasing the use of motherships. As noted previously, motherships are generally vessels that have been hijacked, stripped and rebirthed as *phantom ships* for pirate use. Pirates use high-speed skiffs with outboard motors to attack. According to Holihead from IMO, dhows are generally used as motherships as they are larger than skiffs and generally have a low freeboard which allows the pirates to launch skiffs easily into the ocean. Research shows that pirates live aboard motherships for months at a time to maximise opportunity for attacks. The innovative *modus operandi* of pirates led the UN to refresh Resolution 1816 in response to the emerging challenges.

Due to the scale of Somali piracy and its wide-ranging impact, the Security Council encouraged a combined effort to meet the overarching goal. While not all countries agree on all decisions about how best to combat piracy, a US Government representative noted that “Somali piracy is the only issue that has brought all the nations together and united them with the same response...except Somalia, they are being difficult, which is disappointing.” While these combined efforts have led to some success through increased security and target hardening, the pirates remain motivated to offend. Cooperation is essential to the success of the counter-piracy response. At every meeting, the Security Council reiterates the need for cooperation among the international community in suppressing piracy, making mention of the roles of local coast guards, regional organisations and coordinated efforts among member states. The

---

combined measures to combat piracy encouraged by the UN have been progressed by many UN member states.

**Gatekeepers of the Somali arms embargo: policing the movement of weapons**

The Security Council is responsible for managing the Somali arms embargo, established in 1992. Resolution 733 formalised the arms embargo as a result of the "rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict." Since pirates rely on weapons, enforcing the arms embargo is essential. The embargo applies "until the Council decides otherwise." The Security Council created the Somalia Sanctions Committee through Resolution 751 to manage adherence to the arms embargo.

Despite the efforts of the Somalia Sanctions Committee, there have been breaches of the embargo. In 2003, the Committee informed the Security Council that over a period of six months to November 2003, weapons arrived in Somalia in varying quantities, originating from or rerouted through Djibouti, Eritrea, Ethiopia, the United Arab Emirates and Yemen. Kenyan terrorists intercepted some of these weapons. In response to these breaches, the Somalia Sanctions Committee called for a 'blacklist' of:

- individuals or groups engaged in the illegal manufacture, trade, stockpiling, transfer, possession, transportation, insurance and

---

438 ibid.: preambular paragraph 3.
439 ibid.: preambular paragraph 3.
441 ibid.: paragraph 7.
financing of the acquisition of illicit weapons, with a view to proposing possible future actions against such violators.\textsuperscript{442}

Despite these efforts, arms continue to enter Somalia, facilitating piracy. It is uncertain whether sanctions have been imposed for breaching the embargo and, if so, how effective those have been.

The disregard for the UN-imposed embargo, which prohibits the unauthorised supply of weapons to Somalis, is a major challenge that hinders counter-piracy efforts. Since weapons are fundamental to piracy, member states’ compliance with this embargo would limit the ability to attack. Naval patrols are exempt from complying with the arms embargo adopted in Resolution 733, when aiding security development in Somalia and countering piracy.\textsuperscript{443} This meant that naval patrols could bring weapons into Somalia to use in defence against pirates, as needed. To authorise this motion, member states are required to seek approval from the Somalia Sanctions Committee before weapons enter Somalia.\textsuperscript{444} The Security Council extends this exemption at every subsequent meeting, despite ongoing concern about weapons delivery breaching the arms embargo.

\textbf{6.3.3 International Maritime Organization}

The IMO (see Photo 2) was established in 1959 as the UN’s specialised agency with responsibility for the safety and security of shipping and preventing marine pollution by
The IMO focuses its operations on cooperation to promote “safe, secure, environmentally sound, efficient and sustainable shipping.”\textsuperscript{446} The IMO supports the Security Council’s counter-piracy measures toward the safe passage of vessels through the high-risk region. The IMO receives support from its large marine industry partners, with which it consults when making decisions or recommendations to the Security Council.

\textit{Photo 2: International Maritime Organization Headquarters, Albert Embankment, London}\textsuperscript{447}

The IMO saw a potential gap in port security in the aftermath of the New York City terrorist attacks on 11 September 2001. In response, the IMO developed a security

\textsuperscript{445} International Maritime Organization, "Introduction to IMO" International Maritime Organization, http://www.imo.org/About/Pages/Default.aspx.
\textsuperscript{446} Ibid.
\textsuperscript{447} Jade Lindley, "Personal Photograph, 26 August," (2012).
measure applicable to vessels and port facilities to prevent terrorism.\textsuperscript{448} The International Ship and Port Facility Security Code (ISPS) was designed as the international platform to promote tighter security throughout the maritime sector.\textsuperscript{449} The ISPS is an amendment to the International Convention for the Safety of Life at Sea (SOLAS), in Chapter XI-2.\textsuperscript{450} Part A of the Code is mandatory and Part B recommended.\textsuperscript{451} The ISPS Code has several objectives, including:

- developing an international framework to determine and prevent security threats at port;
- establishing collaboration between national and international stakeholders to minimise security breaches;
- information sharing between stakeholders;
- providing forward planning to support changing security needs; and
- promoting confidence that adequate and proportionate maritime security measures exist.\textsuperscript{452}

The ISPS is applicable only to member states that adopted the SOLAS convention. As with all international treaties, the ISPS is difficult to enforce effectively without blanket adoption of SOLAS.\textsuperscript{453}


\textsuperscript{451} Ibid.


Specific to piracy, the IMO is instrumental in the implementation and maintenance of the Djibouti Code of Conduct. The Code resulted from the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden meeting, from 26 to 29 January 2009. Twenty-one nations are eligible to sign the Code (see Figure 25). At the time of writing, France, representing Reunion, was the only eligible nation that has not signed.

**Figure 25: Eligible Djibouti Code of Conduct nations**

![Map of the world highlighting eligible nations for the Djibouti Code of Conduct]

---


The Code incorporates and promotes Security Council resolutions. Code signatories agreed to cooperate consistent with pre-existing international law, with the following:

- the investigation, arrest and prosecution;
- seizure of suspect ships and property aboard such ships;
- the rescue of ships, persons and property victimised by Somali piracy; and
- conduct shared operations with signatory States and with navies from countries outside the region.\textsuperscript{456}

The Code strongly encourages cooperation. Signatories of the code share information with UN member states and the international community namely, UNODC and UNDP. Similar to UN resolutions, the Code requires signatories to review their national legislation to ensure compliance with the international laws on piracy and armed robbery against ships.

The IMO coordinates its efforts in cooperation with other actors, including other international organisations and those from the private sector. In 2007, after the attacks against the WFP vessels, the IMO signed a joint communiqué with the WFP to secure aid transportation through the high-risk region.\textsuperscript{457} There have been no reports of WFP-vessels bound for Somalia having been hijacked since, though WFP-vessels bound for other African nations have faced attack.\textsuperscript{458}

The IMO sought to provide vessels with a safe passage through the high-risk piracy region. In 2009, the Internationally Recommended Transit Corridor was introduced to facilitate the escort of vessels through the Gulf of Aden, protecting them from piracy.\textsuperscript{459}

The safe passage along the Internationally Recommended Transit Corridor relies on vessels reporting their status to the command and control centres, placing the responsibility onto the shipmaster (discussed further in Chapter 9.3.4).

The IMO maintains a database of reported piracy attacks. The IMO publishes Maritime Safety Committee circulars, which report piracy attacks, including location of attack, weapons involved, interception of authorities and outcome. The IMO primarily receives piracy information from the IMB which is “the first point of contact for the shipmaster to report an actual or attempted attack or even suspicious movements thus initiating the process of response.”\textsuperscript{460} The IMB relies on reports of piracy from local data collection sources, such as police, but also from ship-owners’ reports. The dataset represents a comprehensive sample of piracy attacks, although it invariably suffers from underreporting.\textsuperscript{461} The compilation of piracy data provides a longitudinal sample of piracy attacks necessary for understanding piracy trends; forecasting and contributing towards counter-piracy measures (see Chapter 8 for longitudinal data analyses).


The IMO policies promote the safe passage of vessels, which has specific application to Somali piracy. For oceangoing vessels over 300 gross tonnage, the IMO mandated all vessels to install the Automatic Identification System (AIS) by 2004 year-end. The AIS transmits information about position, identity, course, speed, and cargo between vessels and control centres. The AIS was introduced to prevent vessel collisions, by assisting skippers in safely rerouting their vessels; the technology is also applicable to avoiding pirates. The success of AIS relies on dependable information about nearby vessels. As noted, Somali pirates commonly use small ‘skiffs’ for their speed and small size. Depending on the vessel location, its antenna and the satellite base station determine the range of the AIS. The AIS may not always detect small vessels, such as skiffs; therefore, pirates traverse the region undetected by a vessel’s radar.

The AIS may aid pirates in hijacking vessels. Pirates could buy or access the AIS data from vessels hijacked by pirates, using it to guide them towards potential target vessels carrying valuable commodities. A pirate’s use of the AIS could provide an indication of the vessels’ cargo, the number of crewmembers aboard and the speed at which they are travelling, to determine which target to attack. On balance, however, the AIS is a valuable device that assists vessels in their journeys, despite the possibility of pirates obtaining and misusing the information.

---

Most recently, the IMO has approved the use of armed guards on vessels traversing the region prone to piracy.\textsuperscript{465} According to the BBC, by 2011 “one in 10 ships off the Somali coast already carry armed guards” however, “this number is likely to rise now that the UN has endorsed this practice.”\textsuperscript{466} Accordingly:

the IMO insists that the guidelines are not intended to institutionalise the use of armed, privately contracted security staff on ships and that they do not address all the legal issues that could be linked to their use.\textsuperscript{467}

The IMO extended the decision to allow armed guards on vessels transiting high-risk areas. Discussion of private armed guards appears later in this chapter (see section 6.4.1).

\subsection*{6.3.4 Contact Group on Piracy off the Coast of Somalia}

Security Council Resolution 1816 provides that any naval vessel can enforce the law of the sea rules on piracy in Somali territorial waters.\textsuperscript{468} It further encouraged international cooperation of measures against maritime piracy within the Gulf of Aden region providing authority to regional states to participate in policing, judicial, prosecutorial and prison-related activities. Six months after establishing Resolution 1816, the Security Council established Resolution 1851 which created the Contact Group on Piracy off the

\begin{thebibliography}{99}
\bibitem{466} Ibid.
\end{thebibliography}
Coast of Somalia (CGPCS) in 2009. The CGPCS comprises 24 member states that meet regularly to discuss the ongoing concern of Somali piracy. This international collaboration has a holistic approach in their response to piracy by attempting to address all contributing elements. To this end, the CGPCS established five working groups, which have a role in discussing and implementing counter-piracy solutions across those key areas:

- Working Group 1 – military and operational coordination, information sharing, and capacity building in regional states, chaired by the UK;
- Working Group 2 – judicial issues, chaired by Denmark;
- Working Group 3 – commercial industry coordination, chaired by the US;
- Working Group 4 – public information, chaired by Egypt; and
- Working Group 5 – disruption of financial networks, chaired by Italy.

The success of the working groups varies. The CGPCS held its 14th meeting on 1 May 2013 in New York chaired by the US. The members agreed on four specific areas that required further attention, specifically:

- To better integrate the CGPCS’s work with that of other formal institutional actors, including the Federal Government of Somalia, through deliberate and purposeful collaboration;
- Communicate more effectively to the international community at large and to Somalis themselves the multi-faceted on-going work in the CGPCS to counter piracy;
- Strengthen and focus the international community’s efforts to disrupt pirate networks ashore and their illicit financial flows, including through support to

---

forums that promote active and effective information exchanges among prosecutors and investigators, with a view to bringing to justice the key figures in these criminal organisations; and

- Proactively address the complex policy and legal issues associated with the use of embarked armed security and transport of weapons for self-defence on commercial ships, noting the need to respect applicable law, and further coordinating efforts ongoing in relevant organisations with these issues.\(^{470}\)

The CGPCS is working towards combating piracy by focusing on a number of contributing factors. The overarching theme within the four focus areas is to combat piracy by engaging collaboratively, within a framework of regulatory pluralism. Despite a reduction of piracy attacks in 2012, UN Deputy Secretary-General Jan Eliasson noted, “despite the sharp decline in piracy attacks in 2012 compared to 2011...these gains can be easily reversed if we do not address the causes of piracy.” Consequently, the CGPCS agreed to meet twice annually from 2013.\(^{471}\)

\section*{6.3.5 Naval patrols}

As requested by the Security Council, naval patrols provide guardianship in the region prone to piracy.\(^{472}\) Resolution 1816 authorised naval vessels and aircraft to enforce the


UNCLOS rules of engagement with pirates in Somali territorial waters, in liaison with the TFG.\textsuperscript{473} Guardianship through surveillance reduces opportunity for pirates to attack.

In 2008, piracy attacks were common within Somali territorial waters. Increased naval presence in that area caused pirates to shift the location of their operations.\textsuperscript{474}

Occasionally, pirates attack as far as 1200 nautical miles into the Indian Ocean.\textsuperscript{475} Despite many successes, effectively policing the large region is challenging for the naval coalitions. The region patrolled by the naval coalition is from the south of the Red Sea, the Gulf of Aden and the Western Indian Ocean, including the Seychelles.\textsuperscript{476} That region represents an area of almost 4 million square kilometres.\textsuperscript{477} As noted in 6.3.2, three coalitions formed in response to Security Council Resolution 1816, namely the European Union Naval Force; the North Atlantic Treaty Organization; and the Combined Task Force (see Table 9).

\textsuperscript{473} Ibid.: paragraph 2.
\textsuperscript{475} Ibid.: 10.
\textsuperscript{477} Ibid.
### Table 9: Naval coalition forces

<table>
<thead>
<tr>
<th>Coalition</th>
<th>Role in controlling Somali piracy</th>
<th>Contributing Navies</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union Naval Force</td>
<td>• Atalanta contributed to the creation of the Internationally Recommended Transit Corridor, which safely escorts vessels through the Gulf of Aden; • Atalanta escorted more than 100 African Union Mission in Somalia vessels since 2009; • it escorted a further 100 WFP vessels which delivers food to approximately 1.6 million Somalis daily; • aircraft are deployed in the region to provide aerial reconnaissance of the region; • EU NAVFOR operates 5 to 8 sea vessels and 3 aircraft, on rotation; and • the mission in the Gulf of Aden extends to December 2014.</td>
<td>• Austria • Belgium • Bulgaria • Croatia • Cyprus • Czech Republic • Denmark • Estonia • Finland • France • Germany • Greece • Hungary • Ireland • Italy • Latvia • Lithuania • Luxembourg • Malta • Montenegro • Netherlands • Norway • Poland • Portugal • Serbia • Slovakia • Slovenia • Spain • Sweden • Ukraine • UK</td>
</tr>
</tbody>
</table>

---

| North Atlantic Treaty Organization | \- Operation Allied Provider was a temporary operation between October and December 2008 upon request of the Security Council;  
\- Resolution 1918 in 2009 made NATO’s efforts official through Operation Allied Protector, which operated between 24 March and 29 June 2009;  
\- the operation began 17 August 2009 and has been extended several times ending 2014; and  
\- Operation Allied Protector involves between 6 and 10 vessels on rotation. |
|---|---|
| Combined Task Force | \- CTF-150 was temporarily positioned in the Gulf of Aden region to boost surveillance and counter Somali piracy; and  
\- CTF-151 emerged in January 2009 to provide a dedicated multinational coalition naval force to the Gulf of Aden and off the Horn of Africa. |

All three coalitions operate their counter-piracy activities in full compliance with Security Council resolutions, in cooperation with the independent naval taskforces and regional command centres. In addition to the naval coalitions, China, India, Japan, Korea, Russia, and Taiwan among others, have independently committed vessels to the

| North Atlantic Treaty Organization | \- Belgium  
\- Canada  
\- Denmark  
\- Germany  
\- Greece  
\- Italy  
\- Netherlands  
\- Portugal  
\- Spain  
\- Turkey  
\- UK  
\- US |
|---|---|
| Combined Task Force | \- Australia  
\- Bahrain  
\- Belgium  
\- Canada  
\- Denmark  
\- France  
\- Germany  
\- Greece  
\- Italy  
\- Japan  
\- Jordan  
\- Kuwait  
\- Malaysia  
\- Netherlands  
\- New Zealand  
\- Pakistan  
\- Portugal  
\- Saudi Arabia  
\- South Korea  
\- Spain  
\- Singapore  
\- Thailand  
\- Turkey  
\- United Arab Emirates  
\- UK  
\- US |
region in support of the counter-piracy response.\textsuperscript{479} The coordinated naval effort led to swifter response time to victimised vessels and, where possible, the arrest and remand of pirates.

**Case study: success of the 'full court press' strategy**

Since pirates employ innovative means to avoid interception, the international naval coalition must devise strategic plans to minimise opportunity. In 2010, a naval commander devised a counter-piracy approach borrowed from a basketball strategy.\textsuperscript{480} In basketball, the *full court press* is an effective defensive play which aims to reduce the ability of the offence to pass and play their own game.\textsuperscript{481} When applied to the interdiction of piracy, the full court press created an impenetrable stronghold of naval counter-piracy vessels along the coast of Somalia, which prevented pirates from heading out to sea.\textsuperscript{482} The full court press strategy had some short-term success against the pirates. Holihead stated that “the full court press meant that no small ships were able to leave the Somali coast – all were getting interrupted as soon as they left Somalia.”\textsuperscript{483} Pirate vessels, positioned beyond the stronghold prior to the strategy, continued attacking, though overall, the blockade resulted in a temporary reduction in piracy. Pirates responded to the strategy by altering their *modus operandi*. Pirates increased the use of motherships allowing them to hold between 60 and 100 pirates aboard and travel further distances than they could in smaller skiffs.\textsuperscript{484} Although reported attacks indicate

\textsuperscript{483} Ibid.
that pirates were already venturing further out to sea, the full court press strategy contributed to the expansion of operations well beyond the Somali coastline.

The IMB reports those distances from shore (i.e. range) considered highest risk each year, based on the reported attacks from the previous year. Figure 26 shows these high-risk Somali piracy zones as reported by the IMB.

**Figure 26: Distance from Somali coast considered high-risk due to piracy, by distance in nautical miles, 2002 to 2011**

*The IMB did not report a change between 2003 and 2004*

Figure 26 shows the high-risk zone moved substantially further offshore after 2008. In that year, the high-risk zone was 250 nautical miles from the Somali coastline. By 2010, the high-risk zone increased to 1,000 nautical miles. The Western Indian Ocean is too large to police with the available naval patrol vessels, particularly when the risk extends beyond 1,000 nautical miles from the African coastline. The IMB issues warnings based on the furthermost reported piracy attack. Pirate attacks beyond 1,000 nautical miles from Somalia suggest a change in *modus operandi* to avoid detection and to increase

---

access to suitable targets. Pirates attack well beyond 1,300 nautical miles from the Somali coast. In an attempt to be tougher on piracy, in late 2012, EU NAVFOR conducted an operation to disable equipment used in piracy. The air-based assault destroyed piracy equipment without deaths or injuries. The success of this ‘mission’ harnessed the element of surprise. No doubt, piracy gangs are since more vigilant in preparation for similar counterattacks. Subsequently, piracy reduced dramatically. Indications of continued motivation are evident through other forms of rebellion, such as kidnapping international aid workers (discussed in Chapter 3).

6.4 The counter-piracy community of regulatory institutions: private industry

Commercial shipping industries and their regulators have large stakes in the control of Somali piracy, and seek to bring greater safety to the transit of vessels. The effect of piracy on the shipping industry contributed to increased operational costs, additional mandatory insurance premiums, and potentially longer journey times. Private industry has rallied with the international community to contribute to the control of piracy.

6.4.1 Private security on the high seas

In order to deal with the unsafe transit routes, private security contractors have become increasingly common, particularly in war and post-war environments.\(^{489}\) In the piracy context, armed guards add guardianship by escorting vessels through the high-risk region, and providing on-board protection for vessels. These efforts serve to limit further inflation of insurance premiums, which could have otherwise increased as a result of the heightened risk of piracy.\(^{490}\) Persistent high risk in the region fuels the strong and increasing argument for private security.\(^{491}\)

Using private security in the maritime space is not a new concept. Liss assessed the role of private armed guards strategically placed in waterways with otherwise limited security, such as the Malacca Straits, around Bangladesh, and the Gulf of Aden.\(^{492}\) Due to the political instability in Somalia, the government is unable to secure the safe passage of vessels along the coastline, leaving them vulnerable to piracy.\(^{493}\) With increased attacks and ransom payments, armed guards moved in to assist navies to mitigate against the risk of piracy by escorting and protecting vessels traversing the region, using nonlethal weapons.\(^{494}\)

---

\(^{489}\) See for example Liss, 2008, Bayley and Shearing, 2011, Shearing and Stenning, 1981.
\(^{492}\) Carolin Liss, Private Security Companies in the Fight against Piracy in Asia, ed. Asia Research Centre (Perth: Murdoch University, 2005): 1.
\(^{494}\) Ibid.: 6.
Privatised seaborne security contractors have responded to the need for expanded security in high-risk waters, such as the Malacca Straits and the Gulf of Aden. Most private security contractors have close links with insurance and shipping industries.495

Private security companies recruit many British ex-Royal Marines who can endure high stress situations, as generally the contractors’ activities rely on quick reactions rather than carefully devised policy-based responses applied by navies as directed by their flag state.496 The roles of private security contractors vary, but generally seek to “secure the world’s oceans.”497 Services provided by private security contractors include:

- risk assessment and consulting;
- training crews, port authority personnel or military and law enforcement units, and vessel tracking;
- providing (armed) guards aboard vessels or vessel escorts;
- crews response, investigation and recovery of hijacked vessels and cargoes, and the rescue of kidnapped crewmembers; and
- fisheries protection and protection of fishermen against poachers and pirates.498

Private security services assist navies in deterring piracy in the high-risk area.499 The use of private security contractors has been somewhat controversial due to the questionable activities of some security personnel while engaged in other unstable

495 The Strategist, "Private Security Companies Called in to Combat Somali Piracy".
497 Carolin Liss, Privatising Anti-Piracy Services in the Strategically Important Waterways: Risks, Challenges and Benefits.: 2.
regions, such as Iraq and Afghanistan.\(^{500}\) While Resolution 1816 authorises any counter-piracy vessels to operate in Somali territorial waters, private security personnel do not have powers of arrest.\(^{501}\) Article 107 of UNCLOS provides that only member states’ navies have power of arrest, providing a degree of control over private security.\(^{502}\)

Operating under the prescribed rules of engagement, private security provides a necessary service protecting vessels transiting through the large region off the Horn of Africa.

It is estimated that more than 200 private security companies were operational off the Horn of Africa by mid-2012.\(^{503}\) Many of these security companies emerged to meet the rising demand for security aboard vessels; however, they often lack the necessary skills and resources. As a result, only the most reputable companies continue to operate.\(^{504}\)

Those that remain appear to maintain their professionalism, though private armed security groups are often the targets of criticism. Liss recalls incidents in Iraq whereby armed guards used excessive force and were involved in other controversial acts, and warns of the potential for similar conduct in the context of Somali piracy.\(^{505}\) There are concerns about the potential increased risk of harm to the vessel, cargo and crew due to a lack of regulation over the activities of armed guards contracted to protect or escort

---

\(^{500}\) Ibid.


\(^{504}\) Ibid.

\(^{505}\) Carolin Liss, *Privatising Anti-Piracy Services in the Strategically Important Waterways: Risks, Challenges and Benefits*.: 6.
vessels. Increased regulation and oversight of armed guards would minimise these concerns about their role off the coast of Somalia. Some activities conducted by armed guards, such as Top Cat Marine Security company may be in breach of the Somali arms embargo. Similar to the cooperative arrangements between the naval patrol coalitions, private security companies share information and weapons. The UN Monitoring Group on Somalia and Eritrea reported that an estimated 18 floating armouries hold up to 7,000 weapons, which are rentable by private security to avoid weapons confiscation by Egyptian authorities when vessels enter the Suez Canal.

Armed security have been criticised for their lack of communication with the naval patrols, coast guards and regional command centres, evidenced in a case in early 2012 when Indian fishermen were mistakenly killed by armed guards. Conversely, Stuart Morton revealed that when he was an armed guard team leader, it was a requirement to remain in close contact with his central base and to distribute information back and forth. While the role of private armed security is highly valuable, it could aggravate a standoff between a target commercial vessel target and pirates if adequate rules of engagement are not followed.

---

507 Carolin Liss, Privatising Anti-Piracy Services in the Strategically Important Waterways: Risks, Challenges and Benefits.: 8.
International standards seek to ensure the safety of all vessels and their crewmembers traversing the high seas; similar standards are set out in territorial waters. Some private security contractors have faced criticism for their conduct while at sea, resulting in contract termination. Specifically, noncompliance with the arms embargo led to the dismissal of at least one private security contractor.\footnote{Roger Middleton, "Piracy in Somalia: Threatening Global Trade, Feeding Local Wars," 2008. http://www.chathamhouse.org.uk/files/12203_1008piracysomalia.pdf.: 11.} Another major concern about the use of private security contractors is how contractors respond to piracy.

While the use of weapons aboard vessels is against international standards, the IMO agreed to trial the use of privately sourced armed guards aboard vessels to protect against pirates.\footnote{BBC News Africa, "Piracy: IMO Endorses Use of Armed Guards on Ships". http://www.bbc.co.uk/news/world-africa-13486015; International Maritime Organization, "Report of the Maritime Safety Committee on Its 89th Session, MSC 89/25 (27 May 2011)," London: International Maritime Organization. http://www.usecg.mil/imo/msc/docs/msc89-report.pdf.: paragraph 18.63.} This measure, introduced in May 2011, was to be temporary; not intended to become an institutionalised part of the shipping industry.\footnote{InterManager, "IMO Plans to Launch Global Standards for Armed Guards," InterManager, 18 May 2012. http://www.intermanager.org/2012/05/imo-plans-to-launch-global-standards-for-armed-guards/.} Currently, the international community does not oversee the activities of the private security contractors. Since 2011, however, stricter requirements seek to tighten control over who may be employed as an armed guard.\footnote{Stuart Morton, "Pers. Comm #20, 13 September; Ex-Maritime Armed Guard Team Leader," (London, 2012).} Accordingly, all armed guards must provide evidence of:

1. a medical letter confirming the individual is of a sound mental state;
2. STCW–95 Certificate, which includes first aid and firefighting;
3. testimonial from the armed forces, where relevant;
4. criminal background check; and
5. firearms training.\footnote{Ibid.}

\footnote{InterManager, "IMO Plans to Launch Global Standards for Armed Guards," InterManager, 18 May 2012. http://www.intermanager.org/2012/05/imo-plans-to-launch-global-standards-for-armed-guards/.}
\footnote{Ibid.}
One main side effect of transiting the high-risk region with armed guards is the high cost. A recent working paper from One Earth Future Foundation analysed the economic cost of Somali piracy for 2011 and 2012. The paper found that in 2011, each transit deploying armed guards cost approximately US$50,000. By 2012, the total cost rose by almost 80 percent to between US$1.65 billion and US$2.06 billion. The high cost of armed guards affects profit margins, shifting the additional expense to the consumer. Industry representatives argue that governments should pay the significant costs associated with armed guards, as they are responsible for protecting their people and property. Counter-arguments presented by government representatives maintain that maritime industries are conducting their business for profit, therefore they should be responsible for paying armed guards. Malaysian vessels might have a possible compromise to this issue, as they contract their military personnel to protect the crew and vessels, at a subsidised fee. The US also considered this option, but only in cases where military cargo is aboard the vessel. While armed guards aboard vessels transiting the high-risk regions prevent attack, there is concern about the long-term sustainability of their use. Due to the high cost and potential legal issues, it is questionable whether it is a reasonable solution to piracy in lieu of addressing the root causes of piracy. A shipping industry expert expressed concern that reliance on armed

---

guards could lead to a reduction of the naval coalitions patrolling the area, which would reduce guardianship.\textsuperscript{524}

Though intended as an interim measure, private armed security with improved standards may be a valid longer-term option until issues in Somalia are adequately addressed to de-motivate offenders. Though unevaluated, there is yet to be an attack against a vessel carrying armed guards. Until there is, private security remains an effective guard against piracy, despite the questionable practices that occurred in other international settings.

6.4.2 Insurance through mandatory war risk premiums for piracy hotspots

The insurance industry informally regulates vessels by requiring that they meet international standards for insurance eligibility. The maritime insurance industry and vessel classification societies collaborate to ensure safety of vessels operating at sea. Lloyd's of London is the oldest, one of the largest and most prestigious insurers of marine vessels and cargo. Coffee house owner, Edward Lloyd, developed the idea of Lloyd's in 1688, which has since grown to be a global leader in specialised insurance. Today, Lloyd's carries on the reputation that precedes it, operating in more than 200 countries worldwide (see Photo 3).
Around 200 years after the inception of Lloyd’s, the German competitor Allianz Global Corporate and Specialty was founded in 1891. Allianz is one of the larger insurance underwriters worldwide, operating in more than 70 countries (see Photo 4). Allianz Global Corporate and Specialty underwrites insurance for around 12 percent of approximately 30,000 tankers, container ships, bulk carriers and cargo vessels. 

---

insurance regulations ensure vessels maintain high standards of protection in the high-risk regions, increasing capable guardianship.

As piracy is a ‘peak’ risk, insurance underwriters take precautions to ensure vessels’ insurance coverage is adequate. Most insurance premiums cover against piracy in the regular hull and machinery cover. Vessels traversing piracy hotspots must obtain specific war risk insurance which covers against piracy.

The Joint War Committee added the Gulf of Aden to Lloyd’s War List in May 2008. The Joint War Committee consists of insurance underwriters who meet quarterly to exchange information on war risk, in particular, piracy. In late 2010, the list was amended to include any waters within the regions around the Indian Ocean, Arabian Sea, Gulf of Aden, Gulf of Oman, Southern Red Sea and Somalia. In 2013, the decision was reviewed and despite a reduction in piracy, the region remains on the

---

529 Ibid.
The factors that lead to a region being blacklisted as a war zone usually require that a heightened risk of piracy exists within that region and there is a potential connection with terrorism. War risk insurance protects the underwriter against ransom payouts. Not all insurance underwriters cover war risk in their policies, though the income from these policies is estimated to be approximately US$100 million per year in premiums. The number of insurers covering war risk has increased from three to six, with the expectation of more in the future. In some cases, the cost of obtaining the insurance may outweigh the risk of attack, leading to a greater number of vessels rerouting away from the high-risk zone.

According to Allianz, increasing insurance premiums is one of several responses to piracy; however this concept is dealt with by each insurer differently. Ongoing dialogue with clients involving potential risks, and providing risk management solutions, are other methods that could limit an increase in insurance premium costs. Encouraging vessels to avoid high-risk regions is another method to reduce the risk of

536 Ibid.: 33.
538 Allianz, "Piracy: An Ancient Risk with Modern Faces - an Insurer’s Perspective from Allianz Global Corporate and Specialty".
539 Ibid.: 18.
piracy. In response to piracy, many vessels opt to reroute around the Cape of Good Hope, which adds approximately three weeks to the journey when transiting from east to west.\textsuperscript{540} Avoiding the piracy hotspots should therefore also affect the cost of insurance premiums, as they would not require additional war risk coverage.

