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Diana Slobodian

University at Albany, State University of New York

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Evaluation of the Legal and Historical Perspectives on Piracy in the Gulf of Aden

An honor's thesis presented to the Department of Public Administration and Policy
University at Albany, State University of New York
in partial fulfillment of the requirements
for graduation with Honors in Public Policy and Management
and
graduation from The Honors College

Diana Slobodian

Sponsor: Julie Novkov, Ph.D.

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Abstract

This paper will consider piracy in Somalia, focusing on the two emerging perspectives that define the way that research and counter-piracy efforts are planned and executed. Through an examination of Somalia's political and legal history, the violence which has occurred in the Gulf of Aden will be deconstructed and understood using socio-economic reasoning. The piracy for protection narrative will provide the groundwork for understanding the causes for piracy. The piracy for profit narrative will distinctly show why some researchers believe that piracy in the Gulf of Aden persisted for so many years. This paper will review certain counter-piracy measures, which are structured to address piracy from the different understandings of the criminal activity, framed by the two perspectives. Evaluation of these two perspectives along with the success rates of counter-piracy campaigns will show that the most effective way to combat international violence is using an internal and external understanding of the factors contributing to piracy.

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Introduction

When we hear the word pirates, what do we think of? Most likely the mind scans the thoughts of men on boats with knives who rob one another. The stereotype of pirates to be abusing robbers who ambush ships and steal gold on the great seas are traditionally prevailing. Generally, the word piracy has carried with it negative connotations. For the purposes of this paper, I will be focusing specifically on the literature covering the rise of, and international response to, the piracy activity in Somalia. Throughout the course of history, the idea that pirates are the perpetrators of violence has been the dominating perspective taken by mainstream media and historians alike. The purpose of this paper will be to review the varying scopes through which Somali pirates have been studied, questioning their legitimacy, and exploring how each perspective defines the contributing factors to the rise of piracy. While the prevailing perspective could frame the actions of pirates as criminal, academic research and studies will reveal a divergence in perspectives. Examining the differences in academic perspectives and international responses to piracy is essential for understanding the causes for the rise of piracy, while reasoning through its continuance. It is important to consider the totality of the circumstances in Somalia in order to understand whether the criminality has been simply exacerbated through the media using a narrowed perspective on the realities facing Somalia's land, water, and people.

First, this paper will provide a formal definition of piracy followed by an overview of Somalia's history, specifically focusing on both the civil war in Somalia and laws passed between 1959 and 2013. After understanding the historical context, this paper will then draw on the rise of reporting of piracy in the Gulf of Aden to show when Somalia began gaining international attention for their role in the piracy. With the rise of reporting, the research on the causes of piracy began emerging into two perspectives, piracy for profit and piracy for

protection. This paper will consider factors such as an absence of formal governance, lack of a formal coast-guard, and socio-economic circumstances that would result in piracy for a population's sustenance. There will be further considerations of the financial institutions and onland contributors that could profit from and sustain pirate actions. Furthermore, all claims will be supported by the examination of the dangers of piracy, potential profits and losses from engaging in piracy. Bearing in mind these two perspectives, the international response to piracy will be reviewed. This will provide an understanding of two issues. First, it will reveal the Somali population's attitude towards onshore counter piracy. Second, it will prove how the narrative through which counter piracy is approached determines the success at deterring piracy in Somalia.

The definition of piracy will again be considered in the conclusion to determine whether the acts taking place in the Gulf of Aden fit the definition given the legal status of Somalia's territorial sea and exclusive economic zone. Ultimately, the paper will close with a final examination of several factors contributing to and resulting from piracy to determine whether or not the acts taking place in the Gulf of Aden should be illegal, or if the dissenting perspectives about piracy actually leave the door open to a humanistic evaluation, rendering a forgiveness for the citizens who are simply caught up in political turmoil. After examining these issues from a historical perspective, what will emerge is a clear linkage between the little recognized legal history, to the declaration of an unadmirable law, to the rise of piracy in the Gulf of Aden. This paper will close with the understanding that individual players living under political vacuums, war, and legal controversy are not to blame for their participation in economic endeavors upheld by powerful stakeholders in their country. For Somalia, this means that the pirate is not to blame for the acts of violence, but rather the clan elders, militias, government officials, and

international protectors of piracy. A final review of the two emerging narratives will reveal that where one ends, the other begins. The piracy for protection narrative will explain the reasons for the rise of piracy, whereas the piracy for profit narrative will provide arguments for why it continues.

