Maritime Piracy
A multi-dimensional issue
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Exploring Linkages Between Economic Development, Political Stability and Maritime Piracy
by
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In the 1970’s, piracy reemerged on a large scale with robberies and hijacking of vessels in Southeast Asia. In the beginning, the victims where fishing vessels, but later the growing international merchant fleet became the main target. Nowadays, we are facing a new side of piracy with organized criminals focusing on kidnapping and ransoming.

Piracy of today has found new forms. The ship, cargo or the crew’s belongings are of lesser importance, at least for the pirates in the areas of Gulf of Aden and the Indian Ocean. The crew has been the new bounty of modern piracy, which has more similarities to organized crimes than any other form.

The focus area is the Horn of Africa; pirates from the Somalia area are raging the high seas in the Gulf of Aden and the Indian Ocean and dictate the terms. Violence is escalating and all efforts from the international community seem to have made the pirates more desperate. The question remains: how do we put an end to this serious problem?

How do the harbors in Eastern Africa cope with the fact that 95% of the merchant ships calling a port in that region have armed security personnel onboard? The stability in the region is disturbed, and neighboring countries are affected. Tourism is failing; a promising target for the cruise industry is fading.

The Horn of Africa is one of the driest places on earth and repeatedly struck by drought with fatal consequences for millions of people. The current situation in the area creates problems for the World Food Programme when there is a risk for the essential aid transports to be hijacked by pirates before reaching their destinations with relief for millions of affected.

The pirate economy is ruining the local markets and the conditions for economic stability. Without economic development, socio-political stability and security, it will be hard to combat any criminal activity.

Piracy does not only affect the Gulf of Aden and the Indian Ocean, even though the most spectacular attacks occur here. Piracy and armed robberies at sea does also affect the Southeastern Asia, Bangladesh, Western Africa and the Caribbean. The solution to the problem, however, cannot be solely found at sea. Instead, we have to turn our gaze inland, since piracy is the effect of a multi-dimensional problem.

This report will try to highlight the linkage between piracy, poverty and political instability. This is a theme to be discussed and developed. It is my hope that this report will be a contribution to the ongoing debate with the aim to find a solution to the problem of piracy.

Jaak Meri
Director Public Affairs
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Maximo Q. Mejia Jr.
Malmö, Sweden
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CERF</td>
<td>Central Emergency Response Fund (of the UN)</td>
</tr>
<tr>
<td>CGPCS</td>
<td>Contact Group on Piracy off the Coast of Somalia</td>
</tr>
<tr>
<td>DCoC</td>
<td>Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden</td>
</tr>
<tr>
<td>EEZ</td>
<td>exclusive economic zone</td>
</tr>
<tr>
<td>EHCR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>GDP</td>
<td>gross domestic product</td>
</tr>
<tr>
<td>GoA</td>
<td>Gulf of Aden</td>
</tr>
<tr>
<td>GoG</td>
<td>Gulf of Guinea</td>
</tr>
<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
</tr>
<tr>
<td>ICOPAS</td>
<td>International Conference on Piracy at Sea</td>
</tr>
<tr>
<td>IMB</td>
<td>International Maritime Bureau</td>
</tr>
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<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>ISC</td>
<td>Information Sharing Centre (of ReCAAP or DCoC)</td>
</tr>
<tr>
<td>IUU</td>
<td>illegal, unreported, and unregulated</td>
</tr>
<tr>
<td>LDC</td>
<td>least developed country</td>
</tr>
<tr>
<td>MDG</td>
<td>millennium development goals</td>
</tr>
<tr>
<td>MRAG</td>
<td>Marine Resources Assessment Group</td>
</tr>
<tr>
<td>MV</td>
<td>motor vessel</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OEF</td>
<td>One Earth Future</td>
</tr>
<tr>
<td>PVC</td>
<td>Price Value Chain</td>
</tr>
<tr>
<td>ReCAAP</td>
<td>Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia</td>
</tr>
<tr>
<td>TFG</td>
<td>Transitional Federal Government (of Somalia)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>UNSC</td>
<td>UN Security Council</td>
</tr>
<tr>
<td>USD</td>
<td>USA dollars</td>
</tr>
<tr>
<td>VLCC</td>
<td>very large crude carrier</td>
</tr>
<tr>
<td>WDR</td>
<td>World Development Report (by the World Bank)</td>
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<tr>
<td>WFP</td>
<td>World Food Programme</td>
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</table>
Except for brief interregna, piracy has been the bête noire of shipping since the inception of seaborne commerce – a constant criminal challenge to efficient maritime trade. Throughout the ages, it has taken different shapes and forms and threatened different seas and coastlines. The modern phenomenon of piracy at sea can be surveyed as different types and modus operandi starting with, inter alia, the pirate attacks against the boat people of Vietnam in 1970s, the Lebanese deviations of the 1980s, South China Sea piracy in the 1980s and 1990s, the Malacca Straits and Indonesian waters in the 1990s and 2000s, Latin American container theft in the 2000s, and finally Somalia and West Africa in the current decade.

Between January 1991 and September 2011, a total of 5,442 robberies and violent attacks against merchant vessels have been reported to the International Maritime Bureau (IMB) of the International Chamber of Commerce (ICC). IMB publishes data and information relating to piracy attacks four times a year – a first quarter report, a second quarter report, a third quarter report, and an annual report. The statistics presented in the figures that follow are extracted from these published reports.

Figure 1 shows that there has been an increasing trend in the number of incidents against ships worldwide since 1991. Though there are peaks and valleys throughout the twenty years presented in the chart, it can be said that the number of reports have remained within the range of 200 to 500. That the early 1990s show only a low level of reporting does not necessarily mean that there were significantly less attacks in the past. One could speculate that it was a period when shipping had yet to get used to...
the idea of reporting attacks to a piracy-reporting centre. One can only hope that we have reached a point where the statistics offer more meaningful information.

*Figure 2* breaks the data down between four regions exposed to the highest number of attacks. One observation that is readily apparent is the shift of the centre of gravity, in terms of the number of attacks reported, from Southeast Asia to the Horn of Africa from the second half of the 2000s.

From the mid-1990s to the 2000s, the piracy and armed robbery against ships were concentrated in the Far East, particularly the waters of the South China Sea and the Straits of Malacca. Between 2006 and 2007, just when the number of Southeast Asian incidents started to wane, the number of reports relating to Somali piracy began to rise dramatically.

The shift in concentration of piracy activity is more graphically portrayed in *Figure 3*, from the live piracy map maintained by the IMB in its website. Actual attacks are depicted by red balloons, attempted attacks by yellow balloons, and suspicious vessels by purple balloons. The live piracy map shows scores of balloons of all colours congregating around the Horn of Africa, in a tightness and magnitude of grouping not readily seen in any other part of the world.

The increasing number of incidents off the coast of Somalia is alarming and disturbing. The *modus operandi* employed by Somali pirates differs markedly from those found in the Far East. In Southeast Asia, the principal motive of piracy and armed robbery against ships has been to steal personal valuables, cart away supplies and equipment, and to plunder the cargo – whether on a relatively small or a grand scale. Where violence would serve its purpose, there was not much
hesitation to apply or use it. In comparison, historically, the object of Somali pirates has been to exert some effort to keep the ship’s condition, the crew’s health, and the cargo intact in order to retain a strong bargaining position when negotiating for the ransom payment. However, a review of this year’s instalments of the IMB reports for 2011 reveals that Somali pirates have become increasingly aggressive and violent towards their captives in the past twelve months.

### 1.1 Use of the word piracy in this report

Academics tend to discuss the definition of piracy *ad infinitum*. It is, as Murphy writes, “a slippery concept” that defies accurate and incontestable definition. There is a definition under the Law of the Sea Convention, a marine insurance definition, domestic law definitions, a customary international law definition, etc. For purposes of this report, unless specifically otherwise qualified, the
Word piracy is used in its broadest layman’s connotation, i.e., an act of robbery or criminal violence against ships, crew, or passengers.

1.2 Objective of this report
The objective of this report is to explore piracy’s linkages and the challenges it presents to development and security. After the introductory part, this report is followed by three more parts: Part II which examines the nexus between piracy, security, and development, by looking at issues such as the millennium development goals, the concept of failed states, fishery resources, and effects on emergency-relief and development aid; Part III which briefly surveys select international and regional issues related to piracy such as the cost to seaborne trade, legal aspects, regional security, United Nations (UN) and International Maritime Organization (IMO) initiatives, and the Djibouti Code of Conduct; and, finally, Part IV contains the concluding remarks.
The piracy-security-development nexus

For those who now live in more stable neighbourhoods, it may seem incomprehensible how prosperity in high-income countries and a sophisticated global economy can coexist with extreme violence and misery in other parts of the globe. The pirates operating off the coast of Somalia who prey on the shipping through the Gulf of Aden illustrate the paradox of the existing global system. How is it that the combined prosperity and capability of the world’s modern nation-states cannot prevent a problem from antiquity?

The World Bank, 2011

It is widely accepted that only a combination of a multitude of factors – rather than any isolated reason – can begin to fully explain why piracy occurs. Among these many factors, writers invariably include the level of poverty, economic hardship, and socio-political instability as common features explaining the incidence of piracy in affected areas. Nincic writes, for instance, “Maritime piracy frequently has its roots in weak or fragile states, where humanitarian conditions are dire and economic opportunities are limited.” According to Baird, “The economic hardship in Somalia and absence of an effective legal regime or enforcement agency has meant anyone who could get their hands on a boat could become a pirate, and many have done so.”

Perhaps because the link between economic development, socio-political stability/security, and piracy is seen as self-evident, there does not seem to be a great deal of effort into investigating the connection. One such study, by Mejia, Cariou, and Wolff, inquires into this potential relationship by observing changes in the economic and socio-political situations attending 152 countries during the period 1996–2008 using the following indicators: (a) the real
GDP per capita in 2005 dollars, from the Economic Research Service of the US Department of Agriculture; and (b) political rights and civil liberties indicators reported by Freedom House, an independent watchdog organization that supports the expansion of freedom around the world.

Figure 4 represents the relationship between the real GDP per capita and the number of attacks reported within a particular country’s waters from 1996 to 2008. The chart “suggests that a strong, decreasing relationship exists between the economic development of a country expressed in GDP per capita and the number of attacks reported in a given year.” This finding is reinforced by an associated calculation (Figure 18.7 in Mejia et al.) where the 152 countries were divided into three groups according to the number of attacks reported in a given year: (a) no attacks, (b) 1–5 attacks, and (c) more than 5 attacks. According to this calculation, the mean GDP per capita from 1996 to 2008 for countries with no attacks is USD 10,885, with 1–5 attacks is USD 4,430, and for countries with more than 5 attacks is USD 1,836.

