PIRACY AS A MANIFESTATION OF STATE FAILURE:

A historical context for Somali piracy and its suppression

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This thesis is submitted in partial fulfilment of the degree of Doctor of Philosophy in Arts at the School of Historical and Philosophical Studies, University of Melbourne.

20 December 2018

FINAL
I declare that:

1. The thesis comprises only my own work.

2. Due acknowledgement has been made in the text to all other material used.

3. The length of the thesis is 86,503 words in length, exclusive of tables, maps, graphs, bibliographies, and appendices.

Sarah-Letetia Craze
ABSTRACT

This thesis establishes the Somali piracy epidemic of 2008-12 as a conflict between how Somalis perceived their own sovereign authority and the rules of centralised state norms established by the international community. I argue that as the dominant force in the conflict, the international community’s efforts to apply these rules was complicated by the re-emergence of historic contradictions between the need for immediate deterrence of pirates and the long-term objectives for piracy suppression.

The criminalised war economy that grew out of the Somali state’s collapse in 1991 strengthened the Somalis’ historic cultural tradition of equating wealth with respect, a prime motivator for piracy. However, while ‘state failure’ provided a convenient explanation for the harsh reality of life in Somalia, it ignored the Somalis agency in their post-state collapse state-building efforts. The international community’s ignorance of the state-like authoritative constructs Somalis had built for themselves, especially in Puntland, meant the incomplete ‘state failure’ narrative fed the UN’s decision to suppress Somali piracy.

Historically, ship-owners and merchants always want states to protect their trade from pirates without controlling it, but states were disinclined to sponsor any large-scale naval intervention against pirates unless faced with considerable economic or national security threats. This created a divergence of interests in the piracy’s suppression that had the effect of dispersing the power to stop it. This situation occurred again in response to Somali piracy. Merchants and ship-owners took the path of deterrence: using self-protective measures to avoid pirates, such as arming ships or resolving hijack
situations as quickly as possible, by paying ransoms. The UN took the suppression path of naval intervention, prosecution, and land-based initiatives. For all stakeholders, this proved a highly complicated, expensive, and problematic task. Somali piracy suppression became more an expression of state prestige than an effective suppression of piracy. For the UN though, Somali piracy exposed an entrenched, mutual distrust between the Somalis and the international community that had fed their neglect of Somalis since the mid-1980s.

The demise of the Somali piracy epidemic is commonly attributed to the international community’s naval patrols and the use of armed guards. Eventually, the efforts by successive presidents in Puntland to stop young men from turning to piracy gained the UN’s attention. Today, Somalia is moving from failed state to fragile nation. With international assistance, Somalis endeavour to exert sufficient sovereign authority over individuals and protect their own fishing waters for foreign interlopers despite a cultural ambivalence to the criminality of piracy. The question still remains whether the pirates are gone for good.
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could see how my love of history has blossomed through this process.
ACRONYMS

AMISOM  African Union Mission to Somalia
ARS      Alliance for the Re-liberation of Somalia
BMPs    Best Management Practices
CGPCS   Contact Group for Piracy of the Coast of Somalia
CJTF-HOA Combined Joint Taskforce – Horn of Africa
DSA     Danish Ship-owners Association
EU      European Union
GFC     Global Financial Crisis (2008)
ICGS    International Contact Group for Somalia
ICU     Islamic Courts Union (Somalia)
IGAD    Inter-governmental Authority on Development
IMB-PRC International Maritime Bureau Piracy Reporting Centre
IMO     International Maritime Organisation
IUU     Illegal, Unregulated and Unreported (Fishing)
JWC     Joint War Committee (insurance)
K&R     Kidnap and Ransom (insurance)
MIG     Merchant International Group
MSA     Merchant Shipping Act (Kenya)
SEMG    Monitoring Group on Eritrea and Somalia (UN)
PACER   Public Access to Court Electronic Records (USA)
PCASP   Privately Contracted Armed Security Personnel
PMPF    Puntland Maritime Police Force
RPG     Rocket Propelled Grenade (weapon system)
SCG     Somaliland Coast Guard
SHADE   Shared Awareness and Deconfliction (naval group)
SRSG    Special Representative to the Secretary-General (UN)
SSDF    Somali Salvation Democratic Front (political group)
TFG     Transitional Federal Government (Somalia)
TNI     Indonesian National Armed Forces (Indonesian abbreviation)
UAE     United Arab Emirates
UN      United Nations
UNCLOS United Nations Convention for the Law on the Sea
USC     United Somali Congress
USA     United States of America
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INTRODUCTION

Four years after the peak of the Somali piracy epidemic of 2008-12, Phil Holihead of the International Maritime Organisation (IMO) told an interviewer that the world was still ‘holding [its] breath’.¹ In 2010, as pirates threatened the security of European and Asian maritime trade in the Gulf of Aden, the IMO appointed him Head of the Project Implementation Unit of the Djibouti Code of Conduct, a ‘coordination and capacity building project’ for the regional countries surrounding the Gulf of Aden.² The IMO tasked him with ending the epidemic in two years, but Holihead knew the Code would only provide a mechanism for future piracy suppression, not manage the problem at hand.³ To deal with the immediate piracy problem, a massive deterrence effort from ship-owners, states, and international organisations had begun. From 2012, successful attacks had significantly decreased and Phil Holihead had reached his mandated goal.⁴ However, by 2014, he feared the pirates were merely biding their time until the navies went home.⁵

Phil Holihead’s experience meant he had joined a long line of sovereigns, governors, and other officials frustrated by pirates. In 1549, a law passed in the name of the English King Edward VI lamented that after Edward’s predecessor Henry VIII had proclaimed peace with France three years earlier, the ‘multitude of piracies and robberies on the seas’ had ‘greatly increased’ by ‘both his majesty’s own subjects and

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¹ Phil Holihead, “Focus on Delivery! In Conversation with Phil Holihead, IMO.” Contact Group on Piracy off the Coast of Somalia, 6 October 2014.
² Ibid.
³ Ibid.
⁵ He stated, ‘If you ask ‘when can the navies go home in the surety that the region and the country is better placed to do things?’ In 2016, we’re in danger of going home and holding our breath.’ Holihead, “Focus on Delivery.”
of others’. 6 One hundred years later, successive governors of Port Royal in Jamaica despaired over the unruly mob of ‘wild, dissolute and tattered fellows’ who used the town as a base during the buccaneering of the mid- to late-17th century. 7 The problem was not just an English one. In 1844, the Sultan of Morocco complained about the sea-raiders of the isolated Rif Coast to the British Consul-General and described them as ‘not so much as common subjects, but as savage bandits, who are outside the domain of the law and are not at present subject to its authority.’ 8 In the late twentieth century, ship-owners traversing the Malacca Strait complained about Indonesian pirates. The multitude of jurisdictional issues, combined with the lack of Indonesian naval resources caused the Indonesian Navy’s Chief-of-Staff Tanto Koeswanto to dismiss the problem entirely: ‘we must differentiate between usual crime and piracy which does not only take possessions but also life. The crime which we have is only snatching. The same as if you had something taken in the street.’ 9

Phil Holihead knew relying on the world’s navies to contain the modern piracy problem was a short-term and expensive stop-gap. 10 The real solution lay on land. After all, pirates no longer roamed the English Channel or the Caribbean, so the extension of authority over the actions of individuals on the seas had suppressed piracy in the

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10 Holihead stated the IMO tasked him with stopping Somali piracy within two years.
From Phil Holihead’s perspective, the absence of a centralised Somali state authority was the greatest barrier to sending the international navies home.

Through his role at the IMO, Phil Holihead participated in the United Nations-led Contact Group for Piracy off the Coast of Somalia (CGPCS), a regular meeting of high level international officials occurring during the peak of the Somali piracy epidemic. This experience helped form his view that the collapse of the Somali state in 1991 had created a generation of criminals, liberated from the constraints of law and order by their inability – or reluctance – to maintain peace and rebuild their state. Sporadically, Somali representatives of the internationally sponsored, Nairobi-based Transitional Federal Government (TFG) attended the meetings, despite the TFG’s lack of any real legitimacy amongst Somalis. The Somali representatives’ lackluster attitude towards piracy caused Phil Holihead to conclude, ‘the amount of times I have heard the “history of Somalia” given at a meeting as the only output is just unbelievable, and you hear it over and over again,’ he said. ‘Nothing about what they are doing about piracy.’ He concluded the senior Somali officials he met had no interest in stopping it, leaving him to deal with the problem. As this thesis examines, the situation was far more complicated than that.

Historically, pirates perceived authority in opposition to the laws and rules established by sovereigns and states. This thesis establishes the Somali piracy epidemic of 2008-12 as a conflict between how Somalis perceived their own sovereign authority and the rules of centralised state norms established by the international community. To do

12 Holihead, “Focus on Delivery.” Holihead did not elaborate on how far back the ‘history’ went, but from his comments it is assumed to be from the late 20th century and the state’s collapse.
this, the thesis is split into two parts of three chapters each. In the first part, I use the prevalent piracy themes of sovereign authority, jurisdiction and personal identity to explain the dichotomy between the Somalis’ social and cultural constructs and the international community’s expectations for a modern state. In the second part, I argue that as the dominant force in the conflict, the international community’s efforts to apply their long-established state norms as a mechanism of piracy suppression hinged on imposing rules on individuals who could not comprehend them. This was then complicated by the re-emergence of the historic contradictions between the need for immediate deterrence of pirates and the long-term objectives for piracy suppression.

Academic piracy literature tends to be shaped by the records and accounts of pirate suppressors, not the pirates themselves. Since pirates acted in defiance of the authors of most of the documentary evidence available to historians to study them, the use of rare autobiographical accounts by individuals, such as Caribbean-based A O Exquemelin needed to include an examination of credibility and legitimacy. This extended to the more common (but still rare) accounts from individuals who encountered pirates. For example, in The Pirate Wars, Peter Earle questioned the validity of Aaron Smith’s experiences at the hands of Cuban pirates, to the irritation of

13 The authors of secondary sources used in this thesis derived their sources from Calendars of State Papers and manuscripts, Colonial Series of Papers for America and the West Indies, the Oriental and India Office Collections, Admiralty Records at the British Public Records Office and High Court of Admiralty Records, amongst others. See Little, Pirate Hunting. Marcus Rediker, Villains of All Nations: Atlantic Pirates in the Golden Age (Massachusetts, USA: Boston Press, 2004); Earle, The Pirate Wars. Also Kris E Lane, Pillaging the Empire: Piracy in the Americas 1500-1750, vol. 1 (M E Sharpe Inc, 1998).
14 See A O Exquemelin, Bucaniers of America, or, a True Account of the Most Remarkable Assaul ts Committed of Late Years Upon the Coasts of the West-Indies by the Bucaniers of Jamaica and Tortuga, Both English and French: Wherein Are Contained More Especially the Unparallel’d Exploits of Sir Henry Morgan, Our English Jamaican Hero Who Sack’d Puerto Velo, Burnt Panama, &c. (Henry E Huntington Library; London: William Crooke: 1684). Not used in this thesis but in a similar vein: William Dampier, Journal of William Dampier in the South Seas Relating His Adventures as a Pirate in the South Seas, Following His Departure from Bartholomew Sharp and Journey over Land with the Help of Central American Indians (1681).
Smith’s ancestor.\textsuperscript{16} Other popular accounts, such as Captain Charles Johnson’s book of pirate biographies from the 1720s, remain a prominent source of pirate narratives despite their questionable veracity.\textsuperscript{17}

The study of Asian pirates faced a similar credibility predicament. This time, rare non-colonial sources often revealed a culture of traditional, authorised and therefore legitimate sea-raiding, while the European records reflected this ‘piracy’ on their expanding economic and colonial interests.\textsuperscript{18} Nevertheless, the dominance of institutional and archival sources fed a diversified narrative on piracy. Janice Thomson, Margarette Lincoln and Matthew McCarthy considered the political implications of piracy for their areas of interest in historic European and British policy, while Alfred Rubin emerged as the prominent authority on piracy law.\textsuperscript{19}

By the 21\textsuperscript{st} century, scholars had begun using historic sources to conceptualise piracy beyond the biographic and geographic narratives of individuals and locations. For example, Peter Leeson examined the economics of piracy, and Durand and Vergne argued piracy helped drive the evolution of capitalism.\textsuperscript{20} Before Somali piracy emerged, discussion on contemporary piracy centred on Southeast Asia and the

\textsuperscript{16} Robert S Redmond, ‘Three Centuries of Piracy (Review of the Pirate Wars),’ \textit{Contemporary Review} 283, no. 1654 (2003) 310-11: 310. In his review, Redmond stated ‘Mr Earl is less than fair to this reviewer’s great great grandfather, Aaron Smith, who, he says ‘claimed’ to have been captured. He was, indeed, captured and he suffered.’


The literature specifically dealing with piracy in Somalia emerged around 2008. At the time, it was extremely dangerous for foreigners to travel to Somalia to interview pirates, so the records of aspiring piracy suppressors and their global policy interests formed the basis of analysis. Somali piracy literature focused either on questions of maritime security relating to the rising Islamist threat in Somalia, or on legal questions raised by the prosecution of Somalis in courts outside of Somalia. These perspectives sensibly provided a restricted time period and a topical, global context in lieu of a contemporary social context. However, these approaches gave the literature little historical perspective beyond the standard ‘state failure’ narrative and the volatile situation in Somalia leading up to the piracy epidemic.


State failure as the ‘cause’ of Somali piracy: an incomplete explanation

The predominant academic explanation for piracy from European and American commentators was the failure of the Somali state and the continued absence of a stable government. In part I of this thesis I argue that ‘state failure’ as the cause of piracy is a highly simplified label that ignores the Somali-led authoritative constructs that returned after the state’s collapse. These constructs disregarded the territorial constraints of the old state endorsed by the international community. Instead, they showed that some modern state norms did exist in Somalia at the time of the piracy epidemic. However, their fledgling and evolving nature created under-funded and weak institutions that combined with Somali cultural traditions around wealth acquisition to create incentives for piracy.

I do not dispute the veracity of the Somali state’s failure in 1991.23 At the time, Helman and Ratner defined a failed state as ‘utterly incapable of sustaining itself as a member of the international community’.24 As research interest in this area progressed, the definition refined to include: no control over the means of violence, no peace or stability for populations, limited provision of essential political goods, non-functioning institutions, widespread corruption, and infrastructure destruction. The lack of control over borders and territories caused a variety of forms of disorder: war, conflict, and

terrorism, all fed by ethnic, religious or linguistic animosity.\textsuperscript{25} All of this proved applicable to the Somali experience of state failure.

However, I argue that applying the ‘state failure’ label to Somali piracy occurred along a politicised, ideological spectrum of theories about modern state development informed by each commentator’s position. The differences amongst European and American commentators’ explanations lay in the level of acknowledgement given to how Somali social and cultural constructs diverged from the modern state norms of a centralised state construct.

American international relations expert J Peter Pham stated ‘state failure is neither a necessary nor sufficient cause of piracy [but] there is no denying that the explosion of pirate activity in the waters off the Horn of Africa since the mid-1990s has been facilitated by the lack of anything even resembling a functioning central government in Somalia for nearly two decades.’\textsuperscript{26} As a director of the conservative Washington-based Atlantic Council’s Africa Centre, Dr Pham moved away from traditional American foreign policy objectives for Africa that centred on democracy and human rights.\textsuperscript{27} His advocacy for African development centred on encouraging stronger governance sufficient to attract foreign investment.\textsuperscript{28} Pham conceptualised the state as the


\textsuperscript{27} Richard Dowden, "Peter Pham: President Trump’s Perfect Pick for Top Africa Post?,” \textit{African Arguments}, 1 August 2017.

\textsuperscript{28} J Peter Pham, interview by Vincent Makori, 2017. See also, Dan de Luce and Robbie Gramer, 'GOP Senator Blocks Plans to Fill Africa Post at State Department,' \textit{Foreign Policy} (2017). According to a 2010 Global Research article, the Atlantic Council is ‘packed with former Pentagon, State Department and Central Intelligence Agency veterans.’ Rick Rozoff, "The Insidious Role of the Atlantic Council: Securing the 21st Century for NATO." Global Research, 30 April 2010. It is currently chaired by James L Jones, a former national security advisor to President Barack Obama."}
ultimate protector and source of control of the Somali people. For him, the Somalis’
unwillingness or inability to accept this caused the continuation of the state’s failure.

Other commentators largely agreed with Dr Pham’s state failure explanation but
recognised the historic indicators of piracy. Somali affairs specialist Roger Middleton of
the left-leaning, UK-based Chatham House, also noted the lack of a centralised state
but included a reflection on piracy’s historical reliance on favourable geography and
the absence of alternative employment options. Mr Middleton concluded, ‘with little
functioning government, long, isolated sandy beaches and a population that is both
desperate and used to war’, Somalia had the perfect environment for piracy to
thrive.29 American political scientist Dr Christopher Daniels acknowledged Somali
agency in protecting their enormous coastline from exploitation by foreigners but
concluded piracy arose from the absence of a coastguard, a state-sponsored
controlling mechanism of both residents and interlopers.30

On the other side of the discussion lay the Norwegian security policy expert and Somali
linguist Stig Hansen and the prominent American political scientist, Ken Menkhaus.
Both held specialist expertise on Somalia that demonstrated their greater
understanding of the nature of Somali society. Unlike centralised state advocates, Dr
Hansen’s explanation acknowledged why the Somalis had not maintained a stable
central government: ‘Somalia was a country where there were plenty of areas with
little government as well as areas controlled by actors with little interest in pleasing

29 Chalk, ‘Piracy Off the Horn of Africa,’ 94. Roger Middleton left Chatham House in 2012. Speaking in his personal capacity, he
reiterated that a lack of central government, great poverty, the high risk/reward ratio, and its geographic location facilitated piracy
(Online, 2012).
30 Daniels, Somali Piracy and Terrorism in the Horn of Africa, 35. Dr Daniels retains a professorship at the Centre for Global Security
and International Affairs at Florida Agricultural and Mechanical University. His book is the published version of his PhD thesis on
piracy and terrorism in Somalia.
Sarah Craze, PhD Thesis

Introduction

the international community.' Long before the Somali piracy epidemic, Professor Menkhaus had questioned the need for a centralised state in Somalia at all. He argued the ‘state failure’ narrative meant ‘policymakers, pundits, and politicians sought to harness the piracy story to advance their own agendas.’

When Phil Holihead complained the Somali TFG were doing nothing about piracy, he was adopting the ‘state failure’ explanation for it. State failure provided a convenient explanation for the reality of life in Somalia but I argue it ignored the reasons why the centralised state model continued to fail. Firstly, it failed to acknowledge the repercussions of the brutality of the last incarnation of the centralised state on Somalis, the regime of General Siad Barrè (1969-91). Secondly, the post-collapse civil war produced a criminalised war economy that encouraged greed, cynicism, impunity, and violence against the weakest in an already hostile and harsh land, prone to regular climate shocks. This environment only added to the strength of the Somalis’ historic cultural tradition of equating wealth with respect. Finally, it ignored the efforts by Somalis to create localised political structures for order and protection, such as

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33 Sarah Craze, 'Food and the legacy of the Somali state’s collapse.' Under submission.

The cultural tradition was touched on by a Somali scholar, but not applied to Puntland: Mohamed Haji Ingiriis, ‘The History of Somali Piracy: From Classical Piracy to Contemporary Piracy, C. 1801-2011,’ The Northern Mariner/le marin du nord 23, no. 3 (2013) 230-66. I disagree with his assumption that Somali raiding of European shipwrecks was a form of piracy but agree this established a cultural basis for the significance of the acquisition of wealth in Somali society. The cultural basis was covered more generally in Charles Geshekter, “Somali Maritime History and Regional Sub-Cultures: A Neglected Theme of the Somali Crisis,” in New Directions in Maritime History, Australian Association for Maritime History and the International Commission of Maritime History (Fremantle, Australia: Australian Association for Maritime History, 1993). This article was written many years before Somali piracy arose. Also Samatar, Lindberg, and Mahayni, ‘The Dialectics of Piracy in Somalia: The Rich Versus the Poor.’
Somaliland and Puntland, based on traditional forms of authority. The lack of recognition of these efforts in favour of recognising only the inability of Somalis to rebuild a centralised state in Mogadishu informed the commentators’ positions and ultimately, the international community’s response to Somali piracy. As this thesis suggests, Phil Holihead may have been talking to the wrong people.

Following Hansen and Menkhaus’ line of thinking, I argue that by attempting to force the Somalis into an allegiance to a Mogadishu-based centralised state convention, the international community sabotaged a prime opportunity to suppress the rise of Somali piracy. The repeated failure of its attempts to rebuild the centralised state since it collapsed in 1991 clearly showed the difficulties Somalis had with supporting it. Then the piracy epidemic coincided with a violent and internationally-backed conflict for control in Mogadishu that severely undermined any appeal for this style of statehood. The international community’s rejection of the authoritative constructs the Somalis had chosen for themselves, such as Somaliland and Puntland, meant it ignored the stability of these regions compared with Mogadishu. These regions showed Somalis had formed allegiances to state-like structures and aligned them with many of the norms of the modern state system. However, in the tradition of historic piracy epidemics, these constructs lacked the capacity and strength to suppress piracy. As this thesis shows, the international community’s eventual realisation of the usefulness of these Somali-led state-like authoritative constructs proved highly influential in suppressing piracy. I argue that because the international community did not understand how Somalis perceived legitimate authority and denied Somali agency and

political realities, the affected stakeholders of Somali piracy could tackle only the symptoms and not the causes of it.

**Background to Somali piracy**

Historically, piracy mingled with sovereign authorised sea-raiding. In the late 16th century, the English Queen Elizabeth I prohibited her subjects from ‘going to sea without a license’. She publicly condemned the actions of her sea-raiders against Spain during peacetime but privately condoned them. In 1696, King William tasked the reformed pirate Captain William Kidd with pirate-hunting. Captain Kidd was executed for piracy and murder in 1701 after being unable to produce evidence of the validity of his privateering prizes. The passes that would have exonerated him were found in 1910. In 1814, the Spanish Crown could not pay its servants, so it encouraged a privateering coastguard to pay itself by making war on Spain’s political and fiscal enemies at the same time.

In keeping with this tradition, some time in the mid-1990s, Somali men calling themselves badaadinta badah (‘saviours of the sea’), began demanding compensation from fishing vessels illegally fishing in Somalia’s unprotected territorial waters. They resembled their privateering predecessors by assuming responsibility for executing the state’s obligations but differed because the Somali state’s lack of authority meant they

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36 Known from the mid-1660s as privateering, see Rodger, 'The Law and Language of Private Naval Warfare,' 9.
38 Whether he was a pirate masquerading as a hunter or an exceptionally unlucky privateer remains the topic of historical debate primarily between historians Peter Earle and Richard Zacks.
41 Hansen examined the illegal fishing problem in 'Piracy in the Greater Gulf of Aden,' 9-13. The idea of private individuals engaging in ‘official’ functions is examined by Thomson, *Mercenaries, Pirates and Sovereigns.*
acted without commissions. However, there is historical precedent for the badaadinta badahs’ decision to take the protection of Somali economic interests into their own hands.

In the 1830s, the inhabitants of the remote Rif coast of Northern Africa lived outside the authority of the Moroccan Sultan. To supplement the meagre income drawn from their degraded native lands, they established a maritime trade from Tetuan to Algeria that passed three Spanish presidios.42 By 1850, Spanish intervention against the Rifi traders caused the Rifis to retaliate against the incursions. For Spain, the absence of any sovereign authority over the Rif region from the Moroccan Sultan justified Spanish accusations of piracy. However, for the Rifis, their survival depended on the security of their maritime trade and protecting it from Spanish interlopers transcended any piracy accusations. As reported by the French consul Charles Jagerschmidt in 1852:

they [the Rifi] openly admit that the robberies they commit on British ships are acts of piracy... but they absolutely reject the term pirates when applied to their attacks on Spanish shipping. They attack the Spanish openly, under the very guns of Melilla, and declare that when they act in this way they are acting in accordance with the rights of war.43

Marcus Rediker conceived the idea of turning to piracy as an act of protest when he claimed Atlantic seamen undertook it as a personal act of rebellion against authority.44

43 ‘The Geography of Piracy,’ 277.
But instead of rebelling against authority, the *badaadinta badah* were more similar to the Rifis by claiming to be protecting their legitimate commercial interests from outsiders in the prolonged absence of state authority. The Somalis also recognised that since the states sponsoring the perpetration of illegal fishing seemed to bear no responsibility for its actions, stopping threats to their livelihoods lay with them. However, the trade rivalries of the mid-19th century that garnered the Rifis some level of understanding from the French consul had long given way to international piracy law. By the 21st century, the *badaadinta badah* represented the Somali ‘state’s’ failure to exert jurisdiction over its occupants’ actions at sea and their actions complied with the internationally agreed definition of piracy.45

For the Rifis, the self-protective claim only went so far: the Banu Sa’id tribe undertook most of the Rifi coastal trade but it was the Banu Bu Gafar of the western Guelaya Peninsula who had the oceanographic advantage to attack Spanish ships.46 The *badaadinta badahs’* self-protective claims also became considerably more dubious when combined with the Somalis’ cultural construct of equating wealth with respect. By 2005, a significant number of non-fishing vessels reported pirate encounters in Somali waters (see graph 1). This reflected the turn of the *badaadinta badah* from protecting their fishing resources to the hijack and ransom model of piracy that typified the epidemic. However, this did not change the mindset amongst Somalis that the “piracy” was in retaliation against a grievance inflicted upon them. This view went right to the top of the Somali TFG, formed in 2004. As late as 2009, Somali Foreign Minister Mohamed Omaar suggested at an international meeting of the CGPCS that

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46 Pennell, ‘The Geography of Piracy,’ 278.

**Graph 1: Piracy reports from ships located in Somali waters and the Gulf of Aden by vessel type, 1991-2005 (total = 179)**\footnote{Graph created from IMB-PRC reports from 1991 to 2005. Full data set available in Appendix I.}
The Somali piracy epidemic: 2008-12

Somalia’s geography created a perfect piracy landscape (see Map 1).\(^{50}\) The 19 kilometre chokepoint of Bab El-Mandeb Strait between the northern tip of Djibouti and the south-western tip of Yemen forced the huge volume of merchant ships traversing to and from the Suez Canal through the narrow channel (see Map 2). This provided a predictable stream of potential targets in the Gulf of Aden within close range of Somali settlements. The long, desolate beaches (Image 1) of Somalia’s Indian Ocean coast and the sparse population centres were perfect for beaching a skiff (Image 2) and disappearing into the caves that dotted the coast. Hot and dry weather conditions provided calm seas and months of opportunity for heavily armed Somalis to patrol the Gulf of Aden’s shipping channel in their small, white skiffs looking for potential ships to hijack.\(^{51}\) Fishing dhows provided good targets because their larger size and range facilitated their use as mother-ships and allowed the pirates to stay at sea for longer periods. The pirates would select a suitable merchant ship for hijack, threaten or fire near the ship with their weapons, usually including a rocket launcher (RPG), make their way onboard, and order the captain to sail the ship to the Indian Ocean coast of Somalia.

By 2008, the pirates began operating unimpeded in the Gulf of Aden. Ransom payments meant millions of dollars flowed into Somalia, funding building booms and economic benefits in whole towns.\(^{52}\) Reported hijacked ship numbers peaked at 49 in

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\(^{50}\) Geography provides a crucial contribution to the historic success of piracy, see for example, Galvin, *Patterns of Pillage.* Pennell, ‘The Geography of Piracy.’

\(^{51}\) Peter Chalk stated that although equipped with an array of weaponry, Somali pirates were generally ‘low-tech’. This is corroborated by Hansen who stated that technological resources, such as GPS systems, night vision goggles and ship identification systems were not common. At the time of writing, Chalk and Hansen both stated the pirates did not receive assistance in spotting ships. Chalk, ‘Piracy Off the Horn of Africa,’ 92. ‘Piracy in the Greater Gulf of Aden,’ 36. No more recent operational studies on Somali piracy are available.

\(^{52}\) ‘Piracy Off the Horn of Africa.’
2010, with over a hundred reports of aborted attempts, often with accompanying gunfire, and suspicious crafts. In 2011, the Somali TFG finally acknowledged to the international community that Somali piracy was now a ‘symptom of protracted insecurity on land.’

Map 1: Map of Somalia and regional states

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54 Contact Group on Piracy off the Coast of Somalia, ‘Eighth Communiqué,’ Plenary sessions Contact Group on Piracy off the Coast of Somalia, 22 March 2011.
Map 2: Screenshot of regional shipping traffic on one day in 2018

Introduction

Sarah Craze, PhD Thesis

Image 1: Coastline of Somalia\textsuperscript{56}

\begin{center}
\includegraphics[width=\textwidth]{coastline_of_somalia.png}
\end{center}

Image 2: Typical skiffs used by Somalis for fishing and hijacks\textsuperscript{57}

\begin{center}
\includegraphics[width=\textwidth]{skiffs.png}
\end{center}

\textsuperscript{56} Stills taken from Diego Buñuel, "Don't Tell My Mother I'm in Somalia," in Season 4 (2012).
\textsuperscript{57} Ibid.
The international community’s response

All discussions on piracy inevitably turn to deterrence and suppression. In the case of Somali piracy, the absence of a suitable Somali ‘state’ raised the question of who is responsible for stopping it. The United Nations (UN) authorised naval intervention in 2008 but successful deterrence of Somali pirates did not begin until April 2011. Most commentaries, published between 2010 and 2013, attributed this success to the combined presence of UN-authorised naval forces and armed guards on ships. The focus on deterrence is inevitable since suppression required an unspecified passage of time to pass without piracy re-emerging. I address this issue in Part II of this thesis. By examining the role of deterrence measures in reducing piracy and their interplay with the international community’s effort to suppress Somali piracy on land, I argue that Somali piracy suppressors experienced similar historical challenges to their predecessors.

As my historical analysis shows, in a piracy epidemic, ship-owners and merchants always wanted states to protect their trade from pirates without placing controls on it. However, states were disinclined to sponsor any large-scale naval intervention against pirates unless faced with considerable economic or national security threats. Ship-owners, insurers and cargo providers needed to deter pirates from attacking their
ships or manage a hijack situation in the most economically efficient way. States and sovereigns sought to hold pirates to account. This divergence of interests amongst the piracy’s stakeholders had the effect of dispersing the power to stop it.

I argue this dynamic occurred again in the international response to the Somali piracy epidemic. By 2011, ship-owners and pirates had established ransom payment as the most effective way to safely obtain the release of the ship, cargo, and crew. They had also begun employing armed guards to deter pirates, returning arms to ships after a one hundred year absence and in opposition to the recommendations of international maritime authorities. While deterring pirate attacks, these methods did little to stop young Somali men from turning to piracy in the first place. The absence of the Somali ‘state’ meant the UN took responsibility for this task. But a prominent theme emerged that complicated the UN’s effort: the entrenched distrust and neglect of the international community, represented by the UN, towards Somalis.

After the state collapsed, most Somalis relied on international humanitarian and development aid to survive. However, the persistent conflict combined with the destruction of infrastructure limited the presence of internationally sponsored aid organisations.61 Underlying this disconnection from the Somalis’ everyday existence lay the fallout from the disastrous UN intervention in 1992 and later, the sidelining of the UN when Ethiopia and Eritrea intervened against the perceived Islamist threat in Mogadishu in 2007.62 When Somalis began hijacking merchant ships from mid-2007,

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61 Most aid continued to be administered by the Somali Red Crescent Society, backed by the International Committee for the Red Cross.
the UN’s prolonged disengagement with Somali authoritative constructs meant it had no land-based capacity to mobilise deterrence measures to stop young Somali men from turning to piracy. This disengagement, combined with the rigidity of the commitment to the centralised state in Mogadishu, meant the UN disregarded Puntland, the home of most of the pirates, as a legitimate source of pirate suppressive authority.63

Instead, the UN moved to defend international maritime trade. By authorising naval states to intervene against Somali pirates in 2008, the UN expected the navies to spearhead the suppression effort by capturing and detaining pirates for prosecution. In the meantime, the UN worked on building what it deemed the more permanent solution to Somali piracy: a centralised state in Mogadishu. It soon became clear that while the UN authorised intervention, it could not control how states underwent it. Intervention soon turned to patrol and convoy, while prosecution turned into catch and release. With no control over these methods, the UN could not hold the pirates to account for their actions. Moreover, in spite of its insistence on respecting the sovereignty of ‘Somalia’ in its resolutions, in order to undertake prosecutions the UN returned to the historic legal justification for prosecuting pirates: hostis humani generis – enemies of all mankind. Even in 1694 hostis humani generis was considered ‘a rhetorical invective to show the odiousness of that crime’ rather than a basis for legal doctrine.64 Hostis humani generis also facilitated the employment of privately armed guards onboard ships. The effectiveness of privatised violence at pirate

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deterrence relied on the absence of a recognised Somali sovereign authority to protect or defend its citizens at sea. By severing the connection between sovereign authority and the pirates, the UN excluded the potential of the pirates’ Somali-led authoritative constructs as agents for the ultimate goal of the international community’s response: piracy suppression.

In keeping with historic suppression efforts, the dispersal of power to stop the pirates meant Somali piracy suppression joined most historic suppression efforts: it became complicated, expensive, and highly problematic. Ship-owners incurred considerable costs trying to deter pirates and the naval intervention became more an expression of state prestige than an effective suppression effort. Nevertheless, I credit Somali piracy with bringing the international community’s attention back to Somalia. In 2011, the UN eventually recognised the potential of Somali-led authoritative constructs to suppress piracy. UN engagement with Puntland moved pirate deterrence at sea towards suppression on land that, for the most part, continues today.

Chapter summary

Chapter 1 introduces the history of the idea of Somali pirates choosing a form of sovereign allegiance outside the obligations placed upon them by the modern state system. It draws on a 1693 English case of privateers on trial for piracy and traces its influence throughout modern state development. The centralisation of state authority sets up the great conundrum of Somali piracy - who is responsible for suppressing piracy when the state does not exist?

Chapter 2 establishes how the centralised state structure of the modern state system proved the antithesis of the decentralised and clan-based authorities present in
Somalia. In this chapter, rather than provide a standard historical analysis of the Somali state experience, I take the sources available and apply the idea of sovereign authority as a choice for Somalis.

Chapter 3 connects the themes of clan identity and choosing sovereign authority to the home of the pirates, Puntland. Despite its comparative peace and unity, authority in Puntland stemmed directly from the president’s personal prestige and particularly his influence, or lack of it. I show how this directly connected to not only accusations of complicity with pirates but also successful suppressive efforts on land.

As the first chapter in Part II, Chapter 4 examines how little has changed in the self-protective measures ship-owners take against pirates, including paying ransoms and arming ships. Marine insurers remained a considerable stakeholder in piracy suppression efforts and I emphasise that the Somali piracy epidemic coincided with the Global Financial Crisis and a significant shipping downturn, influencing the insurance industry’s perceptions of the piracy risk and in turn, the decision by ship-owners to privately arm their ships.

Chapter 5 establishes how prestige became the prime outcome of the international community’s effort to suppress Somali piracy rather than a reduction of pirate attacks. Ultimately, despite the UN’s success in facilitating peace in Mogadishu, its long-term neglect of Somalia and its lack of understanding of the authority Puntland could exercise over pirates undermined the success of its early suppressive initiatives.

Chapter 6 examines individual states’ contributions to the suppression of Somali piracy through the prosecution of pirates. Used as a method of holding the pirates to
account, instead the huge legal complexities of prosecution became a significant disincentive for states to undertake the task. To maintain the prosecution objective, capturing navies of the European Union and the United States negotiated pirate transfer agreements with Kenya, Seychelles, Tanzania, and Mauritius, using significant financial incentives as a persuasive tactic.

**Sources and methodology**

Each chapter uses wide-ranging historical and contemporary sources to reflect the inter-disciplinary nature of this thesis. The research questions raised considerable methodological challenges because the perspectives within sources often formed part of the thesis’ arguments. This duality of purpose simultaneously constrained the thesis’ arguments while also informing them.

For example, the dearth of formal Somali sources meant UN records provided the only insight into the situation in Somalia before and during the piracy epidemic. However, the content of the reports directly affected the discussions raised in this thesis. Firstly, the institution’s initial advocacy for Mogadishu as the source of a centralised Somali state established a clear ideological perspective. Secondly, as the Somali piracy epidemic progressed, the UN’s reports and records exposed the limitations of this advocacy as a method of piracy suppression and the superficiality of the institution’s prior engagement with Somalia. This became a major contributing theme to this thesis. So while UN reports were not only a source of information, they also held a representative aspect of the thesis’ discussion, not only because of the information within them but for what was not in them.
Trial transcripts were another example. On one hand, a trial transcript set useful constraints to the pirates’ narrative around their engagement with a sovereign authority, but on the other hand, it directed the pirates’ self-construction along a biased path. In addition, to use the trial transcripts as sources for my narrative, I needed to examine them not only for the testimony being recorded in the transcripts but also with consideration for why and how it was documented in the first place.

**Historical court cases and laws**

The idea expressed in Chapter 1 of sovereign authority as a choice, rather than an obligation draws on the position of William Oldish in the *Proceedings before the Lords of the Council, and the Admiralty; in Relation to the Trials of John Golding, Thomas Jones, John Ryan, Darby Collins, Richard Shivers, Patrick Quidley, John Slaughter, and Constantine De Hartley, as Pirates, Though Acting under King James the Second's Commission: William & Mary AD 1693* first published in 1735 in *A collection of state-trials, and proceedings, upon high-treason, and other crimes and misdemeanours, from the reign of King Edward VI to the present time.* The publication of this case forty years after its completion is indicative of the gradual and lasting influence it asserted over piracy law. My application of its relevance to state development draws on the work of Janice Thomson, who connected the suppression of piracy with the development of the modern, centralised state system. The case provides a historical

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link to the Somalis because it shows the significance of an individual’s personal agency and identity to their sovereign allegiance, as examined in Chapter 2.

The availability of British proclamations, laws, and cases in the Justis Database allowed me to piece together the legal structure of the development of piracy law from the 1536 *Offences at Sea Act* passed by King Henry VIII to the 1982 *United Nations Convention of the Law of the Sea* that encapsulated the modern definition of piracy.

**Somali primary sources**

The war after the Barrè regime collapsed destroyed the national archives and the records of the Somali state’s political history. Since the Somalis had no written language before the 1970s, Chapter 2 relied on non-Somali sources, primarily British, to form the bulk of the pre-state narrative. Mid-20th century attitudes of the British towards Somalis, particularly concerning the unification of Somalia before independence, came from a small number of records on British Somaliland found in the British National Archives. Clive Parry’s *Consolidated Treaty Series* contained 23 treaties with the names of various representatives of Somali clans that I have used to show the dichotomy of authority between the Somali clans and the centralised European states.

From around 1998, entrepreneurial Somalis and members of the diaspora utilised the internet to disperse unofficial, Somali-authored information from and about Somalia.

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68 This is according to Mohammed Haji Ingiriis, a Somali scholar working in Mogadishu. Sylvia Pankhurst wrote in 1951 that the Italian colonists destroyed most of their records. E. Sylvia Pankhurst, *Ex-Italian Somaliland* (London: Watts & Co, 1951), 195.


Chapters 2 and 3 used Somali news articles published in English by the Somaliland Press (www.somalilandpress.com), Hiiraan Online (Somaliland: hiiraan.com), Puntland Post (puntlandpost.net), Garowe Online (Puntland: garoweonline.com), and Horseed Media (horseedmedia.net), run by members of the Finland and Netherlands-based Somali diaspora and focused on Puntland. African and European news aggregators, such as All Africa, the BBC, Reuters, and Agence France-Presse, quickly picked up some of the Somali-authored news articles, providing legitimacy and objectivity to these articles. However, acknowledgement needs to be given to the affiliation of all Somali authors and international news aggregators concerning the divisiveness of opinions on Somalia, particularly concerning the independence of Somaliland. The extent this informed the political objectivity of these articles cannot be ascertained.

**Piracy statistics and data**

Annual reports from 1992 to 2012 provided to me by the International Maritime Bureau’s Piracy Reporting Centre (IMB-PRC) formed the basis of information, statistics, graphs, and maps developed for this thesis. The IMB-PRC did not publish this information publicly but did provide it on request. During the first year of my project, I designed and developed a Microsoft Access database to store and manipulate all the data provided. By the end of my project, the database held over 5,800 records (a screenshot of a typical entry is below), searchable by ship name, date and report location. Based on the written description provided and the location of the ship at the time of the encounter, each record was assigned an attack type in keeping with the UNCLOS definition of piracy: pirated, aborted pirating, and stalked/fired upon met the definition of piracy; while suspicious craft, detained, theft, attempted boarding,
boarding no theft, boarding, and theft, boarded at port were all considered maritime crimes if occurring within territorial waters and therefore not piracy. This classification system allowed me to develop most of the graphs and maps used in this thesis. The full dataset is available in Appendix 1.

The written aspect of the piracy reports allowed me to extrapolate information on whether the ship used any defensive tactics, such as armed guards, and whether external intervention occurred. For those ships that were designated “pirated”, I searched online news archives for additional information not included in the report. While the IMB-PRC reports are the leading source of statistics and data on contemporary piracy, the key drawback to them for my project was they did not provide follow up information, including ransom payments and release dates of hijacked ships, for records that spanned into the next year. In many cases, news articles, particularly those from Lloyd’s List Casualty Reports were used to complete these details. Finally, the IMB-PRC reports did not include information on pirate attacks on the USS Ashland and USS Nicholas examined in Chapter 6 of this thesis.

The attack location information was used to map the location of a ship’s report using an online mapping tool called TileMill. Mapping record data provided a visual context of piracy (see Image 3 below) that allowed me to view each record in the context of others reported during the month, year and over multiple years.

The data, organised by graph and map, is available in Appendix 1.
Image 3: Screenshot for the CEC Future in the Piracy Report Database
United Nations documentation

Chapters 2, 3 and 5 all utilised the extensive documentation publicly available from the Official Document System of the United Nations. The system provided the quarterly reports prepared by the Secretary-General’s staff on Somali piracy, transcripts of UNSC meetings that helped contextualise Security Council Resolutions, reports prepared by the Monitoring Group on Eritrea and Somalia (SEMG), and documentation from the Special Representatives to Somalia. The UN’s website also provided information on press briefings undertaken by the UN.

United Nations reports contain rare and valuable insight into contemporary Somalia, but acknowledgement needs to be given of the questionable validity of information,

Data available at Appendix I. Map omits 11 records without location data.
the role of personal politics, and the broader institution’s centralised state agenda. The enormity of the organisation meant reports occasionally contradicted each other; for example the strong stance against all violations of the UN’s arms embargo against Somalia held by the Monitoring Group on Somalia and Eritrea (SEMG) in 2011, and the UNSC’s acknowledgement of Puntland’s use of its security forces to fight piracy.

Usually prepared by experts appointed outside of Somalia, UN reports could recommend devastating financial and travel sanctions based on anonymous sources, paid informants, and unchallenged evidence. In addition, the UN reports do not provide information on direct state relationships with Somali authorities, such as the economic relationship between Puntland and its primary trading partner, the United Arab Emirates. The UAE provided funding for Puntland’s security forces and in the years after the piracy epidemic, this relationship flourished with little evidence of it in UN documentation.

These limitations created accusations of bias and personal criticism from Somalis and other commentators. For example, the UNSC appointed Matthew Bryden, a Somali-speaking Canadian married to an influential Isaaq clanswoman, as coordinator of the SEMG in 2008. Mr Bryden was known to campaign for Somaliland’s secession. This exposed him to criticism and accusations of partiality towards Somaliland because the TFG does not support Somaliland’s independence. Nevertheless, UN reports

provided a crucial component of the narrative of this thesis for not only what they document, but for how they represent the UN.

**News articles**

Aside from the Somali news sources listed above, many news articles were acquired through targeted searches of the aggregating databases *Factiva* and *LexisNexis*. Research on Indonesia’s response to Somali piracy in Chapter 5 required manual searches of the *Jakarta Post* online. When not available through databases, I acquired most prosecution information reported in Chapter 6 from manual searches of news websites, including: *The Standard* and *Daily Nation* (Kenya: www.standardmedia.co.ke; www.nation.co.ke), the *Seychelles News Agency* (www.seychellesnewsagency.com), the *Yemen Times* (www.yementimes.com) and *Yemen Post* (www.yemenpost.net), *Le Mauricien* (Mauritius: www.lemauricien.com), the *Star* (www.thestar.com.my) and the *Sun Daily* (Malaysia: www.thesundaily.com.my), the *Korea Times* (www.koreatimes.co.kr), the *Japan Times* (www.japantimes.co.jp), the *Times of India* (timesofindia.indiatimes.com) and the *Indian Express* (Indianexpress.com). Targeted searches were also undertaken of non-English publications (using Google Translate), such as the French newspapers *La Croix International* (international.la-croix.com) and *Le Parisien* (www.leparisien.com), and the Spanish legal news source *Poder Judicial* (www.poderjudicial.es/cgpj/en/Judiciary).

Somali pirate prosecution information is available at Appendix II.

Somali pirate trial transcripts

For chapters 4 and 6, I obtained the transcripts of the trials from the United States’ Courts Public Access to Court Electronic Records (PACER) system (www.pacer.gov) after their completion. The appeal of using trial transcripts was that instead of providing a third person interpretation of the pirate’s narrative as other sources did, they contextualised the Somali pirate’s self-constructed narrative within a state apparatus, linking the two major themes of this thesis together.76 As Steedman observed, while the legally required questions that structure the narrative are heard, the written account removed the interlocutor.77 The pirate’s enforced narrative allowed him to give an account of what it was that brought him to the court because they are ‘fashioned according to requirement’.78 When encapsulated within a trial transcript, enforced narratives hold a prominent place in the history of state institutions because they provide the individual with a historical account of equal standing with the institution.

This was significant for this study because, like most historic studies of piracy, Somali piracy sources were written by their suppressors or their sympathisers. As I am not part of the Somali culture or a participant in the prosecution of the pirates, the enforced pirate narrative that emerged became a vital source for historical analysis of Somali piracy that moved beyond the story constructed and told by outsiders. The transcripts allowed me to take the pirate’s enforced narrative and extrapolate and

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78 Ibid., 36.
shape it to include the Somali participants’ voices, giving legitimacy and perspective that informed the discussions in this thesis.

Whether appearing as a defendant or a witness, the transcripts provided the pirates’ new, enforced narrative that included not only the time that passed since his capture but the influence of his experiences of state-mandated detention, prosecution, and sentencing, as well as the personal impact of his removal from his home and family. The extraction of autobiographical accounts from pirates through the court process contrasted with the only voluntary autobiographical accounts given by pirates: media interviews before their capture.\(^{79}\) In interviews, pirates relied on self-introspection and justification to explain their story, but the journalist formed their content and structure. In contrast, giving testimony at a trial meant the pirate’s self-constructed narrative moved beyond explaining his actions to include the international community’s imposed consequences for them.

Using trial transcripts meant I needed to interpret the pirates’ enforced narratives to find the glimpses of Somali perspectives on sovereignty and status appearing while the court applied a modern pirate identity to the Somalis. I needed to take into account how the trial transcripts reflected the relationship between oral and written language, especially when drawing conclusions about language behaviour from written artefacts instead of direct observation.\(^{80}\) As their authors can filter aspects of oral conversation to create a written document of official status, using trial transcripts requires the reconstruction and contextualisation of the trial itself, then the application of this

construct to the research questions.\textsuperscript{81} The use of Hansard reporters meant Somali pirate trial transcripts are comparatively more verbatim and less interpretative than their historical predecessors, including the King James’ Privateers account, but other considerations need to be acknowledged.\textsuperscript{82}

Greatly respected British Judge Sir Thomas Bingham, wrote accessible explanations of the processes of judicial decision-making based on his extensive experience.\textsuperscript{83} He described a key limitation to the use of a trial transcript as the removal of the defendants’ demeanour and the impression it left. He described demeanour as ‘conduct, manner, bearing, behaviour, delivery, inflexion; in short, anything which characterises his mode of giving evidence but does not appear in a transcript of what he actually said.’\textsuperscript{84} The absence of demeanour from transcripts removed an aspect of the credibility of the Somalis’ testimony. Moreover, the removal of emotion from personal recollections and its replacement with a more systematic and directed response meant the transcripts did not reflect the impact of their piracy experience on the Somalis.

Secondly, in these transcripts, all defendants answered questions and gave testimony in their native Somali language, translated back and forth into English by a court-appointed Somali-English interpreter, and then transcribed by the court reporter. This process meant the transcripts relied heavily on the credibility of the interpreter, an unseen intermediary in the narrative.

\textsuperscript{82} Ibid., 626.
\textsuperscript{83} “Lord Bingham of Cornhill (Obituary),” The Telegraph, London, 12 September 2010.
The Somali-only speakers had no way of confirming their narrative was being communicated correctly. In one transcript, Gabul Abdullahi Ali, a defendant in the *USS Nicholas* case, stated that when he was first detained, the US Navy’s interpreter Mr Ismail said to him, ‘unless you say ‘I am a pirate, I am a thief’, then they’re going to throw you into the sea.’85 This allegation against the interpreter and, by extension the US Navy, potentially undermined Gabul’s capacity to trust the court-appointed interpreter and affected the way he spoke, what he said, and subsequently the validity of his testimony within the transcript.

**Conclusion**

In his despair, Phil Holihead failed to understand the complexity of sovereign authority in Somalia and how this informed the historical challenges of piracy suppression. Pirates may be long gone from the English Channel, Caribbean, and Mediterranean Seas now, but getting rid of them took time and major legislative change, significant sovereign investment and realignment of a centuries-old sea-raiding culture. In 2008, the Somalis lacked even the basic infrastructure and political will to begin this transformation. It also faced considerable 21st century challenges, including famine, terrorism and the absence of international support. This thesis shows that Somali pirates fitted many of the patterns of historical piracy and its social and political contexts. The Somali piracy epidemic is part of mainstream pirate history, not an aberration from it.

PART I
CHAPTER 1

Pirates and the history of sovereign authority

In 2012, Mohammad Saali Shibin, a 50-something Somali man on trial for piracy in the United States, spoke of the authority of a president, judiciary and security forces in Puntland, the region where he lived in the north-east of Somalia. He described a complete contrast to the established perception of Somalia as a failed state, with little or no capacity to exert authority over its inhabitants. In another pirate trial a year later, witness Jama “Barre” Ibrahim described the Somali clan as ‘very very important’ with control over specific territory that limited the movement of Somalis between other clan’s territories. This also sounded like a state function, but the vast number of clan factions in Somalia had shown no recent capacity to monopolise force or control the consolidated territory determined as Somalia by the international community. Shibin and Barre described their allegiance to manifestations of sovereign authority unrecognised within the modern state system.

In the 21st century, the modern state system dictated that only a state could exert sovereign authority over its inhabitants in return for their allegiance. After the Somali state collapsed in 1991, repeated attempts to rebuild it in its previous incarnation gained little traction. This failure became the explanation for Somali piracy, examined further in Chapter 2. As pirates, Shibin and Barre ignored recognised international norms and showed no sovereign allegiance to the former Somali state. After all, the

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1 ‘United States of America vs Mohammad Saali Shibin’, US District Court for the Eastern District of Virginia, 26 April 2012, #146, 60.
‘state’ had provided nothing to them for 20 years. Instead, they chose allegiance to their own authoritative constructs that paid no heed to contemporary international law and conveniently placed few obligations on limiting their actions at sea. This allegiance had far more potential for personal enrichment than the remnants of the failed Somali state. As the resulting piracy epidemic showed, the choice proved easy to make.