Defining Piracy:

To offer a formal definition of piracy, the United Nations Convention on the Law of the Sea (LOCS), as per their 2010 definition calls piracy “all illegal acts of violence, detention or any act of depredation committed for private ends by the crew or passengers of a private ship on the high seas. In a place outside of the jurisdiction of any State” (UN). Chalk and Hansen (2012), separate the pirates into two categories, “sustenance pirates” and “professional pirates” (p. 498). In their definition, “sustenance pirates” are often civilians searching for a source of income for themselves and their families. This view takes a more humanistic approach, where the people who are committing acts of robbery on the high seas are just people trying to provide for their families. The sustenance pirate framing approach is one that accounts for the socio-economic and legal contexts taking place in Somali, framing pirates as people rather than criminals. The grand narrative of Piracy, also known as the piracy for protection narrative, is spearheaded by authors who understand piracy as a sustenance issue.

“Professional pirates” on the other hand can fall into a variety of different categories all narrowing to the same commonalities of structure, organization, clan support, and access to weaponry (p. 498). Some authors will use this definition and understanding of pirates as their defense for the piracy for profit narrative which argues that pirates engage in criminal activity because of the monetary value it can bring. Professional pirates are understood by researchers to

be workers in a chain of command beyond Somali citizens who profit from the ransoms they collect through the violence they ensue.

Contextual History of Somalia:

The Global Policy Forum estimates that with the rise of globalization and trade throughout the last decade, over 6.8 billion tons of goods valued at \$7.4 trillion are transported along the global trade system each year. Around 90 percent of these goods are transported by ships and a large amount of those goods are stationed on ships that sail around the Horn of Africa, where Somalia is located (Joyner, 2009, p. 84). Stationed on the longest coastline of Africa is the country of Somalia. Rich in natural resources and ungoverned territory, the nation of Somalia frequently faces political upheaval over control of their surrounding waters.

Maritime Laws:

The Somali Republic was created in 1961, following the unification of British Somaliland and Italian Somaliland. The maritime laws in place at the time to regulate and maintain the waters along the coastline and define ownership boundaries were called the 1959 Maritime Code. This code granted Somalia claim to about 6 nautical miles worth of territorial sea. In 1967, an amendment to the 1959 Maritime Code was passed, which added six more nautical miles, giving the Somali Democratic Republic 12 total nautical miles of territorial sea. This amendment also declared the Somali Democratic Republic's 12 miles of territorial sea an Exclusive Economic Zone (EEZ), as understood by international maritime law and the Law of the Sea at the time. The EEZ is an acronym for Exclusive Economic Zone which when declared, allows the state for which it is declared the right to protect, conserve, and exploit the natural resources of that area. If violated, the offending state could be charged with unlawful behavior

(McLaughlin, 2015). The Somali claim to a territorial sea and the EEZ are considered to be a “fundamental building block for future prosperity, from fishing income to licensing and taxing marine oil and gas exploration and extraction.” (McLaughlin, 2015, p. 308). However, the claim over Somalia’s territorial sea and the declaration of the EEZ remained in disarray, misunderstood by Somalia’s own parliamentarians and officials, for decades for a variety of reasons.

The Somali Democratic Republic has always been a fascinating factor for commercially interested entities, including explorers, who would travel near and through their waters to explore, exploit, and extract their area’s natural resources. Responding to these circumstances, in 1972, Somalia passed a new law attempting to claim an additional 200 nautical miles worth of territorial sea extending out from the coastline. Calling it the Law on the Somali Territorial Sea and Ports, this law also prohibited the passage of warships through their territorial waters, without any prior authorization.

The issue over the Somali claim to the 200 nm territorial sea and EEZ began in 1982, when Somalia signed onto the United Nations Convention on the Law of the Sea (LOCS) in 1982, along with 116 other countries (Encyclopedia Britannica). The LOCS would lay down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources (IMO). Under the LOCS, a country could only claim up to 12 nm of territorial sea (McLaughlin, 2015, p. 318). At the time of the signing, Somalia’s delegate to negotiations had agreed to bring the 1972 law, which claimed a 200 nm territorial sea, into compliance with the LOCS. Until Somalia brought the 1972 law into compliance with the LOCS, explicitly stating that Somalia only claims 12 nm of territorial sea and defining a 200 nm exclusive economic zone, they could not officially be a part of the LOCS.

This would prevent Somalia from enforcing their regulations over both their territorial sea and exclusive economic zone.

The Somali Democratic Republic was engulfed in a civil war beginning in 1988. During this time, the President of the Republic, Siyaab Barre, allegedly passed a law which would bring the 1972 law into conformity with the LOCS. Under this 1989 new Law of the Somali Sea, it was declared that Somalia's territorial sea was 12 nautical miles, while the EEZ was 200-nm. Sometime after this law was passed, Somalia had formally ratified the LOCS.

Over the next few decades, several issues over territorial boundaries of the EEZ arose. Ultimately, in 2012, the United Nations Secretary Council (UNSC) declared through Resolution 2077 that Somalia "declare an Exclusive Economic Zone in accordance with the United Nations Convention on the Law of the Sea" (UNSCR). This would require an examination, and "paper-trail," of the legal enactment of the 1989 Law of the Somali Sea, but ultimately would grant Somalia the 12 nautical miles worth of territorial sea and an EEZ of 200-nm.