To test the relationship between piracy and political rights and civil liberties indicators, Mejia et al. compared the mean for two extremes categories, i.e., countries with 0 and countries with more than 5 attacks. The analysis showed a tendency for countries of the former category to score better in the indicators than countries of the latter category, as presented in Table 1.

To complement the above, Mejia et al. compared the trend in the number of attacks (divided by 100), real GDP per capita (divided by 1,000), political rights, civil liberties, and freedom status (divided by 10) for four locations that showed the highest number of piracy attacks during the period 1996–2008, namely Indonesia, Bangladesh, Nigeria, and Somalia. In the case of Indonesia, the analysis shows that the reduction in the number of attacks over time coincided with improvements in per capita GDP as well as political rights and civil liberties indicators, thus confirming the potential relationship between economic and socio-political conditions and the likelihood of piracy attacks.

This is reinforced in the case of Bangladesh, exhibiting a potential negative relationship between economic and socio-political factors and piracy, though mitigated in the case of Nigeria where

| Mean score for political rights and civil liberties indicators for countries with either 0, or more than 5, piracy attacks. | Mean score for political rights and civil liberties indicators for countries with either 0, or more than 5, piracy attacks. |
|---|---|---|---|
| Countries with no piracy attacks | 3.01 | 3.02 | 1.71 |
| Countries with more than 5 piracy attacks | 3.67 | 3.96 | 2.19 |

(TABULATED FROM DATA IN MEJIA, CARIOU, WOLFF, “PIRACY IN SHIPPING,” P. 363)
FIGURE 5
Number of piracy attacks, real GDP per capita, and socio-political indicators in Indonesia (1996–2008).


SOURCE: FIGURES 18.8 AND 18.11: IN MEJIA, CARIOU, WOLFF, "PIRACY IN SHIPPING," PP. 364 & 367)
the indicators and number of attacks seem to move together. Finally, Somalia represents a situation where attacks are increasing dramatically as the already undesirable levels of economic and socio-political development remain stagnant from 1996 to 2008. Charts for Indonesia and Somalia are shown in Figure 5. The study by Mejia, Cariou, and Wolff supports what has long been postulated by a number of writers – the link between the incidences of piracy attacks on the one hand, and economic and socio-political instability on the other.

2.1 MDGs and piracy
The millennium development goals (MDGs) are the world’s time-bound and quantified targets for addressing extreme poverty and basic human rights in their many dimensions. They consist of eight international development goals with 21 measurable targets that all 193 United Nations member states and at least 23 international organizations have agreed to achieve by the year 2015. The MDGs were officially established following the Millennium Summit in 2000, where all world leaders present adopted the United Nations Millennium Declaration. The MDGs are designed to encourage development by improving social and economic conditions in the world’s poorest countries. The eight MDGs are:

- **Goal 1**: Eradicate extreme poverty and hunger
- **Goal 2**: Achieve universal primary education
- **Goal 3**: Promote gender equality and empower women
- **Goal 4**: Reduce child mortality rates
- **Goal 5**: Improve maternal health
- **Goal 6**: Combat HIV/AIDS, malaria, and other diseases
- **Goal 7**: Ensure environmental sustainability
Goal 8: Develop a global partnership for development

According to the World Bank, “No low-income fragile or conflict-affected country has yet achieved a single MDG.” Indeed, four of the six countries worst affected by the problem of piracy – Bangladesh, Somalia, Tanzania, and Yemen – are low-income fragile countries.

In its 2010 report on MDG progress, Somalia declares that it is unlikely to meet all but one of the eight goals. In its conclusions, the report mentions that, “There is insufficient data to plot progress of Somalia’s MDGs, but the country is predicted to be seriously off track in them. With the current political instability it is unlikely that Somalia will reverse this pattern in the near future.”

In a separate MDG report, the Somali regional government of Puntland notes “constraints for generating productive and decent work for youth due to lack or limited skills, education and low income opportunities” which in essence “dis-
courage some of them in joining community peace building and country reconstruction but rather cause more youth to participate in clan conflicts, pirate groups or joining illegal militia forces.” The Puntland report indicates “Attraction of many youth to piracy activities in the high seas for earning quick wealth and money” as one of the major challenges in meeting the region’s MDGs. The situation is not alleviated by the fact that some in the local community are willing to cash in on piracy operations. Local elites share in ransom revenues and therefore leave pirates undisturbed as they negotiate payment. Other inhabitants are hired to provide guard or catering services to hijacked crews. Local commerce can only but welcome the increased spending brought about by the influx of millions of dollars after every successful negotiation. Since they flaunt money, power, and influence in the community, pirates have become the role model for unemployed, underemployed, or plain adventurous.

The World Development Report (WDR) 2011 shows how the lack of employment opportunities and other productive activities attract people to join criminal gangs or rebel groups (see Figure 6). This is reinforced by other studies that also reveal a connection between violence, MDGs, and development in general. Gates et al. employ econometric techniques to test the development consequences of internal armed conflict and state fragility, and conclude that conflict and fragility are undoub-
edly major obstacles to development for several MDG indicators (see Table 2).

Another study included in WDR 2011 reveals the detrimental effect of violence on poverty levels in certain weak, fragile, or failed states (see Figure 7).

It has been mentioned that low-income fragile states are still a great distance from achieving the MDGs. Nevertheless,
the situation is not hopeless. WDR 2011 notes that “countries that have managed to reduce violence have also produced some of the fastest development gains... Countries emerging from severe violence have made striking development gains, often with strong assistance from the international community.”

So far, only isolated incidents of Somali pirates killing fellow gang members or rivals have been reported. On the other hand, there have been clashes between pirates other groups. For instance, there is an animosity between pirates and Islamists that seems to be motivated just as much by religion as it is by economics. Violence at sea has occasionally spilled over to the shore and Somalis who could help rebuild the legitimate economy flee instead to escape the violence.

One of the conclusions in WDR 2011 is that “Violence is the main constraint to meeting the MDGs.” Younger men and even children are being recruited into piracy, to join a new generation of pirates that do not hesitate to use greater violence against hijacked seafarers. Unless legitimate and attractive opportunities are offered in town, there is a great risk that the piracy phenomenon could turn into a vicious cycle of violence.

### 2.2 Weak, fragile and failed states

The literature on MDGs and development use different terms to describe states of varying levels of economic development and socio-political stability. Some of the labels used are weak, fragile and failed states.

#### TABLE 2

<table>
<thead>
<tr>
<th>MDG</th>
<th>Label</th>
<th>Indicator</th>
<th>Effect of conflict</th>
<th>Effect of fragility</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDG 1</td>
<td>Ending Poverty and Hunger</td>
<td>Undernourishment</td>
<td>Detrimental</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 1</td>
<td>Poverty Headcount</td>
<td>Detrimental</td>
<td>Detrimental</td>
<td></td>
</tr>
<tr>
<td>MDG 1</td>
<td>Life expectancy</td>
<td>Detrimental</td>
<td>Detrimental</td>
<td></td>
</tr>
<tr>
<td>MDG 1</td>
<td>GDP per capita</td>
<td>Detrimental</td>
<td>Detrimental</td>
<td></td>
</tr>
<tr>
<td>MDG 2</td>
<td>Universal Education</td>
<td>Primary Sch. Enrollment</td>
<td>Detrimental</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 2</td>
<td>Sec. School Attainment</td>
<td>Detrimental</td>
<td>Detrimental</td>
<td></td>
</tr>
<tr>
<td>MDG 3</td>
<td>Gender Parity</td>
<td>Primary School ratio</td>
<td>Detrimental</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 3</td>
<td>Life expect. ratio</td>
<td>No effect</td>
<td>Benefit?</td>
<td></td>
</tr>
<tr>
<td>MDG 4</td>
<td>Child Mortality</td>
<td>Infant Mortality</td>
<td>Detrimental</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 4</td>
<td>Under-5 Mortality</td>
<td>Detrimental</td>
<td>Detrimental</td>
<td></td>
</tr>
<tr>
<td>MDG 5</td>
<td>Maternal Mortality</td>
<td>Birth Attendance</td>
<td>No effect</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 6</td>
<td>Combat AIDS</td>
<td>% HIV positive</td>
<td>Benefit?</td>
<td>Benefit?</td>
</tr>
<tr>
<td>MDG 7</td>
<td>Environmental Sustainability</td>
<td>Acces to Water</td>
<td>Detrimental</td>
<td>Detrimental</td>
</tr>
<tr>
<td>MDG 7</td>
<td>Acces to Sanitation</td>
<td>No effect</td>
<td>Detrimental</td>
<td></td>
</tr>
</tbody>
</table>

Source: Gates et al., “Consequences of Civil Conflict,” p. 1.)

#### FIGURE 7

Widening gap in poverty between countries affected by varying levels of violence.

Source: Figure 1.5 in The World Bank, WDR 2011, p. 60
fragile, least developed, failed, and collapsed. What the literature makes plain is that there is no universal agreement as to the exact definitions and uses of these terms. Some are used to describe relative levels of development while others are used interchangeably.

According to Hastings, for example, *weak states* meet something approaching the Weberian definition of the state. They retain a monopoly on the legitimate use of violence over their territory, and provide political and economic goods, if highly imperfectly. They might have high levels of corruption, crime, and social problems, and few fiscal or administrative resources, but the states soldier on. Indonesia, for example, has some of the highest levels of corruption in the world, and occasional ethno-religious unrest, but the government does function somewhat effectively (if inefficiently) over the vast majority of its territory.29

Andersen has the following to say in regard of the term *fragile states*:30

There is no authoritative definition of state fragility, nor is there an agreed list of fragile states... In recent years, ‘fragile states’ has become the catch-all phrase for states at the low end. In the development community, it has replaced labels such as ‘poor performers’, ‘low-income countries under stress’ and ‘difficult partnership’. In academia and security circles, terms such as ‘failed states’ and ‘collapsed states’ remain common. Sometimes these terms indicate differences in degrees of state weakness: a fragile state has not yet failed, and a failed state has not yet collapsed. Frequently, however, they are just used as different words for problems that are seen as related to the state’s lack of will or capacity to perform core state functions.