Somali pirates' \textit{modus operandi} involves the use of hijack, kidnap and ransom, which has not been a typical characteristic of modern piracy in other parts of the world.

Shippers without specific kidnap and ransom cover may be incorporated in \textit{general averages}, an element of \textit{hull and machinery} policies, which is "a voluntary agreement by the owner, charterers, insurers and others interested to pay a proportionate share of a vessel's expenses."\textsuperscript{541} Insurance under \textit{general averages} may, however be unreliable, as its purpose is not to address ransom demands.

\textbf{6.4.3 Regulation of counter piracy measures through shipping classification}

International maritime trade has a long history, and there was an early need to ensure safe and unified standards within the industry. Classification societies emerged to set a benchmark in shipping safety. Lloyd's Register Group (historically known as Lloyds's Register of Shipping) was established as an international shipping registry in 1760 to disseminate information about shipping.\textsuperscript{542} Similarly to Lloyd's of London, Lloyd's Register Group emerged from the coffee house and went on to distribute information about a ship's route, vessels being auctioned, insurance brokered, and other information

\textsuperscript{540} Ibid.: 8.
\textsuperscript{541} Ibid.: 9.
\textsuperscript{542} Lloyd's Register. "250 Years of Service" Lloyd's Register, http://www.lr.org/about_us/LR250/.
relating to ‘shipping intelligence’. Lloyd's Register developed into a source of formal approval for insurance companies after the Register Book Society at Lloyd’s was first published. The Register Book Society at Lloyd’s classified vessels by their safe construction, which became a benchmark for the shipping industry. In modern times, Lloyd’s is one of dozens of classification societies that enforce shipping standards, with more than 130 states in membership. Classification societies have an important role in protecting the shipping industry, requiring vessels to meet their high standards, otherwise rendering them uninsurable.

Lloyd’s Register belongs to the International Association of Classification Societies (IACS), which is the overarching body that regulates classification societies. Due to the size and complexity of the tasks undertaken by the larger classification societies, they have been referred to by some commentators as a new regulatory state; their role involves setting standards, enforcing those standards and applying sanctions for those that fail to conform. A set of strict criteria must be met to become a member of IACS; in return, members receive reputational prominence over other classification societies. As such, few classification societies comply with and therefore are members of the IACS. Since 2011, the following classification societies belong to IACS:

- American Bureau of Shipping;
- Bureau Veritas;

---

543 John Braithwaite and Peter Drahos, Global Business Regulation: 421-422.
544 Ibid.: 422.
545 Ibid.: 422.
• China Classification Society;
• Croatian Register of Shipping;
• Det Norske Veritas;
• Germanischer Lloyd;
• Indian Register of Shipping;
• Korean Register of Shipping;
• Lloyd's Register;
• Nippon Kaiji Kyokai;
• Polish Register of Shipping;
• Registro Italiano Navale (RINA); and
• Russian Maritime Register of Shipping.548

International classification societies have led to greater regulation and adherence to standards. Specifically on Somali piracy, classification societies enable the shipping industry to maintain high standards of on-board protection and adherence to international best practice. Vessels are likely to adhere to international standards regulated by classification societies, fearing reputational damage for defying them.

Linking international classification with insurance and international regulatory bodies (as recognised by the IMO) has had a positive impact on self-protection of at-risk vessels.

6.5 Get out of jail free card: *catch and release*

There are several possible outcomes of a piracy attack; however, Figure 27 charts the common scenario when an attack unfolds.

*Figure 27: Flowchart of Somali piracy attacks*

Several contributors may disrupt Somali piracy attacks. Among others, this flowchart implies the crewmembers see the pirates before boarding, allowing them time to respond. It also implies that naval vessels are patrolling near the attacked vessel. The expanse of the high-risk region patrolled by naval vessels may inhibit a quick response, giving pirates time to hijack the vessel. Assuming the scenario presented in Figure 27 occurs, it allows for three possible options for responding to the attack.

Figure 28 shows the options once the naval patrols intercept the pirates. The decision whether to formally arrest, investigate and prosecute is deferred to the national

---

authority. There are several factors to consider when deciding whether to go ahead with a prosecution, including existence of adequate evidence to secure a conviction.

*Figure 28: Decision making process after apprehending pirates*  

Naval vessels defer the decision to national authority

- If the intercepting national authority decides to prosecute, pirates are arrested and transferred to that country and the investigation begins
- A third State may prosecute pirates on behalf of the intercepting state. Pirates are extradited accordingly.
- *Catch and release*

As shown in Figure 28, there are three options for dealing with apprehended pirates.

While prosecution is always the best possible outcome, there are complications that may arise (explained in Chapter 7.2.1).

*Catch and release* undermines the international efforts by giving the pirates a *get out of jail free* card. Prosecutions and incarceration of Somali pirates is costly; for example in Europe, the trial is estimated at approximately €50,000 per suspect and incarceration €36,000 per year.  

For many countries, these costs outweigh the benefit of prosecuting pirates. *Catch and release* is therefore considered the only practical option; after confiscating the pirates' weapons, the authorities return the pirates to shore.

Despite ongoing challenges and gaps in the response, efforts to control piracy have brought many nations together. According to a US Government representative, Somali

---


piracy is the only issue on which most nations have come together in agreement.\textsuperscript{552} Although opinions vary on issues, such as using armed guards, views about countering Somali piracy are generally consistent. The exception is Somalia, burdened with an ongoing turbulent political situation. Initially, Somali officials failed to demonstrate support through action.

Over the study period, reported rates of attempted piracy attacks increased, despite a decrease in actual success. Due to the \textit{catch and release} method of dealing with pirates, there is little incentive to desist from their piratical ways.\textsuperscript{553} The inability to gather meaningful evidence to try pirates in court limits the options for naval patrol units when intercepting pirates. Where adequate evidence is lacking, the patrols provide the young Somalis with the opportunity to return home safely.

\textit{Catch and release} fails to incapacitate pirates. According to the Royal Navy, fewer than one in five suspects picked up around the Horn of Africa in the past four years have been prosecuted for piracy related offences.\textsuperscript{554} There is growing concern that \textit{catch and release} fuels further piracy. Statistics reveal that of 279 pirates detained by EU NAVFOR since November 2008, only 50 were indicted for crimes relating to piracy in Kenya, Italy and the Seychelles.\textsuperscript{555} The \textit{catch and release} method sends a message to the pirates that the risk of capture and prosecution is low.

\begin{itemize}
\item \textsuperscript{554} OCEANUSLive.org, "Weekly Pirate Activity Update: 7 - 13 April 2012," (2012); http://us4.campaign-archive1.com/?u=eff92e4124a86ce15ee04f687&id=f97957382d&e=1f92a3d7ae.
\item \textsuperscript{555} Ibid.
\end{itemize}
6.6 Conclusion

A variety of actors guard against Somali piracy. Each organisation has an important role within that framework. The UN, particularly through the Security Council and IMO decisions, has a leading role in the policy development and implementation from military, political, social and economic standpoints. Through these bodies emerged the CGPCS, which effectively brings together government, nongovernment, and commercial industry to discuss counter-piracy measures. The naval coalitions patrolling the region developed a partly successful strategy that reduced the pirate gangs leaving the Somali coast, but ultimately encouraged pirates to develop an innovative *modus operandi* to continue attacks. Shortcomings exist in the counter-piracy space, namely *catch and release*, which has been the target of ongoing criticism.

The interests of shipping, insurance and of classification societies contribute to the counter-piracy response by increasing security aboard vessels. Private security is an increasingly popular means of reducing the vulnerability of prospective targets transiting the high-risk regions, particularly since to date all vessels carrying armed guards have avoided attack. Carrying weapons aboard vessels is a new concept that is likely to take time to regulate adequately. In the meantime, the international community accepts the use of armed guards in the Gulf of Aden region, due to their impressive success against piracy.

Somali piracy requires a collaborative effort from the international community to increase capable guardianship. While each organisation in the counter-piracy space often works independently, collectively they are contributing towards increasing control of piracy.
CHAPTER 7 PROSECUTION AND INCARCERATION

7.1 Introduction

Alongside measures to prevent and control piracy, the international community continues to promote prosecution and incarceration to deter pirates. However, prosecution alone is insufficient as a means of achieving specific and general deterrence of pirates. As this chapter argues, prosecuting and sentencing pirates to a period in custody presents many challenges.

Section one discusses the international legal processes that enable the prosecution of pirates. It surveys the challenges in prosecuting pirates, and explores the challenges and benefits of developing internationally harmonised legislation. It also examines the specialised extraterritorial courts set up by the international community to assist in prosecuting pirates. Further, this section compares the legislation and associated penalties for piracy in a number of jurisdictions, with the standards recommendations by the UN. Finally, it reviews some prosecutorial successes.

Section two discusses the complexities surrounding the incarceration of pirates. It describes conditions in Somali and regional prisons, notes the issue of overcrowding and considers how this problem might be managed. It compares the prison conditions in Somalia and nearby countries with international human rights standards. Finally, this section reviews issues relating to prisoner transfer.
The third section provides a case study of the Seychelles, given its infrastructure for the prosecution and incarceration of Somali pirates is an example of best practice.

The final section of the chapter investigates the challenges that individual nations and the international community may face upon the release of pirates. Complications may arise in relation to application for asylum. Collectively, this chapter argues that increasing the certainty of punishment of pirates is essential to achieving general deterrence.

7.2 Prosecution

7.2.1 Legal process and jurisdiction

According to the theory of deterrence, which embodies three elements – certainty, swiftness and severity, motivation to commit crime could be reduced if the expected punishment is severe. Inconsistent severity in prosecuting and sentencing has undermined specific or general deterrence of pirates. The lack of consistency in prosecutorial practices and sentencing is a product of piracy being an international crime, crossing many jurisdictions with varying domestic piracy legislation, legal processes and associated penalties.

Out-dated and vague domestic laws determine the specific crime for which pirates are tried. While the Security Council adopted the counter-piracy responses in 2008, it has

---

not provided specific guidelines for prosecution.\footnote{United Nations Security Council, "Resolution 1816, S/RES/1816 (2 June 2008)".} It has, however, strongly encouraged its member states to prosecute alleged pirates in accordance with all relevant international and human rights law.\footnote{Ibid.: paragraph 11.} Article 100 of UNCLOS clearly and adequately defines piracy; states may incorporate this definition into their penal codes.\footnote{United Nations, "Convention on the Law of the Sea": UNCLOS Article 100. Defined in Glossary.} All nations should have adopted adequate counter-piracy laws, though some are lagging. This lack of commitment to update antiquated national legislation has led to inconsistent and disproportionate sentences handed down to pirates.

In 2006, the IMO attempted to support some African nations in updating their piracy legislation. The IMO encouraged states to review pre-existing and likely out-dated piracy legislation and replace with generic modernised piracy law.\footnote{Alan Cole and Glenn Ross, 'Pers. Comm #08, 26 October; A Cole, Piracy Programme Coordinator, United Nations Office on Drugs and Crime, Nairobi and G Ross, Consultant to United Nations Office on Drugs and Crime,' (London, 2011).} Although the underlying rationale was based on building capacity within those nations, implementation occurred haphazardly.\footnote{Ibid.} In 2009, the UNODC revoked those generic model counter-piracy laws and replaced with modernised legislation, meeting the requirements of current-day counter-piracy measures and seamlessly placing the new legislation within the national legal framework.\footnote{Ibid.} This example illustrates the potential challenges that need to be considered in a climate of fast and reactive decision-making with little time for consultation or reflection.

Resolution 1816, and each resolution since, encourages all member states to adopt counter-piracy legislation in their domestic criminal code and to engage in the
investigation and prosecution of pirates.\textsuperscript{563} Despite this, the naval coalitions commonly catch and release intercepted pirates. The logic behind catch and release causes discontent among the public and retributionists, particularly since approximately 80 percent of pirates intercepted are never prosecuted.\textsuperscript{564} Overwhelmingly, pirates are subject to catch and release in situations when expectations of prosecution success is limited.\textsuperscript{565} Instead, the pirates’ weapons are confiscated and they are released on land.\textsuperscript{566} Prosecution is a challenge because of the difficulties in collecting evidence at sea.

Pirates often throw their weapons overboard, and claim to be innocent fishermen when authorities approach.\textsuperscript{567} In one Seychellois case, pirates on trial denied all piracy charges and testified, “they were Somali fishermen who were fishing peacefully...[and] denied initiating any violence.”\textsuperscript{568} The claim by pirates that they are innocent fishermen causes confusion between pirates and legitimate fishermen.\textsuperscript{569} In another case tried in the Seychelles, alleged pirates told the court “that they were Somali immigrants who had paid between US$400 and US$800 to be transported to South Africa by the whaler to look for work.”\textsuperscript{570} Elsewhere eight defendants tried in Kenya, claimed to be human traffickers returning from Yemen to minimise their culpability.\textsuperscript{571} Unfortunately, the difficulties in establishing jurisdiction and securing the chain of evidence mean that the catch and release of pirates is a frequent outcome.

\textsuperscript{563} United Nations Security Council, "Resolution 1816, S/RES/1816 (2 June 2008)" : paragraph 11. See Appendix D.
\textsuperscript{570} Michele White, The Seychelles Counter-Piracy Model.: accessible via secure login.
Ideally, prosecution and incarceration of pirates should be carried out in Somalia. In 2012, Somalia adopted counter-piracy legislation allowing prosecutions within the country. The Kampala Process - a union between the TFG, the semi-autonomous Somali regions and regional African bodies - led Somaliland and Puntland to develop counter-piracy laws, followed later by Galmudug.\(^{572}\) Initially, it appeared that as the TFG was reluctant to see piracy as a crime, it was slow in creating counter-piracy law.\(^{573}\) According to Eric Thayer, “Somalia's pirates are not viewed as criminals by their own communities.”\(^{574}\) As part of the Somalia road map, the TFG was required to develop a counter-piracy law in consultation with the UNODC by December 2011.\(^{575}\) While the TFG failed to develop the law by the deadline, the Kampala Process ultimately enabled the TFG to develop counter-piracy legislation, which shows some progress. Nevertheless, as long as Somalia lacks functioning schools, hospitals and other basic services, eradicating piracy would remain a low priority.\(^{576}\) The international community and its members could help the implementation of the reforms by providing substantial technical assistance.\(^{577}\)


\(^{577}\) Paul Collier, *The Bottom Billion: Why the Poorest Countries Are Failing and What Can Be Done About It.*: 192.
Application of adequate legislation is essential to prosecute piracy. The Transitional Federal Charter provides for a federal court structure, consisting of the supreme and appeals court.\(^{578}\) While the piracy provisions of the Somali constitution were adopted in 2012, implementation is slow.\(^{579}\) In Somaliland and Puntland, piracy is dealt with in the assize section of the regional and appeals courts, as it carries a penalty of over 10 years imprisonment or the death penalty.\(^{580}\) While the new Somali government is showing more political will than the TFG to counter piracy through prosecution, experts agree there is greater urgency to deal with other domestic issues.\(^{581}\)

Five regional countries have committed to prosecuting and incarcerating pirates on behalf of Somalia and the international community. Kenya, the Seychelles, Tanzania, Mauritius and the Maldives receive substantial financial and judicial support to undertake this task. To facilitate prosecutions, all five countries have adopted appropriate legislation. Prosecutions have occurred on behalf of other states whose legislation remains out-dated or which find it logistically impossible to prosecute. UNODC liaises closely with nations assist in developing a suitable law to try piracy, but also to build capacity within those countries.\(^{582}\)

---


Harmonisation of counter-piracy laws

As noted previously, in 1926, the League of Nations drafted eight articles on suppressing piracy, formally recognising maritime piracy as an international crime.\(^{583}\) Thirty-two years later in 1958, the articles were included in the first edition of UNCLOS. Determining the responsibility for prosecuting pirates caused extensive delay in adopting these articles.\(^{584}\) This impeded member states from implementing consistent legislation as “one country’s pirates invariably turned out to be another country’s patriots.”\(^{585}\) The adoption of relevant counter-piracy treaties, is encouraged in Security Council resolutions, by the Africa Partnership Forum, and in the Lang Report as an important step to eliminate piracy.\(^{586}\) Further, the Security Council has directed its member states to take domestic action, by implementing legislation giving effect to these international treaties.

Harmonisation of legislation among states is necessary to remove the historical legacy, as many states still have legislation dating back to when swashbuckling pirates fought with swords and muskets. Applying historical legislation to modern piracy may reveal its inapplicability and could lead to acquittal. Implementing change, however, adds another barrier for many states, as it may be difficult to amend pre-existing legislation.\(^{587}\) Puchala noted:

Most states have long had national laws against piracy, but these embodied varying definitions of the outlawed practice and established varying procedures of prosecution and adjudication, as well as varying


\(^{584}\) Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 11.

\(^{585}\) Ibid.: 11.


\(^{587}\) Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach.": 11.
penal possibilities. In any event, national laws pertained to piracy either perpetrated by nationals or perpetrated in national waters. Such laws, as noted already, were often indifferently enforced, since national pirates preying upon foreigners were quite likely to be looked upon as heroes instead of villains. It often proved extremely difficult to convict a national in a national court of committing acts of piracy against foreigners.\(^{588}\)

Adopting common counter-piracy legislation allows states to work together efficiently without concerns of jurisdiction. Resolution 1976 - which supersedes previous resolutions on piracy - encourages states to criminalise piracy under their domestic law and:

consider the prosecution of suspected, and imprisonment of convicted pirates apprehended off the coast of Somalia, consistent with applicable international human rights law.\(^{589}\)

To resolve the lack of harmony, model legislation proposed by international and regional organisations provides governments with a template for developing or amending national legislation. This would provide not only a more efficient process for countries to implement counter-piracy responses based on national legislation, but also a way to ensure consistency in definitions and coverage of key issues on piracy.

Without uniform legislation, it is difficult to coordinate responses that cross territorial waters. In 1997, the Comité Maritime International developed model counter-piracy legislation. An agreement on the objectives of the model legislation was developed, but the events of 11 September 2001 distracted attention and the proposal lost

\(^{588}\) Ibid.: 11.

Six years later, the earlier version was redeveloped and the draft guidelines for model legislation were submitted to the 93rd Session of the IMO in mid-2007. The guidelines were “intended as a benchmark against which the content and effect of...national law may be measured”, and as such they could be unsuitable for incorporation verbatim into national legislation. The model legislation failed to gain support and has since been abandoned.

Model counter-piracy legislation may not be the best method to update criminal codes. UNODC and other experts have suggested that model legislation in the counter-piracy space is unfeasible and no more time should be spent attempting to resolve the many issues that make it unworkable. Security Council Resolution 1851 implied that the lack of domestic law impedes progress in combating Somali piracy. After Resolution 1851 was adopted on 23 December 2008, the IMO distributed a circular requesting member states to submit their national piracy legislation for review, which was responded to by most western countries; however, the response from the region surrounding the Horn of Africa was limited. In 2009, Resolution 1897 emphasised the need to create suitable legislation that member states could adopt to facilitate

---

prosecutions within their jurisdiction.\textsuperscript{595} UNODC representatives who attended the CGPCS Working Group 2 meetings noted that developing model legislation would not ensure that quality and applicable legislation is adopted in regional states.\textsuperscript{596}

Variations between national laws and the limitations of adopted international instruments challenge governments in littoral states to police their borders effectively, particularly in cooperation. This requires a regionally agreed response.\textsuperscript{597} As recognised by Mo, member states may be reluctant to develop a regional response because of the perceived high implementation cost, personnel required to support the program and a concern about potential lack of immediate benefit.\textsuperscript{598} Perceived jurisdictional complexity also inhibits some countries from prosecuting pirates.\textsuperscript{599} In such cases, transfer of pirates between jurisdictions occurs to establish the prosecution location.\textsuperscript{600} Implementing domestic counter-piracy legislation alone will not lead to conviction. Political will is an ongoing issue that prevents many countries from prosecuting pirates within their jurisdiction. It is also imperative for trust between governments to be established for a regional response to be effective. This could also include cost sharing, reducing the overall financial commitment for states. Some counter-piracy programs may also have crossover value to other regional and domestic issues. For example, Indonesia has adopted measures including dissuasion programs for pirates, which also


\textsuperscript{597} Liam Bellamy, "What Can Be Done to Counter Somali Piracy?," (Athens 2009). http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e5b3-1e9c-be1e-2e24-a6a8c7060233&lng=en&id=97573.: 14.

\textsuperscript{598} John Mo, "Options to Combat Maritime Piracy in Southeast Asia.: 350-351.


\textsuperscript{600} Ibid.: Evidence 95, paragraph 33.
focus on alleviating poverty and increasing the welfare of people in remote areas. This is an important step to reduce potential recruitment into maritime piracy and should be incorporated in the response to Somali piracy.

UNCLOS addresses complexities in jurisdiction. Applying UNCLOS does not require a clear link between the prosecuting state and either the pirate, victims or the vessel attacked. Universality means that any state regardless of their link can prosecute a pirate through UNCLOS. Increasingly, third states with political will and relevant domestic legal infrastructure are prosecuting on behalf of other countries, applying universality in their domestic counter-piracy legislation. This may reduce authorities adopting the catch and release of pirates because of a lack of legal framework or political will to prosecute.

While emphasis is placed on adopting modern and suitable piracy laws, they cannot always ensure conviction. Kenya, which shares a border with Somalia, was the first to provide extraterritorial courts to prosecute and incarcerate pirates. The Kenyan Government agreed to prosecute and imprison pirates on behalf of other UN member states that were unable or unwilling to prosecute pirates with no direct connection to their state. As such, from January 2010, Kenya remanded more than 100-suspected pirates awaiting trial. However, pre-existing prison overcrowding in Kenya sparked humanitarian concern for those incarcerated. To resolve this, UNODC funded by Australia, Canada, the US and others, donated a considerable sum to Kenya, which

---


resulted in significant structural and humanitarian improvements.\(^604\) Despite some positive outcomes, in November 2010, Kenya’s ability to prosecute on behalf of other member state\(s\) was further limited when “a Kenyan High Court judge ruled in a case involving nine suspects that the country had no jurisdiction over piracy committed in international waters.”\(^605\) These ongoing issues illustrate the need for another solution.

In order to resolve the limitations of extraterritorial jurisdiction in Kenya, the Seychelles, encouraged by a large donation from the European Union, offered its courts and correctional facilities to alleviate the pressure. The Seychelles relies on tourism particularly from yachters arriving from Europe, who have reduced in number substantially due to piracy.\(^606\) To show its strength, the Seychelles Supreme Court handed down a 22-year sentence for acts relating to piracy in January 2011.\(^607\)

In addition, efforts are being made to strengthen the judicial and prosecutorial infrastructure in Somalia to facilitate local trials.\(^608\) The UNODC has assisted the Somali Government by donating funds to refurbish courtrooms and prisons. This would allow prosecution of pirates within Somali jurisdiction. While these efforts assist Somalia in the long-term, there is speculation that local prosecutions could be unsuccessful simply because the country remains a state in crisis, with ongoing civil conflict, limited governance and poor legal infrastructure. Developing a harmonised

\(^{604}\) Ibid.


\(^{607}\) Michele White, The Seychelles Counter-Piracy Model.: accessible via secure login.

international response facilitated by a sound international and domestic legal framework is important for a sustainable response to piracy. Harmonised international law is a key component of the counter-piracy response, particularly in the development of regional measures, such as the Djibouti Code of Conduct.

Specialised piracy courts

It is not feasible to prosecute pirates before the International Criminal Court, as the crime of piracy is not included in the Rome Statute. The international community has debated whether specialised international piracy courts might provide the best solution to deal specifically and exclusively with pirates.609 The Lang Report first discussed introducing specialised piracy courts, along with 24 other recommendations detailing how the international community should respond to piracy.610 The purpose of a specialised court would be to overcome jurisdictional and logistical issues in prosecution.611 Specifically, Proposal 25 stressed the need for the creation of specialised courts to deal with piracy. A specialised court on piracy would operate similarly to the International Criminal Tribunal for Rwanda and use the courtroom facilities in Arusha, Tanzania.612

611 Ibid.: paragraph 14.
612 Ibid.: paragraph 122.

213
Building upon the research compiled by Lang, in June 2011, the UN Secretary-General developed a report discussing specialised piracy courts. The report cites a range of potential impediments to introducing specialised courts. Consultation with experts and other UN agencies, such as UNODC, UNDP and UN Political Office for Somalia (UNPOS), explored whether the use of specialised courts would be the most appropriate course of action. Lang suggested having three specialised courts, a specialised court each in Puntland and Somaliland and an extraterritorial specialised court in Arusha.

Estimates suggest that three years of training is required before international operating standards are met. The long lag-time before the courts are operational presents a major impediment in the use of specialised piracy courts.

Specialised piracy courts may provide a just and consistent response to ongoing prosecutorial challenges. In an attempt to resolve challenges in the courtroom, Resolution 1976 further adds to the discussion as to the potential introduction of specialised piracy courts. Working Group 2 debated this option, though outcomes remain unpublished. According to a piracy law expert who is a member of Working Group 2, the Group has a strong opinion that specialised courts are unfeasible.

Instead, improving the legislation and legal infrastructure in Somalia and nearby countries to try pirates locally would occur in a timelier manner and have a more lasting impact on the region. This is important not only to improve the rule of law and judicial infrastructure in Somalia and the region, but also to de-motivate pirates from attacking

613 United Nations Secretary-General, "Report of the Secretary-General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts, S/2011/360 (15 June 2011)."
vessels in the Gulf of Aden. As noted previously, specific and general deterrence are key goals of the prosecution process. Increasing the strength of the legal system may remind offenders that piracy is not tolerated.

Generally, imprisonment is an important and widely used criminal sanction. Reoffending on release from prison is common among prisoners, and often measures are taken before and after release to manage reoffending. The literature reveals that pirates often reengage in piracy upon their return, particularly if they have served short sentences. To minimise reoffending, general deterrence measures must be taken. The transnational nature of piracy has seen Somali offenders prosecuted and incarcerated all over the world. There are many complexities associated with such arrangements, not least cultural diversity, language difficulty and distance to social support networks. The proximity to support networks during an offender’s incarceration is linked to the success of rehabilitation and reduced recidivism upon release. In addition to applying just deserts consistently, based on the Lang recommendations, developing specialised courts would allow offenders to remain in Africa and be tried and imprisoned locally. Indigenous judicial services could be used within Somalia if specialised courts are implemented. To date, prosecutions of pirates have infrequently involved the use of the Somali judiciary. There are several reasons for this, including the lack of training among Somali magistrates. According to the Lang Report, only five percent of

---

618 Michele White, *The Seychelles Counter-Piracy Model*: accessible via secure login.
621 Ibid.: paragraph 116.
Somali magistrates have any legal training. The Somaliland Lawyers’ Association indicated that its 120 members would participate in counter-piracy courts both within and outside Somalia. Over the past five years, the Lawyers’ Association has gained extensive experience in providing free legal defence services to persons accused of piracy. Once Somalia tackles existing governance weaknesses, the Somaliland Lawyers’ Association may facilitate prosecutions in-country, meaning their fellow citizens would try pirates.

7.2.2 Penalties for piracy and related offences

In general, severe penalties handed down by courts are intended to have a general deterrence impact on the community at large, while also imposing specific deterrence on the offender being sentenced. In sentencing terms, incapacitation is a reasonable solution to piracy due to the high volume of offenders, the frequency of offending and the limited capacity of the region to mitigate the motivational factors, at least in the short-term. Robert Keel noted that:

People will engage in criminal and deviant activities if they do not fear apprehension and punishment. Norms, laws, and enforcement are to be designed and implemented to produce and maintain the image that ‘negative’ and disruptive behaviors will receive attention and punishment [sic].

622 Ibid.: paragraph 116.
624 Ibid.: Appendix III paragraph 3.
626 Ibid.

216
As pirates remain motivated to offend, the current legal responses are ineffective in deterring piracy. Bahadur observed that:

Imprisoning [pirates] was like trying to use a bailing bucket to drain the ocean: for each pirate captured by the authorities, there were dozens of desperate young men on shore ready to rush in and fill the void.627

Despite this, the international community has continued to support the strengthening of legal responses to piracy.

As discussed in the previous section, many countries have out-dated piracy legislation. Comparing penalties is necessary to understand the potential range of sentences and the likelihood of deterrence from future offending (see Table 10).
<table>
<thead>
<tr>
<th>Member State</th>
<th>Name and section of piracy legislation</th>
<th>Maximum penalties for crimes associated with piracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Crimes Act 1914; Part IV, Article 55, Section 52: Piracy</td>
<td>• Life imprisonment</td>
</tr>
</tbody>
</table>
| Belgium      | Chapter 2 - Provisions aiming to combat piracy at sea, Article 3, Section 1 | • 10-15 years for committing piracy  
• 5-10 years for attempted piracy |
| Cyprus       | Criminal Code, Part I - Offences related to piracy, Section 69 | • Life imprisonment for piracy  
• Minimum 10 years for attempting to commit piracy  
• Maximum of 7 years for armed robbery at sea |
| Czech Republic | Criminal Code 2010, Crimes endangering an Aircraft, Civil Vessel and Fixed Platform:  
• Section 1 - Intention to commit piracy;  
• Section 2 commission of piracy; and  
• Section 290 - Gaining Control over the Aircraft, Civil Vessel and Fixed Platform. | • 8-15 years for intention to commit piracy  
• 12-20 years for the commission of piracy |
| Greece       | Greek Code on Public Maritime Law, Article 215 - Piracy | • 5-20 years imprisonment for the captain  
• 10 years imprisonment for the crew who knowingly partook |
| Italy        | Navigation Code  
• Article 1135 - Piracy; and  
• Article 1136 - Ship on suspicion of piracy. | • 10-20 years for piracy  
• 5-10 years for suspicion of piracy |
| Kenya        | Merchant Shipping Act 2009, Part XVI Maritime Security:  
• Article 370 Hijacking and Destroying of Ships; and  
• Article 371 Offences of Piracy and Armed Robbery. | • Life imprisonment for both offences |
| Republic of Korea | Act Concerning punishment of unlawful acts against ships and maritime navigational facilities  
• Article 6 - Ship hijacking; and  
• Article 340 - Piracy. | • Life imprisonment or not less than 5 years imprisonment for ship hijacking  
• Life imprisonment or not less than 7 years imprisonment for piracy  
• If death is caused as a |

result, the offender is to be sentenced to death or life imprisonment.