The issue, however, is that because the country was actively engaged in a civil war while that law was supposedly being passed, there was no way of following the paper trail which could confirm that this law was ever officially passed. Records were lost during this time and the main issue was that the number allocated to the copy of the law was lost, therefore there was no formal record of the legislature having passed the executive proposed laws into place. It became unclear whether the Somali Assembly had passed this law in late 1988 or early 1989. Until Somalia could prove that they passed this law, bringing the 1972 law to compliance with the LOCS, it would be assumed internationally by the United Nations Security Council that the country was deprived of a territorial sea and EEZ. Without a clearly defined and internationally recognized territorial sea and EEZ, Somalia could not prevent illegal fishing, pollution from foreign ships, or

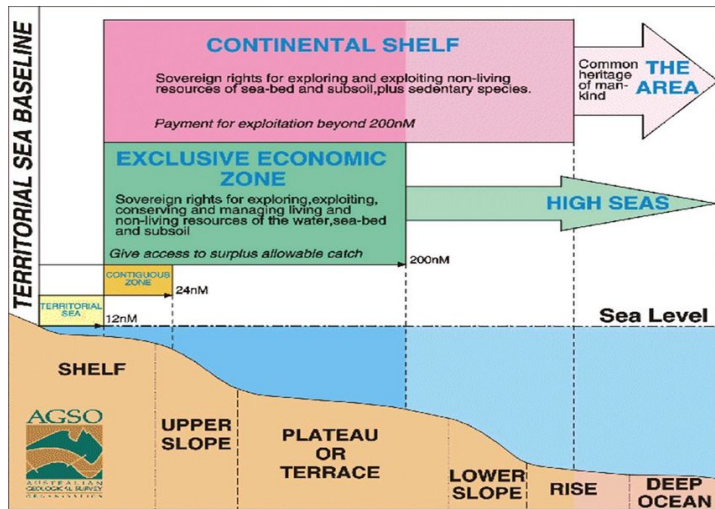
other LOCS protected activities such as weapons testing or spying on their shores in those 200 nautical miles (Encyclopedia Britannica).

In 2013, 2 copies of the 1989 law were finally found in Mogadishu. One of these copies was a draft from 1988, and the other was in the form from 1989. Alone, these two documents could not prove that the bill was passed into law and assigned a law number, proving the overhaul of the 1972 law into compliance with the EEZ. However, other legal acts passed in 1989 would provide enough contextual history to finally determine the law number for the Law of the Somali Sea. In the “Instrument of Ratification,” a legal act from February 1989 that expressly stated that the LOSC was now ratified for Somalia, it states that the President has “seen Law No.11 of the 9th February 1989 on the basis of which the Assembly has approved the Convention specified in this Decree.” The conclusion can be drawn that the 1989 Law of the Somali Sea is indeed Numbered Law No. 11 of February 1989 (McLaughlin, 2015, p. 323).

Finally, in May of 2013, Hassan Sheikh Mohamud, the Somali President made the first, formal executive statement clarifying Somalia’s maritime zones, announcing claim to a 12 nm territorial sea, 24 nm contiguous zone and a 200 nm EEZ. This declaration was only the start to declaring the laws and jurisdictions of the Somali coasts. What followed was years of lawsuits and disagreements over international borders, particularly with Kenya, and discontent from Somalians who distrusted the Law of 1989.

Figure 1:

Diagram Representing the Areas Defined as the Exclusive Economic Zone and the Territorial Sea



Timeline:

- 1959: The 1959 Maritime Code is in place to regulate and maintain the waters along the coastline and define ownership boundaries granting Somalia claim to about 6 nautical miles worth of territorial sea.
- 1967: Amendment to the 1959 Maritime Code, adding 6 more Nautical Miles to Somalia's territorial sea, also declaring these 12 total nautical miles an exclusive economic zone.
- 1972: Somalia passed the Law on the Somali Territorial Sea and Ports, attempting to claim an additional 200 nautical miles worth of territorial sea extending out from the coastline.
- 1982: Somalia signs onto the United Nations Convention on the Law of the Sea (LOCS) and agrees to bring the 1972 law into compliance. They agree to pass a law clarifying that they claim 12 nm worth of territorial sea contained within a 200 nm EEZ.
- 1988: Civil War begins under the reign of Barre. The 1972 Law on the Somali Territorial Sea and Ports is still not compliant with the LOSC.
- 1989: Law of the Somali Sea (also called the 1989 law) brings Somalia's territorial sea into conformity with the LOSC. However, the record of this law being passed is lost.