As for *failed states*, Brooks describes them as those that have lost “control over the means of violence, and cannot create peace or stability for their populations or control their territories. They cannot ensure economic growth or any reasonable distribution of social goods. They are often characterized by massive economic inequities, warlordism, and violent competition for resources.”31

The World Bank seems to avoid using the label *failed state*, referring instead to *fragile states*. Under the Glossary in WDR 2011, state *failure* is not defined whereas *fragility* and *fragile situations* are.32 On the other hand, *least developed country* (LDC) is the term preferred by the UN when describing states at the lowest end of the development scale. The following three criteria set by the Committee for Development Policy of the United Nations Economic and Social Council are used in characterising LDCs:

(a) A “low-income” criterion, based on a three-year average estimate of the gross national income (GNI) per capita, with a threshold of USD 905 for possible cases of addition to the list, and a threshold of USD 1,086 for graduation from LDC status;

(b) A “human assets weakness” criterion, involving a composite index (the Human Assets Index) based on indicators of (i) nutrition (percentage of the population that is undernourished); (ii) health (child mortality rate); (iii) school enrolment (gross secondary school enrolment rate); and (iv) literacy (adult literacy rate); and

(c) An “economic vulnerability” criterion, involving a composite index (the Economic Vulnerability Index) based on indicators of (i) natural shocks (index of instability of agricultural production, share of the population
made homeless by natural disasters); (ii) trade shocks (an index of instability of exports of goods and services); (iii) exposure to shocks (share of agriculture, forestry and fisheries in GDP; index of merchandise export concentration); (iv) economic smallness (population in logarithm); and (v) economic remoteness (index of remoteness).33

State failure, weakness, or fragility does not necessarily result in piracy-infested waters. The condition might facilitate criminality, but the causality is by no means automatic. Murphy offers the following elucidation:

The most piracy-prone waters between 1991 and 2006 were those of Indonesia. Although Somali waters currently host more recorded incidents, the problem in Indonesia is a continuing one and, although it is a weak state where governmental authority does not run throughout its territory, it is not one that has failed. The same description can be applied to the Philippines, which also has a significant and long-standing piracy problem. Moving along the spectrum from weakness to strength, India and Brazil are not merely strong states but regional powers yet they too suffer piracy attacks along parts of their coastlines and in particular ports. Nor is the state failure sufficient to cause piracy. The 2008 Failed States Index lists Bangladesh and Nigeria in its most failed category, both of which have serious difficulties with piracy yet also lists several other coastal states where piracy is not a noteworthy problem including Cote d'Ivoire, Pakistan, Guinea and Burma 34 (italics supplied).

In his study, Hastings examines the geographies of state failure to explain
why pirate behaviour, particularly in terms of sophistication, varies between failed and weak states. His analysis suggests that less sophisticated attacks are prevalent in failed states while more sophisticated attacks prevail in weak states. This is explained by the fact that “because they do not have to worry about enforcement, pirates in failed states can engage in time-intensive kidnappings for ransom, while only weak states provide the markets and transportation infrastructure necessary for operations where ships and cargo are seized and sold for profit.” As a result, Hastings’ concludes that in the long run, “weak states might actually be more problematic for international security in some respects than failed states” 35 (italics supplied).

As far as state failure goes, Rotberg assigns Somalia sui generis status. “This decade’s failed states are Afghanistan, Angola, Burundi, the DRC (Democratic Republic of Congo), Liberia, Sierra Leone, and Sudan. These seven states exemplify the criteria of state failure. Beyond those states is one collapsed state: Somalia.”37

2.3 Local fishery resources

There seems to be sufficient evidence to suggest that the Somali piracy phenomenon can trace its roots to the plunder of Somalia’s fishery resources and the dumping of toxic wastes off its coast. However, whether this lends legitimacy to the hijacking of ships as retaliation for alleged injuries to the Somali coast is a separate question altogether.

In its report to the UK government, the Marine Resources Assessment Group (MRAG) shows that Somalia was second only to Guinea in terms of being victimized by illegal, unreported and unregulated (IUU) fishing38 (see Figure 8). The United Nations estimates Somalia’s annual loss due to IUU fishing at USD 95 million per annum.39

In its 2006 report, the UK High Seas Task Force estimated that IUU fishing off Somalia’s 3,300 km coastline was being carried out by 700 foreign-owned vessels from as close as Kenya, Pakistan, Saudi Arabia, Sri Lanka, and Yemen to as far as Belize, France, Honduras, Japan, South Korea, Spain, and Taiwan.40

Concerns that the “uncontrolled nature of foreign poaching, coupled with unsustainable fishing practices such as bottom-trawling undertaken by these vessels” were pushing Somali fish
stocks on the verge of collapse gave early Somali would-be pirates “a fig-leaf justifica- tion for their actions, leading them to style themselves ‘coastguards.’” In the early 1990s, these enforcers used the self-styled appellation to force ships to slow down and stand by for boarding. Somali anger towards the foreign fishing fleet morphed into two business models – the sale of fishing and waste-dumping licenses on the one hand and piracy/ship hijacking for ransom on the other. Nevertheless, piracy soon outgrew the sale of fishing and waste-dumping licenses in terms of profitability. Revenue from licenses declined from USD 600,000 per annum in 1998 to about USD 300,000 in 2002. This decrease in revenue led Mohamed Abdi Hassan “Afweyne” to engage the Somali Marines of Harardhere, and become the first warlord to set up a piracy organization. Numerous other gangs followed suit. Ransom payments grew from barely USD 100,000 per vessel in the early 2000s to a record USD 13.5 million for the oil tanker Irene SL in 2011. Whatever legitimate grievances there may have been on the part of local fishermen have quickly dissolved in the face of local warlords “complicit in the foreign ransacking of Somali fisheries” and the Somali seizure of foreign shipping for profit, rather than to address allegations of uncontrolled fishing. Statistics show that whether in the 1980s or the 2010s, Somali pirates have always preferred to hijack ships that lie low in the water, move with low speed, and carry high value cargo – not fishing vessels. Because of the piracy threat, there has virtually been no poaching by foreign trawlers or dumping of waste off Somalia in the last five years. Local warlords clearly played upon otherwise legitimate concerns, turned “communal fears into animosities,” and dubbed pirates the “guardians of clan interests.” The words, “We will keep attacking on foreign vessels until illegal fishing and toxic dump is stopped” is nothing more than a mantra of excuses. In the meantime, the development of the Somali fishing industry is retrogressive. With the low level of fishing activity in the past five years, one could even speculate that fish stocks might be recovering. There is in fact testimony from “several of the large fishing companies in Puntland... that ‘the fishing is good.’” Ironically, fishing boats and fishing crews are difficult to assemble and launch either for fear of being attacked by pirates or because both manpower and vessels have been co-opted by pirates. Professional competence in fisheries management has all but disappeared. Shore-side, skilled managers and workers are necessary to run what remaining cold storage and processing facilities have survived...
both civil conflict and tsunami. Somali fisher folk, one of the most important fishery resources, are being lost to piracy and criminality.

While historically representing only a small fraction of Somali GDP, a modern fishing industry has the potential to contribute to wider economic development in the country. To illustrate this point, the volume of fish landed in Somalia grew from 6,000 tonnes in 1950 to 29,800 tonnes in 2002 in spite of political instability and recurring violence in the country.

2.4 Emergency-relief aid

The humanitarian crisis in Somalia continues to persist. As of 2010, 42% of the population or around 3.2 million people are still in need of emergency humanitarian assistance. In fact, in 2009, the whole Horn of Africa – Somalia, Kenya, and Ethiopia – was beset with its worst humanitarian crisis since the mid-1980s. A total of 16 million people in the region were in need of emergency food and nutrition assistance, most of which would have to be delivered by sea.

In response to the situation, the UN established the Central Emergency Response Fund (CERF) to enable more timely and reliable humanitarian assistance to those affected by natural disasters and armed conflicts. 51 countries benefited from CERF funding in 2009, and 34 percent of the total funding benefited the Horn of Africa. The amount granted to Somalia, USD 60.5 million, was the most in nominal terms any one country has ever received in a single year.

The vast majority of food aid for Somalia, around 80–90%, arrives by sea mostly under the auspices of the World Food Programme (WFP). Pirate attacks against WFP ships in 2005 caused the suspension of deliveries to the country, further aggravating the crisis. The increasing threat meant that by 2007, only half the usual number of ships was willing to enter Somali waters to deliver emergency-relief. That year, “the WFP had over 2,400 tons of food supplies waiting on a dock in Tanzania ready for delivery and was having difficulty finding ships to hire. Ship owners feared their vessels would be seized by pirates and their crews held for ransom.” In March the following year, “some 40 relief agencies including World Vision and Oxfam said they were unable to help millions of Somalis due to dangers and other impediments to their work.”

Without the arrival of naval escorts to protect WFP ships, the shipment of crucially needed aid could not have resumed. Even then, the initial lack of coordination among naval escort vessels during the early days of the campaign meant that there were weeks when no aid ships could sail into Somalia.

WFP emergency-relief shipments are not the only ones being victimized by pirates. Even commercial shipments of foodstuffs are being hijacked, driving up the prices of food in the country significantly. In 2010, for instance, as many as nine trading vessels came under the control of pirates and most likely used as piracy mother ships. Local traders complain that shipowners in the region refuse to carry their goods, thereby creating “shortages of basic goods, such as rice, flour and sugar.” As if to add insult to injury, the very same pirates causing the increase in prices because they have hijacked the vessels meant to carry the cargo, come ashore awash with money that further inflate the economy.

2.5 Development aid

When it comes to development aid, WDR 2011 mentions quite a few issues as being relevant to fragile, failed, or collapsed
states such as Somalia. One is that the international system “is ill-equipped to navigate repeated cycles of violence or the blurred boundaries between political conflict and criminal violence.” In this connection, a critical gap was emphasized between focusing on building national capacity instead of addressing security and criminal justice issues. WDR 2011 further regrets that today’s international architecture for cooperation favours recovery rather than prevention.

In the last two decades, development aid programmes have neither been consistent nor effective in targeting countries like Somalia. Countries with extended periods of fragility, violence, or conflict experienced more volatility in the aid they received. The lack of flexibility in the application of standard procedures (procedural conformism) for the administration of development programmes in certain areas meant that mobilization has been slow and best-fit institutional approaches ignored. Also relevant in the Somali context, Andersen explains that:

The 1990s saw a major shift in aid flows towards the so-called ‘good performers’. The obvious flip-side was a tendency to abandon states that performed poorly, i.e. states with weak institutions and a lack of reform-friendly elites. It is this group of states that is now being re-invented as fragile and – precisely because of their fragility – being seen as both needy and worthy of international support. The predicament for donor agencies, however, is that the aid flow cannot simply be shifted towards fragile states. The mechanisms for delivering long-term aid do not work in fragile states: budget support, sector programmes and alignment behind government policies make little sense in settings where the authority, effectiveness and legitimacy of national governments are severely limited.