The idea of choosing sovereign allegiance has a long history in piracy and this chapter examines how it developed. An early manifestation in court came in 1693 during the English trial of eight privateers for piracy but had occurred in practice far earlier. The trial occurred in the volatile and unprecedented political climate caused by William, the Prince of Orange, usurping the throne of his father-in-law King James as English monarch in 1688.\(^4\) William Oldish, the privateers’ advocate, declared that the privateers’ choice to believe in James’ sovereign authority despite his ‘abdication’, formed the basis of the men’s legal identity and their allegiance, regardless of William’s legitimacy as English sovereign.

Two 17\(^{th}\) century case studies of Caribbean and Dunkirk sea-raiders show the basis for Oldish’s argument by providing additional examples of how sea-raiders formed their own sovereign allegiance, regardless of land-based authority. Unique forms of sovereign allegiance also manifested outside of Europe by sea-raiders in the Mediterranean and in Southeast Asia. These historic precedents all demonstrate how Shibin and Barrè’s assertions of sovereign authority connect to a long history of sovereign allegiance as a choice for sea-raiders, rather than an obligation. They also

\(^4\) The full political context of this case is available in Craze, ‘Prosecuting Privateers for Piracy,’ 654-70.
demonstrate the difficulty land-based authorities faced when trying to exert their sovereign authority over pirates and control their actions. These examples are historical precursors of the tensions between state authority and piracy in modern Somalia. They establish that in Somalia, allegiance to authority was a manifestation of an individual’s identity and agency, rather than an obligation forced upon them by modern state norms.

As Charles Tilly explained, the move towards sovereign authority as the solitary domain of the state began towards the end of the 18th century, culminating with the outlawing of privateering in 1856, a key aspect of the dramatic expansion of European military specialisation. This cemented the world order reflected today by the modern state system. The centralisation of authority from the sovereign to the state occurred at a time of increased European colonial and economic expansion and required the elimination of traditional sovereign-authorised sea-raiding. Through force and at considerable expense, colonial powers declared this practice piracy and undertook piracy suppression to eliminate it. Over time, this realigned traditional sources of sovereign allegiance towards themselves and the authority of the centralised state model. By the late 20th century, responses to maritime crime in the Malacca Strait demonstrated how the international community now expected the state to exert sovereign authority over its inhabitants at sea and control their actions.

By examining the historical interplay of individuals at sea choosing their sovereign allegiance and the ruler’s inability or unwillingness to exert authority, this chapter establishes a deep historical precursor to Somali piracy. Further chapters of this thesis

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examine these constructs in Somalia, particularly how Somali pirates exposed the consequences of the absence of state-reliant sovereign authority for not only themselves but also the international community.

The 1693 trial of the King James privateers

In his effort to reclaim his throne from King William, King James authorised privateers. After William’s conquest, he had fled to France where the sympathetic French King Louis XIV assisted his efforts. In response, King William’s Privy Council decided to treat James’ supporters (Jacobites) as criminals rather than rebels. At the time, piracy was ‘nothing else but seizing ships and goods without a commission’. Since ‘King James had lost his sovereignty’, he no longer held ‘the power of granting such commissions.’ These men were pirates who ‘[broke] the common rules of honesty and justice.’

At the 1693 trial of eight of King James’ privateers, their Advocate, William Oldish, presented a different viewpoint. Oldish believed that under the law of nations, even rejected monarchs when fighting to regain their thrones had authority to grant commissions to privateers. Since the French and Irish still considered James the rightful king, Oldish positioned the men’s sovereign allegiance to James as their choice, rather than set by their obligations as Englishmen.

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7 Lords of the Council and the Admiralty, 'John Golding et al,' 1270. The men were prosecuted under the 1536 Offences at Sea Act, or *Trial of Offences Committed Upon the Sea, or within the Admiral's Jurisdiction, by the King's Commission*, England, 1536 (28 Hen. 8) C.A. P. XV.
8 'John Golding et al,' 1270.
The court extended its jurisdiction over the men through the 1536 *Offences at Sea Act*, a law passed by Henry VIII that linked piracy with treason.\(^{11}\) Although the court exercised its jurisdiction in King William’s name, as Irish Catholics the men considered James ‘our king’ and fought ‘king William, as king James’ enemy’ so considered their actions compared to land soldiers and prisoners of war, rather than treasonous pirates.\(^{12}\) Moreover, the privateers’ claimed to be unaware of the English Parliament’s decision on James’ ‘abdication’ so James’ alliance with French King Louis XIV only confirmed the legitimacy of his sovereign authority in their eyes. Oldish considered that since there was no doubt of James’ sovereign authority when he had ruled England, the privateers’ continued belief in it was sufficient for it to continue to exist. His statement that a ‘reputable power is equivalent to a real one’ would become crucial to how sovereign allegiance manifested amongst 21\(^{st}\) century Somalis.\(^{13}\) Finally, as King William had provided no benefit or support to the privateers, they felt no obligation to him. To the men, James’ sovereign authority emanated from him as an individual, regardless of the absence of his jurisdiction over the Admiralty Court.\(^{14}\)

The King James’ Privateers case showed the significance of the privateering commission as evidence of the sovereign’s authority and the sea-raider’s allegiance to him. The sovereign benefitted from this allegiance both in the naval service that the privateers provided and the prize money they contributed. For the sea-raider though, the commission authorised their attacks and identified the financial benefit as his

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\(^{11}\) *Offences at Sea Act*, 1536. The accompanying 1541 *Criminal Law Act* addressed the problem of English seafarers sailing under foreign commissions.


primary motivation: what prizes to take, when to take them and where to dispose of them. The case of the King James privateers exposed a striking corollary to commissions. Only when the legitimacy of the sovereign’s authority came into question did the sea-raider need to construct a legal identity around their sovereign allegiance. Oldish’s argument of sovereign allegiance as an individual choice, rather than an obligation meant that the privateering commission was evidence of only the sovereign’s authority, not the sea-raider’s allegiance.

The historical basis of Oldish’s argument

Oldish drew his argument from how sea-raiders had constructed their legal identity for at least a century before the trial. Their chosen allegiance to a sovereign during wartime meant the geo-political environment facilitated the success of their profession. However, the allure of sea-raiding during peacetime often outweighed the sea-raider’s superficial sovereign allegiance, as the following case study shows.

Sovereign authority in the Caribbean

In the early 17th century, the geographic isolation of the Caribbean meant sovereigns delegated their authority to colonial officials who then authorised sea-raiding to fund colonial settlement.15 The ubiquity of chokepoints and numerous islands away from primary settlement areas, combined with the rich pickings of the Spanish gold trade, created a highly attractive sea-raiding environment.16 Settlers relied on the prizes sea-raiders obtained at sea for their survival, creating a community of support for sea-raiding on land. During wartime, the sea-raider’s profit motivation also benefitted the

15 Zahedieh, ‘Privateering in Jamaica,’ 512.
16 For in-depth discussion on the geographic features of Caribbean sea-raiding see Galvin, Patterns of Pillage, 25. Even the narrow Central American land bridge (now the Panama Canal) provided access to a vast new ocean and coasts ripe for piratical pickings. A more contemporary definition describes a chokepoint as a ‘waterway with vital sea traffic that is vulnerable to accident, terrorism, piracy or war.’
colonial authorities. However, as the years passed, competing claims over Caribbean islands by the Spanish, Dutch, French, and English undermined the capacity of colonial authorities to express their sovereign's authority over the individuals who lived there. During peacetime, the absence of sovereign allegiance amongst unemployed sea-raiders created a unique personal identity independent of the colonial powers in the region.

Predominantly French, with a number of Dutch, English, and Portuguese, these sea-raiders gained the name ‘buccaneer’ from the cured meat (boucan) that formed the mainstay of their diet. Around 1630, buccaneers took possession of the small island of Tortuga, situated on the Windward Passage between Cuba and Hispaniola off the north-western coast of Hispaniola. Ruggedly inaccessible by land, Tortuga offered buccaneers a safe harbour, abundant fresh water, timber and hunting opportunities. The continued conflict between France and Spain meant political ownership of Tortuga existed in a near-constant state of flux, changing hands between Spain, England, and France over the course of decades. During their ownership of the island, the French and English governors realised the buccaneers’ usefulness and enlisted their help as authorised sea-raiders against Spain.

By 1660, the long years of war and the buccaneers’ sea-raiding ability transformed them into vital maritime resources for colonial powers. They were highly experienced veterans of war with established networks and sympathetic support from local

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17 See Zahedieh, ‘Privateering in Jamaica.’
18 Exquemelin, Bucaniers of America.
19 Galvin provided an in-depth discussion on the history of Tortuga. Galvin, Patterns of Pillage, 109.
government officials and merchants who benefitted from their gains. They were organised, adaptable and flexible, with good intelligence of naval movement and shallow-drafted, swift vessels.\textsuperscript{21} A commission provided the buccaneer with legitimacy and legal protection for prizes, but many did not care which government authorised their commission or even whether the date was still valid.\textsuperscript{22} This became evident during peacetime when colonial authorities struggled and failed to enforce their sovereign authority over the buccaneers.

According to the former pirate A O Exquemelin writing in 1684, the story of Tortuga buccaneer Pierre le Grand taking a great ship of the Spanish \textit{flota} and setting sail for France inspired the buccaneers of Tortuga to abandon peacetime planting and hunting and return to the seas.\textsuperscript{23} Despite the presence of the French governor, the buccaneers came back to Tortuga with the captured hides, tobacco, and other commodities, selling them to waiting ships and using the proceeds to fund more ventures. Without commissions, the buccaneers became the pirates of the Caribbean and Tortuga a notorious pirate haven.

The buccaneers’ turn to piracy exposed the weakness of colonial sovereign authority. By relying on the buccaneers’ expertise at sea to fight the Caribbean front of the many wars of the 17\textsuperscript{th} century, European colonial powers needed to grant them amnesty to gain their services as wartime privateers. This compromised the integrity of their sovereign authority during peacetime. Moreover, many authorities proved complicit in piracy. Governor Bertrand D’Ogeron of Tortuga, appointed by the French Government in 1664, attempted to gain some control in the notorious pirate haven by entering an

\textsuperscript{21} Little, \textit{Pirate Hunting}, 171.
\textsuperscript{22} Zahedieh, ‘Privateering in Jamaica,’ 524.
\textsuperscript{23} Exquemelin, \textit{Bucaniers of America}. 37.
agreement with settlers to recover either monies or returns from them, to no avail.\textsuperscript{24} Instead he bought the entire cargo of cocoa brought in by the pirate Francois L’Ollonois for a twentieth of its worth.\textsuperscript{25} In Jamaica, Governor Thomas Modyford did manage to exert some authority over the ‘unruly mob of wild, dissolute and tattered fellows’ of ‘all nations and languages’ who came in to Port Royal to sell their prizes.\textsuperscript{26} But the pirates left the town. Their desertion caused such a precipitous decline in commerce that he quickly changed his mind.\textsuperscript{27}

**The power of sovereign allegiance: The Dunkirkers**

The Caribbean buccaneers were not the only sea-raiders who chose and created their own sovereign identity during this era. On the Flemish coast of mainland Europe, the fearsome and devastatingly effective sea-raiders of Dunkirk (Dunkirkers) maintained a sovereign allegiance to Spain long after France took ownership of their operational base. Regulated as early as 1488, the Dunkirkers had supplemented Spanish warships since 1583.\textsuperscript{28} In 1646, the port of Dunkirk fell to France during the Franco-Spanish War (1635-59).\textsuperscript{29} As Graph 2 indicates, despite the French owning the port of Dunkirk, the Dunkirkers’ allegiance to Spain manifested in the number of French ships they took as prize. Spain regained control in 1652 but war with England caused Oliver Cromwell to take Dunkirk in 1658.\textsuperscript{30} Incensed, the Dunkirkers took English prizes in retaliation.\textsuperscript{31}

\textsuperscript{24} Ibid., 80.  
\textsuperscript{25} Ibid.  
\textsuperscript{26} Zahedieh, ‘Privateering in Jamaica,’ 520-22.  
\textsuperscript{27} Kris Lane, *Pillaging the Empire: Global Piracy on the High Seas 1500-1750*, Second ed. (New York, USA: Taylor & Francis, 2016), 102.  
\textsuperscript{28} R Baetens, ‘The Organization and Effects of Flemish Privateering in the Seventeenth Century,’ in *Acta Historiae Neerlandicae* (Dordrecht: Springer Netherlands, 1976), 48. Regulations stated clearly what Dunkirkers were allowed to seize. They concentrated on fishing fleets and merchantmen returning from the East Indies and Brazil, homeward bound fleets from Muscovy and the Baltic lands, and the richly laden merchantmen from Bordeaux.  
\textsuperscript{30} Ibid., 129, 229.  
\textsuperscript{31} Ibid., 229.
Their continued aggression towards English shipping hastened the decision of the English Parliament, despite disapproval from within, to sell Dunkirk to the French King Louis XIV in 1662.32

Louis had limited interest in Dunkirk or even military affairs at sea, so French ownership did not result in any French control over the Dunkirkers’ sea-raiding proclivities, including issuing commissions and prize adjudication.33 This lack of interest meant the Dunkirkers readily accepted commissions from the Governor of the Spanish Netherlands during Louis’ War of Devolution (1667-8) and raided French shipping.34 By 1673, 13 years after Louis took ownership of Dunkirk, the Dunkirkers continued to target French shipping during wartime (see Graph 3).35

Graph 2: Number of ships captured by Flemish privateers during Franco-Spanish War, 1649-165936

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34 Baetens, ‘Flemish Privateering,’ 66. The war proved the last stand for the beleaguered Spanish Empire, who conceded independence for Portugal in 1668.
36 Data graphed from Baetens, ‘Flemish Privateering,’ 66. War information added by author.
Graph 3: Number of ships captured by Flemish privateers, 1662-1678

Gradually, the Dunkirkers cooperated more with France. During peacetime, Dunkirk provided prominent sea-raiders, most notably Jean Bart, to the French Navy. With the help of Dunkirker expertise, France shifted its primary naval strategy away from guerre d’escadre to privateering for the Nine Years War (1688-97). During wartime however, the Dunkirkers’ depredations against France continued, with French ships comprising 80 per cent of prizes taken during the war. This indicated that in 25 years, France still did not exert sufficient sovereign authority over the Dunkirkers to stop them targeting French ships during wars.

Sovereign allegiance as a choice: the aftermath of the trial

The Caribbean buccaneers and the Dunkirkers showed that long before the King James Privateers stood trial, individuals at sea made their own choices about whether to respect sovereign authority (or not) despite the geo-political environment. As Rubin and Lincoln showed, the trial proved a turning point in the development of piracy law.

37 Data graphed from ibid. War information added by author.
38 Guerre d’escadre (‘clash of fleets’) involved adversaries arrayed in line across from each other at around 90 metres. It was a common tactic in the wars of attrition fought at the time. For a description of guerre d’escadre tactics, see Lynn, The Wars of Louis XIV, 93-98.
because it challenged the entrenched connection between high treason and piracy dictated by the *1536 Offences at Sea Act*.\(^{40}\) It also emphasised that privateering commissions were a matter of national discretion because ‘only English people without a valid commission were precluded from asserting belligerent rights as privateers against other English people.’\(^{41}\)

While not successful in the King James’ Privateers trial, Oldish’s position on sovereign allegiance gained further weight in the trial of Thomas Vaughan for piracy three years later.\(^{42}\) Accused of sailing with French subjects during the Nine Years War, Vaughan claimed to have been born on the French-owned Caribbean island of Martinique, but the jury found evidence suggesting he was Irish (and by extension a subject of the English king) more compelling.\(^{43}\) To complicate matters further for him, his crew were predominantly Dutch, making them also treasonous subjects of the English King William, who was also Prince of Orange. Advocates did not discuss the idea of dual nationality, but did find that by ‘serving under the French king’s commission, they had become his subjects.’\(^{44}\) This established a legal principle for Oldish’s position of sovereign allegiance as a choice, rather than an obligation.

At the conclusion of the Nine Years War (1688-97), the rise of piracy prompted the passing of a new *Piracy Act* that forbade Englishmen from deriving privateering protection from foreign commissions, legally separating treason from piracy and


\(^{41}\) Rubin, ‘Piracy in England,’ 73.


\(^{43}\) ‘Piracy in England,’ 76.

\(^{44}\) Ibid.
reflecting Oldish’s argument of the relevance of personal agency. It authorised vice-
admiralty courts in the colonies to prosecute pirates, particularly in the West Indies,
complementing the idea of the extension of the English personal legal identity. This
also meant allegiance to one’s chosen sovereign now took precedence over the
sovereign authority provided by a commission. At the same time, linking piracy more
closely with robbery rather than treason made it even more important to determine
whether or not the perpetrator had a valid commission. Rubin speculated that
distinguishing piracy from treason was also a political choice because trials using
Admiralty judges were quicker and easier than those in Common Law courts.

Curiously, the Piracy Act of 1698 remained valid for only seven years. There is no
explanation for this time limitation, but the Act had expired by the time Queen Anne
passed her Prize Act in 1708. Since piracy law had now reverted to the 1536 Offences
at Sea Act linking it to treason, Anne’s decision to forfeit the Crown’s share of the prize
meant she all but rubber-stamped the prize adjudication process. This made the
production of a commission the sole difference between a privateer and a pirate. The
Prize Act increased the incentives for privateers by eroding the Queen’s sovereign

45 Ibid., 78.
46 Thomson, Mercenaries, Pirates and Sovereigns. 708.
47 Lincoln, British Pirates and Society, 1680-1730. 64.
49 It encouraged privateering in response to the increasingly expensive War of Spanish Succession (1700-14). Anne’s initial attempt
to encourage privateering was encompassed in Her Majesties most gracious declaration, for the further encouragement of Her
ships of war and privateers. 1703. The Prize Act was actually entitled An Act for the Better Securing the Trade of This Kingdom by
Cruisers and Convoys, Great Britain, 1708 (6 Ann.) C A. XIII. It was also known as the Cruisers and Convoys Act. More analysis on
the impact of the Prize Act is in Craze, ‘Prosecuting Privateers for Piracy.’
50 The Prize Act of 1708 stated that ‘for the better and more effectual encouragement of the sea-service’ after 20 March 1708 any
ship taken as prize shall be retained as ‘sole interest and property’ ‘without further account’, meaning the Crown forfeited any
claims to a share of the prize, including ‘stores, apparel, guns and furniture.’ It did not remove the need for a commission and it
placed strict rules on prize adjudication, ensuring the queen received at least some indirect benefit from the liberalisation of prize-
taking ventures.
authority, entrenching the risk of privateers turning pirate at the end of the war and compromising the government’s capacity to suppress piracy.\textsuperscript{51}

**Exerting sovereign authority over pirates: the problem of piracy suppression**

The demobilisation of the Royal Navy at the end of the war in 1714 created widespread unemployment and a massive incentive for unemployed seafarers to turn to piracy, especially in the Caribbean.\textsuperscript{52} Support for piracy had fallen away in Jamaica because it threatened the lucrative and legitimate sugar trade so the pirates moved to other sympathetic and safe pirate havens in the Caribbean.\textsuperscript{53} Fortunately for pirates, a hurricane had sunk at least ten Spanish treasure ships loaded with silver coins and bullion near New Providence in the Bahamas.\textsuperscript{54} Pirates also moved to St Thomas, owned by the Danish and the nominally controlled Spanish island of Hispaniola. Between 1716 and 1726, up to 5,000 pirates cruised Caribbean and American waters.\textsuperscript{55}

According to Rediker, these Caribbean pirates almost universally rejected national and religious authority, their predominantly lower-class maritime origins, and their overwhelmingly Anglo-American heritage.\textsuperscript{56} As pirates, they did not target the plundered Spanish treasure ships, but the trading vessels of the region’s colonial powers. They exposed the limitations of colonial sovereign authority. Their lack of discrimination threatened the colonial powers’ economic interests and undermined fragile peace treaties. Rulers and their delegated authorities needed to decide whether

\textsuperscript{51} Lincoln, *British Pirates and Society, 1680-1730*. 73. Lincoln stated widening the legal definition of piracy reflected how settlers in West Indian and American plantations traded with pirates but she does not speculate on the time period limitation.

\textsuperscript{52} Rediker, *Between the Devil and the Deep Blue Sea*, 281.

\textsuperscript{53} Lane, *Pillaging the Empire (2016)*, 196.

\textsuperscript{54} Ibid., 142.

\textsuperscript{55} Rediker, *Between the Devil and the Deep Blue Sea*, 256. Earle puts the figure at around 2,000 with 5,000 ‘on the account’. Earle, *The Pirate Wars*, 162.

\textsuperscript{56} Lane, *Pillaging the Empire (2016)*, 176.
the pirate threat required intervention; a decision based on the resources available to them and their willingness to use them.

Outlawing sailing under foreign commissions without permission from the home government had only set an obligation for allegiance during wartime. Piracy showed this did not necessarily remain during peacetime.\textsuperscript{57} To suppress piracy, sovereign authorities needed to hold pirates to account for their actions by asserting authority over them. Since land-dwellers usually held more sovereign allegiance to the prevailing colonial authority, passing laws limiting their engagement with pirates had some effect. However, as had occurred in Jamaica, pirates only moved on to more amenable environs for their activities rather than ceasing them entirely. Passing anti-piracy laws provided an impression to former enemies of taking action against pirates in peacetime, but the absence of sovereign allegiance meant they required practical enforcement. This created a myriad of problems.

In the first instance, European powers lacked sufficient naval resources to undertake suppression. War and natural disasters took a significant toll on ships and the British Admiralty allocated the vessels that survived to homeland protection and protecting the lucrative Mediterranean trade from corsairs. The surviving naval vessels were over-tasked, under-manned, under-funded, under-provisioned and in ill-repair.\textsuperscript{58} Colonial governments proved reluctant to acquire suitable ships with sufficient manoeuvrability that matched the pirates’ operational environment and often wished to retain any

\textsuperscript{57} Ibid., 115. According to correspondence from Kris Lane, he used the Calendar of State Papers, America and West Indies, 1675-6, nos. 656, 741; 1677-80, nos. 313, 368, 478, 480; 1681-85, nos. 102, 395 to form this conclusion.

\textsuperscript{58} Little, \textit{Pirate Hunting}, 175. Natural disasters also contributed. During the War of Spanish Succession, the Great Storm of 1703 struck southern England and wiped out the entire Channel Squadron. All ships were lost and nearly 1,500 seamen died. Weather historian Hubert Lamb claims a far higher figure of 10,000 naval seamen died in the storm. See Maritime Archaeological and Historical Society, “The Great Storm Project.” 4 January 2016.
surviving ships for their own local defence, rather than act as convoy protection against pirates.\textsuperscript{59}

In addition, pirates were not the only people that refused to comply with the rules of sovereign authority. Naval commanders used their naval ships to collect illegal convoy fees and carry cargoes for merchants, while others refused to submit to the authority of local governors to pursue pirates.\textsuperscript{60} Some preferred to stay in port unless a voyage resulted in personal profit.\textsuperscript{61} Moreover, the violent disciplinary tactics of the navy and the withholding of wages for months in arrears provided little incentive for prospective seamen to join a naval fight against pirates.\textsuperscript{62}

Naval attacks on pirate bases had little lasting suppressive effect; and to add insult, Spanish, English and French privateers used the excuse of piracy retaliation as an excuse to execute plundering assaults on enemy towns. The limitations of naval resources and personnel meant that in the Caribbean, the Royal Navy failed to capture any pirate ships in 1715 or 1716 and only one in 1717.\textsuperscript{63} The British Admiralty hindered even these efforts by becoming preoccupied with containing costs and making shortcuts to provisions, crew numbers, careening, and convalescence of frequently sick crew.\textsuperscript{64} Suppressing Caribbean piracy hinged entirely on luck and fortitude, rather than strategy and investment.

\textsuperscript{59} Little, Pirate Hunting, 170. J R Jones, The Anglo-Dutch Wars of the Seventeenth Century, ed. H M Scott and B W Collins, Modern Wars in Perspective (Essex, UK: Longman Group Limited, 1996), 28. For example, even after forty years of Jamaican colonisation, the English still lacked vessels and personnel appropriate to local circumstances.

\textsuperscript{60} Earle, The Pirate Wars, 140. Little, Pirate Hunting, 175.

\textsuperscript{61} Pirate Hunting, 175. See also Earle, The Pirate Wars, 123. Earle described how incompetence contributed to the three disastrous campaigns of English Naval Commodores Warren, Littleton and Matthews (1698-1701) to eradicate the Madagascan pirate base at St Mary’s. Warren was responsible for the early rumours of Captain Kidd’s piracy and had a reputation as a notoriously incompetent naval commodore. Earle reported Matthews sailed up the wrong side of Madagascar.

\textsuperscript{62} Rediker, Villains of All Nations, 43. Merchants also used violence against seamen but did generally pay better.

\textsuperscript{63} Earle, The Pirate Wars, 183.

\textsuperscript{64} Ibid., 186.
In 1717, the British Parliament passed another Piracy Act. It permanently reinstated the 1698 Piracy Act to focus on the actions undertaken as a crime, rather than the treasonous betrayal of a perpetrator’s political identity through the absence of a commission. In 1718, an increasing sophistication in naval strategy and the bravery of some naval commanders facilitated the capture and deaths of some of the most notorious pirates of the time: Le Bour, Blackbeard, and Bartholomew Roberts. At the same time, King George I offered a pardon to all pirates who surrendered before 5 September 1718 for all piracy offences, including murder. The increased potential for capture and the absence of adverse consequences for accepting the pardon saw several competent pirate captains choose to leave the trade with several hundred of their men.

Scholars disagree on the scale and success of the naval-based suppression of Caribbean piracy. It seemed a combination of strengthening laws, prosecutions, and replacing corrupt officials worked only in collaboration with King George I’s policy of time-limited pardon for pirates. Nevertheless, by 1723, the Navy had killed or captured around a thousand pirates. However, more pirates escaped to live in pirate haunts or died of tropical diseases. More significantly, the assertion of sovereign authority in this way did not eradicate the problem of post-war piracy, as the references to

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65 An Act for the Further Preventing Robbery, Burglary and Other Felonies, and for the More Effectual Transportation of Felons, and Unlawful Exporters of Wool; and for Declaring the Law Upon Some Points Relating to Pirates., Great Britain, 1717 (4 Geo. 1) CAP. XI. The Act drew together Henry’s Offences at Sea Act of 1536 with William’s Piracy Act of 1698.
66 The Pirate Wars, 198.
67 Ibid.
68 For a war-like response to piracy by European powers see Lane, Pillaging the Empire (2016), 195. Earle, The Pirate Wars, 192.
69 For a less organised response see Guy Chet, The Ocean Is a Wilderness: Atlantic Piracy and the Limits of State Authority, 1688-1856 (Boston: University of Massachusetts Press, 2014), 21.
70 Earle, The Pirate Wars, 204.
71 Earle estimated at least 1,000 Navy personnel also died of disease during the campaign.
increases in pirate activity in the subsequent 1721 Piracy Act and the 1744 Piracy Act demonstrated.71

**Non-European sovereign authority**

Non-European rulers created their own forms of sovereign authority. For Europeans trading outside of Europe, unfamiliarity created difficulty determining who was legitimately sovereign in these lands and on these seas, whether to accept their authority, or whether the opposing parties were, in fact, pirates.72 This was particularly problematic in the Mediterranean, a major trading region for the European powers.

A ‘patriotic-religious obligation’ formed the basis of authority over the Mediterranean corsairs.73 As the Tripolitan ambassador in London explained to US statesman Thomas Jefferson in 1786: ‘[corsairing] was founded on the Laws of their Prophet, that it was written in their Koran [sic], that all nations who should not have acknowledged their authority were sinners, that it was their right and duty to make war upon them wherever they could be found, and to make slaves of all they could take as Prisoners, and that every Musselman [sic] who should be slain in Battle was sure to go to Paradise’.74 However, corsair captains were occasionally ‘footloose Europeans’ who according to the British were ‘little more than pirates who sought their fortunes under the star-spangled green banner of Algiers rather than the Jolly Roger.’75 A handful of

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72 Thomson, *Mercenaries, Pirates and Sovereigns*.


stories of renegades revealed more nuanced perceptions of their self-constructed sovereign identities.76

Englishman John Ward, a notorious and prolific sea-raider for Tunis in 1607, unsuccessfully tried to buy himself a pardon from King James I so that he could return to England. Fortunately, his wealth allowed him to retain the favour of the dey (ruler) and he died in Tunis in 1622.77 Similarly, Dutchman Simon Danseker made his fortune raiding European ships under the protection of the pasha of Algiers, despite never converting to Islam.78 He eventually settled in France where the Governor of Provence greeted his hefty donation of Muslim prisoners, freed slaves and gold ‘with every sign of joy.’79 Over the years, Danseker assisted the French against the corsairs, but his betrayal of his prior sovereign allegiance caught up with him in Tunis in 1615 when the dey executed him for ‘the many ships, spoils, and great riches he had taken from the Moors, and the merciless murder of their lives.’80

In Southeast Asia, many rulers encountered the same difficulties as Europeans in controlling the actions of their subjects. By the mid-18th century, sultans of the Sulu archipelago exercised a tenuous authority over the Iranun communities of slave-raiders through a carefully spun web of marital and political alliances.81 He provided a market for their captives even when the Iranun engaged in unsanctioned raiding, but authorised their banishment when their actions challenged his authority.82

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79 Ibid.
80 Ibid.
81 Warren, The Sulu Zone 1768-1898, 152.
82 Ibid.
political systems, the legitimacy and strength of their Sultan’s management of trade
determined the extent he controlled the sea-raiding way of life of sea peoples.\textsuperscript{83} A
sudden change, such as the death of their Sultan, weakened authority over people
who used sea-raiding as an act of survival.

As active participants in Somali piracy suppression, the Chinese drew on a long history
of problems suppressing piracy. In the late 18\textsuperscript{th} century, impoverished Chinese
fishermen turned to piracy to exploit the lucrative trade that traversed the numerous
waterways and islands of the South China Sea coast. Soon large, organised pirate fleets
from Vietnam’s Tay-son rebellion in 1793 arrived for the same purpose.\textsuperscript{84} Unwilling to
engage militarily with Vietnam, the Chinese government ignored the problem until
1796 when Chinese officials requested the Vietnam leadership undertake a
suppression effort. The token response caused the Chinese government to launch a
sea-war against the pirates, with little effect.\textsuperscript{85} Frustrated, the government took a
similar approach to King George I in the Caribbean, turning to pacification and pardon
to create division within pirate ranks. They were too late. Now highly organised,
Chinese pirates united and mobilised into a large pirate confederation that the Chinese
government proved powerless to stop.

Like their European predecessors, a dearth of suitable vessels and personnel
undermined the Chinese navy’s suppressive capacity, combined with a lack of political
will and a comprehensive strategy. Pirates began raiding Canton and Macau. In

\textsuperscript{83} Carl A Trocki, \textit{Prince of Pirates: The Temenggongs and the Development of Johor and Singapore 1784-1885} (Singapore: NUS
Press, 1979), 17.
\textsuperscript{84} Murray, \textit{Pirates of the South China Coast}, 45.
\textsuperscript{85} Ibid.
desperation, the Chinese turned to the British in Hong Kong for firepower.\(^86\)

Eventually, the large pirate confederation succumbed not to superior naval power but to internal divisions that destroyed its cohesiveness as an effective operation. The Chinese pirates never developed any sovereign allegiance to the Chinese Government. Instead, 9,000 pirates surrendered only after the pirate leader Kuo P’o-tai had a change of heart in late 1809.\(^87\)

While the epidemic proportions of Chinese piracy ended, piracy off the Chinese coast continued well into the 20th century. In 1930, Aleko Lilius wrote of his experience sailing with a pirate gang targeting British ships to and from Hong Kong in Bias Bay.\(^88\) China’s difficulty in suppressing local piracy re-emerged in the 1990s and its participation in Somali piracy suppression heralded a new era of piracy suppression problems for its Navy, discussed in Chapter 5.\(^89\)

**The expression of sovereign authority through the state**

Back in Britain, the legal legitimacy provided by the Piracy and Prize Acts passed in the latter half of the 18th century provided British seafarers with a clearer connectivity to their sovereign’s authority.\(^90\) The ubiquity of war meant the frequent use of their expertise as privateers gave a strong sense of their own worth, buoyed by public perceptions of them as patriots and heroes, contributing to their sovereign

\(^86\) Ibid., 120, 32.
\(^87\) Ibid., 140.
\(^88\) See Lilius, *I Sailed with Chinese Pirates*.
\(^90\) Beyond those already mentioned, see for example, *An Act for the More Effectual Securing and Encouraging the Trade of His Majesty’s British Subjects to America, and for the Encouragement of Seamen to Enter into His Majesty’s Service*. Great Britain, 1739 (13 Geo. 2) C A P. IV. *An Act to Amend an Act Made in the Eleventh Year of the Reign of King William the Third, Intituled, an Act for the More Effectual Suppression of Piracy*, 1744. *Privateers Agreeing for the Ransom of Neutral Ships Made Prizes*, Great Britain, 1758 c.25.
allegiance. As the century progressed, privateering became a popular and respectable outlet for the capital and labour of ship-owners and seafarers. It connected them further to the economic apparatus attached to their allegiance. More practically, privateering commissions exempted a ship from impressment, and meant it could sail during periods of embargo on shipping and without waiting for convoy. During war time, their legitimacy and positive public perception established their sovereign allegiance but the real test came in peace time.

In Britain, an 1808 trade agreement with Spain meant the Spanish government permitted British trade with Spanish America in return for Britain’s non-interference in the Spanish American Wars of Independence (1808-1833), significantly bolstering the British merchant marine. For the first time, former British privateers had sovereign allegiance and clear peacetime employment prospects. Prominent prize law judge Sir William Scott commented in 1819 that ‘piracy, at least in its simple and original form, was no longer in vogue.’ However, Spain’s loose grip on power around Jamaica and Cuba saw sea-raiders ‘of all nations’ take advantage of the wealth of opportunity Spain’s weakened authority presented.

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94 McCarthy, “A Sure Defence against the Foe,” 34.

95 Ibid., 36. McCarthy commented that there has been little coverage of privateering in the 19th century and his study on Spanish privateering and its effect on British sea trade was the only one of its kind to date.

96 Ibid. For discussion, see Earle, The Pirate Wars, 218-23. An account of one man’s experience at the hands of Cuban pirates in Smith, The Atrocities of Pirates.
Piracy suppression as a tool of colonial expansion

While pirates had moved to the peripheries of European society, the use of naval intervention against indigenous sea-raiders in European colonies occurred within a framework of maritime policing measures that developed, expanded and consolidated the positions of imperial colonial powers. To paraphrase Tilly, the implementation of the criminalisation of traditional sea-raiding practices under the guise of piracy suppression showed just how much coercion it took to bring indigenous people under effective state control. For example, in the Dutch East Indies, the British and Dutch used piracy suppression to shift the allegiance of people from local rulers who lived across the large geographically archipelagic region towards a centralised European-like state structure. A dearth of appropriate vessels, combined with the combative and competitive relationship between the two powers, meant it took until the early 20th century to establish allegiance to centralised control. Nevertheless, maritime crime remains a problem today.

Scholars interpreted piracy suppression as a method of gaining political hegemony and expressing prestige differently. Historian and ruler of the Emirate of Sharjah, Sultan Muhammad Al-Qasimi received a doctorate in history from the British University of Exeter in 1985. In his resulting book, The Myth of Arab Piracy in the Gulf, he argued the indigenous people of the Gulf, including the Qawasim and the Omanis, were not...

98 Tilly, The Formation of National States in Western Europe, 71.
Pirates and the history of sovereign authority

Sarah Craze, PhD Thesis

pirates. Instead, they were fighting against early 19th century British colonial efforts (in the guise of the British East India Company) to increase the British share of trade by any possible means. As a result, Al-Qasimi alleged the British navy’s desire to secure the Gulf region’s maritime routes disguised a concerted campaign against the powerful Qawasim. Painting them as pirates justified their expansive ambitions. The British historian Charles Davies responded in *The Blood-red Arab Flag* that some of the Qawasims’ actions between 1797 and 1820 against the British did amount to piracy, but that the Qawasims themselves were not pirates. However, the treaty signed in 1806 between East India Company and the Qawasim demonstrated the power imbalance that resulted from British expansion in the region. It provided consequences only for the Qawasims’ infringement on British property and vessels, not for the British undertaking the same infringements.

**The effect of the abolition of privateering on state development**

As the 19th century period of European peace progressed, the development of marine chronometers, steam technology and a change of construction materials from wood to steel facilitated significant technological advancement in ocean travel. This coincided with the swift centralisation of state control: the building of social infrastructure, service provision, economic regulation, population movement control,

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101 Ibid.
103 East India Company (Great Britain) and Qawasim. *Agreement between the East India Co. (Great Britain) and the Qawasim, Signed at Bunder Abbas*, 6 February 1806. Clive Parry, *Published in: Consolidated Treaty Series* (Oxford, UK: Oxford University Press).
and assurance of citizens’ welfare. By the mid-19th century, the British government had built a strong and capable navy and neither Britain nor France had authorised privateers for over forty years. To the British, privateering was ‘the weapon of the weaker naval power’ and the only real threat to naval supremacy. The British-led negotiations to abolish privateering culminated in the Declaration of Paris and set and solidified new international rules of Maritime Law. Notably, the Americans refused to sign the abolition agreement.

According to Thomson, the abolition of privateering in 1856 showed how the demands of other states, rather than the demands from their citizens, forced states to assert greater authority over citizens at sea. It precipitated an ‘upward spiral’ in the evolution of state authority and control that shifted the source of sovereign authority away from the sovereign to the new, centralised state. This new world order made states responsible for the violent actions of citizens at sea, but it did not resolve the logistical and financial challenges of exerting sovereign authority over individuals with no sovereign allegiance.

The expansion of legitimate occupations for seafarers through increasingly globalised trade combined with the protections European seafarers received through the state’s social contract with their citizens largely eradicated high seas piracy. By the early 20th century, maritime crime moved into the domain of state and colonial law and its management fell under the relevant state’s jurisdiction, as seen in the Chinese

105 Tilly charted this course of action from 1750, when European state governments began moving aggressively towards direct rule, culminating in unprecedented intervention in the lives of local communities, households, and productive enterprises. Tilly, Coercion, Capital, and European States AD 990-1990, 102.
106 Thomson, Mercenaries, Pirates and Sovereigns, 1034/3153.
108 Thomson, Mercenaries, Pirates and Sovereigns, 2078/3153.
109 Ibid., 2070/3153. The abolition coincided with delegitimising mercenaries and the demise of the mercantile companies.
example above. Although maritime crime remained problematic for seafarers, its failure to threaten global economic trade or national security meant its management remained a low priority to state policymakers until the late 20th century.

**Piracy and state sovereign authority: Maritime crime and piracy in the Malacca Strait**

In 1992, the International Maritime Bureau deemed ‘classic piracy’ a ‘relic of the past’ because ‘the greater part of these crimes are committed within the territorial waters of a sovereign state.’\(^{110}\) It had formed the ‘Regional Piracy Centre’ to address the rising rate of maritime crime occurring in Southeast Asia and the Malacca Strait, despite the vast majority of the reported crimes not meeting the international definition of piracy agreed in the 1982 United Nations Convention on the Law of the Sea (see Map 4).\(^ {111}\)

**Map 4: Global reports of ‘piracy’ and maritime crime according to IMB-PRC, 1993-2004\(^ {112}\)**

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In the early 1990s, the Federation of ASEAN Ship-owners’ Association and the Singapore National Ship-owners’ Association publicly expressed concern over sharp rises in hijacks and robberies, particularly in the Phillip Channel near Singapore and the waters near the Riau Islands in Indonesia. Common explanations for the motivations of these attacks followed a similar historic trajectory: the marginalisation of maritime-oriented people through the failure of the state to replace jobs lost to the late 20th century phenomenon of industrialised fishing. Individualistic feelings of hopelessness, indignity, and grievance against the state eroded seafaring individuals’ sovereign allegiance to their state and its laws. At the same time, the problems of historic piracy suppression remained.

Regional state policymakers gave maritime crime a low priority. Indonesia maintained a penchant for diplomatic solutions and a reluctance to commit resources to maritime security. Their minimal sea-based state-sponsored apparatus combined with the archipelagic nature of the region and created major jurisdictional issues with Malaysia and Singapore. More importantly, the cost of patrolling the waters remained a huge barrier, one all three states considered only surmountable with international assistance. Frustrated by the lack of state-sponsored action, a group of stakeholders

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115 Cribb and Ford discuss how Indonesia’s rulers have a long tradition of making a virtue of the lack of access to technology by emphasizing political solutions over technological ones. Robert Cribb and Michele Ford, 'Indonesia as an Archipelago: Managing Islands, Managing the Seas,' in Indonesia Beyond the Water's Edge, ed. Robert Cribb and Michele Ford (Singapore: ISEAS Publishing, 2009), 14.
established funding for International Maritime Bureau’s Regional Piracy Centre as a centralised depository for ship captains to report attacks.¹¹⁷

Graph 4: Maritime crime reports around Malacca Strait, 1993-2012 (Total = 1982)¹¹⁸

By 2004, the IMB-PRC reports indicated the vast majority of reported incidents in the region involved breaking and entering or theft at anchorages so remained under the jurisdiction of the state.¹¹⁹ Nevertheless, the same year Malaysia, Singapore and Indonesia began a program of trilateral coordinated maritime surface patrols. Some analysts described them as ‘more show than substance’ but the patrols indicated that the states had finally begun to intervene against criminality within their jurisdiction.¹²⁰ Statistically, incidents of piracy had declined by 2006, although Bradford speculated that the devastation of the 2004 Indian Ocean Tsunami and the subsequent


deployment of international relief forces in response played a key role.\textsuperscript{121}

Nevertheless, the USA and Japan spearheaded a naval response in keeping with their foreign policy agendas and treading the fine line of respecting regional sovereignty.\textsuperscript{122} Japan considered the crime an economic threat to a crucial trade route and the US held the more contemporary concerns of terrorism and weapons of mass destruction.\textsuperscript{123} Their combined patrols operated in collaboration with regional forces under the assumption that the appearance of naval vessels would act as a deterrent to pirates.\textsuperscript{124} As Graph 3 shows, reports of incidents did decline, only to swing up again.

**Conclusion**

This chapter established the historical context of individuals choosing sovereign allegiance and the consequences of its absence for sovereign authorities. It first appeared in legal circles through the King James Privateers’ trial when William Oldish raised the possibility of sovereign allegiance as a choice, rather than an obligation. The two case studies showed its historical precedence and its ubiquity across non-European jurisdictions. Piracy occurred when sovereign authorities failed to establish and exert their authority over sea-raiders without complementary allegiance. This failure, combined with logistical and resourcing factors, undermined efforts to suppress piracy.

Sovereign authority intersected with the use of Prize Acts that legitimised sea-raiding throughout the 18\textsuperscript{th} century, providing gainful employment for would-be pirates and...
banishing real pirates to the periphery of society. The abolition of privateering facilitated a clear legal distinction of piracy as a crime and coincided with the move towards centralisation of state structures in the mid-19th century, encapsulating sovereign authority within the state. The exportation of this centralised state structure combined with the illegality of piracy conflicted with the local inhabitants’ use of sea-raiding. Suppressing these sea-raiders became symbolic of the difficulty in establishing centralised state sovereign authority.

By the beginning of the 20th century, the successful deployment of the centralised state structure and its expression of sovereign authority over individuals at sea had largely eradicated high seas piracy. However, as the Malacca Strait issue in the 1990s showed, while the state now held responsibility for the management of maritime crime, it remained a difficult problem for it to solve.

In the event a state has collapsed entirely, the capacity to exert authority over the actions of inhabitants at sea disappears with it. This problem exploded onto the international maritime security agenda in 2008 when piracy off the coast of the failed state of Somalia reached levels unseen in 200 years. In keeping with the ideas outlined in this chapter, Chapter 2 examines the role of state failure as the cause of Somali piracy epidemic and examines the historic and contemporary Somali sovereign authority choices.
CHAPTER 2

The sovereign authority of Somali clans: (1840s – 2007)

For centuries, Somalis maintained a sovereign allegiance to their clan. From the late 19th century, this allegiance became a choice for them to make. The arrival of a top-down state-based authority, in the form of the British and Italian protectorates established in 1884, proved the antithesis of the democratic and decentralised authority of the clan. Overriding the clan’s sovereign authority by establishing state authority required a considerable amount of force. During the 1970s, the regime of General Siyad Barrè managed to accomplish this task, but his exploitation of clan rivalry to maintain power exposed the superficiality of state-based sovereign authority. The state’s collapse in 1991 removed the alternative choice of a state until only the clan remained. From this time, the international community considered the centralised state structure as the only option for Somalis, in keeping with the established norms of the modern state system. But like the pirates of old, Somalis chose the clan’s authority because it facilitated their survival. Moreover, the violent consequences of the state’s failure and the ensuing persistence of violence created an armed generation of youth who grew up with no knowledge of state-based control, only the fight for the supremacy of their clan. In this chapter I contest the Somali piracy epidemic arose for the same reasons historic piracy occurred: the Somalis’ chose a sovereign allegiance in opposition to the only convention of sovereign authority acceptable to the international community.

I do not dispute the reality of the failure of the Somali state. As post-colonialism and Marxism expert Peter Hitchcock described, ‘the weight of obviousness in the
statement appears to crush denial as well as all sense of counter-intuition.'¹ To the entire international community, the persistent failure of the Somali state and its inability to exert any sovereign authority, combined with favourable geographic conditions and opportunity, and a high risk/reward ratio became the primary explanation for the Somali piracy epidemic of 2008 to 2012. However, the closeness of the connection seemed dependent on the ideological viewpoint of the commentator and ignored how the protracted absence of the state over a 15 year period formed the personal identities of the pirates themselves. For example, American African affairs commentator J Peter Pham stated emphatically that ‘Somali piracy is linked to Somali politics – or rather, the failure of national politics in what was, until 1991, the Somali Democratic Republic.’² American naval analyst Martin Murphy agreed, ‘the collapse of the Siyad Barrè dictatorship in January 1991 appears to have triggered the country’s piracy problem.’³ However, Norwegian expert on Somali political affairs Stig Jarle Hansen was less convinced, concluding, ‘the absence of the state in Somalia possibly enabled the emergence of the Somali piracy that exists today, namely deep-sea piracy.’⁴ British political scientist Peter Chalk described the principal motivating influence of piracy as the ‘lack of a viable sovereign entity in Somalia’ but did not specify this entity as a top-down structured modern state in keeping with the norms of the modern state system.⁵ Only Hansen and Chalk seemed to recognise that claiming the source of the epidemic as ‘state failure’ ignored the unique roots of Somali

sovereign authority that lie far deeper in history and their influence on the contemporary political environment.

Instead of relying on the state failure explanation, over two chapters my examination of the cause of Somali piracy establishes a dichotomy between the surviving constructs of pre-state Somali society and the modern state norms of centralised state control and authority. My analysis shows major clan unity across Somali territory rarely existed prior to the arrival of a modern state structure. After 1978, the Somalis’ rebellion against the state showed clan unity required a considerable amount of force to implement and maintain. This created a predatory state and a brutal military regime. In addition, Somalia remains a harsh and difficult land prone to climate shocks that made establishing unity through economic progression very difficult. Analysis of colonial, Somali and UN sources showed the strength and safety of clan-based sovereign authority over an internationally manufactured, centralised ‘state’ from Mogadishu.

The international community’s refusal to recognise the Somalis’ constructs of sovereign authority contributed to the extended absence of a centralised state structure, or ‘state failure’. However, the consequences of the extended state failure meant Somalia remained challenged by ‘an unscrupulous opportunism of internal and external actors bent on profiting from the status quo.’ Predatory behaviour from illegal fishers proved one example. Considered the precursor to the Somali piracy epidemic, Somali men calling themselves baadaadinta badah (‘saviours of the sea’) cited a desire to protect their personal economic interests by demanding

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compensation from illegal fishers. By 2005, the foreign fishers began to arm themselves for protection, so the badaadinta badah turned their attention to foreign merchant ships. Since kidnap and ransom was a popular business for warlords on land, they extended this business model to the seas, dropping any remaining veneer of legitimate justification. By the middle of 2007, it became clear that they could operate with little impunity, either at home or from foreigners. The rich rewards of ransom payments brought millions of dollars into Somalia, motivating more and more young men to join in. The piracy epidemic began.

By examining the history of Somali clan-based sovereign authority and the consequences of the Somali state’s failure in 1991, this chapter explores the clan as the Somalis’ choice for sovereign allegiance, including for Somali pirates. Chapter 3 continues this examination by exploring the pirates’ home of Puntland, a clan-based semi-autonomous region where organised piracy began seventeen years after the state’s collapse.

**Pre-colonial Somali sovereign authority**

Prominent British scholar on Somalia, Ioan Lewis described the pre-colonial Somalia as a ‘pastoral democracy’ of semi-nomadic herders living in an arid environment, with a shared faith of Islam and a common language. Cassanelli noted that the lack of ‘early written records and the difficulty of interpreting oral and ethnographic sources’ meant ‘there are real problems in trying to write the history of a nomadic population [with]...’

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no tradition of centralised authority and no single geographical heartland.  

Historically, Somalis’ agnatic descent came through membership of one of six clan-families: the predominantly pastoral nomadic clans Darod, Dir, Hawiye and Isaaq, and the largely agricultural and sedentary Digil and Mirifle (Rahanwein). These six families divided into at least fifty major Somali sub-clans, with some of the largest containing sub-groups and lineages larger than neighbouring sub-clans. Each clan had some territorial exclusiveness and a degree of localisation within a very general tract of territory but, in contrast to European state structures of the 19th century, the vast geographical scattering of the clan-families (see Map 5 below) meant they could not act corporately as a political unit. Moreover, with a handful of exceptions, the Somali political system had no chiefs, no formal judiciary and no administrative hierarchy of officials. As the British War Office noted in 1907, ‘they are distinct tribes and there is no cohesion amongst them, except the Habr tribes [sub-clans of the Isaaq].’ They ‘rarely act in unison, unless threatened by a common danger [and] the scarcity of water makes the possession of wells a frequent cause of dispute.’

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12 Ibid., 1.


14 Ibid. Aside from these more scathing generalisations, the British described Somalis as the ‘Irish of Africa’: inveterate extroverts, religiously devout with notoriously unpredictable but attractive personalities, and prone to fierce resistance to any foreigner who tried to rule them. Geshekter, *Somali Maritime History*, 17. Sir Francis Burton described the Somalis as ‘uncommonly hard to please’ with a dislike of Arabs, Turks, Franks and all Asiatics but also ‘soft, merry, and affectionate souls’ who ‘pass without any apparent transition into a state of fury.’ Richard F Burton, *First Footsteps in East Africa* (2004). Walsh described them as excellent sportsmen who would ‘excel as detectives and spies’ as they ‘frequently exhibited boldness, discretion, skill and personal courage.’ Walsh, *Under the Flag*. 