2013: Hassan Sheikh Mohamud makes the first, formal executive statement clarifying Somalia's maritime zones, announcing claim to a 12 nm territorial sea, 24 nm contiguous zone and a 200 nm EEZ

Civil War in Somalia:

Somalia was engaged in years of Civil War beginning in 1988 under the leadership of Barre. Following the end of the war and the collapse of the reign of Barre in 1991, after he fled the country, the lack of governmental control and the leadership vacancy left an environment unstable enough to sustain pirate activity (Keating, 2013, p. 186). In May of 1991, the Somoliland Republic was declared by the Somali National Movement through agreements with local clans (Clark, 2015, p. 270). The secession of Somoliland from Somalia created a successful democratic governance on their land, but left Somalia vulnerable to international exploitation. While there was no formal government in Somalia following the Civil War, the internationally recognized government was known as the Transitional Federal Government (TFG) (Hansen, 2011, p. 30).

Somalia's waters have always been rich in natural resources, perfect for fishing. Unfortunately, the lack of formal governance and enforcement capacity made their coast an easy target for exploitation. In an academic journal by Stig Jarle Hansen, through the words of Ken Menkhaus, "in 1991, foreign fishing trawlers aggressively moved into Somalia's rich and unpatrolled waters" (Hansen, 2011, p. 28). Considering that at this time there was no formal declaration of an EEZ by the Somali government to the United Nations, under international law, the "illegal" fishing happening in the waters was difficult to regulate. As a result, some

Somalians turned to what could be conceptually understood as piracy (Keating, 2013, p. 186), (Hansen, 2011, p. 29).

For centuries, Somalia could be identified as one of the world's poorest states. 73% of the population in Somalia is living on less than two American dollars a day. Somalia is faced with falling wages, high consumer food prices, and increasing unemployment (Joyner, 2009, p. 85). The severity of the humanitarian crisis as a result of the lack of economic development that followed the Civil War of 1988 left the civilian population of Somalia suffering (Kengi, p. 44). Pulling data from a publication from the United Nations Security Council, 2001, Kengni (2013) mentions that approximately 75% of Somalia's population fell victim to the effect of the Civil War (p. 45).

Since the outbreak of the Civil War, the United Nations has made attempts at restoring order in Somalia. They placed individuals in high-level government positions to attempt to solve the issues of power vacuums created by war, but unfortunately, the peacekeeping matters were often unsuccessful. In one example, Canadian soldiers who were sent to Somalia to peacekeep were removed from military service and imprisoned for their abuse, dismembering, and humiliation of unarmed children and civilians from 1993 and 1994 (Clark, 2015, p. 271). This abuse on the Somali population from outsiders who were sent in to peacekeep inevitably will create a distrust that permeates the population for non-Somali people who try to resolve internal issues.

Without concluding the reasoning for the rise of piracy, it can be assumed that the conditions on land and on the coast of Somalia made the nation weak in terms of legal, governmental, and international support against the illicit activities which were occurring. The

following sections will examine the national rise in attention for Somali piracy, and evaluate the literature produced defending or condemning the actions of pirates.

Somali Piracy Gains International Attention

While the concept of piracy and hijacking activity of foreign vessels on the Horn of Africa have existed for decades, the rise of international media attention and anti-piracy intervention for Somali piracy began during the 21st Century. It has been reported that the first organized attack of Somali pirates occurred in 2005, when the second phase of the Civil War in Somalia began (The way of the pirates). Between 2007 and 2012, there was “an unprecedented upsurge in incidents of maritime piracy” (Dua, 2019, p.484). Pirate attacks rose taking merchant vessels and seafarers hostage in areas of the ocean spanning from the Gulf of Aden on Somalia’s coast to as far South as the Mozambique channel.

Figure 2

Map of Africa Depicting the Mozambique Channel



However, following the 2008 hijacking of the MV Faina, the rise in international reporting of Somali piracy began. On September 25th, 2008, a Ukrainian vessel carrying Soviet-made tanks and ammunition was hijacked. In an interview conducted by the New York Times, when asked about the potential intent to sell the seized cargo of the ship, a pirate spokesperson replied, “we don’t want these weapons to go to anyone in Somalia... We are not going to offload the weapons. We just want the money” (Buerger, p. 1811). These statements can be interpreted in two differing perspectives. It is made clear that this seizure was not for the particular cargo on the ship, but for the \$3.2 million dollar ransom (Clark, 2015, p. 275). Anja Shortland (2015), in her review of Somali Piracy studies writes that “the MV Faina incident and the subsequent rapid increase in (reported) hijackings triggered an academic debate on the “causes of piracy.” This attack resulted in naval response to piracy from the United States, India, Britain, France, Germany, China and other countries (Joyner, 2009, p. 83). The interpretation of the statements in the interview with the pirate spokesperson and the MV Faina attack begin to lay

the foundational groundwork for the contradicting studies and explanations that are used to examine the causes for piracy. After this interview hit mainstream media, the phrase “we just want money” was plastered and reinterpreted multiple times. For the purposes of this paper, I will be referring back to this interview as the “we just want money” controversy. During the attack on the MV Faina, international media watched as ransom negotiations between the pirates and crew were taking place. This was the first time that the issue of piracy in Somalia became internationally recognized.