International assistance programmes, MDR 2011 concludes, should exert effort to break the repeated cycles of violence in fragile states. Such programmes will need to refocus “assistance on preventing criminal and political violence through greater, and more integrated, support for security, justice, and jobs; reforming the procedures of international agencies; responding at a regional level; and renewing cooperative efforts among lower-, middle-, and higher-income countries.”

Stepping over to the receiving end of the aid programme divide, many writers have speculated on the probability that elements in Somalia may not be in any hurry to resurrect government institutions or the socio-economic infrastructure. In his investigation of the impact of anarchy on Somali development, Leeson finds that “while the state of this development remains low, on nearly all of 18 key indicators that allow pre- and post-stateless welfare comparisons, Somalis are better off under anarchy than they were under government. Renewed vibrancy in critical sectors of Somalia’s economy and public goods in the absence of a predatory state are responsible for this improvement.”

Powell et al. took a “comparative institutional approach to examine Somalia’s performance relative to other African countries both when Somalia had a government and during its extended period of anarchy.” What their study found was that although poor, Somalia’s relative economic performance actually improved during its period of statelessness, i.e., at least until 2005, the extent of data covered by this study. Standards of living in Somalia improved as a result of some basic law and order and currency
reforms. Powell et al. observe, “Somalia has been relatively peaceful for most of the period since becoming stateless, and living standards have not collapsed.”

Coyne argues that Somalis have adapted to their situation. The private sector has apparently developed coping mechanisms to fill the void created by the absence of a central government. He observes that these “have proven to be more effective in generating widespread order than attempts by foreign occupiers to impose a self-sustaining liberal state.”

Powell et al. speculate that some sectors in Somalia view the restoration of a state as a high stakes zero-sum game. Their only experience with an established central government has been that clans that “gain control over a central government will use it to appropriate economic resources at the expense of others, and will use the law, patronage, and the monopoly of legitimate use of violence to protect this advantage.”

On the other hand, Menkhaus thinks that the Somali elite probably would not mind a state, as long as power is not consolidated fully in the centre. At the very least, the elite will most likely appreciate the security and opportunities for prosperity attendant with having an internationally-recognized nominal or “paper” state. According to Mubarak, while the “no-government situation has proven to be far better than the repressive government institutions and policies of Barre’s era..., the economic expansion is chaotic and there is a strong new demand for an accountable and effective government that could provide essential public goods for sustainable economic development.” Menkhaus attributes the hesitation among political and economic actors to the fear of “a change in the operating environment which, though far from ideal, is one in which they have learned to survive and profit.”
This section examines selected international and regional issues that are relevant to piracy, development, and security. First are the impact and costs arising out of pirate attacks against shipping. Second is an overview of the piracy provisions in the Law of the Sea Convention and some of the challenges attending the legal aspects of counter-piracy efforts. Next is a review of some implications that the current piracy phenomenon may have in terms of regional security. The fourth subsection is a survey of some of the measures undertaken by the UN and the IMO, including an introduction to the Djibouti Code of Conduct.

3.1 Impact and costs for international seaborne trade

There are now a number of studies that attempt to quantify the financial cost and impact of piracy on global seaborne trade. The study by Bowden is the pioneering work and probably the most frequently cited one today. It was the result of a large-scale study commissioned by the One Earth Future (OEF) Foundation to quantify the cost of piracy as part of its Oceans Beyond Piracy project.

The study’s calculations estimate that maritime piracy is costing the international economy between USD 7 to USD 12 billion, per year. The study focuses on direct (first) order costs, but also includes some estimates of secondary (macroeconomic costs), where data is available. It concentrates on the supply-side costs to both industry and governments. The study set out to analyze the cost of piracy to the Horn of Africa, Nigeria and the Gulf of Guinea, and the Malacca Straits. The focus is inevitably on the costs of Somali piracy because this is the region where contemporary piracy is most highly concentrated and
is the greatest source of current data and information. *Table 3* presents the main cost factors and their equivalent values in USD.\(^74\)

The next study is one conducted by the international consultancy group Geopolicy. The study’s self-stated aim is to contribute to “what remarkably little work has been conducted on the economics of piracy.” In contrast to the study by OEF, which focuses on calculating direct and indirect costs, the Geopolicy study adds to the analysis an assessment of the benefits accruing to pirates, financiers, sponsors, and other major stakeholders, who reap more revenue from piracy than pirates themselves. According to the Geopolicy study, piracy has emerged as a market in its own right, valued at between USD 4.9–8.3 billion in 2010 alone,\(^75\) as summarized and presented in *Table 4*.

Geopolicy developed a global economic model for assessing the costs and benefits of international piracy: adding significantly to the debate on the causes and consequences of piracy. The model provides a comprehensive, independent framework of trend analysis, while also highlighting across the *Pirate Value Chain (PVC)* where the greatest rates of return on international counter pirate investment and policy are to be found. The model includes, (i) cost-benefit analysis at the individual pirate level, based on existing socioeconomic and market data, (ii) the aggregate costs and benefits at the international systems level, and (iii) comprehensive data on the resurgence of piracy by functional classification and sovereign jurisdiction; to include trend, comparator and predictive analysis.\(^76\)

A third study, by Fu et al., concentrates on the costs associated with the Far East-Europe trade for container vessels.Calibrated with data between 2003 and 2008, the study models shipping demands and competition in the Far East-Europe container liner shipping service and investigates the economic welfare loss effects due to reduced volumes of trade and shipping, as well as efficiency loss due to geographical re-routing of shipping networks which would be otherwise uneconomical.\(^77\)

The analysis by Fu et al. shows that, without government efforts in combating Somali pirates, traffic volumes along the Far East-Europe route would reduce by about 30%, though only about 18% of the traffic would be detoured via the Cape of Good Hope. Their analysis also shows that the overall economic welfare loss is much more substantial, with an expected annual loss of USD 30 billion

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**Table 3**

Estimated total costs of maritime piracy, per annum.

<table>
<thead>
<tr>
<th>Cost Factor</th>
<th>Value (Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ransoms: excess costs</td>
<td>$176 million</td>
</tr>
<tr>
<td>Insurance Premiums</td>
<td>$460 million to $3.2 billion</td>
</tr>
<tr>
<td>Re-Routing Ships</td>
<td>$2.4 to 3 billion</td>
</tr>
<tr>
<td>Security Equipment</td>
<td>$363 million to $2.5 billion</td>
</tr>
<tr>
<td>Naval Forces</td>
<td>$2 billion</td>
</tr>
<tr>
<td>Prosecutions</td>
<td>$31 million</td>
</tr>
<tr>
<td>Piracy Deterrent Organizations</td>
<td>$19.5 million</td>
</tr>
<tr>
<td>Cost to Regional Economies</td>
<td>$1.25 billion</td>
</tr>
<tr>
<td><strong>Total estimated cost</strong></td>
<td><strong>$7 to 12 billion per year</strong></td>
</tr>
</tbody>
</table>

Source: Figure 13 in Bowden, “The Economic Costs of Maritime Piracy,” P. 25

**Table 4**

Estimated costs related to maritime piracy.

<table>
<thead>
<tr>
<th>Headlines (based on available data)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Low/High Pirate income (2010): Using 1,500 Pirates</td>
<td>~US$33,000–US$79,000/year</td>
</tr>
<tr>
<td>Potential Lifetime Earnings (2010 Data): Using 1,500 Pirates</td>
<td>~US$168,000–US$394,000</td>
</tr>
<tr>
<td>Next Best Alternative</td>
<td>~US$500/year</td>
</tr>
<tr>
<td>Pirate Incomes Compared to Average Income</td>
<td>~67–157 higher</td>
</tr>
<tr>
<td>No. Pirates Could Double by</td>
<td>~2016</td>
</tr>
<tr>
<td>Total Cost of Piracy 2010</td>
<td>~US$4.9–8.3 billion</td>
</tr>
<tr>
<td>Projected Increase by 2014</td>
<td>~US$13–15 billion</td>
</tr>
<tr>
<td>Major Stakeholders</td>
<td>Financiers, Sponsors, Officials, Pirates, Maritime Insurers, Security Companies, Navies, Merchant Marine</td>
</tr>
</tbody>
</table>

Source: Geopolicy, “The Economics of Piracy”
on the countries and regions served by this shipping route. Fu et al. see the significant loss as supporting the proposition that maritime piracy endangers the sustainability of the current liner shipping’s status quo. It also concludes that current naval presence and operations tackling piracy in the western Indian Ocean is justified from the perspective of global economic development as a way to improve economic efficiency and raise aggregate welfare, at least in the short and medium terms.\(^78\)

Beyond the purely financial implications lies an arguably more compelling issue – the human cost of piracy. In the year 2010, the IMB reported that vessels around the world experienced 89 attempted boardings and 196 successful boardings. 107 ships fired upon and 53 were hijacked. 6 persons were assaulted, 1,181 held hostage, 37 injured, 20 kidnapped, and 8 killed.\(^79\) During the first nine months of 2011, there were 89 attempted boardings and 138 successful boardings. 90 ships were fired upon and 35 were hijacked. 6 persons were assaulted, 619 held hostage, 41 injured, 6 kidnapped, and 8 killed.\(^80\)

Seafarers are tortured, physically and mentally abused, shot at, killed, beaten, confined, starved, raped, and used as human shields by pirates. The case of the MV Renuar, hijacked on 11 December 2010 and released on 23 April 2011, is a recent example. Somali pirates held the Renuar’s Master, Calixto Caniete, and his crew for 133 days under inhuman conditions. Capt. Caniete testified to abuse and deprivation in the hands of the Somali pirate captors. They were confined to only one side of the bridge, allowing for short trips to the toilet. They were held at gunpoint day and night. They were fed rotten rice and given rusty yellowish water to drink. Caniete was personally held responsible, physically abused, and threatened with execution whenever ransom negotiations went sour or when food, water, and fuel ran out. He was forced to give medical attention to their captors and to serve them like their slave.\(^81\)

Thousands of seafarers are traumatized by attacks, whether or not the pirates succeed in taking over their vessel. YouTube videos such as that of the hijacked crew of the MV Leopard give graphic testimony to this. The prospect of navigating through piracy-affected waters alone is a source of considerable stress that can have a lasting impact on both seafarers and their families. When a seafarer is hijacked, family members are subjected to psychological manipulation by pirates who are frequently inclined to raise the stakes by claiming the hijacked seafarer is either dead or is about to be killed. No matter the financial costs or its effects on commerce, “the potential danger piracy presents to all seafarers, and the fear it induces, which extends to those on large ships and yachts,” simply cannot, and must not, be ignored.\(^84\)

### 3.2 Legal aspects

Article 15 of the 1958 Geneva Convention on the High Seas, and Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982 provide the world community with what today is generally accepted as the definition of the high seas crime of piracy. By distilling the essence of these articles, it may be said that for an act to be considered piracy under international law, the following conditions or rules must be met:

- the illegal violence rule, i.e., the act must be an illegal act of violence, detention, or depredation;
- the _lucri causa_ rule, i.e., the act must be motivated by private gain;
- the two-ship rule, i.e., two ships must
be involved in the incident – the victim ship and the pirate ship; and

- the high seas rule, i.e., the act must be committed on the high seas or waters outside the jurisdiction of any state.