<table>
<thead>
<tr>
<th>Country</th>
<th>Penal Code, Chapter VIII - Offences Affecting Relations. With Foreign States and External Tranquillity, Article 66, Section 1: Piracy</th>
<th></th>
</tr>
</thead>
</table>
| Tanzania    | • Article 208 - involved or conspiracy to jeopardise the safety of the shipmaster or his freedom;  
• Article 209 - sinks, burns or commits life threatening damage to a ship; and  
• Article 210 - involved or conspiracy to take possession of a ship. | • Life imprisonment |
| United Arab Emirates | • Article 208 - involved or conspiracy to jeopardise the safety of the shipmaster or his freedom;  
• Article 209 - sinks, burns or commits life threatening damage to a ship; and  
• Article 210 - involved or conspiracy to take possession of a ship. | • Provisional imprisonment is imposed on Articles 208 and 210  
• Life imprisonment to the death penalty for Article 209 |
| US          | Violence against maritime navigation - Part 18 U.S.C:  
• Section 1651 - Piracy under law of nations;  
• Section 1652 - Citizens as pirates; and  
• Section 1653 - Aliens as pirate. | • Life imprisonment for all offences |

Most IMO member states impose life imprisonment for offenders of piracy (see Table 10). The mere existence of legislation that meets the Security Council’s requirements does not automatically lead to convictions. In some cases, a lack of evidence at trial results in an acquittal of the offenders. To counteract this legal flaw, some jurisdictions have introduced crimes of ‘conspiracy to commit piracy’, in addition to piracy. This allows for the arrest and subsequent prosecution based on the simple presence of pirates at sea. As noted previously, as many as 100 pirates board a single mothership to embark on a long expedition. The crime of ‘conspiracy to commit piracy’ allows a naval vessel to intercept a mothership and assuming there is adequate evidence to suggest that piracy could be conducted from the vessel, the suspected pirates may be arrested.629

According to a US Government representative, “most countries have a long history of dealing with piracy and therefore have a low tolerance for it; we hate pirates and always have.”630 While some countries impose lengthy and finite sentences, other countries

---

629 Michele White, The Seychelles Counter-Piracy Model.: accessible via secure login.
remain open-minded and consider mitigating factors to determine the sentence of best fit. The average length of imprisonment for pirates sentenced to October 2013 is 12 years; while the death penalty is an extreme sentencing option, Somali pirates have been executed for their crimes in Yemen and UAE.631

Prosecution of piracy occurs in many jurisdictions, though there is no standard punishment. Neither UNCLOS nor any other international instruments on piracy provide member states with sentencing guidelines, which raises questions about disparate treatment and the application of the human rights aligned with humanitarian law.632 Harmonisation of sentencing practices could be a beneficial addition to UN approved legislation and international treaties. Boxes 1 and 2 show two examples of sentencing outcomes for offences relating to piracy. Box 1 shows a prosecution outcome from a court in the US, where the alleged offender was not charged with piracy.

**Box 1: US prosecution of a Somali pirate**633

In early 2011, a New York Federal District Court sentenced an accused pirate leader to a period of 33 years and 9 months imprisonment after pleading guilty to hijacking, hostage taking, kidnapping and conspiracy. These crimes related to the hijacking of a US-flagged cargo ship in 2009. The defence negotiated the charge of piracy to be dropped as it carried a mandatory sentence of life imprisonment.

---

Despite avoiding the charge of piracy and the associated penalty of life imprisonment, the lengthy sentence in Box 1 showed a lack of tolerance for piracy and related offences. At the time, this sentence was longer compared to sentences previously handed down in any European countries. However, later that year, a Spanish court handed down two sentences of 439 years (effectively 30 years). Spaniards have a long history of dealing with pirates, and these sentences appear to be part of a ‘shock campaign’ attempting to warn other pirates about the potential outcomes of committing piracy.

**Box 2: Spanish prosecution of two Somali pirates**

A Spanish court handed down sentences to two pirates for a period of 439 years imprisonment and an additional fine of €3.6 million each for 36 counts of illegal detention and robbery with violence. The accused offenders were absolved of charges of terrorism, membership in an organised crime group and torture. Under Spanish law, regardless of the offence, offenders can only serve a maximum of 30 years in prison.

The age of the offender bears great significance in sentencing, in cases involving children. There have been several cases reported where the age of the offender was in dispute. According to the UN Convention on the Rights of the Child, no child - under the age of 18 years - shall receive a sentence of capital punishment or life imprisonment. In one case, the age of an offender was considered by a judge in determining the appropriateness of the 34-year sentence ultimately handed down. It was determined the offender was 19, relieving the court from treating the offender as a child. Many Somalis do not know their date of birth due to inadequate record keeping.

---

637 Ibid.
and the nomadic culture, which further complicates the task of the courts to sentence appropriately.\footnote{Waris Dirie and Cathleen Miller, Desert Flower: The Extraordinary Life of a Desert Nomad.: 41.}

### 7.2.3 Prosecutorial success

It is estimated that approximately 1,167 Somali men were charged with crimes relating to piracy in 22 countries around the world.\footnote{United Nations Office on Drugs and Crime, "Conference of the Parties to the United Nations Convention against Transnational Organized Crime," Vienna: UNODC.} Of those, 582 were convicted, 23 were acquitted and 562 were remanded awaiting trial.\footnote{Ibid.: CTOC/COP/2012/7 paragraphs 23.} As of July 2012, 164 were charged with crimes relating to piracy in Kenya of whom 67 were convicted (10 have finished serving their sentences). A further 17 were acquitted and the remaining 80 were awaiting trial. In the Seychelles, 118 have been charged with crimes relating to piracy; 64 have been convicted and the trials of the remaining 54 prosecutions are still under way. In 2011, 232 suspected pirates were involved in prosecutions and in 2012, 152 suspects were involved in prosecutions.\footnote{Jonathan Bellish, "The Economic Cost of Somali Piracy 2012: Working Paper," 2013.} Conviction rates are relatively low considering that UNODC representative Wayne Miller stated that more than 3,500 people are estimated to be involved in piracy.\footnote{Michelle Wiese Bockmann, "Est. 3,500 Somalis Working as Pirates: UN", http://www.bloomberg.com/news/2012-02-16/est-3-500-somalis-working-as-pirates-un.html.} Improvements to the prosecution process in Somalia and other regional locations should eventually result in shorter prosecution delays.
7.3 Incarceration

7.3.1 Where should all the pirates go? Prison capacity, conditions and transfer

Somali pirates are in prisons all over the world. The UNODC has been working towards providing the necessary infrastructure within Somalia and the surrounding countries to minimise the need for incarceration of pirates elsewhere. Many countries have arrested and prosecuted pirates; therefore, incarcerating those pirates within their prisons has been the only option. The associated cost of prisoner incarceration is high. Bowden and Basnet estimated the cost of piracy prosecution and incarceration in 2012 was US$14.9 million, which decreased by around US$1.5 million from the 2011 figure.\(^\text{643}\) The following sections seek to draw out some common problems with the incarceration of pirates.

Prison capacity

Most regional African prisons have limited capacity for additional inmates. The UNODC is undertaking improvements to existing prisons in Somaliland and Puntland as they are well below international standards.\(^\text{644}\) The two prisons in Somaliland and Puntland are already filled to capacity.\(^\text{645}\) By the end of 2013, completion of two additional prisons in Somaliland and Puntland should increase capacity by 1,000 beds.


\(^{645}\) Ibid.: 31.
for pirates convicted outside Somalia.\textsuperscript{646} In the Seychelles, prisons have reached their capacity with the increased intake of pirates.\textsuperscript{647} According to representatives from UNODC, Mauritius had prison beds available from August 2011 and Tanzania had a 72-bed prison available from December 2011, potentially taking pressure away from the Seychelles.\textsuperscript{648} Managing overcrowding is an ongoing challenge for any prison and many African prisons barely has capacity to house existing prisoners.

Alternatives are being sought to increase Africa’s prison capacity while construction and refurbishment is ongoing. A floating prison was determined to be a reasonable interim solution to provide 1,000 prison beds quickly involving minimal set up costs, and it could be docked off the coast of Somalia.\textsuperscript{649} As with any interim solution, there are challenges in implementation. Potential options for the temporary prison would meet all the EU human rights standards, which far exceed the standards in most African prisons at present.\textsuperscript{650} While expanding existing prisons and building new prisons continues, this short-term quick-fix option contributes towards the capacity shortage but does not resolve piracy.

\textsuperscript{646} Ibid.: 29.
\textsuperscript{647} Philip Holihead, "Piracy: Update, Challenges and Regional Capacity Building" (25 January, 2012).
\textsuperscript{650} Ibid.
Prison conditions

Conditions in most African prisons are below international standards. Most Somali prisons lack basic medical facilities, water, sanitation and trained staff. The UNODC has implemented various programs in Somalia and within the region to improve and support prison staff. Training programs are essential along with the establishment of an independent prison oversight committee. Building local capacity to fulfil day-to-day prison responsibilities should have long-term impact once the international community has withdrawn.

Due to the lengthy sentences imposed in many countries prosecuting pirates, rehabilitation would be unnecessary. The US, among others, imposes mandatory life sentences, making the benefit of a recidivism-reducing program irrelevant. According to a representative from the US Government, while rehabilitation and skills training programs occur in prison, pirates would be unlikely to receive any skills training to assist them if they are eventually released. Providing improved prison conditions and rehabilitation programs within Somalia and the surrounding region would enable imprisoned pirates to develop better life skills minimising the likelihood of reverting to piracy upon release.

High security standards are necessary not just to manage imprisoned pirates, but for the safety of prison staff. Many courts and prisons considered for use in piracy trials and incarceration do not meet the required security standards, and the security within some

courts is difficult to maintain. For example, in late 2011, Tanzania agreed to assist the international community with prosecutions and incarceration of pirates, though its civil court is used for trials since the criminal court cannot be adequately secured.

Maintaining the security of incarcerated prisoners and those on remand is an ongoing challenge for the international community, though UNODC is working with governments to make the necessary changes.

**Prison transfer**

As discussed in the previous section, the lack of prison capacity in Somalia has created a need to incarcerate pirates elsewhere. The ongoing construction of new prisons and upgrades to existing African prisons should ensure conditions meet international standards. Prisoner transfers back to Somalia would be possible once capacity and prison conditions improve. Ideally, Somalia should be able to conduct prosecutions and incarcerate offenders once the infrastructure is improved. Somalia is party to UNCLOS and has the necessary legislation to prosecute those offending within and outside its territorial waters. Developing agreements between Somaliland and Puntland and naval states would allow naval vessels to deliver intercepted pirates for local prosecution and imprisonment.

Agreements between jurisdictions would lead to the best outcome for the prisoners. Third states could sign a memorandum of understanding to transfer convicted pirates to

---


655 Ibid.


Somalia to serve their sentence. Working Group 2 of the CGPCS assists with negotiations between Somali authorities to ensure the decision benefits both parties.\textsuperscript{658} The Seychelles has signed an agreement with Somalia to repatriate prisoners where they could serve the remainder of their sentence.\textsuperscript{659} Readying Somali prisons and their staff for the intake of transferred prisoners could be difficult, particularly when preventing and overcoming corruption.\textsuperscript{660}

### 7.4 Case study: the Seychelles

Some countries are more advanced than others in developing counter-piracy models. The Seychelles agreed to prosecute and incarcerate pirates on behalf of the international community as a result of piracy threatening the Island’s trade, transport, fishing and tourism.\textsuperscript{661} The Seychelles opened a regional prosecution centre on 6 February 2010.\textsuperscript{662} It responded to piracy by implementing an effective coast guard and a bespoke legal framework, backed with strong political will to arrest, prosecute and incarcerate pirates swiftly and effectively.\textsuperscript{663} To ensure judicial success, the Seychelles amended its Penal Code.\textsuperscript{664} Specifically, section 65 of the Seychelles Penal Code was amended to include conspiracy to commit piracy, imposing a maximum sentence of 30 years in prison and a fine of R1 million (approximately US$70,000) for each offender.\textsuperscript{665}

\textsuperscript{658} Ibid.: paragraph 32.
\textsuperscript{659} Michele White, \textit{The Seychelles Counter-Piracy Model.}: accessible via secure login.
\textsuperscript{661} Victor Erofeyev, "Save the Seychelles from Pirates". http://www.nytimes.com/2011/01/12/opinion/12ht-derofeyev12.html; Michele White, \textit{The Seychelles Counter-Piracy Model.}: accessible via secure login.
\textsuperscript{663} Michele White, \textit{The Seychelles Counter-Piracy Model.}: accessible via secure login.
\textsuperscript{664} Victor Erofeyev, "Save the Seychelles from Pirates". http://www.nytimes.com/2011/01/12/opinion/12ht-derofeyev12.html.
\textsuperscript{665} Michele White, \textit{The Seychelles Counter-Piracy Model.}: accessible via secure login.
Between 2009 and 2011, the Seychelles Supreme Court prosecuted all accused pirates. All 63 pirates tried are serving sentences of between six and 24 years, representing 13 percent of the Seychellois prison population.666 Pirates are tried in English with Somali interpreters, paid for by UNODC.667 The Seychelles is showing strong opposition to piracy through these convictions and lengthy sentences handed down to pirates.

Trial transcripts from the Seychelles reveal significant facts about the pirates. In four cases, the defence suggested the alleged pirates were mere fishermen. These assertions were disproven by the prosecution based on a lack of usable fishing equipment aboard the vessel.668 Mitigating factors illustrated that despair among Somalis led them into piracy. Defence arguments contended that had they not been exposed to piracy, these Somalis were likely at risk of committing other crimes, such as, “drug and human trafficking, gun running, illegal fishing and environmental pollution etc given the existence of a close connection with each other [sic].”669 This comment by the defence indicates the ongoing motivation to offend centres on lack of alternate opportunity and therefore, targeted counter-piracy diversionary programs could deter Somalis away from piracy.

There is growing concern that small island nations, such as the Seychelles, have not adequately considered the potential negative impact of releasing Somalis into the

666 Ibid.: accessible via secure login.
668 The Republic of Seychelles V. Mohamed Ahmed Ise and Four Others, Seychelles Supreme Court, Criminal Side No. 75 (2011); The Republic of Seychelles V. Abdukar Ahmed and Five Others; The Republic of Seychelles V. Mohamed Ahmed Dahir and 10 Others; The Republic of Seychelles V. Mohamed Ahmed Ise and Four Others, Seychelles Supreme Court, Criminal Side No. 76 (2010).
669 The Republic of Seychelles V. Abdukar Ahmed and Five Others.
community after acquitted at trial. As a representative from the international community noted, with such a small population, there is a danger that local Seychellois could discriminate against Somalis.\textsuperscript{670} The agreement between the Seychelles and Somalia to transfer prisoners once the facilities are available, could resolve this issue.

\textbf{7.5 Beyond the penal system: seeking asylum}

The challenges in dealing with piracy do not stop at incarceration. Concerns are growing, particularly within Europe, about whether captured pirates may seek asylum to remain. The response to piracy has been reactive and, in many cases, there are key issues yet to be tested or understood fully. According to Hugh Williamson, the potential of asylum-seeking may discourage some western nations from intercepting pirates and instead opt to \textit{catch and release} pirates.\textsuperscript{671} This is supported by claims that more than 1,500 pirates were released back into Somalia by naval patrols between January 2010 and October 2011.\textsuperscript{672} The fear among western nations to avoid asylum seekers should not exempt pirates from punishment. In countries where the sentences for pirates are relatively short, asylum may be of concern compared with countries that have mandatory life imprisonment for convicted pirates. The US Government is unconcerned with the potential for convicted pirates seeking asylum because of the limited likelihood of their release.\textsuperscript{673} If pirates do attempt to seek asylum, as may be the case in European countries, the risk should not outweigh the desire to bring the pirates to justice.

\begin{footnotesize}
\begin{enumerate}
\end{enumerate}
\end{footnotesize}
There remains some speculation about whether convicted pirates could have a legitimate claim for asylum based on the likelihood of political persecution. By definition, refugees are people unprotected by their government, and are more than likely facing persecution, therefore the international community has an obligation to protect.\textsuperscript{674} According to Yvonne Dutton, based on crimes committed by pirates, signatories of the Convention Relating to the Status of Refugees may not have to grant asylum.\textsuperscript{675} Article 1(F) of the Refugee Convention outlines facts that would deem an applicant ineligible for asylum.\textsuperscript{676} Specifically, applications for refugee status are nullified if applicants have committed crimes against peace, a war crime, a crime against humanity, or has been guilty of acts contrary to the purposes and principles of the UN.\textsuperscript{677}

On this basis, convicted pirates would be unlikely to be granted asylum. However, pirates acquitted at trial could be successful in seeking asylum. No guidelines exist about pirates acquitted of their alleged crimes in the Refugee Convention. This would challenge prosecuting jurisdictions further to ensure they could obtain a guilty verdict.

Seeking refugee status under the Refugee Convention requires proof of fear of persecution on repatriation. According to Dutton, pirates would have difficulty proving risk of persecution or torture on return to Somalia.\textsuperscript{678} The Committee against Torture

\textsuperscript{676} United Nations, "Convention Relating to the Status of Refugees".
\textsuperscript{678} Yvonne Dutton, "Pirates and Impunity: Is the Threat of Asylum Claims a Reason to Allow Pirates to Escape Justice," http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2277&context=ilj.: 293.
would duly assess the perceived level of danger against the requirements of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture). States that have signed the Convention against Torture are obligated to grant asylum to pirates, regardless of the crimes they committed, assuming there is high likelihood of torture resulting. Article 3, part I of the UN Convention against Torture states that:

No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.679

In at least two cases, pirates on trial in the Netherlands have applied for asylum, which extends to their wives and children also.680 The history of instability in Somalia should allow ex-pirates to apply under the Convention against Torture. Annemarie Middelburg commented that:

Somalia has a record of human rights violations and therefore it would be almost impossible to send the pirates back to Somalia after their conviction. Due to human rights concerns the pirates can take advantage of asylum laws.681

Despite the instability in Somalia, Dutton stands firm in her analysis that pirates who are convicted of violent crimes should be ineligible for asylum or complementary forms of protection against *refoulement*.\(^682\) \(^683\)

### 7.6 Conclusion

This chapter argued that despite steps to improve prosecution and incarceration, many challenges persist. Inconsistent national legislation is an ongoing impediment often leading to the *catch and release* of pirates. *Universality*, applied through UNCLOS, allows any state, whether or not linked to the incident, to try pirates, and at the time of writing, 22 states had tried pirates. In addition, international attempts to resolve inconsistent and out-dated legislation are ongoing, particularly in countries that lack political will. Out-dated legislation hinders prosecutorial success, and contributes to low conviction rates and inconsistent penalties.

Limited prison capacity and poor conditions restrict the use of incarceration in Somalia and other nearby African countries. The international community has attempted to resolve this by recruiting third-party states to prosecute and incarcerate pirates. Significant resources have been invested in improving prison facilities in third-party states, with great success in the Seychelles. Somali prisoners serving sentences away from their support networks present a further challenge, such as increased recidivism. While 22 nations have tried pirates, a variety of issues, such as asylum-seeking post-sentence, have increased reluctance among some western nations to prosecute pirates.

\(^682\) Refoulement means the expulsion of persons who have the right to be recognised as refugees. See *Glossary*

\(^683\) Yvonne Dutton, "Pirates and Impunity: Is the Threat of Asylum Claims a Reason to Allow Pirates to Escape Justice," [http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2277&context=ilj:] 293.
Although international law regarding political asylum this has not been well tested with respect to pirates, the pre-existing conditions in Somalia presents a challenge in denying pirates asylum. Achieving success in controlling piracy through prosecution must involve certainty of punishment, and not just severity of punishment.
PART FIVE: DATA ANALYSIS AND INTERPRETATION
CHAPTER 8 CAN ROUTINE ACTIVITY THEORY EXPLAIN SOMALI PIRACY?

8.1 Introduction

The persistence of piracy has threatened international shipping and security off the Horn of Africa and in the Gulf of Aden. The purpose of this chapter is to analyse piracy data to test the explanatory power of routine activity theory. Drawing on earlier chapters, the goal is to develop a greater understanding of Somali piracy and to determine gaps in the responses to it. This chapter will also review the nature and extent, regional comparisons, analytical interpretations, and the evolution of Somali piracy from 2002 to 2011.

The chapter begins by showing trends of Somali piracy attacks during the study period from 2002 to 2011. It unpacks the alarming increase of Somali piracy, giving context for the rest of the chapter.

The first section of analysis considers the motivated offender. It explores the evolution of Somali piracy by comparing attacks to those from other regions. It gives an overview of analysed recorded piracy data from Somalia and other piracy-prone regions from 1992 to 2011. Comparative analysis over the 20-year period shows that Somali piracy has exceeded that occurring in any location in recent history. Furthermore, this section explores the trends in modus operandi of Somali pirates, which involves hijack for ransom and hostage taking upon steaming vessels. Combining the number and method of attack shows premeditation to attack, thereby confirming strong motivation to offend.
The second section analyses the suitable target element of routine activity theory. In the Horn of Africa region, it explores shifts in the locations in which commercial vessels transit in order to avoid piracy attacks. The section also examines shifts evident among pirate attacks from the coastline towards the outer rim of the region, in line with the preferred route of commercial vessels. The observed shifts in vessel and pirate activities demonstrate a series of displacements in the pattern of piracy attacks. It also gives insight into the motivation of offenders, the factors that create suitable targets and the actions of capable guardians that collectively may affect the success of Somali pirates.

The third section of analysis explores the guardianship aspect of the theory. It incorporates trend analysis that considers the nexus between actual and attempted, or successful and unsuccessful attacks. Commonly, reports combine both; by disaggregating the piracy attack data, it is possible to infer the true success of piracy and the control resulting from the efforts of capable guardians. Finally, the discussion section revisits the thesis objective and connects it to the data analysis.

8.2 Somali piracy explained through the elements of routine activity theory

The following section tests the proposition, that by reducing vulnerability of targets and increasing guardianship, motivation among potential offenders would reduce. This will shed further light on gaps in the current response.
8.2.1 Trends: Somali piracy - 2002 to 2011

An understanding of Somali piracy trends is essential to the development of effective prevention measures. Trends within this section draw upon data collected by the IMB.

Figure 29 shows piracy attacks from 2002 to 2011. While the columns show some fluctuation during the 10-year period, the trend line indicates a strong upwards progression.

The data in Figure 29 show that 18 attacks occurred in 2002, increasing to 237 attacks in 2011. From 2002 to 2005, 99 attacks were recorded, fewer than the total attacks in 2008 alone. The largest rise was between 2007 and 2008, with 51 and 112 attacks respectively, representing a 220 percent increase. There was another large increase from 2008 to 2009, from 112 to 218 attacks, which represents an increase of 195 percent.

There was a clear upward trend in the piracy attacks over the study period. The recorded attacks from 2009 to 2011 exceeded the estimation indicated by the trend line. Looking at attacks by year, over a 10-year period, allows comparisons between the periods to show the evolution of attacks. Based on Figure 29, it is possible to conclude that Somali piracy has increased dramatically over the decade. While acknowledging that since 2012, Somali piracy has slowed, the response is unsustainable and greater efforts to understand and address the root causes are still necessary.\(^6\) The following sections seek to disaggregate commonly reported data and view them through the lens of routine activity theory to determine gaps in the counter-piracy response.

### 8.2.2 Analysis: Motivation of Somali pirates - the modus operandi

This section identifies critical points that confirm strong motivation to offend among Somali pirates, despite efforts to control the number of attacks. It disaggregated the methods of attack common to Somali piracy to show their uniqueness of motivations to offend.

**Compared to pirates from other regions, are Somali pirates more motivated to offend?**

Historically, piracy attracted public interest partly due to media sensationalising reports in order to capture a wider audience.\(^6\) Since 2008, media commentators of Somali piracy have demanded international authorities devise an immediate response. Some

---


experts have questioned the relative exposure to risk of Somali piracy; therefore, this section discusses whether Somali pirates are more active than pirates from other regions. Figure 30 shows recorded piracy attacks from the most prolific piracy hotspots around the globe: Indonesia, Bangladesh, the Malacca Straits, Nigeria, and Somalia. These trends offer an overview of modern piracy.

Comparing attacks committed by Somali pirates and attacks by pirates from other piracy-prone regions (see Figure 30), suggests more piracy attacks occurred off the coast of Somalia compared to any other region from 2002 to 2011. Figure 30 shows that Indonesian piracy peaked in 2003 and the number of attacks in that year slightly exceeded the number of Somali piracy attacks recorded in 2008 when it emerged on the international agenda. Recorded piracy attacks around Bangladesh remained well below 50 attacks per year since 2003. Nigerian piracy in West Africa is increasingly gaining attention, though it appears relatively minor compared to Somali piracy.

While Somali piracy attacks were higher than any other region in the past 10 years, Table 11 shows annual incidence of piracy from 1992 to 2011 giving greater historical relevance of piracy attacks.

<table>
<thead>
<tr>
<th>Year</th>
<th>Indonesia</th>
<th>Bangladesh</th>
<th>Malacca Straits</th>
<th>Nigeria</th>
<th>Somali pirates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>49</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1993</td>
<td>10</td>
<td>0</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1994</td>
<td>22</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1995</td>
<td>33</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>1996</td>
<td>57</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>1997</td>
<td>47</td>
<td>9</td>
<td>0</td>
<td>9</td>
<td>5</td>
</tr>
<tr>
<td>1998</td>
<td>60</td>
<td>9</td>
<td>1</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>1999</td>
<td>115</td>
<td>25</td>
<td>2</td>
<td>12</td>
<td>14</td>
</tr>
<tr>
<td>2000</td>
<td>119</td>
<td>55</td>
<td>75</td>
<td>9</td>
<td>22</td>
</tr>
<tr>
<td>2001</td>
<td>91</td>
<td>25</td>
<td>17</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>2001</td>
<td>103</td>
<td>32</td>
<td>16</td>
<td>14</td>
<td>18</td>
</tr>
<tr>
<td>2003</td>
<td>121</td>
<td>58</td>
<td>28</td>
<td>39</td>
<td>21</td>
</tr>
<tr>
<td>2004</td>
<td>94</td>
<td>17</td>
<td>37</td>
<td>28</td>
<td>12</td>
</tr>
<tr>
<td>2005</td>
<td>79</td>
<td>47</td>
<td>11</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>2006</td>
<td>50</td>
<td>47</td>
<td>11</td>
<td>12</td>
<td>22</td>
</tr>
<tr>
<td>2007</td>
<td>43</td>
<td>15</td>
<td>7</td>
<td>42</td>
<td>51</td>
</tr>
<tr>
<td>2008</td>
<td>23</td>
<td>12</td>
<td>2</td>
<td>40</td>
<td>112</td>
</tr>
<tr>
<td>2009</td>
<td>15</td>
<td>18</td>
<td>2</td>
<td>29</td>
<td>218</td>
</tr>
<tr>
<td>2010</td>
<td>40</td>
<td>23</td>
<td>2</td>
<td>19</td>
<td>219</td>
</tr>
<tr>
<td>2011</td>
<td>46</td>
<td>10</td>
<td>1</td>
<td>10</td>
<td>237</td>
</tr>
</tbody>
</table>

Indonesian piracy peaked between 1999 and 2003, averaging 110 attacks per year during that time. By comparison, Somali piracy during its peak between 2008 and 2011 recorded an average of 196 attacks per year over the four-year period. That shows an average of 86 more attacks per year committed by Somali pirates compared to Indonesian pirates during the peak. Compared to Somali piracy, the attacks by Indonesian pirates were less violent, involving armed robbery on docked vessels rather than hijack for ransom on steaming vessels.690 Since 2007, piracy around Indonesian

---

689 Ibid.
240
waters has remained below 50 attacks per year, with a peak of 26 and a low of 15 attacks. Further to this discussion, regions most exposed to piracy tend to be surrounded by failed or failing states (see Figure 30 and Table 11). Few functioning states with commitment to the rule of law and adequate corruption controls are confronted by piracy in their vicinity. The Malacca Straits are occasionally viewed as a piracy haven; the data in Table 11 show that the region faced fewer than 15 attacks per year since 2005. Some of Singapore’s littoral neighbours with weaker governance may shield criminal havens giving rise to attacks along the Straits. Singapore’s stable governance discourages piracy in its immediate vicinity.

The trends indicate that Somalis are more capable pirates than are pirates from other regions. Viewing Table 11 through a routine activity theory lens, the data show that highly motivated offenders seize the opportunity to offend. While other conditions facilitate offending, the high number of attacks directly reflects the high number of offenders engaged in piracy, which estimates reveal is approximately 3,500. It is unknown whether the motivation of Somali pirates is encouraged by access to more vulnerable vessels and to lax control compared to other regions. Regardless, combining motivated offender, suitable targets and lack of capable guardians within the region surrounding Somalia, provides an environment suitable for more piracy attacks compared to other piracy-prone regions. It is therefore reasonable to conclude that the response to Somali piracy is warranted.

---

Somali pirates’ targets for attack: steaming vessels

The *modus operandi* of Somali pirates differs from piracy committed in other regions. Somali piracy has consistently involved vessel hijacking and hostage taking on the high seas, followed by ransom demands. This differs from piracy in other regions, such as the Asian regions around the South China Sea, Indonesia and Bangladesh, where the preference is to conduct armed robbery of vessels at anchor within territorial waters. Boarding a moving vessel travelling up to 15 knots is high-risk, compared to armed robbery on a docked or anchored vessel. Given the abundance of relatively attractive targets at sea, attacks on anchored vessels at port are low (see Table 12, n=2). These activities are analysed in this section to show the distinct *modus operandi* of Somali pirates.

**Table 12: Status of the vessel when Somali pirates attacked, 2002 to 2011 (number)**

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berthed</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Anchored</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Steaming</td>
<td>17</td>
<td>21</td>
<td>11</td>
<td>44</td>
<td>21</td>
<td>45</td>
<td>111</td>
<td>217</td>
<td>219</td>
<td>236</td>
</tr>
<tr>
<td>N/A</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>21</td>
<td>12</td>
<td>48</td>
<td>22</td>
<td>51</td>
<td>112</td>
<td>218</td>
<td>219</td>
<td>237</td>
</tr>
</tbody>
</table>

Table 12 shows most attacks committed by Somali pirates from 2002 to 2011 occurred while the target vessel was steaming. Few attacks occurred at anchor and no attacks occurred on vessels berthed at port. Though few vessels berth at Somali ports, several ports are located within the zone in which pirates operate, potentially exposing those vessels to attack. These data show that vessels are at greatest risk of Somali piracy when they are in transit. Boarding a steaming vessel is a dangerous and challenging task; however, it is the only way to hijack an unprotected vessel on the high seas. While some on-board measures seek to minimise risk of attack while steaming (see Chapter 9.3), it

---

is clear that the *modus operandi* of Somali pirates is to attack vessels in transit in anticipation of receiving a ransom. Hijack for ransom while steaming, though highly dangerous, is more lucrative than robbing vessels at anchor. The premeditated attacks on vessels travelling at high speeds suggest that pirates are highly motivated to hijack for ransom. The danger pirates face while attacking a fast-moving vessel further illustrates that the level of motivation is consistently high.