The Grand Narrative: Literature in Defense of Piracy

This section will consider two sub-narratives that exist which both defend piracy as existing for protection. The first narrative frames piracy as existing for sustenance of the Somali people, which is a result of the poverty, lack of opportunity, and socio-economic circumstances faced by the people of Somalia. Literature taking a piracy for protection or sustenance approach refer to their understanding of piracy as the “coast guard narrative,” or “the grand narrative.”

Returning to the “we just want money” interview written about by Bueger (2013), in the same interview where this phrase was said by the pirate spokesperson, Sugule Ali, he was later asked, “have the pirates been misunderstood?” Ali’s response was “we do not consider ourselves to be pirates. We consider pirates to be those who illegally fish in our seas and dump waste in our seas and carry weapons in our seas. We are simply patrolling our seas. Think of us like a coast guard” (p. 1811). In literature where the causes of pirate activity are reviewed from the Grand narrative perspective, pirates and their activities are evaluated through the lens of the social and political conditions present in Somalia. The pirates that are engaging in hijacking are perceived as the nation’s coast guard by authors who examine these issues from the coast guard narrative. In the words of Bruefer (2013), when studying piracy from this perspective, “piracy is about

more than money and is interpreted as a form of alternative development, resistance to globalization or protection against external influence” (p. 1813). Taking into account the Civil War in Somalia, the living conditions faced by the citizenry of Somalia must be considered with the understanding that the effects of war can last decades. Kengni (2013), writes, “protection and management of the land and other resources, such as water, whether through the authority of a central government or the traditional knowledge of tribal elders is necessary to ensure both civilian survival and the development of a sound economy” (p. 45).

Contributing to this idea, Chalk and Hansen (2012) acknowledge a void in governance will exacerbate pirate activity (p. 502). They make note of the lack of economic opportunity on land in Somalia, linking the incidence of maritime crime to the lack of central political authority. Karen Clark (2015) expands on this idea, acknowledging Somalia as an “unorganized state without a central government, [which] relies on pirates to guard its water and resources,” mentioning that piracy began in Somalia after European and Asian fleets seriously depleted the fish stocks in Somalia waters (p. 276). This resulted in the fishermen of Somalia losing their access to income and sustenance, at which point, they began harassing the foreign fishing fleets that were taking advantage of their natural resources (p. 276). Jefferey Gettleman, a New York Times reporter who spent time as an international correspondent in Mogadishu, Somalia, documented the accounts of fishermen in Somalia in 2008 who detailed the issue of toxic waste in the oceans on Somalia's coast. He mentions the fisherman noticing “clouds of dead fish floating nearby and rogue fishing trawlers sucking up not just fish and lobsters but also the coral and the plants that sustain them,” adding that it was these circumstances that “turned fishermen into pirates” (Gettleman, 2008). The grand narrative traces the origins of piracy back to the historical legal controversies over the 1972 claim to a territorial sea and EEZ. It is important to

remember the critical state of political instability in Somalia due to the civil war and the failure to declare a formal EEZ under the LOCS. Somalia's susceptibility to foreign fishing vessels to exploit their waters freely became more easily accessible without any valid legal remedy which could be taken to protect their waters. With this understanding, the comparison can be made between first and third world countries. Clark (2015) explains that a third world country, like Somalia, protect their territorial waters with "what are perceived to be illegal gangs in place of the navy that it cannot afford," where as first world countries recognize foreigners navigating, polluting, and stripping resources of their waters as a threat to national sovereignty, therefore enacting "self-protecting policies" (p. 276).

This idea that piracy began and exists to protect Somali waters from illegal fishing is echoed by President Farole of Puntland. In 2011, he stated "the piracy started when fishermen defended themselves against illegal fishers" (Hanson, p. 26). This issue of illegal fishers forms the basis of the piracy for protection, or coast guard narrative. While this issue only rose to national attention in 2008, when the Civil War in Somalia began in 1991, "Somali waters were left without legitimate capacity for enforcement of maritime sovereignty or boundary integrity" (Glaser et. al, 2019, p. 10). It was not until December 2014, when the Somali Fisheries Law was passed, that the activities of foreign vessels on the Gulf of Aden were considered "illegal" (Glaser, et. al, 2019, p. 2).