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Exposed to British imperial control at Aden through their livestock trade with Arab communities, the Isaaq sub-clan Habr Owul (later corrected to ‘Awal’), signed the only two treaties between the Somalis and the British before 1880. Both treaties show the earliest evidence of how clan authority manifested in comparison to the solitary representation of the British. The first in 1827 sought compensation for the raiding of a British ship. The second in 1856 ended a blockade by the British in retaliation for the

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murder of British officers. Signed by the ‘Sheiks of the Habr-Owul’, the 1827 treaty named three Habr-Owul representatives while the 1856 treaty named ten representatives of four sub-clan lineages.

The first Somali state-like entity: establishing British Somaliland by treaty

All adult men within a sub-clan are elders, with varying levels of authority connected to wealth and religious status. Beginning in 1884, the treaties that established the British Somaliland protectorate attracted increasing numbers of Somali representatives. Sometimes groups selected delegates to represent them, so a Somali elder who signed a treaty with a foreign entity obtained status, legitimacy, and authority within the sub-clan. For example, the 1884 Berbera Agreement with the Habr Awal concerned British freedom of navigation, protection, cessation of slavery and a pledge not to cede territory unless into British hands. It recorded the names of 29 clan members from 11 different sub-lineages. Treaties with other Isaaq sub-clans; the Habar Tolje’lo, Issa Somali, and Habar Gahajis soon followed, with 78 different individuals and a dozen sub-lineages representing the sub-clans, while a sole individual continually represented British interests. Even acknowledged sultans with control over specific territory were not solitary signatories, indicating little comparison to

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17 Berbera Agreement: Peace, Friendship and Slave Trade, 7 November 1856.

18 Lewis discussed the complexity of elder authority in Lewis, A Pastoral Democracy, 198-203.


20 Ibid.

European sovereign authority at the time. Sultan Osman Mohamoud of the Majerteen Sultanate signed the 1884 ‘Mijjertayn Somal’ treaty concerning the treatment of shipwreck survivors (discussed further in Chapter 3) with eleven other clan elders.22

From 1884, the British Government, prompted by the need to defend its strategic interests in the Red Sea against the French, entered into protection treaties with all the ‘tribes’ of the north-eastern Somali coast, except the Dhulbahante (see Table 1).23 Supplementary agreements with the Isaaq sub-clans in 1886 created British Somaliland by providing ‘royal protection to the exclusion of other powers’.24 The protectorate had an estimated population of around 315,000 people; comprising the Dir clan (including the Issa and Gadabuursi), the Isaaq sub-clans Habar Awal, Habar Garhajis, and Habar Tolje’lo, and the Warsangeli sub-clan of the Darod.25 It established the first formal territorial boundaries around multiple Somali clans. The British seemed to show some level of sensitivity to inter-clan dynamics; while the wealthy Isaaq and the Dir had some trade rivalry, the Warsangelis’ territorial location had already established them as a ‘buffer’ between the north-western traders and the dominant Darod clan of the north-east, the Majerteen. Stereotyped as resourceful and energetic, the Isaaq emerged as the dominant clan in the protectorate.26

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23 Great Britain War Office, Official History of the Operations in Somaliland, 1901-04, 45. Protectorates offered a legitimate but much less complete form of government than a colony.


26 Studies of the Dir and Isaaq clans formed the basis of English language pre-colonial academic sources by Lewis and MacCallum. The complexity of clan relationships and the rivalry between them meant that these sources only inform one element of a pre-colonial Somali story. British imperial control at Aden skewed Isaaq trade and migration patterns towards Europe, enabling the Isaaq sub-clans to build interpreting skills and become the first Somalis to live abroad in far greater numbers than other clans. However, one British official noted the Isaaq spent their wealth on commodities that made life easier, rather than ‘in a way likely to permanently benefit the country.’ Habr Gerhajis members prepared shooting expeditions for the British at Berbera and Walsh wrote of the Somalis who served on ships of war as firemen or as officer’s servants and acted as sea-going interpreters who
Meanwhile, the French claimed the lands inhabited by the lise ethnic Somalis and Afar tribesmen that surrounded the Gulf of Tajura. The French intended to acquire intermediary status in the considerable trade between the Ethiopian hinterlands and the Mediterranean. They successfully diverted the coffee trade from British-occupied Zaila and forged strong commercial ties between ethnic Somalis and Ethiopia that saw their tiny protectorate prosper, to the economic benefit of all.

Table 1: British protectorate treaties signed in 1886

<table>
<thead>
<tr>
<th>Clan (Sub-clan)</th>
<th>Date</th>
<th>Sub-clan lineages (number of representatives)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isaaq[^31] (Habr-Awal)</td>
<td>1 February 1886</td>
<td>Bar Arab (2) Tibril Abokr (Rer Dallol lineage) (4) Baghoba (Rer Ali lineage) (2) Baghoba (Rer Mahmoud lineage) (2) Geuiss (2) Ba Habr Adan (2) Mahmoud Aysa-Ayser Musa (2) Aysa Musa (Adan Aysa lineage) (4) Makail (3) Bayari (1) Mahomed Tunis (1) Ba Aila (5) Bo-Ho (3) Bandeira (4) Ba Aysa Musa (3)</td>
<td>40 signatories from 15 different lineages</td>
</tr>
</tbody>
</table>

[^31]: Berbera Agreement: Non-Cession of Territory, Commerce, Slave Trade, 14 July 1884.
### Italian treaties with the Somali clans

The British reported over the years that the coastal region between Laas Koray and Ras Haafun occupied by the Darod family of clans, including the Majerteen and Warsangeli, produced no comparable international political structures to those established by the Dir and Isaaq. However, the Darod’s lands contained a more centralised power structure known as the Majeerteen Sultanate, examined further in Chapter 3. The Darod Sultans Yusuf Ali (Majeerteen/Osman Mohamoud/Bah Yacquub sub-clans) and Mahamuud (Majeerteen/Osman Mohamoud/Bah Dir sub-clans) occupied the north-eastern territory along the Indian Ocean coast. Despite being in-law relations, the men were bitter enemies and saw Italian protection as a useful way of obtaining weapons and financial reimbursement. They entered negotiations with the Italians, who were keen to obtain the prestige of foreign colonies. Unlike their Isaaq

<table>
<thead>
<tr>
<th>Isaaq</th>
<th>1 February 1886</th>
<th>Adan Madoba (14)</th>
<th>38 signatories from 5 different lineages.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Habr Toljaala)</td>
<td></td>
<td>Rerdod (5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Samber (4)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Yussuf (7)</td>
<td></td>
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<td>Abd-er Rahmin (8)</td>
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<td>Isaaq</td>
<td>1 February 1886</td>
<td>Jibril Adan (10)</td>
<td>18 signatories from 6 lineages.</td>
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<td>(Habr-Gerjajis)</td>
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<td>Mahomed Adan (1)</td>
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<td>Musa Array (3)</td>
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<td>Musa Bokr (2)</td>
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32 Supplementary Agreement with the Habr Toljaala (British Protection), 1 February 1886.
34 Lewis described the office of Sultan as the ‘only truly traditional titular political office in northern Somali society’ and its waning influence as colonists took control. He examined the role in Lewis, A Pastoral Democracy, 203-09.
compatriots, only the two sultans signed the 7 April 1889 protection agreement. 37

However, by the signing of the 1901 ‘Convention between Italy and the Sultan of the Medjourtines’ placing the Majeerteen under Italian protection, the sultan had become one of twelve other signatories. This signified the decline in his authority. 38

The Italians based their protectorate’s capital in Mogadiscio (Mogadishu), a commercial entrepôt in the western Indian Ocean trading system mostly populated by Arabs, Persians and Indians, and far south of the two men’s territories. 39 They entered protection agreements with the indigenous chiefs of Mogadiscio (3 signatories) in March 1891. Five years later, they signed agreements with the Marehan, Bon Marehan and Awlyahan sub-clans in Lugh (Luuq) to control the land edging closer to the Ethiopian border. 40

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39 Mogadishu, Marka and Barawe were also important outlets for products from the pastoral sector and were places of refuge for nomads in times of drought. Cassanelli, The Shaping of Somali Society, 26. According to Tripodi, widespread incompetence and improvisation by Italian politicians marred the Italian protectorate in Somalia. The Italians did not have a clear administrative agenda for colonial expansion beyond the acquisition of territories to add prestige to the Italian state. Tripodi, Colonial Legacy in Somalia. 26-48. See also D C S Healy, 'British Perceptions of Treaties with the Somalis: 1884-1897” (paper presented at the First International Congress of Somali Studies, 1980). Hess, 'The 'Mad Mullah' and Northern Somalia.'

Mohammed Abdullah Hassan: The beginning of a nationalised Somali identity

The establishment of the British, Italian and French protectorates formally divided the Somalis across their traditional lands for the first time. The British considered their protectorate the ‘butcher shop of Aden’ and focused their energies in East Africa towards Kenya and Uganda. In contrast, the Italians in southern Somalia followed a

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41 Lewis, A Pastoral Democracy, (unnumbered).
42 ‘Somalia: A Nation in Turmoil,’ 15.
The sovereign authority of Somali clans: (1840s – 2007)  

Sarah Craze, PhD Thesis

program of land colonisation. The Ethiopians agitated to forestall European occupation of the Somali coast by eventually claiming the Haud grazing grounds occupied by western Somali clans. This became the Ogaden region.

The traditional radiation of authority upward had always created a very flexible political system within Somali culture, but the arrival of European colonists meant the Somalis did not have the stability and durability needed to confront the Europeans’ well-armed centralised power. The division of Somalis, frustrations with Ethiopian incursion, and the authoritarian rule of the British and Italians led to the rise of Mohammed Abdullah Hassan, an Ogaden/Darod clansman who used his personal interpretation of Islam to unite Somalis across clan lineages. From 1900, Hassan spent 20 years waging a fierce jihad against British imperial rule in Somaliland that killed a third of the population.

The British dubbed Hassan the ‘Mad Mullah’ and his jihad expanded to Italian and Ethiopian occupiers as well as those Somalis who did not respond to his religious enthusiasm. While his Bah Geri/Ogaden sub-clan supported him, most of the Isaaq of British Somaliland ideologically opposed Hassan, with only sections of the Habar Yonis, Habar Tolje’lo and the Dhulbahante actively supporting him in British territory. The Warsangeli held no sympathy for his movement but assisted him by selling arms for

44 ‘Somalia: A Nation in Turmoil,’ 15. The Ethiopians used the western Somali clans as the source of provisions and supplies for their expansionist claims, leaving a ‘trail of devastation behind’.
47 A September 1921 letter to The Times from Sir Alfred Pease refuted the ‘mad’ label. Writing in response to the confirmation of the Mullah’s death, the former British Liberal Party politician and east African explorer stated, ‘like other ‘idealists’ of this kidney, he brought devastation and distress to a once prosperous country and happy people. But, if this signifies dementia, there are several other ‘Mad Mullahs’ still at large within the British Empire.’ Alfred E Pease, “The Somali Mullah,” The Times, London, 23 September 1921.
commercial profit. They later fought against him.⁴⁹ The Marehan sub-clans of the western region, under Yusuf Ali’s sultanate domain, suffered heavily from Hassan’s raids and had no alternative but to join him. Hassan’s agitations ultimately saw him assigned Nugal territory (located between Hobyo and Majerteen land) by the Italians. This gave him political recognition and significant prestige amongst all Somalis.⁵⁰

Image 4: The Mullah’s stronghold at Tale⁵¹

From 1930 to 1940, Italian infrastructure investment in Mogadishu caused increasing urbanisation. Discharged Somali soldiers, fresh from Italian campaigns in Ethiopia, doubled the population.⁵² The benefits of education helped Somalis gain employment in international ports and low-level civil service. The development of the first indigenous and sophisticated alphabet and script for the Somali language helped create a Somali national consciousness. In the north, Hassan’s struggle for freedom

⁴⁹ Ibid., 40.
⁵¹ Built in 1913 and destroyed by the British in 1920. Pankhurst, Ex-Italian Somaliland, 29.
⁵² Lewis, A Modern History of Somalia, 113.
inspired small groups of local merchants and traders to organise political associations to promote education and overcome traditional rivalries that divided Somali society.\textsuperscript{53} Organised nationalist parties, such as the Somali Youth League, National United Front and Somali National League gained traction.\textsuperscript{54} Despite his incursions against them, the Somalis eventually came to view Hassan as a unifying symbol of revolt; the embodiment of the Somali’s nomadic concept of freedom and liberty, and of their distrust for the non-Somali.\textsuperscript{55}

\textbf{Image 5: The Mullah’s memorial in Mogadishu}\textsuperscript{56}

Most African states moving towards independence maintained a passionate attachment to their colonial frontiers.\textsuperscript{57} In contrast, emerging Somali leaders, such as Haji Mohammed Hussein, President of the Greater Somali League, considered the

\textsuperscript{53} Ibid.
\textsuperscript{54} The role of the Somali Youth League in the independence movement is discussed in ‘Visible and Invisible Differences: The Somali Paradox,’ African Studies Review 74, no. 4 (2004) 489-515. See also Abdi, “Decolonization in the Horn and the Outcome of Somali Aspirations for Self-Determination.”
\textsuperscript{55} Hess, ‘The ‘Mad Mullah’ and Northern Somalia.’
\textsuperscript{56} Beachey, \textit{The Warrior Mullah}, 82. It was destroyed soon after the war began in 1991.
unity of all Somalis across all clans as the only way Somalis could exert sufficient sovereign authority against stronger powers.\(^{58}\) Known as the Pan-Somali Movement, this unity included Somalis in French Somaliland, northern Kenya and southern Ethiopia.

As early as 1946, the British began to consider independence and a union between the two protectorates to create a Somali ‘state’ within the new world order.\(^{59}\) The potential negative effects of Haji’s Pan-Somali advocacy on English, French and Ethiopian relations in the region deeply concerned the British over the next decade.

‘[His] prestige is enhanced because we are afraid of him,’ commented the British Foreign Office representative at the time.\(^{60}\)

**Somali independence and the establishment of sovereignty**

The British planned for British Somaliland’s independence on 26 June 1960 and then, five days later, its unification with the former Italian Somalia in the south.\(^{61}\) This meant unity was entirely up to the rulers of the new Somali Republic. From the outside, independence went smoothly. The United States recognised the new Somali Republic on 1 July 1960 in a congratulatory message from President Dwight D. Eisenhower to President Aden Abdulla Osman.\(^{62}\) Three months later, Somalia joined the United

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\(^{58}\) For background on the development of Somali nationalism, see Chapter 6 of *A Modern History of Somalia*.

\(^{59}\) This claim is made according to the cumulative documents on Somaliland available in the British National Archives. For discussions on British decolonisation in Africa, see John Flint, “Planned Decolonization and Its Failure in British Africa.” From the nationalist perspective, see Babou Cheikh Anta, ‘Decolonization or National Liberation: Debating the End of British Colonial Rule in Africa,’ *Annals of the American Academy of Political & Social Science* 632, no. 1 (2010) 41-54. Max Weber provided the seminal definition of a state in the 1960s as ‘a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory it has the sole right to use violence.’ Weber, *Politics as a Vocation*.

\(^{60}\) I Watt, Activities of Mahmoud Harbi and Haji Mohamed Hussein: Pan-Somali National Movement, CO 1015/2480.

\(^{61}\) British colonial correspondence curiously focused more on the postal arrangements and the supply of narcotics from the UK for the five-day interim period over any exit strategies. The post-independence Somali archives were destroyed in the 1991 war.

Nations and it recognised the new Somali state’s sovereignty. However, the Pan-Somali Movement remained the ideal of the strong nationalist movement. According to R M Hadow, of the British Embassy in Paris, the success of the union between the two protectorates ‘all depended on whether the people one was dealing with were responsible mortals or just drunk with the fumes of independence,’ he wrote to H C F Wilks at the Colonial Office.

The target of Hadow’s condescension was the refusal of the north and south to sign the other’s unification agreements. The vast disparities between each region’s development, including the education system, legal frameworks, telephone networks and linguistic differences, all contrived against unification. Moreover, tightened borders with French Somaliland meant Somalis now required passports and visas to visit relatives there. This fuelled great upset over familial separations and created huge practical and logistical problems because northerners could only acquire official documentation one thousand kilometres away in Mogadishu. The impact appeared lost on the departing British: ‘I am afraid this is another indication of the inability of the Somalis to get on with their neighbours on a reasonable level’, stated one official in April 1961 when discussing the poor relations between French Somaliland and the new Somali Republic.

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63 In 1995, Thomson articulated sovereignty as “the recognition by internal and external actors that the state has the exclusive authority to intervene coercively in activities within its territory.” Janice E Thomson, ‘State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research,’ International Studies Quarterly 39 (1995) 213-33. For discussion on the four elements of sovereignty, namely international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty see Stephen Krasner, Sovereignty: Organised Hypocrisy (New Jersey: Princeton University Press, 1999), 33. For
64 Quote handwritten on a file of archived documents in the National Archives. R M Hadow, Union between British Somaliland and Somalia, FO 371/146973.
66 Handwritten note on Colonial Office, Visit to French Somaliland by Hm Consul, FO 371/155294.
Creating economic unity after independence

Independence left heavy debts: at a proposed cost of £1.16 million, the new Somali state assumed responsibility for the past and present pensions of expatriate officials.\(^{67}\)

To help build Somalia’s economy, foreign missions and experts from the US, UK, UAR, USSR, UN, Italy, West Germany, Communist China, Czechoslovakia and the European Common Market set about attempting to establish agricultural food production as an economic commodity for Somalia.\(^{68}\) However, success relied on two factors of considerable uncertainty: the people’s participation and the weather.

Most of the small number of existing farmers derived a higher proportion of their income from livestock than cultivation, so expended little time and effort on crops.\(^{69}\)

To establish state control over food, Somalia’s rulers needed more labour and this meant turning the largely nomadic population into sedentary farmers. However, the major clans marginalised the pre-existing sedentary communities and nomadic males considered most forms of manual labour undignified. Moreover, the camel provided their prime source of prestige, power, greed, violence, wealth and theft.\(^{70}\) Its possession determined a nomad’s position within their clan and farming would do little to enhance the nomad’s capacity to acquire camels. Converting nomads to farmers required a state-led revolution in the fundamental structure and values of Somali society that was not at all to the nomads’ advantage.\(^{71}\)


\(^{69}\) Gunnar Haaland and Willem Keddeman, “Poverty Analysis: The Case of Rural Somalia,” *Economic development and cultural change* 32, no. 4 (1984) 843-60: 851. The authors cite the returns on livestock as three to four times higher than crops.


\(^{71}\) Contini, “Somalia Walks the Tightrope,” 35.
Faced with the nomads’ disinterest in giving up their lucrative pastoralist lifestyles, a climate shock dealt the agricultural initiatives an even harsher blow. In 1961, an unprecedented flood in the country’s only permanent agricultural area destroyed road infrastructure, farms and at least half of the country’s banana export industry.\textsuperscript{72} Prime Minister Abdirashid Ali Shermarke requested ‘5.25 million quintals of food imports’ or food and medical assistance for 600,000 people.\textsuperscript{73} Having barely recovered from the flood in the south, crippling drought gripped Somalia in 1964, prompting food donations from the US, China, the Catholic Relief Society and a kindly group of Mali women.\textsuperscript{74} Five years after becoming an independent state, Somalis had been brought to the brink of famine three times and were no closer to establishing agriculture as an economic revenue source or a consistent food supply.\textsuperscript{75} Economically, the lack of Somali business ownership meant that state power became the only method of wealth acquisition available. By 1967, unity between the two former protectorates finally gained clan-based traction, but the other failures of the government, including an economy petrified with nepotism, exploitation and corruption, caused a military coup in 1969. The only casualty was President Shermarke. General Mohammed Siyad Barrè had taken over.


To override clan divisions, General Siyad Barrè made the Pan-Somali Movement official policy. At the same time, he quickly consolidated his power base around his Marehan
(a sub-clan of the Darod) lineage and carefully selected members of co-opted marginal groups.\textsuperscript{76} In the Cold War era, Somalia’s key strategic location on the Gulf of Aden meant Siyad required and received significant financial and military support from the Soviet Union, creating one of East Africa’s best-equipped armed forces.\textsuperscript{77} In return, Somali ports provided Soviet warships access to the Persian Gulf’s oil-tanker lanes.\textsuperscript{78}

By the end of the 1970s, 51,500 Somalis belonged to the armed forces, 1.5% of the population.\textsuperscript{79}

\hspace{1cm} \textit{Establishing economic unity in the Barrè era}

Over the years, Barrè expended considerable effort to eliminate traditional clan allegiances and enforce the centralised state structure over Somalis. With Soviet support, he established a handful of irrigated farming schemes and fishing initiatives.\textsuperscript{80}

However, the nomadic lifestyle of pastoralists largely continued along its historical clan lines during his regime.\textsuperscript{81} In an effort to access the revenue of the livestock trade, in 1974 Barrè attempted to sedentarise the nomads. Four years of successive poor rain decimated the livestock industry and Barrè saw the opportunity the nomads’ migration in search of water presented.\textsuperscript{82} He ensured 250,000 nomads received food rations, a sliding scale of pay, free medical treatment and educational facilities in exchange for


\textsuperscript{78} Ibid.

\textsuperscript{79} ‘Sub-Saharan Africa,’ \textit{Military Balance, International Institute for Strategic Studies}, 53.

\textsuperscript{80} Peter Conze and Thomas Labahn, \textit{Somalia: Agriculture in the Winds of Change} (Germany: epi Verlag GmbH, 1986), 35. Farmers allowed nomads to graze their livestock on harvested fields. The common rain fed crops were sorghum, millet, groundnuts, maize, cow peas, and mung beans grown on smallholder farms. Sorghum was by far the most significant (90 per cent of production). Despite the state farms, sedentary Somalis (around 25 per cent) depended on the smallholder farms for food. Samatar, \textit{Somalia: Nation in Search of a State}, 101.

\textsuperscript{81} This is further detailed in Sarah Craze, ‘Food and the collapse of the Somali state’, under submission, June 2018.

\textsuperscript{82} Somalia’s situation contributed to a global food crisis brought on by severe drought, production shortfalls, a spike in food prices and the first global oil crisis that caused the US to reorientate its food aid policy towards broad-based development schemes, rather than just feeding hungry people their agricultural surplus. See Aaron D. Rietkerk, ‘The Constructive Use of Abundance: The UN World Food Programme and the Evolution of the International Food-Aid System During the Post-War Decades.,’ \textit{The International History Review} 38, no. 4 (2016) 788-813: 807.
moving the nomads onto his food production schemes. However, the extended period of drought, the breakdown of infrastructure, and negligence of irrigation systems affected production. Once rain returned and grazing conditions improved, some people returned to their nomadic life to rebuild their herds, but most migrated to Mogadishu or even to the Gulf States, hoping to find work.

While his attempts at establishing upward economic mobility for Somalia failed, throughout the 1970s, Barrè enjoyed the respect of most Somalis. The Pan-Somali policy overrode traditional clan rivalries and Somalis perceived the strength of their military as integral to its implementation. However, despite public condemnation of clan allegiances, Siyad used the significant level of international aid he received to reward loyalty to his regime, allowing him to buy protection from his and associated clans. In 1973, he created and armed a ‘People’s Militia’ of 3,000 individuals to prepare for the reclamation of the lands occupied by the Ogaden Somalis from the longtime enemy of Somalia: Ethiopia.

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84 Conze and Labahn, Somalia: Agriculture in the Winds of Change, 79.
87 ‘Sub-Saharan Africa,’ Military Balance, International Institute for Strategic Studies, 41. The term historically referred to a Soviet incarnation of ‘legitimate part-time or reserve retainers, followers or soldiers’ operating either under the umbrella of a factional leader, clan or ethnic group, or on their own behalf, but can also be synonymous with gangs and thugs exploiting state fragility. Alice Hills, ‘Warlords, Militia and Conflict in Contemporary Africa: A Re-Examination of Terms,’ Small Wars and Insurgencies 8, no. 1 (1997) 35-51: 39.
The centuries old rivalry between Ethiopians and Somalis created a playing field for the Cold War superpowers. In 1974, Ethiopia turned toward Soviet-style communism, disrupting its long-running alliance and relationship with the United States. Siyad’s unilateral decision to invade Ethiopia caused the Soviets to switch their support to Ethiopia. The Somali army owned a Soviet-supplied tank force three times the size of Ethiopia’s and a larger supply of aircraft (see Graph 1), however Military Balance estimated only a quarter of Siyad’s Soviet-supplied army equipment was operational.

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88 Graphs compiled from Military Balance volumes 70-90 (all recorded data available). Figures often approximate or estimated. See Appendix I for details.
90 ‘Sub-Saharan Africa,’ 53.
The 215,000 strong army of Ethiopia (including 17,000 Cubans and a People’s Militia of 100 to 150,000) destroyed much of the Somali army’s fighting capability.91

Siyad’s defeat at the hands of the Ethiopians proved a turning point in Somali support for his regime. His inability to demonstrate the effectiveness of his military on an international level combined with his inability to establish economic progress for Somalis caused serious dissent within the Barrè government. A number of clan-based rebel movements began to form (see Table 2).92 His notorious intelligence agency, National Security Services, undertook harsh measures against the slightest regime criticism, including the use of detention, torment and torture.93 In response to a coup attempt involving senior (mostly marginalised Majeerteen) members of his military in 1978, Siyad decided to issue weapons to his supporters, triggering the beginning of the collapse of law and order.

Somalia’s defeat also created a massive influx of ethnic-Somali refugees, the antithesis of the Pan-Somali objective to reclaim traditional Somali lands. Their arrival coincided with a severe drought. The crisis prompted the Barrè Government to seek and receive large amounts of food assistance for the refugees from the international community.94 With the domestic food supply compromised by drought and the torrential rains that succeeded it, Barrè made access to food (and denial of it) a mechanism for ensuring

the loyalty of his supporters. Before long, international observers accused him of misappropriating food aid. I contest in Chapter 5 these actions were the source of the international community’s distrust of Somalis that compromised its response to the Somali piracy epidemic.

Siyad shifted the objective of the People’s Militia towards maintaining internal control and swelled their numbers to 20,000, comprising mostly of the Ogadeen Darod clan. In 1989, he sent the Militia to the north to suppress his most serious rivals for power, the Isaaq. He also trained, sponsored and armed other clan-based militias, including his own Marehan militias. These were ordered to fight against the Majerteen’s Somali Salvation Democratic Front in central Somalia. A militia of the Gadabursi clan fought the Isaaq-comprised Somali National Movement, while a Gaalgale militia attacked the rural Abgaal members of the United Somali Congress. The Isaaq Diaspora formed the armed opposition group, the Somali National Front.

In 1988, the Government undertook savage reprisals towards the Isaaq population, killing tens of thousands of civilians and destroying the credibility of the army as a

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97 ‘Sub-Saharan Africa,’ 49. With supplementary information provided by Ingirits, “Siyad Barre Regime Questions”.

98 “Siyad Barre Regime Questions”.

99 Throughout the Barrè regime, the Isaaq had continued to facilitate the livestock export trade they had established centuries before. The threat of their autonomy and wealth caused their violent suppression in 1989. Testimony recorded by The Africa Watch Committee, ‘Somalia: A Government at War with its Own People,’ Africa Watch.
calming force. Rebel movements launched in the south and clan-affiliated warlords mobilised militia. By 1989, the military regime had become politically and diplomatically isolated and war against it engulfed most of the country. The clan-based rebel forces began to gain control of key Somali towns, dubbing Siyad ‘Mayor of Mogadishu’ as that was the only district his loyal forces effectively controlled. By 1990, even his own Darod clansmen abandoned him and in January 1991, Siyad fled Somalia.

**State collapse**

Before leaving, Siyad ensured the destruction of most of Mogadishu’s infrastructure and ordered his troops to slaughter livestock, destroy crops and massacre local cultivators. Already afflicted by famine, the devastation caused starvation throughout southern Somalia and inflicted a profound psychological blow on a militarised population already seething with clan-based hatred. No African or international leaders came to the assistance of non-profit relief agencies struggling to feed the population. Hundreds of thousands of Somalis died, including 75 per cent of children under five. Only a political vacuum remained.

The absence of any state representation meant Somalis suffered from the passivity and inaction of the administration of the UN, including the active discouragement of

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101 The Early Morning Phone Call, 28.
103 Ibid.
the US in addressing the humanitarian disaster.\textsuperscript{106} By July 1992, the UN Secretary General Boutros Boutros-Ghali publicly shamed the Security Council (and particularly the United States), accusing it of only being interested in the ‘rich man’s war’ in the Balkans and employing a ‘naked double standard’.\textsuperscript{107} In December 1992, the outgoing US President George Bush Sr reconsidered and authorised an unprecedented influx of 24,000 US troops.\textsuperscript{108} The United Nations Operation in Somalia (UNOSOM, also known by its American military code name Operation Restore Hope) became the first time the UN had authorised intervention without the consent of a sovereign government and explicitly for humanitarian intervention.\textsuperscript{109}

**The failure of the Somali state**

In the eyes of the international scholarship, the collapse of Siyad’s regime in Somalia and the resulting brutal civil war caused the failure of the Somali state.\textsuperscript{110} However, as this narrative shows, Barrè’s loss of the Ogaden War exposed to Somalis how he lacked the military strength required to override the clan’s sovereign authority and monopolise force over them. Their rebellion proved the collapse of the state’s sovereignty had begun years before Barrè’s escape. However, by pitting the clans against each other, Siyad drew on centuries-old rivalries that solidified the Somalis’ sovereign allegiance to their clan while severely compromising any hope of peace, let alone rebuilding state-based authority. As the following section shows, the severe

\begin{footnotesize}
\begin{enumerate}
\item Clark cited the US insistence on modifying the first UNSC resolution on the crisis from ‘ensuring a commitment to the cessation of hostilities’ to ‘seeking a commitment’. ‘Debacle in Somalia,’ 221.
\item *Saving Strangers*, 172.
\item The increased interest in post-Cold War failed states is commonly traced to a 1992 *Foreign Policy* article by Helman and Ratner, ‘Saving Failed States.’ Helman and Ratner defined a failed state as ‘utterly incapable of sustaining itself as a member of the international community’. See also, Brooks, *Failed States, or the State as Failure,* 1160. And also Rotberg, *Failed States, Collapsed States, Weak States: Causes and Indicators.* Zartman, *Collapsed States: The Disintegration and Restoration of Legitimate Authority.*
\end{enumerate}
\end{footnotesize}
devastation he left behind had long-term effects that entrenched clan authority, including the militarisation of the people and the proliferation of privately held arms; the essential role of food as the means of economy amongst Somalia’s famine-stricken population; and the maintenance of deep divisions amongst the clans.\(^{111}\)

The reality of life in post-collapse Somalia consistently showed how the clear lines of clan authority survived the collapse of the state. Moreover, individuals within clans vied for their own authority by controlling arms and/or food. The significance of an individual’s clan affiliation meant clan leaders could not tolerate the supremacy of one clan-affiliated individual emerging as a leader over another (or themselves). As the following section shows, for regular Somalis, clan allegiance was a matter of life or death. As the years passed, clan leaders conditioned the militarised youth. Many pirates grew up in this social and cultural environment.

**Gathering the means to monopolise force: arms**

The UN reported that more than 500,000 abandoned weapons littered Mogadishu in January 1992.\(^{112}\) The extent of the organised clan militia battles for power indicated Somalis retained a considerable number of operational weapons and a steady supply. After Siyad left, American sources claimed competing insurgent troops had acquired most of the former government’s working military equipment.\(^{113}\) The collapse of the Mengistu regime in Ethiopia in May 1991 became a significant source for ammunition

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and weapons in the Somali conflict, with US$18.26 billion worth of weapons in circulation.\textsuperscript{114}

The sheer volume of weapons made the UN’s disarmament policy - considered the reason for international military intervention in Somalia - impossible.\textsuperscript{115} Moreover, the major force behind the intervention, the United States, did not include disarmament in its mandate. This meant the UN lacked the capability to enforce its objective anyway.\textsuperscript{116}

\textbf{Gathering the means to monopolise force: food security}

The violence of the political vacuum connected directly with the meagre availability of food.\textsuperscript{117} The widespread drought in the Horn of Africa had already caused an 800 to 1,200 percent increase in food prices in Somalia before the state collapsed.\textsuperscript{118} Afterwards, cereal prices skyrocketed as the absence of regulatory bodies caused the value of animal exports to drop and a dramatic decline in household income. The destruction of most of Somalia’s infrastructure and the lack of government meant relief workers faced overwhelming distribution issues and looting so intense 80 per cent of relief commodities were lost by November 1992.\textsuperscript{119} Merchants stole food to keep prices high, clan-affiliated warlords stole it to feed their militias, and armed

\textsuperscript{114} ‘Managing Arms in Peace Processes: Somalia,’ 70. Adibe noted this figure is more than double the combined dollar value of all weapons imported in the same period by South Africa, Nigeria and Zimbabwe. The lucrative Kenyan arms trade remained in operation.\textsuperscript{115} Ibid., 69.\textsuperscript{116} The UNOSOM II initiative commencing in March 1993 included a comprehensive operational plan for ‘continuous and irreversible’ disarmament in Somalia, but again lacked the manpower and firepower to implement it. The resulting dispute is documented in Hirsch, \textit{Somalia and Operation Restore Hope}, 104-06.\textsuperscript{117} Andrew S Natsios, ‘Humanitarian Relief Intervention in Somalia: The Economics of Chaos,’ in \textit{Learning from Somalia: The Lessons of Armed Humanitarian Intervention}, ed. Walter Clarke and Jeffrey Herbst (Westview Press, 1997), 79.\textsuperscript{118} Ibid.\textsuperscript{119} ‘Managing Arms in Peace Processes: Somalia,’ 17.
individuals stole it to feed themselves.\textsuperscript{120} This caused the humanitarian food distribution to be uneven and haphazard, fuelling violence.\textsuperscript{121}

Access points for food relief became the only reliable source of food, pulling the conflict towards them. Food had become the medium of exchange and a principal source of wealth.\textsuperscript{122} The Somali merchant class, usually a stabilising source of commercial exchange, exploited the unnatural increase in food value and used their clan connections to not only protect their source of income but to obtain their stock.\textsuperscript{123} With food now a symbol of power, a clan-based militia leader’s ability to adhere to a peace agreement and control the actions of his men (especially the youth) linked explicitly to his capacity to discourage looting and feed them himself.

UN representative Mohamed M Sahnoun reasoned since arms and ammunition were easily available and food was not, Somalis would only voluntarily bring in their weapons in exchange for a food basket of sufficient attractiveness. The idea behind his food-for-arms program was to flood Somalia with food, but logistical inadequacies and bureaucratic inefficiency meant UN humanitarian agencies could not meet his ambitious food target. The Americans picked up the program in January 1993, but again, the limited supply of food available through food agencies caused tension and the Americans abandoned the idea.\textsuperscript{124} Eventually, Operation Restore Hope did largely stop the marauding bandits and warlords from stealing relief supplies.\textsuperscript{125} Threatened

\textsuperscript{120} Clark, ‘Debacle in Somalia,’ 212.
\textsuperscript{121} Ibid.
\textsuperscript{122} Natsios, ‘Humanitarian Relief Intervention in Somalia,’ 82. Natsios noted that food prices varied wildly day-to-day but were lower on days when food relief shipments arrived.
\textsuperscript{123} Ibid., 83.
\textsuperscript{124} ‘Managing Arms in Peace Processes: Somalia,’ 76.
by the US involvement, merchants also released hoarded food supplies onto the market, causing the price to drop significantly.  

**Gathering the means to monopolise force: control of the people**

With no alternate employment prospects, possession of a weapon allowed young men to join private armies or hire themselves out as guards. Here they had access to a ready supply of stolen food and enjoyed a dramatic improvement in their lifestyles not possible before. The corruption of the merchant class and the empowerment of the youth undermined the authority of clan elders, one of the only stabilising influences over Somalis, fundamentally changing the fabric of Somali civil society.

By 1992, the politically themed factions developed in the 1980s to resist the Barrè regime had proliferated into clan-based movements led by leaders of the former regime and military. They continued to identify themselves by their military titles. General Muhammad Farah Aideed, leader of the United Somali Congress (USC) emerged as a key player in the aftermath of the regime’s collapse. A former General in the Somali Army, he helped defeat Siyad’s forces in Mogadishu before entering into a bitter struggle for power with Ali Mahdi Mohamed, a former parliamentarian and prominent Mogadishu businessman/hotelier. After Siyad’s flight from Mogadishu, some sections of the USC pronounced Mahdi interim President, a claim Aideed violently rejected. The group split and Mahdi created the USC Manifesto Group that gained unchallenged control over economic activities in Mogadishu harbour and

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126 Natsios, ‘Humanitarian Relief Intervention in Somalia,’ 84.
127 Ibid.
Although a politically complex situation, hindsight suggested clan-based factions aligned either for or against Aideed.\footnote{Aspects of the conflict are discussed by Adam, 'Somalia: A Terrible Beauty Being Born?.'}

<table>
<thead>
<tr>
<th>Group</th>
<th>Sub-Clan</th>
<th>Backer</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somali Salvation National Movement</td>
<td>Dir/Bimaal</td>
<td>Dir communities</td>
<td>Originally sided with Aideed but left after Aideed engaged UN forces.</td>
</tr>
<tr>
<td>United Somali Front</td>
<td>Issa</td>
<td></td>
<td>Joined with SSNM.</td>
</tr>
<tr>
<td>Somali Democratic Alliance</td>
<td>Gadabursi</td>
<td></td>
<td>Joined with SSNM.</td>
</tr>
<tr>
<td>United Somali Party</td>
<td>Dhulbahante Warsangeli</td>
<td></td>
<td>Non-aligned, joined with SSDF to gain political influence in the foundation of Puntland.</td>
</tr>
<tr>
<td>United Somali Congress</td>
<td>Hawiye (Murasade &amp; Abgaal)</td>
<td>Somali National Movement, Former army personnel</td>
<td>Split and became the Somali National Alliance, led by General Aideed and fought for control of Mogadishu. Opposing side became Somali Salvation Alliance led by Ali Mahdi.</td>
</tr>
<tr>
<td>Somali Peoples Movement</td>
<td>Ogadeni</td>
<td></td>
<td>Pro-Aideed forces expelled from southern Kismayu by rival clans. Taken over by different military leaders, including Colonel Ahmed Omar Jees and former Barrè Defence Minister, General Gabiyo.</td>
</tr>
<tr>
<td>Somali National</td>
<td>Darod</td>
<td></td>
<td>Allied with Aideed, but later</td>
</tr>
</tbody>
</table>

\footnote{Ibid.}
Democratic Union joined SSDF and Puntland.

<table>
<thead>
<tr>
<th>USC Manifesto Group(^\text{131})</th>
<th>Hawiye</th>
<th>Led by Mahdi and comprised of remains of SNM split. Cooperated with UN but failed to form a government.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somali Africans Muke Organisation</td>
<td>Bantu</td>
<td>Allied with Mahdi although some joined Aideed.</td>
</tr>
<tr>
<td>Somali National Front</td>
<td>Marehan</td>
<td>Led by former General Maselle, tried and failed to exploit USC factionalisation.</td>
</tr>
<tr>
<td>Somali Democratic Movement</td>
<td>Rahanwayn</td>
<td>A little known neutral entity in Aideed/Mahdi conflict. Severely affected by famine.</td>
</tr>
</tbody>
</table>

NB: Grey shading indicates more influential factions.

Aideed’s dispute with Mahdi ran deep. It caused third party peace negotiations between them to proceed at a glacial pace. It took two months to persuade the two men to accept the deployment of 50 unarmed UN observers.\(^\text{132}\) UN representatives committed many cultural *faux pas* that exposed a preference for Mahdi’s leadership and infuriated Aideed, worsening the crisis. These ranged from referring to Mahdi as the interim President to offering a US$25,000 reward to any Somali for information that would lead to Aideed’s arrest, completely misreading the Somalis’ relationships with each other and foreigners.\(^\text{133}\) The lack of international respect for Aideed’s authority turned him against the UN and compromised the UN’s standing as a neutral party amongst everyday Somalis. This laid the ground for Aideed’s intense resistance.

\(^{131}\) The efforts by the Somali elite to persuade Siyad Barrè to step aside and avoid inevitable bloodshed are documented in Ingiriis, ‘The Making of the 1990 Manifesto: Somalia’s Last Chance for State Survival.’

\(^{132}\) ‘Managing Arms in Peace Processes: Somalia,’ 42.

\(^{133}\) Ibid., 102. The report described the offer as a ‘painful reminder of slavery.’
to the presence of UN troops in Mogadishu and the eventual withdrawal of the UN from Somalia altogether.134

**Failure of the international intervention**

While the UN’s intervention managed to alleviate the famine situation, reasons for the failure of its peace-building effort remain a topic of dispute amongst international scholars. These included: the weakness and slowness of UN bureaucracy and decision-making; questions over the security of the food and distribution networks and its centralisation from Mogadishu; the dispute over disarmament between the UN and the US; whether the UN and US gave too much legitimacy to perceived warlords like Aideed and Ali Mahdi; and most significantly, the validity of the UN’s decision to expand UNOSOM to assisting the Somali people to rebuild institutions and re-establish the rule of law and civil society (UNOSOM II).135

UNOSOM II took over during the deterioration of security in Mogadishu. US air attacks on Aideed-aligned clans killed over 100 civilians and turned Somalis and international public opinion against the Americans.136 A former senior diplomat, Aideed was well aware that targeting Americans would create pressure on the US Congress to withdraw American troops.137 The turning point came on 3 October 1993 when Aideed forces shot down two American Black Hawk helicopters. The resulting fire fight killed 18 Army Rangers, wounded 84 American service personnel and killed over 500 Somalis.138

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138 Ibid. Patman cited the number of Somalis killed as over 1,000. Patman, *Strategic Shortfall*, 41.
Facing growing public and Congressional pressure and dismayed by the loss of American lives, President Bill Clinton announced American troops would be out of Somalia by March 1994.\textsuperscript{139}

Without the US, the UN could only stand by and watch as Somalia descended into chaos.\textsuperscript{140} The UN withdrawal from Somalia in March 1995 became a short-lived victory for Aideed, who died in August 1996 of a gunshot wound. Mahdi became the nominal president of Somalia, but unable to control the flow of arms and the proliferation of clan-based militias, he exerted little authority beyond Mogadishu. He did manage to mediate an agreement with Aideed’s son, the former US Marine corporal Hussein Mohamed Aideed, in late 1997 to open the Mogadishu airport and seaport.\textsuperscript{141} Most significantly, the UN’s withdrawal began an informal policy of concerned neglect of Somalia that only began to end in 2007 when Somali pirates threatened trade in the Gulf of Aden. This is further discussed in Chapter 5.

\textbf{International attempts to rebuild the state: the challenges of Somali state-building}

Almost immediately after the state’s collapse, the Somalis began organising governmental structures along clan lines.\textsuperscript{142} These local state-building attempts initially became components of the international community’s ‘building-block’

\textsuperscript{139} Wheeler, \textit{Saving Strangers}, 199.
\textsuperscript{140} Patman, \textit{Strategic Shortfall}, 57.
\textsuperscript{141} See ‘Somali Political Leaders: Cairo Declaration on Somalia [Notes],’ \textit{African Journal of International and Comparative Law} 11, no. 1 (1999) 204-10.
approach to reinstating a federal state of Somalia based in Mogadishu.\textsuperscript{143} Supported by the United States and the European Union, federalism disregarded the fact that Siyad had required superpower levels of financial and military resources to maintain control and unity over the clans of Somalia. Even this control had lasted barely a decade before beginning to erode. The international community's idea that diplomacy alone could overcome entrenched clan divisions and grievances proved naive at best and at worst, actively contributed to ongoing war and conflict.\textsuperscript{144} By 2004, the international community had made more than twenty attempts to rebuild the Somali state that often culminated in disastrously unsuccessful deals with various warlords of the day.

Siyad's monopolisation of force had never entirely overcome the authoritative role of the clan in Somali cultural life. Even during Siyad's regime, Somalis had relied on their clan and kinship groups to provide for their personal security, especially in the rural areas. By fuelling clan divisions, Siyad created a generation of political elites that changed Somali political culture into a destructive practice of politics ruthlessly manipulated for narrow personal gain.\textsuperscript{145} His demise meant state power became the prize of the strongest clan. The internationally endorsed federal approach to state-building without regard to the Somali cultural and political context reinforced and institutionalised specific clans at the expense of others, underwrote and endorsed

\textsuperscript{143} Ken Menkhaus, 'Governance without Government in Somalia,' \textit{International Security} 31, no. 3 (2007) 74-106: 84. Menkhaus considered the building-block approach as an experiment in coexistence and power-sharing rather than a tool of ethnic hegemony and viable only in ethnically heterogeneous regions, such as the far south.

\textsuperscript{144} For discussion on this viewpoint, see 'Chapter 1: Reassessing Protracted State Collapse in Somalia,' in \textit{Somalia: State Collapse and the Threat of Terrorism} (2004).

warlords, undermined local state-building efforts, and viewed state-building entirely through its own agenda (such as counterterrorism).¹⁴⁶

The proliferation of arms by powerful local actors eroded the resolution process of the traditional Somali rule of law (Xeer) and the cultural standing of community elders.¹⁴⁷

Used as child soldiers during the war, the children routinely witnessed and undertook beatings and robberies, creating a generation who resolved conflict with violence. As one Somali who returned home in 1993 after eleven years away commented, ‘before, to make eye contact with an elder was a real taboo. Now the children look at you like they want to kill you.’¹⁴⁸

Despite the harsh reality of post-state life, the Somali experience of the violent and oppressive state under Siyad Barrè created high levels of uncertainty and risk aversion to rebuilding attempts. Moreover, the strong business community propagated fears of the effect of state institutions like taxation, regulation and even nationalisation; while criminal interests combined with clan loyalty to create private (and trusted) security.

As the state’s failure persisted, the question of whether Somalis even needed a centralised state became prominent among some foreign academics. Menkhaus wrote in 2006 ‘the mosaic of overlapping informal and formal systems does not add up to anything approaching a central state... but it does provide Somalis with a modicum of rule of law and predictability in a dangerous environment. Somalia is, in other words, without government but not without governance.’¹⁴⁹

¹⁴⁸ Geshekter, ‘Somali Maritime History,’ 32.
Barrè had never succeeded in establishing economic authority over Somalis. This meant when the state collapsed, Somalis not afflicted by famine proved economically robust. The collapse of the banking system had only taken the state’s fortunes with it because Somalis had much greater trust in direct remittances from overseas workers.\textsuperscript{150} Throughout the 2000s, a flourishing cross-border livestock market, Mogadishu’s trade entrepôt, banana commerce, telecommunications and money transfer services demonstrated a solid economic progression.\textsuperscript{151} Somalis suffered from a lack of education and adequate healthcare compared to other East African countries but were not exceptionally poor.\textsuperscript{152}

Yet to Somali commentators, perhaps a centralised state offered the opportunity for peace, if only Somalis could overcome the bitter divisions within their society. In 2006, Somali journalist Liban Ahmed wrote, ‘the absence of a popular confidence in the state—manifested in the desire to mistake wishes of [the] ethnic group for nation and institution building—subordinated the Somali statehood to tribalism, and has made it easier for the state [to] become a criminal in “oppressing the people”.’\textsuperscript{153} He argued that the formation of the first Republic of Somalia occurred around a common narrative, the Pan-Somali Movement. However the turbulence of the nation’s recent history caused such divisions people needed to facilitate entirely new thinking about the persistent political and social problems they faced.\textsuperscript{154} Another journalist writing for Hiiraan Online, Mohamed Shariff, expressed his support for a state but his frustration at foreign-led state building efforts. In keeping with Oldish’s argument in 1693, Shariff

\textsuperscript{150} Lewis, 'Visible and Invisible Differences: The Somali Paradox,' 504.
\textsuperscript{151} Lindley, \textit{The Early Morning Phone Call}, 30.
\textsuperscript{152} Ibid.
\textsuperscript{154} Ibid.
argued the people of Somalia needed to choose to give their state rulers political legitimacy, it did not just occur because the international community desired it. Yet when Somali-led state constructs brought peace, as occurred in 2006 through the Islamic Courts Union, foreign interference (discussed in detail in Chapter 5) only reinforced to Somalis the absence of their agency in decisions of sovereign authority. Shariff concluded ‘the world implied that genocide by opportunistic warlords [was] more tolerable than stability [provided] by an undesirable ideologue opponent.’

**Illegal fishing (1992-2005)**

As a precursor to Somali piracy, illegal fishing provided an apt example of the dichotomy between the state-free Somalis and the international community’s understanding of Somali sovereign authority. The state’s collapse caused foreign fishing companies to move in to Somalia’s unprotected waters and decimate local fish stock. By 2005, the UN estimated that approximately 700 unlicensed foreign vessels were fishing in Somali waters.

Undoubtedly, the global problem of illegal, unreported and unregulated (IUU) fishing is manageable only with significant investment and resources from the state. In Australia, the Australian Fisheries Management Authority used government-sponsored surveillance, monitoring, and patrols of Australia’s extensive maritime borders to reduce incursions of illegal fishers from 2005 to 2015 from 367 interdictions to 17. Over the same period, the Canadian Government’s use of these measures and

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156 Daniels, Somali Piracy and Terrorism in the Horn of Africa, 33-35.
diplomatic efforts caused a drop in infringements for illegal fishers of cod and redfish in the North Atlantic Ocean to below ten incidents per year. Clearly, a government’s pro-active support and intervention can limit IUU fishing, but the governments of states affected needed resourcing, coordination and political will.

Local, artisanal fishers from West Africa to Southeast Asia suffer from the inability or unwillingness of their government to protect their fishing grounds from high-impact, industrialised fishing. What the Australian and Canadian experience showed was that the modern state system dictated that it was a state’s job to police its own waters, not the responsibility of industrialised fishing companies to stay away from them. For many local fishers, including in Bangladesh, Indonesia and West Africa, the persistent incursion of foreign fishers meant some men felt they needed to take the protection of fishing resources into their own hands. Many Somalis had the same response:

It was 1999...Foreign trawlers passed near the beach. They were scraping the seafloor. Doing so, they destroyed all our fishing nets. When we came close to them they started shooting at us. My friend got shot in the stomach and I was shot in the leg. I thought I would die. Nobody offered any compensation for my loss. I decided to hunt those white infidels down. So I start fighting those Europeans.

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159 Fisheries and Oceans Canada, "NAFO Citations." 28 September 2017.
161 For an in-depth discussion on this motivating factor in the Southeast Asia context, see Liss, Oceans of Crime, 109-18. Also, John Vidal, "Is the EU Taking Its over-Fishing Habits to West African Waters?" The Guardian, UK, 2 April 2012.
162 Abdi Rage, self-identifying pirate quoted from Palotta and Wolting, Last Hijack Interactive.
the illegal fishing practices of foreigners made the fish disappear and we couldn’t make a living. That’s why we became pirates, they left us no choice. When we saw we’d die of hunger, we had to find other ways to survive.\textsuperscript{163}

In reflecting on his actions in 2011, one Somali who went to sea claimed the only way to preserve Somalia’s fishing waters for Somalis was to demand compensation from foreign fishing vessels. Abdullahi “Boyah” Abshir preferred to describe himself as \textit{badaadinta badah} (‘saviour of the sea’), translated in the English-speaking media as ‘coastguard’.\textsuperscript{164} To him, the compensation he received was a legitimate form of taxation levied in absentia on behalf of a defunct government that he represented in spirit, if not in law.\textsuperscript{165} After the long years of state failure, Somalis like Boyah did not construct their actions on the basis of the former state’s laws or international law.