**Violence at sea: hostage taking and use of weapons**

Somali pirates seek financial advantage by demanding a ransom payment after hijacking vessels. In doing so, hostage-taking is collateral damage often used to speed up negotiations.\(^{694}\) The 22 hostages from *MV Iceberg* were released in late 2012 after being held by pirates for more than 1,000 days.\(^{695}\) From 2005, there has been a strong upward trend in hostage taking by Somali pirates (see Figure 31).

---

Each year showed an upward trend in hostage taking, except 2011 when fewer than half the hostages were taken compared to 2010. The dramatic drop in hostages may be indicative of a lower number of successful attacks in 2011 (see Figure 33). While the number of hostages taken in 2011 was lower than previous years, it is still very high and a cause for concern among seafarer safety advocates. Preventing hostage taking and managing seafarers post-hijack should be central to any counter-piracy response.

Somali pirates’ *modus operandi* involves violence. IMB reports reveal that Somali pirates consistently use assault rifles and other weapons, such as AK-47s and rocket propelled grenades (RPGs), differing from pirates in other regions who prefer to attack with knives. As indicated previously, attacking vessels steaming at approximately 15 knots is common to Somali pirates, explaining the use of RPGs to attack targets from

---

greater distances. Furthermore, they are increasingly taking hostages to facilitate their ransom negotiations. Despite a drop in 2011, the upward trend indicates the motivation of the pirates is greed; the overwhelming majority of hostages are released unharmed.699

8.2.3 Analysis: Suitable targets - displacement of Somali piracy attacks

After 2009, authorities advised vessels to transit farther from the Somali coastline to minimise risk of attack. Drawing from routine activity theory, authorities hypothesised that by removing the suitable targets from the location of the motivated offender, and adding capable guardians, piracy would become more difficult. Displacing suitable targets and increasing guardianship along the Somali coastline forced pirates to alter their modus operandi and attack further out at sea. Attacks beyond the coastline indicate ongoing success in accessing suitable vessels.

Over the 10-year period, pirates expanded their operations from the coastline of Somalia and the Gulf of Aden into the Red Sea, Oman, the Arabian Sea, the Indian Ocean, and around the Seychelles. The shift in location of attack was most prominent in 2009, when the number of attacks also increased substantially (see Figure 29). Analysing the locations of attacks shows where and how the activity of pirates was displaced, most likely to avoid capture by naval patrols and to identify suitable targets. The 10-year trend shows the flexible nature of pirates shifting their location of operation to access more vulnerable vessels suitable for attack (see Figure 32).

699 Ibid.: 11.
In addition to the significant increase in Somali piracy over the 10-year period, there is also a noticeable change in the location of attack. From 2002 to 2004, the Gulf of Aden was the area of the highest attack. In 2005, more attacks occurred along the Somali coast compared to the Gulf. In 2008 and 2009, there was an increase of attacks occurring in the Gulf once again. Conversely, in 2010 and 2011, the attacks shifted once again to the wider Somali coast. Over the 10-year period, the highest attack average was within the Somali coast (n=49). Over that period, vessels displaced from the Somali coastline, as did pirates, chasing vessels well into the Indian Ocean (see Figure 21 in Chapter 5.2.2). Naval patrols could guard regions that show fewer pirate attacks. On average over the 10-year period, there are somewhat similar numbers of attacks in the Gulf of Aden and along the Somali coastline (see Figure 32). More recently, a greater number of attacks occurred in other regions including the Red Sea, the Arabian Sea and near the Seychelles. Pirates first expanded attacks to the Red Sea in 2009, likely due to

---

the vicinity to the Gulf of Aden, with attacks in that region increasing each subsequent year since. Infrequent peaks in attacks in other locations have occurred off the coast of Oman in 2007 and 2009 and in the Arabian Sea in 2007. Maritime vessels are free to alter their course enroute, particularly when faced with the threat of piracy. Unlike air traffic, the oceans do not have certified lanes to avoid collision. This is consistent with the high seas being a place of freedom. UNCLOS defines the high seas as “all parts of the sea that are not included in the territorial sea or in the internal waters of a State.” While the Internationally Recommended Transit Corridor provides a safe passage for vessels, use of the lane is optional. Accordingly, vessels alter their course to reduce the threat of pirates.

Data show that despite displacement of commercial vessels, pirates changed their modus operandi to facilitate attacks. Examining the data through routine activity theory, external factors challenged the success of piracy attacks. Displacement of commercial vessels shows efforts to reduce vulnerability to victimisation, while displacement of attack locations prove that pirates remain motivated to attack suitable targets and are willing to shift their location of attack to reach these targets. Despite the motivation among pirates remaining strong, the shift in location of attack may be indicative of vessels increasing on-board self-protection measures and capable guardians protecting the region.

8.2.4 Analysis: Capable guardianship - actual versus attempted Somali piracy attacks

Guardianship within the piracy prone region has increased steadily since the naval coalitions began patrolling in 2009. The impact of increased guardianship should be reflected in the reduced number of attacks. Figure 29 shows that Somali piracy has increased over the 10-year study period, with only minor troughs recorded. Analysis of piracy data breaks down the extent of piracy attacks in the region to provide a true reflection of the risk. As noted in Chapter 1.5.2, for this thesis, the definitions of actual and attempted attacks derive from generalisations made in the IMB reports. Actual attacks occur when pirates have boarded a vessel with the intention to commit piracy, or when the vessel has been hijacked for ransom. Attempted attacks include all cases where effort has been made to successfully commit piracy, according to that definition, but has failed; this includes firing on a target vessel and attempting to climb aboard a vessel. These definitions shall apply to all reference to attempted and actual attacks hereafter. Figure 33 compares the actual and attempted attacks in Somali piracy from 2002 to 2011.
Despite slight fluctuations, there is a general trend in the actual and attempted attacks during the study timeframe. Over the 10-year period, on average 70 attacks per year were unsuccessful (73%), and on average, 25 attacks per year were successful (27%). These findings show that despite having high frequency of piracy overall, almost three quarters of vessels encountering pirates evaded attack. This important finding shows that counter-piracy measures since 2009 are defeating the efforts of pirates.

In 2008, when Somali piracy gained momentum, successful attacks were higher than the average, at 40 percent. Following the rollout of the counter-piracy measures in 2009, the success of pirates almost halved (22%). By 2010, successful attacks had increased to 30 percent, indicating innovation among pirates to evade the authorities’ guardianship and undeterred motivation to offend. By 2011, once again, pirates’ success reduced to 20 percent, the lowest success ever recorded indicating a combination of fewer suitable

---

targets and an increase in capable guardianship preventing successful attacks. Later chapters discuss the counter-piracy activities of the authorities and the causes of reduced Somali piracy.

Viewing actual successful attacks alongside unsuccessful attempts of piracy, it is evident the motivation of offenders remained strong over the 10-year study period. It is possible to conclude that combining on-board protection and increased guardianship at sea should result in fewer actual attacks, despite ongoing motivation among pirates to offend.

8.3 Discussion

This thesis sought to test the common criminological proposition that by reducing the number of suitable targets and increasing capable guardianship, offending will diminish. Disaggregating and analysing reported Somali piracy attacks through routine activity theory sought to show the gaps in the counter-piracy response. The three elements of routine activity theory provide a framework for applying counter-piracy measures. This chapter suggests that efforts to protect vessels reduce the likelihood of attack. Vessels rerouted away from the Somali coastline resulted in fewer attacks within the coastal band. The displacement away from the coast was accompanied by an increase in attacks in those farther locations, though vessels are making clear attempts to minimise the risk of pirate attack.

Guardianship increased within the region in line with the significant naval presence. The diminishing proportion of attacks that were successful confirms that protection
measures are effective. Most significantly, the analysis revealed that despite these efforts to increase protection and to deter pirates from offending, motivations persist. This was made evident by comparing Somali piracy attacks with other regions, showing the higher reported attacks off the Horn of Africa. Furthermore, ongoing hijacks of steaming vessels using automatic weapons indicates persistent motivation for attack. These data suggest that removing the motivation to attack vessels remains essential to overcoming Somali piracy.

8.4 Conclusion

The purpose of this chapter was to analyse reported piracy attacks from 2002 to 2011, to test the explanatory power of routine activity theory. Through these analyses, it was determined that despite reducing the vulnerability of targets and increasing capable guardianship, the motivation of prospective pirates appears undiminished.

Analyses of the first element of routine activity theory, the motivated offender element, involving a comparison of piracy data from Somalia and other regions from 1992 to 2011, showed that Somali piracy has exceeded recorded attacks of any other region at any time. Furthermore, it found that the modus operandi of Somali pirates consistently involves boarding and hijacking steaming vessels. Data analyses illustrated that hostage taking and ransom demands were also common practice of Somali pirates. Furthermore, it suggests that pirates’ increasing reliance on deadly weapons and use for violence is indicative of undeterred motivations to offend.
Reviewing vulnerability and protections of vessels, the second element of routine activity theory, revealed that despite some fluctuation, there was an upward trend in Somali piracy over the 10-year study period. The shift in location of commercial vessels and accordingly of pirates, revealed that vessels sought to reduce risk of attack, and pirates followed.

The third element of routine activity theory, capable guardianship, helps explain the increasing disparity between successful and unsuccessful attacks, revealing reduced actual attacks. Despite a substantial increase in effective guardianship within the piracy-prone region, the motivation of pirates remained persistent.

Somali pirates are flexible and dynamic, adapting their operations to continue attacks. Analyses suggest that motivations among offenders are robust, despite measures to control piracy, suggesting that addressing the motivation of offenders is pivotal to achieving long-term piracy control. In the meantime, maritime commerce must be protected from pirates.
PART SIX: PREVENTION AND DETERRENCE MEASURES TO CONTROL SOMALI PIRACY
CHAPTER 9 WHAT IS THE MOST APPROPRIATE INSTITUTIONAL CONFIGURATION FOR THE EFFECTIVE CONTROL OF SOMALI PIRACY?

9.1 Introduction

This chapter questions: *what is the most appropriate institutional configuration for effective control?* In response, it describes the most noteworthy measures of the counter-piracy response as directed by the UN Security Council and argues that despite these counter-piracy activities, the persistence of piracy indicates only partial effectiveness. This chapter argues that a counter-piracy response adhering to a regulatory pluralism paradigm is the most likely to succeed.

Current measures to reduce motivation among offenders have had varying success. Circumstances on land have created incentives to engage in piracy because opportunities for earning money in Somalia have suffered in accordance with the country’s political turbulence. Consequently, creating alternate livelihoods within Somalia might arguably divert those motivated to offend, as argued in the first section of this chapter. Thus far, measures to this end have been inadequate, allowing the continuation of offending by motivated pirates.

The second section describes four important target-hardening measures to reduce the vulnerability of vessels. These four measures combine vessel protection measures, such as advice disseminated by regulators, new technologies, and transiting via alternate routes during times with less favourable weather conditions. These, in combination, should reduce the vulnerability of the vessel to attack.
The final section assesses the effectiveness of guardianship. It firstly explores the regulatory pluralism paradigm and discusses examples of dynamic relationships between guardians. It identifies activities influenced by the other guardians operating in the counter-piracy space to show that small contributions may form part of a larger holistic solution. It then describes two counter-piracy measures that have enhanced guardianship in the high-risk region. It argues that naval vessels play an important role in the counter-piracy response, in combination with vessel target-hardening and motivation-reduction measures. The combination of naval patrols and armed guards as a short-term measure has produced a reduction in piracy attacks. Little is known about the distribution of ransom payments. This section argues that a greater understanding of commerce in this environment might assist in disrupting money laundering and financing to piracy operations.

9.2 Motivated offenders: what factors could deter motivated pirates?

Reducing pirates' motivations to offend must occur on land, as well as at sea, to have maximum impact.704 The reactive military response of the UN appears to have had limited effectiveness in reducing the pirates' motivation, despite preventing piracy attacks to some extent. A pluralistic institutional configuration that provides proactive measures addressing a wide range of potential causes of piracy is likely to have greater success in controlling piracy. To this end, shifting the focus to responses targeting the protection of the natural environment and creating legitimate alternatives to piracy may lead to greater success.

9.2.1 Protecting Somalia’s natural environment

As described in Chapter 4.2.1, adverse economic conditions arising from environmental factors are among the motivators for the initial engagement in piracy. Grievances caused by IUU fishing and toxic waste dumping motivated the early pirates. The Security Council determined that greater control over licences and agreements could prevent future marine environment degradation. The Security Council suggested implementing the advice provided by the Food and Agriculture Organization (FAO) specifically on preventing and deterring IUU fishing. The FAO best practice guide sets out the responses to IUU fishing in dealing with culprit vessels, basic management of fisheries, and regulation of activities. Plans to provide fishermen with identity cards would alleviate confusion between pirates and legitimate fishermen. While piracy may provide a greater financial reward than fishing, the fishing industry could perhaps be made sustainable and is less risky than piracy. Oversight measures to ensure the viability of fisheries could prevent future environmental harm and contribute to the control of grievance-based piracy.

Toxic waste dumping also led to the degradation of Somali fisheries. To control waste dumping generally, the Security Council adopted the Convention on the Control of

---

705 Jay Bahadur, *Deadly Waters: Inside the Hidden World of Somalia’s Pirates.*: 238.
707 Ibid.: paragraph 35.
708 Ibid.: paragraph 35.
Transboundary Movements of Hazardous Wastes and their Disposal.\textsuperscript{710} The Convention entered into force in 1992 and Somalia ratified the treaty in July 2010. The purpose of the Convention is “to protect, by strict control, human health and the environment against the adverse effects resulting from the generation and management of hazardous wastes and other wastes.”\textsuperscript{711} Illegal maritime dumping could have contributed to the onset of piracy in the 1990s. A functioning government in Somalia may have sooner ratified the convention and provided protection its waters, minimising damage caused from toxic waste dumpers. After ratification in 2010, this treaty now provides Somalia with the necessary tools to prevent and protect against toxic waste dumping within its territorial waters, though state capacity to implement the treaty is negligible.

Somalia’s TFG made progress towards securing its territorial waters by signing relevant international treaties; however, due to weak governance, implementation of recommendations and fulfilling obligations remain elusive goals. Despite the challenges, the Security Council encourages the Somali government to work in partnership with relevant UN agencies, such as the IMO, to decrease vulnerability to IUU fishing and waste dumping.

\textbf{9.2.2 Countering motivation through alternate livelihoods}

The current counter-piracy responses lack community support in Somalia, and in turn, fail to address local issues that contribute to ongoing offending. Efforts to redirect potential offenders to engage in legitimate alternatives could reduce piracy. There is no shortage of Somalis keen to engage in piracy: when one pirate is caught another is ready

\textsuperscript{710} United Nations Secretary-General, "Report of the Secretary-General on the Protection of Somali Natural Resources and Waters, S/2011/661 (25 October 2011)". : paragraph 56.
\textsuperscript{711} Ibid.: paragraph 56.
to take his place. Creating suitable alternatives or diversionary programs in the community and in prisons could reduce recidivism.

The UNODC developed the land-based ‘Somalia Beyond Piracy’ campaign, which targets those who are at risk of being recruited into piracy. Wayne Miller, who has worked in various counter-piracy roles for the UNODC, reported there are four messages critical to the campaign:

1. piracy is *haram* or against all Islamic teachings;
2. piracy has eroded Somalia’s cultural and traditional values;
3. piracy has destroyed Somalia’s international reputation and standing; and
4. piracy increases chance of death or imprisonment.

The campaign relies on media channels, mainly radio, to inform Somalis about the downside of piracy. The UNODC is targeting young people to make positive choices in liaison with well-known pirate Boyah. The campaign provides many young people with support, which is otherwise inaccessible. The success of the program in reducing piracy recruitment is currently unknown.

Targeted crime prevention programs could divert at-risk youth. In 2011, UNDP created a diversionary program for young Somalis in collaboration with the UN Children’s Fund and the International Labour Organization. Hundreds of young people have

---

714 Ibid.: 5.
716 United Nations Children’s Fund is commonly referred to as UNICEF.
participated in UNDP’s ‘Youth at Risk’ initiative.\textsuperscript{717} The program is part of the ‘Armed Violence Reduction’ project and “aims to bring about a change in mindset, behaviour, attitude, opportunities, and interaction with the community in individuals who are currently engaged with criminal and violent activities.”\textsuperscript{718} Regional state, Himan and Heeb, developed a locally run government rehabilitation program to assist young people to engage in legitimate careers after having drifted into piracy. More than 200 former pirates have been rehabilitated through a three-month training programme and formal military training to become professional soldiers once they are transferred to the Federal Government. Others could be diverted into the fishing industry or other small business.\textsuperscript{719}

Similar to the UNODC campaign, neither of these programs have been formally evaluated to determine their effectiveness, though early results suggest a positive impact.\textsuperscript{720} As piracy is opportunistic, crime prevention approaches deterring pirates and at-risk youth, and creating alternative livelihoods contribute to a holistic response.

\textbf{9.3 Suitable targets: what factors minimise risk of Somali piracy attack?}

Minimising the risk of piracy requires implementing prevention measures aboard vessels transiting the high-risk region. While the international community has a responsibility to create safe international waters and flag states have responsibility for

\textsuperscript{718} Ibid.
safe territorial waters and to limit motivated offenders, vessel owners are responsible for reducing the vulnerability of vessels to attack. The UN released some general points of advice to assist skippers in reducing risk of piracy, which are:

1. sail as fast as possible;
2. use barbed wire at locations on the vessel where pirates could possibly board;
3. stay in contact with the international maritime forces; and
4. sail at recommended times.\textsuperscript{721}

The following section draws on these suggestions and presents four common methods of vessel target hardening that contribute to piracy control.

### 9.3.1 Protective advice disseminated by regulators

As the international community is unable to police the high-risk region comprehensively, it provides guidance to vessels via radio and email. Earlier analysis determined that commercial vessels are at highest risk of piracy attack, with yachts, dhows and fishing vessels also at risk (see Chapter 5.2.1). While these types of vessel differ greatly, understanding the specific elements that increase risk allows vessel owners to prevent piracy through on-board measures.

**Best Management Practices for Protection against Somalia Based Piracy**

To support safety and security at sea, the IMO promotes the *Best Management Practices for Protection against Somalia Based Piracy* (BMP).\textsuperscript{722} Several industry


partners, supported by the IMO, developed the guidelines to prevent piracy attacks.\textsuperscript{723} Adherence to these BMP guidelines is voluntary; however, they are “invited to be considered” by shipowners and masters of vessels that transit the region.\textsuperscript{724} The BMP guidelines include information about risk management at sea and activities to undertake when facing a piracy attack.\textsuperscript{725} Since the release of the first edition of the BMP guidelines in February 2009, it has been updated periodically and is currently in its fourth edition.\textsuperscript{726} According to Anna Bowden and Shikha Basnet, 80 percent of vessels adopt the BMP guidelines.\textsuperscript{727} Since 2009, the BMP guidelines have aided vessels to prevent attack after being approached by pirates.\textsuperscript{728} From 2009 to 2011, over three quarters (76\%) of vessels approached by pirates were able to prevent an attack (see Figure 33 in Chapter 8.2.4). Although this success may not be specifically due to the adoption of the BMP guidelines, they are a likely contributor.\textsuperscript{729}

The BMP guidelines have a three-point process to increase the safety of a vessel against Somali piracy attack. These are:

1. register at Maritime Security Centre - Horn of Africa;
2. report to the UK Maritime Trade Operations; and

\textsuperscript{723} Ibid.: cover.
\textsuperscript{726} Ibid.: v.
3. implement the Ship Protection Measures.\textsuperscript{730}

While the BMP guidelines promote self-protection, they also encourage vessels to liaise with guardians in the region to minimise potential piracy threat. All vessels can benefit from the advice, although the BMP guidelines do not apply to every vessel.\textsuperscript{731} The BMP guidelines offer helpful advice; however, the skipper’s authority overrides any advice when protecting the crewmembers, vessel and cargo.\textsuperscript{732} The advice provided by the BMP guidelines has been well received, increasing on-board protections and likely decreasing vulnerability to piracy attack.

There is no mandate to adopt the BMP guidelines, though the UN, IMO and industry strongly encourage compliance with them.\textsuperscript{733} According to a representative from the UK Government, crewmembers may feel unsafe working aboard a vessel that has not adopted advice provided in the BMP guidelines.\textsuperscript{734} Workers from a Texan shipping company sued for failing to adopt the protective measures provided within the BMP guidelines, alleging the crewmembers were placed in grave danger.\textsuperscript{735} It is unlikely that the IMO or UN would mandate compliance with the BMP guidelines; however, shipping industry support for the guidelines has led to adoption by many shipping companies.\textsuperscript{736}

\textsuperscript{731} Ibid.:
\textsuperscript{735} Ibid.
Piracy alerts

Several sources provide piracy alerts for the region. Some of these alerts are from official sources, while others are less official ‘blogs’ or emails. Alerts inform shipmasters and their crewmembers, policy-makers, insurers, researchers and the shipping industry. There are many alerts in the public domain, as well as classified reports, disseminated daily, weekly, monthly, quarterly and annually. Table 13 shows a collection of available piracy alerts, but is by no means an exhaustive list.

<table>
<thead>
<tr>
<th>Alert Name/Source</th>
<th>Frequency</th>
<th>Type of information reported</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Maritime Bureau Piracy and Armed Robbery against Ships</td>
<td>Quarterly and annually</td>
<td>The reports include trends of known and emerging piracy hotspots. These reported piracy attacks are the most accurate and referenced dataset of reported piracy attacks.</td>
<td>Although the IMB reports are quite infrequent, the information is valuable to learn about the trends over time including longer-term changes in the pirates’ modus operandi. The IMB reports include analysis on the attacks within the reporting period while also providing data from the same period for the previous five years. The IMB report summarises all reported attacks in that period.</td>
</tr>
<tr>
<td>OceanusLive Newsletter</td>
<td>Weekly</td>
<td>This report collates and summaries newspaper articles on piracy around the world from the previous week, providing links to relevant webpages.</td>
<td>Subscribers to this alert are able to view a weekly snapshot of all important piracy-related events and activities, useful to researchers, policy-makers and shippers.</td>
</tr>
<tr>
<td>International Maritime Organization Reports on Acts of Piracy and Armed Robbery Against Ships</td>
<td>Monthly and annually</td>
<td>Similar to the IMB reports, the IMO collates piracy attacks within its reports and is available to download from the IMO website.</td>
<td>The IMO analyses the piracy attack data and provides a snapshot of the previous month and year. While the analysis in the monthly reports are limited compared to the IMB reports, the IMO report is released with greater regularity allowing users to analyse the raw data.</td>
</tr>
<tr>
<td>Piracy Analysis and Warning</td>
<td>Weekly</td>
<td>These retrospective reports provide information about</td>
<td>This report is valuable for policy makers and</td>
</tr>
</tbody>
</table>

Table 13: Piracy alerts

263
Regional support centres

Regional centres support vessels transiting the high-risk zone by acting as points of contact to provide a timely response in cases of piracy attack. They also guide vessels safely through the region. The Maritime Security Centre - Horn of Africa and the UK Maritime Trade Operations operate in the region to assist vessels in managing potential piracy attacks against them.\(^{737}\)

**Maritime Security Centre - Horn of Africa**

In 2008, EU NAVFOR established the Maritime Security Centre - Horn of Africa (MSCHOA) in response to the growing need of support for mariners and their vessels in the region. The purpose of MSCHOA is to provide 24-hour monitoring of registered vessels transiting through the Gulf of Aden.\(^{738}\) On approach to the Gulf of Aden, shipping companies and vessels are encouraged to register their date and time of arrival in the region to reduce response time if the vessel is attacked.\(^{739}\) The Centre’s interactive website communicates with shipping companies and vessels to prevent risk of piracy attack.\(^{740}\) The Centre introduced an initiative enabling vessels to travel in


\(^{738}\) EU NAVFOR Somalia, "About MSCHOA and Operation ATALANTA".

\(^{739}\) http://www.mschoa.org/Pages/About.aspx.

\(^{740}\) Ibid.

264
Convoys protected by naval vessels through high-risk areas to minimise risk of attack.\textsuperscript{741} In arranging the group transit, MSCHOA identifies vulnerable vessels and coordinates appropriate protection arrangements using EU NAVFOR vessels or other naval vessels in the region.\textsuperscript{742} Group transits generally occur during the night when attacks are fewer.\textsuperscript{743} Commercial vessels involved in group transits generally outnumber pirate teams, which often consist of two skiffs.\textsuperscript{744} Group transits provide vessels with the safest method of transiting the Gulf of Aden by reducing vulnerability through increased guardianship.\textsuperscript{745} Registering with MSCHOA assists vessels to lower the risk of pirate attack. The role is limited to only the Gulf of Aden, though piracy has shifted to other areas where vessels are vulnerable to attack (see Figure 32 in Chapter 8.2.3). Despite vessels facing vulnerability in other areas, the Gulf of Aden is a chokepoint increasing risk of piracy. Accordingly, protected transits are required in that location.

**United Kingdom Maritime Trade Operations**

Based in Dubai, the United Kingdom Maritime Trade Operations (UKMTO) is the primary point of contact for commercial vessels and is the point for liaison with military coalitions operating within the region.\textsuperscript{746} UKMTO liaises with MSCHOA and the naval patrols, to disseminate risks and alerts and respond to vessels in need. UKMTO administers the ‘Voluntary Reporting Scheme’ to track vessel locations. Commercial vessels are encouraged to report their position, course, speed and estimated time of arrival at their next port whilst transiting the Gulf of Aden region.\textsuperscript{747} UKMTO

\textsuperscript{741} Ibid.
\textsuperscript{742} Ibid.
\textsuperscript{743} Ibid.
\textsuperscript{745} Ibid.: 14.
\textsuperscript{746} EU NAVFOR Somalia, "UKMTO Dubai". http://www.mschoa.org/Links/Pages/UKMTO.aspx.
\textsuperscript{747} Ibid.
disseminates the vessels’ location to the naval patrols and to the EU headquarters as a precaution. By communicating with UKMTO, vessels receive information about their intended transit route, such as piracy warnings, or other emerging concerns. Most importantly, naval patrols can easily locate vessels should pirates pursue or attack them.

9.3.2 The effect of sea state

Adverse weather reduces the risk of piracy. Large commercial vessels are unaffected by poor weather and ocean conditions during monsoonal months, unlike small vessels, such as pirate skiffs. Monsoonal months provide a safer period in which to transit the Horn of Africa region (see Chapter 5.2.4) as pirates are less able to transit and therefore attack.

Sea state is a term used in oceanography to describe the oceanic conditions at a given time. The World Meteorological Organization (WMO) liaises with the IMO, contributing to the protection of the safety of lives and property at sea. The WMO created the State of the Sea Code, based on the 1917 Douglas Sea Scale, which aids seafarers to observe the condition at sea. Sea state is relevant as during higher sea state, the likelihood of piracy transiting is lower. The WMO State of the Sea Code (see

748 Ibid.
749 Ibid.
Table 14) assigns a code figure to each sea state, which signals the expected weather within a region.

**Table 14: World Meteorological Organization State of the Sea Code**

<table>
<thead>
<tr>
<th>Code Figure</th>
<th>Description Terms</th>
<th>Height* (metres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Calm (glassy)</td>
<td>-</td>
</tr>
<tr>
<td>1</td>
<td>Calm (rippled)</td>
<td>0 - 0.1</td>
</tr>
<tr>
<td>2</td>
<td>Smooth</td>
<td>0.1 - 0.5</td>
</tr>
<tr>
<td>3</td>
<td>Slight</td>
<td>0.5 - 1.25</td>
</tr>
<tr>
<td>4</td>
<td>Moderate</td>
<td>1.25 - 2.5</td>
</tr>
<tr>
<td>5</td>
<td>Rough</td>
<td>2.5 - 4</td>
</tr>
<tr>
<td>6</td>
<td>Very rough</td>
<td>4 - 6</td>
</tr>
<tr>
<td>7</td>
<td>High</td>
<td>6 - 9</td>
</tr>
<tr>
<td>8</td>
<td>Very high</td>
<td>9 - 14</td>
</tr>
<tr>
<td>9</td>
<td>Phenomenal</td>
<td>over 14</td>
</tr>
</tbody>
</table>

Notes: (1) * These values refer to well-developed wind waves of the open sea. While priority shall be given to the descriptive terms, these height values may be used for guidance by the observer when reporting the total state of agitation of the sea resulting from various factors, such as wind, swell, currents, angle between swell and wind, etc. *(2) The exact bounding height shall be assigned for the lower code figure; e.g. a height of 4m is coded as 5.\end{quote}

The BMP guidelines recommend vessels traverse during times higher than sea state ‘3’ to minimise the risk of piracy attack. Conditions meeting sea state 3 (see Figure 34) entail swells around one metre, a gentle to moderate breeze, large wavelets and scattered whitecaps.\end{quote}

Pirates are less able to control their skiffs in water with a ‘slight’ swell. In clear weather, skiffs travel at a high speeds giving pirates greater opportunity to board vessels. Fewer pirates operating during sea state ‘3’ or over leads to fewer incidents of attacks. Sea state is generally lower near the land than it is on the high seas. Transiting in calmer water requires less fuel and provides a clearer outlook ahead, which may account for why vessels opt to traverse closer to the coast. This was the case before 2008; however, increased risk of attack near the Somali coastline forced vessels to transit further out to sea (see Figure 22 in Chapter 5.2.2).

Disaggregating attacks by month against the average sea conditions determines whether there is a strong relationship between the state of the sea and piracy attacks (see Figure 35).

---

755 MarineBuzz.com, "Weather Forecast: Wind Speed, Direction and Sea State"  

Figure 35 provides an overview of the average conditions expected each month. It shows the condition of the sea is calm from January to April. April is the calmest month for both seas and wind, when the Gulf of Aden has conditions similar to that of a swimming pool. Between May and September, the wind speed and sea height reflect less stable sea conditions. Increased winds, but relatively low seas follow gentle conditions in October, November and December. Comparing the conditions in the Gulf of Aden and the Somali coastline, winds and seas are much higher off the Somali coast than in the Gulf of Aden. This is likely due to the Gulf being somewhat sheltered from harsh weather conditions, compared to the Somali coast, which has exposure to the Indian Ocean.

While sea states may vary day to day, it generally remains fairly consistent over the course of a month. Table 15 shows the average sea state for each month, the number of attacks, and the likelihood for attack. By showing these figures together, it is possible to see a complete picture of the potential for attack across the year.