When examined in the light of pirate attacks (i.e., outside the present Somali piracy phenomenon), these conditions were always the subject of some controversy and considered as frustrating complications when attempting to identify the crime. The first element on the above list is straightforward. All pirate attacks are illegal acts of violence since these are committed by elements other than naval forces or other public instruments of violence sanctioned by the state.

With regard to the second point, there is controversy whether the reported attacks are motivated by private gain or by public gain. Indeed, some argue that the two are not necessarily mutually exclusive. Logina writes, “Private aims always constitute an important part of public aims, because public aims cannot exist without individuals. If a person truly associates himself/herself with a particular group, the aims of this group are also his/her individual aims.”

The third point constitutes the “two-ship rule,” which means that for an act to qualify as piracy under UNCLOS, both a pirate ship and a victim ship must be present. In actual fact, the majority of non-Somali piracy attacks do not involve two ships; attacks are usually made while ships are at anchor or tied to the dock or pier. Even in the case of Somali piracy, purists might argue that notwithstanding the use of mother ships to extend the range of pirate boarding teams, most victim ships are boarded by perpetrators using skiffs or rubber boats which are not, strictly speaking, ships.

Finally, the fourth point listed above means that, depending on how Article 58 and “high seas” in Article 101 of UNCLOS are construed, the act would need to have occurred either outside the 12 nautical mile limit (i.e., beyond the territorial sea) or as far out as 200 nautical miles from shore (i.e., beyond the exclusive economic zone). As it happens today, most non-Somali pirate attacks occur landward of the territorial seas of a coastal state. In what might be characterized as a gerrymandering of the oceans, piracy was artificially or virtually eliminated when UNCLOS pushed the high seas to as much as 200 nautical miles from shore.

In its maritime security deliberations, the IMO circumvents the complication posed by the UNCLOS definition of piracy and the imprecise use of the term in certain quarters by resorting to the expanded construction “piracy and armed robbery against ships.” IMO defines armed robbery against ships as “any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, (italics supplied), directed against a ship or against persons or property on board such a ship, within a State’s jurisdiction over such offences.”

One crucial implication of identifying an act as piracy under UNCLOS is that it affords any state the option to claim universal jurisdiction by invoking Article 105. Until recently, this remained mainly a hypothetical option because most reported attacks did not meet the UNCLOS criteria. China and India present us with some of the rare examples in contemporary times where piracy cases were prosecuted even in the absence of a nexus with the arresting state. By the mid-2000s the concept of “universal jurisdiction over piracy was largely thought to be a historical artefact with little or no modern relevance.” This notion has since been
negated by the piracy phenomenon off the coast of Somalia, where most attacks from the mid-2000s onwards have been reported outside what would theoretically be Somalia’s exclusive economic zone (EEZ). Nonetheless, while attacks by Somali pirates easily “fall within the (UNCLOS) definition, which is therefore perfectly adequate to deal with the present situation,” states tackling the maritime criminal phenomenon in the Horn of Africa still face numerous challenges.

Kontorovich and Art argue that, “the nominal availability of universal jurisdiction for piracy does not translate in practice into ending impunity for the crime.” Because the exercise of universal jurisdiction over piracy cases is only a recent phenomenon, state practice is still in a very early and inefficient stage of development. Nanda observes that, “the needed mechanisms, logistics, and facilities to ensure apprehension and prosecution, detention, extradition, and imprisonment are barely in place.” Arresting states invariably transfer suspects to third states. Among these, Kenya has prosecuted more piracy cases where there are no clear Kenyan interests involved. There is an obvious strain on the country’s resources, resulting in backlogs that not only delay justice, but also weaken the arrests’ deterrent effect. Trials in the courts of arresting states, situated thousands of miles from the actual theatre of operations, are no more efficient, not only because of the manifest delay in transporting suspects but also in assembling witnesses based in different countries around the world. In the worst case, insufficiencies in the domestic legislation of arresting states or unwillingness to commence domestic criminal proceedings leave the naval forces of these countries no choice but to release alleged perpetrators soon after they are captured. The UN Security Council (UNSC) noted “that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice.”

Evidence handling and crime-scene preservation are a crucial area that requires improvement. With naval, rather than coast guard or constabulary, forces being deployed to deter and arrest pirates, it is not surprising that evidence collection has been focused on intelligence gathering and maritime target development, rather than on building a criminal case against suspected pirates. This lack of skill and knowledge in gathering and handling evidence has affected its admissibility before the courts and allowed many pirates to escape punishment.

Failure to observe the human rights of the accused is yet another contributory factor to inefficiency in arrest and prosecution under the current regime of universal jurisdiction over piracy cases. According to Petrig, “It is not rare that criminal prosecutions fail because arrests, investigative steps or handovers are secured in violation of human rights.” She also cautions that, Even though the legal instruments governing counter-piracy operations do not explicitly mention the applicable human rights norms, enforcement powers cannot be exercised in a legal vacuum and ad libitum. Rather, their exercise is restricted by the application of general human rights law. This is insinuated by (UNSC) Resolution 1851 deciding that any measure based on the enforcement powers conferred by that Resolution “shall be undertaken consistent with
applicable... human rights law.” Guilfoyle identifies the following four human rights issues as being relevant vis-à-vis counter-piracy operations in the Horn of Africa:

- legal authority to detain suspect pirates at sea and their right to be brought promptly before a judicial authority;
- non-refoulement and transferring suspect pirates to regional States for prosecution;
- the application of fair-trial rights in such transfers; and
- in the European Convention on Human Rights (ECHR) context, the right to an effective remedy requiring the ability to challenge one’s transfer.

A related issue is the question whether arrested piracy suspects are entitled to protections under the law of armed conflict and international law in general. Bahar draws on his experience as the Staff Judge Advocate for the Nassau Strike Group during the US Navy’s first capture of suspected pirates in recent memory (the Safina al Bisarat pirates) and offers the following answer: “Pirates are not combatants or enemy prisoners of war, but they are international maritime criminals entitled to international and constitutional due process protections.” Indeed, while the epithet *hostis humani generis* characterises universal abhorrence towards pirates, their torture, maltreatment, and unfair trial will only “call into question the motives and values of states that participate in antipiracy efforts.”

To make a complicated situation even more complex, it has been established that a significant number of pirates are actually 15 years old or younger. This drags another area of treaty law into the picture (e.g., International Convention on the Rights of the Child, 1989 Worst Form of Child Labour Convention).

Nevertheless, because global trade and commerce are dependent on safe and efficient maritime transport, it is only “in every state’s best interest that the fight against piracy” is given its best chances for success by ensuring that operations remain “legally and morally beyond reproach.”

Numerous other problems related to the legal aspects of counter-piracy programmes have been identified. These include cooperation among law enforcement agencies and institutions; interface between military forces, national police organizations, and Interpol; interface between ship operators and crews and assisting Interpol response; legal capacity building in states affected by piracy; regional judicial and enforcement training; and the possibility for asylum requests by convicted pirates.

3.3 Regional security

Increasingly violent maritime crimes such as piracy can complicate the shaky security climate in any region’s maritime domain. After the Horn of Africa, it is probably the Gulf of Guinea (GoG) that suffers from the world’s most violent piracy attacks. The GoG region is a highly strategic body of water. The area produces “around 5.2 million barrels per day and is estimated to hold as much as 50.4 billion barrels of oil in proven reserves. By virtue of its vast quantities of natural gas, it is projected to account for one-fifth of global oil production by 2010 and expected to add between two to three million barrels per day to global oil supply.”

Unfortunately, the GoG region is also unstable. Equatorial Guinea, the most important new oil-producing nation in the region, also has the most repressive regime; it is a social powder keg set to ignite. The demand for GoG oil could lead to an arms race between world
powers and result in the proliferation of weapons in the region. More weapons, more pirates. The secessionist conflict in Nigeria, but a struggle for shares in the oil-rich Niger Delta, “has given way to organized criminal syndicates that deal in oil, arms, and kidnapped foreign workers. An estimated 250,000–300,000 barrels, valued at more than USD 3.8 billion, are stolen each year through “oil bunkering” (the theft of oil from pipelines or storage facilities). Local gangs and political groups are drawn into ethnic violence. The consequences of violence on development, “like its origins, spill across borders, for the region, and globally. Violence in one country can create a ‘bad neighbourhood.’ For example, the manifestations of conflict in Liberia under President Charles Taylor during the late 1990s hurt Côte d’Ivoire, Guinea, and Sierra Leone.”

According to the World Bank, the ‘bad neighbourhood’ affects “economic prospects: estimates suggest that countries lose 0.7 percent of their annual GDP for each neighbour involved in civil war. And a doubling of terrorist incidents in a country is estimated to reduce bilateral trade with each trading partner by some 4 percent.”