In the second evaluation of the piracy for protection narrative is the idea that the lack of socio-economic opportunity, resulting from the Civil War and lack of general governance in Somalia, pirate activities continue to exist to provide sustenance. Returning to Chalk and Hansen's (2012) idea of "sustenance pirates," such can be examined from the pirate attack of the Maersk Alabama, occurring in April 6, 2009, when 4 Somali pirates boarded the commercial

vessel. Captain Richard Phillips, an American, was the only person taken hostage during this attack while the American crew aboard the vessel remained on the ship. The three pirates (one pirate was in need of medical attention and therefore removed), held their captor, Captain Phillips, in a lifeboat. Negotiations took place for five days, during which time the captives aboard the ship were provided with food and water, as was Captain Phillips, while the Somali pirates were awaiting ransom payment in the amount of \$1-2 million dollars from the United States government. The United States navy employed the Federal Bureau of Investigation to handle the ransom negotiation, however, they refused to pay. On April 11, 2009, snipers employed by the U.S. Navy assassinated the three pirates as they were peeking out of their lifeboat, despite never firing any ammunition. Karen Clark (2015) writes, "The U.S. strategy was unique in that it involved the deployment of an elite military faction to essentially assassinate civilians" (p. 272). Following the return of Captain Phillips and the killing of the three Somali pirates, American media outlets were flooded with headlines of American heroism, courage, and bravery (Clark, 2015, p. 272).

The conclusion can be made that these three Somali citizens, who could be defined as "sustenance pirates" were aboard this ship for the potential ransom payout. They boarded this ship because a successful ransom payout would mean that they would be paid and be able to support their families. They were not heavily armed yet faced by U.S. warships and helicopters. They were simply carrying out the duties of their job. Rather than raiding the ship's cargo or inciting violence on the American crew, they took one valuable captor and waited for their payout from the United States. While the piracy for profit narrative will assert that these types of actions are condemnable and prove that the profitability of pirate activities are the purpose of the continuation of attacks, the piracy for protection narrative will understand this attack from the

sustenance narrative, understanding that the ransom can be reinvested into the community, adding to Somalia's economic growth during a time when jobs and resources are scarce.

In summary, the grand narrative is one that realigns the responsibility for pirate activity, placing blame on the political actors involved rather than the individual. Rather than asserting that piracy emerged out of a desire for profit, these researchers pinpoint the legal and political vacuum that existed in Somalia in 1991 when there was an outbreak of war that left their country with no leader. This vacancy and apparent weakness left Somalia vulnerable, allowing foreigners the opportunity to move into their waters. With no capacity for regulation due to the lack of international recognition of Somalia's territorial sea and EEZ, their coasts were left defenseless. Having no formal coast guard at the time, piracy began when Somalians began defending their coast and its natural resources. Researchers who study piracy in the Gulf of Aden and agree with this narrative find that the criminality of the attacks on ships and vessels is not where the attention of the media and reporting should be focused. Instead, they accept that the Somali people who choose to make piracy into their career are doing so due to the lack of lucrative and sustainable job opportunities following the financial crisis in Somalia caused by the outbreak of war. Through interviews with ex-pirates, what becomes clear is that while a Somali can be captured and tried engaging in piracy, there is a greater network of individuals who saw the potential for profit that could be gained through ransom payments. This narrative argues that the focus should be on the true profiteers of piracy, and not the pirates who believed that they were defending their nation's coasts.

Piracy for Profit, The Prevailing Perspective

As mentioned earlier, the perspective that has taken precedence and has prevailed as the main reason explain why piracy continues to exist in Somalia is the piracy for profit narrative.

Some who agree with the piracy for profit narrative completely discount the piracy for protection narrative, also known as the grand narrative or the coast guard narrative. While researchers some piracy for profit agree that illegal fishing is an issue in Somali waters, they argue that piracy is not the solution to the problem (Hansen, 2011, p. 26). Stig Jarle Hansen (2011) writes, “in spite of the high success rate of attacks against fishing ships, pirates choose not to target them” (p. 27). One report tracking hijackings based on ship type in the Gulf of Aden between 2007 and 2011, found that tankers, bulk carriers, and cargo ships were attacked far more frequently than fishing vessels (Hansen, 2011, p. 28). This would imply that pirates are choosing their targets based on the potential ransom payouts, rather than protecting their shores from illegal fishers.

Mark Bellamy is a senior fellow in the Africa program at the Center for Strategic and International Studies in Washington who has stated that pirates are not interested in the cargo of the ships they attack, but instead the money, when referring to the MV Faina attack which resulted in a \$2.3 million dollar payout. To understand the piracy for profit narrative, the question arises of where these ransom payments are being paid out and to whom. Karen Clark (2015) writes that “some funding earned by the pirates from ransom payments is funneled to corporate factions within governments,” adding that “other monies are used to enhance the operational effectiveness of the pirates by facilitating the purchase of sophisticated weaponry and vessels.” In an interview with Farah Ismail Eid, a pirate serving a 15 year sentence in Kenya, he explained the distributions of ransom payments among the players in sophisticated pirate attacks in Somalia. He explained that 20% of a ransom payment is for their bosses, 20% is for future missions, 30% goes to the gunmen on the ship, and 30% goes to government officials (Clark, 2015, p. 274). Considering these conditions, the piracy for profit narrative can be framed through the understanding that some pirates fall into Chalk and Hansen’s (2012) earlier definition of

pirates, calling them “professional pirates” because of the distribution of resources to the other players involved in the attacks, including government officials. The formal structure of the payouts from the ransoms that were being collected would make these professional attacks rather than acts of protection.