**Table 15: Average sea state, attacks and likelihood of success of Somali piracy, by month, 2002 to 2011**

<table>
<thead>
<tr>
<th>Month</th>
<th>Estimated average sea state</th>
<th>Average attacks (n)</th>
<th>Likelihood for attack (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>4</td>
<td>81</td>
<td>26</td>
</tr>
<tr>
<td>February</td>
<td>3</td>
<td>59</td>
<td>25</td>
</tr>
<tr>
<td>March</td>
<td>3</td>
<td>125</td>
<td>22</td>
</tr>
<tr>
<td>April</td>
<td>1</td>
<td>116</td>
<td>34</td>
</tr>
<tr>
<td>May</td>
<td>4</td>
<td>102</td>
<td>21</td>
</tr>
<tr>
<td>June</td>
<td>6</td>
<td>61</td>
<td>13</td>
</tr>
<tr>
<td>July</td>
<td>7</td>
<td>46</td>
<td>17</td>
</tr>
<tr>
<td>August</td>
<td>5</td>
<td>50</td>
<td>28</td>
</tr>
<tr>
<td>September</td>
<td>5</td>
<td>64</td>
<td>33</td>
</tr>
<tr>
<td>October</td>
<td>3</td>
<td>91</td>
<td>35</td>
</tr>
<tr>
<td>November</td>
<td>4</td>
<td>106</td>
<td>26</td>
</tr>
<tr>
<td>December</td>
<td>5</td>
<td>57</td>
<td>33</td>
</tr>
</tbody>
</table>

Table 15 shows the risk of attack is lower if traversing during the months when the weather worsens. Based on the 10-year period from 2002 to 2011, on average, piracy attacks are lowest in July (n=46) when the average sea state is the highest at ‘7’, indicating rough seas. The likelihood of attack is not always indicated by sea state. May, on average, experienced one of the highest average months of attack, but had an average sea state of ‘4’. Table 15 shows that, on average, April and October recorded the highest number of attacks against vessels transiting the region (34% and 35%, respectively) due to low sea states (1 and 3, respectively). Based on these findings and consistent with the BMP guidelines, shipping companies could opt to traverse the Gulf of Aden from June to September, December and January, during periods of rough seas. At the other times of year when the likelihood of piracy attacks is greater, transiting the Cape of Good

---

Hope is safer. This option may impede maritime commerce, alternatively, expanding organised convoys may alleviate some risk when transiting the high-risk region during periods when seas are calm (see Chapter 9.4.2).

Findings in Table 15 are also consistent with meteorological analysis for 2010 and 2011 conducted by Duncan Cook and Sally Garrett. This analysis illustrates that poor weather reduces opportunity to offend; reflecting on routine activity theory, this analysis shows that vessels are only considered suitable targets whilst travelling on calm seas.

9.3.3 On-board vessel deterrents, and new technologies

General on-board deterrence measures

The BMP guidelines provide advice to vessel owners and operators regarding methods to prevent piracy attacks. These non-lethal measures prevent pirates from boarding a vessel, particularly large, slow commercial vessels. Listed are some of the most commonly used measures:

- dummies – well-constructed dummies strapped to the railings could increase the perceived vigilance by appearing as crewmembers on the watch;
- physical barriers – includes razor wire, as pirates generally board vessels by hooking their ladders and climbing the side of the vessel. Razor wire reduces access to a vessel’s bridge, making boarding difficult. Some vessels use electric barriers with warning signs printed in Somali;

762 Ibid.: 23.
• water hoses – water cannons and fire hoses provide non-lethal options to keep pirates from closing in on a vessel from boarding;
• alarms – alert the crewmembers that an attack is underway, but also alert the pirates that the crewmembers have seen the pirates;
• upper deck lighting – lighting increases visibility for night watchmen and should always remain switched on to reduce risk of attack; and
• citadels – specifically designed and constructed citadels create a safe area on a vessel isolating the crewmembers from the pirates and prevent pirates from taking control of the vessel. Within the citadel, the crewmembers have full control of the vessel and supplies of food and water.

Training exercises should occur regularly to ensure the crewmembers become familiar with their roles.\textsuperscript{763}

The use of these prevention measures, at least in combination, reduces the vulnerability to piracy attack.\textsuperscript{764} All, or a combination of these measures are designed for large commercial vessels, but some measures are also applicable to smaller vessels. While yachts and fishing vessels are unlikely to have citadels, other measures, such as physical barriers, water hoses and on-board lighting deters pirates to some extent.

Aging vessels as a risk factor to Somali piracy

Aging commercial vessels may be at increased likelihood of piracy attack (see Table 16). Technologies on newer vessels could reduce opportunity for boarding, and even

\textsuperscript{763} Ibid.: 23-40.
approaching a vessel, therefore reducing the potential for piracy attacks.\textsuperscript{765} Upgrades to older vessels, as advised in the BMP guidelines, could be a reasonable short-term measure against attack.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{Vessel Type} & \textbf{Average Vessel Age (years)} & \textbf{Risk of attack (%)} \\
\hline
Container & 10.7 & 12 \\
Bulk Carriers & 15.3 & 24 \\
Oil Tankers & 16.4 & 0 \\
General Cargo & 24.2 & 15 \\
All vessels (average) & 22.5 & 3 \\
Top 10 Open Registries (average) & 14.8 & 11 \\
\hline
\end{tabular}
\caption{Vessels by age and type, 2011\textsuperscript{766}}
\end{table}

The average age of commercial vessels is 22.5 years.\textsuperscript{767} Newer vessels are capable of faster speeds. Therefore, all else equal, pirates are more likely to succeed when attacking an older vessel.\textsuperscript{768} While older vessels could be more prone to attack, the low speed of most commercial vessels increases risk irrespective of age. Prior to the risk of piracy on slow-going vessels, efforts to reduce fuel consumption and the resulting emissions encourage vessels to travel at speeds closer to 12 knots.\textsuperscript{769} Bulk carriers with an average age of 15.3 years and an average attack rate of 24 percent confirms this point.

Open registries have a younger fleet than the overall world average (n=14.8 years, n=22.5 years, respectively), therefore a concrete link between age and risk of piracy attack is impossible.\textsuperscript{770} According to the Review of Maritime Transport, new vessels are

\textsuperscript{765}United States Naval Research Laboratory, "Research" http://www.nrl.navy.mil/.
constructed to be more fuel efficient and operate at higher speeds, which would assist in evading pirate attack. Particularly since no vessels travelling at 18 knots or faster have been attacked, technology to increase speeds on new vessels could help prevent attacks. While skiffs often travel beyond 18 knots, the *modus operandi* of boarding a steaming vessel by scaling a grappling ladder is too difficult beyond 18 knots.

Assuming prospects of substantial gain continue to provide motivation to offend and commercial vessels travel consistently beyond 18 knots, pirates might seek to acquire vessels, skills or technology to facilitate continued offending.

**Counter-piracy innovations**

As history has shown, innovative measures to minimise piracy attacks is an old concept. According to a representative from the US Government, new technologies for shipping vessels are being developed constantly, however many are prohibitively expensive for use in commercial settings. The US Navy trials innovative vessel safety measures to determine whether they are feasible for mainstream production.

Electromagnetic Pulsing (EMP), used by the US Navy, provides one defence mechanism. The commercial shipping industry could benefit from the EMP technology to defend against pirates. EMP operates as a type of bomb that sends out a current,
disabling electronic devices within its radius.\textsuperscript{775} The EMP operates by disabling all vessels in its blast radius, preventing counterattack. Due to the high cost of installing EMP, it is unlikely to be adopted by the commercial sector in the short-term.\textsuperscript{776}

Technology aboard hijacked vessels becomes the property of the pirates. As was the case with GPS navigational devices and other technologies, pirates may use hijacked vessels’ technologies to locate other vessels suitable for attack. There is potential that pirates could use the EMP technology to aid their hijackings. If used by pirates, EMP technology used by pirates could significantly reduce the profitability of the commercial shipping industry and increase the vessel and crews’ vulnerability. As with all new technology, EMP would require some industry guidelines to ensure safe usage should it be adopted in a commercial setting.

Satellite vessel-tracking devices are useful to monitor the location of vessels. ShipLoc is an inexpensive satellite tracking system endorsed by the IMB, which minimises opportunity for attacks by communicating the precise location of a vessel regularly to the ShipLoc base.\textsuperscript{777} ShipLoc also has a discrete alarm that when triggered by crewmembers, communicates with the vessel owner and relevant authorities, without being detected by pirates aboard or by other nearby vessels.\textsuperscript{778} This technology allows naval patrols to reach a vessel under attack quickly in its exact location. The IMB encourages vessels to have on-board technology that tracks location to allow for a quick response if pirates attack.

\textsuperscript{775} Mark Tempest, "EMP Heard Again?" EagleSpeak, http://www.eaglespeak.us/2006/01/emp-heard-again.html.
\textsuperscript{778} Ibid.
While communicating location is important, particularly when a piracy attack has occurred, preventing attack is more desirable. Secure-Ship is a non-lethal, electrifying fence which surrounds the vessel. As described previously, using an electrified fence that emits 5,500-volt pulses to deter boarding attempts, the risk of a pirate boarding a vessel is reduced. If the fence is compromised, the intruder should receive a non-lethal shock and sound an on-board alarm activating floodlights and a siren. Combining the electric fence, floodlights and alarm are effective defensive tools if pirates attempt to board a vessel. While these innovations are likely to reduce the success of piracy, the cost of the devices may outweigh the potential benefit, particularly if the vessel has other protection measures installed.

9.3.4 Alternate routes

Removing potential targets from the high-risk area, could resolve Somali piracy. The BMP guidelines advise mariners to avoid the high-risk piracy zone. An alternate to facing the risk of piracy involves transiting along a different route. This high-risk region is bounded by the Suez Canal, the Strait of Hormuz to the north, and between 10°S and 78°E. Attacks have also taken place at the outermost edges of this high-risk area, expanding the hotspot zone even further. It is reasonable to assume that if a vessel enters this region, they become vulnerable to attack. Due to the geographical expansion

783 Ibid.: v and 4.
of piracy, avoiding risk is increasingly difficult. This section aims to shed light on some of the alternative routes to prevent the risk of attack.

The Gulf of Aden provides an abundant supply of prospective targets

Worldwide reliance on sea trading means that between 22,000 and 25,000 vessels, or 50 percent of the world’s containers pass by the Horn of Africa annually.\(^{784}\) According to Oceans Beyond Piracy, the cost of piracy in 2011 was estimated to be between US$6.6 and US$6.9 billion and between US$5.7 and US$6.1 billion in 2012.\(^{785}\) Avoiding the Suez Canal in preference of the Cape of Good Hope could present a reasonable alternative. Rerouting vessels around the Cape to avoid piracy, adds significant time and expense; almost 10,000 kilometres or up to 20 days for a cargo vessel and costing an estimated US$290.5 million in 2012 down from between US$486 and US$680 million in 2011.\(^{786}\) If a shipping company chooses to transit the Suez Canal and accept the possible risk of piracy, they must buy war risk insurance to protect their vessel (see Chapter 6.4.2).\(^{787}\) Underwriters may offer to reduce premiums for vessels that hire armed guards and take out separate kidnap and ransom insurance.\(^{788}\) In the wake of

---

piracy, several shipping companies began rerouting all vessels around the Cape of Good Hope.\textsuperscript{789}

Most vessels still transit the high-risk areas, despite the risk of piracy. Combining measures to prevent attack, shipping companies perceive the risk of attack as low, fewer than 0.1 percent.\textsuperscript{790} Many shipping companies are taking the risk transiting the high-risk region and bearing the associated high cost of insurance.\textsuperscript{791} While rerouting the vessel around the Cape of Good Hope seems logical, research suggests that even if piracy increased 10-fold, only 18 percent of vessels would reroute their journey.\textsuperscript{792} This indicates that the time saved by transiting through the high-risk region outweighs the risk of attack.\textsuperscript{793}

Among vessels transiting the high-risk region, a new trend emerged in 2011. Vessels opted to transit the Gulf of Aden, but hug the coastlines of Western India and the Arabian Peninsula minimising exposure to Somali waters. This journey only adds one additional day to the journey and compared to rerouting around the Cape of Good Hope, results in a large financial saving.\textsuperscript{794} Figure 36 shows the commonly used transit route near the western rim of India.

\textsuperscript{791} Ibid.: 13.
The route shown in Figure 36 presents a reasonable solution to minimise risk of piracy. With increased use of motherships, however, pirates are less restricted in the distance they travel in search of a suitable target. Protection measures recommended in the BMP guidelines may safeguard ships, although, rerouting the vessel away from the Gulf of Aden decreases the risk of piracy. Vessels rerouting to other transit routes forces the pirates to alter their *modus operandi*, or refrain from attacking completely.
Safest transit times

The BMP guidelines and EU NAVFOR state that nighttime is the safest period of day to travel through the region. This is contradicted by a BBC newspaper article reporting that pirates operate at night.\textsuperscript{796} Both IMO and IMB state the times (where available) at which piracy attacks took place in their piracy reports. In order to show the safest times to transit, Table 17 analyses the times of attacks from 2002 to 2011 in 6-hour timeslots. Figure 37 graphically presents the totals from Table 17.

\textit{Table 17: Somali piracy attacks, by time of day, 2002 to 2011 (number)}\textsuperscript{797}

<table>
<thead>
<tr>
<th></th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12am-6am</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>11</td>
<td>18</td>
<td>23</td>
<td>16</td>
<td>75</td>
<td>30</td>
</tr>
<tr>
<td>6am-12pm</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>16</td>
<td>11</td>
<td>17</td>
<td>13</td>
<td>71</td>
<td>28</td>
</tr>
<tr>
<td>12pm-6pm</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>12</td>
<td>8</td>
<td>12</td>
<td>12</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>6pm-12am</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>Unknown</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>11</td>
<td>9</td>
<td>5</td>
<td>42</td>
<td>17</td>
</tr>
<tr>
<td>Attempted</td>
<td>13</td>
<td>16</td>
<td>9</td>
<td>32</td>
<td>16</td>
<td>39</td>
<td>67</td>
<td>169</td>
<td>154</td>
<td>189</td>
<td>704</td>
<td></td>
</tr>
<tr>
<td>12am-6am</td>
<td>2</td>
<td>7</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>6</td>
<td>20</td>
<td>57</td>
<td>46</td>
<td>47</td>
<td>193</td>
<td>27</td>
</tr>
<tr>
<td>6am-12pm</td>
<td>7</td>
<td>5</td>
<td>5</td>
<td>9</td>
<td>6</td>
<td>17</td>
<td>26</td>
<td>50</td>
<td>43</td>
<td>80</td>
<td>248</td>
<td>35</td>
</tr>
<tr>
<td>12pm-6pm</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>14</td>
<td>2</td>
<td>6</td>
<td>19</td>
<td>52</td>
<td>46</td>
<td>50</td>
<td>193</td>
<td>27</td>
</tr>
<tr>
<td>6pm-12am</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>10</td>
<td>2</td>
<td>9</td>
<td>19</td>
<td>12</td>
<td>69</td>
<td>10</td>
</tr>
<tr>
<td>Unknown</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>


Table 17 and Figure 37 show that most pirate attacks occur between 12am and 6am (n=75, 30%), followed by between 6am and midday (n=71, 28%). Table 17 and Figure 37 also show that pirates attack at all times of the day and night. However, the period of day when the fewest attacks are reported is between 6pm and midnight (n=16, 6%). Almost five percent (n=43) of all piracy attacks failed to report the time of attack.

Somalis usually practice five compulsory prayer sessions daily in accordance with their adherence to Islamic beliefs. As such, times of prayer could be safe periods to travel; prayer is required at dawn, noon, mid-afternoon, sunset, and in the evening. Based on the reported attacks shown in Table 17 and partially consistent with the BMP guidelines, heightened vigilance is needed when transiting the high-risk area after midnight when piracy poses the highest risk.

798 Ibid.
9.4 Capable guardianship: what are the most effective counter-piracy responses?

The international counter-piracy measures incorporate varying responses. This section argues that applying a pluralistic regulatory response is the most effective means of combating piracy. It further addresses crime control through two elements; the frontline naval coalition patrolling the region and attempts to disrupt the clandestine criminal syndicates facilitating piracy. It explores the framework of regulatory pluralism to control crime and organise the stakeholders involved in the response.

9.4.1 Dynamic relationships between piracy regulators

Despite periods of suppression, maritime piracy has never been eliminated, though it has been outlawed in various locations since Roman times. Lessons from history show attempts and triumphs in suppressing maritime piracy in various regions around the world (see Chapter 2). In order to effectively counter piracy, local, national and international responses are necessary. Although the current global measures against maritime piracy have not been entirely effective, there is wide agreement that a global or at least regional response is necessary and has the greatest potential for success. An understanding of the complexities associated with the maritime domain, and the requirements to secure against unlawful acts, is paramount for safety on the high seas.

---

801 Donald J Puchala, "Of Pirates and Terrorists: What Experience and History Teach."; 9; John Braithwaite and Peter Drahos, Global Business Regulation : 419.
Securing the oceans must not undermine the natural integrity of passage routes or the legitimate existence of those vessels transiting through waterways.\textsuperscript{804}

There are many impediments to effective responses to piracy. The maritime industry is poorly regulated and within it exist practices that invite illegal infractions, including piracy.\textsuperscript{805} Loopholes may include the failure to meet national or international standards acting as a \textit{seal of approval}, such as inspections and surveys issued by the IMO and classification societies.\textsuperscript{806} The relevant UN guidelines have only been adopted by around 25 percent of vessels traversing piracy prone waters, which further impacts on the ability to coordinate an effective response.\textsuperscript{807}

Timothy Martin suggests that since maritime piracy does not have the \textit{threat profile} of organised terrorists, many littoral states fail to see it as a real threat.\textsuperscript{808} David Rosenberg points out, the expense of implementing proactive responses to maritime piracy is so costly, the benefit, particularly to developing littoral states, may not outweigh the expense.\textsuperscript{809} Role sharing could be an effective means of reducing costs to some states that are unable to reap immediate benefits from counter-piracy activities. In reality, a lone-acting country cannot guarantee the safety and security of the maritime domain,


\textsuperscript{806} John Braithwaite and Peter Drahos, \textit{Global Business Regulation} : 424.


therefore a coordinated regional effort is likely to yield greater success. Weak law enforcement undermines regional counter-piracy activities resulting in pirates taking sanctuary along the extensive Somali coastline.

This chapter has presented examples of dynamic relationships within the regulatory pluralism framework. Firstly, the shipping industry exemplified positive collaboration in bringing together interested parties to contribute towards the development of the BMP guidelines. Secondly, collaboration was discussed as being necessary to run the regional support centres from the international community, governments, the shippers and armed security. Thirdly, the CGPCS with its five Working Groups brings together international community, insurers, commercial shippers and governments in an international forum to discuss and make decisions on piracy.

Policies are commonly influenced by activities on the ground. The Security Council, for example, instructs governments, the international community, the shipping industry and private security, in line with expert feedback and assessment reports it receives from frontline sources. Specifically, Resolution 2077 “encourages member states to continue to cooperate”, “to exchange evidence and information” and “to facilitate coordination” in the fight against piracy. These activities promote and encourage collaboration.

---

These examples are a small representation of much collaboration between actors working in the counter-piracy space.

Regulatory pluralism has applicability beyond working towards a shared goal. Interactions that influence the activities of another actor are also prominent in the counter-piracy space. Armed guards aboard vessels reducing the need for war risk insurance provide an example of this. In 2012, there was a drop in the uptake of war risk insurance, while kidnap and ransom insurance remained the same as recorded in 2011.\textsuperscript{813} In some cases, insurers, such as Hiscox Ltd, offer up to a 50 percent reduction in the cost of their insurance premiums for vessels navigating the high-risk region with hired armed security aboard.\textsuperscript{814} Some underwriters do not issue kidnap and ransom insurance unless a vessel charterer hires armed guards.\textsuperscript{815} The success of armed guards in protecting vessels has influenced the activities of insurers by providing them with confidence that vessels transiting the high-risk areas could be safe without issuing war risk insurance.

\textbf{9.4.2 Longevity of naval patrols in the Somali piracy-prone region}

The UN and other international bodies rely on combined naval patrols to implement their responses. The naval coalition is the frontline in the counter piracy response and is first to respond to piracy attack. The navies are an important part of the regulation and crime prevention framework. In 2009, naval coalitions entered the Gulf of Aden region to protect vessels in transit. Initially, NATO, EU NAVFOR and the CTF deployed

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{814} John W Miller, "Loaded: Freighters Ready to Shoot across Pirate Bow". http://online.wsj.com/article/SB126265833983415885.html?mod=rss_Today.
\item \textsuperscript{815} Ibid.
\end{itemize}
\end{footnotesize}
Ocean until at least the end of 2014. A representative from the US Government also indicated that US naval vessels would remain in the high-risk zone until piracy is suppressed. While this commitment from the international community remains strong, concerns expressed by a representative from the shipping industry noted that fewer vessels patrol due to the increased use of armed guards aboard vessels. This commitment from the international community shows resilience and interconnected dedication to suppress piracy, though the future use of armed guards may lead to a reduction in the presence of naval forces. The combined response of naval patrols and armed guards has led to a reduction in piracy attacks. These efforts should continue.

**Convoys and the ‘Internationally Recommended Transit Corridor’**

The Internationally Recommended Transit Corridor (IRTC) is a counter-piracy measure that creates a channel for safe transit through the Gulf of Aden (see Figure 38). Naval forces operate along the IRTC, closely monitoring by air and sea, to increase guardianship and limit the potential for attack. The corridor relies on regional command and control centres, the Maritime Security Centre - Horn of Africa and the UK Maritime Trade Operations, to coordinate group transits and to share information with vessels in the region. Vessels traversing the region register with the Maritime Security Centre which then assigns a naval vessel to escort. The Maritime Security Centre also releases advice on recommended travel times to further minimise risk. While reports

---


826 RedFour, "Internationally Recommended Transit Corridor," 2009.

exist of attacks occurring along the IRTC, a piracy expert disclosed that those attacks are relatively minor because of the speed at which naval patrols rescue victimised vessels.828

Figure 38: Internationally Recommended Transit Corridor829

The use of armed guards or transiting faster than 18 knots through the region may not be feasible for some vessels. Vessel and financial limitations impede opportunity for protection through these strategies. Organised convoys through the high-risk region could be a beneficial alternative. Revisiting strategies from World War II during the Battle of the Atlantic could prove to be a transferrable strategy against pirates. Led by Britain, the Allies relied on convoys to safely transport troops and equipment in the face

of German submarine operations after some ports to the island country were held by the Axis army and denied access for imports. In this modern setting, the concept of convoys along the IRTC has also been effective. Expanding the IRTC concept, convoys could operate beyond the Gulf of Aden, into the wider high-risk region. Adopting convoys for varying requirements, such as slow and fast pace vessel convoys and the use of convoys outside of monsoon seasons, could be effective. This could provide vulnerable vessels with guardianship.

9.4.3 Manpower: Armed guards

Armed guards aboard vessels have effectively defended against Somali piracy. At the time of writing, all vessels carrying armed guards had prevented pirates from boarding a vessel. In 2011, an average of between 15 and 25 percent of vessels transiting the high-risk region deployed armed guards, which increased to as much as 50 percent by year-end. The dramatic reduction in reported piracy attacks in 2011 reinforces the case for using armed guards.

Despite effectively preventing piracy, carrying and using weapons creates many problems, particularly when transiting between international jurisdictions. Reports

---

indicate that as many as 10 percent of vessels used armed guards before the issue reached the IMO agenda.\textsuperscript{834} Armed security guards on vessels or having crewmembers carry weapons is discouraged by UNCLOS.\textsuperscript{835} Regardless, the flag state decides, independent of the international community, whether to authorise shippers to contract armed guards.

Unarmed guards had been deployed aboard vessels for some time, though armed guards represent a relatively new innovation for commercial shipping.\textsuperscript{836} This concept has given rise to extensive international dialogue regarding the safety of carrying weapons, responsibility for use of weapons, and payment of armed guards. The IMO facilitates ongoing communication between its member states and industry players to determine guidelines and expectations. There remains uncertainty and disagreement about some issues, which reflects the fast pace in which engagement of armed guards has occurred.\textsuperscript{837} There are many positive and negative arguments about the use of armed guards, though their success in deterring pirates is indisputable.

In June 2009, the IMO released a circular providing advice to governments to prevent and suppress piracy. Recognising the increased use of armed guards aboard vessels, the IMO released a further circular accepting the use of armed guards on commercial vessels in May 2010.\textsuperscript{838} The IMO consistently emphasised its discouragement of

\begin{flushright}
\textsuperscript{836} Peter Cook, "Pers. Comm #14, 10 November; Founder and Director of Security Association for the Maritime Industry," (London, 2011).
\end{flushright}
carrying weapons aboard vessels. In September 2011, the IMO released three Maritime Safety Committee circulars that provide recommendations for using armed guards. These provide information for port and coastal states; flag states; and seafarers to ensure that those vessels wishing to use armed guards operate under strict and consistent guidelines. The purpose of the IMO’s recommendations ensures that vessel owners, shipmasters and flag states have established a national policy on how to select appropriate armed guards and deal with any consequences that may arise. The IMO recognises that existing national legislation within the flag state must not be violated by approving the use of armed guards aboard vessels. Some flag states publicly announced their use of armed guards, though there is no requirement to do so. At the time of writing, the flag states that announced their approval for armed guards to accompany crewmembers aboard vessels include:

1. Cyprus;
2. Denmark;
3. Finland;
4. Germany;
5. Greece;
6. Hong Kong;

---

839 Ibid.: paragraph 18.37.
7. India;
8. Italy;
9. Netherlands;
10. Norway;
11. Spain;
12. UK; and
13. US.\textsuperscript{843}

Within this regulatory space, some flag states influence decision-making in other states. Advertising the flag states that carry armed guards may encourage others to do the same.

Authority to carry weapons and guards is complex. The decision to carry armed guards must comply with pre-existing laws in the flag state, port states and states of transit and mooring.\textsuperscript{844} Before deploying armed guards, flag states must obtain a variety of licences to cover the flag state, the point of embarkation, transit and mooring points and the location of disembarkation.\textsuperscript{845} Some locations, such as Egypt have strict stipulations about weapons and privately contracted guards within their territorial waters, which affect vessels wishing to transit the Suez Canal. In September 2011, the Egyptian government lifted its ban, and permitted weapons and privately contracted guards to


\textsuperscript{845} Ibid.
enter its territorial waters. Now, vessels carrying weapons and intending to transit the Suez, must:

Submit a letter certified by their flag state stating the details of all weapons, ammunitions, number of guards aboard and the identity of the guards' employers including confirmation that such weapons and ammunitions will not be used during the vessels' presence in the Canal waters.

The Suez Canal is a vital shortcut linking the US and Europe with the Indian Ocean and its Asian ports. Vessels must comply with these conditions or take the longer journey around the Cape of Good Hope. Tolls for entering the Suez Canal amount to about US$5 billion annually, which may account for why the Egyptian Government relaxed the requirements for weapons entering the Canal. Shipping companies whose vessels are protected by armed guards consider the cost and time impacts when determining their route.

In a piracy attack, the SOLAS Convention states that "the master of a ship has the ultimate responsibility for the safety and security of the ship", mirrored in the ISPS Code. The rules of engagement with pirates vary; however, the armed guards must

---

847 Ibid.
follow the orders of the vessel master. According to ex-armed guard Morton, in reality the masters rely on the advice provided by the team of armed guards to lead the response.\textsuperscript{851} The legal test of proportionality also applies when responding to pirates.\textsuperscript{852} What constitutes a proportionate response to threats differs between jurisdictions, clouding the legal responsibility further. Determining proportionality in response to piracy becomes an issue when reckless and risk-taking ‘cowboys’ are employed as armed guards.\textsuperscript{853} Regardless, the shipmaster determines the appropriate course of action when faced with a crisis.

Since 2010, there has been a steady increase in private companies offering their services as armed guards. To protect the commercial shipping industry against rogue armed guards, BIMCO disseminated a sample contract for the employment of security guards on vessels.\textsuperscript{854} To impose some regulation over the quality of armed guards, Peter Cook founded the Security Association for the Maritime Industry (SAMI). The purpose of SAMI is to provide the shipping industry with an accredited choice of private security companies to use aboard their vessels. The accreditations program is divided into three stages; phase one rolled out on 3 January 2012:

Stage 1: Due diligence – involves an exercise within the armed security companies to ensure all correct documentation is in place including licences and correct insurance that complies with the P&I clubs.


\textsuperscript{853} Peter Cook, "Pers. Comm #14, 10 November; Founder and Director of Security Association for the Maritime Industry," (London, 2011).

Stage 2: Company audit – the purpose of this stage is to ensure the armed security company conducts security activities and manages a crisis. It also checks to ensure that in times of crisis, the rest of their company continues to function as normal.

Stage 3: Spot check – the purpose of this stage is to ensure the armed security company is complying with local and international laws. These spot checks occur infrequently, to ensure compliance at all times.\(^{855}\)

While SAMI is still a new organisation, it is rapidly developing its place in the industry and it promises to provide the shipping industry with accredited, quality contractors. As a regulatory actor, SAMI influences the shipping industry by providing accredited private security companies. SAMI provides a safety net for the shipping industry, although it is unlikely that failure to meet the accreditation would result in sanctioning.\(^{856}\) Despite the lack of sanctions, operating a private security company would be difficult because of the pressure and oversight from the international community.

SAMI aims to provide the shipping industry with professional armed guards. In doing so, SAMI has an ongoing dialogue with IMO, follows key IMO circulars relating to armed guards in protection against piracy, and is represented at the IMO Maritime Security Committee meetings.\(^{857}\) SAMI has been welcomed as a regulator, which in time should provide checks and balances to assist the shipping industry to make sound decisions about armed guards. There is concern among some commentators that SAMI could monopolise the accreditation of private security and therefore, dictate price and

\(^{855}\) Peter Cook, "Pers. Comm #14, 10 November; Founder and Director of Security Association for the Maritime Industry," (London, 2011).

\(^{856}\) Ibid.

\(^{857}\) Ibid.
terms within the private armed guards market.\textsuperscript{858} According to Jonathan Bellish, in 2012 SAMI already had 186 members paying an average membership fee of just under US$4,000.\textsuperscript{859} As the private security industry continues to grow to meet the increasing demand, the need for regulation and transparency should also rise.