Back in the Horn of Africa, the ‘bad neighbourhood’ effect manifests itself in the number of refugees fleeing Somalia. There are around 310,280 Somali refugees in Kenya and 161,468 in Yemen. It has been shown that developing countries that host refugees for protracted periods experience long-term economic, social, political, and environmental impacts. From the moment of arrival, refugees may compete with local citizens for
scarce resources such as water, food, housing, and medical services. Their presence increases the demands for education, health services, infrastructure such as water supply, sanitation, and transportation, and also in some cases, for natural resources such as grazing and firewood.117

In the case of Somali refugees in the camps in Daadab, Kenya (which hosts one of the largest refugee populations in the world), while it is observed that there are direct and indirect benefits of the camp operation for the local economy, the presence of refugees also results in “depletion of firewood and building materials as well as competition for grazing land in the immediate vicinity of the camps.”118 It is also noted that refugee camps have a tendency to facilitate the cross-border movement of criminal elements and other persons trained in violence.119 In the Kenyan Shippers Council’s assessment, crimes such as piracy have increased “the cost of imports by USD 23.8 million and exports by USD 9.8 million per month.” One can naturally expect then that the amount paid to disburse these costs would surely be passed on to consumers.120

### 3.4 The UN and IMO response

**United Nations**

The United Nation has responded to the problem of piracy off the Horn of Africa with a series of UN Security Council resolutions,121 starting with Resolution 1816, condemning all acts of piracy and armed robbery against ships, urging all states to cooperate with the Transitional Federal Government (TFG) of Somalia in the fight against piracy and armed robbery at sea off Somalia’s coast, and authorizing all states, for a period of six months from the date of the resolution, to:

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

The effect of Resolution 1816 has been extended every six months since it was adopted in June 2008. Other UNSC resolutions in the series include exhortations for states to, among others, cooperate in the establishment of anti-piracy courts, respect the human rights of arrested suspects, increase prosecution capacity for suspected pirates, increase development assistance to Somalia, respect the marine resources of Somalia, criminalize piracy under their domestic law, cooperate in transfer arrangements for convicted pirates, etc.

UNSC Resolution 1581 encouraged states “to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia’s coast.” This led to the creation of the Contact Group on Piracy off the Coast of Somalia (CGPCS) on 14 January 2009. The CGPCS has now brought together more than 60 countries and international organizations all working towards the prevention of piracy off the Somali coast. The CGPCS operates through five Working Groups, in which all CGPCS parties may participate, addressing different focus areas:122

- Working Group 1 (WG1): responsible for ensuring effective naval opera-
tional co-ordination and supporting the building of the judicial, penal and maritime capacity of regional states to ensure they are better equipped to tackle piracy and maritime security challenges;

- Working Group 2 (WG2): provides specific, practical and legally sound guidance to the CGPCS, states and organizations on all legal aspects of counter-piracy. At its tri-annual meetings the participants exchange information on on-going judicial activities, including specific court cases, as well as on relevant capacity building activities in the region. Through this exchange of information, WG2 contributes to a common approach to and understanding of the legal issues. WG2 has developed a number of specific legal tools gathered in a virtual “legal tool box,” including on issues such as applicable international law, transfer and ship-riders;

- Working Group 3 (WG3): discusses concerns of the participant states, maritime industry and labour groups regarding actions that should be taken to provide self-defensive actions to protect vessels from hijacking by pirates in the high risk waters off Somalia;

- Working Group 4 (WG4): focuses mainly on the public diplomacy aspect of the problem of combating piracy over the coast of Somalia. It aims at raising awareness of the dangers of piracy and highlighting the best practices to eradicate this criminal phenomenon. Based on the conviction that the most effective way to combat piracy is through working on land, it uses various means of communication and education to inform the public in the area and abroad of the dangers posed by piracy; and

- Working Group 5 (WG5): coordinates international efforts to identify and disrupt the financial networks of pirate leaders and their financiers. The CGPCS has understood from the beginning of its establishment that successful eradication of piracy is impossible without dismantling the illicit funding and financial flows related to piracy taking place on shore. Aside from the UNSC, a number of UN bodies are heavily involved in counter-piracy activities, such as the United Nations Office on Drugs and Crime (UNODC), United Nations Political Office for Somalia (UNPOS), Operational Satellite Applications Programme (UNOSAT) of the UN Institute for Training and Research (UNITAR), Food and Agricultural Organization (FAO), World Food Programme (WFP), United Nations Development Programme (UNDP), and the International Maritime Organization (IMO).

While not UN bodies, the significant commitment and contributions of the North Atlantic Treaty Organization (NATO), European Union (EU), and International Criminal Police Organization (Interpol) to combating piracy deserve to be mentioned and acknowledged.

**International Maritime Organization**

The International Maritime Organization, the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships, has been involved in combating piracy since the 1990s. The IMO's anti-piracy programme is a long-term project that began in 1998.

Phase one consisted of a number of regional seminars and workshops attended by government representatives from countries in piracy-affected areas of the world; while phase two
consisted of a number of evaluation and assessment missions to different regions. Throughout the years, IMO has formulated a body of treaties and recommendations that are useful in the global fight against piracy.\textsuperscript{124}

Keeping in mind the thousands of seafarers navigating through the world’s piracy hotspots on a daily basis, the IMO Council designated “Piracy: orchestrating the response” as the theme for World Maritime Day 2011. IMO also set the following objectives in support of this theme:\textsuperscript{125}

\begin{itemize}
\item increase pressure at the political level to secure the release of all hostages being held by pirates;
\item review and improve the IMO guidelines to maritime administrations and seafarers and promote compliance with industry best management practice and the recommended preventive, evasive, and defensive measures ships should follow;
\item promote greater levels of support from, and coordination with, navies;
\item promote anti-piracy coordination and cooperation procedures between and among States, regions, organizations, and industry;
\item assist states in building capacity in piracy-affected regions of the world, and elsewhere, to deter, interdict, and bring to justice those who commit acts of piracy and armed robbery against ships; and
\item provide care, during the post-traumatic period, for those attacked or hijacked by pirates and for their families.
\end{itemize}

**Djibouti Code of Conduct**

IMO’s aim has been to foster the development of regional agreements on implementation of counter piracy
measures. Regional cooperation among States has an important role to play in solving the problem of piracy and armed robbery against ships, as evidenced by the success of the regional counter-piracy operation in the Straits of Malacca and Singapore. The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia (ReCAAP), which was concluded in November 2004 by 16 countries in Asia, and includes the ReCAAP Information Sharing Centre (ISC) for facilitating the sharing of piracy-related information, is a good example of successful regional cooperation which IMO seeks to replicate elsewhere. Today, the deteriorating security situation in the seas off war-torn Somalia and the Gulf of Aden (and in the increasingly volatile Gulf of Guinea) are at the heart of the problem.

In January 2009, inspired by the achievements of ReCAAP, an important regional agreement was adopted in Djibouti by States in the region, at a high-level meeting convened by IMO. The Djibouti Code of Conduct (DCoC) concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden recognizes the extent of the problem of piracy and armed robbery against ships in the region and, in it, the signatories declare their intention to cooperate to the fullest possible extent, and in a manner consistent with international law, in the repression of piracy and armed robbery against ships. As of the date of this Report, 18 of 21 states in the region are signatories to the DCoC.

Signatories to the DCoC commit themselves towards sharing and reporting relevant information through a system of national focal points and information centres; interdicting ships suspected of engaging in acts of piracy or armed robbery against ships; ensuring that persons committing or attempting to commit acts of piracy or armed robbery against ships are apprehended and prosecuted; and facilitating proper care, treatment, and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to acts of piracy or armed robbery against ships, particularly those who have been subjected to violence. Implementation of the DCoC will help to:

- improve communications between States;
- enhance the capabilities of States in the region to deter, arrest and prosecute pirates; improve States’ maritime situational awareness; and
- enhance the capabilities of local coast guards.

While the DCoC is heavily influenced by ReCAAP, the one is not the exact duplicate of the other. The DCoC does not explicitly provide for countries outside the region to accede to it. Article 15 of the DCoC provides that it be open for signature by any of the 21 regional states that were participants in the Djibouti Meeting of 26-29 January 2009. In contrast, ReCAAP, having entered into force, is open to accession by states outside the Asian region.

Compared to ReCAAP, the wording in the DCoC reveals an instrument that is bolder in its intentions. The DCoC’s provisions include, inter alia, a more explicit statement on seizure of ships, an article relating to embarked officers or “ship riders,” and “the sharing of information concerning applicable laws and guidance pertaining to the interdiction, apprehension, investigation, prosecution, and disposition of persons involved in piracy and armed robbery against ships.”

In spite of the determined tone of the instrument, nothing in the DCoC
“is intended to... create or establish a binding agreement.” In other words, the DCoC in its present form is a set of statements of intent rather than a treaty opposable to its parties. In contrast, ReCAAP is an international treaty instrument within the scope of the Vienna Convention on the Law of Treaties. Nonetheless, the DCoC makes a strong appeal for a binding agreement to be concluded within two years of the date at which the Code takes effect.

Another significant difference between DCC and ReCAAP is that the former creates not one, but three, ISCs, plus a training center. While ReCAAP has its single ISC in Singapore, DCC designates an ISC each in Kenya (Mombassa), Tanzania (Dar es Salaam), and Yemen. Additionally, Djibouti has offered to establish the regional training center.

Commentators refer to ReCAAP as a “model for other regions that are faced with the scourge of piracy and armed robbery” or as a “template for other similar international agreements.” Indeed, some very useful lessons can be learned from the ReCAAP experience. The first of these is that a regional agreement is not a silver bullet. Regional agreements are an important element in any comprehensive approach against criminality at sea, but these are effective only when applied together with a multitude of other measures and arrangements. In fact, ReCAAP did not enter into force until after the magnitude and severity of piracy and armed robbery against ships in East Asia had already peaked.

There are many other lessons to be learned from ReCAAP, both in terms of challenges and opportunities. Using ReCAAP as a model reduces the learning curve and hastens the pace for launching the three DCoC-ISCs.
The objective of this desktop study was to explore the linkages between political stability, economic development and piracy at sea. In pursuing its objective, this study aimed not so much to offer answers or solutions, but more to provide food for thought that might facilitate the formulation of answers and solutions.

The piracy-security-development nexus has been shown to exist in terms of MDGs, state failure and fragility, fishery resources, emergency-relief aid, and development aid. This provides us with a further basis for deeper studies into the nexus that will hopefully contribute to laying the appropriate foundation for recovery and development that will stifle the seeds of criminality.

This part presents three sections in conclusion. First are thoughts on some challenges facing long-term development programmes. Next are thoughts on the way forward vis-à-vis a long-term perspective. Finally, the third section puts forward a few ideas for further research.