Under the Islamic-based rule of customary law Somalis followed called the \textit{Xeer}, crime was determined in terms of property rights.\textsuperscript{166} To Boyah, the \textit{Xeer} justified his actions to seek compensation from foreign fishing companies that took fish that belonged to Somalis. This compensatory rather than punitive system was incompatible with contemporary, Westernised legal systems that dominated international law.

Under international law, by acting without a state’s authority, even for a ‘self-defence’ purpose, Boyah’s actions amounted to piracy.\textsuperscript{167} Despite its failure, the Somali state had never lost international recognition of its territorial sovereignty. This meant its

\textsuperscript{163} Unnamed incarcerated pirate quoted from Buñuel, ‘Don’t Tell My Mother I’m in Somalia.’
\textsuperscript{165} Ibid.
\textsuperscript{166} Spencer Heath MacCallum, “The Rule of Law without the State.” Ludwig von Mises Institute, 12 September 2007.
rulers retained responsibility for not only authorising mechanisms to deter foreign fishing vessels but controlling the actions of its citizens at sea. As this chapter showed, the Somali government had no capacity to do either of these tasks at this time. Even when the administrators of the northern region of Puntland took decisive action against illegal fishers soon after Puntland’s inception in 1998 (described in Chapter 3), accusations of piracy continued.\textsuperscript{168} By mid-2007, the identity construct of the \textit{badaadinta badah} had long been superseded by another cultural tradition that came into play: the allegiance of wealth with respect.

**Somali piracy**

Around 2005, the warlords who ran clan-based militias recognised the revenue raising potential of the threat of the \textit{badaadinta badah} to the foreign fishers and organised protection contracts with them. Unwilling to challenge the authority of their clan leaders turned warlord, the \textit{badaadinta badah} adapted to their environment and began to pursue commercial shipping vessels instead (see Graph 1 in the Introduction).\textsuperscript{169} From 1993 to 2004, 21 events reported to IMB-PRC met the definition of piracy according to UNCLOS (see red dots on Map 7), reflecting the \textit{badaadinta badahs’} metamorphosis into pirates.\textsuperscript{170}


\textsuperscript{169} Bahadur, "Somali Pirate: 'We're Not Murderers... We Just Attack Ships'." The IMB-PRC defined piracy more expansively than the UNCLOS definition during this period. 'Piracy Report (1 January - 31 December 2001),' 3.

\textsuperscript{170} See Appendix I for details.
By 2008, according to renowned Eyl-based pirate Boyah, a delegation of local clan and religious leaders declared to the local population that dealing with pirates was *haram* – religiously forbidden. The pronouncement came too late. As millions of dollars in ransom payments flowed into Somalia, protecting Somalia’s territorial waters had turned into a lucrative stream of personal profit and prestige. As one interviewed pirate stated:

171 Bahadur, “Somali Pirate: ‘We’re Not Murderers... We Just Attack Ships’.”
I spent my money on three houses and three cars. And I bought a mobile phone. That was the first time I ever owned one. I would press the phone to my ear and shout, ‘Hello? Can you hear me?’ I used it just like a radio. I kept shouting in my phone: any news about the ship? That’s how I tried to impress women. By talking out loud about ships.

Mohammed Nur, self-identifying pirate

So I said when you get the money, what are you going to do with it? Some of them said they had three wives. Their custom allowed four. So they would get another wife. That was the first thing they seemed to think of. Several of them wanted to go to Europe or the United States... So you can imagine that they wanted to get out and have a more successful life.

Colin Darch, Captain of Svitzer Korsakov

Warlords turned businessmen invested in pirate operations so successfully whole towns experienced building booms and economic benefits from the pirate trade. Many pirates became shore-based investors, providing financing to a pirate leader in charge of organising the expedition. A chief pirate commanded the force on shore, secured the pirate base and captured vessels, and became part of the committee of financiers. Investors also supported other criminal and legitimate business activities through and around Somalia, including the khat trade, warlords, and human trafficking. While some pirate money made it back into the community, for most people, piracy took a sinister turn:

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172 Palotta and Wolting, *Last Hijack Interactive*.  
173 Ibid.  
174 Chalk, ‘Piracy Off the Horn of Africa.’ Chalk provided a comprehensive analysis of the ‘low-tech’ operational aspects of Somali piracy, including the methods of hijack and the use of mother ships and weaponry.
My son used to be a pirate. But I fought to keep him at home. But when I went away one time, he immediately joined them again. But he never came back.

*Maryan Du’aale Mohamed*\(^{175}\)

For a child of 20 years old, almost still a teenager, to collect one million dollars. He has no skills, nothing to do with the money. Nowhere to go and no plans. He’ll lose everything in life. Alcohol, prostitution, and drugs will take their toll.

Secondary school students are being recruited and they’re offered alcohol and drugs and they promise them lots of money. And so they join them.

*Ismail Haji Abdi, Founder of Garowe Educational Centre*\(^{176}\)

\(^{175}\) Palotta and Wolting, *Last Hijack Interactive*.

\(^{176}\) Ibid.
Maps 8: Piracy events attributed by the IMB to Somalis, from 2005 to 2012

2005 (Pirated = 15) 2006 (Pirated = 5) 2007 (Pirated = 12)

2008 (Pirated = 42) 2009 (Pirated = 44) 2010 (Pirated = 49)

2011 (Pirated = 27) 2012 (Pirated = 11)

Red = Pirate encounter or hijack
Blue = Naval intervention
Yellow = Armed guard onboard

Accumulated and mapped from data retrieved from IMB-PRC Piracy Reports, 2005-12.

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The series of maps in Maps 8 demonstrates the rapid escalation of piracy from 2008. The small clusters of attacks around Mogadishu from 2005 to 2007 indicate the threat of piracy to food aid delivered to Mogadishu. By the end of 2008, the IMB reported 112 pirate attacks off the Somali coast, with 42 ships held for ransom, up from 12 the year before.\textsuperscript{178} As the 2009 map shows, the presence of UN-sponsored naval forces of the EU, NATO and the US-led Combined Maritime Force in the Gulf of Aden had begun causing the pirates to widen their operations into the Indian Ocean. Yet in 2010, 49 successful hijacks still occurred. As examined in Chapter 1, this was a direct reflection of how historic naval interventions against pirates often caused them to move to unpatrolled areas, rather than to stop. The ineffectiveness of the UN sponsored intervention (discussed in Chapter 5) is juxtaposed by the yellow dots that show the increasing number of ships carrying armed guards. By 2011, hijack numbers had dropped to 27 while reports of suspicious activity escalated to 171. This seemed more indicative of increases in reporting rather than the number of pirates. By 2012, the vast majority of ships travelled with armed guards on board. This facilitated a significant drop in attack report numbers, signalling the end of the epidemic.

As Chapter 3 picks up, most attacks occurred in the Gulf of Aden off the coast of the semi-autonomous region of Puntland, one thousand kilometres north of the Somali capital. As a region organised along clan lines and allegiance, Puntland reflected the significance of the clan’s authority amongst Somali pirates. How it interplays within a state-like structure is the subject of the next chapter.

Conclusion

In this chapter, I have shown that Somali culture and society functioned in direct contrast to the model of the state described in Chapter 1. The arrival of British and Italian colonisers set the course for centralised control, but within thirty years of independence, the Somali state had collapsed into chaos, anarchy, and violence. This left the clan as the only reliable source of sovereign authority. Allegiance to it became inherent to survival. As I contested in Chapter 1, the modern state system arose through the belief that sovereign authority retained legitimacy if the individual believed it to exist. For the occupants of many established modern states, maintaining allegiance to state-based authority is not a choice, it is a given. For the Somalis though, my analysis showed state-based authority had never been more than a temporary and superficial construct. Moreover, the catastrophic consequences of the state’s failure left them with their clan as the only choice of sovereign allegiance. My analysis revealed the cause of Somali piracy to be less the failure of the state to exert its sovereignty over its occupants, and more the failure of the Somalis to believe in a non-existent authority that had only brought misery and violence. I do not argue for the superiority of the clan as the prevailing sovereign authority, only recognition of the reality of its existence and its significant influence on how Somalis construct their sovereign identities. The international community’s insistence on rebuilding the Somali state within the norms of the modern state system ignored the Somalis’ agency in choosing their sovereign allegiance.

In this chapter I briefly touched on the cultural constructs around wealth and respect. To Somali nomads, camels represented the manifestation of this construct. For Siyad
Barrè, the possession of a well-equipped military earned him the respect he needed to unite the clans. The exposure of the ineffectiveness of his military in Ethiopia represented the demise in respect for his authority that led to the state’s failure. As I examine in Chapter 3, in Puntland, the wealth/respect construct competed with the Somalis’ recognition of a state-like structure. It played a crucial role in not only the piracy epidemic but the stability of Puntland’s state-like apparatus and its capacity to act as a suppressive authority.
CHAPTER 3

Puntland: state identity through the eyes of Somali pirates

The Somali piracy epidemic of 2008-12 originated from Puntland, a self-declared semi-autonomous region in the arid north-east. Created by elders in 1998, Puntland’s inhabitants descended from the Harti confederation between the Darod sub-clans of the Majeerteen, Warsangeli, and Dulbahante. Historic European encounters with the Darod tell of a dearth of natural and man-made resources and a brutal and opportunistic people hostile to foreigners. ¹ While not seafarers, the Majeerteen shared a raiding tradition with pirates. This contributed to a culture that linked greed and the acquisition of wealth with respect. ²

At its inception, Darod elders, dominated by the Majeerteen, used the clan’s sovereign authority to peacefully elect a president and establish a judiciary, security forces and nominal state-like structures to create Puntland. The new administration had no desire for independence because a Majeerteen contingent lived in the Kismayu region of southern Somalia. Puntland’s leadership advocated for a federally organised re-established Somalia. ³ Over the years, Puntland’s elders managed to exert sufficient sovereign authority to peacefully maintain more conventional state-like apparatus than found in Mogadishu, with little international recognition or formal financial assistance beyond emergency food aid. Until 2008, Puntland held little direct academic

interest beyond being a potential component of a federalised Somalia.\(^4\) Piracy caused Puntland’s emergence on the international stage.\(^5\)

Around 2007, Puntland faced significant economic and security challenges, weakening its inhabitants’ allegiance to its leadership. A territorial dispute with Somaliland and the rise of Al-Shabaab in the south consumed Puntland’s meagre security forces. At the same time, Saudi Arabia had banned the mainstay of Puntland’s economy, livestock exports, creating an economic crisis. When considered in the context of the wealth/respect tradition, the economic instability meant respect for Puntland’s President, Mahmoud Isse Hersi began to diminish amongst the sub-clans of the Majeerteen. The resulting fracturing of the Puntland alliance coincided with the rise of Somali piracy to epidemic proportions.

Chapter 1 established that the modern state system dictated responsibility for the actions of inhabitants at sea lay within the jurisdiction of the state and its institutions and Chapter 2 examined the difficulty of establishing this structure within Somalia. In this chapter, the various perspectives of this norm in Puntland and the state-like constructs in place before and during the piracy epidemic are examined for the first time. By examining the interplay of these perspectives, I establish the significance of Puntland in not only the success of the piracy epidemic but the opportunity it presented as a land-based source of authority in piracy suppression.

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In the first instance, the chapter establishes the historic rivalry and cultural traditions of Puntland’s leadership: the three powerful lineages of the Majeerteen sub-clan, the Umar Mahammud, the Iise Mahammud and the Ismaan Mahammud. The presidency of Puntland rotates amongst these lineages, creating an intimate connection between the territorial bases of each lineage, Puntland’s leadership and the Somali piracy epidemic. In keeping with the importance of land-based support for pirates, first established in Chapter 1, this chapter analyses this connectivity through the Iise Mahammud pirate base of Eyl. When taken in the context of the wealth/respect culture, I found that Eyl became representative of not only the piracy epidemic, but the volatility of the connection between Puntland’s presidency and the personal prestige of its incumbent. This affected the President’s capacity to exert authority over pirates from other lineages.

Secondly, I use pirate trial testimony to show how clan groups united to receive lucrative ransom payments that enriched and empowered private individuals. While showing that rival clans could work together for a mutually beneficial outcome, Somalis’ wealth/respect culture connected neatly with the individualistic rewards of piracy. At the time of the epidemic, Puntland could not compete with the wealth piracy provided and therefore could not use wealth to gain the respect needed to exert sufficient sovereign authority and override the lure of piracy. This provided a motive for complicity in piracy by Puntland’s authorities.

Finally, the chapter introduces the shift from examining the Somalis’ concept of sovereign authority to Part II of this thesis: how Somali sovereign authority is perceived by the international community. Pirate testimony showed no
acknowledgement of the existence of Puntland’s internal sovereignty in an American courtroom. Instead, the Shibin case study shows that despite how Oldish’s argument for the belief in sovereign authority to be sufficient to demonstrate its existence became the basis for sovereign allegiance within the modern state system, in the modern day, a piracy accusation overrode this claim. The court case showed that despite Shibin’s allegiance to Puntland’s authoritative capacity, if its leaders could not stop piracy it held no legitimacy in lieu of a centralised Somali state.

By demonstrating the complexity of the domestic and international challenges facing the government of Puntland, combined with the uniquely Somali factors of the intricate sub-clan relationships and a traditional culture of competitive wealth accumulation, the chapter establishes the difficulty Puntland Somalis faced in complying with the international norm of extending sovereign authority to control the actions of individuals at sea in the 21st century.

**The Majeerteen and shipwreck raiding**

Historic narratives describe how the harsh north-eastern lands of the tough and uncompromising Majeerteen created attitudes of mutual suspicion compounded by extreme xenophobia. Greed was associated with sharaf (respect) and the camel was a source of prestige, power, greed, violence, wealth and theft. Its acquisition and possession afforded the respect of the clan, especially when one displayed ambition to acquire it for the benefit of clan members. This environment created a ‘kill or be

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6 For in-depth insight into the role of the camel in Somalia, see Abokor, *The Camel in Somali Oral Traditions*.
7 Ingiriis, ‘The History of Somali Piracy,’ 247.
killed’ society of people who did not fear death and creatively sought wealth in a forbidding environment that lacked natural and man-made resources.8

As pictured in Map 9 below, the giant clockwise eddy (known as the Great Whirl) between Ras Haafun and Cape Guardafui emerged every summer to routinely provide two or three European shipwrecks each season along the Majeerteen’s coastline. Unlike other Somali clans, a sultan ruled the Majeerteen.9 With their geographic proximity to the Great Whirl, raiding the shipwrecks helped the Ismaan Mahamuud lineage of the Majeerteen consolidate their push for leadership of the sultanate.10 However, the sultan was not immune to European-style succession crises. In 1842, the Ali Suleyman and Siwakron lineages challenged the Ismaan Mahamuud’s power by refusing to share the proceeds of the Memnon, a British frigate. A council of clan elders inflicted a severe fine for ‘daring to appropriate to themselves property cast on the shore by the sea, without the consent of the ‘Sultan’s house’.11 The Ismaan Mahamuud eventually secured exclusive control over shipwrecks and throughout the 19th century dominated all the region’s local political economies.12

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8 Ibid., 240. Ingiriis cited the pastoral Somalis enthusiasm for camel rustling as an example.
9 Cruttenden, ‘Note on the Mijjertheyn Somalees,’ 321. Cruttenden stated ‘this is the only Somalee tribe that I have met who acknowledges the name Sultan.’ According to Lewis, by exerting tax-collecting capabilities, the Majerteen Sultan possessed more power than was typical of a Somali clan-head. Lewis, A Pastoral Democracy, 208-09.
11 Cruttenden, ‘Note on the Mijjertheyn Somalees,’ 326.
In 1843, Lieutenant W Christopher of the British Navy reported a friendly reception from locals throughout his travels up the Somali coast to Mogadishu but noted that in ‘the country wholly unknown from Makadishó to Hafún (Majeerteen Sultanate territory) a distance of 600 miles, there [is] no record of any European having visited the shore for the purpose of enquiry, [only water].’

As British, French, American, Indian and Arab merchants increased sea trade in the Gulf of Aden in the 1840s, a devastating drought brought Majeerteen nomads to the Indian Ocean coastal settlements in search of relief. The severity caused coastal residents to overcome hostility toward foreigners and establish trade relationships with the passing ships to

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13 Ibid., 288.
induce them to stop. As trade developed, it was not long before Majeerteen nomads increased livestock holdings and began producing staple commodities specifically for the export market, based in the area of what is now the northern port area of Bossasso.\(^{15}\)

The increased pastoral production required for the new export industry took a devastating toll on the Somali pastoral landscape. Lieutenant C J Cruttenden of the British Navy noted in 1844 the Majeerteen’s pride in being a ‘peaceful nation’ but the radical environmental changes created fierce competition for access to pastures and wells, causing blood feuds and skirmishes between herding sub-lineages.\(^{16}\) The Sultanate became destabilised by the death of the sultan and a blood feud over the murder of a Majeerteen man by a Warsangeli clansman provided an occasion for general warfare.

By 1868, drought exacerbated land degradation, causing an unprecedented famine.\(^{17}\) Internal rumblings again challenged the Ismaan Muhammad leadership of the Majeerteen sultanate. The head of the Ali Suleymaan sub-clan, Yuusuf Ali took it upon himself to plunder two wrecked steamers at Cape Guardafui without reserving the sultan his customary share.\(^{18}\) Yuusuf Ali sold his prizes in Aden for a fabulous sum, breaking the monopoly of the Ismaan on booty and patronage and setting the scene for extended warfare between the two sub-clans.\(^{19}\) By 1883, bogged down in warfare, famine struck again. The next year, the Majeerteen Sultan and the British, occupying Aden across the Gulf, brokered an agreement. The Sultan agreed to assist all British

\(^{15}\) Durrill, 'Atrocious Misery,' 296.  
\(^{16}\) Ibid., 301. Cruttenden, 'Note on the Mijjertheyn Somalees,' 326.  
\(^{17}\) Durrill, 'Atrocious Misery,' 301.  
\(^{18}\) Ibid., 303.  
\(^{19}\) Ibid., 304.
shipwreck survivors for an annuity of 360 Maria Theresa dollars and British officials in Aden agreed to purchase livestock from Majeerteen merchants.\textsuperscript{20} Eventually, the combination of environmental degradation, internal upheaval and a stronger foreign interloper in the Italians caused the decline of the Majeerteen Sultan’s authority.\textsuperscript{21} By 1884, the Majeerteen Sultanate subsumed into Italian Somaliland.

The story of the Majeerteen’s raiding activities demonstrated how Majeerteen clan-members acknowledged their Sultan’s sovereign authority sufficiently to forfeit their own desires and ensure he received a share of the shipwreck spoils. However, leadership uncertainty challenged the dominant sub-clan of the Sultanate. The opportunity to increase personal wealth through livestock exports eroded the unity of the Sultanate further, sparking conflict and establishing patterns of distrust mirrored again in 21\textsuperscript{st} century piracy.

**The genesis of Puntland**

As Chapter 2 examined, after Siyad Barrè lost the Ogaden war with Ethiopia in 1978, a group of seventeen Majeerteen military personnel staged a coup against his regime.\textsuperscript{22} The Majeerteen had played an active role in the Somali state after independence (providing the last pre-coup president and prime minister), but threatened by their dominance, the Barrè regime made them targets for oppression and alienation.\textsuperscript{23} The coup failed, leading to the execution of all but one of the coup participants, Colonel Abdullahi Yusuf, who fled to Ethiopia. In retaliation for the coup attempt, Siyad sent his

\textsuperscript{20} *Bunder Muriaya Agreement: Protection of Wrecked Vessels*, 1 May 1884.
\textsuperscript{21} Smith presented an alternative view by considering Mahmood and Ali ‘pirated international ships to negotiate their communities’ integration into the emerging international order’ and ‘that local rulers transformed themselves through piracy into clients to channel the benefits of colonial patronage’. Smith, ‘The Machinations of the Majerteen Sultans: Somali Pirates of the Late Nineteenth Century?’, 20, 23.
\textsuperscript{22} The political context of the coup is described in ‘Peace Initiatives in Puntland 1991-2007,’ 12-15.
\textsuperscript{23} Ibid.
notorious Duub Cas (Red Berets) to destroy precious water sources of Yusuf’s sub-clan, the Umar Mahamuud, causing the deaths of tens of thousands of cattle and thousands of people.\textsuperscript{24} As the Majeerteen poet Khalif Sheikh Mahammud articulated:

What is hard to accept is the gloating of the oppressor over the scattered Majeerteen corpses. And they’ve been heinously massacred as if they did not belong to the family of Muslims. Did not Mr Barrè – everywhere – mercilessly rain mortar shells and bullets on the Majeertees?\textsuperscript{25}

Abdullahi Yusuf continued the fight from Ethiopia, until his detention by Ethiopian authorities in 1985.\textsuperscript{26} After Ethiopian rebels released him six years later, Yusuf returned as head of the armed wing of the Somali Salvation Democratic Front (SSDF) and joined the battle for the remnants of the Somali state. Described as a warlord by international media, Yusuf claimed he held the favour of the United States, stating the US supplied him not just with cash, but with confidential information used to weaken his adversaries, some of whom held distinctly anti-American sensibilities.\textsuperscript{27}

Yusuf focused the SSDF’s war effort in the Mudug region around Hobyo to protect against the Hawiye clan’s potential encroachment. During the aftermath of the state’s collapse, Yusuf’s effort protected the north-eastern region from the war and allowed the retention of most of its public infrastructure, although it was prone to looting. A localised, traditional governance arose that addressed social, security, administrative

\textsuperscript{24} ’Somalia: A Nation in Turmoil,’ 18.
\textsuperscript{25} Ibid. Original Somali text: Mowdkiyo raqoodii miyaa laga dulmaansooday; Sidii waxan muslimahayn miyaa muxuuo loo laayeey; Madfac iyo rasaastii miyaa meel kastaba gaarey.
\textsuperscript{26} Barbara Aggerholm, “Somalian Eager to Join K-W Family,” Waterloo Region Record, 14 June 1991. Yusuf’s wife and four children lived in Canada at this time.
and political affairs and accommodated the educated and professional Majeerteens who fled back to the region with their administrative expertise and government experience.28

Creating and organising Puntland

From 1991, as the UN, US, and their allies participated in the fight to monopolise force in Mogadishu, a series of conferences led by senior SSDF members discussed security, leadership and representative issues.29 One conference included the signing of the vital Mudug Peace Agreement of 1993 between Yusuf and his main Hawiye rival, Mohamed Farah Aideed, leader of the United Somali Congress at the time.30 Yusuf advocated a ‘bottom-up’ approach to the Somali state, rather than the conventional ‘top-down’ approach advocated by some Somali political groups and the international community (see Chapter 2).31 He felt that the only way to establish the full participation of Somali civil society was through equal regional representation. He advocated for the 1960 independence arrangement as a basis for power-sharing between federated states of Somalia. He faced internal opposition to this idea, particularly from General Mohamed Abshir, but in 1994 eventually convened an SSDF Congress of all sub-clan affiliates that agreed to form a credible and functional administration in the north-east region. Abshir challenged Yusuf for the leadership of the SSDF and the resulting impasse caused the organisation to split, with neither section able to claim control of it.32 The formation of the administration stalled and

28 ‘Peace Initiatives in Puntland 1991-2007,’ 6. The report noted that despite the famine in the south killing hundreds of thousands of people, no starvation-related deaths were recorded in the north-east.
29 These are documented in ibid., 16-18.
30 The USC divided into opposing factions: see Chapter 2 for overview and sources on this point.
traditional elders worked hard to contain, prevent and resolve conflicts, successfully avoiding war.\(^{33}\)

The efforts of the north-easterners to form a state-like apparatus independently and peacefully in keeping with their traditional values and alliances gained little UN attention. However, the European Union encouraged the idea of a decentralised, regional administrative structure.\(^{34}\) In Somalia’s regional states, the initiative attracted a mixed response. As traditional allies of the Majeerteen, the Ethiopians supported the effort by facilitating the end of the internal conflicts in the SSDF to progress the creation of the regional administration. Egypt, Yemen and other Arab countries however, showed a clear bias towards the Hawiye-centred United Somali Congress that represented Mogadishu-based centralised control. They commandeered the relocation of a peace conference from the Gulf of Aden port of Bossasso to Baidoa, a southern town under military occupation by Hussein Aideed’s forces.\(^{35}\) Humiliated, the SSDF instructed Yusuf to withdraw and the conference never took place.

To the Darod elders, the incident only confirmed the need for a regional administration. By May 1998, a Garowe-based conference of over 300 elders met to create a 69-member parliament and a nine-member ministerial government in the Darod’s traditional lands, named Puntland.\(^{36}\) Yusuf’s dedication to his clan prompted his selection as president.\(^{37}\) He quickly set about establishing a parliament, council of ministers, government departments and independent organs, including taxation on

\(^{33}\) Ibid.


\(^{37}\) Ingiriis, "Abdullahi Yusuf: A Somali Warlord’s Life and Days."
the main source of potential revenue, the Bossaso port. Most Somali societal representatives, except the leader of neighbouring Somaliland who disapproved of the move, offered Puntland cautious congratulations. Within a few months, German and Danish delegations had met with Yusuf to discuss refugee repatriation, indicating a level of international acknowledgement of his legitimacy. Yusuf’s government recruited police, printed bank notes, established a university and tabled legislation to disarm the population. The practical implementation of the administration’s fledgling state-like apparatus was on its way.

Map 10: Puntland’s towns and villages

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42 A 2003 examination of the applicability of Weber’s definition of a state to Puntland appeared in Martin Doornbos, ‘When Is a State a State? Exploring Puntland, Somalia,’ in Global Forces and State Restructuring: Dynamics of State Formation and Collapse (New York: Palgrave MacMillan, 2006). Doornbos decided that while Weber’s definition remained relevant, Puntland showed ‘he might have laid much greater stress on aspects of functionality of various kinds that political entities have (or have not) within their socio-political contexts.’
Puntland and piracy

On 13 January 1998, a group of armed Somali men hijacked and ransomed the Belize-flagged and Bulgarian owned Alfa BG off Cape Guardafui. Taking 33 men hostage, including the Syrian crew of the ship towing the vessel, the hijackers from an ‘uncontrolled Somali military unit’ demanded a US$600,000 ransom, eventually agreeing to US$130,000. By 12 February 1998, the armed men released the seamen, all in good health. A similar hijack occurred to the crew of the MV Bushey around the same time. Even during the Garowe conference, armed men, claiming to be members of the SSDF, captured and detained two French nationals on a yacht. The incident offered Puntland’s founders the opportunity of publicly disassociating themselves from their SSDF roots, describing the hijackers as ‘criminal elements of the society’. Other elders, claiming to have no affiliation with Puntland, negotiated the release of the two Frenchmen and, after 52 days, secured the men’s release with unconfirmed reports of a $50,000 ransom payment.

While Puntland’s leaders dismissed these perpetrators as disenfranchised and rogue SSDF members, recurring incidents held the potential to destabilise Puntland’s clan-based unity. A share of a piracy ransom payment offered all Somalis a rare and lucrative source of personal income, in a traditional culture that equated personal wealth with respect. With only Bossaso port offering a reliable revenue stream for the
new administration, Puntland’s leaders needed to quickly find and secure alternate revenue streams to override the lure of piracy. The prevalence of illegal fishing in Somali waters offered Puntland’s leaders a sovereignty building and economic opportunity. Clearly, fish were a sought-after resource in the contemporary globalised economy, so by intercepting foreign fishers and demanding compensation, Puntland’s leaders could not only demonstrate their authority to their people by appealing to their long tradition of xenophobia but also tap into a potentially lucrative revenue stream.

The first intervention by Puntland authorities occurred in December 1998, when 33 Kenyan, Italian and Romanian fishermen on an Italian-owned fishing boat were brought before a self-styled court in Eyl and found guilty of ‘illegally entering Somali territorial waters and stealing its marine products, destroying property and possessing illegal weapons.’ The court confiscated the catch and the trawler and set a fine of US$500,000. In subsequent incidents, Puntland’s administration received compensation from dozens of foreign owners of fishing boats, allegedly from ‘Italy and Far East Asian countries’ for illegal fishing. For Puntland, these compensatory claims represented an expression of its sovereign authority to Somalis, combined with desperately needed financial resources for the administration. However, since Puntland’s sovereignty held no international legitimacy, the international community viewed the claims as piracy. Moreover, as Map 11 indicates, the ‘criminal elements of

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50 Few Somalis eat fish and most decided long ago that animal husbandry and livestock-keeping proved a far more profitable way of life than fishing and farming. Beyond coastal residents, fishing operated almost entirely as an export market. See Abokor, The Camel in Somali Oral Traditions, 1.

51 “Somali Court Sentences Detained Foreign Fishermen,” Agence France-Presse, 26 December 1998.


society’ still engaged in sporadic hijack and ransom of non-fishing vessels, significantly undermining any effort by Puntland to express its sovereign legitimacy internationally.

Map 11: IMB-PRC reports of hijack and ransom events off Puntland’s coastline, 1999-2002

Information collated and mapped by author from IMB-PRC Piracy Reports.
Puntland, Eyl and the Bahari Kenya incident

By 2001, Yusuf exhibited hostility to democracy and justice and a willingness to use violence to retain power, destabilising Puntland’s authoritative structure.\(^55\) When clan consensus by local elders elected his political rival Colonel Jama Ali Jama as his successor (a Londoner Yusuf described contemptuously as a ‘refugee’), Yusuf later admitted he ordered his militias ‘to demolish his house by artillery’.\(^56\) His refusal to step down after trying to extend his term without elections in June 2001 prompted another challenger to step forward, Judge Yussuf Hajji Nur, severely weakening Yusuf’s authority.\(^57\) According to the IMB-PRC, at this time, Somali gunmen from Eyl, 200 kilometres from Puntland’s capital Garowe, ‘boarded the Kenyan fishing vessel Bahari Kenya and detained her, taking 33 crew members hostage and demanding a US$1 million ransom payment for their release’.\(^58\) However, the vessel held a fishing permit issued by President Yusuf to fish in Puntland waters.\(^59\) By August, news sources reported the payment demand as a US$700,000 fine from an Eyl court.\(^60\) The reporting demonstrated the different perceptions of the incident by the IMB-PRC and the Somalis. It also showed the significance of the President’s legitimacy to the Puntland administration’s capacity to exert authority over the residents of Eyl.

Yusuf’s precarious grasp on the presidency combined with several realities for Puntland’s capacity to exert authority over the sea. Puntland’s three major population


\(^{56}\) Ingiriis, "Abdullahi Yusuf: A Somali Warlord’s Life and Days."


\(^{60}\) Hassan, "Somali Elders Have Fined a Kenyan Vessels $700,000 for Illegally Fishing in Somali Waters: Gunmen Hold Crew for Payment." Also reported as $450,000 in "Somali Gunmen Demand $450,000 Dollar "Fine" from Crew of Seized Boat."
centres, Bossaso, Garowe, and Qardho formed the core of the apparatus of its authority. The capital, Garowe, lay more than 200 kilometres away from the Indian Ocean coast (see Map 11 above) and the disrepair of the roads, combined with the large geographic distances required for travel, complicated the logistical challenges of providing authorised security personnel to not only protect coastal towns from pirates but stop the townspeople turning into pirates themselves.

Images 6 & 7: Skiffs on the beach of Eyl in 2015 and Eyl from the sea

The ancient coastal town of Eyl held all the historic hallmarks of a potential pirate base. Geographically isolated on the Indian Ocean coast, Eyl had traditionally provided respite and supplies for the Iise Mahamuud nomads in the Nugaal Valley region of the Majeerteen Sultanate. In the 1840s, the Nugaal Valley formed the heartland of the Majeerteen’s expansion of the livestock market for exportation, although Indian and Arab merchants dominated the export trade further north than Eyl. Coastal residents of towns like Eyl adapted to the environmental changes caused by the degradation of the Valley and turned to fishing. However, by 1880 even their resourcefulness was

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63 Ibid. Christopher’s account of his exploration north of Zanzibar stated ‘Makadishô to Hafûn was seldom visited except for water. No harbour is known or mart established’. Lieutenant W Christopher, ‘Extract from Journal by Lieut W Christopher, Commanding the H C Brig of War ‘Tigris’, on the E Coast of Africa, Dated 8 May 1843,’ 102.
destroyed by severe drought and famine, causing increasing armed conflict between the Iise Mahamuud and other Majeerteen lineages, particularly the Umar Mahamuud of the land to the north.\(^{64}\) Throughout colonisation, fishing dominated Eyl’s economy (Image 6) and Siyad Barrè established a fishing cooperative there in 1975, but despite international support, it never became profitable.\(^{65}\)

**Image 8: A Majeerteen boy with a shark, c. 1960 (location unknown)**\(^{66}\)

With its history of economic exploitation and marginalisation by other Majeerteen sub-clans, the Iise Mahamuud of Eyl opposed the authority of President Abdullahi Yusuf, a

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\(^{64}\) Durrill, ‘Atrocious Misery,’ 302-05.


\(^{66}\) The figure description states: “Illeg (Migiurtinia) – Un esemplare di pescecane” or Ilig (presumed to be the boy’s name) (Majeerteen) - a specimen of shark. The use of ‘Majeerteen’ as a descriptor by the author provided a general geographic location for the photograph and confirmation of fishing as a source of income but no exact location. Enrico Cerulli, *Somalia: La Poesia Dei Somali, La Tribu Somali, Lingua Somalia in Caratteri Arabi. Ed Altri Saggi* [Somalia: Somali Poetry, The Somalian Tribe, Somali Language in Arabic Characters, And other sages] (Rome, Italy: Ministero Degli Affari Esteri, 1964).
Umar Mahamuud.67 For the Iise Mahamuud, Yusuf’s power struggle with Colonel Jama and Judge Nur justified the invention of ‘their own court to legalise the demand for a fine’ for the Bahari Kenya.68 A group of elders eventually secured the freedom of the crew from their clan in November 2001, although it is unknown if they received remuneration or how much.69 By December 2001, Yusuf had overcome his opponents and consolidated his authority. No further reported incidents around Eyl occurred until February 2008, when Eyl began its meteoric rise to become a premier Somali piracy base.70

The legitimacy of Puntland’s authority: complicity in piracy

By October 2004, Yusuf had left Puntland to become President of Somalia’s Transitional Federal Government.71 His struggle for control established the fluidity of Puntland’s politics and emphasised its reliance on the status and influence of individuals. Australian academic David Dorward noted this during a visit to Puntland in 2003. He found that the presence of the Acting President Abdirahman Mohamud Farole as his escort during his road trip from Garowe to Bosasso assured a ‘hassle-free trip through towns and roadblocks’ of Yusuf’s militia but even Farole displayed nervousness in the ‘opposition’ territory north of Qardho.72 The highly personal nature of leadership connected directly to Puntland’s role in the Somali piracy epidemic.

67 Ingiriis, Abdullahi Yusuf Ahmed Question.
69 Ibid.
70 The IMB-PRC 2004 report showed a general cargo ship (name and flag unrecorded) hijacked 100km off Mogadishu and taken to the ‘Yeel’ area, but there is no further collaborating information on this incident to connect it to Eyl. ‘IMB-PRC Report 2004,’ 61.
71 Yusuf resigned from the Somali presidency in 2008 and died in 2012 of liver disease.
As Map 12 below shows, the IMB-PRC’s statistics reflect that the majority of piracy at this time occurred further south from Puntland’s territory (see Chapter 5 for a discussion on the cause behind these incidents).

Maps 12: Suspicious activity (green) and piracy (red), 2005 - 2007

Murphy theorised that Yusuf’s departure began the Puntland authorities’ complicity in piracy because he took considerable numbers of Puntland’s security force personnel and its wages budget with him.73 However, the expansion of the hijack and ransom model of piracy that would come to epitomise the Somali piracy epidemic began in the Gulf of Aden in late 2007. The Somali media confirmed the IMB-PRC statistics mapped above by suggesting that Yusuf’s successor, Mahmoud “Adde” Isse Hersi, a former General under Siyad Barrè and Canadian gas station owner, suppressed most Puntland-based maritime crime until at least early 2007.74 By this time, Puntland had entered a territorial dispute with Somaliland and also faced the rising Islamic

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74 Puntland suppression efforts are documented in "Somali Pirates Abandon French-Registered Vessel, Free Crew," Agence France-Presse, 16 July 2000. "Four Held in Somalia over Hijacked UN Ship," Xinhua News Agency, Nairobi, 27 February 2007. The vessel hijacked, the MV Rozen, was reportedly surrounded by five Puntland authorities’ police boats and that four men were arrested over the incident.
fundamentalist threat of Al-Shabaab from the south.75 The desire to protect itself from unwanted interlopers overrode piracy suppression as a priority for Puntland’s meagre security apparatus. More fundamentally though, Puntland struggled economically. In early 2007, Hersi investigated livestock exports to the UAE as Saudi Arabia’s ban on importing Somali livestock continued.76 He also authorised oil and mineral resource exploration by foreign companies.77 But these initiatives did not address immediate cashflow issues for Puntland and actually created political instability as clans, particularly the Warsengeli, claimed their private ownership of potential resource windfalls.78

Hansen speculated that piracy took off when Puntland’s financial position became so precarious it was unable to pay most of its security forces.79 Shortland used protection theory to conclude that support for Somali piracy only occurred in towns without sufficient revenue sources that could outstrip piracy.80 As the only functional port on Puntland’s Gulf of Aden coast, Bossaso’s geographic proximity to the spike in attacks gained it a reputation as a resupply port, although it never hosted hijacked ships. By early 2008, IMB-PRC reports found pirates hijacking ships in the Gulf of Aden took them around the Horn to settlements along the Indian Ocean, particularly Eyl. Already angered by the compromising of their fishing waters by foreigners, the Iise Mahamuud residents of Eyl had no significant financial revenue stream and its geographic isolation made it a perfect pirate base. Moreover, the Bahari Kenya case showed a volatile

76 BBC, “Somalia: Puntland President Vows to Defend Dhahar, Flies out to UAE.” ”Somali Livestock Exports to Jump as Saudi Ban Ends,” Reuters, 7 November 2009.
78 Hansen, Al-Shabaab in Somalia. 122.
79 Shortland and Varese, 'The Protector’s Choice,' 756.
80 Ibid., 759.
connection between the lisse Mahmuud of Eyl and Puntland’s sovereign authority.

President Hersi belonged to the Ismaan Mahmuud sub-clan of the Majeerteen, the main rulers of the former Majeerteen Sultanate.\textsuperscript{81} The lucrative revenue stream of piracy offered a chance for the lisse Mahamuud to overcome the Ismaan Mahmuud’s traditional dominance over them. By the end of 2009, Eyl had hosted almost 30 hijacked ships, enriching the town and its residents, and indicating Eyl-based pirates operated with impunity.\textsuperscript{82}

In cash-strapped Puntland, revenue from ransom payments quickly made the lisse Mahamuud a powerful political force and a potential source of vital revenue for Puntland. The case study of the \textit{CEC Future} in Chapter 4 used pirate testimony to reveal nearly US$600,000 of the $1.7 million ransom payment made it to Puntland’s capital Garowe (see Chart 2). However, the pirate did not reveal the distribution of it in the town.

President Hersi vigorously denied involvement in piracy personally, but his critics accused him and his ministers of taking bribes from the pirates to look the other way.\textsuperscript{83} The enrichment of pirates advanced their cultural status and facilitated their political influence, threatening the cohesiveness of Puntland’s authority. On a personal level, clan dynamics compromised Hersi’s influence as Puntland’s President over the lisse Mahamuud while the diminished security forces only compounded his weak position against them.

\textsuperscript{81} Ingiriis, Abdullahi Yusuf Ahmed \textit{Question}.

\textsuperscript{82} According to Shortland, up to 42 ships may have been held there while the IMB-PRC recorded around 30, including the Switzer Korsakov, Stella Maris, Thor Star, Bunga Melati Dua, Irene, Bunga Melati 5, Bright Ruby, Stolt Valor, Action, African Sanderling, Yasa Neslihan, CEC Future, Karagol, Delight, Biscaglia, Blue Star, Sea Princess, Longchamp, Saldanha, Titan, Bow Asir, Hansa Stavanger, Malasina Castle, Buccaneer, Irene EM, Pompei, Ariana, Victoria, and Horizon 1. \textit{IMB-PRC Report 2008.} International Maritime Bureau Piracy Reporting Centre, \textit{‘Piracy and Armed Robbery against Ships,’ Annual Report, ICC International Maritime Bureau, 1 January - 31 December 2009.}

\textsuperscript{83} CBC News, \textit{“Former Ottawa Gas Station Operator Rules Home State of Somali Pirates,” CBC News, 26 November 2008.}
In January 2009, Abdirahman Mohamud Farole peacefully succeeded Hersi as President. As a member of the Iise Mahmuud sub-clan and born in Eyl, the UN Security Council claimed piracy revenue funded Farole’s election campaign. Throughout 2009, Farole’s piracy connections increasingly undermined his international credibility and he moved to increase Puntland’s capacity to suppress pirate activity. He had the clan connections to eradicate Eyl as a pirate base and IMB-PRC statistics confirmed that from 2010, pirates no longer took hijacked ships to the town. However, he faced tough opposition from opposing clan-based operations elsewhere.

Pirates and the sovereign authority of the clan

In his memoir as a kidnap victim in Somalia, journalist Colin Freeman noted of his captors, ‘never so much as a sharp word or raised voice among them. Cooped up like this, a bunch of Westerners would have been at each other’s throats long before now.’ If members of the different clans were born enemies, members of the same clan seemed predisposed to get along. Testimony from a Warsangeli pirate, Jama “Barre” Ibrahim, provided insight into the authority intrinsically present within a clan lineage. He emphasised the territorial specificity of the clan and its limitations for the cross-clan unity required to unite Puntland:

85 Shortland and Varese, 'The Protector’s Choice,' 756. Shortland reported he used donor money to reinvigorate the fishing industry.
86 Farole vowed to crack down on piracy throughout his term, including the involvement of local authorities and oversaw its decline by 2011. For an overview of Farole’s actions against piracy, terrorism and other international crimes, see the documentary Electric Pictures, "The President vs the Pirates," (Australia: SBS Television, 2013). Also, International Crisis Group, 'Somalia: The Trouble with Puntland,' Briefing No. 64, 12 August 2009.
87 Freeman, Kidnapped: Life as a Somali Pirate Hostage. 2523/4821.
88 Ibid., 2522/4821.
89 Barre was a prosecution witness in the American trial of Ali Mohamed Ali, the alleged ransom negotiator for the Danish-owned CEC Future, hijacked by a Warsangeli and Majereteen pirate group in early 2008 and taken to Eyl.
The tribe in Somali[a] is very, very important. The regions are separated by tribes. The settlements where they stay are separated also be tribes... If you live in a tribe other than where your tribe originates, you cannot live there, you cannot do anything there... There's a possibility you can go there for work, but you can't stay there for long.90

This entrenched cohesiveness combined with a high level of organisation within the pirate group:

We had a very organised system. We had a commission that make [sic] all the decisions. There was a commander with authority over the leader of the ship. We also had an accountant and people for the calculations.

Mohamed Nur91

However, Warsangeli territory on the (disputed) border between Puntland and Somaliland and close to the primary port of Bossaso (see Map 12 above), could not provide a safe and isolated location for holding ships awaiting ransom payments. To gain access to Eyl, the Warsangeli pirate group entered into an alliance with a Majeerteen group:

So the agreement was that we bring the boat and the two skiffs, and we use those to go to the high seas. And the engines, some of the weapons, the fuel, and the food. The water supplies and the food that we’ll use. He [Ali Abdullahi, Warsangeli pirate leader] told me part of the agreement will be they [the Majeerteen] capture, they go to the high seas and they

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90 'United States of America vs Ali Mohamed Ali', #421, 14. Ibrahim made this statement in response to a question about the importance of 'the tribe and clan affiliation in Somalia'.
91 Palotta and Wolting, Last Hijack Interactive.
capture a ship. The ship will be taken to the Majeerteen people area. He
told me the Majeerteen guys would provide the RPG, which is essential to
the mission and whoever brings the RPG will have a share of the overall
ransom. The Warsangeli tribe were to [also] provide the translator.

Jama “Barrè” Ibrahim92

Despite coming together to form Puntland, the Majeerteen and Warsangeli pirates had
for centuries held each other in great distrust, united only by their Darod heritage. The
verbal agreement between the two groups described by Ibrahim concerned only one
ship hijack (in this case the Danish-owned CEC Future) and did not extend beyond
business purposes. Fully aware of this dynamic, the Majeerteen pirate leader, Omar
Baglye created a clan balance by heading a committee of two Majeerteen and two
Warsangeli men to ensure the safety and security of the ship during its captivity.93
Nevertheless, Ibrahim confirmed the lack of trust between the two groups when the
Majeerteen men transferred Ali Mohamed Ali, the Warsangeli ransom negotiator, to
the CEC Future:

We told them not to [board the ship] and the reason was because they
were Majeerteen guys... if all the new guys come on board, they would
have more Majeerteen guys than us, and we did not like that so we told
them not to... The deal was that they would bring food or supplies and the
translator only, nobody else.94

93 Ibid., 14.
94 Ibid., 40-41.
Conversely, the Warsangeli never questioned the trust between themselves, even when the men did not know each other well. Ibrahim asked the Warsangeli man supplying *khat* and sheep to the pirates on the ship to record all the purchases secretly because:

> The people who used to bring the stuff, they were Majeerteen guys. The idea behind that was they don’t claim more than they deliver later on when the money comes. And if they claim that, then we will have evidence that we have exactly what we used... He did it the right way [because] he brought me his notebook with the correct dates on it. And I used that against the other guy’s and their accounting.\(^{95}\)

Finally, the divisions of the sub-clans of the Majeerteen caused distrust between the pirate group and the Iise Mohammud of Eyl. Jama Ibrahim described how locals kidnapped the head pirate, Omar Abdullahi. Abdullahi’s brother secured his release after he paid a ransom (an undisclosed amount). The pirate group deducted the ransom payment from Abdullahi’s final remuneration.\(^{96}\)

This short case study provides a snapshot of the potential for peaceful and negotiated unity amongst residents of Puntland, despite a history of distrust, juxtaposed with the complexity of the Majeerteen’s internal dynamics. Of course, piracy provided a reward for accomplishing this unity that the Puntland administration was yet to provide.

As previously mentioned, unlike Somaliland, the Puntland administration did not seek to establish itself as an independent state from Somalia. In 2003, Dutch political

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\(^{95}\) Ibid., 43.

\(^{96}\) Ibid., 37-38.
scientist Martin Doornbos applied Weber’s definition of the state to Puntland. He concluded that entities like Puntland raised the theoretical question of how degrees of ‘stateness’ can be recognised. As the next case study demonstrates, while Puntland’s inhabitants gave its state-like apparatus their sovereign allegiance, outside of Puntland, the proliferation of piracy obliterated any ‘stateness’ claim.

**Puntland and the USA in court**

On a journey from India to the Netherlands, Puntland pirates took the German-owned chemical tanker *Marida Marguerite* approximately 190 kilometres south of Salalah in Oman on 8 May 2010. In his testimony in an American court, the Indian captain reported that only one of the six pirates who boarded the ship spoke sufficient English to communicate his group’s needs to the crew. So, after anchoring at Ras Hafun off the north-eastern Somali coast, the hijackers engaged Mohammad Saali Shibin to translate for them. Having successfully negotiated a ransom, Shibin was next expected to be a negotiator for the hijacked US yacht *SV Quest* almost a year later. However, this hijack turned sour after the pirates executed the hostages. In April 2011, US authorities extradited Shibin from Puntland to stand trial.

Puntland’s ambiguous status within the international community perplexed the US court. The exchanges between the judge and both attorneys demonstrated three key indicators of entrenched notions of the state and its responsibilities, founded in the American men’s identities as members of a strong and stable state. Firstly, the men held preconceived notions of sovereign authority recognition. Secondly, they assumed

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98 ‘IMB-PRC Report 2010,’ 63-64.
99 ‘United States of America vs Mohammad Saali Shibin’, #146, 207.
100 Ibid., 209.
interconnection between this recognition and a willingness to suppress piracy. Finally, they confused state functions with governance.

At the time of the trial, UN and US government documents acknowledged the existence of Puntland and suggested it had some state-like capacity as a separate entity from Somalia. However, this observation did not appear in the courtroom until Shibin described Puntland as a ‘regional administration, which is part of Somalia’ along with ‘Somaliland and Mogadishu’ and himself as a citizen of ‘Somalia, Puntland’. In response to questions concerning whether Puntland had state-like structures, such as a functioning government, an elected president, a legislature, judiciary and court system, Shibin replied affirmatively. Shibin also referred to his detention by ‘armed men’ in ‘military uniforms’ and his transfer to ‘the centre of an army’ that he had heard was funded by the US Government. Whoever these men were, they enjoyed sufficient status and recognition by the US to accept and action a request from the US Government to extradite Shibin to the US for trial. Shibin denied the prosecutor’s assertion that ‘there are cities along the coast of the Puntland region that are controlled by pirates.” He pointed out that while Puntland’s state-sponsored security forces struggled to control the coastal areas where pirates

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103 Jeffreys, United States of America vs Mohammad Saaili Shibin, #146, 59, 67, 72...

104 Ibid., 60.

105 It may be he was referring to the Puntland Maritime Protection Force (PMPF) established in 2011 and funded and trained by the United Arab Emirates. ‘SMEG Report 2012.’ "Somalia: UAE Will Continue Supporting PMPF, Says Puntland President."

106 ‘Mohammad Saaili Shibin v United States of America’, Motion to Suppress. United States District Court for the Eastern District of Virginia, Norfolk Division, (2012), 70.
operated, pirates did not control specific towns. In his view, the presence of these apparatus in Puntland proved its sovereign authority.

Judge Doumer concluded that he was:

under the impression that there was no established government there, but [Shibin] is saying there is established government there... so I’m assuming that the established government, therefore, has something to do with piracy.

In the first instance, the court’s assumption that the government ran the piracy ignored the unique problems of policing maritime crime in developing countries. In the 21st century, state governments in Indonesia, Guinea, and Nigeria all failed to manage problematic, ongoing maritime crime but their failure to do so does not automatically mean they were implicated in the crime nor that the state’s authority did not exist. As Chapter 1 demonstrated, governments have always struggled to prioritise piracy when faced with a myriad of other financial and security challenges.

Secondly, the court considered that the anchoring of the hijacked Marida Marguerite in Puntland territory cancelled Shibin’s claim of Puntland’s authority. It viewed stopping the proportionally small number of foreign ships from being targeted by a handful of Puntland’s inhabitants to be the highest priority for Puntland, with no consideration for its security capacity or land-based concerns. Finally, Judge Doumar’s main concern was any interconnection between the administration of Puntland and

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107 Ibid., 73. Ibrahim also acknowledged the presence of authorities, saying ‘the government, they have some police and some government police, if you will, who are fighting against the piracy, so they were afraid of those people, and they don’t want to come to our village,’ as the reason his pirate group met at sea. Kaneshiro-Miller, United States of America vs Ali Mohamed Ali, #421, 47.