\subsection*{9.4.4 Cutting off the money trail: Overcoming the problem of laundering piracy profits}

The inclusion of policy on dealing with laundered piracy-generated profits within anti-piracy efforts was slow to start. Antonio Maria Costa, Executive Director of UNODC until July 2010, conveyed that an effective counter-piracy solution must have robust anti-money laundering measures.\textsuperscript{860} Further, the UK House of Lords noted in its 19\textsuperscript{th} European Union Committee Report, that:

\begin{quote}
Money extorted by the payment of a ransom to free a ship, its crew or its cargo clearly becomes the proceeds of crime. The money may be laundered, although...[Somalia] [is] a cash-driven economy, and...[ransom] money would be unlikely to be placed in a financial institution, at least initially. Whether the money is laundered or not, it may be used for the financing of terrorism.\textsuperscript{861}
\end{quote}

\begin{itemize}
\end{itemize}
Hawala is a legitimate form of informal banking that operates in Somalia, which also is regarded as a conduit for money laundering by criminals.\textsuperscript{862} Due to the complexities associated with the non-transparent hawala system, responding to money laundering received little priority initially. Paperless transfer and dispersion of funds leaves little evidence to prove if, where, and how profits are transferred within and beyond Somalia. Hearsay and anecdotal evidence indicate some money laundering occurs, however little evidence exists that could result in conviction.\textsuperscript{863} Adequate gatekeepers to control the transfer and spending of ransoms could help disrupt piracy as ransom payments are rumoured to finance the purchase of weapons, small boats, fuel and technological items, such as GPS navigational systems, facilitating further offending.\textsuperscript{864}

Striking a balance between regulating the hawala system and permitting its use in legitimate settings is a challenge for the international community.\textsuperscript{865} Somalia, plagued by challenges of governance, faces difficulties in establishing the necessary infrastructure to regulate underground financial transfers, without penalising those who use the system legitimately.\textsuperscript{866} An in depth study explored the complexities of the hawala system operating in Somalia through remittances. It noted that:

in the long run...the benefits of the remittance sector need to be complemented by broader financial sector reforms. Like other

financial intermediaries, remittance companies are constrained by the absence of a sound legal and regulatory framework, strong property rights culture, enforceable collateral contracts, accessible credit information systems and related financial infrastructure.  

The Somali Money Services Association, in coordination with UNODC, is developing a code of conduct to ensure money transfer services in Somalia meet international standards. Workshops hosted by UNODC in 2013 sought to develop mechanisms to target financiers of pirates, counter money laundering and the financing of terrorism.

In 2011, INTERPOL began mapping the transfer of profits. Working Group 5 was added to the CGPCS suite of working groups to identify and disrupt the financial networks of piracy and their financiers. The rationale is that by cutting off the supply of funds, specifically by stopping transfer of ransom payments, the crime should be unable to continue. Suggestions of banning ransoms emerged, but as stated by a representative from the UK Government, “if ransoms are banned, vessels and crew may not be safe.” The near future should no doubt determine whether Working Group 5 could address some of the concerns about laundered piracy profits.

---

9.5 Conclusion

Assessing a range of measures to prevent and deter piracy revealed that while there is some success, there is no panacea. Specifically, this chapter brought together methods that seek to reduce the motivation of pirates, increase protection of at risk vessels and strengthen guardianship off the coast of Somalia. Applying a regulatory pluralism paradigm that draws on a range of complementary responses is a useful way to counter piracy. A routine activity theory framework, to map a pluralistic approach requires methods to reduce the motivation among offenders, in addition to reducing targets and increasing guardianship. Some UN agencies are in the early stages of developing diversionary programs for young people. Prior offenders and those who are at risk of recruitment into criminal gangs would benefit from these programs. Without evaluations, the success of the programs remain unmeasured, however there are indications of positive outcomes.

Target hardening measures for vessels would decrease vulnerability to attack, although not all measures apply to each vessel type. Reducing risk is possible by adopting practices encouraged within the BMP guidelines and other piracy alerts. Analyses revealed that during June to September and from December to January pose least risk, as there is reduced likelihood that pirates operate their skiffs in poor oceanic conditions. Further, the BMP guidelines advise that older vessels unable to travel at high speeds are at greater risk; no vessel steaming over 18 knots has been attacked. While the fleets flagged to open registries are consistently younger, there is no conclusive link to increased risk of attack as analyses showed that commercial vessels laden with cargo would be unlikely to travel at speeds in excessive of 18 knots, irrespective of age. Innovations trialled by the US Navy, such as EMP, could have success in repelling
pirate attacks; they would be unlikely to be installed in commercial vessels due to the high cost. Alternatively, the international community has endorsed other innovations, such as ShipLoc and Secure-Ship. The high cost associated with re-routing vessels around the Cape of Good Hope has been alleviated by instead hugging the Western Indian rim, though pirates expanded their area of operation to this zone. The IRTC provides a safe option, and analyses revealed that transiting the region between 6pm and midnight would also result in fewer attacks. Between midnight and 6am elicits the greatest risk of piracy attack, partially consistent with the BMP guidelines.

Increasing guardianship could result in a reduction of risk of Somali piracy. The international counter-piracy response primarily involves preventing piracy by policing the region with naval patrols. The naval coalitions are the most visible counter-piracy response. However due to the size of the region, the effectiveness of the limited number of vessels on patrol is constrained. Regardless, the coalitions remain committed to guarding the region. As a short-term response, naval patrols and armed guards have provided a significant reduction in attacks. Despite the complexities that arise with contracted armed guards, zero attacks against vessels they protect provides a very strong case for their continued use. The international community is working towards developing regulatory control to give some oversight of armed guards, which was previously a haphazard approach. The international community was slow to react to the problem of laundering piracy ransoms. There is a growing focus on preventing profits laundering, particularly when this activity defies the arms embargo. The adoption of CGPCS Working Group 5 is a step towards developing tighter controls over illegal financial transfers, while being mindful of not penalising those who use the hawala.
system legitimately. Collectively, the guardians presented in this chapter provide a strong network to survive independently, but strengthen as a group.
CHAPTER 10 STRENGTHENING THE RESPONSE: VIEWING SOMALI PIRACY THROUGH A HOLISTIC LENS

10.1 Introduction

Somalia faces challenges not only in overcoming piracy, but also in rebuilding a country damaged by war and absence of governance for almost a quarter century. Despite assistance from the international community, Somalia is likely to encounter challenges during the recovery process. Combining short and long-term mechanisms to reduce the number of successful attacks, and provide political stability and economic development in Somalia will have greatest realisable benefit on land and at sea. This chapter, divided into three sections, presents alternative measures using a pluralistic regulatory framework. Reflecting again on routine activity theory, the first part of this chapter considers measures to reduce the motivation of offenders. It reviews recent prevention and diversion activities aimed at young people and draws guidance from measures tested in other countries. Programs developed by the international community show a commitment to tackling all the elements facilitating piracy.

Secondly, discussion draws on the suitable target element by addressing methods to reduce the vulnerability of vessels to piracy. It also considers possible future targets. The allegiance of pirates to Al-Shabaab increases concern of terrorism, particularly with access to oil and chemical tankers transiting through the region.
The third section focuses on the guardians against piracy. It addresses the international community’s commitment to controlling piracy and whether the role of naval vessels is likely to be long-term, or potentially permanent, in the region.

10.2 Developing a new outlook to deal with Somali piracy

The international community implemented numerous strategies to counter piracy. While the focus of these measures is predominantly to secure the region, there is agreement among some experts that a holistic response drawing on regulatory pluralism is necessary to control piracy. The challenge, as noted by Ted Robert Gurr, is that “[Somalia] is not now, never was, and is very unlikely to become a basis for a stable and unitary state.”

This sentiment is also echoed by Collier, who believes that countries overshadowed by a 'conflict trap' face insurmountable challenges whilst achieving developmental success. The Security Council stated that:

- a solution to piracy can only be found by combining such activities with the wider efforts aimed at stabilizing Somalia, which include promoting good governance and rule of law, strengthening government institutions and fostering socio-economic development.

While this is clear, developing a holistic approach, involving measures on land and at sea, has encountered several challenges, including limited entry into Somalia.

---


10.2.1 Motivated offenders: Preventing piracy uptake and later diversion into other crime types

Somalis have few opportunities for legal forms of employment. Even so, the turn to piracy remains unjustified. Of the three routine activity theory elements, measures aimed at reducing vulnerable targets and increasing guardianship (see Chapter 8.3) have dominated international responses to piracy. Measures to reduce motivated offenders have been fewer in number. This may have been a strategic decision of the international community given the barriers to effecting change in Somalia. However, the research and analysis throughout this thesis points to the importance of reducing the motivation of Somalis to choose piracy and targeting counter-piracy efforts on land. Clearly though, reducing motivations to offend is complicated by the legacy of complex domestic issues impeding internal social, political and economic progress.

As described previously, modern pirates are a combination of two groups. The first group of pirates were disgruntled fishermen who demanded hefty ‘taxes’ from fishing vessels that entered Somali waters as a means of compensation for lost earnings. The second group of pirates were ex-militia piracy gangs who emerged some years later and were instead driven by greed. What militia groups lacked in knowledge about the ocean, they made up for in business acumen and weapons ownership. Both groups of pirates have certain needs that underlay their motivations to offend. Criminogenic needs may refer to substance abuse, antisocial attitudes, criminal associates, unemployment, and
weak marital and family relationships. 875 Donald Andrews and James Bonta’s thesis on criminogenic needs found that criminals may desist from committing crime by embracing alternatives that reduce their motivation to offend. 876 The theory suggests that if any or all of these factors exist along with opportunity, offending is likely. 877 In the piracy scenario, greed, environmental, and social factors motivate pirates. According to Andrews and Bonta’s theory, removing these factors may reduce motivations to offend. 878 As argued in this thesis, efforts on land aimed at reducing Somalis’ motivations to offend should discourage prospective pirates from offending.

Based on the limited legitimate economic opportunity for Somalis, pirates are motivated to offend. The history of oppression and joblessness in Somalia may blur the lines of the ‘rational actor’ concept, particularly when calculating the costs and rewards of committing piracy. 879 According to James Q Wilson, if the opportunity for employment is low and the cost for committing illegal activities is also low, the rational actor may opt to hijack a vessel for ransom rather than fish for a living. 880 “One major reason why crime has gone up is that people have discovered it is easier to get away with it.” 881 It seems that often, where no alternatives exist the “lure of prosperity associated with piracy outweighed the risks.” 882 Looking at the problems for Somalis as a whole, further consideration is needed of the measures designed to divert young people into activities

876 Ibid.: 232.
877 Ibid.: 232.
878 Ibid.: 233-234.
881 Ibid.: 117.
away from piracy or gang-related illegal activities. This should include improved education and the alleviation of poverty to ensure that young people, no longer involved in civil conflict are not motivated to engage in piracy.

What does the future look like for Somalis?

Somalia faces significant challenges in development and stability, tarnished by almost a quarter-century of civil war and political insecurity. These challenges should be acknowledged. Establishing change within this political landscape and culture is a slow process that faces deep internal resistance, which impedes efforts to curtail piracy.883 Despite these challenges, efforts from local, regional and international stakeholders must overcome the barriers to rebuild Somalia and control piracy from within.

The risk of death to Somalis who engage in piracy is high. Reports indicate that between 30 and 50 percent of pirates never return safely.884 Pirates travel far in the hope of receiving a ransom for a hijacked vessel.885 “Desperate Somalis – many no doubt close to starvation – are begging for the chance to try their luck.”886 After confiscating their weapons, naval patrols may provide pirates with fuel and food and return them to Somalia.887

---

887 Ibid.
The patriarchal social structure dominates in Somalia particularly in rural areas whereby men take control over decision-making. War, male migration and the imprisonment of pirates significantly reduced the number of men within the Somali population, forcing women to head their households and engage in government and business. In cities, women live a less traditional lifestyle, often having paid employment. Somali culture, however still strongly encourages women to stay at home caring for children while men work to provide for their families. A similar situation emerged in Rwanda in the wake of civil war, forcing women to engage in less traditional social roles. Referring to other countries that have encountered similar issues, such as Rwanda is a useful reference point to generate governance and social order in Somalia. Examples of the gender role shift are already emerging in Mogadishu. ‘God Sleeps in Rwanda’, a documentary canvassing the lives of women years after the genocide, shows how legislative changes were necessary to allow women to undertake roles more commonly assumed by men. Rwanda has recently rebuilt somewhat, including economic growth and decreased corruption. Embracing the opportunity to have female Somali diaspora and locals lead the country into change, in combination with other necessary changes within the country, may in the longer-term result in positive outcomes.

The Somali diaspora may be pivotal in influencing the country to action redevelopment. The million-strong diaspora provides relatives in Somalia approximately US$1 to US$2

---

891 Kimberlee Acquaro and Stacy Sherman, God Sleeps in Rwanda (United States of America: Shorts International, 2003), Documentary Short Film.
billion each year. In contrast, ordinary Somalis lacking the skills to gain employment find it harder to migrate. A partnership between the UNDP and the International Organization for Migration focuses on bringing the Somali diaspora back to redevelop the country. The Somali Institutional Development Project requires eligible candidates to have a university degree, speak Somali and English fluently, and have a “genuine interest and commitment to the development of Somalia and a willingness to share skills, knowledge and experience.” Involving Somalis in the rebuilding process is likely to lead to more sustainable outcomes than by excluding them. Community participation advocates suggest that rural development projects involving the local community may deliver success. “Programs where the community had more direct control over service providers tended to work better.” The clan structure is strong in Somalia and may be used to strengthen political and social governance, through a bottom-up approach. As culture is important within Somalia, locals may be more effective in instituting change compared to that led by westerners. For example, a study in Uganda and Kenya found that foreigners attempting to make change without the support of locals had little success, which is likely to be the case in Somalia. Locals are closer geographically, linguistically, culturally, economically,
and sociologically to the needs of the region, and thus have fewer barriers to overcome.\textsuperscript{901} Parallels apply to Somalia, generating a more grounded solution built on trust from within the community. Due to the lack of centralised governance, Somali clans are the closest political structure available and should be incorporated in the rebuilding process.\textsuperscript{902}

To be viable, the new Somali Federal Government would benefit from developing strengthened internal relationships. Somalia has a strong culture that has had little influence from the western world. There is a failure among the international community to consult adequately with local people, which may well impede capacity-building activities. This is particularly important since Somali culture is hierarchical, meaning there is always a leader; leadership is constantly challenged through war and conflict. Failure to consult may lead to conflict as Somalis may assume the leadership is being challenged.\textsuperscript{903} By understanding the cultural complexities, there is an enhanced possibility to develop a peaceful resolution.

Somalia relies on aid from the UN to assist those in poverty, especially IDPs in refugee camps. Research conducted by Tim Besley et al. considered the impact piracy has on the aid entering Somalia.\textsuperscript{904} Their research shows that since 2008, the loss of humanitarian aid in Somalia due to risk of piracy attack has amounted to close to
US$1.5 billion. Further, most ransom payments are spent outside Somalia, failing to contribute towards local development. The international community has continued assisting Somalia by rebuilding infrastructure, which has long-term benefits and aims to encourage foreign investment. Somaliland and Puntland have increasing stability. Instead of attempting to resolve the issues in wider-Somalia, these regions have separated and thrived, comparatively. While Somalia has entrenched problems that will take many decades to resolve, according to Jeffrey Gettleman a journalist for The New York Times, Mogadishu seems to be recovering; for the first time since 1991 it is under one authority and is undergoing new construction and has welcomed the return of approximately 300,000 locals to early-2012. Similarly, according to Andrew Harding, Mogadishu is experiencing relative calm amidst hotels and cafes reopening and returning members of the Somali diaspora believing in a future without bloodshed. Gettleman believes this may spread outside the capital, ending war instead, and making way for peace and recovery. Conversely, many commentators believe, Mogadishu is still dangerous. News that humanitarian organisation Médecins sans Frontières pulled out of Somalia is indicative that the country still has a long road of recovery ahead. Matt Bryden echoes these observations and notes that after one year on from the introduction of the new constitution, Somalia has lost its way. Political will could

905 Ibid.: 1.  
guide the momentum towards stability. Addressing entrenched issues and developing sustainable governance challenges Somalia. In time, a recovered Somalia may reduce the reliance on aid relief to support the livelihoods of its people.

What are the alternatives to piracy?

As discussed in earlier chapters, desperation fuelled a reliance on piracy in place of legal employment. In the event that alternatives were available to pirates, some may be willing to convert to a law-abiding lifestyle. Interviews with Somali pirates by reliable media groups (including the New York Times, the BBC and 60 Minutes Australia) have portrayed similar points of view. Liam Bartlett of 60 Minutes Australia interviewed Indianda, a Somali pirate leader, and questioned whether he would give up the pirate's life if he could see a better future:

Liam Bartlett: “If the international community made sure your waters were OK for fishing, would you go back to fishing?”

Indianda Translation: “Yes, that would be OK.”

While the reliability of this testimony is questionable, there are indications that some prefer following a law-abiding lifestyle, particularly when the mortality rate is so high among those participating in piracy. The international community is implementing strategies to create legitimate employment opportunities, but these programs take time to establish. By way of example, the international community spent money preventing Afghan opium poppy growers from cultivating their illegal crops by providing farming

alternatives. "The livelihoods of about 1.7 million rural people – around 7 percent of Afghanistan’s population – are directly dependent on poppy cultivation."\textsuperscript{913} Specifically, the UNODC offered saffron to Afghan farmers as a lucrative alternative to poppies as saffron yields are high, even for a low-grade crop. The optional program was initiated to "move farmers away from growing poppies that fuel the heroin drug trade and cultivate alternative high-value crops."\textsuperscript{914} Many farmers received cheap seeds, tractors, electricity and additional funding for the option of growing pomegranates, wheat or saffron.\textsuperscript{915} Saffron could potentially yield higher profits than opium; saffron sells for around US$1,000 per kilogram, though some reports indicate that saffron may sell for as much as five times that amount.\textsuperscript{916} The FAO reported that:

\begin{quote}
Afghanistan is the largest producer of opium worldwide, accounting for more than two-thirds of the global opium production...the 2003 harvest, at 3,600 tonnes, was the second highest recorded to date in the country.\textsuperscript{917}
\end{quote}

By contrast, despite profits from the poppy industry funding their activities, the Taliban destroyed poppy crops in 2001 and 2012, declaring that drugs were inconsistent with Islamic principles.\textsuperscript{918} As a result of the program and in line with Afghanistan’s National Drug Control Strategy, more than US$25.5 million was pledged by multiple donors in


\textsuperscript{915} Ibid.


the first phase of a five-year program to eliminate illicit opium poppy cultivation by 2013. Unfortunately, the strategy has been ineffective. To bring the Afghan strategy to fruition, it required “distribution of seeds, tools and fertilizers, and locust control.”

Shifting context, as many pirates started out as fishermen, it may be reasonable for pirates to convert back to fishing as a profession. To apply a similar strategy, Somali fishermen would require nets, fishing lines, and boats to successfully transition to professional fishing. While there is potential for diversion from piracy, the legacy of challenges impeding the development of a functioning fishing industry must also be duly considered.

Somalia had a rich fishing industry before foreign vessels overfished and destroyed marine habitats. Piracy partly began in response to the grievance, and since its emergence, fish stocks have returned and there is potential for legal licences, and police catches, to ensure Somalia reaps the benefits it is owed. The government must monitor the industry to control standards, but allow small business entrepreneurs to operate the industry. The encouragement of starting new fishing businesses could occur through microfinance opportunities. Microfinance alleviates poverty; it gives business opportunity for income generation through providing goods and services. The objective of microfinancing small business is to reduce poverty and advance the economy of a developing society. Microfinance schemes have contributed towards

---

920 Ibid.
poverty reduction in other developing nations and could potentially be useful mechanisms for generating similarly positive outcomes in Somalia. According to Glenn Ross, “[microfinancing] would be the best way to improve the situation on the ground and get people set up. The main issue is that it needs to be sustainable.”

Local efforts are emerging to aid the development of the fishing industry in Somalia. A Danish group developed *Somali Fair Fishing* to provide alternatives to crime and piracy in the Gulf of Aden. Accordingly, within the first six months, the group raised enough money to conduct a trial and show local fishermen in the Somali city of Berbera how to make fishing a profitable business. Shipping companies and governments have donated essential equipment to kick-start the initiative. Together, Somali President and the Minister of Natural Resources visited a fish-processing factory in Mogadishu, “to highlight the need for Somalia to exploit its own natural resources and encourage those businesses [that] are investing and creating jobs for young Somalis.” Furthermore, in a speech to the international community in New York, the President “put the world on notice” to cease any illegal fishing and illegal waste dumping in Somalia’s territorial waters.

Somalia had a strong fishing industry in the 1990’s. An oceanic feature of the region, the Somali Current, is believed to have encouraged the return of fish. According to

---

928 Ibid.
UNPOS, due to the Somali Current, a sustainable fishing trade may be developed.\textsuperscript{929} The potential success of the fishing trade depends on Somalia formally identifying its EEZ and providing and maintaining security for it thereafter. By declaring an EEZ, Somalia must also have a fully functioning coast guard or similar to monitor the region, which is presently unforeseeable.\textsuperscript{930} Fishing as opposed to the high-risk option of piracy, could generate legitimate profits and provide a relatively safe and sustainable livelihood.

In 2009, a coast guard was established along the Somali coast under the direction of the Security Council to better control the fight against local piracy, illegal fishing, dumping of toxic waste and smuggling of arms and illicit drugs.\textsuperscript{931} The lack of government resources left many coast guard personnel unpaid; several reverted to piracy as a means of supplementing their income. On the failure of the previous coast guard, there have been appeals to re-establish a new Somali-run coast guard supported by the UN.\textsuperscript{932} A sustainable coast guard unit must also link in with established police units on land.\textsuperscript{933} The new Somali Federal Government agreed to establish a coast guard in conjunction with a Dutch company, the Atlantic Marine and Offshore Group.\textsuperscript{934} The Somali Government has received some criticism after announcing they plan to outsource the
coast guard. Establishing sustainable and functioning coast guard and police services in Somalia would likely create opportunities for legitimate employment, reducing the motivation for piracy, though the challenge would be in ensuring its viability. Mechanisms to discourage corrupt activities should form an essential part of the establishment of these services.

Due to the ongoing civil conflict, lack of rule of law and safety concerns for foreigners, there is hardly any foreign investment in Somalia. Its future depends on political, social, and economic development. Foreign investment could provide finances to redevelop the country, although warlords, corruption and poor financial management, act as barriers to Somalia emerging as a stable country. Foreign investment would create jobs, increase the gross domestic product through greater exports in the hope to boost and therefore increase the standard of living. A functioning central government is essential to the viability of Somalia’s international trade. Somalia has the potential to export a number of commodities, including: livestock, bananas, hides, fish, charcoal, scrap metal and potentially oil. Until internal security is re-established, foreigners are unlikely to enter and invest, decreasing the potential job opportunities for Somalis. This places further pressure on the international community to assist by investing in the desistance of piracy and financing fishing and other industries as alternatives.

Fishing is one method to aid Somalia in developing their economy; another may be the exploration for and potential extraction of oil. It is unknown whether there is oil in Somalia, though companies are showing interest in oil or mineral exploration. Among

---


others, Australian company Jacka Resources is determined to enter Somalia to drill for oil.\textsuperscript{937} Locals agree that foreign investment brings jobs for locals. While acknowledging the relative significance of this information, Sixty Minutes reporter Liam Bartlett interviewed Somali man, Liban Bogor whose view was:

We want to have foreign investment...to create employment for the pirates. Nobody wants to do something illegal, if they can have an alternative. We have to create the alternative for them.\textsuperscript{938}

Once there are signs of peace, foreign investment could return and provide opportunities to develop the Somali economy. A holistic model applying a pluralistic regulatory paradigm would allow all Somali people, whether involved in piracy or not, to have the opportunity to gain skills and develop a long-term sustainable form of income.

10.2.2 Suitable targets: will a lack of suitable targets make Somali piracy impossible?

Target-shifting

Removing prospective targets reduces piracy as offending becomes impossible. Minimising the vulnerability of target vessels could lead pirates to alter their \textit{modus operandi} or divert their attention to other potential targets. Vessels carrying the world’s oil supply are potentially at risk of piracy, moreso than other vessel types. Experts question the potential dangers of oil tankers being hijacked in this high-risk region.\textsuperscript{939}


While pirates have attacked many oil and LPG tankers, personal rather than political motivations have led pirates to seek ransom payment in exchange for the tanker and its cargo. As commercial vessels become increasingly difficult to attack due to on-board protections, such as armed guards, pirates could target cargoes of the highest reward, which may be oil. Oil tanker disruption would affect oil-dependent countries. There is concern among experts that pirates' motivation may align with terrorist ideals by holding the global economy hostage for oil. Some experts believe the figurative line in the sand between pirates and terrorists has already been crossed. Scholars have explored the relationship by which profits generated from organised crime fund terrorist activities. Milena Sterio believes that pirates and terrorists should be legally treated equally due to the parallel between their activities, regardless of their motivations. There is a good argument for treating pirates harshly through incarceration, but by definition pirates are not terrorists; therefore, they do not warrant the associated penalties.


942 Ibid.

943 Ibid.


318
Target-hardening

As previously discussed, pirates have been unsuccessful when attacking a vessel equipped with armed private security.946 This provides further weight to the argument for contracting armed security aboard vessels when transiting the high-risk region. The international community has commended private security; however, questions remain about their future use.947 Armed security is no panacea, but can be an effective complement to the other strategies.

Private security companies provide a valuable and safe service to commercial vessels, though it comes at a high price; compared to the risk, the price charged by armed security companies is low. Some countries are exploring methods to eliminate the need for private guards, without sacrificing security. These alternatives are particularly important in countries that have not approved the use of armed security on vessels flying their flag. Malaysia employs the military to accompany transits through the high-risk regions.948 The country's own military may be more likely to comply with the rules of engagement, which is not guaranteed to be followed by private security companies as was the case when armed guards mistakenly killed Indian fishermen, believing them to be pirates.949 Long-term and sustainable measures to protect vessels against piracy are but one piece of the counter-piracy jigsaw. The need is to develop solutions that are manageable within the region after the navies leave, and when private security is too expensive.

10.2.3 Capable guardianship: will the international community concede and accept any Somali piracy?

Somali piracy occurred prior to 2008, although at comparatively low levels. In 2008, when the pirates began attacking WFP vessels, the international community became interested in combating piracy. Piracy levels have since fluctuated, though the international community has remained committed to controlling piracy, in part due to the potential link with terrorism. Should the level of piracy fall to previous low levels, it is unknown whether the international community would withdraw their counter-piracy measures.

Overcoming piracy completely is unlikely. Piracy off the east coast of Africa existed before, in much smaller amounts and would likely continue, albeit at a comparatively minor rate.\(^{950}\) It may be necessary for the international community to accept a modest level of piracy. Continued efforts to reduce pirates’ motivation, decrease opportunity through awareness and prevention, and increase reliable and capable guardianship could succeed in reducing the problem. Low levels of piracy exist around the world, though sustainable regional interventions reduce the need for expensive global interventions. In South East Asia, piracy is traditional and unlikely to completely disappear, despite strong commitment to control piracy within that region. Holihead believes that similarly, Somali piracy will always exist, though most likely at much lower levels.\(^{951}\)

“Resolving piracy to a manageable level is a good result.”\(^{952}\) While ending piracy altogether is improbable, managing a reduced amount of piracy may be acceptable.

---


\(^{951}\) Ibid.

\(^{952}\) Ibid.
Naval patrols currently provide guardianship in the high-risk region. The cost of maintaining the naval patrols is high, leaving experts to question what will happen in the region if the navies leave. Naval coalitions operating under NATO and EU NAVFOR have extended operations in the region to 2014; however, it is unknown what will occur beyond that. One representative from the international community mentioned that naval assets from their country plans to stay in the region until piracy has been completely eliminated. Experts have speculated that Somali piracy will require at least one generation of dedicated effort before being adequately controlled. Instead, the international community needs to acknowledge the most likely outcome could be a reduction of piracy to a level manageable by the region. The Djibouti Code of Conduct is aiming to provide the infrastructure and training within the region to deal with piracy on its own. The Djibouti Code is a valuable and positive outcome of the counter-piracy efforts as it demonstrates to the region how to deal with piracy through shared efforts beyond the contribution of the international community. Regional participation to control piracy through the Djibouti Code of Conduct could also extend to local efforts within Somalia. The following case study provides an example of how a local Somali community assisted the international community in reducing piracy based from Eyl.

Case study: Eyl’s community guardianship and the impact of piracy

Throughout history, safe havens have been essential to prevent pirates being intercepted by authorities. Until 2010, Eyl, a northern town in Puntland, was the piracy safe haven


955 Ibid.

and the centre for organising piracy operations. “Hidden between rocky hills in the mountainous part of the Nugal region and overlooking the Indian Ocean, Eyl in some experts view is the perfect pirates’ hideout.”\(^{957}\) In earlier days, pirates were welcomed by locals as heroes, but that sentiment changed and pirates are now unwelcome.\(^{958}\) Local community opposition to piracy is increasing. As the pirates’ weapons and vehicles are more advanced, the authorities were forced to retreat. People are willing to drive pirates out but they do not have the power to do so.

Tolerance for piracy diminished among Puntland authorities and locals, forcing the pirates out of Eyl. Eyl was a quiet fishing town until the influx of piracy. The pirates were recognisable by driving their new vehicles along dusty streets lined with rundown houses.\(^{959}\) Instead of direct investment in the country, the proceeds of ransom payments are often spent abroad, providing little future revenue generation for Somalis, which caused conflict in the community.\(^{960}\) Locals protest that:

[Wrappers] have introduced alcohol, massive inflation and commercial sex into the town, and that was not known to us before, we need to change the way we deal with them.\(^{961}\)

Several attempts were made by the Puntland military to remove the pirates.\(^{962}\) Finally, Eyl locals and authorities forced pirates from the town.\(^{963}\) The 5,000-strong Puntland military forced pirates to retreat to the neighbouring region of Galmudug.\(^{964}\) Pirates and

---


\(^{959}\) Jay Bahadur, "Somali Pirate: We're Not Murderers...We Just Attack Ships". http://www.guardian.co.uk/world/2011/may/24/a-pioneer-of-somali-piracy.


\(^{963}\) Ibid.: 184.

\(^{964}\) Ibid.: 126.
related gang members were arrested in an attempt to clean up the streets.\textsuperscript{965} Pirates re-established themselves in Hobyo, El Danaan and Harardhere.\textsuperscript{966} Until then, piracy attacks were largely isolated around the region surrounding Eyl. The relocation of pirates displaced the location of attacks. Pirates remain motivated to commit piracy despite defying their religious beliefs isolating them from their community.

Lessons for Somalia could be drawn from Liberia, where UNODC worked with the national police force to rebuild the country from within.\textsuperscript{967} The police force received on the ground day-to-day training giving them confidence in their duties with a long-term effect. In Somalia, a similar scenario of training could improve their capabilities. Although the United Nations Department of Peacekeeping Operations (DPKO) is currently on the ground in Somalia, UNODC could offer ex-police as consultants.\textsuperscript{968}

When police took control of Eyl and forced the pirates to leave, the pirates changed their \textit{modus operandi} to maintain the success of their operations. The earlier case study provides insight into the workings of the pirates and comparisons with Liberia show methods to increase capable guardianship in the local capacity to overcome piracy operationally.

\textbf{Outsmarting pirates: circumventing the supply of weapons to pirates}

Pirates source their weapons with the proceeds of crime. The origins of weapons confiscated from pirates are difficult to trace. Commonly, weapons misplaced or lost by


\textsuperscript{966} Jay Bahadur, \textit{Deadly Waters: Inside the Hidden World of Somalia’s Pirates.} 50; Mark Kirk, "Kirk Report: Ending Somali Piracy against American and Allied Shipping."