Conclusion

We are seeking solutions in three distinct time horizons. In the immediate term, our aim is to contain piracy, thwart pirate attacks and punish those responsible for such attacks; in the mid-term, our strategy is to undermine organized crime gangs that plan and mastermind pirate operations and make it harder for them to engage in, and conduct, such operations; while the long term solution should be for the international community to help the people of Somalia to rebuild their country, including establishing law and order conditions such that crime will no longer be a preferred option for several of them.
4.1 Challenges

Rebuilding a failed or collapsed state like Somalia will involve innumerable challenges. In an ideal world, a weak state should have been strengthened before it could fail or collapse.\textsuperscript{138} Aside from the enormous amount of time and resources necessary to revive Somalia, there may be a potential contradiction or resistance within the country against a restoration. Section 2.5 of this Report refers to studies showing how the Somali private sector have had little choice but to adapt to their situation of statelessness and develop the necessary coping mechanisms. In what is probably a testament to the dire conditions under the Barre regime, indicators show how Somalia has been better off under anarchy than under government.

It is almost inconceivable that Somalis in general would not wish for a fully functioning state to promote and orchestrate the population’s security and economic wellbeing. However, their only experience of post-independence government has been under a predatory dictatorship. Given the level of corruption within the bureaucracy and the role that security forces historically played in armed violence and criminality against civilians in that country, any apprehension towards programmes to revive a strong central government is only understandable. Development projects “presume that an effective state structure is essential for economic development and human security, but for many Somalis the state is seen as a potential threat and a source of armed conflict.”\textsuperscript{139} Herein lies the contradiction.

Another challenge is the need to change the perception that “piracy is a global phenomenon but not a global problem.”\textsuperscript{140} Indeed, in commercial terms, “although an individual ship owner with insufficient insurance cover could be ruined by a single large payment if a ship were to be held for ransom and thereby prevented from working for any length of time, the estimated losses for the shipping industry as a whole remain insignificant.”\textsuperscript{141} Only a major or significant disruption of maritime trade and commerce can turn piracy into a global problem.\textsuperscript{142} While this may be the case, in terms of piracy’s impact and costs for international seaborne trade there are other considerations than the purely financial implications. The human cost is a very compelling issue.\textsuperscript{143} The vast majority of the hostages held by Somali pirates today are either Filipino or Indian. One cannot help but speculate on the possible scenario if the hundreds of hostages happened to be predominantly nationals of the affluent OECD states instead. One might also imagine the global reaction if an environmental disaster were to result from piracy,\textsuperscript{144} if oil were to contaminate pristine coasts and cover sea birds and seals, or if the petroleum prices were to double or treble. The level of priority and resources assigned to the problem by western governments and the degree of media attention would conceivably change if this were the case.

4.2 The way forward

Long-term development programmes targeted at weak or failed states must engage the country’s leaders and together “build the legitimate institutions that can provide a sustained level of citizen security, justice, and jobs – offering a stake in society to groups that may otherwise receive more respect and recognition from engaging in armed violence than in lawful activities, and punishing infractions capably and fairly.”\textsuperscript{145} The problem in Somalia may not be so much the absence of a state as much as it is the lack or decline of local institutions.
crucial to stability and development. Some of these local institutions still exist and, though weak, they may very well be important keys to a building-block approach to the Somali problem.\textsuperscript{146} The way forward in Somalia would be to adopt a building block or bottom up approach, rather than classic state-building (top down). A government that controls only a few city blocks, and that has no credible public security enforcement apparatus, could be little more than a paper tiger. There is increasing belief that the debacle in “cases such as Afghanistan and Iraq, institutional features of the second phase – constitutions, elections, representative bodies – were implemented before achievement of the first phase, the establishment of a legitimate state monopoly of physical force.”\textsuperscript{147}

The enforcement and maintenance of law and order are critical to breaking the cycle of insecurity. Without a functioning police force, piracy and other forms of criminality will remain lucrative. These illicit activities will attract young people because of limited employment opportunities. When there is a window of opportunity to revive important sectors such as agriculture or industry, only few young people will be willing and available. Without human resources recovery programmes will fail, jobs will not be generated, and criminality continues to be a viable option; and so the vicious cycle keeps turning.

With traditional fishing grounds replenished, a lucrative fish processing industry in Somalia is a real possibility. Support for the development of fishery resources and the fishing industry should be increased. A profitable fishing industry will not only result in helping create jobs, stimulating the economy, promoting education and training, and technology transfer, it will also symbolically eliminate an excuse Somali communities have used in engaging in piracy.

The global community should consider increased collaboration and support to relatively effective regional governments such as Somaliland and Puntland, provided these regional governments dissociate themselves from any form of pirate activity.\textsuperscript{148} Economically and politically stable regions can serve as radiating spokes from which development could spread to the rest of the country.

The development and implementation of any long-term aid programme should closely involve the target states so that there is a feeling of ownership of the solution. The practice of sending a team of experts from western capitals to LDCs to conduct “a ‘needs assessment,’ and then dictate to the locals”\textsuperscript{149} should be avoided at all cost.

### 4.3 Further research

A number of possible areas of further research could serve the interest of fostering the long-term objective of political and socio-economic stability of piracy-affected areas such as Somalia.

**Piracy and its effects**

- The social, economic and political causes and consequences of piracy on coastal communities
- The influence of cultural attitudes, practices and structures on piracy
- Piracy’s effects on local economies, particularly employment opportunities, businesses, and trade
- Local responses to piracy prevention

**Development programmes**

- The role of development aid or partnership programmes in resource-rich and relatively economically affluent countries in areas such as the Gulf of Guinea
- A comprehensive survey of all bilateral and multilateral aid that flows
into Somalia, the status of such programmes, and recommendations for improvement and optimization

- The development of Somaliland and Puntland to serve as regional centres of excellence from which development can radiate
- The role of the Somali diaspora

The development-piracy nexus; build upon the research conducted by Mejia et al. to look into

- Further differentiation on the effects of piracy on weak as opposed to fragile or failed states
- The difference between democracy and political stability, keeping in mind that liberal democracy does not automatically flow from political stability, and vice versa

Maritime and marine potential

- Establishment of the Somali EEZ and promotion of marine and ocean resources management, exploration, and exploitation
- Maritime repair and supply – Somalia is ideally situated; the same geographical features that provide it with perfect piracy hunting grounds also make it the perfect stop for ships in need of a wide range of services geared towards the maritime industry
- Maritime labour development – the number of young men that have taken to the sea for whatever reason could speak of the potential for young Somalis to become seafarers
- Fishing industry – determine whether/how much fish stocks have recovered; evaluate current multilateral fisheries projects designed to drive pirates from piracy back to fishing

Article 100 of UNCLOS, obligates all states to “cooperate to the fullest extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.” This obligation to cooperate applies not only to short-term counter-piracy operations, but also to long-term development programmes that will enable the country to provide its citizens with the opportunities they deserve. Large-scale criminality will “corrupt government officials, hurt economic development, undermine civil society, and increase ambient levels of violence.”

This Report merely scratches the surface on the linkages between security, development, and piracy. The more lessons the international community can learn from the extreme case of Somalia, the more prepared it will hopefully be in facing – or better yet, preventing – the next piracy powder kegs.
1) “For a pirate is not included in the number of lawful enemies, but is the common enemy of all. With him there ought not to be any pledged word nor any oath mutually binding.” This quote and translation from Cicero’s *De officiis* are borrowed from D. Heller-Roazen, *The enemy of all: piracy and the law of nations*, New York, New York, USA: Zone Books, 2009, p. 16, an exposition of the legal, political, and historical nature of pirates and piracy. It is also discussed in A. P. Rubin, *The law of piracy (2nd ed.*)*, Irvington-on-Hudson, New York, USA: Transnational Publishers, 1998, p. 15, n. 49.

2) A specialised division of the ICC, the IMB is a non-profit making organisation, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. For over 25 years, the IMB has used industry knowledge, experience and access to a large number of well-placed contacts around the world to protect the integrity of international trade by seeking out fraud and malpractice. “ICC Commercial Crime Services,” [http://www.icc-ccs.org](http://www.icc-ccs.org), accessed 6 December 2011.


10) Freedom House indicators: political rights (scale from 1 “Free” to 7 “Least Free”), civil liberties (scale from 1 “Free” to 7 “Least Free”) and freedom status (1 “Free”, 2 “Partially Free” and 3 “Not Free”).

11) Each bullet corresponds to one country-year observation. The upper category concerning attacks comprises countries with 10 or more attacks per year.


24) Shortland, Vothknecht, “Combating ‘maritime terrorism,’” pp. s149–s150. The authors show through their statistical analysis that pirates conducted attacks even during the holy month of Ramadan, showing contempt for the Islamic courts.


32) “Fragility and fragile situations: Periods when states or institutions lack the capacity, accountability, or legitimacy to mediate relations between citizen groups and between citizens and the state, making them vulnerable to violence.” The World Bank, WDR 2011, p. xvi.


37) Ibid., pp. 85–96.


41) Id.

42) Hansen, Piracy in the greater Gulf of Aden.


46) Hansen, Piracy in the greater Gulf of Aden, p. 10.


51) Ploch et al., Piracy off the Horn of Africa, p. 9.


61) Ibid., p. 183.

62) Ibid., p. 195.

63) Ibid., p. 197.

64) Andersen, “Fragile states on the international agenda,” pp. 7–9.


68) C. J. Coyne, “Reconstructing weak and failed states: foreign intervention and the nirvana fallacy,” Foreign Policy Analysis, vol. 2, nr. 4, 2006, pp. 343–360. Coyne further writes, “Attempts to reconstruct weak and failed countries suffer from a nirvana fallacy. Where central governments are absent or dysfunctional, it is assumed that reconstruction efforts by foreign governments generate a preferable outcome. This assumption overlooks (1) the possibility that foreign government interventions can fail, (2) the possibility that reconstruction efforts can do more harm than good, and (3) the possibility that indigenous governance mechanisms may evolve that are more effective than those imposed by military occupiers. It is argued that re-construction efforts focus on resolving the meta-level game of creating self-sustaining liberal democratic institutions while neglecting the nested games embedded within the general meta-game.”


74) A. Bowden, The economic costs of maritime piracy, Bloomfield, Colorado, USA: One Earth Future Foundation, 2010.
76) Ibid., p. iv.
78) Ibid., p. 690.
84) Murphy, Small boats, weak states, dirty money, p. 378.
86) UNCLOS 1982, Article 58 “Rights and Duties of Other States in the Exclusive Economic Zone” specifies that, among others, the high seas piracy provisions “and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible” with Part V of the Convention.
89) UNCLOS 1982, Article 105 “Seizure of a pirate ship or aircraft” provides that “every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.”
91) S. Venkiteswaran, “Re: Alondra Rainbow,” in Mejia, Maritime security and crime.


108) Latin for “enemy of mankind.”