108 ‘United States of America vs Mohammad Saaili Shibin’, #146, 69.
piracy that, if established, he considered would disqualify Puntland’s sovereign
authority entirely, rather than demonstrate the difficulty of exerting it.

By the time of the trial in 2012, the Puntland administration had established some
presence in international discourse. In April 2010, Somalia’s TFG had signed a
memorandum of understanding with Puntland on counter-piracy issues, indicating that
it at least considered the regional authorities had some legitimacy. As Chapter 5
examines, the TFG had only nominal territorial control around Mogadishu, corrupt and
ineffective state institutions, and required international forces to maintain peace in
Mogadishu, let alone manage the widespread Islamic fundamentalist movement
outside of the city. However, as the internationally approved government of Somalia,
the TFG represented the privilege of previous international recognition of Somalia’s
state sovereignty. In addition, the UN Monitoring Group on Somalia and Eritrea
described the Puntland Maritime Police Force (PMPF) as a ‘well-equipped elite force,
over 1,000 strong, with air assets used to carry out ground attacks, which operates
beyond the rule of law and reported directly to the President of Puntland.’

The PMPF demonstrated the UN’s internal conflict over Puntland. On one hand, it
represented how Puntland threatened the centralised state structure it intended for
Somalia. According to Australian academic David Dorward, Puntland operated as a
quasi-autonomous non-government organisation with a predatory administration of
fluid and complex alliances. On the other hand, it represented the only viable option
for piracy suppression that connected directly to the pirates themselves. In addition,

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110 ‘SMEG Report 2012,’ 22. Dubai-based Sterling Corporate Services trained and equipped the PMPF. See “Sterling Helps Puntland
Hunt Pirates,” Intelligence Online, 22 March 2012.
111 Dorward, ‘Insights from a Trip through Puntland: Civil Society in a ‘Quango-State’,” 41.
criticism of it came from the UN’s representative Matthew Bryden, who questioned the PMPF’s legitimacy because of its ‘flagrant breach of the [arms] sanctions regime, lack of transparency, accountability or regard for international law.’\textsuperscript{112} As documented in the Introduction section, controversy over Bryden’s support of Somaliland meant he attracted little support from Somalis.

The situation stymied the UN until early 2011, when UN Secretary-General Ban ki-Moon released a report by his Special Adviser, French politician Jack Lang, examining the prosecution and legal issues surrounding Somali piracy. The report drew attention to the status of Puntland and Somaliland as separate entities within Somalia and outside the chaos of Mogadishu. In the meantime though, the piracy suppression effort of Puntland’s President Farole indicated that despite the lack of international support for the PMPF outside of its major donor, the United Arab Emirates, the security force played a crucial role in deterring pirates on land.

\textbf{Piracy suppression, Somali-style}

By 2010, Puntland’s townspeople had grown increasingly frustrated by the pirates. At first, the townspeople were grateful for the money the pirates brought into their towns and the financial flow of support received by relatives with a pirate in the family.\textsuperscript{113} Michael Scott Moore, a German-American hostage in Somalia for over two years, reported his kidnappers seemed devout in their Muslim faith, yet reports from the land suggested the pirates engaged in stereotypical pirate behaviour: drinking,

\begin{itemize}
\item \textsuperscript{112} ‘SMEG Report 2012,’ 23.
\end{itemize}
carousing, and fighting.\textsuperscript{114} In Eyl, the pirates ‘were responsible for poor security, destroying the local culture, [increased] robberies, [and they] brought alcohol and prostitution’, said Muse Osman, Eyl’s Mayor.\textsuperscript{115}

Further north in Bargaal, a council of townspeople frustrated by similar pirate behaviour complained that Puntland’s inadequate budget, police or security forces meant authorities neglected security for their town.\textsuperscript{116} In March 2011, they took matters into their own hands, declaring pirate money \textit{haram} (against Islam) and organising an 80-man armed police force to turn back pirates seeking supplies from their town.\textsuperscript{117} The town’s initiative showed the limitations of Puntland’s security apparatus but other reports showed it as an effective deterrent. Pirates further south reported an ambush from ‘ten truck loads of Puntland security forces’ from Qhardo, a town 300 km inland.\textsuperscript{118} Interviewed pirate Mohammed Nur also confirmed its effectiveness, saying in 2013, ‘there’s a big difference now than how it was three years ago. People get caught very easily. They grab you like a cat grabs a mouse. When a policeman catches a pirate he will be promoted. You can’t even enjoy the money you get.’\textsuperscript{119}

Like their historic predecessors, Somalis realised the necessity of alternate sources of employment to piracy. Members of the local community started re-education programs with the support of the Puntland Government. Ismail Haji Abdi of the


\textsuperscript{115} Mohamed, “Somalia’s ‘Pirate Capital’ Is Its Best Kept Secret.” Similar complaints came from Bargaal.

\textsuperscript{116} “Into the Heart of the Pirate Lair.” \textit{SomaliaReport}, 13 April 2011.

\textsuperscript{117} Ibid.

\textsuperscript{118} Ibid.

\textsuperscript{119} Palotta and Wolting, \textit{Last Hijack Interactive}. 
Garowe Vocational Training Centre ran a three-month ‘Alternative Livelihood to Piracy’ program for ex-pirates, teaching classes in electrical engineering and woodwork.\textsuperscript{120} He stated in 2014, ‘there hasn’t been any piracy in Eyl for three years’ and he had helped 560 pirates by teaching them ‘about our culture and our beliefs’.\textsuperscript{121} The initiative attracted Japanese Government and UNICEF support and by 2017, it aimed to equip over 1,500 out of school youth with technical and vocational skills in seven regional areas.\textsuperscript{122}

\textbf{Image 9: 2011 graduation ceremonial banner for Alternative Livelihood to Piracy project}\textsuperscript{123}

As Part II of this thesis will attest, the UN recognised prosecution as the only way to hold pirates to account. By 2010, Puntland’s authorities had already realised that prosecuting their pirates offered access to development aid they desperately needed.

\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} Jairus Ligoo, "Providing Adolescents and Youth with Options in Somalia." UNICEF Somalia.
\textsuperscript{123} Webmaster, “Hay'ada Nca Do Garowe Ku Soo Gaba Gabeysay Kana Bilowday Tababar (Sawiro) Translated as Nca Arrives in Garowe,” Somali Broadcasting Corporation, 27 September 2011.
In December 2010, the Puntland Parliament passed Somalia’s first Anti-Piracy Law, specifically addressing piracy crimes.\(^\text{124}\) The UN assisted in drafting the legislative detail, although found it ‘was amended in terms that are not consistent with the definition of piracy set out in UNCLOS.’\(^\text{125}\) A March 2011 article stated Puntland and Somaliland had detained or convicted 350 people of piracy-related offences.\(^\text{126}\) It emerged that judges in the Puntland towns of Bossaso and Garowe had already convicted 240 people in 30 cases for piracy.\(^\text{127}\) It is highly unlikely these trials met international prosecution standards, but since neither Somaliland nor Puntland held any international legitimacy, their enthusiastic and swift prosecution of pirates came under no scrutiny.

In his 2011 report, Jack Lang proposed the building of a specialised court in Puntland conferred with universal jurisdiction and the building of a prison there to accommodate prosecuted pirates.\(^\text{128}\) Perhaps increased international investment in its judiciary would help Puntland’s administration gain prestige and control over its inhabitants, the core component of Somali pirate suppression. The UN’s Monitoring Group described how several hundred junior pirates languished in UN-funded Puntland prisons after arrests and seizures by other Puntland security forces.\(^\text{129}\)

In recognition of Puntland’s efforts against pirates, the United Nations Development Programme provided Puntland with training and equipment for investigators, judges and legal professionals, suggested ‘enhancements’ to the protective capacity of police...
and security forces, assisted with the drafting of legislative instruments, provided legal aid, IT equipment and vehicles.\textsuperscript{130} By April 2014, a new UN-funded prison in Garowe opened, built primarily for convicted pirates repatriated from other jurisdictions.\textsuperscript{131}

The US court failed to recognise any of these actions and the novelty of Puntland worked against it. Shibin’s testimony showed that when compared to that of a strong established state, the lack of international recognition of Puntland’s sovereign authority by the international community overrode its internal recognition by the residents. Moreover, Puntland’s perceived failure to stop the pirates entirely compromised its authority, despite other, more established states also failing to suppress maritime crime. In his decision to find Shibin’s extradition to the US legal, Judge Doumar decided:

\begin{quote}
At best even your [the defence attorney] testimony is it’s a weak government. What the world knows is it’s a rogue government, and that’s all it is... there was no direction [to extradite] by the United States, there was a request by the United States. But whether there was direction or a request it doesn’t make any difference. I’m still finding that they can take – capture the citizen, they can kidnap the individual and bring him to the United States and try him and it doesn’t make any difference.\textsuperscript{132}
\end{quote}

Eventually, the court convicted Shibin of piracy and sentenced him to life imprisonment.

\textsuperscript{130} 'UN Anti-Piracy Courts Report,' 7.


\textsuperscript{132} 'United States of America vs Mohammad Saaili Shibin’, #146, 89-90.
Conclusion

This chapter extended the ideas raised in Chapters 1 and 2 concerning the complexity involved in exerting sovereign authority over Somalis. I argue that Puntland’s clan connectivity helped its foundation and comparative peacefulness even as historic rivalries between the sub-clans of the Majeerteen simmered under the surface. The traditional culture linking wealth with respect meant Puntland needed to project its authority through its wealth. Its difficulty in doing this, combined with the individualistic nature of the wealth/respect dynamic fed into the lure of piracy. The success of piracy raised the status of pirates but threatened the President’s prestige.

Despite allegations of complicity in piracy, President Farole recognised Puntland’s survival hinged on international assistance, even though Puntland faced more security challenges than just piracy. Farole made considerable effort to suppress piracy before the UN recognised the opportunity for suppression Puntland represented.

As chapter 2 examined, international recognition of Somalia’s sovereignty persisted even as it lacked domestic sovereignty over its inhabitants. The two case studies in this chapter provided insight into how Somalis perceived sovereign authority in Puntland. Jama Ibrahim’s testimony showed the fragility of the inter-clan basis of Puntland’s authority while Shibin’s testimony showed the disconnection between perceptions of sovereign authority within Puntland and its recognition by outside authorities. In Judge Doumer’s mind, Puntland’s implication in piracy cancelled out any claim to external recognition of it despite President Farole’s efforts to use piracy suppression to override the profit-seeking motivations of clan-affiliated Somalis.
Piracy brought Puntland to international attention and provided financial opportunities to strengthen and legitimise its administration. The eventual investment in Puntland’s state infrastructure by the UN not only directly contrasted with the view of Puntland’s status by the US court system but also helped Puntland realign the UN’s perception of its legitimacy. According to the UN, this investment was safer and more trustworthy than in Mogadishu, even though it is only ‘Somalia’ that existed as a legitimate sovereign authority. Given the international community’s focus on the volatile situation in Mogadishu at the time of the piracy epidemic, examined in Chapter 5, it is doubtful that this investment would have occurred if piracy had not.

The preceding three chapters use piracy to examine how sovereign authority transitioned from the sovereign to the state and the persistent difficulty in applying this model to Somalia. Chapter 2 showed the extent of the ‘state failure’ narrative in Somalia. Chapter 3 showed that despite the ‘state failure’ in Mogadishu, when they chose their own sovereign authority Somalis proved very capable of peacefully creating state-like administrative structures for their order and protection. Somali piracy caused these two realities to intersect. Only one came onto the international stage: state failure.

For the international community, Somali piracy represented the Somalis’ inability to adhere to its preference for a centralised state in Mogadishu. While this Chapter refuted the accuracy of this assumption, it nevertheless informed the international community’s response to piracy. This created the second theme of this thesis: who is responsible for suppressing piracy when a state can not?
PART II
CHAPTER 4

Self-protective measures: convoy, ransom and armed guards

The second part of this thesis examines how the competing interests of the parties affected by Somali piracy dispersed the effectiveness of the international effort to stop it. Historically, merchants expected the sovereign or state to protect their seaborne property in times of need, particularly during piracy epidemics.¹ They reasoned this protection was their return for the significant financial contributions they made to these entities’ well-being. As this chapter attests, convoy became the predominant state-sponsored protective measure for seaborne trade. However, as a response to merchants’ piracy concerns, convoy catered far more to the interests of insurers and states than merchant ship-owners. I establish this as a historic root of the disperal of power to stop piracy. This chapter then applies the analysis of this competing dynamic to the deterrence measures 21st century merchants and ship-owners implemented against Somali pirates. Chapters 5 and 6 then examine the competing perspective of piracy suppression led by the United Nations.

For ship-owners, three very different ways of managing piracy emerged. Since the 18th century, ship-owners used insurance to protect seaborne trade. Marine insurers tended to enjoy a mutually beneficial relationship with governments, exerting significant influence over decisions concerning maritime trade risks in return for intelligence on ship activity. However, self-protective measures taken by marine merchants and ship-owners against pirates helped mitigate their insurer’s risk at the expense of their own profit. This competing interest caused ship-owners to take profit-

seeking risks at the expense of piracy protection. This dynamic manifested again in the response to Somali piracy.

In the event privateers or pirates captured their ship and held it for ransom, the second historic management solution was usually capitulation and acquiescence: ransom payment. Somali piracy proved no exception. Refusal to pay the ransom left the ship and crew at the pirates’ mercy and resulted in uncertain physical and psychological damage to crews, the loss of cargo and the vessel, including its future earning capacity, and significant environmental impacts from abandoned vessels.² By 2011, ship-owners and pirates had established ransom payment as the most effective way to safely obtain the release of the ship, cargo, and crew.

Somali piracy ransom payment created a dilemma for governments affected by the ship’s hijack. They held responsibility for executing their sovereign obligation to protect their citizens’ interests at sea. While ransom payment provided the best protection in lieu of sending in the navy, it also encouraged more piracy. It helped the state avoid the financial implications of piracy but it increased insurers’ risks and the threat to international economic trade and security. Governments grappled with this dilemma in different ways.

In the case of the Maersk Alabama, the US government refused to negotiate a ransom and sent their navy in to deal with the matter. While the US Navy eventually rescued the crew of the Alabama successfully, it proved unable to do so for the four murdered hostages of the American-flagged yacht SY Quest. This exposed the fallibility of a naval

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² Richard Neylon, "Banning Ransom Payments to Somali Pirates Would Outlaw the Only Method a Shipowner Has to Remove His Crew from Harm’s Way and Rescue His Vessel and Cargo," Lloyd’s List, 1 November 2011.
response. Other governments publicly deferred to the ship-owner’s decision on whether to pay and worked discreetly behind the scenes. Others left the matter entirely in the hands of the ship-owners and refused to provide any assistance whatsoever, even when faced with very public criticism from the families of crews.

Chapter 5 uses Indonesia to examine the rarity of public and direct government involvement in ransom payment and the motivations behind it.

The third solution proved a strong deterrent: placing armed guards on ships. Historically, merchant ships went armed because private or commercial warfare was a normal aspect of the use of the sea. The outlawing of privateering, discussed in Chapter 1, began a move towards an international norm disapproving of private arms onboard ships. Ship-owners had honoured this norm for over a hundred years. By 2010, ship-owner frustration at the inability of the international community’s navies to stop Somali pirates hijacking ships caused many to employ privately contracted armed security personnel (PCASP). Additional financial pressure from insurers caused ship-owners to use PCASP to cover their risk. Insurers quickly connected PCASP to a reduction in skyrocketing insurance premiums, despite the considerable expense for the ship-owner. All of this occurred in the highly unpredictable environment of the Global Financial Crisis.

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3 The Indian Navy also disastrously intervened in the November 2008 hijack of the Ekawatnava 5, a Kiribati-flagged fishing vessel. One Thai fisherman was confirmed dead and 14 were missing. See "Pirates Pile on Pressure as India Told It Sank Wrong Boat," Agence France Presse, 27 November 2008.

4 For example, the US trial of the ransom negotiator, Mohammad Ali Shibin exposed the German government’s investigative assistance in the hijack of the Merida Marguerite. In the trial of two Somalis for the hijack of the Spanish-flagged fishing vessel, Alakrana, the Spanish court judgement specifically noted the ample evidence of the Spanish government’s involvement in paying the ransom, despite its denials. “Pirates’ Trial Reveals ‘Alakrana’ Payoff Was Made,” El País, Spain, 3 May 2011.


Largely unregulated and frowned upon by the international maritime organisations, I argue that PCASP heralded the return of privately sponsored violence to the high seas. Moreover, the use of PCASP exploited the absence of the Somali state’s capacity to protect its citizens. As examined in Chapter 5 and 6, this contradicted the ultimate goal of the international community’s suppression effort: establishing sufficient sovereign authority in Somalia to ensure it could take responsibility for suppressing piracy.

**Managing historic threats to economic trade with convoy**

In the early years of Spanish Caribbean settlement in the late 16th century, Spain’s military resources focused on Europe. Threatened by the European sea-raiders targeting their lucrative treasure fleets passing through the Caribbean to the Gulf of Mexico colonies, Spanish merchants used a convoy system as protection.7 The Spanish convoy system demonstrated the merchant’s importance to the financial interests of the Spanish Crown and the government. This system helped Spain curb sea-raider threats until 1628 and, between 1655 and 1725, no pirate successfully took a Spanish treasure ship while in convoy.8 By the 18th century, convoy proved integral to the relationship between insurers, ship-owners, and the government.

**Marine insurers and convoy**

Insurance insulated merchants from the financial toll of piracy and created a fiercely competitive early modern Britain sea trade. In the late 17th century, London’s Lloyd’s Coffee House quickly became the hub of information on British maritime trade for

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7 A naval convoy system also protected English trade since the Restoration (1660). Like the Spanish, the British Admiralty deemed homeland protection and protecting trade from the Mediterranean corsairs more in need of its limited resources than the Caribbean.

merchants, insurers, the Government and Lords of Admiralty. At Lloyd’s, members obtained government information on any misconduct of merchant ship captains, while the Lords received information on ships taken by privateers. To reduce the incidence of claims, Lloyd’s insurers offered reduced premiums for the use of convoy protection.

Convoy offered the sovereign a practical response to merchant demands for naval protection. However, merchants desired protection for their trade, not control of it, so convoys did not engender much enthusiasm from ship-owners and merchants. Despite its endorsement by the sovereign authority, most convoys probably consisted of a collection of interchangeable private and state-owned ships whose usage depended on the geopolitical environment at the time insurers needed the convoy. By 1793, Lloyd’s insurers were so influential they compelled the British Government to pass an Act requiring all vessels engaged in foreign trade to sail in convoy unless specifically authorised by the Admiralty. The Act imposed severe penalties on captains who disobeyed the orders of the escort commander. This capitulation caused the imposition of a tax to fund naval convoys.

For merchants and ship-owners, the new law caused their ships to remain in port waiting for a convoy to materialise and naval escorts to arrive, often delayed by a naval ship’s engagement in trade for its own benefit. The Royal Navy repeatedly defended...
itself from criticism by stating financial incentives for ship captains from ship-owners encouraged them to break free of convoys, rather than the other way around.\textsuperscript{14} In the merchants’ view, they needed to cover the cost of provisions and wages, perishable cargoes, and any port fees, so some of the faster sailing ships were inclined to break convoy in the hope of reaching their markets ahead of the others. This practice added to the underwriters’ risks and Lloyd’s pressed the government for prosecution of offending skippers.\textsuperscript{15}

The situation sustained a fractious relationship between ship-owners, insurers and the government compounded by the occasional flaring of piracy occurring in the early 19\textsuperscript{th} century. Convoy demonstrated the marine insurance industry’s historic influence over the government. Since piracy threatened state economic interests, for the government, the insurer’s need to reduce risk continually outweighed the merchant’s need for profit.

**The contemporary connection between insurers and governments**

The connection between insurers and government re-emerged in 2005, when the Joint War Committee (JWC), who represented underwriters writing war and related risks within the London market, nominated the Malacca Strait as a high-risk area for piracy.\textsuperscript{16} For years, some ship-owners had reduced their insurance risk by employing private security personnel aboard ships traversing the region. The increasing threat of maritime crime and piracy in the Malacca Strait caused their use to increase.\textsuperscript{17}

\textsuperscript{14}Ibid., 58.
\textsuperscript{15}Flower and Jones, *Lloyds of London*, 72.
\textsuperscript{17}“The Privatisation of Maritime Security” 12-18.
However, rather than basing their assessment on the convention of insurance losses caused by piracy, JWC ignored ship-owner-provided data to the IMB-PRC and based its decision on the terrorism risks documented in an assessment by Aegis Defence Services, a London-based private security company.\(^\text{18}\)

A region’s designation as high risk caused war risk insurance premiums, payable for every journey through the Malacca Strait, to increase from its usual, nominal fee. Moreover, the inclusion of piracy with war risk severed its traditional designation within hull insurance.\(^\text{19}\) This inclusion meant insurers could immediately pass on risk costs to ship-owners, rather than through their hull insurance premiums calculated on a yearly basis. Most ship-owners no longer personally shipped cargo, so cargo providers required separate ‘all risk’ insurance to protect against ‘marine perils’, such as the risk of thieves and pirates stealing a ship’s cargo or the contents of its safe.\(^\text{20}\)

By grouping piracy within war-related perils, the British insurance market could alleviate claim disputes between two different sets of underwriters – hull and war risk.\(^\text{21}\) However, paying additional war risk and all risk insurance (for cargo) for a ship to journey through a nominated high-risk area meant ship-owners offset the perceived increased insurance risk at their own expense. Saving on the increased shipping costs provided an incentive for ship captains to avoid high-risk routes. This, in turn, affected taxes and duties payable by visiting ships along the high-risk route, influencing governments’ economic interests.

\(^{18}\) Ibid., 18.
\(^{19}\) Historically, hull insurance packages commonly included piracy as a ‘peril of the sea’ with fire, explosion and earthquake and covered physical damage to the hull and machinery of the ship. James Brewer, "New Hope for Owners on Piracy Cover," Lloyd’s List, 18 November 2005.
The foreign ministers of the Malacca Strait’s littoral states, Singapore, Malaysia, and Indonesia, showed their disapproval of the decision by pointing out that JWC had not consulted nor considered their maritime security efforts. Industry organisations, such as the International Chamber of Shipping, the Hong Kong Ship-owners Association and the Singapore Shipping Association argued that the Aegis report did not sufficiently distinguish between different types of security threats, namely piracy and terrorism. Despite the concerns of states and ship-owners, the JWC took a year to remove the region from its high-risk designation.

In theory, rising insurance premiums provided ship-owners more leverage with governments to intervene against maritime criminals because they could prove piracy was threatening a state’s economic trade. However, the inclusion of piracy in war risk insurance meant insurers stood to gain considerably from the forthcoming Somali piracy epidemic.

**Insurers, ship-owners and the rise of Somali piracy**

The JWC also nominated Somalia as a high-risk area in 2005 but, as Chapter 2 documented, unlike the states surrounding the Malacca Strait, Somalia had no capacity to dispute the decision. The inclusion prompted the privately owned Merchant International Group (MIG) to develop the Marine Piracy Threat Assessment modelling tool based on piracy reports to the IMB-PRC. In 2005, MIG predicted around 50 attacks along the East African coastline in the coming year. There were 20.

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23. Ibid.
24. See also Bradford, ‘Shifting the Tides against Piracy in Southeast Asian Waters,’ 479.
25. Lloyds Market Association, “Joint War Committee.” Naming Somalia on the list was overshadowed by controversy over the inclusion of the Malacca Strait. MIG were ‘specialists in strategic research and corporate intelligence’
The increased insurance risk of a Somali pirate attack placed unprecedented economic pressure on ship-owners. Unable to sail without insurance, ship-owners were at the mercy of how insurers and underwriters perceived piracy risk. Over the next two years, MIG analysts intermittently used Lloyd’s List to publish the company’s piracy threat findings for the Malacca Strait and Somalia. By early 2006, Lloyd’s List published suggestions of potential links between piracy and ‘extremists’ in Somalia and Indonesia, including Al-Qaeda. This occurred despite IMB reports and interviews with Somali pirates consistently giving no indication of any political agenda connected to their ransom demands. Nevertheless, by the end of 2007, MIG analysts wrote that insurers were now redrawing standard policies to cover both piracy and terrorism. In May 2008, in response to a significant increase in piracy reports and hijacks, the JWC placed the Gulf of Aden on its high-risk area list.

The inclusion created a new insurance problem for ship-owners. The success of the hijack and ransom model of Somali piracy hinged on keeping the ship and the cargo intact and undamaged. Standard hull and war risk insurances only covered physical damage, potentially invalidating a Somali piracy-related insurance claim. Moreover, these policies did not cover ransom payment and the logistics of its delivery, so piracy-affected ship-owners struggled to claim successfully on their insurance. Some owners successfully argued that a demand for ransom placed their property (the ship) at risk of

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29 Christopher Raleigh and Christopher Kende, ”Don’t Be a Hostage to Fortune: Cut through the Piracy Confusion,” Lloyd’s List, 16 February 2006.
31 Sean Kane, ”Piracy Thrives in Grey Area,” Lloyd’s List, 5 December 2007.
loss or damage, triggering a claim under hull insurance.\textsuperscript{33} Others, such as one
disgruntled Danish ship-owner, did not receive any reimbursement for the US$5.4
million expended, including a $1 million ransom payment and delivery costs.\textsuperscript{34} This
new insurance model also did not insure ship’s crews from the threat of piracy.

Marine insurers did not traditionally provide Kidnap and Ransom (K&R) insurance. In
addition to the re-engineering of traditional insurance models, Somali piracy caused
non-traditional insurers to enter the marine insurance market. Basic K&R policies
covered the crew against ransom demands and escalated to include the unlimited and
immediate assistance of a dedicated team of ransom negotiators.\textsuperscript{35} Conversely, the
connection made between piracy and terrorism complicated the underwriting of K&R
insurance because the US and Britain proscribed the payment of ransom to terrorists.
Payment of a ransom could make a K&R claim unpayable.

Despite these changes, by October 2008, Somali piracy had not caused steep insurance
premium increases.\textsuperscript{36} However, a new, formidable economic pressure emerged at this
time: the Global Financial Crisis (GFC). In the latter half of 2008, the GFC made
European trade credit scarce and expensive, causing world trade to plummet.\textsuperscript{37} A lack
of demand caused shipping companies to pull more and more ships out of circulation.
In Germany, the cost of chartering a ship for the day dropped from €24,000 to €9,600
in six months.\textsuperscript{38} Underwriters suffered: market leader MPC Capital posted an annual

\textsuperscript{33} Captain Thomas Brown, "Marine K&R an above 'Average' Marine Insurance." Seacurus, September 2009.
\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid.
\textsuperscript{36} Tim Stephenson and Jessica Taylor, "Pirates Are Too Canny to Be Defeated by Precedent Alone," Lloyd’s List, 1 October 2008.
\textsuperscript{37} Directorate-General for Economic and Financial Affairs, "Economic Crisis in Europe: Causes, Consequences and Responses,"
European Economy, European Commission, 20.
loss of €70 million and Lloyd Fonds announced plans to slash 15 percent of its jobs.\(^{39}\)

As Graphs 6 and 7 on Suez Canal traffic show, in December 2008 there was a sudden drop of 15 per cent from the same time in 2007, with 255 fewer ships passing through the Suez Canal.\(^{40}\) This decline remained steady until the end of 2012.

**Graph 6: Total number of ships passing through the Suez Canal, 2007-2012\(^{41}\)**

\(^{39}\) Ibid.


\(^{41}\) Collated from ibid.
In a May 2009 broadcast on mainstream American radio station NPR, journalist Tom Gjelten stated marine insurance premiums against piracy had climbed ten times higher than 18 months earlier. While insurers predicted 2009 to be a ‘difficult year’, the ‘steep increases in premiums expected from February’ were due to the GFC restricting cash flow, not piracy. Cargo insurers declared some anxiety over piracy but primarily blamed the tough market conditions on increased cargo capacity and goods despatch pressure.

Gjelten’s statement referred to the influence of risk in determining war risk insurance rates. In the midst of a global European shipping downturn, hull underwriters and financiers could not expect ship-owners to buy insurance if they were not using their ships. However, war risk underwriters could leverage on the uncertainty of Somali

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piracy by combining the economic and war risk. By 2009, war risk insurance for ships travelling through the Gulf of Aden had jumped from US$500 per voyage to $20,000.\textsuperscript{45} By 2010, some ship-owners paid $150,000 per journey.\textsuperscript{46} K&R insurance premiums could be as high as US$30,000 for $3 million of cover for one journey.\textsuperscript{47}

The historic use of convoy showed insurers minimised their financial risk at the expense of ship-owner profit. However, calculating this risk during the Somali piracy epidemic drew more on the emotional effect of the risk of a Somali pirate attack on ship-owners than actual losses. Official sources of piracy information, such as the IMO, ICC, Seafarers associations and the widely circulated Best Management Practices (BMPs), rarely provided a statistical risk factor, preferring to use more emotive language. The BMPs particularly emphasised the ‘High Risk Area’ of pirate attacks and the ‘potential consequences’ for not following the BMPs as ‘severe’, creating a strong emotional perception of the inevitability of a pirate encounter.\textsuperscript{48}

Table 3: Statistical probability of encountering a pirate or ship hijack based on transit numbers and IMB reports\textsuperscript{49}

<table>
<thead>
<tr>
<th>Event descriptor</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pirate encounters</td>
<td>39</td>
<td>70</td>
<td>176</td>
<td>156</td>
<td>211</td>
<td>61</td>
</tr>
<tr>
<td>Ships held for ransom</td>
<td>12</td>
<td>42</td>
<td>44</td>
<td>49</td>
<td>28</td>
<td>12</td>
</tr>
<tr>
<td>Ship Transit Numbers</td>
<td>20,384</td>
<td>21,405</td>
<td>17,215</td>
<td>17,993</td>
<td>17,799</td>
<td>17,225</td>
</tr>
</tbody>
</table>

\textsuperscript{45} US Department of Transportation, ‘Economic Impact of Piracy in the Gulf of Aden on Global Trade,’ US Maritime Administration.
\textsuperscript{49} Pirate encounter figures obtained from IMB-PRC reports (see Appendix I). Gulf of Aden transit figures obtained from Authority, ‘Traffic Statistics.’ A figure of 20,000 transits is generally used, see Chalk, ‘Piracy Off the Horn of Africa,’ 96. However, alternate figures were “thousands” from UNODC; 16,000 per year from Chatham House and the German group World Ocean Review; a claim of 21,080 in the first half of 2008 from global marine service provider Poten and Partners; ‘more than 30,000’ from a publicly available presentation by a US Navy representative Rear Admiral Terry McKnight. McKnight also cited 33,000 in the same presentation. ‘Maritime Piracy,’ 198. ‘Maritime Highways of Global Trade,’ 172. ‘Piracy in Somalia,’ 3. Poten and Partners: Poten and Partners, “Monthly LNG Opinion,” news release. Rear Admiral Terry McKnight, ‘Gulf of Aden Counter Piracy Operations,’ United States Naval Forces Central.
Table 3 shows that using IMB-PRC reports to calculate a piracy risk factor indicated the risk of encountering a Somali pirate peaked at 1 per cent. The risk of ship hijack was at most 1/4 of 1 per cent.\(^{50}\) While this figure assumed that all ships encountering pirates reported attacks to the IMB, during the 2008-12 Somali piracy period, the IMB-PRC reports only mentioned under-reporting of Nigerian-based incidents, not Somali piracy.\(^{51}\) Nevertheless, risk underwriters determined the acceptability of the piracy risk for themselves and this fed the emotional uncertainty for ship-owners.

For many ship-owners wishing to use the Gulf of Aden for trade, the rising insurance costs of shipping created two divergent choices, examined separately in the following sections. They could take the risk and in the unlikely event pirates hijacked the ship, they could negotiate and pay the ransom. Alternatively, the ship-owner could spend considerably more money to hire armed security personnel to resist a potential hijack in the first place.

### The history of ransom payment as a resolution to piracy

For centuries, privateers and pirates demanded ransom for ships, cargoes, individuals, and towns. One of the earliest known stories concerned the capture and ransom of Julius Caesar in 75AD by Cilician pirates.\(^{52}\) Throughout the late 17th century, the buccaneers L’Ollonais, Blackbeard and Henry Morgan separately held towns for...

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\(^{50}\) Calculated from ‘IMB-PRC Report 2008.’

\(^{51}\) In its 2008 report, the IMB-PRC stated, ‘under-reporting from vessels involved in incidents in the Nigerian waters remains a great concern for the PRC.’ In 2009 it wrote it was unable to verify 30 Nigerian incidents, mostly on vessels supporting the oil industry, reported by a private Danish company. Ibid., 26. ‘IMB-PRC Report 2009,’ 25.

\(^{52}\) The origin of this story is attributed to Plutarch, a Greek historian.
A privateer’s commission usually authorised the privateer to take captured ships as prize, not hold them for ransom. To receive payment, privateers needed to take a prize to port for adjudication through the state’s established regulatory process, such as the Prize Courts run by the Lords of Admiralty in England. However, ransoming allowed privateers to extort money from innocent neutrals who would do anything to avoid the slow, expensive and often partial Admiralty courts. Wrote one St Eustatius merchant in 1758, ‘as soon as we hear of the vessels being taken we send the money which the privateer demands as if an agreement founded upon equity and the laws; their government and ours are perfectly inform’d of it and nobody lays claim against it.’

There is little information on sovereigns or states paying privateer or pirate ransom demands on behalf of ships. However, as the merchant’s quote suggests, the state did condone and respect its use as a private, documented arrangement between individuals.

After boarding and disarming the crew, a captor quickly seized and secured ship papers and any money found onboard. With the captain now penniless, the captor set the

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56 Ibid.
ransom demand amount within a bill of exchange for the ship’s captain to take to the ship’s owner.⁵⁷ The bill of exchange created a non-interest-bearing, binding written contract for the ship’s owner to pay the captor a fixed sum of money at a predetermined future date. It gave the captured ship a license for safe conduct from the captor’s government and authorised the ship’s captain to sail to a designated port over a specified route and within a limited time. Crucially, it provided immunity to capture from other privateers; and should it be ignored, obliged the captain to pay the ransom personally.⁵⁸

The use of ransoming through bills of exchange provided significantly more advantages to the sea-raider than the state. Ransoming allowed sea-raiders to stay at sea longer and capture more ships for greater profit, particularly when the crew of a captured ship was dangerously large, the captured vessel was in disrepair, the cargo was of very small value, or the sea-raider could not afford to spare a crew to commander it back to port for adjudication.⁵⁹ However, the sea-raider carried all the financial risk. By sending a captured ship to a safe port for prize adjudication, he might avoid losing it to other sea-raiders, but if sea-raiders captured him with ransom bills of exchange he lost everything, including his own ship.

On occasion, failure to pay a ransom bill resulted in court proceedings. During the Seven Years’ War, French privateer Ricord captured the English ship Syren. Captain Bettenham and Ricord agreed to a ransom of 300 pistoles and Bettenham left his first

⁵⁸ Ibid.
mate, Joseph Bell as security. Bell died in prison so Ricord refused to honour the ransom. After the war ended, Ricord sued Bettenham for non-payment and won. The court considered the contract as valid and that Bell was ‘merely left as collateral security’ and not part of the contract. Cobbett elaborated in the 1895 edition of his book that since the Ricord v Bettenham case, only a hostage could launch non-payment proceedings in the ‘courts of his own country for the recovery of his freedom.’

For the state, ransoming allowed one of the few instances of peaceful engagement between belligerents in wartime. For the most part though, governments had good reason to frown on ransoming. It was not in the best interests of the state during wartime because it only took a toll on the enemy’s trade, rather than intercepting his supplies. A ship taken as prize came with a full enemy crew, so ransoming deprived the state of potential prisoner exchanges and the return of qualified sailors. Thirdly, the ransom was always less than the value of the prize. Otherwise, there would be no point in the arrangement. Finally, ransoming encouraged brutalities and gave the privateer an opportunity to embezzle and conceal prizes, thus depriving the government of its share of the prize and the associated customs and duties.

Limited historical record of the extent of the English Government’s encouragement or authorisation for privateers to use ransom exists, however during the eighteenth century England these claims were abolished by the Prize Acts of 1702 and 1708 as discussed in Chapter 1.
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century, a succession of legislative instruments indicated an increasing focus on proscribing it.\(^{67}\) The 1758 *Naval Prize Act* in Britain made it an offence to agree with a neutral for a ransom and discharge him without bringing the ship in as prize.\(^{68}\) Defying this law would attract piracy charges.\(^{69}\) The 1776 *Privateers Act* stated that after 20 February 1777 any commissioned ship commander agreeing to ransom after taking the ship as prize must discharge the prize ship and face prosecution for piracy.\(^{70}\) These moves by Britain coincided with a rise in the practice of ransoming vessels by Americans seeking independence.\(^{71}\) By 1 June 1782, the British Government made it unlawful to ransom captured vessels and voided bills of exchange.\(^{72}\) The French Government had already moved against the practice, providing a legal definition of ransom in 1706 to curb the practice and outlawing it altogether by 1756.\(^{73}\)

American privateers used ransoming during the War of 1812 with Britain (1812-15) and created a predicament for captured British merchants. A merchant ship-owner who did not pay his written obligations could not trade in foreign ports without the seizure of his vessels by creditors, but at the same time, paying ransom meant violating British law. American records suggested the payment of at least twenty ransoms by British vessels during the war, but there is unsurprisingly little evidence of this on the

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\(^{67}\) Pares states the English Government never condoned privateers using ransom but Petrie takes a more lenient view. However, they both agree that it became increasingly frowned upon during the eighteenth century.


\(^{69}\) *Naval Prize Act*, 1758.

\(^{70}\) *If the Commander of Any Commissioned Ship Shall Agree with Any Person Belonging to Any Prize Taken, for the Ransom Thereof, &c.*, Great Britain, 1776 c.7.

\(^{71}\) Petrie provides a detailed account of the acquisition of prizes and use of ransoming by American privateers, including the capture and ransom of a whaling ship, *Eliza Swan* off the Scottish Coast. Petrie, *The Prize Game*.

\(^{72}\) Ibid., 22. Full title of the legislation: *Penalty on Persons Ransoming, or Contracting to Ransom, Any Ship, &c. Contrary to This Act*, Great Britain, 1782 c.25. The practice was made illegal for Naval commanders in 1793. In 1803 the Encouragement of Seamen Act indicated ransom was allowable by naval vessels in 'extreme necessity' but does not indicate what this means in practice. The Naval Prize Act 1864 allowed the use of ransom in war time and was not repealed until 1981.

British side.\textsuperscript{74} Formal correspondence from the British government demonstrated a refusal to reciprocate the bills of exchange from American captors of ships and prisoners.\textsuperscript{75} Section IX of the 1815 \textit{Prize Act} deemed any bills of exchange for ransom of neutral or enemy ships to ‘be absolutely null and void in Law, and of no Effect whatsoever.\textsuperscript{76} By the end of the war, the Americans stopped trying.

The 1864 \textit{Naval Prize Act} relaxed the strictness of its predecessor. It allowed the British sovereign to regulate ransom from ‘time to time’ for any ship belonging to her subjects under the High Court of Admiralty’s exclusive jurisdiction.\textsuperscript{77} By this time, the Declaration of Paris had outlawed privateering so the Act only concerned the British Navy. While the British government refused direct requests for a ransom payment, the Act re-established the precedent of looking the other way at ransoms paid by merchants.

In the United States, the legality of ransom by captors and the captured, including against neutrals and with a hostage to assure payment continued throughout the 19th century. The 1818 case of \textit{Goodrich v Gordon} in the supreme court of New York held that ransom bills were good contracts enforceable in court.\textsuperscript{78} The \textit{Prize Money Act} of 1862 provided for the division of ransom money in the same manner as prize money.\textsuperscript{79} The belligerents of the US Civil War used ransom bills, referenced in a story of how Captain Semmes of the \textit{Alabama} left his collection of them (unfortunately for him they were payable after the recognition of the Confederate states) along with his other

\textsuperscript{74} Petrie, \textit{The Prize Game}, 23.
\textsuperscript{75} Ibid.
\textsuperscript{76} \textit{An Act for the Encouragement of Seamen, and the More Effectual Manning of His Majesty’s Navy During the Present War}, Great Britain, 1815.
\textsuperscript{77} \textit{An Act for Regulating Naval Prize of War}, Great Britain, 1864.
\textsuperscript{78} Philip Quincy Wright, \textit{Enforcement of International Law through Municipal Law in the United States} (Urbana: University of Illinois, 1916), 186.
\textsuperscript{79} Ibid.
valuables in safe custody ashore while fighting.\textsuperscript{80} From this point, there is no evidence of the use of ransom in practice by the US Navy, as even prize adjudication ceased after the Spanish War of 1898.\textsuperscript{81} However, it was still within the legislature and mentioned in Section 4642 of the 1898 Distribution of Bounty and Prize Money: ‘all ransom money, salvage, bounty or proceeds of condemned property accruing or awarded to any vessel of the Navy shall be distributed and paid to the officers and men entitled thereto...’.\textsuperscript{82} In his 1916 book, Wright claimed US law permitted ransom on receipt of a signed ransom bill.\textsuperscript{83} After this, it seemed ransom law disappeared, perhaps subsumed into the prize laws reinvigorated during the international wars of the 20\textsuperscript{th} century.\textsuperscript{84}

\textbf{Ransom in the 21\textsuperscript{st} century}

The advent of Somali piracy revealed the divergence of British and American legal approaches to private ransom payments. In 2010, a British court found a company’s payment of a ransom for the release of a ship, cargo and crew was not against public policy or British law.\textsuperscript{85} In the US, President Barack Obama signed an Executive Order on 13 April 2010 forbidding US persons or entities from being involved in the payment of ransom to terrorists, effective January 14, 2011.

\textsuperscript{80} Senior, 'Ransom Bills,' 62.
\textsuperscript{83} Wright, Enforcement of International Law through Municipal Law in the United States, 185.
\textsuperscript{84} See Sarah Craze, 'When does war end? Armistice and the Prize Courts of the Twentieth Century.' (under submission)
\textsuperscript{85} Kate Lewins and Robert Merkin, 'Masefield Ag v. Amlin Corporate Member Ltd; the Bunga Melati Dua: Privacy, Random and Marine Insurance' Melbourne University Law Review 35, no. 2 (2011) 717-34: 727. The payment of ransom to terrorists however became an international issue in 2014 with the rise of ISIS. A British law passed in 2014 forbids the payment of ransom to terrorists by insurers. See Mads Fleckner and Sharon Churcher, "Hostage Tortured by ISIS Is Now 'Drowning in Debt' after Begging Family and Friends to Raise the Cash for £1.3 Million Ransom... But Could He Now Face Prosecution for Breaking the Law?", Daily Mail Online, London, 28 October 2014.
ransoms to Somali pirates under certain circumstances. Since few American-flagged ships travelled the Gulf of Aden route, there is no evidence of this in practice.

A ransom demand for a hijacked ship created an ethical dilemma for states and shipowners that hinged on how much obligation a state had for its citizens’ well-being and safety. The encouragement of further attacks threatening crews and ships became a central argument against paying ransoms. However, outlawing paying ransom removed the only proven peaceful solution to a Somali pirate hijack. As Justice Steel stated in the 2010 British court case, ‘in practice, [there is] often little option but to hand over the money to prevent the crew from coming to harm.’

Allowing ransom payment also meant a state could shift responsibility for affected citizens on to private enterprise rather than assume it through naval engagement and pirate suppression.

**The ransom process: the hijack and ransom of the CEC Future**

The testimony of Niels Mathiesen and Gary Porter, two employees of the Clipper Group, owner of the Danish-owned, Bahaman-flagged cargo ship CEC Future hijacked in November 2008, comprehensively detailed the process for paying a Somali pirate’s ransom demand. Responsible for managing the company’s response to the hijack, the two men testified at the trial of the alleged ransom negotiator Ali Mohamed Ali. There is no indication of direct Danish government involvement in resolving the situation, yet the process of collating and transferring a ransom needed government complicity. The Danish Government made no public comment on the CEC Future hijack, but subsequent events provided insight into their position. It is not against
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Danish law to pay a ransom, but a Danish Foreign Ministry official was quoted in 2011 saying ‘Denmark did not and would not pay a ransom "as a matter of principle"’ in the case of a Danish family held for six months by Somali pirates.89 In this case, the Danish government did assist the family after the attack.90

The CEC Future did not receive any assistance from the Danish Royal Navy’s ship HMDS Absalon deployed in the Gulf of Aden at the time, although the crew maintained constant contact with naval forces.91 Instead, the Danish Navy offered to assist the Sirius Star, a large Saudi-owned oil tanker hijacked a week after the CEC Future and located approximately 2,000 kilometres south of the CEC Future’s reported hijack location.92

89 David Charter, "$3m Ransom Paid to Free Danish Yachting Family Held Hostage for Six Months by Somali Pirates," The Australian, 8 September 2011.
90 By 2014, the rise of Islamic State saw Danish citizens ransomed and Phil Balboni, executed American journalist James Foley’s employer, indicated Danish government involvement in payment, in violation of a 2013 agreement between G8 countries not to pay ransoms to terrorists. ‘There were French, Spanish, Italian, German and Danish hostages released, all of whom spent time with Jim and they’re home with their loved ones and obviously we deeply wish that was true for Jim and the others as well.’ Julian Borger, Kim Willsher, and Stephen Burgen, “Paying Ransom: The Ethical Dilemma: To Pay up or Stick to Your Principles,” The Guardian, London, UK, 23 August 2014.
92 Michael Linden-Vørnle, press officer at the Danish support ship ‘Absalon’ said, ‘Sirius Star’ is the biggest ship ever hijacked... they are ready to help.’ (Translation by Google Translate) Stine Thomsen, “Interview: ’Absalon’ Er Parat Til at Hjælpe ’Sirius Star’,” Politiken, Denmark, 19 November 2008.
Map 13: Location of the CEC Future and November 2008 pirate attacks in the Gulf of Aden

As one of 582 Danish-owned ships sailing under foreign flags, the Clipper Group’s use of a Bahaman flag of convenience and a Russian captain and crew meant it excused itself from any maritime legal and regulatory obligations set by the Danish Government, the Danish Ship-owners Association (DSA), and the European Union. Danish obligations were consistently and significantly higher than the Bahamas in the International Chamber of Shipping’s annual assessment of the performance of flag states. Ultimately, the Clipper Group’s use of a flag of convenience meant the CEC Future was not under Danish sovereignty so the Government had no obligation to intervene.

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93 Data collated from ‘IMB-PRC Report 2008.’ One of the blue indicators is the Ekawatnava 5, sunk by the Indian Navy. Data available in Appendix I.
95 International Chamber of Shipping, ‘Shipping Industry Flag State Performance Table 2015/16.’
Ransom negotiations

After receiving a security alert from the *CEC Future* in the Copenhagen head office, Mathiesen assembled the company’s emergency response team. An hour after the alert, a military patrol aircraft operating in the area of the *CEC Future* saw pirates on its deck and contacted the company. The company then advised the crew’s families of the situation, but the pirates took three days to make contact. During this time, Mathiesen had hired two crisis experts to assist with negotiations, an advisor and a communicator who had previous experience in hijack situations, particularly the hijack of the Danish-owned *Danica White* in 2007.96 The company decided the intended resolution to the situation was to pay the ransom and the limited Danish media coverage of the hijack confirmed this intention.97 The company CEO, Per Gullestrup, was designated the final decision-maker on the ransom payment.

Once the pirates finally made contact, both sides engaged in businesslike negotiations (see Table 4) and, despite threats, the crew did not suffer physically. According to his testimony, Gullestrup’s goal from the beginning was to obtain the release of the ship for less than US$2 million.98 Hijacked ship negotiations took an average of 35 days at the time (barring one incident of 255 days) so the 67 days taken for the *CEC Future* was comparably lengthy. Clipper Group needed the time to make sufficient preparations to pay the ransom.

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97 “Clipper is now in the process of negotiating a ransom with the pirates, who have not been contacted yet, but Hans Tino Hansen [of Risk Intelligence] expects them to do it within a week.” Translation by Google Translate of Danish text. Sanne Fahnoe, “Ekspert: Totalt Anarki I Somalia,” *Politiken,* Denmark, 8 November 2008.

98 This was an economical amount for ransom at the time. Two other ships hijacked at around the same time, the *Sirius Star* and *Pompei,* went for $3 million.
Table 4: Chronology of CEC Future ransom negotiation (all figures in US dollars)

<table>
<thead>
<tr>
<th>Date</th>
<th>Elapsed time</th>
<th>Pirates’ offer</th>
<th>Clipper’s offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 November 2008</td>
<td></td>
<td>CEC Future is hijacked</td>
<td></td>
</tr>
<tr>
<td>10 November 2008</td>
<td>3 days</td>
<td>$7 million</td>
<td>$400,000</td>
</tr>
<tr>
<td>30 November 2008</td>
<td>23 days</td>
<td>$4.9 million</td>
<td>$764,000</td>
</tr>
<tr>
<td>12 December 2008</td>
<td>32 days</td>
<td>First threat to crew</td>
<td></td>
</tr>
<tr>
<td>26 December 2008</td>
<td>46 days</td>
<td>$4.9 million</td>
<td>$950,000</td>
</tr>
<tr>
<td>29 December 2008</td>
<td>49 days</td>
<td>$3.25 million</td>
<td>$1 million</td>
</tr>
<tr>
<td>29 December 2008</td>
<td>49 days</td>
<td>Further threats to crew</td>
<td></td>
</tr>
<tr>
<td>30 December 2008</td>
<td>50 days</td>
<td>Will go to $3M if ‘two guys’ are paid $250K</td>
<td>Will go to $1.2M if ‘two guys’ continue negotiations</td>
</tr>
<tr>
<td>1 January 2009</td>
<td>52 days</td>
<td>Contact with the ship lost</td>
<td></td>
</tr>
<tr>
<td>6 January 2009</td>
<td>57 days</td>
<td>No response</td>
<td>$1.2 million</td>
</tr>
<tr>
<td>10 January 2009</td>
<td>61 days</td>
<td>$3.5 million</td>
<td>$1.23 million</td>
</tr>
<tr>
<td>11 January 2009</td>
<td>62 days</td>
<td>$1.9 million</td>
<td>$1.3 million</td>
</tr>
<tr>
<td>12 January 2009</td>
<td>63 days</td>
<td>No response</td>
<td>$1.7 million +$50K</td>
</tr>
<tr>
<td>13 January 2009</td>
<td>64 days</td>
<td>$1.775 million</td>
<td>$1.775 million</td>
</tr>
<tr>
<td>16 January 2009</td>
<td>67 days</td>
<td>Ransom dropped, ship released</td>
<td></td>
</tr>
</tbody>
</table>

Gathering the money

Mathiesen’s first challenge was collecting the ransom cash in the used American dollars the Somalis requested. In the Danica White case, the Danish Intelligence Service cooperated with the FBI to arrange for the transfer of US$753,000 from a bank in the United States.99 Several anomalies allegedly occurred with the money that caused regulatory and legal ambiguity within Denmark. The Financial Action Task Force...
reported that the US authorities provided the serial numbers for the notes but somehow the Danish authorities did not receive them.\footnote{100} When the money left Denmark, the Danes made no cash declarations and subsequently lost track of it. A private company delivered the cash to a hotel in Dubai and after the pirates collected it and released the ship, the marked bills disappeared. Neither the US or Danish authorities investigated whether these anomalies occurred accidentally or deliberately.\footnote{101} Three years later, the proliferation of Somali piracy caused US government policy to harden and it closed the avenue of obtaining cash from the US.\footnote{102} Mathieson and Porter needed to find the money within Denmark.