Shortland, A & Varese, F. (2015), discusses the separation between the pirates themselves in Somalia and the “protectors” of piracy, being clan elders and Islamist militias who facilitated and profited the most from the hijacking of ships. Clans have existed in Somalia for hundreds of years. The mentality of loyalty and desire for power among clan elders have historically caused divides among the population of Somalia. However, the profitability of piracy has been reported to bring certain clans into unification over the cause. Jama Abdullahi, a jailed ex-pirate, explained in an interview that the clans would work together in their pirate missions because it was “good for business.” Other pirates at this same prison corroborated this idea. The pirates recall that “they had recently crossed clan lines to open new, lucrative, multiclan franchises” (Gettleman, 2008). The clan elders, who hold a high degree of respect in their communities are the ones who pull the strings and make these agreements.

Through this perspective, while the pirate activity is producing a profit, it is ultimately the state and Somali society leaders who identify the opportunities for profit, therefore protecting pirate activity through their formal or social governance. This perspective of examination still views pirate activity as an organized crime; however, it arguably takes the blame off individual citizens who are performing their job duties on a daily basis, and shifts the blame onto the militias who hold the power in Somalia. Arguably, this perspective lies at the intersection of piracy for profit versus piracy for protection. On one hand, this perspective finds that ransom payments were being redistributed for the purposes of reinvestment into the pirate activities,

creating the circular system of formalized piracy, implying that the activities happening in Somalia could be considered illegal piracy upheld by the powerful players in the country. On the other hand, the acceptance of this view would label the individual players who carry out the pirate activity without profiting entirely from the alleged crimes as nothing more than workers for the governing bodies in their country. The contending issue at hand is the idea of self-employment. Piracy activity under the control of the government and large stakeholders brings legitimacy to the crimes on a much larger scale than if the attacks by the pirates were autonomous. Singular, autonomous acts carried out by pirates are not being planned and regulated by people in power. This makes it harder to not only prosecute the pirate activities, but also to identify a central organization or person to blame for the attacks happening in the Gulf of Aden.

Jatin Dua and Ken Menkhaus (2012) reference the cycle of profit gaining through piracy as a 'pirate value chain' (p. 751). The idea of a 'pirate value chain' was first mentioned in a Geopolicity study written by Anna Bowdan who estimated the economic costs and benefits of piracy. This study highlights the difficulty of tracking the players who finance and support piracy, but through the tracking of money transfer systems, patterns of nearly 50% of the profits made through piracy are transferred out of Somalia. The piracy value chain can be understood as a supply chain with many actors involved, from the pirates themselves, to support crews, to the institutions who support them. She acknowledges that while piracy is a high risk career for the pirates, "in a fragile state with an ineffective government, financing piracy is relatively risk free over the long term (p. 6).

Some supporters of the piracy for profit narrative take the other "profiteers" into consideration when forming their perspectives. In 2008, NBC wrote an article with a quote from

Ahmed Dahir Suleyman, a former pirate who sparingly discussed the negotiations pirates go through when planning attacks and collecting ransoms. He stated that pirates have ‘negotiators, translators and agents in many areas ... let me say across the world’ (The Associated Press).

What becomes clear is that the issue of piracy in the Gulf of Aden spans much further than the internal operations on Somalia’s coast. There are a number of players involved across the globe who all have something to gain from the hijackings and ransom payments.

Researchers from the piracy for profit and piracy for protection narratives both concede that there is profit to be gained through violence on the high seas. However, the piracy for profit narrative focuses on the forces involved, arguing that the pirates who carry out the criminal activity are equally to blame for their participation in the profit. The piracy for protection researchers lay the foundation for the rise of piracy in the Gulf of Aden, whereas the piracy for profit narrative narrowly focuses on why attacks continue to happen. In their approach, they address that the issue of piracy is well beyond Somalia’s coast due to the involvement of powerful and untraceable players. Unlike researchers of piracy for protection who argue that piracy continues to exist for the purpose of sustenance, piracy for profit researchers assert that the realization of potential monetary gain sustains piracy.