116) Ibid., p. 65.


118) Ibid., pp. 7–8.


124) Among them the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988, as amended; the International Ship and Port Facility Security (ISPS) Code; Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended; and scores of circulars and recommendations for governments and shipping companies on issues such as the deployment of armed guards on board ships, the prevention and suppression of piracy and armed robbery against ships, as well as the investigation of cases of piracy and armed robbery against ships.


126) ReCAAP, Article 18 “Signature and entry into force.”

127) DCoC, Article 4 “Measures to repress piracy.”

128) DCoC, Article 7 “Embarked officers.”

129) DCoC, Article 8.7 “Coordination and information sharing.”

130) DCoC, Article 15(a) “Miscellaneous provisions.”

131) This defines treaty as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

132) DCoC, Article 13 “Consultations.”

133) Resolution 3 adopted at the IMO Sub-regional meeting on maritime security, piracy and armed robbery against ships for Western Indian Ocean, Gulf of Aden and Red Sea States, Djibouti, 26–29 January 2009.


140) Murphy, *Small boats, weak states, dirty money*, p. 21.

141) Ibid., p. 52.

142) Ibid., p. 378.

143) See Section 3.1 of this Report. Add to this the humanitarian emergency in the Horn of Africa where half a million Somalis live more or less permanently in refugee camps in Kenya and Yemen (see Section 3.3 of this Report) – not to mention the hundreds of thousands suffering within Somalia’s borders.


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“Our own vessels have encountered pirates a few times”

Interview with Johan Jäwert, Manager Commercial Operations World Wide, Stena Bulk.

Stena Bulk is one of the world’s leading tanker shipping companies who provide safe and cost-efficient transports of crude oil and refined petroleum at sea. They do everything from developing and building tankers, to manning and chartering them out.

Their customers are major oil and chemical companies, as well as independent trading houses. They all have high demands on maximum safety, flexibility and transport economy. Customer relations are characterised by partnership, cooperation and a long-term perspective.

Their focus is to provide them with innovative solutions to satisfy their transport and logistical needs.

Today their fleet consists of about 100 vessels of totally 7 million tonnes deadweight and operates all over the world.

Stena Bulk is a part of the Stena Sphere, which has 20 000 employees in Sweden and abroad.

How have piracy affected your organization and what measures have you taken?

“Piracy affects us on a large scale and has become a part of our daily trade.

“With the vessels we commercially operate we make around 50–60 passages per year in the area of Gulf of Aden and the Indian Ocean, around 30 % of these passages are made with our owned ships.

“We value the safety of our crew, vessel and the cargo. Therefore it is of utmost importance to make risk assessment before every passage. The security level on our own vessels is very high and on our time chartered vessels it is up to the owner to set the security level and we support them the best way possible to achieve a high security level.

“We always carry armed security personnel on board our vessels in the area
between Sri Lanka and Suez, Egypt, unless the cargo owners or ship owners on our time charters states otherwise. In those cases we always make the trip around the Cape of Good Hope.

“The cost for having armed security personnel, extra security equipment like barb wire, insurances and crew bonuses costs about 90 000–110 000 US dollars per passage. This is a cost that we will have to mainly have to cover ourselves. We will not pass through the area of Gulf of Aden without armed security personnel onboard due to the current situation.”

Do you or the company have any experiences from Piracy?

“Our own vessels have encountered pirates a few times and in some cases the armed security personnel have been forced to fire warning shots.

“We had the commercial management on a vessel that was caught some time ago by pirates and they held the vessel for 300 days. Unfortunately one crew member died during the captivity due to complications of a hunger strike.”

Can you see a solution or a way forward to solve the problem with Piracy?

“Our own solution is to carry armed personnel on board our vessels during transit. So far the pirates seem to be reluctant to attack vessels with security personnel onboard. An escalation of violence in the area would only hurt the pirates more, and I believe that they are aware of that.

“Stena is of the opinion that the international community has a quite clear picture of the situations of piracy in particular Somalia. The problem is that the international community, the United Nations, cannot agree to a way forward and a solution of the problem. The problem is of course multidimensional and much more than just a bunch of renegades hi-jacking ships.

“The ship owners have already taken a large responsibility and costs in our effort to avoid the problem, but it is not our responsibility to solve the problem. We just want to trade on open and free oceans. It is up to the United Nations to come up with a solution. They will have to step up to the challenge. I am afraid we will have to get used to have armed escorts onboard our vessels for a long time ahead.”

What is your opinion of the WMU report on linkages between Piracy, poverty and political stability?

“It is a very interesting report and I think it is important to illuminate a problem from many different angles, but the most important thing is to spread the information in the right fora.

“The industry tries to by-pass the problem with our current measures, but it does not solve the core problem. This is something that the international community will have to deal with. So far the current cost for the industry does not affect the global community to a large extent. So I am afraid it will be hard to create a large scale public opinion against the present situation.

“This report will hopefully shed some more light on the situation and a deeper understanding of the core problem, whereof piracy is an effect.

“To create a safe and secure situation at the Horn of Africa will probably take decades, but it should be possible to put a swift end to Piracy. According to me it is up to the international community to catch and prosecute these pirates and their funders.”
“Our vessels trading in the affected area are more vigilant”

Interview with Peter Jodin, Safety Manager, Wallenius Marine AB.

Through a number of subsidiaries and associated companies, Wallenius offers global transportation and integrated logistics solutions – from factory to dealer and anything in between – to car manufacturers and producers of other rolling cargo.

Wallenius and its partners control a fleet of 135 vessels, of which 35 are wholly or partly owned or long-term chartered by Wallenius Lines. These 135 vessels are operated by their commercially operating subsidiaries: Wallenius Wilhelmsen Logistics, EUKOR Car Carriers, American Shipping and Logistics Group and United European Car Carriers. Wallenius Marine is responsible for the management and design of the Wallenius-owned fleet. One of the most important objectives is for their vessels to have the lowest impact possible on the environment.

The transportation services are performed by their joint ventures which are well positioned with a broad base of customers and comprehensive global coverage. The whole fleet operates in some 40 routes all over the world, with the main trades being Asia to Europe and the U.S., Oceania, the Atlantic and the Pacific.

How have piracy affected your organization and what measures have you taken?

“It has a great impact on our daily trade, we are more alert and our vessels trading or passing in the affected area are more vigilant. We have vessels passing the area of Gulf of Aden and the Indian Ocean on a weekly basis. We have routines for risk assessments, crisis management and of course the general preparedness of the crew before entering the affected area. Our vessels are fortified and have extra security and we do everything to ensure the safety of our crew, ships and cargo.”
Do you or the company have any experiences from Piracy?

“Our vessels have encountered pirates a few times but never been attacked. The pirates have probably made a risk assessment and aborted. Our vessels have a high freeboard and a relatively high speed. It would be a hazardous attempt to try to board our vessels.”

Can you see a solution or a way forward to solve the problem with Piracy?

“As I see it, the piracy in Somalia has nothing to do with the old romanticized picture of piracy. This is pure organized crimes, kidnap and ransom, the ship or cargo is of lesser importance. It is the value of the crew that is important to the so called pirates in Somalia, without a crew onboard the vessel they will not get any money. Somali piracy is not like the piracy in other regions of the world, in Asia and West Africa where it is more focused on robberies or theft. As long as some parts of the Somali region are weak or failed and welcomes pirates to their coasts there will be difficult to tackle the situation.

“This is a political question, there has to be a change in the political climate and stability in the region to deal with the piracy problem. I do not think that the naval forces in the area are a solution to the problem, even though they are making a difference. The problem is that the naval forces are not dealing with the core problem to piracy. The international community will have to come up with a solution together with the people in the region. We just want to trade in these areas without having to fear for our crews and ships safety. Our main focus today is to ensure the safety of our crew whenever they pass through dangerous waters. The main focus for the international community should be to ensure the safety of the people of the region and to put an end to piracy and other criminal activities in the Gulf of Aden area.”

What is your opinion of the WMU report on linkages between Piracy, poverty and political stability?

“It is a very interesting report with a very political approach to the problem. It is not our duty as a shipping company to solve the problem, but we wholeheartedly support any way forward towards a solution.”
The Swedish Shipowners’ Association is a trade organization representing the Swedish shipping industry and the Swedish ship owners. The association wants to create good conditions for sustainable, safe and cost efficient shipping. The main objective of the association is to create good competition terms for the Swedish ship owners.

The Swedish Shipowners’ Association has a wide range of competence areas in their lobbying in excess of environmental and safety issues such as; commercial policy, nautical, IT, logistics and information issues.

How have piracy affected your organization and what measures have you taken?

“It has had an enormous impact on the organization since the question engages more or less all our members. There is a huge anxiety for the safety of the employees onboard our member’s vessels. They demand that the association takes lead in the discussions with the Swedish government to ensure the safety of the crew and ships of the Swedish ship owners.

“The issue is a prioritized area and we started the discussion three years ago with the Ministry of Enterprise, Energy and Communications. Our demands are simple; Sweden should support all resolutions in the United Nation that hampering or eradicates the effects of piracy. We are also strong supporters of Swedish presence in the European Union Naval operation Atalanta in the Gulf of Aden. At the moment we are driving the legal aspects and possibilities for Swedish ship owners to carry armed security personnel on board their vessels. Today we have a gap in our Swedish legislation and we are actively working for a solution to fill that gap.”

Interview with Tryggve Ahlman, Area Manager Safety and Technique, the Swedish Shipowners’ Association.
Do you or the organization have any experiences from Piracy?

“We have an industry perspective and we work closely with several international organizations on this issue, such as; the International Chamber of Shipping, the International Maritime Bureau and the European Community Shipowners’ Associations. The booklet Best Management Practices for protection against Somalia Based Piracy 4 (BMP 4) is a result of that good cooperation. Our members, the Swedish ship owners, have a deep and thorough knowledge of handling their vessels in pirate infested waters.

“In July 2011 was a Swedish owned vessel attacked outside Cotonou in West Africa during a ship to ship operation. All onboard was physically unharmed due to good routines and best management practices.”

Can you see a solution or a way forward to solve the problem with Piracy?

“There need to be more naval resources present in the Gulf of Aden and more powerful measures have to be taken against piracy. Local or regional courts have to be established and pirates have to be convicted for their crimes. In the long run we need to create political stability in Somalia and the entire region around Gulf of Aden.”

What is your opinion of the WMU report on linkages between Piracy, poverty and political stability?

“It is a very well written report and an interesting approach upon the issue.”