\textsuperscript{968} Ibid.
DPKO find their way into the hands of pirates or other criminals.\textsuperscript{969} According to UN representatives, suspected breaches of the Somali arms embargo are investigated.\textsuperscript{970}

Discovering a breach of the arms embargo is difficult as often weapons are old and recycled, decreasing the ability to determine the origin, rarely resulting in a traceable breach.\textsuperscript{971} Instead, investigating funds used for piracy, such as purchasing outboard motors used for skiffs are traceable and could show an intended breach of the arms embargo.\textsuperscript{972} While policing the arms embargo is difficult, investigating purchases and transfer of funds could be an effective means of disrupting pirates.

There is much speculation about where laundered profits go. Rumours suggest that money is transferred across the Somali border into north Kenya, while other suggestions indicate that members of the diaspora in London receive profits.\textsuperscript{973} The Somali diaspora living across the globe are generally the most educated and wealthy among its countrymen.\textsuperscript{974} Speculation arose that Somali expatriates have been financing and financially benefitting from continued piracy.\textsuperscript{975} Understanding what the beneficiaries of piracy are spending their ransom payments on could assist investigations to disrupt purchases with ransoms. Reportedly, pirates spend their ransom money on securing further piracy ransom payments, as such they are spent to recruit new pirates, buy boats


\textsuperscript{971} Ibid.


and equipment. Common across most criminal groups, pirates are believed to spend money on houses, cars, and large quantities of khat. According to Ross, ransom money is lost to consumerism as pirates spend ransoms on gambling, prostitution and drugs, consistent with gang culture. Somalia being a polygamous society, after creating their wealth, commonly pirates marry more wives. Some consider pirates fashionable due to their ability to afford luxuries. Delving into the activities of pirates outside their work could aid the CGPCS Working Group 5 and relevant authorities in disrupting the financial trail.

10.3 Conclusion

Counter-piracy efforts have led to limited success in restoring law and order in Somalia. Reflecting on the past success of the Somali fishing industry, long-term support from the international community could reestablish the industry and offer a sustainable alternative for some. Through re-establishment of governance in Somalia, foreign investment is also more likely, although barred by challenges in establishing sustainability. Encouraging the Somali diaspora to return, bringing with them experience and education, could provide the internal support that is required to rebuild.

Those who see no alternatives to piracy may increase threats to vessels, or divert to other crime types in the future. The potential evolution into terrorism threatens oil and chemical tankers exposing coastal areas to risk of being targets of an attack. Reaching an acceptable level, manageable by regional counter-piracy forces could be internationally agreed, instead of attempting to overcome piracy completely. The threat to nearby maritime trading routes, seafarers, and vessels remain, though through enhanced counter-piracy activities in the region should bring about greater security and control. Somali communities are reducing their tolerance of piracy, evidenced by the effect of a united and local response in removing pirates from Eyl. Uncovering potential risks is an important step forward in countering piracy. While efforts to achieve success in Somalia have begun and should continue, the likelihood of success remains unknown. It could take many years, possibly decades before the success is realised.

Understanding and implementing holistic methods on land and at sea to control piracy, drawing on the complementary efforts of a variety of actors and institutions, has the best chance of achieving long-term success.
CHAPTER 11 THE ENDURING CHALLENGE OF SOMALI PIRACY

Piracy has persisted throughout history across time and location. However, modern Somali pirates operate differently than did pirates from previous eras, requiring a modern response. Somali pirates’ *modus operandi* involves hijack for ransom, uncommon among other pirates throughout the world in present or historical times. This change in scope has also required the international legal definitions to change, accordingly, from the first international law put forward by the UN. While early methods attempting to annihilate pirates were effective, the use of force to eliminate pirates today would defy important international standards in human rights on land and at sea. Alternatively, control through the combined activities of a range of institutions and actors leads to more effective outcomes. Reviewing historical methods for controlling pirates revealed a recurring theme: to disrupt piracy networks, international cooperation is paramount.

The political hardships endured and the impact of the militia and terrorism groups operating on land present further challenges to the international community’s attempts to secure the seas. Political instability over almost a quarter century has damaged the fabric of society, and has left the country with a huge supply of automatic weapons. This has created a climate conducive to engage in illegal activity, including piracy. The UN provides ongoing financial, political and military support to the Somali government to bring about stability, economic development, and corruption control. Somalia’s first constitution in 52 years has led to limited success in rebuilding the country.
The militia group Al-Shabaab challenges internal development, strengthening the argument for relying on traditional clans to have a greater role in Somalia’s leadership. At the height of the ICU control, piracy attacks returned to manageable levels, indicating that enhanced guardianship can protect vulnerable targets. An overwhelming youth population, as well as low levels of education and chilling of investment, combined to cause poverty and lawlessness, and produce an environment conducive to Somali piracy. These pre-existing conditions worsened by the impact of the tsunami and drought, increased the pool of prospective offenders.

Drawing on the ‘motivated offender’ element of routine activity theory the research questioned: what motivates offenders of Somali piracy? Risk factors providing a suitable environment for Somalis to engage in crime, the greed and grievance concept was a backdrop for discussions around motivations of piracy. It linked the causes of grievances in Somalia, namely IUU fishing and toxic waste dumping in the mid-1990s, to the onset of piracy as a result of depleted fish stocks. It found that while several Somalis emerged as grievance-fuelled pirates, the promise of reward and low risk enticed ex-militia and internally displaced persons. Increasing ransom payments holds strong appeal, supports a lasting motivation, and continued recruitment into piracy.

Answering the question: are there risk factors that lead to victimisation of vessels? revealed four main themes. Specifically, the type of vessel, the transport route, the vessels’ flag state, and the prevailing weather conditions. It concluded that each of those factors increased the likelihood of piracy attack when certain circumstances prevailed. Most notably, low and slow vessels are at highest risk, in particular bulk carriers and
general cargo vessels. Vessels transiting in the vicinity to the Gulf of Aden, Red Sea, ports along the Northeast African coast and the islands set in the Indian Ocean, provide a channel through which suitable targets transit, and become bottlenecked, presenting an opportunity for pirates to attack. While some flags are attacked more than others, analyses of flag states determined that vessels flagged to open registries are at greater risk, all else equal, due to larger fleet size transiting the region. Lastly, vessels transiting the region during the monsoon periods, but particularly during the months of April, September, October and December, are at greatest risk of attack. Data failed to confirm that pirates attack specific flags, which may have suggested politically motivated attacks of terrorism. Instead, pirates attack vessels with poor protection and those heavily laden with cargo travelling at slow speeds, with limited manoeuvrability.

To understand the ‘capable guardianship’ element of the counter-piracy force it was necessary to question: *is the international community capable of guarding against Somali piracy?* A variety of public and private actors provides adequate guardianship against piracy. Earlier parts of the thesis sought to understand factors that shaped Somali piracy. By examining those factors, gaps were identified in the counter-piracy response, security and legal practices in the region. While the UN Security Council is central to these measures, the network created through the collaboration of public and private actors provides effective countermeasures against piracy. The interests of commerce, namely the shipping industry, insurance underwriters and classification societies, contribute to the counter-piracy response by increasing security aboard vessels. Reliance on private security is increasing to protect the vulnerable target transiting in the high-risk regions. Carrying weapons aboard vessels is a new concept proving to be an effective method in preventing piracy attack, but will take time to
regulate adequately. Limitations of the naval patrols and their reliance on *catch and release* are the target of ongoing criticism.

Successful prosecutions rely on a solid legal framework along with political will. Despite some prosecutorial successes, the majority of the estimated 3,500 people involved in piracy are free; therefore, greater harmonisation of definitions and legal frameworks is necessary to achieve specific and general deterrence. Attempts to resolve inconsistent and out-dated legislation are ongoing, particularly in countries lacking political will. Out-dated legislation hinders prosecutorial success and results in inconsistent penalties. Limited available space and poor conditions in Somali prisons reduces the ability to incarcerate pirates as a means of controlling piracy. Pirates seeking political asylum following their acquittal or release may discourage some nations from claiming jurisdiction, which is one of many causes of *catch and release*.

Analyses of reported piracy attacks from 2002 to 2011 tested the explanatory power of routine activity theory and determined that despite reducing the vulnerability of targets and increasing capable guardianship, the motivation of prospective pirates appears undiminished. Attacks by Somali pirates exceed recorded attacks of any other region at any time, and involves a *modus operandi* of heightened violence and sophistication. Pirates' *modus operandi* consistently involves boarding and hijacking steaming vessels, holding vessels and their crew hostage for ransom and relying on deadly weapons and violence, indicative of undeterred motivations to offend. Further, despite some fluctuation, there was an upward trend in piracy over the 10-year study period. The shift in location of commercial vessels and accordingly of pirates eager to attack, revealed
that vessels sought to reduce risk of attack and pirates sought to follow. Finally, a substantial increase in effective guardianship in the piracy-prone region showed an increasing disparity between actual and attempted attacks, conducive of reduced likelihood of success.

Determining the most appropriate institutional configuration for the effective control of Somali piracy assists in developing strategies to prevent and deter pirates. Further research surrounding the motivations of offenders reinforced the earlier conclusion that inadequacies exist in the current measures aimed at deterring offenders. Analyses over the 10-year study period revealed factors that should lead to fewer attacks. These include travelling through poor weather reduces the likelihood that pirates are able to operate their skiffs; opting to use faster vessels over speeds of 18 knots; hugging the western rim of India; opting for protection by armed guards; and having heightened vigilance when transiting the region at night. Further research is needed to uncover the limited information known on the transfer and dispersion of ransom payments, which is the focus of the Contact Group on Piracy off the Coast of Somalia Working Group 5. The guardians operating in the counter-piracy space are a mixture of actors that would affect change independently, but strengthen as a group.

Casting a critical gaze on the political, social, ecological and security risks present in Somalia and the surrounding region, assists in understanding how to strengthen the country holistically. Somalia is dependent upon the re-establishment of governance and its diaspora to encourage sustainable investment, though it is plagued with challenges in achieving success. A collection of actors, working together and independently, appears
to be viable, though there is no panacea. Without building blocks towards a sustainable future, piracy will continue to threaten the region. An acceptable level of piracy, manageable by regional counter-piracy forces, is achievable; total suppression of piracy is an elusive goal.

The responses to Somali piracy, a collective undertaking from the international community, show strengths and weaknesses. Somali piracy has a significant global footprint, inspiring changes to the conduct of business in the international marketplace. The increasing trend towards armed security and war risk insurance shows the importance of the private sector, involving shipping, classification societies and insurance underwriters, taking ownership of their risks and instituting measures to mitigate them. In the short-term, armed guards and naval patrols have produced clear and significant reductions in the number of successful attacks. These efforts should continue.

Somali piracy is a global issue that requires a holistic and collaborative set of unified responses focused not only at sea, but also on land. Re-establishing rule of law in Somalia is a step forward in controlling piracy. This process requires establishing an EEZ, adopting relevant international treaties, and developing and fully implementing workable legislation throughout all Somali regions. This process lays out a structure to prevent and protect against IUU fishing and toxic waste dumping to ensure Somali waters are safe and provide a sustainable fishing industry into the future. This process would also have an impact on militia, terrorist groups and other organised criminals operating in and linking to Somalia. Disrupting money trails through Somalia is an ongoing challenge that must be part of long-term counter-piracy responses. Reinforcing the Somali arms embargo would re-establish control over the supply of arms entering
the country. Other internal issues, such as dealing with root causes related to poverty, addressing endemic corruption, and lack of employment opportunities, are crucial to the success of counter-piracy measures. Positive influence from the diaspora is also necessary for long-term success.

Control of piracy involves the slow and challenging process of nation building. Though the impact of piracy on the region is negative, the potential outcomes from the efforts of the international community, in particular the Djibouti Code of Conduct, are positive. The international community is developing criminal justice systems within neighbouring countries to assist Somalia in the short-term, while also providing essential infrastructure to have the greatest long-term impact. The Djibouti Code of Conduct is developing a unified infrastructure in the region. These long-term solutions for the region seek to ensure cohesive maritime laws and regulations, and create a platform for positive collaboration within the region.

Reducing the motivation to offend is paramount. Programs targeting at-risk young people and diverting those who have already engaged in crime, whether piracy or otherwise, is essential to rebuilding Somalia. Greater control over militia and terrorist gangs in Somalia is necessary to re-establish control over those who may be exposed to criminal recruitment due to their economic situation, common among IDPs. It would also be useful to contrast Somali piracy with other forms of organised crime. Comparing illicit organisations' patterns of recruitment, desistance, and organisational form could be a worthwhile extension of this research. In the long-term, sustainable prevention and control of piracy will require political stability and economic development on the mainland. Efforts to achieve these goals have begun, but the
prospect of success is by no means clear. If they are to succeed, it will take a considerable amount of time, numbered in years, perhaps decades. Strengthened governance in Somalia, by way of ensuring police and other officials are provided with adequate equipment and salaries to limit opportunity to engage in corrupt practices, must also support this direction. Addressing ongoing internal conflicts and reasserting the role of the new Somali Federal Government and its constitution seek to have a positive impact on the country’s stability. Re-establishing governance in Somalia would discourage piracy through a strengthened front of regulation and capable guardianship, reducing motivation to offend. Increased confidence in operational rule of law and control over corruption would encourage foreign investment, bringing with it employment opportunities. Creating peace, developing alternative opportunities, and reasserting the rule of law in Somalia will have a flow on effect on land and at sea.
Photo 5: Anchor, St Katherine's Dock, London


http://www.unicri.it/topics/piracy/database.


347


-----. "Personal Photograph, 26 August." 2012.


http://nabataea.net/isearoute.html.

Naqvi, Muneeza. "India, Italy Wrangle over Indian Fishermen Killing." Associated
over-indian-fishermen-killing.

http://www.nauticexpo.com/prod/ssl-shipbuilding/cargo-ships-panamax-bulk-
carriers-shipyards-31644-265411.html.

http://www.nauticexpo.com/prod/bugari/professional-fishing-vessels-fishing-
trawlers-shipyards-20425-84599.html.

---."Ship Deck Crane (General Cargo)." Nautic Expo, Accessed 23 January 2012
http://www.nauticexpo.com/prod/liebherr-international-deutschland/ship-deck-
cranes-general-cargo-30468-189614.html.

technology.com/news/newsus-navy-sea-trials-passive-sonar-surveillance-
methods.

Nesbitt, Francis Njubi. "Piracy Redux." Foreign Policy in Focus, 18 February 2010,


---. "The “Radicalization” of Maritime Piracy: Implications for Maritime Energy
e-radicalization-of-maritime-piracy-implications-for-maritime-energy-
security&catid=112:energysecuritycontent&Itemid=367.

North. "Egypt Reverses Ban on Weapons and Armed Guards Onboard Vessels in Its
Waters." North, Accessed 15 February 2012

North Atlantic Treaty Organization. "Maritime Security: NATO and EU Roles and
Coordination." In Committee Reports, edited by NATO: North Atlantic Treaty

---. "Operation Allied Protector." In North Atlantic Treaty Organization, edited by
North Atlantic Treaty Organizationn.d.
http://www.manp.nato.int/operations/allied_provider/web_copy_op_allied_protec-
tor.pdf.


North Atlantic Treaty Organization Shipping Centre. "Gulf of Aden Internationally
Recommended Transit Corridor and Group Transit Explanation." NATO, 2010.
www.shipping.nato.int/.../Group%20Transit%20explanation.pdf.

Denver: One Earth Foundation, 2013

http://us4.campaign-
archive2.com/?u=ef92e4124a86ce15ee04f687&id=301b638b05&e=1f92a3d7ac

Weekly Pirate Activity Update: 7 - 13 April 2012. (2012), http://us4.campaign-archive1.com/?u=eff92c4124a86ce15ee04f687&amp;id=f97957382d&amp;e=1f92a3d7ac


http://treaties.un.org/Pages/Error.aspx?messageKey=SSIS.


## Appendix A: Key events in Somalia's history

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1897</td>
<td>Colonial partition of Somali-inhabited territories by United Kingdom, France, Italy and Ethiopia.</td>
</tr>
<tr>
<td>1890 – 1921</td>
<td>The Dervish movement under the leadership of Sayid Mohamed Abdulla Hassan fought to rid Somali territories of colonialists.</td>
</tr>
<tr>
<td>1943</td>
<td>The Somali Youth Club was created then changed its name to the Somali Youth League in 1947. Its aim was the unification of all Somali territories and independence from colonial rule. It opposed clan-ism. The Somali National League was formed in British Somaliland with similar nationalist aims.</td>
</tr>
<tr>
<td>1950</td>
<td>Somalia placed under United Nations Trusteeship administered by Italy, British Somaliland reverts to its former protectorate status, and the Ogaden is returned to Ethiopia.</td>
</tr>
<tr>
<td>1955</td>
<td>Western part of British Somaliland Protectorate and Reserve Area annexed to Ethiopia.</td>
</tr>
<tr>
<td>26 June 1960</td>
<td>British Somaliland Protectorate gains independence.</td>
</tr>
<tr>
<td>1 July 1960</td>
<td>United Nations Trusteeship of Southern Somalia gains independence from Italy. The two territories unite as the Somali Republic. Abdirashid Ali Sharmarke is Prime Minister and Aden Abdule Osman is provisional President.</td>
</tr>
<tr>
<td>1962</td>
<td>Aden Abdule Osman elected President and nominates Abdirizak Haji Hussein as Prime Minister.</td>
</tr>
<tr>
<td>June 1967</td>
<td>Abdirashid Ali Sharmarke elected President and appoints Mohamed Haji Ibrahir Egal as Prime Minister.</td>
</tr>
<tr>
<td>15 October 1969</td>
<td>President Abdirashid Ali Sharmarke assassinated.</td>
</tr>
<tr>
<td>21 October 1969</td>
<td>The army, led by Major General Mohamed Siad Barre, overthrows the civilian government headed by Prime Minister Egal, suspending the constitution and bans all political parties.</td>
</tr>
<tr>
<td>21 October 1970</td>
<td>Siad Barre declared Somalia a socialist state, embarks on a range of socialist economic programmes, and seeks support from the Soviet Union.</td>
</tr>
<tr>
<td>21 October 1972</td>
<td>A Somali script is officially introduced using a modified Roman alphabet.</td>
</tr>
<tr>
<td>1974</td>
<td>Somalia joins the League of Arab States.</td>
</tr>
<tr>
<td>July 1977</td>
<td>Following clashes between the Ethiopian army and the Western Somali Liberation Front, the Somali army (equipped by the Soviet Union) invades the disputed Ogaden region of Ethiopia.</td>
</tr>
<tr>
<td>November 1977</td>
<td>Soviet Union switches its support to Ethiopia.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1978</td>
<td>The Somali Government withdraws its forces from Ogaden after being defeated by the Soviet and Cuban backed Ethiopian army. Thousands of Somalis flee from Ethiopia to Somalia as refugees.</td>
</tr>
<tr>
<td>April 1978</td>
<td>A coup attempt by disaffected army officers is crushed. The officers form the Somali Salvation Front, led by Lieutenant Colonel Abdullahi Yusuf, which later merges with other civilian opposition parties in exile to form Somali Salvation Democratic Front (SSDF).</td>
</tr>
<tr>
<td>1980</td>
<td>Somalia strengthens diplomatic links with United States and receives economic and military aid in return for US access to Berbera port.</td>
</tr>
<tr>
<td>April 1981</td>
<td>Somali National Movement (SNM) formed overseas to fight the Barre regime.</td>
</tr>
<tr>
<td>1982</td>
<td>Under pressure from Western donors, the Barre government abandons socialist policies and adopts an International Monetary Fund (IMF) structural adjustment package.</td>
</tr>
<tr>
<td>April 1988</td>
<td>Somalia and Ethiopia sign peace agreement.</td>
</tr>
<tr>
<td>May 1988</td>
<td>The SNM briefly captures Burco and Hargeisa. The Somali government responds with aerial bombing of Hargeisa, killing thousands of civilians and forcing 650,000 people to flee to Ethiopia. Reports of human rights abuses lead to freezing of foreign aid.</td>
</tr>
<tr>
<td>January 1989</td>
<td>The United Somali Congress (USC) formed in Rome.</td>
</tr>
<tr>
<td>March 1989</td>
<td>The Somali Patriotic Movement (SPM) formed in Middle Juba.</td>
</tr>
<tr>
<td>May 1990</td>
<td>A ‘Manifesto’ calling for dialogue and political reform published and signed by 114 politicians, religious leaders, professionals and business people. Many signatories imprisoned but later released under international pressure.</td>
</tr>
<tr>
<td>1990</td>
<td>December Government forces lose control over most of countryside. United Somali Congress (USC) enters Mogadishu.</td>
</tr>
<tr>
<td>January 1991</td>
<td>Siad Barre flees Mogadishu as United Somali Congress (USC) forces capture the city. One section of the USC elects Ali Mahdi as president but others reject the appointment. The ‘presidency’ goes unrecognised internationally.</td>
</tr>
<tr>
<td>28 February 1991</td>
<td>First internationally sponsored peace conference takes place in Djibouti. Ali Mahdi selected President, with Omar Moalim and Abdikadir Zoppe as Vice Presidents. Creation of an executive Presidency alters the 1960 Somali constitution. Civil war continues.</td>
</tr>
<tr>
<td>May 1991</td>
<td>The SNM proclaims independence for Republic of Somaliland.</td>
</tr>
<tr>
<td>1991</td>
<td>Intra-clan and factional fighting in southern Somalia kill, wound, and displace hundreds of thousands.</td>
</tr>
<tr>
<td>1992</td>
<td>Famine rages through much of southern Somalia.</td>
</tr>
<tr>
<td>1992</td>
<td>Attempt by Al-Itihad forces to control the northeast defeated by the SSDF.</td>
</tr>
<tr>
<td>July 1992</td>
<td>‘Operation Provide Relief’ launched to airlift food aid to southern Somalia.</td>
</tr>
<tr>
<td>March 1993</td>
<td>Joint UN-Ethiopian sponsored reconciliation conference held in Addis Ababa. Fifteen factions, with Somaliland as observer, sign agreement that was not implemented. UNOSOM II formed.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| May 1993   | Mohamed Haji Ibrahim Egal is selected President of Republic of Somali
| June 1993  | A peace agreement establishes a cease-fire in Galkayo and Mudug.      |
| 24 June 1993 | UNOSOM Pakistani troops killed in ambush by supporters of General Aideed and Somali National Alliance (SNA). |
| October 1993 | The US announces the withdrawal of its troops, following deaths of 18 US Special Forces and hundreds of Somalis in clashes in Mogadishu. |
| January 1994 | General Aideed and Ali Mahdi sign a peace agreement, remain political rivals but security in Mogadishu improves. |
| March 1994  | US military forces withdraw from Somalia.                             |
| November 1994 | Civil war breaks out in Somali.                                      |
| January 1995 | Siad Barre dies in exile in Nigeria.                                  |
| March 1995  | UNOSOM II forces and civilian officials depart Somalia. The country still divided with no central government. |
| June 1995   | General Aideed declares a 'broad-based' government, but is unable to administer effective control even in Mogadishu. His government not recognised internationally. |
| August 1996 | General Aideed dies of gunshot wounds sustained in a battle. His son, Hussein Aideed, takes over his leadership. |
| November 1996 | Ethiopian sponsored reconciliation conference in Sodere brings together most southern factions, but boycotted by Hussein Aideed and Somaliland. |
| December 1996 | Somaliland National Conference in Hargeisa officially ends Somaliland’s civil war. |
| February 1997 | The Somaliland National Conference replaces the National Charter with a Provisional Constitution and reselects Mohamed Haji Ibrahim Egal President of Somaliland for additional two years, which was later extended to five. |
| November 1997 | Peace conference held in Egypt. The leaders of 30 factions sign a peace accord, which was not implemented. |
| February 1998 | An outbreak of Rift Valley Fever in Somalia leads to ban on the import of Somali livestock by Saudi Arabia, which lasts 15-months. |
| Jul-Aug 1998 | Mogadishu based faction leaders negotiate establishment of Banadir Regional Authority. Hussein Aideed relinquishes his claim to the presidency. |
| August 1998  | Garowe Constitutional Conference held. Leaders in northeast form non-secessionist 'Puntland State of Somalia', and select Abdullahi Yusuf as President. |

365
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1999</td>
<td>Rahanweyn Resistance Army (RRA) recaptures Bay and Bakol from occupying forces and installs its own administration. Food security situation improves. Increased access for aid agencies.</td>
</tr>
<tr>
<td>May 2000</td>
<td>On the initiative of the Djibouti government and IGAD, the Somali National Peace Conference (SNPC) convened in Arta, Djibouti.</td>
</tr>
<tr>
<td>August 2000</td>
<td>The Transitional National Assembly (TNA) formed in Arta with 245 representatives. Abdiqasim Salad Hassan elected President of the Transitional National Government (TNG) for Somalia. His inauguration ceremony attended by heads of neighbouring governments, the UN, EU, OAU and Arab League representatives.</td>
</tr>
<tr>
<td>September 2000</td>
<td>Gulf countries impose another import ban on livestock from the Horn of Africa, following several human deaths from RVF in Saudi Arabia.</td>
</tr>
<tr>
<td>September 2000</td>
<td>Abdiqasim Salad Hassan addresses UN Millennium Summit in New York. The Somali flag rose at UN Headquarters.</td>
</tr>
<tr>
<td>November 2000</td>
<td>Somalia represented by the TNG at the IGAD summit.</td>
</tr>
<tr>
<td>February 2001</td>
<td>Somalia, represented by the TNG, attends the OAU summit in Tripoli. The TNA ratifies Constitutive Act of the African Union.</td>
</tr>
<tr>
<td>March 2001</td>
<td>Somali Reconciliation and Restoration Council (SRRC), comprising faction leaders opposed to the TNG formed in Awasa, Ethiopia. The base established in Baidoa in April. Claims of plans to organise reconciliation conference inside Somalia.</td>
</tr>
<tr>
<td>April 2001</td>
<td>Somali shilling to US dollar exchange rate reaches all time low, fuelled by newly printed Somali shilling notes imported into country.</td>
</tr>
<tr>
<td>May 2001</td>
<td>Somaliland’s constitution, which affirms Somaliland’s independence, subjected to referendum. Officials claim 97 percent of voters endorse constitution. Two international nongovernmental organisations monitor voting.</td>
</tr>
<tr>
<td>June 2001</td>
<td>The Mandate of the Puntland Administration and Parliament expires, according to Puntland’s Transitional Charter. Abdullahi Yusuf seeks to extend constitution, but the chairman of the Supreme Court rejects this move. He announces that, in line with the Charter and pending a community conference, he will assume the office of interim President.</td>
</tr>
<tr>
<td>July 2001</td>
<td>Mohamed Haji Ibrahim Egal forms a political party, UDUB.</td>
</tr>
<tr>
<td>August 2001</td>
<td>Mohamed Haji Ibrahim Egal survives an impeachment vote in Somaliland Parliament. Some Sultans critical of Egal’s handling of the move to a multi-party system call for the disbandment of UDUB. Several are detained when they visit Hargeisa.</td>
</tr>
<tr>
<td>2001 August</td>
<td>Failure to resolve the constitutional crisis in Puntland led to clashes in Bosasso between forces loyal to Abdullahi Yusuf and the opposition. Abdullahi Yusuf withdraws to Galka’ayo. A second Constitutional Conference called to select a President, Vice-President, and to approve an additional three years of Puntland’s Transitional Charter.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>November 2002</td>
<td>Kenya hosted the Somali Reconciliation Conference.</td>
</tr>
<tr>
<td>April 2003</td>
<td>Somaliland held presidential elections that saw Dahir Riyale Kahin come into power.</td>
</tr>
<tr>
<td>October 2004</td>
<td>President Abdullahi Yusuf Ahmed of Puntland elected as president of the Transitional Federal Government.</td>
</tr>
<tr>
<td>26 December 2004</td>
<td>The Indian Ocean Tsunami devastated much of coastal Somalia, including local fishing villages. Evidence of toxic waste spillage because of the tsunami has affected marine life in the region.</td>
</tr>
<tr>
<td>2005</td>
<td>Somali piracy emerged as a serious problem when World Food Programme vessels were hijacked en route to deliver food to Somali people.</td>
</tr>
<tr>
<td>2006</td>
<td>The Islamic Courts Union (ICU) gained control of Transitional Federal Government (TFG) governed parts of Somalia. The ICU imposed Sharia law, which opposed piracy. The TFG regained control over the ICU with the assistance of Ethiopian troops and the African Union peacekeepers.</td>
</tr>
<tr>
<td>2006</td>
<td>Piracy reduced during 2006 while the Islamic Courts Union overtook the pirate capital of Harardhere, which led to the reduction of piracy and other crimes generally.</td>
</tr>
<tr>
<td>2006-2009</td>
<td>The Somalia War involved the Islamic Court Union against Somali troops from Puntland, Ethiopian troops and forces from the Transitional Federal Government.</td>
</tr>
<tr>
<td>2007-2008</td>
<td>Al-Shabaab militia forces strengthened and made victories over various parts of Somalia.</td>
</tr>
<tr>
<td>2008</td>
<td>The United Nations Security Council adopted resolution 1814, the first counter-piracy resolution. Since, resolutions 1816, 1838, 1844, 1846 and 1851 have superseded 1814. This unanimous decision allows naval vessels to enter Somali territorial waters with the intention to tackle pirates.</td>
</tr>
<tr>
<td>2008</td>
<td>In accordance with Security Council resolutions, the naval patrols of NATO, the EU and the Combined Taskforce descended upon Somalia in an attempt to increase surveillance. Despite some periods of retreat, these forces have remained within the region since.</td>
</tr>
<tr>
<td>December 2008</td>
<td>President Abdullahi Yusuf tries to sack Prime Minister Nur Hassan Hussein over his attempts to draw moderate Islamists into the government. Parliament declares the dismissal unconstitutional and passes a vote of confidence in Mr Nur. Mr Yusuf resigns.</td>
</tr>
<tr>
<td>January 2009</td>
<td>Al-Shabaab forced the Ethiopian troops out of Somalia, as they were under-equipped to counter the militia forces.</td>
</tr>
<tr>
<td>February 2009</td>
<td>President Ahmed selects Omar Abdirashid Ali Sharmarke as prime minister. Mr Sharmarke, a former diplomat, widely seen as a bridge between Islamists within the Somali government and the international community.</td>
</tr>
<tr>
<td>May 2009</td>
<td>Islamist insurgents launch onslaught on Mogadishu and advance in the south.</td>
</tr>
<tr>
<td>June 2009</td>
<td>President Ahmed declares a state of emergency as violence intensifies. Somali officials appeal to neighbouring countries to send troops to Somalia, as government forces continue to battle Islamist insurgents.</td>
</tr>
<tr>
<td>October 2009</td>
<td>Al-Shabaab recaptures the southern port of Kismayo after defeating the rival Hizbul-Islam militia.</td>
</tr>
<tr>
<td>2009</td>
<td>The United Nations Security Council further strengthened its opposition to piracy by adopting resolution 1897. In addition, the Secretary-General released the first counter-piracy report.</td>
</tr>
<tr>
<td>January 2010</td>
<td>UN’s World Food Programme withdraws from Al-Shabaab-controlled areas of southern Somalia after threats to lives of its staff.</td>
</tr>
<tr>
<td>March 2010</td>
<td>Up to half of food aid being diverted to contractors, militants and local UN staff in government-controlled areas, says UN’s Monitoring Group on Somalia.</td>
</tr>
<tr>
<td>2010</td>
<td>Piracy increased to the highest recorded occurrences. In addition to the increase in attacks, the attacks were occurring at greater distances from Somalia, reportedly up to 1200 Nautical Miles from the coastline.</td>
</tr>
<tr>
<td>2010</td>
<td>In 2010, the UN Security Council adopted resolutions 1918 and 1950 in relation to piracy. It called upon States and regional organizations to take part in the fight against piracy and armed robbery at sea off the coast of Somalia. In particular, it requested deploying naval vessels, arms and military aircraft to seize and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery.</td>
</tr>
<tr>
<td>September 2010</td>
<td>Prime Minister Sharmarke quits; replaced by Mohamed Abdullahi Mohamed.</td>
</tr>
<tr>
<td>February 2011</td>
<td>Kenya closed its border with Somalia after nearby fighting between Al-Shabaab rebels and government-backed forces.</td>
</tr>
<tr>
<td>May 2011</td>
<td>The International Maritime Organization proposed to allow armed guards join merchant ships transiting through the piracy-prone waters around the Gulf of Aden. This decision was reviewed in late 2011.</td>
</tr>
<tr>
<td>2011</td>
<td>Somalia experienced the worst drought in half a century leading to internally displaced persons. Bakool and Lower Shabelle in the south of the country were declared famine zones. Al-Shabaab, linked with al-Qaida, rules both regions. As such, the United States is reluctant to provide aid to those regions with concerns it will end up in the hands of the terrorists.</td>
</tr>
<tr>
<td>19 June 2011</td>
<td>Mohamed Abdullahi Mohamed resigned from his position as Prime Minister of Somalia and former Minister of Planning and International Cooperation, Abdiweli Mohamed Ali, was later named Prime Minister</td>
</tr>
<tr>
<td>July 2011</td>
<td>The UN formally declares famine in three regions of Somalia. Al-Shabaab partially lifts ban it had imposed on foreign aid agencies in the south, and UN airlifts its first aid consignment in five years to Mogadishu. Al-Shabaab pulls out of Mogadishu in what it calls a &quot;tactical move&quot;.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>October 2011</td>
<td>Kenyan troops enter Somalia to attack rebels they accuse of being behind several kidnappings of foreigners on Kenyan soil. The US military begins flying drone aircraft from a base in Ethiopia, and Ethiopian troops are sighted in the central town of Guriel.</td>
</tr>
<tr>
<td>Feb-May 2012</td>
<td>Al-Shabaab loses key towns of Baidoa and Afgoye to Kenyan, African Union and Somali government forces.</td>
</tr>
<tr>
<td>1 August 2012</td>
<td>The new Somali constitution was adopted, which also defined the new judiciary.</td>
</tr>
<tr>
<td>20 August 2012</td>
<td>The Federal Government of Somalia was inaugurated.</td>
</tr>
<tr>
<td>10 September 2012</td>
<td>Parliament elected Hassan Sheikh Mohamud as the new President of Somalia in the first presidential election in Somalia since 1967.</td>
</tr>
<tr>
<td>6 October 2012</td>
<td>Abdi Farah Shirdon was appointed as the new Prime Minister with a mandate to promote national cohesion and fight nepotism.</td>
</tr>
<tr>
<td>October 2013</td>
<td>African Union and government forces recapture Kismayo, the last major city held by Al-Shabaab and the country's second-largest port, and the town of Wanla Weyn northwest of Mogadishu.</td>
</tr>
<tr>
<td>April 2013</td>
<td>UN Security Council votes for partial lift of the embargo on selling arms to Somalia for a year in March 2013. President Obama directs US military to assist to Somalia.</td>
</tr>
<tr>
<td>June 2013</td>
<td>Somali government troops take veteran Al-Shabaab leader Sheikh Hassan Dahir Aweys after being ousted by extreme Al-Shabaab figure Ahmed Abdi Godane.</td>
</tr>
</tbody>
</table>
## Appendix B: Somalia Human Development Indicators, 2009