Despite its membership of the European Union, the Danes still used the krone and pegged it to the Euro. While the US was Denmark’s largest non-EU trading partner, Denmark did not attract a significant amount of US tourists to bring dollars directly into the country.\footnote{103} This made obtaining a large volume of used American dollars in suitably small denominations within Denmark challenging and time-consuming.\footnote{104} Eventually, Clipper’s representatives managed to accumulate US$2 million in $50 and $100 increments within Denmark for storage at their bank.

International law did not proscribe ransom payment. However, Danish money laundering laws prohibited the unlawful transportation of ‘the profits of a punishable violation of the law.’\footnote{105} To avoid breaking the law, the first idea was to transfer the money digitally through Dubai:

\footnote{100}{Ibid.}\footnote{101}{Ibid.}\footnote{102}{This occurred through a series of financial regulation changes documented in Mikhail Reider-Gordon, ‘US and International Anti-Money Laundering Developments,’ The International Lawyer 45, no. 1 (2011) 365–79.}\footnote{103}{Bureau of European and Eurasian Affairs, "US Relations with Denmark." US Department of State, 19 September 2016.}\footnote{104}{United States of America vs Ali Mohamed Ali, United States District Court for the District of Columbia, 4 November 2013, #410, 109.}\footnote{105}{Act on Measures to Prevent Money Laundering and Financing of Terrorism, Denmark, 2007. In 2014, the UN Security Council passed a resolution making it illegal to pay ransom to terrorists, but Somali piracy is not covered under this resolution.}
...we sent our agent to go and collect the money, under money laundering terms, anything over US$10,000 you have to sign for and what you’re going to use it for. And when our agent put down it was for a ransom, they wouldn’t allow us to have the money.

*Gary Porter*[^106]

With Dubai off the table, the next idea was to take the money from Copenhagen to Djibouti by air to connect with a privately contracted air-drop to the ship. In the first instance, US$2 million in small denominations consists of 400,000 heavy and space-consuming individual bank notes. To overcome the size and weight problem, Porter took the company jet instead of a commercial flight. It is not an offence to take large amounts of cash out of the country by air but Danish customs required the declaration of currency exceeding €10,000 or the equivalent[^107]. The declaration ascertained whether the money was the proceeds of crime. In his testimony, Porter could not confirm whether a declaration occurred, but the money made it safely to Djibouti, located on the north-western border of Somalia. A 4 am landing time meant Clipper’s jet could land at Djibouti airport and transfer a large volume of cash to a smaller plane while any authorities could strategically look away. Porter confirmed he completed no paperwork or declarations about the money in Djibouti.[^108]

Sub-contracting the ransom drop cost Clipper $250,000.[^109] It needed to be highly coordinated with the pirates because, as Porter stated:

[^107]: VisaHQ, "Denmark Customs."
[^109]: Ibid., 133.
we wanted them to get to it quite quickly because it [$1.7 million] is quite heavy and you really don’t want $1.7 million [to] sink to into the bottom of the water because then we wouldn’t get our vessel back or our people.110

The pirates released the *CEC Future* on 16 January 2009. The court asked Porter about his awareness of the illegality of what he was doing and Porter replied, ‘I didn’t, I just did what I was supposed to do.’111

While Danish authorities took a hands-off approach to being involved in resolving the *CEC Future* hijack situation, it appeared Clipper worked unimpeded within some grey areas of Danish law and regulation to facilitate an end to the situation.

**Somali pirate ransom: where the money goes**

Somali pirates operated on a credit system and the men self-declared expenses to the accountant who deducted these from their share of the ransom.112 The pirate group established a process for dividing the ransom in advance of the hijack. Mohamed Nur described a typical ransom distribution ratio:

The hijacker gets 50 percent and 20 percent goes to the assistants. The suppliers and people in the area where the ship is anchored, they get five percent. Young people on board with a minor role are paid 15 percent. The system is that each man on board has a receipt. Each man has kept track of his expenses. They have sorted everything out on the receipt and this gives him his share.113

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110 Ibid., 126.
111 Ibid., 133.
112 See also Economist, "Somali Piracy: More Sophisticated Than You Thought."
113 Palotta and Wolting, *Last Hijack Interactive*. 
In a pirate tradition of old, Jilani Abdiali reported a pirate could increase their take home share:

The first man to board the ship gets a higher share, and also the first man to see the ship also gets a higher share. Actually, they purchase a car for him, a Land Cruiser car for him.\(^{114}\)

Jama Ibrahim, the *CEC Future*’s pirate group’s accountant, reported that his actual take home pay from the *CEC Future* was $17,000 despite his position as a head pirate entitling him to $51,800.\(^ {115}\) He stated that he had purchased a car with money borrowed from other pirates and had consumed a lot more *khat* than he had realised.\(^ {116}\) He demonstrated unwavering trust in his clan compatriots, considering he was in charge of the operation’s accounts so would need to personally resolve disputes. His testimony forms the basis of Chart 1 and gives an approximation of how the pirates distributed the US$1.7 million ransom.

\(^{114}\) United States of America vs Mohammad Saaili Shibin, #146, 702.
\(^{116}\) Ibid., 110.
Chart 1: Ransom distribution among pirates of the CEC Future (total amounts)\textsuperscript{117}

Based on Chart 1, US$374,527 remained from the ransom after all employees and creditors received their share. This did not include the purchase of an RPG ($25,900), payment for the ransom negotiator (although Ali Mohamed Ali disputed receiving $17,000) and other expenses not disclosed during the trial. Ibrahim also stated that pirate leader Omar Baglye was supposed to receive $194,149 as a return on his investment in the initial operation.\textsuperscript{118} On this basis, the longer the ship’s captivity, the more expenses incurred and the higher the ransom needed to be to cover the pirates’ expenses and still make a sufficient profit to fund the next operation. Of the $1.7 million received, approximately $180,000 remained as profit. There is no indication in the trial transcripts where this went, although most likely the original investors used it as seed funding for another hijack attempt. The pirates gave no further information on the large share that made it to Garowe, Puntland’s capital.

\textsuperscript{117} Comprised from testimony recorded in ibid., 15-47.
\textsuperscript{118} Ibid., 71.
Self-protection and the debate over arming ships

The alternate choice for ship-owners to the reactive action of paying a ransom was to pay for a proactive self-protective measure. After World War II, governments, the shipping industry, and international maritime organisations opposed the armed protection of commercial vessels – by private and government personnel. Nevertheless, by the end of the Cold War, the growing modern private security industry responded to maritime industry requests with a range of services, including risk assessment and consulting, crew training, onboard ship protection, and hijacked ship recovery. The 1999 and 2000 IMB reports showed a small number of ships travelling near Indonesia also carried privately contracted armed security personnel (PCASP) for protection. Ship-owners used PCASP sporadically all over the world until it became increasingly prevalent in 2009 (Graph 8) for ships sailing through the Gulf of Aden. This signalled the ship-owners’ shift towards another historic self-protection method: arming their ships.

121 For example the Panama-flagged tanker Pacific Bravery in August 1999; the Panama-flagged bulk carrier Tina V in March 2000; and the Liberian flagged tanker Phoenix Gas in May 2000.
Security experts Andrew Kain and Ric Filon described how questionable authorities pressured fearful ship-owners, frustrated by the apparent ease with which pirates gained access and control of ships, to use PCASP. A significant debate arose. On the one hand, advocates of arming merchant ships – either by giving arms to the ship’s crew or by hiring armed security to travel onboard – considered it a method of deterrence or an immediate response mechanism. The idea appealed because of the large geographic distances and limited responsiveness of international naval assets to pirate attacks. Per Nykjaer Jensen, the owner of the Danish shipping line Shipcraft figured that ‘if a warning shot in the air or a number of warning shots in the water just in front of the boat could stop it’ than the potential for escalation decreased. After

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122 Based on information gathered from IMB Reports and included in Appendix I.
124 Gjelten, "As Piracy Insurance Gets Pricier, Owners Try Guards."
Self-protective measures: convoy, ransom and armed guards

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all, PCASP were not ‘soldiers in combat’ but more akin to ‘the dog in the house that keeps the burglar away.’

Critics cited many reasons not to override the established anti-arms norm. The IMO stated in 2009 that since seafarers were civilians ‘flag states should strongly discourage the carrying and use of firearms by seafarers’. Legal implications ranged from liability for fatal shootings to regulation and licensing compliance, particularly the transportation of arms across national borders. Many states considered visiting vessels with weapons onboard a security or terrorist risk and ships that called at multiple ports could find certain routes difficult to traverse. Other concerns included gun battles causing increasing piracy-related violence; insufficient or ineffective training for crew members to effectively deter pirates; unequal weaponry between crew and pirates; and the increased fire risk caused by gun fire. Moreover, the use of PCASP came with a considerable price tag that could outweigh the occasional ransom payment.

Marine insurance and PCASP

Initially, underwriters were reluctant to insure ships with armed escorts, preferring naval escorts. Changes in this line of thought began in October 2008 when Lloyd’s offered a new seven-day war risk policy with physical protection from Hart Security, expected to reduce premiums by 20 to 30 per cent. In December 2008, controversial private military contractor Blackwater reported around 70 inquiries from ship-owners

125 Ibid.
127 Liss, '(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs,' 90.
128 ‘Piracy Off the Horn of Africa,’ 37.
129 Ibid.
seeking guards.\textsuperscript{132} However, war risk insurance covered only crew members killed or injured, not armed guards.\textsuperscript{133} Traditional marine insurers did not consider the presence of armed guards on ships to invalidate insurance but did consider there to be quite serious insurance implications.\textsuperscript{134} This thinking continued well into 2010.\textsuperscript{135}

By January 2011 ‘a lot of ship-owners [were] beginning to think that [armed guards were] the only answer’ and IMB-PRC statistics reflected that Somali pirates had never taken a ship under armed guard.\textsuperscript{136} As the traditional marine insurance industry grappled with the armed guard problem, trade association newsletter for InterManager claimed in 2011 that ‘a number of K&R insurers are demanding the presence of armed guards on vessels, [while] others are offering discounts of up to 35 per cent to ship-owners employing private security firms for high-risk area voyages.’\textsuperscript{137}

A decision to employ PCASP cost roughly $5,000 a day for a four-man armed team, on duty for four to 20 days, with the average cost around $50,000 per transit.\textsuperscript{138} By 2012, insurance broker Seacurus offered a reduction of 75 per cent on K&R insurance premiums if PCASP were onboard, cutting the cost from US$15,000 per transit to $4,500 for some ship types.\textsuperscript{139} Seacurus also created an insurance product to cover corporate manslaughter, underwritten by Lloyds of London.\textsuperscript{140}

\textsuperscript{134} Ibid.
\textsuperscript{137} Debbie, "Insurers Offer Discounts for Armed Guards.” InterManager, 21 October 2011.
\textsuperscript{138} David Isenberg, "The Rise of Private Maritime Security Companies,” Huffington Post, USA, 29 May 2012. The cost also varied depending on the type of ship and its cargo.
\textsuperscript{139} Michelle Wiese Bockmann, "Armed Guards Can Help Cut Insurance Shipping Costs," Bloomberg, USA, 23 May 2012. Very large crude oil carriers and tankers pay higher premiums that are reduced from US$28,000 to $11,200 per transit with K&R insurance.
\textsuperscript{140} Julian Macqueen, “Insurance Cover Launched for Corporate Killing,” Lloyd’s List, 4 July 2011.
By late 2011, governments began to move in favour of PCASP. A senior US State Department official announced the US ‘insisted’ on all US-flagged ships carrying security personnel to defend against pirate attacks.\(^{141}\) The US State Department and the UK Government encouraged countries to allow commercial ships transiting high-risk waters to have armed security teams onboard.\(^{142}\) UK Prime Minister David Cameron described the decision as a ‘choice’ determined by the ‘fact that a bunch of pirates in Somalia is managing to hold to ransom the rest of the world and our trading system is a complete insult and the rest of the world needs to come together with much more vigour.’\(^{143}\) By the end of 2011, over 25 per cent of ships reporting piracy incidents had PCASP onboard. Attacks plummeted from 160 to 49 in a year.\(^{144}\)

**The return of private maritime violence: a new maritime industry**

Pre-existing private security companies initially met the demand for PCASP, employing veterans of the contractor circuit in Iraq and Afghanistan.\(^{145}\) From 2009-12, 38 different flag states condoned PCASP on voyages affected by Somali piracy.\(^{146}\) At first, oceangoing ship-owners could easily take advantage of the isolation of their operating arena and the absence of any binding international regulations on the use of PCASP to


\(^{144}\) 'IMB-PRC Report 2012,' 5.


\(^{146}\) Figure is obtained from collated IMB-PRC reports.
hire armed private security without explicit government approval.\textsuperscript{147} The dearth of regulation combined with the prevalence and questionable accountability of flag of convenience states meant the sudden increase in PCASP in 2011 created an ongoing legal maelstrom. At its core was the question of just how much control a state had over the actions of privately sponsored and unregulated violent actors like PCASPs. Moreover, their use exploited the absence of the Somali state. Chapter 5 explores this point further by examining how PCASP deterred attacks but undermined the international community’s effort to suppress Somali piracy.

In the meantime, private security companies found their own solutions. Floating armouries circumvented port restrictions on firearms by loitering semi-permanently in international waters, acting as a hotel and base for PCASP.\textsuperscript{148} Guards boarded a client’s ship at sea with their weapons, rode through the piracy high-risk area and disembarked at the other end of the journey, thereby keeping weapons at sea.\textsuperscript{149} These floating armouries remained cloaked in secrecy until the American owned, Sierra Leone-flagged \textit{Seamen Guard Ohio} allegedly drifted into Indian territorial waters.\textsuperscript{150} An Indian court convicted the entire crew on illegal weapons charges.\textsuperscript{151} In Sri Lanka, accusations of the connection between floating armouries and gun-running caused the resignation of the Law and Order Minister in 2015.\textsuperscript{152}

International concerns that PCASP escalated private violence at sea eventuated, although one industry newsletter describing the concern over the escalation of

\textsuperscript{147} Liss, ‘(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs,’ 89. Liss named Greece and Japan as examples and identified four key challenges with the regulation of PCASP at sea (p 92-94).
\textsuperscript{149} Ibid.
\textsuperscript{150} Cassie Werber, “The Capture of a Floating Armory and Its Crew Reveals a Strange Industry on the High Seas,” \textit{Quartz}, Online (USA), 14 January 2016. India is particularly vigilant on floating armouries given its long sea coast, location at the end of the HRA and the use of the sea by the Mumbai terrorists in 2008.
\textsuperscript{151} Ibid.
\textsuperscript{152} “Sri Lanka’s Law and Order Minister Resigns Amid Floating Armoury Scandal,” \textit{Times of India}, 9 November 2015.
violence as ‘folks getting their panties in a twist’. With no vetting processes for security teams or obligation to report casualties, PCASP violence remained unchecked by the international community. Some overzealous or untrained guards shot indiscriminately, including at innocent bystanders, with impunity. The first pirate casualty at the hands of PCASP occurred in March 2010 and while witness reports and leaked videos verified these incidents, the true number of casualties remained unknown. Journalist Katharine Houreld speculated that the ship’s flag state, Bangladesh bore responsibility for the PCASP’s actions, but no public information on any repercussions could be found.

Despite the risks and lack of regulation, by 2013, four out of five container ships and tankers passing through the Gulf of Aden carried armed guards onboard, signifying the return of violence to ships on the high seas and the rapid decline of this piracy epidemic.

Conclusion

This chapter has examined the historic and contemporary self-protective measures available to ship-owners facing pirates. My analysis of the Somali piracy epidemic showed how the historical relationship between insurers and ship-owners continued to intrinsically influence the ship-owners’ response to a pirate attack. However, as Neylon pointed out, ‘much is written about preventative measures that can be

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153 Mike Schuler, “Pirate Killed by Private Security Guard of Somali Coast,” gCaptain, USA, 25 March 2010.
155 Ibid.
deployed in an attempt to avoid being hijacked, but once you are caught, the game is up... a ship-owner has no option but to pay the ransom.'158

While modern communications and technology made the ransoming process faster and more efficient than in the past, its use by Somali pirates demonstrated that it remained a reliable and effective way for ship-owners to obtain the release of the ship and crew. Notably, since the decline of Somali piracy in 2012, ransoming became a lucrative revenue raiser for militant terrorist groups and the kidnapping and ransoming of foreign nationals became a primary source of their income.159 This exacerbated the ransoming dilemma faced by states: pay the ransom and fund terrorist or criminal acts, refuse to pay and leave hostages to an uncertain fate or death. Despite the implication of other European Union in ransom payments to release Islamic State hostages, Denmark has stood firm in denying any involvement.160 However, as the CEC Future case attested, the Danish government’s refusal to get involved that indirectly assisted in resolving the ransom situation. Yet, paying ransoms did not stop pirate attacks.

The rapid increase in the arming of ships in 2011 indicated the shift of the ship-owners agenda from acquiescence to deterrence. As Chapter 5 will examine, the international community’s navies could not sufficiently protect the insurers and ship-owners’ economic interests, so private companies stepped in to provide security services that filled this void. The employment of PCASP represented the absence of unity between the objectives of those immediately affected by piracy and those tasked with suppressing it. Self-protective measures and armed resistance did deter pirates, but they did not stop people turning to piracy in the first place.

158 Neylon, "Banning Ransom Payments."
160 Borger, Willsher, and Burgen, "Paying Ransom: The Ethical Dilemma: To Pay up or Stick to Your Principles."
While all the stakeholders in Somali piracy wanted it to stop, the United Nations’ approach to it focused on suppression, rather than immediate deterrence. Chapter 5 examines the further dispersal of the power to stop piracy.
CHAPTER 5

Authority, trust and neglect: the international effort to suppress Somali piracy

In early 2008, a battle between various Somali and international forces for control of Mogadishu raged. Somalia’s Transitional Federal Government (TFG), endorsed and sponsored by the international community, could not establish control of Mogadishu. To onlookers, it looked very much like the failure of the Somali state continued with no end in sight. At the same time, pirate attacks in the Gulf of Aden rapidly increased. As they had for years, piracy-affected states expressed little interest to the United Nations in the war in Mogadishu or the state’s continued failure. Instead, they placed increasing pressure on the UN’s Security Council to do something about the pirates.

Prior to 2008, as Chapter 1 touched on, the UN had actively avoided authorising states to intervene against pirates (as provided for in Article 100 of the UN’s Convention for the Law of the Sea (UNCLOS)), by expecting the pirates’ home state to manage the problem itself. To the UN, the situation in Mogadishu showed the Somali state had no capacity to exert authority and control. So in December 2008, it took the unprecedented step of authorising its member states to intervene in Somali piracy.

This thesis already established the dichotomy between how Somalis viewed their sovereign authority and how the international community expected it to occur. Instead of considering the Somalis’ perspective of sovereign authority by considering Somaliland or Puntland as suppressive agents, the UN took responsibility for Somali piracy suppression based on the ‘state failure’ narrative surrounding it. In doing so, it

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set about establishing and endorsing the authority of Mogadishu as the centre of the Somali state. It hoped a reconstructed, centralised state would stop Somalis turning to piracy in the first place. Chapter 4 showed that this goal contrasted with the dispersed deterrence interests of ship-owners, cargo providers, and insurers. To add further complexity, the UN expected the states participating in the piracy suppression effort to follow its suppression strategy, particularly regarding naval intervention and prosecution. But the participating states developed their own policies around their involvement. This dispersed the power to stop it even further.

Other authors have competently examined the operational aspects of Somali piracy suppression.\(^2\) This chapter shows the consequences of the UN focusing its piracy suppression strategy on the inaccuracy of the ‘state failure’ narrative. Many of the historical precedents of piracy suppression discussed in Chapter 1 manifested again through this process. In addition to this complexity, I argue that the UN’s failure to consider Somali sovereign authority constructs meant Somali piracy exposed the international community’s long term neglect of Somalia. I further contend that since the war in Mogadishu had sidelined the UN, Somali piracy suppression offered an opportunity for the UN to reassert its international authority in Somalia and to its member states.

This chapter shows the international community made considerable effort to coordinate a response to Somali piracy. The UN had a unique capacity to bring high-level, multi-state stakeholders and influential individuals together. The diplomatic

posturing of various committees and their resulting agreements echoed the passing of proclamations and laws to stop pirates in the past. As discussed in Chapter 1, these agreements had little effect without enforcement. Here I use the examples of China and Australia to argue the UN’s authorisation of naval intervention quickly provided more of an opportunity for participating states to peacefully present to each other their naval prestige, rather than actively suppress piracy. The motivator of prestige is applied to Indonesia’s engagement with Somali pirates. I show that despite its unprecedented international flavour, naval-based piracy suppression in the 21st century held similar challenges to those experienced 300 years earlier.

**Failing to establish law and order in Somalia**

Chapter 2 examined how Somalis shifted their sovereign allegiance away from centralised state-based sovereign authority after the state collapsed. As this section documents, from 2005 international actors with their own policy agendas undermined the internationally-led efforts to rebuild the conventional state in Mogadishu. This caused not only the reinforcement of the Somalis’ allegiance to the clan; it also directly contributed to a new choice for Somali sovereign allegiance at complete odds to modern state norms: *Al-Shabaab*.

**The political landscape of Mogadishu, 2004-07**

After the UN withdrew in 1995, the International Committee for the Red Cross, the World Food Programme, and the UN’s Development Programme remained active in
the country, providing food and other assistance. However, the UN’s Political Office for Somalia (based in Nairobi) participated in state-building efforts only indirectly.

For the Somalis, the international community’s failure to protect them from the violence of the Barrè regime, the failure of the intervention and the lack of engagement afterwards gave no cause for them to retain trust in the UN’s authority as an institution. Over the years, the inability of the Somalis to find and maintain peace and the creation of a profitable war economy based on corruption and aid misappropriation did little to improve relations. Until the pirates came en masse, the UN stayed away.

Nevertheless, by October 2004, the international community had cause for hope for the future of a modern, centralised Somali state in Mogadishu. The Somali National Reconciliation Conference, led by a regional network of Horn of Africa states called the Intergovernmental Authority for Development (IGAD), had concluded successfully. It had established the Transitional Federal Government (TFG), sworn in Puntland’s former President Abdullahi Yusuf as the new president, and achieved a declaration by all clans and factions represented that they would support President Yusuf and

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3 For the rest of the 1990s and into the 2000s, the International Committee for the Red Cross sponsored the Somali Red Crescent Society to administer humanitarian and food aid in Somalia. The ICRC gained observer status at the UN in 1990. International Committee of the Red Cross, “The ICRC Is Granted Observer Status at the United Nations.”


demobilise their militias.\(^6\) This optimism faced considerable challenges when 2005 became yet another calamitous year for Somalia.

The announcement of the TFG did not heal the deep division between centralist and federalist camps of Somalis. A centralist state afforded some Somali clan-lineages more advantage than gained by others.\(^7\) For example, clans such as the politically weak Rahanwein, who occupied valuable agricultural land in the south, viewed federalism as their only form of protection against the land hunger of more powerful clans.\(^8\) The Hawiye clan-family dominated the political and economic life of Mogadishu and occupied Rahanwein land, so it viewed federalism as a thinly veiled attempt to rob them of the fruits of victory.\(^9\) Others warned that without federalism, Somalia would disintegrate into fiefdoms that made easy pickings for arch enemy Ethiopia.

Meanwhile, Somalia’s growing Islamist movement rejected federalism altogether.

As political divisions embedded, intermittent fighting continued and members of the TFG contributed to the insecurity in Mogadishu.\(^10\) By July, the relocation of TFG institutions from Nairobi to Somalia had not progressed. The murder of several key people during the year, including Somali peace activist Abdulkadir Yahya Ali in July and a UN security officer in October, culminated in an assassination attempt on the Somali prime minister in November.\(^11\) The flow of arms from Eritrea, Ethiopia, and Yemen

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\(^7\) Menkhaus, ‘Governance without Government in Somalia,’ 83-84.

\(^8\) Ibid., 84.

\(^9\) Ibid.


increased, despite the former two countries’ direct involvement in the establishment of the TFG.  

**The Islamic Courts Union and Al-Shabaab**

Somalis traditionally adhered to a moderate, Sufi-inspired Islam. By early 2006, the continued absence of the TFG from Mogadishu caused unity through Islam to grow. The Islamic Courts Union (ICU) was a loose alliance of Islamic courts, some more radical in how Somalis traditionally interpreted Quranic law, including public floggings and executions. Nevertheless, for six months, the ICU provided a semblance of order and peace after fifteen years of chaos in Mogadishu. However, a faction of the ICU called *Al-Shabaab* or ‘the Youth’ advocated for militant Islamic control in Somalia and increasingly conflicted with the moderate elders of the ICU. Local warlords, well connected in the booming illegal arms trade, still maintained their own clan-based personal agendas, while the TFG remained powerless in Nairobi. The struggle to monopolise force in Mogadishu deteriorated into armed hostility and the rise of *Al-Shabaab* fed the international community’s fear of Islamic terrorism.

Two years earlier, persistent violations of the arms embargo caused the UNSC to unanimously vote to reactivate the UN-sponsored Monitoring Group disbanded in 1995. To reflect its increased attention on Somalia, the UN’s Secretary-General Kofi Annan appointed a Special Representative to Somalia, Guinean diplomat and former

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ambassador François Lonseny Fall in 2005. SRSG Lonseny Fall facilitated a ceasefire agreement between the ICU and TFG but it degenerated into a new round of conflict, amid reports of Ethiopian forces moving into Baidoa in support of the TFG. The rise of the ICU prompted some UNSC representatives to request more proactive intervention, including the United States and South Africa, but the full Council did not endorse peacekeeping intervention.

At this point, the contradictory dynamic between the US and the UN came into play. In June 2006, the Bush administration convened a group of ambassadors (predominantly Europeans, EU members and invited UN and African Union observers) as the International Contact Group on Somalia (ICGS) to discuss how to support the TFG in Somalia. Publicly, the US government and Congress expressed little concern over the ICU or state-building in Somalia and the State Department forbade the US military, through the Combined Joint Task Force-Horn of Africa (CJTF-HOA) based in Djibouti, from operating in Somalia. These actions did not stop unsubstantiated rumours of unofficial, clandestine US engagement in Somalia. To the Ethiopians, the
ICU directly challenged the legitimacy of the TFG and contained the seeds of an Islamic state that it did not want on its doorstep.\textsuperscript{23} Ethiopia suspected its archenemy Eritrea of surreptitiously supporting the ICU as a way to open a second front in their long-running border dispute and overextend Ethiopian military forces.\textsuperscript{24} A UN memo dated June 2006 outlined how US and Ethiopian interests aligned and darkened the motivations of the US in convening the ICGS. Azous Ennifar, the Acting Special Representative of the Secretary-General for the UN Mission in Ethiopia and Eritrea, wrote that the US Assistant Secretary of State for African Affairs Jendayi Frazer had said:

> the best-case scenario posits that the [ICU] and the TFG enter into dialogue, and as a result, moderates would emerge thus leading to stability in the country and the rebuilding of the State. The worst-case scenario would result from a total control by the [ICU] over Somalia and the disintegration of the ICU. [The US] would rally with Ethiopia if the ‘Jihadist’ took over [and] if Ethiopia intervened in Somalia, it would be a mistake for the international community to condemn it.\textsuperscript{25}

Ennifar concluded the memo with the statement, ‘any Ethiopian action in Somalia would have Washington’s blessing’, confirming a clear disregard for violating the non-interventionist principles of the UN’s Charter and Somalia’s sovereignty.\textsuperscript{26}

\textsuperscript{23} Mitchell, ”Extremists Emerge as the Real Face of Somalia’s Islamic Movement.”

\textsuperscript{24} This was confirmed by Jendayi Frazer on 31 January 2007. US State Department, ”U.S. Official Issues Upbeat Assessment of African Union Summit - State’s Frazer Says Watchword Was Cooperation on Somalia, Sudan Issues,” news release, 31 January 2007.

\textsuperscript{25} Azous Ennifar, ”Meeting with US Assistant Secretary of State for African Affairs,” United Nations (Wikileaks, 2006), 4.

\textsuperscript{26} Ibid. The statement is in direct contradiction to 2131 (Xx). Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, UN General Assembly, 1965 A/RES/20/2131.
**Ethiopian troops enter Mogadishu**

In December 2006, the Americans supported Ethiopian troops moving into Mogadishu.  
SRSG Lonseny Fall rebuked Ethiopia, saying in August that ‘[Ethiopia’s] support for the [TFG] did not translate into a green light for any country to interfere in Somalia at this critical moment.’ On 20 December, a UN representative declared no UN involvement, technical or other, in the putting together of the force in Somalia. Two days later, the Secretary-General expressed ‘grave concerns’ about the ‘continuous reports of the involvement of foreign forces in the current conflict and the lack of respect for Somalia’s sovereignty.’ Officials in Europe and neighbouring Djibouti criticised the US for the attacks.

Barnes and Hassan wrote that ‘genuine multilateral concern to support the reconstruction and rehabilitation of Somalia had been hijacked by unilateral actions of other international actors – especially Ethiopia and the United States – following their own foreign policy agendas.’ The Guardian’s Tom Porteous warned that ‘Western support for Ethiopia’s counter insurgency efforts in the Horn of Africa is not only morally wrong and riddled with double standards, it is also ineffective and counterproductive. It will ... help to radicalise its large and young Muslim population.’ Somalis reacted negatively, especially when the US claimed they were searching for three terror suspects wanted for bombing the American embassy in Kenya in 1998. Dr Mohamed Diriye Abdullahi, a Somali linguist, historian and cultural scholar,

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28 “Press Conference by Secretary-General’s Representative for Somalia.”
32 Barnes and Hassan, ‘The Rise and Fall of Mogadishu’s Islamic Courts.’
expert based in Hargeisa, Somaliland said, ‘air strikes kill indiscriminately. Ethiopian bombs are killing indiscriminately. If there are terrorists in Somalia, they must be hunted using ground forces, using good intelligence, not with missiles fired from the air, or with an army of occupation that is causing suffering to thousands of people.’

The attack blindsided the UN and highlighted how the US prioritised its own foreign policy agenda over the non-interventionist principles underlying its membership of the UNSC. Even though the US stopped short of a physical presence in Somalia to find the terror suspects allegedly hiding there, its military action proved another example of undermining the UN’s authority. The UN could only meekly confirm the attacks had occurred with the consent of the TFG. The disconnection between the US and the UN was not lost on Somalis: expatriate Abdi Ismail, a Somali professor of geography at the University of Minnesota said, ‘you don’t damage a society so deeply because three criminals are hiding someplace. Go after those criminals and assist the Somali population to put their government together, so that no terrorists or criminals can hide in that place.’

Throughout January 2007, the US government continued airstrikes on Somali soil against alleged terror suspects. By the end of the month, the UN acknowledged it was ‘on the sideline’.

The international intervention occurred in the first month of the appointment of the UN’s new Secretary-General, Ban Ki-moon. He soon discovered that underlying the UN’s neglect lay a deep, mutual distrust dating to the 1980s when the UN accused Siyad Barrè of misappropriating food aid intended for Ethiopian refugees and selling it

36 "Terror Finds a Home in Mogadishu."
38 "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General."
for profit. His subsequent actions showed he intended to use Somalia to reassert the UN’s authority and its humanitarian mandate.

In February 2007, he secured UNSC authorisation for the African Union to send Burundian peacekeepers to Somalia (AMISOM) to protect the TFG. He also decided to appoint a new SRSG to Somalia, Ahmedou Ould-Abdullahi. SRSG Ould-Abdullahi’s career followed a standard trajectory; cabinet-level posts in the Mauritanian government and a number of ambassadorships before his appointment as SRSG to West Africa in 2003, where he negotiated the end of the Nigeria-Cameroon border dispute. SRSGs required exemplary political, negotiation, leadership and management skills combined with a high level of personal prestige. Tasked with negotiating a peace agreement in Somalia, SRSG Ould-Abdullahi also needed a ‘superabundance of optimism, persistence and patience.’

From the outset of his appointment, SRSG Ould-Abdallah worked towards reconciliation and peace between Somalia’s warring parties. He believed the international community needed to ‘stop collectively punishing Somalia for past errors.

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42 Ibid.

43 Connie Peck, ‘Special Representatives of the Secretary-General,’ in The UN Security Council: From the Cold War to the 21st Century, ed. David M Malone (Boulder: Lynne Rienner Publishers, 2004), 328. For other analysis of the role of SRSGs see also John Karlsrud, ‘Special Representatives of the Secretary-General as Norm Arbitrators? Understanding Bottom-up Authority in UN Peacekeeping,’ Global Governance 19 (2013) 525-44.

44 Peck, ‘Special Representatives of the Secretary-General,’ 328. For other analysis of the role of SRSGs see also Karlsrud, ‘Special Representatives of the Secretary-General as Norm Arbitrators? Understanding Bottom-up Authority in UN Peacekeeping.’

by neglecting it’ and made considerable effort to bring the international spotlight back to Somalia, including meeting with US Secretary of State Condoleeza Rice.46 In December 2007, he asked the UNSC to consider the Somalia crisis as an ‘international problem’ and pleaded for a UN peace-keeping force to reinforce AMISOM and his fragile Somali peace deal, the Djibouti Agreement.47 His request gained broad support in the UNSC, with Burundi, Ghana and Nigeria committed to joining AMISOM.48 However, some members expressed apprehension about whether Somalis could maintain a sufficient level of peace to risk international peacekeepers. The United States specifically stressed the need for contingency planning through a technical assessment mission to Somalia before it would back a peacekeeping force.49 Ban Ki-moon had initially strongly supported the deployment of a United Nations peacekeeping operation to Somalia, subject to progress in the reconciliation process and developments on the ground.50 However, by July 2007 he recorded concerns over security and the UN’s capacity to mobilise sufficient troops and personnel for an operation of the size envisaged for Somalia.51 In his February 2008 response to SRSG Ould-Abdullahi’s December request, he deemed the security situation too precarious and ‘complicated by regional and international factors’. 52 Instead he decided to reinforce only diplomatic efforts and to continue to support AMISOM through the

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48 Ibid., 14.
49 Ibid.
50 ‘The Situation in Somalia,’ 303.
51 Ibid., 304.
52 The African Union forces comprised of only a contingent from Uganda, far below the requested 8,000 forces. The UN did send two fact-finding missions. The first, headed by the Department of Political Affairs, undertook a strategic assessment with the aim of developing a coherent UN strategy for Somalia. The other by the Department of Peacekeeping Operations responded to the US request to develop contingency planning for the deployment of a possible United Nations peacekeeping operation. Ban Ki-Moon, ‘Report of the Secretary-General on the Situation in Somalia,’ United Nations Security Council, 6-7.
African Union’s forces rather than authorise an UN-backed intervention. The international community entered another stalemate of inaction over Somalia.

The ICU and the local warlords declined rapidly in the face of the Ethiopian forces. Éric Laroche, United Nations Humanitarian Coordinator for Somalia reported in March 2007 that since January, Mogadishu had been ‘quiet’ and that perhaps ‘a new political environment was emerging in Somalia’ warning ‘the only alternative to chaos was to support the current institutions.’ He said people were tired of fighting and ‘the United Nations had decided to change its rules of engagement in Somalia.’

Unfortunately, before the month was out, another spate of violence had broken out in Mogadishu, including outrage over the shooting down of a cargo plane and the desecration of bodies of soldiers. Al-Shabaab had commenced its insurgency against Ethiopia’s occupation.

‘When two elephants fight it is the grass that suffers’

The situation created an ideological conflict of sovereignty for Somalis that fed the ongoing war. On one hand, the entrenched hatred of Ethiopia united many in wanting Ethiopian troops out of Somalia. On the other hand, opposing the Ethiopian occupation did not automatically mean embracing Al-Shabaab as a viable authority for control. An alternative was the Eritrean-supported Alliance for the Re-liberation of Somalia (ARS), loosely comprised of the ICU representatives opposed to Al-Shabaab. However, Eritrea’s involvement essentially meant it was now at war with

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55 Ibid.
57 Quote used by President Abdullahi Yusuf to describe the plight of Mogadishu’s residents. Steve Bloomfield, “Almost 200,000 Live in Despair in One of the World’s Blind Spots,” The Age, Australia, 24 November 2007.
58 Mitchell, “Extremists Emerge as the Real Face of Somalia’s Islamic Movement.” Ethiopia and Somalia have a long history of discord, including two wars in the past 45 years.
Ethiopia in Somalia, feeding the flames of anti-Ethiopian sentiment for Somalis.

Underlying the situation lay the usual simmering clan tensions and the remnants of support for the TFG.

The renewed conflict caused an unprecedented level of violence, including roadside bombs, assassinations and suicide attacks.⁵⁹ Control of Mogadishu fluctuated between the ARS, allegedly (at the time) Al-Qaeda affiliated Al-Shabaab, a variety of clan-based insurgent groups and the Ethiopian-backed TFG forces.⁶⁰ When Al-Shabaab made inroads into localities in the south, the war heralded the ‘worst period of fighting in Somalia’s bloody history.’⁶¹

The US made no official statement of any involvement in Somalia despite Somali reports of unmanned American drones, the presence of CIA agents in Mogadishu, civilian rendition, and granting asylum to the Somali Prime Minister.⁶² However, in a rare moment of candour, the US special envoy to Somalia, John Yates, admitted to fellow diplomats that ‘we set the agenda and then we lost control.’⁶³

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⁵⁹ Taylor, “Terror Finds a Home in Mogadishu.”
Authority, trust and neglect: the international effort to suppress Somali piracy

SRSG Ould-Abdullahi kept trying for peacekeepers but could not get his request through the Security Council.\(^{64}\) Edmond Mulet of the Office of Peacekeeping Operations reported daily security incidents targeting TFG elements, Ethiopian and AMISOM personnel and security situation that remained ‘complex, volatile and unpredictable’.\(^{65}\) The UN’s Monitoring Group (not located in Mogadishu at the time) reported arms embargo violations, corruption, and food aid misappropriation.\(^{66}\) This helped the international community maintain their long-established distrust of the Somalis’ desire for peace. Eventually, Somali leaders turned on Ould-Abdullahi; accusing him of being the central perpetrator responsible for a legal and political dispute within Somalia’s fragile government.\(^{67}\) Shortly after he left office in 2010, he wrote:

... ‘the long Somali war with its criminalised economy, attendant greed and cynicism and above all impunity and violence against the weakest, is also a profitable business for many, including Western actors. Somalis bear a great responsibility for this. But western organisations too have yet to come clean. Western assistance comes too late and even then is mostly spent outside Somalia... International conferences and calls for dialogue have become a profitable end in themselves and a motive for the Somali actors of the day to undermine the transitional government and broader

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\(^{67}\) “UN Envoy to Leave Office,” All Africa, 31 May 2010.
stability... During my three-year tenure as UN representative to Somalia, I saw genuine interest and commitment only from Secretary-General Ban Ki-moon and the African Union. The US would like to help more but is an easy target for western critics and hence is often undecided.68

As 2008 progressed, occasional international news headlines spoke of the complexity of the conflict and the resulting carnage while a growing disaster of drought and famine loomed.69 Then in late April 2008, two New York Times journalists offered a new angle on the old Somali story: ‘Strange how an African country can be moving from prolonged chaos to violent collapse and no one in the world notices until a couple of European boats get seized by armed gunmen.’70 For the first time since the UN’s intervention in 1992, the consequences of the Somali conflict began to directly affect the international community.

The international response to Somali piracy

SRSG Ould-Abdullahi first publicly noted piracy in September 2007 when he commended the French for sending naval escorts for international food shipments.71 However, in December 2007, he missed the opportunity to connect his desire for more UN peacekeepers for Somalia to the rising international economic threat of piracy,

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68 Ould-Abdallah, “Somalia: West Has yet to Come Clean over Its Policy of Neglect.”
70 Daniela Kroslak and Andrew Stroehlein, “Oh My Gosh, Pirates! Somalia,” International New York Times, 29 April 2008. The media coverage afforded to the early April 2008 hijack of the French ship Le Ponant and the resulting ransom negotiations is an indicator of increasing media attention towards Somali piracy. The article was followed by the BBC who picked up a Spanish news report on Spain urging the UN to intervene in piracy. Enrique Serbeto, “España Quiere Que Onu Apoye Misión De Protección En Somalia,” ABC Website, 30 April 2008. The title translates to Spain wants UN to back protection mission in Somalia. The maritime industry publication Lloyd’s List had consistently reported on Somali piracy attacks throughout the year.
despite representatives from Ghana, the United States, and the Congo all mentioning it. In his March 2008 presentation to the UNSC, he did not mention it at all, despite a letter sent in February by Somalia’s Permanent Representative to the UN Security Council conveying the consent of the TFG for urgent assistance in securing their territorial and international waters. The letter acknowledged the TFG had no chance of implementing any control over its inhabitants’ actions at sea. However, TFG representatives understood that UN support hinged on engaging internationally on the piracy issue. With no hijacks recorded by the IMB-PRC in the preceding three months, the UN made no response, presumably considering the request of low consequence. Before long, the end of the wet season combined with the deterioration of ICU control caused hijack numbers to increase again (see Graph 9).

**Graph 9: Somali pirate-attributed attacks, by month, 2005-2012**

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72 “’Business as Usual’ Approach to Somalia Will No Longer Work.”
74 Figures compiled from IMB-PRC reports 2005-12 and available in Appendix I.
The US began patrolling the Gulf of Aden using warships from their base in Djibouti.\textsuperscript{75}

In keeping with historic piracy preventative measures, other states with interests in the area began to use convoy for their ships.\textsuperscript{76} The Russian Navy heavily publicised its offer of a convoy service in the latter months of 2008 but escorted mostly Russian ships, while the Chinese sent a naval squadron to escort its lucrative trade ships travelling through the Gulf of Aden.\textsuperscript{77} Korea, India, and Japan also offered convoy services primarily to their own flagged ships and citizens. Per Gullestrup of the Danish-owned Clipper Group stated that it was possible for others to join, but ‘we certainly [would] have been rejected.’\textsuperscript{78}

In April 2008, pirates hijacked a Spanish tuna fishing boat and a French luxury yacht.\textsuperscript{79} For Spain and France, the attacks meant pirates now directly threatened their citizens and their state’s economic and political interests. They spearheaded the international pressure on the UNSC to pass a six-month (June to December 2008) resolution authorising member countries to send warships into Somali waters in pursuit of pirates.\textsuperscript{80} By August, hijack reports had more than doubled from the previous year (see Graph 9) and began to escalate rapidly.\textsuperscript{81}

\textbf{The UN’s authorisation of Somali piracy intervention}

SRSG Ould-Abdullahi had previously emphasised the connection of piracy with illegal fishing and toxic waste dumping, writing in more detail about it himself in November
2008. Since he needed to maintain the trust of the Somali leadership, he knew emphasising external causal factors rather than the inability of Somali leaders from stopping their people turning to crime would keep them on his side and help his ultimate goal of maintaining the Djibouti Agreement. However, by choosing this side he could not use the leverage of piracy as a land-based problem to obtain more land-based peacekeepers. Moreover, his mandate centred entirely on building relationships with the Somali TFG, centred in Mogadishu. As Chapter 3 examined, pirates active in the Gulf of Aden came from Puntland. With no engagement by SRSG Ould-Abdullahi with Puntland’s authorities, the UNSC had no capacity to engage with the pirates at their home bases.

Meanwhile, the UNSC’s resolutions of December 2008, in keeping with UNCLOS, authorised international forces into Somali waters and cooperative arrangements for the prosecution of Somali pirates. The resolutions all reaffirmed ‘respect for the sovereignty, territorial integrity, political independence and unity of Somalia’. However, to allow other states to violate Somalia’s territorial waters and justify this exception to the UN’s charter for impartiality and self-determination, the UN needed to sever the connection between Somali state-based sovereign authority and the pirates. This meant it established the pirates as hostis humani generis – enemies of all mankind. Even Matthew Tindal in the King James Privateers case of 1692 conceded ‘hostis humani generis is ... a rhetorical invective to show the odiousness of that crime’

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84 ‘Resolution 1816 (2008),’ 1. ‘Resolution 1851,’ 1. Resolution 1851 included ‘Somalia’s rights with respect to offshore natural resources, including fisheries in accordance with international law.’
rather than a basis for legal doctrine. While UNCLOS set out a definition of piracy, as Chapter 6 examines, the prosecution of pirates as *hostis humani generis* in the 21st century proved highly problematic for intervening states.

For the UN, the threat of violence presented by the pirates conflicted with its humanitarian mandate. With no legal or practical capacity in its own right to act as a suppressive force, the UN held no control over the actions of the three intervening anti-piracy forces: EUNAVFOR, NATO, and the CMF. All had mandates independent of the UN and retained their own leadership and agendas outside of anti-piracy operations. Moreover, the respect for ‘territorial integrity’ gave a clear signal that no state could intervene against the pirates on land, traditionally the most effective suppressive measure. All the UN could do was become a coordinating system for collections of initiatives organised by member states using the suppression of piracy to extend their expression of prestige.

While the UNSC could do little, the UN’s agency for the international maritime industry, the International Maritime Organisation (IMO), did take steps to deal with the pirates themselves. The IMO’s Djibouti Code of Conduct, signed in January 2009, became the central international law instrument to develop a regional capacity to

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86 States participating in these forces are at Appendix III.
87 For in-depth analysis see Kees Homan and Susanne Kamerling, ‘Operational Challenges to Counterpiracy Operations Off the Coast of Somalia,’ in *The International Response to Somali Piracy*, ed. Bibi Van Ginkel and Frans-Paul van der Putten (Leiden, Netherlands: Brill, 2010), 65-103. See also Dutton, ‘Maritime Piracy and the Impunity Gap.’ In keeping with the EU’s humanitarian-led defence policies, EU ships had already begun protecting World Food Program ships to Somalia before forming EUNAVFOR after the December 2008 UNSC resolution. NATO had planned maritime operations in Asia and modified these to fit the Gulf of Aden, reasoning that since it was already in the area it should do something to fight piracy. While the American-led Combined Maritime Forces’ Combined Task Force 151 undertook maritime security operations in the region, its original mandate was anti-terrorism and some of its members thought anti-piracy diverted too much from its original goal. Also, while it looked like a collaboration between a large number of different naval forces, it only had two to five ships in the region at one time, making it ineffectual as anything beyond a patrolling force.
combat piracy. It commenced as a multilateral agreement between the IMO and 20 Indian Ocean states who all declared their intention to cooperate in the investigation, arrest and prosecution of piracy suspects, the interdiction, and seizure of suspect ships, the rescue of ships and related persons and property and the conduct of shared operations with non-signatory states. As a nonbinding agreement administered by the international community, it required international funding and implemented missions designed for European/Western standards, a goal few of the regional states had any capacity to accomplish. In 2016, Phil Holihead of the IMO admitted its purpose was ‘about allowing [regional authorities] to coordinate more so that they can either give a warning that something is happening to bring in the cavalry or to become the cavalry themselves and police the sea effectively. It [was] not about trying to stop the current spike, but trying to create better conditions so that it [didn’t] happen again.’ This set a precedent amongst the international community for discussing piracy suppression at high-level meetings while not addressing the problem of actually stopping the pirates active at the time.

The Contact Group on Piracy off the Coast of Somalia (CGPCS)

In Somalia, they say if you don’t want to solve a problem, put it in a committee’s hand.

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89 International Maritime Organization, "Djibouti Code of Conduct." The full title is the "Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden". Signatories were Djibouti, Ethiopia, Kenya, Madagascar, Maldives, Seychelles, Somalia, the United Republic of Tanzania, Yemen, Comoros, Egypt, Eritrea, Jordan, Mauritius, Mozambique, Oman, Saudi Arabia, South Africa, Sudan and the United Arab Emirates.
90 Jens Vestergaard Madsen and Liza Kane-Hartnett, 'Towards a Regional Solution to Somali Piracy,' Air & Space Power Journal 5 no. 1 (2014) 67-80: 71. These authors note that in 2014, the administration of the Code was handed to an unnamed ‘newly formed regional mechanism’.
91 Holihead, "Focus on Delivery."
By early 2009, discussing piracy suppression at state-level meetings had become the contemporary equivalent of English sovereigns issuing proclamations calling for piracy to cease. It showed states knew piracy was a problem but did not provide a practical solution to stop it from occurring. The most prominent committee became the UN-mandated and US State Department-initiated group of 23 Member States and five intergovernmental organisations called the Contact Group on Piracy off the Coast of Somalia (CGPCS). The CGPCS made a concerted effort to come up with a practical suppressive strategy within the confines of the UN’s humanitarian charter. It developed four working groups (Table 5) led by the United Kingdom, Denmark, the United States, and Egypt, to form the focus areas for a coordinated piracy response. While the technology of the 21st century greatly facilitated the ‘discussion and coordination of actions among states and organisations to suppress piracy off the coast of Somalia’ as this section shows, the CGPCS could do little to solve the historic challenges of piracy suppression it encountered.

Table 5: CGPCS Working Groups

<table>
<thead>
<tr>
<th>Group</th>
<th>Mission</th>
<th>Leader</th>
<th>Responsibility</th>
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<tbody>
<tr>
<td>1</td>
<td>Military and operational coordination; information sharing; regional coordination centre cooperation.</td>
<td>United Kingdom with IMO support</td>
<td>Liaison with 'Shared Awareness and Deconfliction' (SHADE), regional capacity building, including implementation of the Djibouti Code of Conduct.</td>
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95 ‘First Communiqué,’ Contact Group on Piracy off the Coast of Somalia, 14 January 2009, 4.

96 SHADE was an independently established naval patrol group based in Bahrain. This group met monthly to alleviate the problem of multiple navies pursuing the same targets and to facilitate the coordination of a zone defence. Lisa M Novak, ‘Naval Officials Discuss Anti-Piracy Tactics,’ Stars and Stripes, Online, 28 May 2009.
In a 2014 interview, the US Department of State representative Donna Hopkins, a former chair of the CGPCS, stated ongoing debate around armed guards, the delineation of high-risk areas that diverted commercial traffic away from Saudi Arabia, Oman, Indian and Egypt, and the focus on deterring pirates rather than fixing Somalia all contributed to tensions in the group. Aside from the problems with prosecution discussed in Chapter 6, the sparse communiques showed an additional issue reflected in historic piracy suppression: how difficult it would be to build a Somali state of sufficient strength to exert the authority needed to control inhabitants actions’ at sea.

**The problem of Somali participation**

As justification for intervention, the UNSC’s resolutions repeatedly mentioned the requests from the TFG for assistance in combating piracy, with no mention of the situation in Mogadishu at the time or the potential role for Somaliland or Puntland.

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97 'Third Communique,' 1. The New York Declaration was described as ‘A Commitment to Best Management Practices to Avoid, Deter or Delay Acts of Piracy for major flag of convenience countries: Panama, Liberia, the Bahamas, and the Marshall Islands to commit to and promulgate internationally recognised BMPs for self-protection to vessels on their registers.’ US State Department, "The United States Signs "New York Declaration"," news release, US Department of State, 9 September 2009.
98 Donna Hopkins, "Reflections on Four Years' Work in the Contact Group. In Conversation with Donna Hopkins." Contact Group on Piracy off the Coast of Somalia, 8 July 2014.
The lack of awareness of political developments within Somalia caused a lost opportunity to deal with pirates at their source quickly. The references to unity within the resolutions confirmed the exclusion of Puntland’s authority as a possible intervener against the pirates. As Chapter 3 examined, this was most likely because of the UN’s allegations of Puntland’s complicity with it. In January 2009 newly elected President Abdirahman Muhammad Farole took the opportunity to establish contact with SRSG Ould-Abdullahi, ‘reaffirming the continued support of Puntland for any legitimate, meaningful and representative reconciliation of the Somali people’ but lamenting Puntland’s ‘inadequate’ representation in the UN-sponsored reconciliation process.\(^{100}\) While SRSG Ould-Abdullahi welcomed Farole’s engagement, he gave no indication a move towards supporting Puntland would facilitate a resolution to the piracy problem, despite the UN’s Development Programme working in Puntland on human rights monitoring, prison assessment, security force training and demining operations.\(^{101}\) It appeared this position followed the instruction of Ban Ki-moon. He noted in early 2009 that the American-mandated technical assessment mission sent by the UN to Somalia had suggested the UNSC needed to expand its focus beyond south-central Somalia and assist in consolidating the relative stability of Puntland and Somaliland.\(^{102}\) To do this would compromise SRSG Ould-Abdullahi’s commitment to the TFG and show the Somalis that protecting international interests affected by piracy was more important than continuing their peace process.

Meanwhile, TFG representatives did sporadically attend CGPCS quarterly meetings. For them, putting Puntland’s President forward as a potential authoritative piracy


\(^{101}\) Ibid.

\(^{102}\) Ibid., 11. The Americans wanted the technical assessment mission into Somalia for contingency planning before they would vote for sending peacekeepers.
suppressor would only undermine their authority in this international arena. It was also not in their interests to take responsibility for the lack of state control over the pirates since they had no capacity to implement piracy suppression. At the May 2009 CGPCS meeting, the Foreign Minister Mohamed Omaar suggested the external threats of illegal fishing and toxic waste dumping motivated Somalis to engage in piracy, despite the international community’s evidence of profit motivation. He requested support for the development of a Somali Coast Guard to combat these threats. At the next meeting, the Somali Ambassador Duale stressed the ‘need for a comprehensive approach by the international community to fight the scourge of piracy and armed robbery against ships’, again positioning Somali piracy as a problem inflicted upon Somalia, rather than caused by internal criminality.

The next mention of Somali representation occurred in March 2011. Then the TFG representative stressed the ‘importance of assisting Somalis in building and strengthening their economic, security, judicial and development capacity’ but for the first time acknowledged that piracy was now a ‘symptom of protracted insecurity on land.’ It seemed the CGPCS provided only an opportunity for the Somali TFG to enforce its legitimacy on the international stage rather than contribute to any meaningful resolution process of the piracy problem.

**The Kampala Process**

Stymied by the rigidity of the UN’s commitment to the TFG as representative of the Somali state, the absence of TFG representatives in 2010 caused the CGPCS’s focus to

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103 Guilfoyle, ‘Prosecuting Pirates: The Contact Group on Piracy Off the Coast of Somalia, Governance and International Law,’ 73.
104 ‘Third Communique,’ 2.
105 ‘Fourth Communique,’ Plenary sessions Contact Group on Piracy off the Coast of Somalia, 10 September 2009, 1.
106 ‘Eighth Communique.’
shift to the Kampala Process. It had begun in January 2010 as an agreement of intent facilitated by the UN’s Office of Drugs and Crime between the American and European-backed ICGS, TFG, Puntland and Somaliland to establish a ‘technical coordination mechanism for counter-piracy.’\textsuperscript{107} Eighteen months later, the Ninth Communique (14 July 2011) referred to the Kampala Process as a ‘Somali counter piracy dialogue forum.’\textsuperscript{108} The reality was far more complicated.

In September 2010, the new SRSG for Somalia, Augustine Mahiga articulated the very real problems pursuing the Kampala Process entailed. The ICGS had now evolved its mandate to developing operational capacity to assist in peace, reconciliation and the development of law enforcement. It now came under the auspices of the UN’s SRSG. As Ahmedou Ould-Abdullahi’s Tanzanian successor, SRSG Mahiga held the task of implementing the ICGS agenda and the variety of international agreements devised to fight piracy while also campaigning for UN peacekeepers to enforce the Djibouti Agreement.\textsuperscript{109} He spent most of his three-year tenure encouraging and cajoling the Somali leadership in Mogadishu to move from a transitional state towards a more permanent government. In a September 2010 address to ICGS members, SRSG Mahiga placed the UN-sponsored piracy intervention efforts firmly within the context of the need for land-based intervention to improve the overall security situation in Somalia, particularly the threat of \textit{Al-Shabaab}. He stated:


\textsuperscript{108} Contact Group on Piracy off the Coast of Somalia, ‘Ninth Communique,’ Plenary sessions Contact Group on Piracy off the Coast of Somalia, 14 July 2011, 2.

‘We are expending serious naval capacity to counter [piracy] and yet we are doing nothing to address the inshore problem between the land and international waters... Military activity by the International Task Forces at Sea conducting Maritime Security Operations must support and be complimentary to the overall security architecture of Somalia... As we attempt to build TFG forces and AMISOM remains below optimum levels the effort is being undermined by re-supply from the sea of the opposition forces and this is unacceptable given the naval forces we have in the region...’

By this time, SRSG Mahiga emphasised the need for piracy suppression to be part of ‘a package of balanced measures that contribute to the political stability of Somalia’. However, in Somali-led initiatives for peace like the Kampala Process, Mahiga struggled to find common ground and unity amongst these participants to talk about piracy. At a June 2011 meeting of the ICGS attended by the presidents of the TFG, Puntland and the central Somali region of Galmudug (but not Somaliland), SRSG Mahiga stated, ‘I have postponed convening this meeting several times waiting for positive political developments from Somalia, but they have not been forthcoming.’ He lamented that ‘political outreach, dialogue and inclusiveness has not been pursued vigorously’ and Mogadishu was beset by ‘political paralysis’ as its transitional phase came to an end. Somalis had begun to accuse SRSG Mahiga of direct interference in the Somali

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111 Ibid.
112 ‘Ninth Communique,’ 3.
parliamentary process.\textsuperscript{114} He responded by accusing the Somali leadership of political bickering, stating ‘the problem is that neither Parliament nor the Government want change. And that is the crux of the paralysis.’\textsuperscript{115} The swift loss of Somali trust in SRSG Mahiga had the unexpected effect of strengthening the peace agreement, uniting Somalis against the UN, but undermining the UN’s authority to coordinate a land-based response to piracy from the TFG.\textsuperscript{116}

With no collaboration with Mogadishu or Puntland, the complexity of the situation seemed lost on the CGPCS and the same assumptions of state capacity appeared as those made by Judge Doumer in Chapter 3. Phil Holihead of the IMO commented on this in 2014 stating, ‘all these Somali briefings we used to get just to keep them in the room... the amount of times I have heard the history of Somalia given at a Working Group 1 meeting as the only output is just unbelievable, and you hear it over and over again. Nothing about what they are doing about piracy.’\textsuperscript{117} Meanwhile, as rains failed and drought took hold a deepening humanitarian crisis offset the encouraging signs of improvement in security. The first document of outcomes referring to piracy and the Kampala Process did not appear until March 2013 and by that time piracy had declined significantly.\textsuperscript{118}

\textbf{The unintended role of convoy}

In response to the UN’s resolutions on Somali piracy, the navies of the world clamoured to participate in three major naval interventions: the European Union-
organised EUNAVFOR, NATO’s Operation Shield, and the Combined Maritime
Forces.119 The original CGPCS strategy expected navies to capture and detain pirates
for prosecution but the Group soon discovered it could not force states to undertake
this strategy. As Chapter 6 examines, they soon actively avoided it.

In a development reminiscent of the difficulties suppressing piracy in the Caribbean,
the complexity of the intervention/prosecution approach meant ‘naval intervention’
soon turned into a more passive patrol and convoy response. Chapter 4 examined the
historic conflict convoy caused between states and merchants. However, while the
chapter examined how some states undertook convoy for their own ships, unlike their
historic predecessors, 21st century insurers did not advocate for convoy and it did not
appear as a component of the UN’s suppression strategy.120 Instead, convoy became
representative of how the UN could not direct state navies in their piracy response.

In the pre-epidemic years of Somali piracy, navies working in isolation, usually
responding to a distress call if they were in the area. After the US-commanded CMF
established its Maritime Security Patrol Area in August 2008 and EUNAVFOR devised
its Internationally Recommended Transit Corridor through the Gulf of Aden, navies
worked more cooperatively to escort merchant ships through the region. Naval patrols

119 A table of these is in appendix III. The workings of two of the three major naval operations against Somali piracy, the EU’s
ATALANTA and NATO’s Ocean Shield are examined by Homan and Kamerling, ‘Operational Challenges to Counterpiracy Operations
Off the Coast of Somalia.’ Joris Larik and Quentin Weiler, ‘Going Naval in Troubled Waters: The EU, China and the Fight against
Piracy Off the Coast of Somalia,’ in China and the European Union: Partners or Competitors in Africa?, ed. Jing Men and Benjamin
in Unchartered Legal Waters? ’ International and Comparative Law Quarterly 64, no. iii (2015) 533-68; Radu N. Botez, ‘A European
Perspective on Maritime Security Challenges in the Indian Ocean Region,’ Strategic Analysis 36, no. 3 (2012) 369. ‘New Counter-
Maritime Security Challenges in the Indian Ocean Region.’ Toremans, ‘NATO’s Counter-Piracy Operation Ocean Shield.’ Peter M
Olson, ’Countering Piracy Off the Coast of Somalia: A NATO Perspective,’ Gebhard and Smith, ‘The Two Faces of EU–NATO
Cooperation: Counter-Piracy Operations Off the Somali Coast.’ and Ricardo Gosalbo-Bono and Sonja Boelaert, ‘The European
Union’s Comprehensive Approach to Combating Piracy at Sea: Legal Aspects,’ all in The Law and Practice of Piracy at Sea:
mission, CMF-150 has not attracted (English-speaking) academic interest to date.
120 Stares, “On Call Convoy Requests on the Rise.”
against pirates proved a relatively simple exercise however, patrols and convoy acted only as a deterrent measure, not a suppressor. They soon became a platform for expressing prestige for new and middle military powers, especially China and Australia.

**Prestige and power through naval intervention against pirates: China and Australia**

Chapter 1 touched on China’s troubled history with pirates. Prior to Somali piracy, it had most recently manifested in the prosecution of Indonesians for piracy in the 1990s. Due to its insufficient legal apparatus to deal with piracy, the Chinese had a propensity for releasing alleged pirates caught in the South China Sea, usually in relation to hijacked non-Chinese ships found in Chinese ports. However, increased international pressure caused the prosecution of four cases that involved considerably more than opportunistic maritime robbery; including murder, attempted murder, and violence, as well as firearms and stolen property offences. China’s experience a decade earlier made its naval leaders determined to avoid detaining and prosecuting Somali pirates. Instead, China embraced convoy. This helped shift the UN’s entire naval response away from direct intervention towards deterrence.

China’s engagement in the Somali piracy suppression effort provided it with a peaceful mechanism for promoting its rapidly expanded capacity to project military strength on the world stage. Prior to 2008, domestic priorities dominated China’s military agenda,

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including security for the Olympic Games, the provision of relief for a devastating earthquake that killed 70,000 people and the suppression of ethnic unrest in Tibet.\textsuperscript{123} China’s military display at its 60\textsuperscript{th} anniversary celebrations in 2009 showed the results of the substantial increase in China’s defence budget from previous years.\textsuperscript{124} In November 2009, China asked to co-chair SHADE, a position previously held by the CMF and EU.\textsuperscript{125} The three Chinese warships already in the zone were its first naval combat mission for 600 years.\textsuperscript{126}

In January 2016, China published a report on its experiences participating in anti-piracy initiatives. The report articulated almost the same challenges that had faced fledgling navies three hundred years ago. It spoke of the difficulty in dealing with the continuously changing nature of the pirate groups and the way they operated. It also discussed how the severity of the Somali environment, including monsoonal weather, high temperatures, and salinity, affected the operation of equipment. Technology had still not solved the problems of convoy. The difficulty now was coordinating escorts for merchant vessels with different sizes, weights, speeds, performance and defence capabilities when they all arrived at different times at the rendezvous points. The lack of an overseas base, insufficient training and language difficulties all affected the Chinese experience.\textsuperscript{127}

\textsuperscript{123} ’Chapter 8: East Asia and Australasia,’ Military Balance, \textit{International Institute for Strategic Studies}, 363.
\textsuperscript{124} Ibid., 365. A US Defence Department report estimated that actual spending was two to three times higher than published figures.
\textsuperscript{126} Jonathan Pearlman, ”Australia to Take on Somali Pirates,” \textit{Sydney Morning Herald}, 9 January 2009. See also Office of Naval Intelligence, ”The People’s Liberation Army: A Modern Navy with Chinese Characteristics,” \textit{Office of Naval Intelligence}, August 2009. 3. The report stated the voyages of Admiral Zheng He in 1405 and 1433 are the historical antecedent of China’s present day naval modernisation. China did not have a global naval tradition from the 15\textsuperscript{th} to 19\textsuperscript{th} centuries and naval operations played a minimal role in China’s civil war and its war with Japan in 1937-45.
\textsuperscript{127} Contact Group on Piracy off the Coast of Somalia, ”The PLA Navy of China Contribution to Counter-Piracy,” 2 January 2016.
The Australians joined the piracy suppression effort as an opportunity to ‘send a 
message to allies and others alike that we are prepared to shoulder common strategic 
burdens.’ Unlike the Chinese, Somali piracy only marginally affected Australian 
trade. Most Australian-connected ships did not sail anywhere near Somalia, with only 
13 per cent of imports and exports in 2008-09 European and 3 per cent Middle 
Eastern. Australia’s decision to send the frigate proved only an expression to the 
Chinese of the reliability of its alliance with the US. In place since World War II, the 
Australia-US alliance relied on the willingness and capacity of the US to act as a 
stabilising force in the Asia-Pacific region. Concerned about ‘the pace, scope and 
structure of China’s military modernisation’ Australia’s Force 2030 plan suggested 
China ‘needed to do more’ to ‘reach out to others to build confidence regarding its 
military plans.’ The Chinese involvement in Somali piracy suppression prompted one 
commentator to suggest, ‘since Australia had recently finished guarding Iraq’s offshore 
oil facilities, a deployment to the anti-piracy force would allow the Australian navy to 
work alongside ships from China, helping to build confidence and trust between China 
and other international navies.’

Soon after the announcement, the US-based Nautilus Institute for Security and 
Sustainability published a comprehensive analysis by Australian-based maritime 
security expert Carolin Liss. It found that while Australian involvement would support 
government-led, as opposed to private, responses to security threats, ‘the deployment 
of an Australian warship [made] little sense unless Australia and other countries also

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129 Based on the figures available for 2008-09 in Commonwealth of Australia, ‘Australian Sea Freight 2008-09,’ Bureau of 
Infrastructure, Transport and Regional Economics, 8. Most Australian sea-based trade is centred on Asia (68 per cent).
130 ‘Defending Australia in the Asia Pacific Century: Force 2030,’ 33.
131 Ibid., 34.
132 Pearlman, “Australia to Take on Somali Pirates.”
[took] an active role in ensuring that long-term measures are taken and successfully
implemented.' In addition, an opportunity for closer engagement lay with the
election of Somali-Australian Abdirahman Mohamud Farole to the Puntland presidency
in 2009. However, Australia proved unwilling to engage in state-building in Somalia
itself or with Farole, only tasking an Australian frigate and AP-3C maritime patrol
aircraft to anti-piracy operations. This added to pre-existing counter-terrorism and
maritime security patrol duties. There was no mention of funding any Somali-based
initiatives to prevent Somalis engaging in piracy and a donation of $2 million in foreign
aid was in keeping with previous years.

State intervention against pirates: Indonesia

For Indonesia, the rise of Somali piracy provided a welcome respite from the glare of
international condemnation at its failure to suppress maritime crime in its waters.
Indonesia opposed UN resolutions to send international patrols to the Gulf of Aden,
concerned it would create a precedent for intervention in other waters, specifically its
own. The Indonesians fiercely guarded their maritime sovereignty, but the state's
capacity to protect it was a different matter. A 2009 equipment serviceability audit of
Indonesia's military assets found that only 62 per cent of army vehicles, 31 per cent of
aircraft and 17 per cent of naval vessels were serviceable.

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133 Carolin Liss, 'Policy Forum 09-010: Ending Somalian Piracy: Pitfalls and Possibilities of Australian Naval Intervention and Long-
134 Hon. Joel Fitzgibbon MP, "Minister for Defence Announces Australian Contribution to International Anti-Piracy Efforts," news
million to Somalia since 2005-06. In 2009, Australia donated $1.5 million to the United Nations Humanitarian Appeal for security
protection for humanitarian workers in Somalia; and $500,000 to the African Union Mission in Somalia for the support of Somalia’s
TFG.
While it was reluctant to engage in anti-piracy activities in the Gulf of Aden, Indonesia’s regional neighbours embraced the opportunity. In keeping with its history of peacekeeping engagement, regional neighbour Malaysia became an early participant in the CMF. Despite owning only four warships capable of long-range operations, Malaysian forces successfully prevented the hijack of a St Vincent & Grenadines flagged ship *Zhen Hua 4* in December 2008 and a Panamanian-flagged ship the *Bunga Laurel* in January 2011. Chinese forces intervened in the attempted hijacking of the *Eleni G* in January 2009 and Japanese forces intervened in an attack on the *Grain Express* in April 2009. Thai naval forces rescued hijacked crewmembers of a Thai fishing vessel the *Or Sirichainava 11* in November 2010 in Yemeni waters. All the while, piracy in these states’ home waters was beginning to climb again, from 42 attacks in 2009, to 97 by 2012 (See Graph 1, Chapter 1). This time though, the large scale of Somali piracy and the lure of international prestige gained from intervening far outweighed the thankless task of stopping small-scale opportunists operating in Indonesian waters.137

**The Indonesian Government and the MV Sinar Kudus**

The Indonesian media picked up on Somali piracy in March 2011 when pirates hijacked the *MV Sinar Kudus*, a small Indonesian flagged bulk cargo carrier carrying US$174 million worth of ferronickel from Sulawesi. The pirates reportedly sought a US$3.5 million ransom for 20 Indonesian sailors, the ship and the cargo. The hijack attracted about as much interest as if it had happened in Indonesian waters – very little at all.

One day, almost a month later, a Jakarta Post columnist criticised the government’s

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lack of concern for the plight of his countrymen and the country’s malaise over an attack he perceived to be on its national security. He called the incident, ‘a perfect moment to project our power – a time to show that we are neither unfaltering nor deterred by a bunch of gangsters in a lawless land. Show them the fury of Indonesia!’ Others quickly chimed in with criticism of the government for its sluggish handling of the case and its failure to send in a rescue mission like the US and South Korea had for their kidnapped citizens, despite both countries experiencing loss of hostage life during the missions. They argued it played by the pirates’ rules to negotiate, as evidenced by the alleged increase in the ransom demand. The government defended itself by reiterating its concern for the welfare of the hostages and its preference for diplomacy and negotiation to resolve international crises, even refusing an offer of military assistance from India. This did little to abate commentators. Only one lone voice pointed out that Indonesia’s lack of military capability for global power projection made negotiating the only option available.

Before long, the government’s failure to launch a military operation had become a matter of national pride.

The criticism mobilised the Indonesian government into action. In a highly unusual move from other piracy-affected states, President Susilo Bambang Yudhoyono suggested a combined ransom payment and military response. The Indonesian government openly discussed its role in negotiating a ransom payment, although it

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138 Ristian Atriandi, "Free MV Sinar Kudus, Show Indonesia’s Fury," Jakarta Post, Indonesia, 13 April 2011.
insisted it did not contribute state funds.\textsuperscript{144} Within a week, the government had agreed on a ransom amount with the pirates. Soon after, the President dispatched two frigates with Marines and Army special forces to deliver the ransom.

\textbf{Map 14: Indian Ocean piracy activity in March 2011}

Despite public criticism for capitulating to pirates, the government’s decision to pay the ransom and intervene militarily in the hijack became Indonesia’s longest-range operation in 30 years.\textsuperscript{145} As Chapter 4 showed, it was also highly unusual. With the UN-mandated intervention in full swing, recently freed merchant ships benefited from friendly military escort and assistance, including to conventional political foes, such as North Korea.\textsuperscript{146} Despite its neighbour Malaysia’s presence in the Gulf of Aden at the time and a flurry of piracy off its own coastline, Indonesia chose to send two frigates (a third of its long-range naval capacity), an amphibious vehicle, a helicopter and a

\textsuperscript{144} Adianto P Simamora, “Money Ready to Pay Ransom for 20 RI Hostages, Govt Says,” \textit{Jakarta Post}, Indonesia, 20 April 2011. See also: “Minister to Disclose Ransom Amount to Pirates,” \textit{Jakarta Post}, Indonesia, 4 May 2011.


\textsuperscript{146} A US warship provided medical assistance to the crew of the North Korean vessel Dai Hong Dan when it came under attack in 2007 and Dutch and Spanish warships (as part of EUNAVFOR) assisted the crew of the North Korean vessel Rim after they had managed to regain control of the ship four months after it was pirated.
hundred-strong unit of special forces five thousand kilometres across the Indian Ocean to help the *Sinar Kudus*. This need to show its military strength may have stemmed from criticism of its focus on ransom negotiation (packaged as ‘diplomacy’) to resolve the matter, as well as envy over the success regional neighbours Malaysia, India, and South Korea enjoyed through their participation in the anti-piracy efforts of the Combined Maritime Forces. Given the fractious relationship between the neighbours, Indonesia would have seen the *Sinar Kudus* incident as an opportunity to gain prestige and express naval strength within its region and its population.

**The ransom drop**

Between the ransom drop and the release of the *MV Sinar Kudus*, Indonesian military forces (TNI) killed four pirates. Chief Admiral Agus Suhartono was quoted as saying, ‘the pirates were leaving the ship one by one, and when the last four got their turn to leave, the TNI personnel opened their attack, killing the four.’ The Admiral also suggested the military engagement was an attempt to recover the ransom money, rumoured to be US$4.5 million, ‘we took out four pirates [but] we did not find the ransom money, because the pirates had already distributed it between themselves when they were still on board the MV *Sinar Kudus*.’ Within hours, reports of the deaths of the four pirates suggested justifiable homicide in an ‘exchange of gunfire’ and a ‘firefight’, with one commentator claiming insider knowledge that the TNI killed the four Somalis because they belonged to a second group of pirates attempting to re-

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148 “Indonesian Troops Kill Four Somali Pirates after Ransom Paid, 20 Hostages Freed,” *Jakarta Post*, Indonesia, 3 May 2011. This is standard practice by Somali pirates.
capture the ship.\textsuperscript{149} While pirated ships changed hands amongst pirate groups, a second pirate group would be more concerned about obtaining the ransom money rather than the ship, making re-capture unlikely. The TNI’s execution of the four men linked to Indonesia’s relationship with vigilante justice.

Deaths of Somali pirates at the hands of foreign forces attracted little media scrutiny. On occasion, the military initiated an investigation into pirate killings (the US Navy exonerated the SEALS who killed three Somali men during the rescue of the US-flagged \textit{Maersk Alabama}) or chose to consider the deaths justifiable for the protection of innocent victims. Common during the Suharto regime, the premeditated murder of criminals by police or other security forces in Indonesia still enjoyed public support.\textsuperscript{150} Courts convicted police for similar crimes, but sometimes perpetrators attracted significant public support.\textsuperscript{151}

The TNI experienced no recourse for their actions; the media reported the deaths as justified by the pirates’ actions, or a demonstration of military strength.\textsuperscript{152} The TNI’s executions demonstrated the normality of vigilante justice within Indonesia combined with the problematic difficulty of the only other method of holding pirates to account: prosecution.\textsuperscript{153} Indonesian street justice included Islamic concepts like \textit{qisa} (law of retaliation). In contrast, Indonesia’s Penal Code, inherited from the Dutch, did not


\textsuperscript{150} Michael Bachelard, “Trial Draws a Vigilante Crowd,” \textit{The Age}, Fairfax Media, Melbourne, Australia, 5 September 2013.

\textsuperscript{151} Slamet Susanto and Bambang Muryanto, "Support for Kopassus Continues as Verdicts Read," \textit{Jakarta Post}, Indonesia, 6 September 2013. Bachelard, "Trial Draws a Vigilante Crowd."

\textsuperscript{152} "Indonesian Troops Kill Four Somali Pirates after Ransom Paid, 20 Hostages Freed. " "Editorial: A Different Success Story."

allow the death penalty for piracy, only a 15 year maximum imprisonment penalty. The Penal Code provided no definition of piracy beyond penalties based on its location (sea, beach or coast) and no mention of the Law of Nations. Chapter 6 examines this as one of the many challenges of Somali piracy prosecution.

The argument for prestige as the motivator for the government’s intervention in the *Sinar Kudus* needs to be placed in the context of the treatment of Indonesians in other Somali pirate encounters. The twenty men of the *Sinar Kudus* were not the first Indonesians captured by Somali pirates. On 30 March 2010, pirates captured eleven Indonesian men working aboard the Taiwanese fishing vessel *Jih Chun Tsai* and used it as a mother ship in other attacks for a year. Eventually, the pirates exchanged the men for medical treatment from the US Navy for two wounded colleagues. The US Navy killed three pirates and the hijacked ship’s captain during a rescue operation three months later.

Despite the Indonesian government’s recently implemented protections for citizens working overseas, at no time was Indonesian government assistance reported. In fact, on return to Indonesia, the men’s employer denied them nineteen months’ worth of salary, despite international standards that entitled them to monthly pay and 200 per cent compensation in such cases. The Indonesian crew held for eight months on the hijacked, Singapore-flagged *MT Gemini* were also denied compensation. Moreover, the Indonesian government did nothing to intervene in the plight of Indonesians held

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157 D Nugroho, "Indonesian Sailors' One-Year Ordeal," *Jakarta Post*, Indonesia, 8 June 2011.
158 Ibid.
159 Ibid.
by local pirates. Families paid ransoms for local fishermen and while by no means as exorbitant as Somali demands, ransoms of US$10,000 are an enormous amount for a low-income family to raise.160

Conclusion

This chapter examined the UN’s effort to create a suppression effort for the Somali piracy epidemic. The effort split in two general ways. The UN took responsibility for devising a land-based solution to piracy suppression in Mogadishu and the participating states took on the interventions required to hold pirates to account for their actions.

Somali piracy offered an opportunity for the UN to reassert its authority over its members and in Somalia. To begin its effort though, the UN needed to overcome years of neglect for Somalia. International interference in the country, represented by the 2007-08 battle for control in Mogadishu, meant the UN needed to rebuild the Somalis’ trust in it as an institution. The herculean efforts of the Secretary-General’s Special Representatives proved integral to this effort and the peace agreement brokered by the UN’S SRSG in Mogadishu became a starting point for a semblance of peace that grows today. However, Chapter 3 showed the source of the pirates was Puntland, not Mogadishu. So the UN’s commitment to rebuilding a centralised state from Mogadishu did not easily connect to its piracy suppression agenda. Moreover, the UN-endorsed Somali TFG recognised the diplomatic opportunity high-level piracy suppression meetings presented for not only its legitimacy on the international stage but the acquisition of financial resources to fund security efforts.

Meanwhile, naval intervention did not give the UN control over if or how these naval coalitions chose to intervene. China used Somali piracy suppression as an expression of its new and growing military power. Australia used it to show its loyalty to its military alliance with the US and their joint capacity to exert force. Somali piracy offered the UN’s members a peaceful opportunity to exert diplomatic and military prestige against a historic ‘enemy of all mankind’. The theme of prestige emerged as the dominant motivator for participation. Indonesia used it in reaction to criticism of its lack of military projection.

The absence of UN control over the naval coalitions completely marginalised a key pillar of its piracy suppression strategy: prosecution. It did not take long for naval powers to move from active intervention against pirates to the more passive deterrent measure of patrol and convoy. This meant naval intervention did little to stop people turning to piracy or continuing to participate in it.

Chapter 6 examines exactly why the UN’s naval intervention and preference for prosecution failed. The turning back of hundreds of years of legal precedent to establish Somalis as *hostis humani generis* did little to deflect the contemporary prosecution of Somalis in foreign courts. Somali pirate prosecutions proved just as problematic, time-consuming and expensive as the centuries of piracy suppressive efforts that preceded it.
CHAPTER 6

Politicising piracy through prosecution

Before the UN authorised the suppression of Somali piracy, no nation had sent its naval vessels out of its own region specifically to capture and prosecute pirates in nearly two hundred years.\(^1\) Historically, prosecution represented the imposition of the sovereign’s rule of law over captured ‘enemies of all mankind’ even though most pirates never saw the inside of a courtroom.\(^2\) The public display of executed pirates, most famously embodied by the corpse of Captain William Kidd hanging over the Thames for years, provided credible and tangible evidence of the sovereign’s control over pirates.\(^3\)

In keeping with this precedent, the CGPCS’ suppression strategy included the prosecution of interdicted Somalis for piracy.\(^4\) Since Somalis hijacked ships on the high seas, their actions fell under international law. The only way for them to be held accountable for their actions lay with prosecution but the UN had no authority to undertake this task. Responsibility fell to member states.

I argue piracy prosecution by a multitude of non-Somali states dispersed its legitimacy as a deterrent or suppressive measure. The potential of encountering a Western-style punitive legal process did little to deter Somalis from turning to piracy in the first place.

Chapter 5 established that the UN’s neglect of Somalia meant it held little authority

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\(^2\) For example, Rediker stated ‘no fewer than 400 and 500-600 Anglo-American pirates were executed between 1716 and 1726.’ He does not provide a source for this figure. A pirate ship of that time needed dozens of men to sail it and by law, everyone on it would be a pirate. This meant 600 executions over a ten year period probably only amounted to less than 10 pirate ships, or one per year.
\(^3\) See Robert C Ritchie, 'Captain Kidd and the War against the Pirates,' (Cambridge, Massachusetts: Harvard University Press, 1986).
\(^4\) ‘Seventh Communiqué,’ 2. For example, the CGPCS’ third Communiqué of May 2009 stressed ‘the need for cooperation to the fullest possible extent’ on the ‘arrest, detention and prosecution of suspected pirates.’ ‘Third Communiqué,’ 2.
amongst the people. Prosecution may have removed low-level pirates from the seas from the UN’s point of view, but to Somalis, the sea itself often accomplished this task anyway. Transferring pirates to international courts removed the opportunity the powerful controlling influence the pirate’s clan held over them. Despite the presence of judicial capacity in Somaliland and Puntland, the UN’s desire to ensure prosecutions met international standards meant it did not consider these entities to be suitable judicial contenders.5 This is not at all surprising given the accusations of complicity in piracy Puntland’s authorities faced. However, the alternate path chosen only further dispersed the suppressive effort.

In the first instance, finding courtrooms to prosecute Somali pirates was harder than finding the pirates themselves.6 Piracy may be a crime under international law, but it required state law to prosecute and these varied in definition, precedents and sentencing requirements. A key consequence was the reluctance of the naval powers to undertake prosecution. This was clear as early as 2009, including to the Somali pirates. Said the CGPCS in the seventh communique: ‘capturing suspected pirates and releasing them without consequence when there is sufficient evidence to support prosecution creates a perception of impunity.’7 One unnamed country did not see the point of prosecution at all.8 By 2012, even the CGPCS acknowledged ‘the gap between

5 UN representatives cited the out-dated and antiquated legal systems, volatile and highly unstable security situation, lack of qualified defence counsel, judges and other legal professionals, lack of secure and properly equipped courtrooms, untrained and ill-equipped investigators with no established operational procedures, overcrowded and unsanitary prisons, corruption and bribery as the reasons. ’UN Anti-Piracy Courts Report,’ 7.
7 ‘Seventh Communique,’ 6.
8 Donna Hopkins stated ‘There is one country, who I won’t name, that just kills them, you know they don’t see any purpose at all and think that it is excessively humanitarian to try pirates. You pick them up and you drown them. Hopkins, “In Conversation with Donna Hopkins.”'
the number of prosecutions and the number of suspected pirates detained by international forces.’

Secondly, a myriad of problems faced the seventeen states that completed prosecutions of Somalis for piracy (a full summary is at Appendix III). This included the expense of trials, including everything from interpreting services to defence attorneys, borne by taxpayers. The sole German prosecution cost an estimated €230,000, prompting one commentator to describe the trial as ‘an expensive and pointless farce.’ Moreover, the situation in Somalia was so insecure that convicted pirates could legitimately qualify for asylum. Most importantly though, every prosecuting state faced fundamental legal complications caused by piracy’s centuries-old dormancy that in no way assured conviction.

This chapter examines the US prosecution experience in Somali piracy suppression. The US National Security Council deemed prosecution and detention of pirates as an ‘essential implementation pillar’ of its piracy suppression plan. However, since its independence from Britain, the US deliberately avoided invoking universal jurisdiction in its courts. Despite its leadership role in the CGPCS, this tradition continued in its Somali piracy prosecutions. In addition, even though it only prosecuted Somalis attacking US ships, there were significant problems in aligning piracy laws and legal...
precedents to secure convictions. This required a level of judicial manipulation of centuries’ old laws and precedents to accomplish.

As the major naval powers sought to avoid prosecuting, they entered transfer agreements with Kenya, the Seychelles, Mauritius, and Tanzania to prosecute pirates in return for considerable financial investment. Only Kenya and the Seychelles prosecuted extensively. In keeping with the argument raised in Chapter 5 concerning piracy suppression as an expression of prestige, I use case studies on Kenya and the Seychelles to demonstrate the different ways these two states used Somali pirate prosecution as an opportunity to express their sovereign authority and enhance their prestige. In contrast, Yemen interdicted pirates on the own volition and undertook a considerable number of prosecutions without any international assistance at all.¹⁴

By mid-2009, only six months after the convening of the CGPCS, international naval forces began releasing a suspected nine out of ten apprehended alleged pirates back to Somalia.¹⁵ The CGPCS considered this a failure of its suppression strategy but I contest that this approach had the potential to be a more effective suppressive measure than prosecution. As Chapter 2 and 3 examined, the Somali clans jealously guarded their territorial areas. Returning a pirate to an area not of his clan placed him in adversity to the dominant sovereign authority. So a pirate from Puntland dropped in Mogadishu had a long and dangerous trek home.

¹⁴ Known Yemeni cases are documented in Appendix III.
Piracy prosecution in the 21st century: universal jurisdiction

The legal framework for piracy lay in Article 105 of the United Nations Convention on the Law of the Sea (UNCLOS). It expected states to have their own anti-piracy laws to prosecute crimes of piracy and implement punishment. Since UNCLOS defined piracy as a crime committed outside the jurisdiction of any state, a prosecuting state could invoke universal jurisdiction to prosecute. Most 21st century scholars considered universal jurisdiction over piracy to be undisputed, even though the complex and overlapping rules of it meant very few state courts had any contemporary experience invoking it. While the international legal community theoretically accepted the UNCLOS definition of piracy as authoritative customary international law, no state had tried cases to test it. Moreover, no state had updated their piracy laws in over a century, if they had any at all.

The situation created three significant challenges for states prosecuting Somalis for piracy (Table 1). In the first instance, states needed to indict Somalis on piracy charges to invoke universal jurisdiction. The state needed to use pre-existing piracy law and

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17 Luc Reydams, Universal Jurisdiction: International and Municipal Legal Perspectives, Oxford Monographs in International Law (Oxford: Oxford University Press, 2005). In 2001, Bassiouni concluded that 'universal jurisdiction to prevent and suppress piracy has been widely recognised in customary international law as the international crime par excellence to which universality applies.' M. Cherif Bassiouni, 'Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice [Article],' Virginia Journal of International Law 42, no. 1 (2001) 81-162. See also more recent publications relating to Somalis tried for piracy: Samuel Shnider, 'Universal Jurisdiction over "Operation of a Pirate Ship": The Legality of the Evolving Piracy Definition in Regional Prosecutions,' North Carolina Journal of International Law & Commercial Regulation 38, no. 2 (2013) 473-569: 482-92. "The notion that piracy is a crime that is "regarded as the most heinous by the international community," and therefore punishable by any court where the pirate may be found," has become widely accepted as the basis of an analogy between piracy and other gross human rights offenses." Universal jurisdiction over other international crimes is more controversial and outside the scope of this thesis.

18 "Universal Jurisdiction over "Operation of a Pirate Ship " , 496. See also: R R Churchill and A V Lowe, The Law of the Sea (Manchester: Manchester University Press, 1985). In addition, the 1988 Convention for the Suppression of Unlawful Acts against Maritime Navigation (SUA Convention) provided a useful broader scope to piracy than UNCLOS, but it negated universal jurisdiction by requiring a nexus between the offence committed and the jurisdictional state. United Nations, 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,' International Maritime Organisation, Article 6(a) pg 226. The nexus could be: the flag of the ship; the committing of the offence within the state's territory; the offence affecting a state national; the perpetrator is a national of the state or a 'stateless' person; or the offence is committed to compel the state to do or abstain from an act.
any precedent set by it, or alternatively, pass new domestic piracy law. Secondly, universal jurisdiction relied on the state’s legal definition of piracy complementing UNCLOS. Many states’ legal definition of piracy pre-dated UNCLOS by centuries. Finally, the state could not invoke universal jurisdiction if it met the ‘nexus’ obligations of the SUA Convention, but it could exert its own jurisdiction over the pirates.

Table 6: Publicly recorded trials and prosecutions of Somalis to 2 October 2017

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<th>State</th>
<th>Number of trials</th>
<th>Number prosecuted</th>
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<td>2</td>
</tr>
<tr>
<td>France</td>
<td>4</td>
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<td>11</td>
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<tr>
<td>India</td>
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<tr>
<td>Japan</td>
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<td>4</td>
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<tr>
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<td><strong>Grand Total</strong></td>
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</table>

19 See Appendix A for full details. §
In 2012, the UN lists 492 potential prosecutions and convictions, with 290 in Puntland and 95 in Somaliland. These are not included due to lack of corroborative detail. Information in Appendix III.

According to a 2012 survey by Yvonne Dutton, very few state laws provided for universal jurisdiction over piracy. In fact, many states did not even specifically criminalise piracy: relying instead on general categories of crime, such as robbery, assault, kidnapping, or murder. With little reason to update piracy laws, governments had not addressed these challenges before the UN authorised naval intervention in December 2008. Only one of the 17 prosecuting states was not a signatory of UNCLOS, so most had a theoretical framework in their favour. For the one non-signatory, the United States, its first piracy trial brought these legislative issues and more into sharp relief.

The challenge of prosecuting 21st century piracy: the United States

Between 2010 and 2013, five trials relating to four separate events saw 16 Somali men in US courtrooms for armed attacks on US ships. At least 13 men entered guilty plea agreements (including the sole survivor of the *Maersk Alabama* incident, Abduwali Abdukhadir Muse) and two acted as witnesses. Table 2 gives a summary of each case.

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20 Dutton cited Kenya, Yemen, China and India as the only states with pre-existing experience of universal jurisdiction over piracy before 2008. Dutton, ‘Maritime Piracy and the Impunity Gap,’ 1137. However, China did not have anti-piracy legislation when it prosecuted Indonesian pirates in 1998 and 1999. In the *Cheung Son* and the *Petro Ranger* cases, China charged the men under murder, kidnapping and other offences. China claimed territorial jurisdiction because authorities found both vessels in Chinese ports. The Indians also had no anti-piracy legislation when prosecuting the Alondra Rainbow case that ultimately ended in acquittal. See Flynn, “China Criticised for Failure to Beat Piracy.” Abimanyu Nagarajan, “Sea Change,” Safety4Sea, SQE Marine Group, 13 June 2012. Kenya’s experience is discussed in the chapter. There is no public information available on Yemen’s history with piracy prosecution.

21 Dutton, ‘Maritime Piracy and the Impunity Gap,’ 1116. Before 2005, even the IMB used a significantly broader definition of piracy than UNCLOS.

22 The US recognises UNCLOS as a codification of international law and its refusal to ratify it is unrelated to the definition of piracy.
Table 7: Summary of Somali piracy trials in US courtrooms

<table>
<thead>
<tr>
<th>Date of finding</th>
<th>Persons</th>
<th>Piracy event</th>
<th>Finding</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>29/10/2010</td>
<td>5</td>
<td>Firing on the USS Nicholas</td>
<td>Guilty</td>
<td>Life</td>
</tr>
<tr>
<td>27/4/2012</td>
<td>1</td>
<td>Acting as ransom negotiator on Marida Marguerite</td>
<td>Guilty</td>
<td>Life</td>
</tr>
<tr>
<td>27/2/2013</td>
<td>6</td>
<td>Firing on the USS Ashland</td>
<td>Guilty (on appeal)</td>
<td>Life</td>
</tr>
<tr>
<td>8/7/2013</td>
<td>3</td>
<td>Murder and hijack of SY Quest</td>
<td>Guilty</td>
<td>Life</td>
</tr>
<tr>
<td>27/11/2013</td>
<td>1</td>
<td>Acting as ransom negotiator on CEC Future</td>
<td>Hung jury (dismissed)</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Domestic anti-piracy laws criminalised piracy, prohibited individual conduct, and provided for punishment within a state.23 Historically, US piracy law largely followed British precedents. By 1819, Congress attached penalties to ‘all who should commit the crime of piracy as defined by the law of nations,’ without adding any further description of the crime beyond piracy as robbery on the high seas.24 A ‘piratical act’ included depredation: aggression, search, restraint or seizure. However, if committed by a person who was not a citizen of the United States or the ship and passengers were foreign, it was not piracy and therefore US courts could not prosecute it.25 Judges used subsequent cases to mitigate this restrictive interpretation of the law.26 An 1874 American article by Whatley lamented the ‘failure to distinguish clearly between piracy under the law of nations and piracy by municipal law.’27

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25 An Act to Protect the Commerce of the United States, and Punish the Crime of Piracy, United States, 1819. This enshrined in law the 1818 acquittal on piracy charges of two Americans who robbed a Spanish vessel on the high seas (US v Palmer).
Eventually, federal criminal statutes included extraterritoriality (exerting legal power beyond territorial borders) if a US connection existed. In the 2003 case US v Yousef, ‘in order to apply extraterritoriality for a federal criminal statute to a defendant consistently with due process, there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair.’28 The Yousef case provided the legal basis for the United States to avoid invoking universal jurisdiction to prosecute Somali pirates without a US connection.

In the 21st century, universal jurisdiction evoked prominent controversy in the US, most famously in a 2001 article on the subject by former US Secretary of State Henry Kissinger. He argued that while universal jurisdiction had prevented and punished human rights violations, war crimes, genocide, and torture, ‘the danger lies in pushing the effort to extremes that risk substituting the tyranny of judges for that of governments; historically, the dictatorship of the virtuous has often led to inquisitions and even witch-hunts.’29 Kissinger raised concerns that excessive reliance on universal jurisdiction undermined the political will to sustain the humane norms of international behaviour. Executive Director of Human Rights Watch Kenneth Roth responded to Kissinger by alluding to Kissinger’s concern being more that universal jurisdiction could be asserted over Americans (like him), rather than standards and due process. In Roth’s view, universal jurisdiction provided an opportunity for the prosecution of crimes when national courts lacked this capacity.30 Piracy scholar Alfred Rubin directly rebuked this argument: ‘[It is assumed] that we are prepared to have our people tried

28 ’USA v Hasan’, Opinion and Order, 17.
for the same things that we say others violate international law by doing. It has never, never happened except in victor’s justice courts. Never—I repeat, never.’31

**Definition of piracy**

Before the Somali pirate trials, the most recent court precedent on the definition of piracy was *US v Smith*, tried in 1820.32 The court needed to determine whether Congress had sufficiently proscribed piracy by relying on the law of nations for its definition, or if it also included any unauthorised violent act or attack committed on the high seas without lawful authority against another ship. The Supreme Court judge found that piracy, under the law of nations, was only robbery on the sea and that Congress had defined it sufficiently.33 Despite the broadening of jurisdiction rules, revised statutes of 1874 carefully preserved the unique connectivity piracy created between international and municipal law.34 This did not become problematic until 2010 when American judges needed to prosecute Somalis for piracy.

In April 2010, Mohamed Ali Said and his compatriots set off in a small skiff into the Gulf of Aden. As the skiff approached the *USS Ashland*, a United States naval frigate stationed in the region, one person in the skiff raised and shot a firearm at the ship.35 The *USS Ashland* returned fire, destroyed the skiff and killed one of its passengers. The US Navy took the remaining passengers into custody. On 21 April 2010, the US District Court in Virginia indicted the men on charges relating to their actions, including piracy.

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33 Ibid.
35 In his statement, Mr Said said he and his compatriots were attempting to signal the ship for assistance after ferrying Somali asylum seekers to Yemen.
The men would be the first defendants against piracy charges in the US in almost 200 years.

Judge Raymond Jackson noted that at no time did Said and his colleagues board, take control or rob the *USS Ashland*. Based on the precedent set by *US v Smith* the judge found its definition of piracy as sea robbery would stand because ‘the discernible definition of piracy as “robbery or forcible depredations committed on the high seas”... has remained consistent and has reached a level of concrete consensus in US law since its pronouncement in 1820.’36 He noted subsequent cases after Smith also referred to piracy as robbery.

In response, the Government argued that internationally recognised definitions of piracy included ‘any illegal acts of violence or detention’, most notably in UNCLOS. Judge Jackson found that these variations on the definition were ‘unsettled’ and, in fact, a number of scholars defined piracy just as Judge Story had in the Smith decision.37 While UNCLOS may provide a definition, the interpretation of that definition had the potential to vary widely between states.38 And besides, the US had never signed UNCLOS. Judge Jackson determined that the precedent set by the Smith case would stand and dismissed the charge of piracy against Said and his compatriots.39

This finding jeopardised the potential for the successful prosecution of other Somalis already brought to the US for trial. The Government immediately appealed the

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37 Ibid., 26.
38 Ibid., 18.
39 Said was not the first Somali piracy trial to occur in the US but was the first to reach a conclusion. Abduwali Abdukhadir Muse, the sole surviving Somali of the *Maersk Alabama* hijack in 2009 was detained and indicted on 19 May 2009. He changed his plea to guilty on 18 May 2010 so a trial did not proceed.
decision. In the time it took for the appeal hearing, the second trial of Somalis for piracy in the US, *USA v Mohammed Modin Hasan* (and others) began. These men had also fired on a US navy ship, the *USS Nicholas*, and the circumstances of their case were very similar to Said and colleagues. Judge Mark S Davis examined the definition of piracy again.

Judge Davis agreed that *US v Smith* defined piracy to require robbery or forcible depredations. However, he determined that the definition of piracy under the law of nations evolved over time. Judge Davis concluded that the phrase ‘law of nations’ as used in the US piracy law required the application of the modern international consensus definition of general piracy. He noted that while the US had not ratified UNCLOS, ample evidence suggested it did adhere to its terms, except in the one article under dispute, the prohibition on deep-sea exploration and mining. Judge Davis felt the US had respected UNCLOS in its entirety, bar this exception, for 25 years. Since Somalia had ratified UNCLOS in 1989, both nations had accepted the same definition of general piracy. He made no mention of the failure of the Somali state or its incapacity to acknowledge or enforce such agreements. Finally, he also noted that courts in Kenya had relied on the piracy provision of UNCLOS to interpret their domestic criminal code proscribing general piracy, despite the legal dubiousness of this finding, examined later in this chapter.

Judge Davis decided that ‘as of 1 April 2010, the law of nations, also known as customary international law, defined piracy to include acts of violence committed on

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40 *USA v Hasan*, Opinion and Order, 51.
the high seas for private ends without an actual taking." Ignoring Judge Jackson’s precedent set two months’ earlier, Judge Davis overruled his decision and the definition of piracy in the United States now aligned with UNCLOS. In his Opinion of 29 October 2010, Judge Davis was careful not to establish universal jurisdiction as the basis for the *USS Nicholas* case, instead relying on the territorial principle of jurisdiction since a US warship remained US territory at sea. The court convicted Hasan and the other men. Based on Davis’ judgement, the appeals court denied the prosecution’s appeal against Said and eventually convicted him and his compatriots of piracy in 2012.

**Defining ‘high seas’ in the US court**

While both these cases worked through how to define piracy, the two cases of the alleged ransom negotiators, Ali Mohamad Ali and Mohammad Saaili Shibin examined the high seas component of the definition of piracy. Unlike their compatriots, Ali and Shibin were not involved in the actual hijack of a ship and joined the pirate group after the pirates had anchored each ship within Somali territorial waters.

Ali Mohamad Ali’s charges centred on the hijack of the Danish owned, Bahamian-flagged *CEC Future* in 2008, discussed in Chapter 4. He was charged with aiding and abetting piracy, hostage-taking and compelling the ship’s Danish owners to pay a ransom for its release. Ali, a proficient English speaker from his years living in the United States, was a former Director of the Ministry of Education in Somaliland.

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42 'USA v Hasan', Opinion and Order, 75.
43 A comparison of the two cases and an argument that Jackson’s interpretation of the law was incorrect but Davis disregarded the *stare decisis* legal principle of adhering to precedents is made by David Inge Clay, "A Tale of Two Judgments: United States v Said and United States v Hasan." Social Science Research Network, 11 March 2011. The two cases and their opposing approaches to attempted piracy is also discussed in Eugene Kontorovich, 'United States v Dire,' *American Journal of International Law* 107, no. 3 (2013) 644-49. Kontorovich concluded that precedent existed of attempted piracy as piracy through the Smith definition.
American authorities arrested him in the US after he attended an educational conference in North Carolina two years after the attack.\textsuperscript{46}

His defence counsel alleged that Ali’s actions did not amount to piracy because he was not involved directly in the hijacking incidents. The prosecution responded that domestic laws made those who aid, abet, counsel, command, induce, procure, or wilfully cause the commission of a federal crime punishable as a principle.\textsuperscript{47} In her finding on the defence’s motion, Judge Ellen Huville concurred with the Hasan ruling that UNCLOS defined piracy and ‘any act of inciting or of intentionally facilitating an act of piracy is itself piracy.’\textsuperscript{48} However, she criticised the Government’s indictment of Ali for assuming he was on the high seas when the piratical acts occurred. She found that the text of the general piracy statute clearly stated that it only applied to high seas conduct: ‘whoever, on the high seas, commits the crime of piracy as defined by the law of nations...’.\textsuperscript{49} Judge Huville considered that applying US law to conduct that occurred within another state’s jurisdiction (i.e. on land) could arguably violate international law.\textsuperscript{50} Finally, Judge Huville considered that the UNCLOS definition of piracy did not extend to conspiracy to commit piracy. The government needed to convince a jury beyond reasonable doubt that Ali intentionally facilitated acts of piracy while he was on the high seas.\textsuperscript{51} Government evidence based on GPS coordinates on-board the CEC Future indicated Ali could only have been on the high seas at most for 24 to 28 minutes.