### Human Development Index and its components

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life expectancy at birth (2011)</td>
<td>51.2 years</td>
<td></td>
</tr>
<tr>
<td>Maternal mortality ratio (2008)</td>
<td>1200</td>
<td></td>
</tr>
<tr>
<td>Adolescent fertility rate (2011)</td>
<td>70.1</td>
<td></td>
</tr>
<tr>
<td>Female seats in parliament (female) (2011)</td>
<td>6.8%</td>
<td></td>
</tr>
<tr>
<td>Labour force participation (male) (2008)</td>
<td>56.5%</td>
<td></td>
</tr>
<tr>
<td>Labour force participation (female) (2008)</td>
<td>84.7%</td>
<td></td>
</tr>
<tr>
<td>Contraception prevalence rate, any method (married females aged 15 – 49) (2005-2009)</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>Antenatal coverage of at least one visit (2005-2009)</td>
<td>26%</td>
<td></td>
</tr>
<tr>
<td>Births attended by skilled health professions (2005-2009)</td>
<td>33%</td>
<td></td>
</tr>
</tbody>
</table>

### Gender Inequality Index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected years of schooling (2011)</td>
<td>2.4 years</td>
<td></td>
</tr>
<tr>
<td>Maternal mortality ratio (2008)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adolescent fertility rate (2011)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female seats in parliament (female) (2011)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labour force participation (male) (2008)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labour force participation (female) (2008)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Multidimensional Poverty Index

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population in multidimensional Poverty (headcount) (2000-2008)</td>
<td>81.2%</td>
<td></td>
</tr>
<tr>
<td>Population in multidimensional Poverty (Intensity of Deprivation) (2000-2008)</td>
<td>63.3%</td>
<td></td>
</tr>
<tr>
<td>Population at Risk of Multidimensional Poverty (2000-2008)</td>
<td>9.5%</td>
<td></td>
</tr>
</tbody>
</table>

### Civil liberties

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Rights Violations (1= low and 5= high)</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

### Sustainability and vulnerability

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population living on degraded land (2010)</td>
<td>26%</td>
<td></td>
</tr>
<tr>
<td>Population without access to improved services (water) (2008)</td>
<td>70%</td>
<td></td>
</tr>
<tr>
<td>Population without access to improved services (sanitation) (2008)</td>
<td>77%</td>
<td></td>
</tr>
<tr>
<td>Deaths due to indoor and outdoor air and water pollution (per million people) (2004)</td>
<td>3,490</td>
<td></td>
</tr>
<tr>
<td>Population affected by natural disasters (average per year, per million people) (2000-2009)</td>
<td>67,697</td>
<td></td>
</tr>
</tbody>
</table>

### Perceptions of individual well-being and happiness

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal health (% of all respondents who were satisfied)</td>
<td>87%</td>
<td></td>
</tr>
<tr>
<td>Standard of living (% of all respondents who were satisfied)</td>
<td>73%</td>
<td></td>
</tr>
</tbody>
</table>

### Elements of happiness

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treated with respect (% answering “yes” to having that element)</td>
<td>74%</td>
<td></td>
</tr>
<tr>
<td>Social support network (% answering “yes” to having that element)</td>
<td>88%</td>
<td></td>
</tr>
<tr>
<td>Negative experience index (0, most negative, 100, least negative)</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

### Civil and community well-being

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Measure</th>
<th>Result for Somalia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime and safety – Assault victims (% reporting having been a victim) (2006-2009)</td>
<td>13%</td>
<td></td>
</tr>
</tbody>
</table>

---

| Demographic trends | Total population (million) (2010) | 9.4 |
| | Average growth (1990-1995) | -0.2% |
| | Urban population (% of total) (2010) | 37.5% |
| | Median age (2010) | 17.6 |
| | Dependency ratio (per 100 people ages 15-64) (2010) | 90.8 |
| | Total fertility rate (births per woman) (1990-1995) | 6.5 |
| | Sex ratio at birth (male births per 100 female births) | 101.2 |
| Decent work | Employment to population ratio (% of population ages 15-64) (2008) | 66.5% |
| | Child labour (% of children ages 5-14) (1999-2007) | 49% |
| Health | Resources – Physician (per 10,1000 people) (2000-2009) | <0.5 |
| | Risk factors – Infants immunisation against DTP (% of one-year-olds) (2009) | 69% |
| | Risk factors – Infants immunisation against Measles (% of one-year-olds) (2009) | 76% |
| | Risk factors – HIV prevalence among youth females (% of 15-24) (2009) | 0.6% |
| | Risk factors – HIV prevalence among youth males (% of 15-24) (2009) | 0.4% |
| | Risk factors – HIV prevalence among adults (% of 15-49) (2007) | 0.5% |
| | Mortality – infants (per 1,000 live births) (2008) | 119 |
| | Mortality – under-five (per 1,000 live births) (2009) | 180 |
| | Mortality – female adults (per 1,000 people) (2009) | 350 |
| | Mortality – male adults (per 1,000 people) (2009) | 382 |
| | Mortality – age standardised death rates from non-communicable diseases (per 100,000 people) (2004) | 1,148 |
| Environment: financial flows and communities | Official development assistance – Per capita ($) (2008) | 84.7 |
| | Official development assistance – Allocation to social sectors (% of total aid) (2008) | 16.8 |
| Enabling environment: economy and infrastructure | Economy – GDP per capita, average annual growth rate (%) (1970-2008) | -1.4% |
| Access to information and communication technology | Telephones – Mobile and fixed-line phone subscriptions (per 100 people) (2008) | 8 |
| | Telephones – Mobile and fixed-line phone subscriptions (% growth, population-based) (2000-2008) | 592% |
| | Internet – Users (per 100 people) (2008) | 1.1 |
| | Internet – Users(% growth, population-based) (2000-2008) | 580% |
Appendix C: Attempted and actual Somali piracy attacks, 2011

---

## Appendix D: Evolution of UN Security Council resolutions relating to Somali piracy to November 2012

<table>
<thead>
<tr>
<th>Resolution number</th>
<th>Date of adoption</th>
<th>Action items not included in earlier resolutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/RES/2077</td>
<td>21 November 2012</td>
<td>• Encourages flag States and port States to further consider the development of safety and security measures aboard vessels, including, where applicable, developing regulations for the deployment of armed guards aboard vessels through a consultative process, including through the IMO.</td>
</tr>
<tr>
<td>S/RES/2020</td>
<td>22 November 2011</td>
<td>• Notes the increasing ransom payments and lack of enforcement of the Somalia arms embargo fuelling the growth of Somali piracy; • Commends INTERPOL for the creation of the global piracy database designed to consolidate information about Somali piracy and facilitate the development of actionable analysis for law enforcement and urges all states to share info with INTERPOL for use in its database; • Welcomes the recommendations and guidance of the IMO on preventing and suppressing Somali piracy and underlines the importance of implementing these recommendations by all stakeholders including the shipping industry and urges state to collaborate with the insurance industries and the IMO to develop avoidance and evasive measures and encourage any captured vessel to be available for forensic investigation; and • Invites the IMO to continue its contributions to prevent and suppress Somali piracy in particular with UNODC, the WFP, the shipping industry and all other parties concerned and recognises the IMO's role concerning private security aboard ships.</td>
</tr>
<tr>
<td>S/RES/2015</td>
<td>24 October 2011</td>
<td>• Notes the end of Somali transition road map of 6 September 2011 includes developing counter-piracy policy and legislation in conjunction with regional entities as a key task of the Transitional Federal Institutions (TFI), and notes that the Security Council has made its future support to the TFI contingent upon the completion of the tasks contained in the road map; • Encourages the sharing of evidence to lead to prosecutions; • Encourages the Somali diaspora to assist as well as the SC to enhance the prosecution of pirates; and • Asks UNODC and UNDP to provide the SC within 90 days the methods to deal with pirates in prison with costs and timeline.</td>
</tr>
<tr>
<td>S/Res/1976</td>
<td>11 April 2011</td>
<td>• Welcomes the report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the coast of Somalia; • Calls upon States to cooperate, as appropriate, on the issue of hostage-taking; • Requests States and regional organizations to support sustainable economic growth in Somalia thus contributing to a durable eradication of piracy, as well as other illegal activities connected, in particular in priority areas recommended by the Istanbul conference on piracy in Somalia; • Invites States and regional organizations to continue their support and assistance to Somalia in its efforts to develop national fisheries and port activities in line with the Regional...</td>
</tr>
</tbody>
</table>
Plan of Action, and in this regard emphasizes the importance of the earliest possible delimitation of Somalia's maritime spaces in accordance with UNCLOS;

- Requests the Secretary-General to report within six months on the protection of Somali natural resources and waters, and on alleged IUU fishing and illegal toxic dumping off the coast of Somalia, taking into account the studies on this matter previously conducted by the UNEP and other competent agencies and organizations, and expresses its readiness to keep the matter under review;

- Urges States to consider investigating allegations of IUU fishing and toxic waste dumping with a view to prosecuting such offences when committed by persons under their jurisdiction;

- Encourages States and regional organisations cooperating with the TFG to assist Somalia in strengthening its coast guard capacity, in particular by supporting the development of land-based coastal monitoring and increasing their cooperation with the Somali regional authorities in this regard, as appropriate, after having any necessary approval from the Council's Committee pursuant to resolutions 751 (1992) and 1907 (2009);

- Calls on States, regional organizations, the UN, IMO and other appropriate partners to provide all necessary technical and financial support to the implementation of the Djibouti Code, the Regional Plan of Action for Maritime Security in Eastern and Southern Africa and the Indian Ocean agreed by Ministers in Mauritius in October 2010, and the CGPCS regional needs assessment report, recognizing the political will expressed by regional countries in these documents to combat piracy by all means possible, including through prosecution and imprisonment;

- Commends the efforts of the shipping industry, in cooperation with the CGPCS and IMO, in developing and disseminating the updated version of the Best Management Practices to Deter Piracy off the Coast of Somalia and in the Arabian Sea Area (BMP) and emphasizes the critical importance for the shipping industry of applying the best practices recommended in the BMP;

- Urges all States, including States in the region, to criminalize piracy under their domestic law, emphasizing the importance of criminalizing incitement, facilitation, conspiracy and attempts to commit acts of piracy;

- Recognizes that piracy is a crime subject to universal jurisdiction and in that regard reiterates its call on States to favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law;

- Further invites States and regional organizations, individually or in cooperation with, among others, UNODC and INTERPOL, to assist Somalia and other States of the region in strengthening their counter-piracy law enforcement capacities, including implementation of anti-money laundering laws, the establishment of Financial Investigation Units and strengthening forensic capacities, as tools against international criminal networks involved in piracy, and stresses in this context the need to support the investigation and prosecution of those who illicitly finance, plan, organize, or unlawfully profit from pirate attacks off the coast of Somalia;
<table>
<thead>
<tr>
<th>S/RES/1950</th>
<th>23 November 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underlines the importance of continuing to enhance the collection, preservation and transmission to competent authorities of evidence of acts of piracy, and welcomes further work of IMO, INTERPOL and industry groups to assist in providing guidance to seafarers on preservation of crime scenes following acts of piracy, noting the importance for the successful prosecution of acts of piracy of enabling seafarers to give evidence in criminal proceedings;</td>
<td></td>
</tr>
<tr>
<td>Urges States and international organizations to share evidence and information for anti-piracy law enforcement purposes with a view to ensuring effective prosecution of suspected, and imprisonment of convicted, pirates;</td>
<td></td>
</tr>
<tr>
<td>Requests States, UNODC and regional organizations to consider, consistent with applicable rules of international human rights law, measures aimed at facilitating the transfer of suspected pirates for trial, and convicted pirates for imprisonment, including through relevant transfer agreements or arrangements, and commends the efforts to date of the CGPCS in this regard;</td>
<td></td>
</tr>
<tr>
<td>Welcomes the readiness of the national and regional administrations of Somalia to cooperate with each other and with States who have prosecuted suspected pirates with a view to enabling convicted pirates to be repatriated back to Somalia under suitable prisoner transfer arrangements, consistent with applicable international law including international human rights law, recognizes in this regard the discussions between the Government of Seychelles and the national and regional administrations of Somalia, which resulted in an agreement in principle of a legal framework for the transfer of convicted pirates to Somalia after their prosecution and conviction in the Seychelles, and encourages States to continue their efforts in this regard;</td>
<td></td>
</tr>
<tr>
<td>Urges States, UNODC, based on support from donors, and regional organizations to consolidate international assistance to increase prison capacity in Somalia, including by constructing in the short-term additional prisons in Puntland and Somaliland, and requests UNODC to continue to provide training for prison staff in accordance with relevant international human rights standards and to continue to provide monitoring of compliance with such standards; and</td>
<td></td>
</tr>
<tr>
<td>Requests the TFG, with the assistance of UNODC, to elaborate and adopt a complete set of counter-piracy laws, and in this regard, welcomes the positive steps made in Puntland, and the progress being made in Somaliland.</td>
<td></td>
</tr>
<tr>
<td>Escalating ransom payments and the lack of enforcement of the Somalia arms embargo established by resolution 733 (1992) are fuelling the growth of piracy and calls upon all States to fully cooperate with the Somalia and Eritrea Monitoring Group including on information sharing regarding possible Somalia arms embargo violations;</td>
<td></td>
</tr>
<tr>
<td>Calls upon all States, and in particular flag, port, and coastal States, States of the nationality of victims, and perpetrators of piracy, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of all persons responsible for piracy, including anyone who incites or facilitates an act of piracy, consistent with applicable international law including international human rights law to ensure that all pirates handed over to judicial</td>
<td></td>
</tr>
</tbody>
</table>
Authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

- Urges all States to take appropriate actions under their existing domestic law to prevent the illicit financing of acts of piracy and the laundering of its proceeds; and

- Urges States, in cooperation with INTERPOL and Europol, to further investigate international criminal networks involved in piracy, including those responsible for illicit financing and facilitation.

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Date</th>
<th>Actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>S/Res/1918</td>
<td>27 April 2010</td>
<td>Affirms the failure to prosecute pirates undermines the efforts of the international community; and Welcomes in this context the progress being made with the Djibouti Code of Conduct and calls upon participants to fully comply as soon as possible.</td>
</tr>
<tr>
<td>S/RES/1897</td>
<td>30 November 2009</td>
<td>Commends the work of the CGPCS to coordinate the counter piracy efforts in cooperation with IMO, flag states and the TFG and commends the decision of the CGPCS to establish a Trust Fund and encourage donations from member states; and Welcomes revisions by the IMO to advise on preventing piracy, urges states along with shipping and insurance companies and IMO to develop measures to avoid attack, and urges states of vessels attacks to allow forensic evidence to be collected and call upon assistance from closest port.</td>
</tr>
<tr>
<td>S/Res/1851</td>
<td>16 December 2008</td>
<td>Encourages all states and regional organizations fighting piracy to consider creating a centre in the region to coordinate information relevant to piracy, to increase regional capacity with assistance of UNODC to arrange effective shiprider agreements or arrangements consistent with UNCLOS and to implement the SUA Convention, UNTOC and other relevant instruments to which States in the region are party, in order to effectively investigate and prosecute piracy and armed robbery at sea offences; Welcomes the communiqué issued by the International Conference on Piracy around Somalia held in Nairobi, Kenya, on 11 December 2008 and encourages Member States to work to enhance the capacity of relevant states in the region to combat piracy, including judicial capacity and the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy; and Urges States in collaboration with the shipping and insurance industries, and the IMO to continue to develop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity.</td>
</tr>
<tr>
<td>S/Res/1846</td>
<td>2 December 2008</td>
<td>The Security Council notes its concern over escalating ransoms; Welcomes the IMO to make recommendations to the shipping industry; Calls upon states to cooperate with the shipping and insurance industries and the IMO; Welcomes initiatives from Canada, Denmark, France, India, the Netherlands, Russia, Spain, the UK and the USA and regional and international organisations to counter piracy as per 1814,</td>
</tr>
<tr>
<td>Resolution</td>
<td>Date</td>
<td>Actions</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>----------------------------------------------</td>
</tr>
</tbody>
</table>
| S/Res/1816 | 2 June 2008| - Notes that the Somalia arms embargo does not apply here;  
- With the permission from the TFG, states can enter Somali waters with the intention to control piracy attacks;  
- Asks that activities don’t impact on the transit routes;  
- To be noted that this resolution only applies in Somalia;  
- Coordinate efforts to ensure there is no impact on trade routes for a period of 6 months; and  
- The Secretary-General of the IMO and the UN are to report to the Security Council. |
| S/Res/1838 | 7 October 2008| - Authorises that all states that are committed to controlling piracy may use all means necessary to fight against Somali piracy.  
- Condemns Somali piracy and the related activities;  
- Requests that all vessels travelling in the region to be vigilant;  
- Urges states and regional bodies to cooperate with each other;  
- Asks states to fly their flag and train in avoiding Somali piracy attacks;  
- Asks states and regional bodies to provide technical assistance to build capacity in the region;  
- Notes that the Somalia arms embargo does not apply here;  
- With the permission from the TFG, states can enter Somali waters with the intention to control piracy attacks;  
- Asks that activities don’t impact on the transit routes;  
- To be noted that this resolution only applies in Somalia;  
- Coordinate efforts to ensure there is no impact on trade routes for a period of 6 months; and  
- The Secretary-General of the IMO and the UN are to report to the Security Council. |
|            |            | 1816, 1838 and the NATO to escort vessels for a period of 12 months from December 2008;  
- Encourages states to share information through bilateral channels of the UN in order to counter piracy along with the UN, the IMO and shipping industry and member states;  
- Shows that long-term security of international navigation and WFP maritime deliveries to Somalia and mentions the need of a possible coordination and leadership role for the UN in this regard to rally member states and regional organisations to counter piracy;  
- Calls upon states to investigate and prosecute pirates consistent with international law; and  
- The SUA Convention provides parties with the opportunity to create criminal offences establish jurisdiction and accept delivery of persons responsible for or suspected of piracy related activities, urges states to implement all obligations and cooperate with IMO to build capacity for successful prosecutions. |
## Appendix E: Analysis of Somali piracy court decisions

<table>
<thead>
<tr>
<th>Case</th>
<th>Suspects</th>
<th>Date</th>
<th>Sentence</th>
<th>Notes</th>
<th>Mitigating Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>USA v Mohamed Ali Said et al (CAN. 2:10cr57/2010)</td>
<td>5</td>
<td>17 August 2010</td>
<td>N/A</td>
<td>Ongoing debate about how to define piracy was central to this case.</td>
</tr>
<tr>
<td>USA</td>
<td>USA v Mohammed Modin Hasan et al (CAN. 2:10cr56/2010)</td>
<td>5</td>
<td>29 October 2010</td>
<td>N/A</td>
<td>The government failed to prove piracy, but found the defendants guilty of other offences relating to piracy.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saudi</td>
<td>R v Mohamed Ahmed Dahir &amp; Ten Others (CR 51/2009) (Topaz case)</td>
<td>11</td>
<td>26 July 2010</td>
<td>10 years imprisonment</td>
<td>Of the weapons recovered, authorities believed they were made in China, despite a lack of evidence. Strong indication that the Seychelles vessel was not the specific target, instead any suitable vessel would have been targeted. The defence claimed the accused were fishermen, however there were no fishing equipment aboard.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seychelles</td>
<td>R Abdi Ali &amp; Ten Others (CR 14/2010) (Intertuna II case)</td>
<td>11</td>
<td>3 November 2010</td>
<td>6 years imprisonment</td>
<td>Among the accused was thought to include children less than 18 years. The accused noted that they had paid between USD$400 and $800 to be transported to South Africa for work. After running out of water, they fished for survival. They denied having weapons aboard the vessel. The skiff was flying no flag.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>R v Abdukar Ahmed &amp; Five Others (CR 21/2011) (Gloria and La Fleche case)</td>
<td>6</td>
<td>14 July 2011</td>
<td>24 years imprisonment</td>
<td>The accused reportedly used the crew as human shields when attacked by naval patrols,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>R v Mohamed Ahmed Ise &amp; Four Others (CR 76/2010) (Talenduic case)</td>
<td>5</td>
<td>30 June 2011</td>
<td>30 years imprisonment and a fine of 1 million Rupees</td>
<td>The accused did not have fishing equipment aboard.</td>
</tr>
<tr>
<td>Case</td>
<td>Defendant</td>
<td>Date</td>
<td>Sentence</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
<td>------</td>
<td>----------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>R v Nur Mohamed Aden &amp; Nine Others (CR 75/2010)</td>
<td></td>
<td>30 June 2011</td>
<td>20 years imprisonment and 10 years imprisonment, concurrently</td>
<td>One of the accused admitted to being a first time pirate.</td>
<td></td>
</tr>
<tr>
<td>R v Houssein Mohammed Osman &amp; Ten Others (CR 19/2011) (Draco case)</td>
<td></td>
<td>12 October 2011</td>
<td>10 years imprisonment</td>
<td>The vessel was not flying a flag and confirmed it was not a fishing vessel as they only had one small line aboard suitable for catching fish for survival.</td>
<td></td>
</tr>
<tr>
<td>R v. Liban Mohamed Dahir &amp; Twelve Others (CR 7/2012) The Happy Bird case</td>
<td></td>
<td>13 July 2012</td>
<td>1 defendant was under 12 years old and was released and deported to Somalia; 3 children aged between 14 and 17 years of age received 2 years and 5 months imprisonment; 1 defendant pleaded guilty before the trial and received 10 years imprisonment; the remaining defendants received the maximum sentence of 30 years imprisonment and a fine of 1 million Rupees</td>
<td>Large quantity of extreme weaponry aboard the vessel shows willingness to engage in extreme violence. Further comment by one defendant noting that he would 'shoot the learned prosecutor in the head' which drew laughter from his co-accused's therefore the court was in favour of longer sentences. Aerial photos taken revealed 2 hook ladders, a large quantity of fuel and the absence of fishing equipment.</td>
<td></td>
</tr>
<tr>
<td>R v. Farad Ahmed Jama &amp; Fourteen Others (CR 16/2012) MV Sunshine case</td>
<td></td>
<td>5 November 2012</td>
<td>Each count attracted the maximum sentence of 30 years imprisonment and a fine of 1 million Rupees</td>
<td>The attack on oil tanker MV Sunshine with RPGs could have endangered the lives of those aboard and caused serious environmental damage. The use of juveniles by the adult offenders should also increase the sentence of the adults.</td>
<td></td>
</tr>
<tr>
<td>R vs. Aid Mohamed Ahmed &amp; 7 others (CR 3486/2008)</td>
<td></td>
<td>10 March 2010</td>
<td>20 years imprisonment</td>
<td>Normally they are fishermen, but on the day they were captured they were engaged in human trafficking. They had delivered the people to Yemen. They engaged in fire with others for 12 hours.</td>
<td></td>
</tr>
</tbody>
</table>

It was noted the lack of governance in Somalia, which limited opportunity among the accused's ability to get other employment. All accused were young men.
<table>
<thead>
<tr>
<th>Case</th>
<th>Defendants</th>
<th>Date of Determination</th>
<th>Outcome</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>R vs. Hassan Jama Haley &amp; 5 others (CA 103/2010, from the original case 1340/2010)</td>
<td>15 July 2010</td>
<td>Determination of jurisdiction</td>
<td>Remanded in custody</td>
<td></td>
</tr>
<tr>
<td>R vs. Abdirashid Jama Gas &amp; 16 others (CA 1939/2009)</td>
<td>5 November 2010</td>
<td>Determination of jurisdiction</td>
<td>Released</td>
<td></td>
</tr>
<tr>
<td>Mohamud Mohamed Hashi &amp; 8 others vs. Rep. (CA 434/2009)</td>
<td>9 November 2010</td>
<td>Determination of jurisdiction</td>
<td>Released</td>
<td></td>
</tr>
<tr>
<td>R vs. Abdirashid Jama Gas &amp; 16 others (CA 3472/2010)</td>
<td>17 November 2010</td>
<td>Determination of jurisdiction</td>
<td>Acquitted</td>
<td></td>
</tr>
</tbody>
</table>

**Difficulty in determining jurisdiction, which impeded some cases going to trial in Kenya. After determining the jurisdiction was reasonable for the court to progress, the defendants were remanded in custody.**

**A ruling was made regarding legal representation, which determined that the accused offenders should receive free legal representation party because they are foreigners who do not understand the Kenyan legal system.**

The prosecution case was unable to secure a guilty verdict beyond reasonable doubt.

The prosecution case was unable to secure a guilty verdict beyond reasonable doubt. Under UNHCR, the defendants were considered displaced persons and repatriated accordingly.

The prosecution case was unable to secure a guilty verdict beyond reasonable doubt. The accused said they were fishermen who had weapons aboard. The mothership sank while being towed to losing evidence to prove they are in fact fishermen. They said they have weapons because everyone in Somalia has weapons for their own personal protection and further denied being pirates. The prosecution noted the accused offenders had no criminal record, therefore treating them as first time offenders. Noted the state of Somalia as mitigation and the young age of all offenders. Noted that each of the pirates has families and therefore responsibility, the defence requested leniency.
<table>
<thead>
<tr>
<th>Case</th>
<th>Accused Details</th>
<th>Time</th>
<th>Date</th>
<th>Implication</th>
</tr>
</thead>
<tbody>
<tr>
<td>R vs. Jama Abdikadir Farah &amp; 6 others (CR 1693/2009)</td>
<td>The accused said they were on their way back from Yemen and could fit 45 people in their boat but only had 36. The prosecution does not believe the boat was used for anything but piracy and stated it would capsize if 45 people were in the boat. Noted they had already been in prison for 18 months at the time of the trial. Mitigated by the state of Somalia and the lack of opportunity. Treated as first time offenders as they had no criminal record.</td>
<td>7</td>
<td>22 October 2010</td>
<td>4.5 years imprisonment and repatriation to Somalia upon release</td>
</tr>
<tr>
<td>R vs. Abdiaziz Abdullahi &amp; 23 others (CR 2006/2011)</td>
<td>Ruling about whether they had been detained too long, suffered torture and instead should go to trial in Somalia. The judge agreed that action must be taken and deferred the case until 29 June 2011.</td>
<td>24</td>
<td>24 June 2011</td>
<td>N/A</td>
</tr>
<tr>
<td>Netherlands BM8116, Rotterdam District Court, 10/600012-09 (4 co-accused)</td>
<td>The defendants argued that they were acting in self-defence, despite having the necessary items (weapons and ladder) aboard to conduct Somali piracy. That defence was dismissed. Noted that no evidence was found that the defendants were part of a large group of pirates. The court noted that Somalia is a troubled place and the defendants would have been exposed to distress. Details about one defendant’s wife and family reduced the sentence demanded by the prosecution.</td>
<td>1(4 co-accused)</td>
<td>17 June 2010</td>
<td>5 years imprisonment</td>
</tr>
</tbody>
</table>