\textsuperscript{47} 'USA v Ali', Memorandum Opinion, 16.
\textsuperscript{48} Ibid., 17.
\textsuperscript{49} Ibid., 19.
\textsuperscript{50} Ibid., 19.
\textsuperscript{51} While the UNCLOS definition covered aiding and abetting, it did not provide for conspiratorial liability. This meant that the government could not incorporate conspiracy to commit piracy into the definition of piracy. Judge Huville found that prosecuting Ali for conspiracy to commit piracy would violate international law. In fact, Ali is the first person to be charged in this manner. Judge Huville dismissed the charge for ‘failure to state an offense’.

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during the entire 67 days of the *CEC Future*’s captivity.\(^5^2\) Furious, Judge Huville dropped the piracy charge. The case ended in December 2013 with a deadlocked jury. The court released Ali after a failed Government appeal.

Conversely to Judge Huville’s view, Mohammad Saaili Shibin’s Judge Robert Doumar contested that Congress chose not to ‘crystallise the contours of general piracy’.\(^5^3\) He cited the 1946 *Pinkerton v United States* precedent that ‘the overt act of one partner in crime is attributable to all’, making aiding and abetting a crime.\(^5^4\) Judge Doumar found that Shibin engaged in acts of aiding and abetting in a crime that originated on the high seas, such as guarding hostages while the ship was in port, and this was sufficient to sustain the charge of aiding and abetting piracy. Shibin’s motion was denied and he was convicted on 15 counts of piracy and related offences in August 2012. He lost his appeal and received multiple life sentences.

**Prosecuting piracy under transfer agreements: Kenya, Seychelles, and Mauritius**

The US experience demonstrated the time-consuming complexity of prosecuting non-US citizens for piracy through the US court system. Its role as a naval leader in piracy suppression conflicted with its determination not to invoke universal jurisdiction and prosecute piracy without a US nexus. The contemporary context for this position lay with the US Navy’s capture of the Somalis who hijacked the *MV Safina al Bisarat* in 2006. In a one-off agreement, they managed to persuade Kenya to agree to prosecute them. When piracy escalated in 2008, the US needed some way to follow through on

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\(^{5^3}\) Shibin was not charged with conspiracy to commit piracy so this part of Judge Huville’s opinion is not relevant. ‘United States of America v Mohammad Saaili Shibin’, Opinion and Order. *US District Court, Norfolk, Virginia*, (2012), 5.

\(^{5^4}\) Ibid., 8.
the international community’s expectation of prosecution but avoid having to do it themselves.

In early 2009, the UK, EU, and the US negotiated agreements with Kenya to transfer alleged pirates captured by international forces to Kenya in exchange for investment and improvement in its antiquated court system.55 In 2010, the Seychelles’ government also accepted alleged pirates for prosecution and in return, received financial resources to improve court and detention systems, train police and legal officers, and draft appropriate legal frameworks. Agreements with Mauritius and Tanzania followed with similar inducements. Table 3 provides a summary of all the known transfer agreements between regional states and representatives of the international community for the prosecution of Somalis for piracy. It is important to note ‘transfer’ was an involuntary change of custody for the suspect, rather than any kind of formal extradition or deportation. The transfer agreements and their legal ramifications provoked in-depth academic discussion, including the challenges of evidence preservation, providing adequate health care and security for prisoners, what to do about underage defendants and accusations of human rights violations.56 The following case studies examine how each state implemented these agreements.

Politicising piracy through prosecution

Sarah Craze, PhD Thesis

Table 8: International agreements by regional state (by date of signing)

<table>
<thead>
<tr>
<th>Regional state</th>
<th>International party</th>
<th>Date signed</th>
<th>Monetary Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya</td>
<td>United Kingdom</td>
<td>12 December 2008</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td>United States</td>
<td>January 2009</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td>European Union</td>
<td>6 March 2009</td>
<td>€2 million</td>
</tr>
<tr>
<td>Kenya</td>
<td>Canada</td>
<td>Existence disputed</td>
<td>€2 million+</td>
</tr>
<tr>
<td>Kenya</td>
<td>China</td>
<td>Existence disputed</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td>Denmark</td>
<td>Early 2009</td>
<td></td>
</tr>
<tr>
<td>Seychelles</td>
<td>United Kingdom</td>
<td>27 June 2009</td>
<td></td>
</tr>
<tr>
<td>Seychelles</td>
<td>European Union</td>
<td>September 2009</td>
<td>€780,000</td>
</tr>
<tr>
<td>Seychelles</td>
<td>United States</td>
<td>14 July 2010</td>
<td></td>
</tr>
<tr>
<td>Mauritius</td>
<td>European Union</td>
<td>July 2011</td>
<td>US$3 million</td>
</tr>
<tr>
<td>Seychelles</td>
<td>Denmark</td>
<td>Before January 2012</td>
<td></td>
</tr>
</tbody>
</table>

Somali piracy begins a dramatic decline from January 2012

| Seychelles     | Netherlands              | Before 21 May 2012      |                        |
| Mauritius      | United Kingdom           | 8 June 2012             |                        |
| Seychelles     | Norway                   | 28 June 2013            |                        |
| Seychelles     | Australia                | 26 June 2013            |                        |

58 "US Delivers Seven Somali Pirate Suspects," Reuters Online, 5 March 2009.
61 A September 2010 article in Kenya’s Daily Nation discussed the cancellation of all Kenya’s pirate transfer agreements mentions one with Canada. However, a Canadian editorial published at the same time disputes a formal agreement stating ‘apparently Canada is trying to work out a deal with Kenya, whereby if we catch pirates in the area we can turn them over to Kenyan courts to prosecute.’ See Gideon Maundu, “Kenya Cancels Piracy Trial Deals,” Daily Nation, Kenya, 30 September 2010. Peter Worthington, "We Needn’t Be So Nice to Pirates and Those Who Stone Women," National Post, Canada, 13 September 2010.
62 The same September 2010 article mentions an agreement with China. Information on the signing of these agreements is not publicly available. An alternate publication from 2011 disputes this statement and claims China had not entered into any transfer agreements at all because escorting Chinese ships was the priority for China’s participation in anti-piracy initiatives in the Gulf of Aden. See Maundu, “Kenya Cancels Piracy Trial Deals.” Larik and Weiler, ‘Going Naval in Troubled Waters: The EU, China and the Fight against Piracy Off the Coast of Somalia,’ 92.
63 The date of the signing of the Kenya-Denmark agreement is unknown. Kenya cancelled the agreement in September 2010. Kenya agreed to accept transferred suspects on an ‘ad hoc’ basis. ‘Strategy for the Danish Counter-Piracy Effort 2011-14,’ Ministry of Foreign Affairs, 21.
66 Pamela De St Antoine, “Somali Piracy Comes Ashore in Mauritius as Pirates Are Detained and Tried in Island Courts,” LeMauricien.com, 26 January 2014. Also reported as 3 million Euros.
67 Agreement referenced in 'Admin', "Danish Warship Frees 14 Hostages," Copenhagen Post (online), 9 January 2012.
68 Government of the Netherlands, "Eleven Somali Suspects to Be Handed over to Seychelles." 21 May 2012.
69 "Norway and Seychelles Enter into Agreement on Transfer of Pirates," Regjeringen, Norway, 1 July 2013.
## Regional state

<table>
<thead>
<tr>
<th>Regional state</th>
<th>International party</th>
<th>Date signed</th>
<th>Monetary Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanzania</td>
<td>European Union</td>
<td>3 April 2014</td>
<td></td>
</tr>
<tr>
<td>Seychelles</td>
<td>UN’s Office of Drugs and Crime</td>
<td>5 May 2014</td>
<td>US$4 million</td>
</tr>
<tr>
<td>Seychelles</td>
<td>Japan</td>
<td>19 December 2014</td>
<td></td>
</tr>
</tbody>
</table>

### Kenyan transfer agreements

In Kenya, concerns about the affect of the transfer agreements on Kenya’s sovereignty began almost immediately. In January 2009, the Kenyan Foreign Minister reiterated his support for the US-Kenya agreement but emphasised that Kenya was ‘not an open door for dumping pirates on Kenya[n] soil.’ By April, the suspects’ lawyer Mr Francis Kadima, a former magistrate, argued the transfer agreements were not enforceable because Kenya had not ratified international maritime conventions and Parliament had not approved them. In another interview with the Daily Nation, Mr Kadima warned that the country’s judiciary did not have enough experience to expeditiously deal with the issues of piracy. Other critics cited the security risks to Kenya and a perceived lack of financial, judicial and technical support for the trials from the foreign partners.

The agreements were also internally politically contentious. Members of the Parliament’s committee on defence and foreign relations stated the agreements ‘were...”

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70 “Australia Joins RAPPICC and Signs with Seychelles on Cooperation to Prosecute Suspected Pirates,” news release, Seychelles Ministry of Home Affairs and Transport, 26 June 2013.
72 “Unodc’s Support to Seychelles Celebrated,” Seychelles Nation, 7 May 2014.
75 Gettleman, “Rounding up Suspects, the West Turns to Kenya as Piracy Criminal Court.”
77 Maundu, “Kenya Cancels Piracy Trial Deals.”
signed by people who did not have the interest of the country at heart.’78 The
Attorney-General described the agreements as ‘overzealous’ and called for their
revocation because with nearly one hundred piracy suspects still awaiting trial, ‘they
were putting the country’s judicial system under undue strain, while the rest of the
countries in the region benefited.’79 By September 2010, Kenya’s agreements had
‘come to an end’, despite intense pressure from Western powers to reconsider.80
Kenyan ambassador to the UN, Mr Zachary Muburi-Muita said ‘many in the Kenyan
Government [were] beginning to express concern about creating a second
‘Guantanamo Bay’ in Kenya.’81 With the flow of suspected pirates stopped, now the
judicial system had to work through the trials.

The legislative framework for piracy prosecution in Kenya

In 2006, faced with the unexpected prosecution of the ten Somalis transferred by the
Americans, Kenya faced the same judicial problems as the Americans. The Kenyan
government used its 1930 Penal Code to charge the men for the hijack and attempted
ransoming of the Indian vessel MV Safina al Bisarat.82 In the first instance, the Kenyan
Penal Code did not align with the definition of piracy provided by UNCLOS because its
definition included Kenyan territorial waters as well as the high seas.83 Secondly, the
Penal Code did not explicitly confer jurisdiction for crimes committed entirely outside

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79 Ibid.
80 Maundu, “Kenya Cancels Piracy Trial Deals.”
82 Before modifying their piracy laws to prosecute Somalis in 2009, Kenya and the Seychelles drew their domestic piracy laws from
the Penal Codes inherited from their British colonisers. By 1926, the Colonial Office had decided that British East Africa, including
Kenya, should conform more closely to English law. The Colonial Office adopted the Nigerian Code in Kenya, Uganda, Tanganyika
(now Tanzania), Nyasaland (now Malawi), and Northern Rhodesia (now Zambia) and in 1956, the Seychelles. After independence,
these Penal Codes formed the foundation of criminal law for many crimes, including piracy. See Sir Harry Gibbs, ‘Queensland
83 ‘Republic of Kenya v Mohamed Mohamed Hashi, Mohamed Dogol Ali Cade, Abdiwhahid Mohamed Osman, Abudilahi Omar
Mohamed, Abdirahman Mohamud Caser, Khadar Mohamed Jama, Abdirizak Hassa Ali, Mohamed Cirfer Ismail’, Civil Appeal No.
of Kenya with no Kenyan connection. Kenya needed to invoke universal jurisdiction because it was not the capturing state. In addition, the Kenyan parliament had not passed enabling statutes to give effect to the UNCLOS and SUA conventions.\textsuperscript{84}

Nevertheless, legal commentators considered the Penal Code sufficiently recognised piracy under the law of nations and conferred jurisdiction to the Kenyan High Court.\textsuperscript{85} However, the Bisarat trial ran in the subordinate Magistrate Court. Gaathi argued that this extension of extraterritorial jurisdiction did not have a sound legal basis under the Penal Code.\textsuperscript{86} Moreover, the judge considered Kenya’s status as a signatory of UNCLOS confirmed universal jurisdiction, even though the Kenyan parliament had not enabled it. He convicted the men of piracy. This decision then informed Judge Davis’ ruling on the piracy definition in the USS Nicholas case.

Three years later, the Kenyan parliament repealed piracy in the Penal Code through the 2009 Merchant Shipping Act (MSA). The intention of the MSA was to domesticate all key international conventions aimed at curbing piracy, including UNCLOS and the SUA Convention, by defining piracy more extensively and comprehensively than had existed in the repealed section. Jurisdiction in Kenyan courts over non-nationals captured on the high seas was wider than in the SUA Convention but still required High Court jurisdiction.\textsuperscript{87} Kenya had charged the majority of transferred Somalis under the old Kenyan Penal Code, not the MSA and held their prosecutions in the lower Chief Magistrate’s Court in Mombasa, not the High Court.

\textsuperscript{84} Wambua, 'The Jurisdictional Challenges to the Prosecution of Piracy Cases in Kenya,' 109. By late 2009, the parliament had only enacted a single legislation relating to UNCLOS, that of the delineation of maritime zones. 
\textsuperscript{85} Gathii, 'Kenya's Piracy Prosecutions,' 373.
\textsuperscript{86} Ibid., 367 n21.
\textsuperscript{87} Wambua, 'The Jurisdictional Challenges to the Prosecution of Piracy Cases in Kenya,' 103. Gathii argued that most SUA signatories followed the stipulations of the Convention in crafting implementing legislation. Wambua stated the new law was ‘not premised on sound legal principles.’ Ibid., 104.
The November 2010 judgement by Judge Ibrahim reflected the flawed legislative framework. He determined the Chief Magistrate’s Court held no jurisdiction to try pirates for offences committed outside of Kenyan territory and could not invoke universal jurisdiction. He considered repealing the piracy section of the Kenyan Penal Code meant the law had ceased to exist. Since there was no provision in the new MSA to facilitate the ‘transfer’ of charges from the Penal Code to the new Act – known as a sunset clause, he dismissed the charges. In his view, by passing the MSA, Parliament had intended to extend jurisdiction to the high seas for ‘offences affecting relations with foreign states and external tranquillity’, but it failed to ‘legislate expressly in the statutory provisions that matter, i.e. sections of the statute.’ Moreover, the Kenyan government could not rearrest and recharge the Somalis under the MSA, as the Kenyan Constitution prohibited *ex post facto* crimes.

The ruling stalled prosecution of piracy in Kenya for almost two years. Kenyan media commentator Peter Mwaura described Judge Ibrahim’s actions as ‘judicial activism’ and quoted the English Lord Denning, ‘judges have ways and means of getting round the law.’ Legal commentators wondered why the Judge had ignored the precedent set by the *Bisarat* trial. The Attorney General, aggrieved by the ruling, filed an immediate appeal.

Only one piracy case appeared in the Kenyan Magistrate Court in 2011. The case concerned four Somali men charged with an armed attack on the *Sherry* fishing dhow.

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89 Ibid., 36.
90 Ibid.
92 Ibid.
93 Ibid.
in September 2009. The Magistrate was of ‘the considered view that there exists a
doubt as to the Court which should try this offence’ but refused the only alternate
course of action, releasing the defendants.94 He referred the case to the High Court. In
his May 2011 finding, High Court Judge Ojwang determined the Magistrate’s Court did
have jurisdiction to try piracy in Kenya under the MSA and that the High Court had
‘supervisory jurisdiction over the subordinate courts.’95 Importantly, Judge Ojwang
cited the Penal Code repeal as a differentiating factor between the Sherry case and
Hashi. Despite the finding, no suspected pirates appearing in Kenyan courts again until
August 2012.

During the prosecution hiatus, one commentator from Kenya’s Daily Nation newspaper
speculated on political machinations in the legal quagmire. Phillip Muyanga reported
an allegation that EU funds for the defence of Somalis had ‘been diverted to other
uses’ despite ‘correspondence from a UN official indicating that the organisation had
provided Sh240 million (approximately US$2.3 million) for the suspected pirates’
defence.’96 In October 2011, the newly promoted Supreme Court Judge Ibrahim was
strongly criticised by Public Prosecutions director Keriako Tobiko for an unlawful ruling
and a transgression of the Penal Code in the Hashi case.97 His spokesperson said:

‘The judge made the ruling based on the wrong law. There was something
skewed about the authorities he relied on... it beats logic that the [previous]
judgment could be referred to in many parts of the world, including the US, and

95 Ibid., 22.
96 Muyanga, “EU Funds Diverted, Piracy Trial Told.”
yet fail to be referred to locally...’98 Many countries are using the same
international law [universal jurisdiction] applied in trying pirates, yet he failed to
be guided by the correct interpretation of a judge he sat with in the same
building.’99

The prosecutor also accused Judge Ibrahim of deliberately delaying delivery of the
judgment for eight months, even after the prosecution had closed its case and the nine
suspects put on their defence.100 The appeal suffered a setback when one of the five
Appeal judges required to hear the case was absent for a scheduled hearing in
February 2012, compounded by the dismissal of four Court of Appeal judges in April
2012.101

On 18 October 2012, the Court of Appeal overturned Judge Ibrahim’s decision on
jurisdiction. The court found ‘the learned Judge did not appreciate the law’ in relation
to the applicability of the Penal Code to prosecute foreigners for piracy.102 The Appeals
Court judge found he was wrong to ignore the precedent set by the Bisarat trial and
had ‘no jurisdiction to make the orders he made.’103 The Judge continued, ‘what would
be the use of the international conventions on such matters if signatories to them such
as Kenya do not honour them in action?’104 After the success of this appeal, the

98 Ibid.
100 Ibid.
103 Ibid.
Kenyan courts slowly worked through at least nineteen trials of over 200 transferred Somalis until the conclusion of the last trial of Somalis in August 2015.  

**Seychellois transfer agreements**

By March 2010, Somali pirates had attacked the Seychellois coastguard, affected the country’s yacht tourism industry, and caused shipping prices to skyrocket. Pirates had held several groups of Seychellois fishers hostage, with a pair of elderly fishers still in captivity at the time. With its small population of nearly 90,000 people, the Seychelles prison system could not support a large contingent of piracy prosecutions and piracy did not exist as an independently defined crime under the Seychellois Penal Code. Nevertheless, members of the international community and the Indian Ocean island state of Seychelles signed transfer agreements to prosecute pirates.

In anticipation of prosecutions, the Seychellois parliament modified the Penal Code. The new law closely modelled a piracy definition along the UNCLOS definition, with a broader reach. It criminalised conspiracy to commit piracy, dispensed with the ‘high seas’ component and enabled prosecutors to charge several defendants with the same offence, as long as all had a ‘common intention’ to commit the crime in question. Undertaking these measures before accepting transferred Somalis greatly facilitated piracy prosecutions in the Seychellois courts.

Throughout its 16 prosecutions, Seychellois courts established universal jurisdiction over accused pirates, developed case law on attempted piracy and showed a

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107 Sharon Uranie, "Eight Somali Adults and One Minor Convicted of Piracy by the Seychelles Supreme Court," *Seychelles News Agency*, 19 March 2015. The men were released in 2011 after a year.
109 Ibid. See also Shnider, 'Universal Jurisdiction over "Operation of a Pirate Ship".'
willingness to prosecute for cruising without violence. However, convicted pirates complained they had no defence counsel, translator or a right to appeal. British barrister Tim Moloney QC observed a Seychellois piracy case and stated:

‘Whilst every effort was made by the parties and the trial judge to ensure that the proceedings were fair, there was a marked inequality of resources between the prosecution and defence which was capable of producing injustice. All five defendants were represented by a single lawyer. He had no instructions from the alleged pirates as to their defence to the charges and was simply testing the prosecution case.’

Mauritian transfer agreements

Mauritius signed a pirate transfer agreement with the EU in July 2011 and the UK in July 2012. Under this agreement, the EU expected Mauritian authorities to investigate and prosecute Somalis suspected of piracy in return for €3 million for a purpose-built prison and court. In keeping with the Seychellois model, Mauritius needed to update its laws and train its police, judges, and lawyers before commencing prosecution. With the assistance of the UN, the new Mauritian law, the *Piracy and Maritime Violence Act*, expanded the definition of piracy to include those who engaged in piracy-like acts on shore, those who enabled piracy, and those who financed pirate
attacks or profited from attacks. The first (and to date, only) transfer of suspected Somali pirates to Mauritius was by the French Navy in January 2013. The Mauritian Government charged twelve Somalis with the attempted hijack of the French-flagged MSC Jasmine. The attack involved two groups of men: a group who initiated the attack, and a group who remained on the mother ship. Mauritian magistrate Wendy Rangan acquitted the men in November 2014 due to a lack of evidence, including a failure to prove which men on trial were the ones who attacked the ship and which were the accomplices. In a blog post about the finding, American legal scholar Milena Sterio described the finding as ‘legally bizarre’, citing the precedent set by the Seychelles to prosecute based on ‘common intention’ or ‘joint criminal enterprise’, without having to determine the scope of their particular roles in the criminal endeavour. Other findings she deemed ‘bizarre’ were the decision that the ‘high seas’ were those outside the Economic Exclusion Zone of Mauritius (not any state) and that their detention on Mauritian soil was illegal. The case showed that the provision of financial resources to prosecute pirates was no guarantee of a conviction. The prosecution immediately appealed the decision. The Appeals Court

116 Ibid.
117 Ibid.
convicted the men in August 2016, sentenced them to time served and authorised the transfer of the men to the Seychelles for repatriation to Somalia.123

Prosecution in Tanzania

To date, Tanzania has not completed a prosecution of Somalis for piracy, despite signing agreements to accept transferred pirates.124 In the meantime, Tanzania received EU-sponsored training of its naval forces and court officials. Seven Somalis appeared in a Tanzanian court in 2013 for attacking an oil exploration vessel within Tanzania’s waters, but a lack of defence counsel caused the case’s adjournment.125 As at April 2018, no developments had occurred.

Evaluating the effectiveness of prosecution as a tool of piracy suppression

As these case studies showed, non-Somali courts faced significant challenges in legal and jurisdictional issues. Other challenges included differing standards of evidence and investigation; language and communication issues; witness location and retention (for the defence and the prosecution); prolonged incarceration of suspects; and potential human rights violations; and funding of legal defences and representation to ensure due process. Moreover, most of the people prosecuted in foreign countries were not in the top echelons of pirate networks, only poverty-stricken, desperate young men.126 The Europeans tended to prosecute for actual hijack and ransom events, while the...
Kenyan and Seychellois courts prosecuted cases of attempted hijacks. Only Mohamed Abdi Hassan (“Afweyne”), prosecuted in Belgium for his involvement in the hijack of the MS Pompei, had any proven standing amongst Somali pirates.127

The international community also assumed that prosecutions would be successful, but that was not always the case. The idea of an ‘acceptable outcome’ provided by a legislative system deemed superior to the Somali alternative lay at the heart of all non-Somali prosecutions. Successful international convictions stopped very few Somalis from engaging in piracy permanently. However, returning suspects to Somalia, or the ‘catch and release’ approach to pirate suspects, while abhorred by international commentators, stopped a much larger number of Somalis at least for a short time. The territorial aspects of clan culture and the way pirate groups expected individuals to cover their own expenses until ransom payment meant release could become a permanent solution, depending on where in Somalia the navies returned the men.

Alternatively, a pirate returned to his home town faced pressure to repay debts by returning to the seas. Whatever their motivations, removing potential pirates from the seas for even a short time did protect some ships and crew from hijacking, regardless of which navy or coastguard was doing the removing. It still took time and money for individuals to re-engage with their pirate group (especially if dropped off far from their home territory) and re-equip themselves to return to the seas. The catch and release approach at least proved a more cost-effective option than prosecution.

The success of the transfer agreements depended on what outcomes determined the meaning of success - for the state in question and the international community.

Providing funding to regional states for prisons and courtrooms showed the people of the regional states a tangible return for the diversion of judicial resources to prosecute foreigners. The four regional states used the new facilities to assist in domestic crime prosecution. The Seychelles provided a good model of a state that held up its end of its agreements, while still providing a benefit for its people. By proving to be a viable prosecutor of pirates, the Seychelles and its government gained prestige in the international arena. In contrast, Kenya sacrificed the prestige it gained as the first regional state to enter agreements for the legal mess caused by the Hashi finding. The two year delay caused by this legal decision occurred during the height of Somali piracy and demonstrated that prosecution in the 21st century provided no deterrent. Meanwhile, the €3 million price tag on the only Mauritian pirate trial provided a significant return on investment for Mauritius.

**Unacknowledged prosecutors: Yemen**

While the CGPCS could monitor the progress and success of the prosecutions of its members, little is known or acknowledged about Yemen’s efforts to prosecute Somali pirates. Yemen’s geographical proximity to Somalia and the Gulf of Aden meant of all the littoral states of Somalia, it was the most directly affected. IMB-PRC records show Somalis hijacked Yemeni fishing vessels for use as mother ships and Yemeni fishers were known to assist other vessels attacked by pirates. The Yemeni coastguard and Navy actively interdicted against pirates attacking Yemeni vessels and, on occasion, other flagged vessels. However, Yemen did not feature as an option for

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128 See Appendix III.
129 This is reflected in IMB-PRC records available in Appendix I. For example, the hijack of the Greko, a Yemeni flagged fishing vessel in September 2007, the 2009 hijack of the Danish-flagged Powerful used a hijacked Yemeni fishing vessel, Yemeni fishers helped the hijacked Kirabati-flagged Ekawatnava 5 in 2008.
130 The coastguard intervened in the attempted hijack of the Philippines-flagged Stolt Strength in May 2009.
international prosecution, most likely because its legal system was not based on British colonial law. Yemen never entered transfer agreements with the naval powers nor received external financial resources for prosecutions. Nevertheless, Yemeni courts undertook several trials and emerged as an unheralded supporter of prosecution as a strategy for Somali piracy suppression.

**Unacknowledged prosecutors: Somaliland**

Another prosecution alternative that emerged with little international acknowledgement was Somaliland. From the outside, Somaliland offered the benefit of an entirely Somali-led suppression initiative. However, as Chapter 2 showed, the Isaaq clans of Somaliland and the Darod of Puntland had a history of animosity. In addition, successive Somali governments in Mogadishu maintain an adamant objection to its bid for independence. Nevertheless, sensing an opportunity to further the independence cause, Somaliland’s leaders took it upon themselves to prosecute other Somalis for piracy.

Unfortunately, Somaliland faced a similar predicament to other prosecuting nations. Since it was not an independent state, it could use only outdated, colonial-era laws from Somalia, including the 1959 *Somalia Maritime Code* and the 1962 *Penal Code*. This code of criminal procedure contained no explicit piracy charge, so Somaliland’s courts used armed robbery instead. In 2009, Somaliland passed the *Somaliland*...
Piracy Law. Like Puntland, this effort remained largely unacknowledged by the international community until early 2011.

In a 2011 editorial in the Somaliland Press, the writer claimed that ‘the international community could make considerable progress in slowing down [or] completely eliminating the pirate issue from the Somali coast if they would seriously engage the Somaliland administration and seek its cooperation and input from it.’ Eventually, the UN listened. It recognised Somaliland’s efforts to suppress piracy in 2011 by providing a US$1 million refurbishment grant for its prison. The Somaliland government cited transport issues as its reason for deciding the prison would only house prisoners tried in Somalia. The UN reported that by January 2012, Somaliland courts had undertaken 16 piracy trials involving 97 suspects and the prison was hosting prisoners transferred from Seychelles.

Sentencing

Another barrier to evaluation prosecution’s effectiveness lay with sentencing. Unlike the pirates of old, very few Somali pirates received a life sentence or the death penalty and the CGPCS had no authority over the length of Somali pirates’ sentences. Prosecutions in Europe, Yemen, Kenya and Seychellois courts routinely gave sentences shorter than ten years, with five years for minors. Only the Americans gave long sentences (30 years) for hijack attempts, with life sentences only occurring if a death

137 Ibid.
139 “UN Anti-Piracy Courts Report,” 12.
142 See Appendix III for details.
had occurred.\textsuperscript{143} Yemen handed down the only death penalties, in a piracy case that included the murder of two crewmembers.\textsuperscript{144} Most Somali pirates served relatively lenient sentences in foreign prisons with education and health care opportunities not available in their own country. At the completion of their sentences, the prosecuting state repatriated former prisoners back to Somalia.

A UNODC survey of prisoners found that most prisoners had more fear of running out of fuel than capture by international navies.\textsuperscript{145} Prisoners who knew someone who had left piracy cited family and community pressure as the prime deterrent.\textsuperscript{146} Perhaps the only real deterrent to piracy was the prisoner’s isolation from his family, especially those serving long sentences overseas. Ultimately, the months taken to move through the prosecution process to a suitable international standard had little impact on Somalis taking to the seas to hijack ships. Moreover, even transferring Somalis back to Somalia had a questionable effect. One Somali prisoner stated, ‘the food here is not good. We get rice, tomatoes and only a little bit of meat. In Seychelles the food was better.’\textsuperscript{147}

**Conclusion**

Chapter 5 established the CGPCS as the lynch-pin of piracy suppression. However, the current chapter has exposed the limitations of its authority. The CGPCS held no authority to force states to undertake what it considered to be crucial to piracy suppression: prosecution. For the 17 states that did choose to prosecute, as the


\textsuperscript{144} “Yemen/Somalia: Yemen Court Sentences Somali Pirates to Death,” Thai News Service, 20 May 2010.


\textsuperscript{146} Ibid.

\textsuperscript{147} Tran, “Inside Somaliland’s Pirate Prison, the Jail That No Country Wants.”
current chapter has shown, showed how ill-preparedness and poor management undermined the CGPCS’ expectations of an international standard for piracy trials, creating a widespread unwillingness to prosecute. However, it has also exposed a far more insidious problem. The dispersal of suppressive power established in Chapter 4 was further fractured by the refusal of states with real naval power to prosecute. When combined with the international community’s disinterest in engagement with Somali suppressive authority in Puntland, it called into question the legitimacy of the modern state’s authority as a suppressive force. By excluding the only coercive force that could have had a greater suppressive effect than prosecution, the international community undermined its own piracy suppression strategy.

The use of transfer agreements proved the naval powers’ unwillingness to undertake piracy prosecutions. They used their status as strong states to impose the duty of prosecution on states with lesser international status. Many Kenyan authorities considered the agreements an imposition on their government’s sovereign authority and the Kenyan court cases reflected their reluctance. On the other hand, the Seychelles seized the opportunity the prosecutions presented to increase their standing within the international community.

Although prosecution did not act as much of a deterrent to Somali pirates, that does not negate its potential for the future. The trials undertaken updated state laws and precedents, creating a renewed wealth of knowledge and expertise on piracy that had not existed for centuries. If or when piracy emerges again, the international community is considerably more prepared to prosecute.
CONCLUSION

One day in January 2013, Mohamed Abdi Hassan, known as “Afweyne” (“Big Mouth”), announced to the world he was giving up piracy.¹ The UN claimed Afweyne was one of the most notorious and influential pirates in Somalia, so his retirement sparked incredulous disbelief from observers in the international community.² In many ways, Afweyne represented the core theme of this thesis: the dichotomy between Somali sovereign authority and the norms of the modern state system that underlay the international community’s piracy suppression effort.

Aged in his 50s, Afweyne’s former career as a civil servant had provided him with good organisation skills and business contacts, enabling him to develop his hand-picked pirate group to keep costs low, profits high and to maximise efficiency.³ He began his piracy career around 2003, well after the Somali state had collapsed. However, Afweyne was not from Puntland, nor did he belong to the Majeerteen clan lineage. Based near Hobyo and Haardheere, 400 kilometres north of the war in Mogadishu, he was far enough removed from the political quagmire of the capital to broker an entrepreneurial alliance between his Suleiman sub-clan and the Majeerteen pirate veterans. This allowed him to use Puntland’s veteran pirates as instructors in return for a share of the profits.⁴ Afweyne enjoyed considerable financial success, masterminding the high profile hijacks of the *MV Faina*, a Ukrainian container ship carrying arms, and

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¹ “Somali Pirate Kingpin “Big Mouth” Quits after Naval Crackdown,” Reuters, 11 January 2013. Afweyne claimed his nickname came from his youth when he ‘cried a lot’.
³ ‘Piracy in the Greater Gulf of Aden,’ 23-24. According to personal communication from Mohammed Haji Ingiriis, no one really knows whether Afweyne’s employment in the civil service was before or after the 1991 war. It is rumoured he worked in Yemen.
⁴ Ibid.
the Saudi oil tanker *Sirius Star*, among many others. Yet his operational success ultimately hinged on the sovereign authority he constructed to gain his sub-clan’s support and protection and the alliance with the Majeerteen. Without it, as a former Haardheere pirate claimed, ‘you can not organise anything.’

**Image 10: Mohamed Abdi Hassan, known as “Afweyne”**

As part I of this thesis examined, Afweyne’s identity and loyalties stood in sharp contrast to the centralised state model advocated by the international community. Well aware of this, Afweyne claimed he was a *badaadinta badah*, acting in retaliation against the destruction of his fishing company by foreign fishing fleets. In 2012, his son Abdiqaadir continued Afweyne’s claim of seeking freedom for Somalis to fish in

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7 Picture by Tony Karumba and included in: James M Bridger, “The Rise and Fall of Somalia’s Pirate King,” *Foreign Policy*, 4 November 2013. The nickname ‘Afweyne’ was also given to Siyad Barrè.

their seas, including from the presence of the anti-piracy patrols of international naval ships.\textsuperscript{9} To Afweyne, the financial windfall of his business was merely an enjoyable outcome of his patriotic efforts. According to the UN, Afweyne and his family used their piracy wealth to recruit and co-opt elements of the local community into piracy across clan lines, demonstrating the accumulation of considerable respect and prestige.\textsuperscript{10}

In announcing his retirement, Afweyne expressed a complete ideological reversal. He now desired the restoration of the international reputation of Somalia and announced his own efforts to stop young men from tarnishing it with piracy. He claimed he had persuaded over one thousand men away from the sea.\textsuperscript{11}

Afweyne had a reputation for tall tales.\textsuperscript{12} To the rest of the world pirates were criminals, now under considerable pressure from private security companies and navies, so of course Afweyne found it difficult to find recruits.\textsuperscript{13} Despite clearly holding no fear of the foreign warships patrolling the coast, nor international retribution for his actions, Afweyne’s retirement only proved the world’s piracy suppression tactics worked.\textsuperscript{14} After all, the statistics proved the decline of Somali piracy. The IMB-PRC had received only 75 attack reports in 2012, down from 237 the previous year, with only 14 ships captured.\textsuperscript{15} The international media concurred: naval patrols and the ship-owners’ use of armed guards had caused the decline, rather than any land-based

\textsuperscript{9} Mohamed Odowa, “Interview with Abdulkadir Mohamed Afweyne,” Somalia Report, Somalia, 4 February 2012.
\textsuperscript{11} Askar, “Somalia: Jobs Wanted: Somali Ex-Pirates Seek Employment.”
\textsuperscript{12} For example, British journalist Justin Marozzi said, ‘I had a rooftop lobster dinner with the notorious Somali pirate Afweyne – Big Mouth. Boy did he live up to that one.’ Justin Marozzi, “The Somali Love of ‘Rude’ Nicknames,” BBC News Magazine, 7 March 2014.
\textsuperscript{13} “Somali Pirate Kingpin “Big Mouth” Quits after Naval Crackdown.” See also “Somali Pirate Kingpins Enjoy Impunity, Says UN,” The Star, 19 July 2012.
\textsuperscript{15} IMB-PRC Report 2012,” 20.
efforts by ‘former’ pirates.\textsuperscript{16} Never mind that the suppression effort caused foreign fishing vessels to return to Somalia’s waters.\textsuperscript{17}

Chapter 1 showed that the end of a piracy epidemic often coincided with a change of heart from key participants. The combination of punitive sovereign-sponsored tactics like prosecution combined with the use of amnesty against Caribbean and Chinese pirates had deterred them. Could Afweyne’s claim of turning men away from piracy be trusted? If it was true, he was crucial to the solution to piracy as a land-based problem. But even Afweyne warned ‘90 percent of what you hear in Somalia is false.’\textsuperscript{18}

Part I of this thesis showed how historically pirates chose an allegiance to sovereign authority to facilitate their personal ambitions. Afweyne proved no exception. The traditional Somali social construct equating wealth with respect had manifested to provide Afweyne with status and influence amongst the Somali leaders endorsed by the international community. A ‘regional government representative’ stated Afweyne had withdrawn from active piracy some years earlier and was behind the surrender of 120 pirates in the previous week.\textsuperscript{19} However, the UN suspected the Somali President Sheikh Sharif Ahmed had pardoned and appointed Afweyne as an anti-piracy official after he travelled to Malaysia on a diplomatic passport.\textsuperscript{20} Afweyne’s piracy business

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\textsuperscript{18} Askar, "Somalia: Jobs Wanted: Somali Ex-Pirates Seek Employment."
\textsuperscript{19} "Somali Pirate Kingpin “Big Mouth” Quits after Naval Crackdown." The article does not identify which regional government the representative came from.
\end{flushright}
had benefited from his high level connections: his uncle Kamal Gutale held several senior positions within the Somali government.\(^{21}\) President Sheikh Sharif vehemently denied the claim, stating he had issued the passport to encourage Afweyne and his men to destroy their piracy network.\(^{22}\) To the UN though, this reinforced the Somali Government’s indifference to the criminality of piracy.

The passport issue exposed the contradictions that surrounded Somali piracy suppression. Clearly, this modern manifestation of the historical use of amnesty as a suppressive tactic for the assertion of sovereign authority over pirates did not sit well with the representative entity of the modern state system, the UN. This continued a theme that emerged through the Shibin case examined in Chapter 3. This case showed that by the 21st century, the criminality of piracy transcended any state-like structures not strong enough to suppress it.\(^{23}\) The UN’s perception of Somali pirates as \textit{hostis humani generis} meant even after peace returned to Mogadishu and Somalia’s TFG established itself there, the criminality of piracy outweighed Somali-led efforts to establish and build a centralised state and its accompanying functions. In addition, Part I of this thesis showed the significant influence of wealth in Somali society. To establish the authority of a centralised state from Mogadishu as a piracy suppressive force, President Sheikh Sharif recognised the need for influential Somalis like Afweyne to be on his side, despite the ire of the UN over how he established his influence. As Chapter 3 showed, personal prestige and clan connections also played a significant role in obtaining and holding the Somali Presidency and Afweyne’s sub-clan Farax was


\(^{23}\) Doornbos picked this up in his analysis of the ‘state-likeness’ of Puntland, see Doornbos, ‘When Is a State a State? Exploring Puntland, Somalia.’
politically allied with the President. Finally, if Afweyne really had invested his own money and leveraged his connections to convince other clan members, former business associates, and local youth of piracy’s increased physical and financial risks instead of its lucrative viability, he could potentially have contributed to the peaceful winding down of land-based piracy operations even more than the international community’s deterrence efforts. Wasn’t that ultimately what the UN wanted?

Putting Afweyne’s questionable trustworthiness aside, even if his claim was authentic, his base in central Somalia and his clan relationships meant he held limited political influence in Puntland. Once the UN recognised Puntland as a suppressive force in 2011, Puntland’s anti-piracy activities documented in Chapter 3 continued with UN and international donor assistance. IMB-PRC reports of Somali piracy continued to fall far short of the epidemic’s heyday. In 2016, Secretary-General Ban Ki-moon acknowledged Puntland’s contribution to reducing onshore safe havens.

However, the Secretary-General still considered the presence of foreign naval warships, ship-owners’ self-protective measures, and foreign prosecution to be responsible for deterring attacks on large commercial vessels. Even five years after the end of the epidemic, the UN needed to continue the hostis humani generis identification of pirates to justify the expense, time and effort required to suppress Somali piracy and keep it that way. Moreover, this approach fed into the dichotomy between how Somalis viewed and constructed their sovereign authority and how the

24 Information provided through correspondence with Mohamed Haji Ingiriis dated 28 July 2018.
25 Mesko, "Ex-Pirates' New Role: Anti-Piracy Crusaders."
28 Ibid.
international community expected them to implement modern state norms. By publicly minimising the efforts of Somali entities to suppress piracy in favour of the international community’s intervention method, the UN perpetuated the distrustful relationship it had established with the Somalis in the mid-1980s.

The inability or unwillingness of the international community to acknowledge the clan as a source of sovereign authority continued after Somaliland emerged as a prominent player in piracy suppression in 2008. At the time of the piracy epidemic, Somaliland’s economic and administrative apparatus was far more advanced than in neighbouring Puntland. Created around the boundaries set by British Somaliland and comprised mostly of members of the Isaaq clan, Somaliland’s economy relied on its long-standing livestock trade. Fishing offered Somaliland an alternate economic commodity with a potential annual sustainable production of 40,000 tons and an estimated income of US$32 million.29 This gave Somaliland’s leaders a vested interest in deterring illegal foreign fishers. At the same time, the pirates gave Somaliland an opportunity to advance its agenda of independence from Somalia.

Somaliland’s initiative to assist the international community’s piracy suppression effort through prosecution, discussed in Chapter 6, did pay off in increased financial assistance for its maritime security capacity. In 2013, Somaliland’s Coast Guard (SCG) received assistance from the European Union’s maritime capacity building project in Somalia, EUCAP NESTOR and a Somali diaspora-led development organisation called Transparency Solutions.30 By 2017, this support had extended beyond piracy prevention towards activities that directly benefited Somaliland’s economic interests.

30 “Somaliland Coast Guard.”
and recognised it as a viable economic entity. The SCG received UN-backed training and funding to interdict at least 51 illegal fishing vessels, one illegal weapons shipment and a number of human traffickers.\(^{31}\)

Piracy suppression helped Somaliland facilitate relationships with recognised states, especially in the European Union, even though the UN-supported TFG in Mogadishu remains adamantly against Somaliland’s independence.\(^{32}\) When famine threatened Somaliland in late 2017, these relationships helped alleviate the famine threat without Mogadishu’s assistance.\(^{33}\) To date, Somaliland’s proven capacity to participate in the international community through piracy suppression has not translated into the international sovereign recognition it desires. It was also not involved in the prosecution of Afweyne.

Afweyne was a far bigger fish than the low level pirates prosecuted in Puntland and Somaliland. He may have expanded his sovereign allegiance to include the Mogadishu government but ultimately, it meant nothing under international law. A few months before his retirement announcement, Belgian authorities contacted Afweyne through his associate ‘Tiiceey’ under the guise of filmmakers seeking his participation in a film project on piracy.\(^{34}\) Over several months, they built a relationship of trust with Tiiceey and Afweyne. The Belgians sought to lure the two men to Brussels for the signing of the film’s contract. After many months, they succeeded. The moment the men stepped off the plane from Nairobi, they were detained by Brussels’ federal police.\(^{35}\)

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\(^{32}\) Wan, “Somalia: ‘Otherwise We'll Have to Go to War’.”


\(^{35}\) Ibid.
2016, a Belgian court sentenced Afweyne to 20 years imprisonment for the hijack of the Belgian-flagged *Pompei* in 2009.36

Belgium does not hold an extradition treaty with Somalia and there are no reports that the Belgians engaged with the Somali TFG during the time they engaged in their sting.37 Even if there was a treaty, given Somaliland used Somalia’s old laws to prosecute for armed robbery instead of piracy, it is unlikely the dual criminality aspect of extradition would be met. For the Belgians, this negated the use of a state-to-state approach. Then during the course of the sting, Afweyne received a diplomatic passport and amnesty from the Somali president in return for his anti-piracy activities. For Afweyne, his passport proved recognition of his allegiance to Somalia’s internationally recognised sovereign authority. To the Belgians, it proved Afweyne would never be held to account for his piracy in Somalia. Fortunately for the Belgians, they could rely on Afweyne’s ego to orchestrate his downfall.

Afweyne’s arrest sparked several protest marches in his home region.38 His pirate rehabilitation program may have been no more than an attempt to defraud foreign donors and organisations, but in the absence of Somali government support, he had provided some basic services to the people of his region, particularly keeping *Al-Shabaab* at bay.39 The UN’s Monitoring Group also reported that many of the protesters had benefited from Afweyne’s generosity.40 While the Somalis saw only the benefits Afweyne had provided, the UN maintained the criminality of his piracy

36 "Brussels: Top Somali Pirate Jailed 20 Years in Belgium."
37 A search of the online database of the Belgian Foreign Affairs, Foreign Trade and Development Cooperation found no record of an extradition treaty. See: https://diplomatie.belgium.be/en/treaties
39 "Before They Were Caught, Afweyne and Tiiceey Were Shrew Businessmen Who Knew How to Play the Pirate Game," *Somalia Online*, 5 June 2015.
overrode them. Nevertheless the Somalis’ disconnection from the criminal aspects of piracy, despite now acknowledging pirates as burcad badeed (sea robber), went to the top of the Somali government:

such protests and criticism illustrate that piracy is considered more a source of revenue than a wrongful activity in Somalia. Many regard Afweyne, although responsible for dozens of hijackings, killings and inhuman suffering, to be a benefactor of the community rather than a criminal. There is local indifference to the fact that he acquired his wealth and power by shrewdly exploiting an environment of lawlessness, poverty and corruption... Local and central authorities in no way counter the distorted image of pirates and piracy.41

Through a detailed study of Somali piracy’s position within the long history of piracy, this thesis showed that no matter how long expensive naval patrols continue, how many armed guards deter pirates at sea, or how many prosecutions take place, suppressing piracy still required the exertion of sovereign authority over individuals on the land. This thesis exposed the difficulty of doing this in the 21st century when sovereign authority does not conform to the centralised state norms expected by the international community. My analysis of Puntland showed that despite its complexity, at the time of the epidemic the clan was a more successful unifier than the artificial construction of a state around Mogadishu. For a decade, Siyad Barrè managed to enforce a (mostly) centralised state over the clan system but only with high levels of military force. The disastrous consequences of his regime continue to be felt today.

41 Ibid.
The response to the Somali piracy epidemic showed the international community expected Somalis to overcome the contribution of international actors to the decades of conflict and distrust they had established with each other. The Somalis were then expected to invent a peaceful and diplomatic state that prioritised the suppression of piracy over internal security, education, health care, and other potential state functions. At the same time, its delayed recognition of alternative state-like constructs in Somalia, including Puntland and Somaliland, combined with the intense focus placed on the state emanating from Mogadishu undermined all their suppression efforts. The meddling of international actors in Somalia, including Ethiopia, Eritrea and the United States, gave the Somalis little grounds for placing any trust in the international community and its organs. It also did nothing to stop the piracy epidemic. On the other hand, the response to Afweyne’s arrest provided an apt contemporary example of the root of the state-building challenge for Somalia: demonstrating leadership credibility in the face of the international community’s distrust. The Somalis have only now begun developing international trust through investments by the United Kingdom and the United Arab Emirates, aided by the extensive Somali diaspora.

This thesis also showed that stakeholders affected by piracy always want it to stop, but none could make it happen alone. Throughout history, ship-owners expected state rulers to protect their economic interests without controlling them, and Somali piracy proved no exception. However, the historic similarities of piracy’s impact on ship-owners, including the historic traditions of piracy self-protection, including ransom payment and arming ships, continued largely unchanged.
Even when ship-owners and their state representatives eventually gained access to the people who could authorise intervention against pirates, the complexity of modern day international norms around sovereignty and self-determination stymied decision-making and effective action. Historically, the practice of state-sponsored prize-taking from enemy ships used by private individuals and naval personnel also undermined the effectiveness of sending a navy to suppress pirates. The little economic reward for stopping pirates proved a significant de-motivator for intervention for centuries. On the surface, the response of the world’s navies to the UN’s call for naval intervention against Somali pirates seemed to contradict this history. However, as Chapter 5 and 6 demonstrated, each state still had its own agenda for involving itself in Somali piracy suppression and prosecution. Prestige became the reward but it did not provide a sustained solution.

In 2016, a small rise in the hijacking of a number of small fishing vessels and dhows occurred. The disappearance of pirates had empowered illegal fishers to return. Despite the Somali piracy epidemic and its consequences, local Somali communities still viewed ransom payments for hostages as compensation for lost fishing revenue. Then in March 2017, a group of Somalis hijacked the *MT Aris 13*, a tanker en route to Mogadishu from Djibouti. It was the first hijack of a merchant vessel since 2013. Puntland authorities quickly suppressed the attack and warned ‘acts of piracy within

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42 'Report of the Secretary-General on the Situation with Respect to Piracy and Armed Robbery at Sea Off the Coast of Somalia,' 2.
43 Sarah M Glaser et al., ‘Securing Somali Fisheries Report,’ xiv. The report claimed illegal fishers caught three times the amount of fish as Somali artisanal and subsistence fishers. See also Hassan Sheikh Mohamud, “Somalia’s New Pirates,” Times of Oman, 30 October 2015. Hassan Sheikh Mohamud was the President of Somalia at the time of writing.
44 See also A Abdirahman, "Somalia: Puntland Coast Guard Seize Yemeni & Iranian Illegal Fishing Vessels," Horseed Media, Somalia, Puntland, Somalia, 17 October 2015.
46 A ship had been attacked in November 2016 but not successfully hijacked.
Puntland territory will be severely dealt with.’47 In August 2018, resurgence to 2008 levels seemed unlikely. However, these incidents show the Somalis’ continued disconnection between the perceived need for compensation for illegal fishing and the illegality of ‘real’ piracy.

Understanding how Somalis interpret sovereign authority required this thesis to explain how and why the Somali piracy epidemic occurred. The Somali piracy epidemic of 2008-12 renewed international attention to Somalia lost after the failed humanitarian intervention of 1992. Piracy allowed Somali rulers to obtain considerable foreign financial resources that would not otherwise have been forthcoming. There are clear signs the Somalis have made progress in reaching agreement on securing their fisheries, but their enormous coastline combined with the federated structure of present-day Somalia makes this an ongoing challenge.48

Afweyne’s story showed how the contradictory perceptions of international, state and local actors conspired to allow his piracy to flourish and manufactured his demise. This thesis has established that the refusal of international decision-makers to acknowledge Somali sovereign authorities deprived them of a framework to formulate land-based solutions and underpinned an ill-considered resort to expensive naval action and privatised violence on the seas. By providing a cautionary tale of the historic connectivity of Somali piracy to the past, the international community can endeavour to avoid it recurring in Somalia and other regions. Ban ki-Moon warned in 2016 that progress on combating Somali piracy remained ‘fragile and reversible.’49 The international naval forces still in the Gulf of Aden have a finite mandate and any

47 Office of the President, "Puntland Government Talks Hijacked Ship the Mt Aris 13."
48 ‘Securing Somali Fisheries Report,’ 85.
49 ‘Report of the Secretary-General on the Situation with Respect to Piracy and Armed Robbery at Sea Off the Coast of Somalia,’ 2.
increase in insecurity within Somalia threatened its fragile peace, increasing the piracy risk. So far, Puntland has managed to contain significant threats, but that is no guarantee for the future.
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