Two Perspectives Considered

After considering the two narratives, piracy for protection and piracy for profit, deciding on a final narrative for why piracy in the Gulf of Aden began and why it continues becomes a troublesome issue. Ultimately, the overlap in these two perspectives shows that a holistic

approach drawing on both narratives must be taken in order to understand why piracy began, why it continues, and how it can be addressed. The differentiation in these two perspectives framed the approach that organizations took to addressing the pirate activity. In response to the violence happening in the Gulf of Aden, many organizations made their own plans for addressing the piracy. Described below you can understand how in their own ways, researchers who attempted to address piracy framed their implementation plans from either the piracy for profit narrative or the piracy for protection narrative. Unfortunately, most counter-piracy campaigns were relatively unsuccessful. Centering the approach to counter-piracy internally, focusing on the Somali people rather than the agents involved in piracy across the world did not yield impactful results.

Counter-Piracy Campaigns

When it comes to anti-piracy efforts in Somalia, there are two approaches rooted in opposing perspectives trying to address the issue. Some researchers, including Samater, Lindberg, and Mahayni (2010), would generally align with the approach to counter piracy campaigns with the fundamental belief that the illegality of the fishing happening in Somali's coastal waters was far worse than the actions of Somali pirates in response. The community of Somalia was facing economic and political unrest, therefore the actions of pirates were not justifiable, but an understandable response to their circumstances. In their approach, these campaigns target the community by attempting to provide solutions onshore, including the rebuilding of economic structures and providing jobs and alternative answers to violence. Taking a holistic approach to combating piracy and rebuilding Somalia from within is contrary to the criminalization of pirate activity and subsequent deterrence focus of previous anti-piracy campaigns. Those who advocate for onshore, Somali population centered campaigns would

generally agree with the piracy for protection narrative. The piracy for protection narrative, in its progressive nature, understands that individual participation in the economy of a nation lacking job security and availability is a result of sociological issues beyond the individual themselves. This perspective understands that people need to act as a coast guard and protect their families because the political circumstances of war in their country left civilians poor and starved.

On the other hand, authors whose position lies in the belief that piracy is a criminal justice issue, would more likely side with the piracy for profit narratives. In some instances, however, the piracy for profit perspective is the agreed upon narrative of the researchers, but the approach to the counter-piracy is centered around the influence of the Somali people against pirate activity. The most common approach to combating piracy is through “disruption and deterrence.” Throughout the 2000’s, there have been several counter-piracy campaigns in Somalia. The Somali population takes an outsider versus insider approach to certain anti-piracy efforts. Somali people do not take seriously and in some cases, completely disregard any anti-piracy efforts associated with or funded by the North Atlantic Treaty Organization (NATO), and the United States Department of State. In fact, it has been found that the people of Somalia view the efforts of those campaigns as propaganda (Gilmar, p. 768). The Somali people believe that the efforts led by NATO are not only counter productive, but rather enable the illegal fishing that is happening on their coasts, therefore only serving as a perpetrator to the pirate activity (Glaser, et. al, 2019, p. 10). This is until the United Nations Office on Drugs and Crime (UNODC) conducted a campaign that attempted to “influence public opinion in Somalia against piracy.” This was called an “awareness campaign,” because the team made efforts to manipulate public opinion in order to dissuade the population from partaking in a particular act, in this case piracy, by spreading awareness to the communities about the consequences (p. 14).

Brittney Gilmer is a field researcher who participated in a large-scale project from 2010-2012 through the UNODC Counter Piracy Program in Somalia, Kenya, and Seychelles. In her paper, she evaluates the success of her campaign and specific anti-piracy efforts from development institutions on Somalia's coast. As a first-hand researcher, she was able to both see the campaign conducted by the UNODC from the planning process, through its implementation and the consequential aftermath. Through her first-hand experience, she had the opportunity to interview the Somali native population, use textual analysis, and observe focus groups while taking field notes that assisted her in her evaluation of this specific project.

The attempt of the UNODC was directed at the people in Somalia, using highly debated tactics for attempted deterrence and influence over the population of Somalia. They made efforts to dissuade the Somali people from working with the pirates or becoming pirates using workshops and media campaigns. Their approach is one that is centered around and derived from the piracy for profit perspective. Their efforts ultimately fell short, as most vocational based deterrence campaigns do, due to a lack of sufficient funding.

Paving the road for the campaign in which Gilmar participated were campaigns with similar intentions, aimed at turning the population of Somalia against the internal pirate community. One of these campaigns was called the Norwegian Church Aid (NCA). Over the course of three years, their efforts included the targeting of ex-pirates and Somali youth to raise awareness for the dangers of piracy through hosting rallies, while integrating these people in vocational and business skill training. Another example of a campaign that laid the groundwork for the UNODC awareness campaign was a media based anti-piracy campaign in Puntland organized by the United Nations Political Office for Somalia. Targeting youth and coastal communities, this campaign used tactics including outreach and newspaper communication to

spread information about counter piracy issues through the media reporters in Somalia, holding the title, ‘Utilizing Media to Prevent and Combat Piracy.’

The UNODC campaign spread across 4 offices which each held their own determinations of what kind of material would be distributed to the people of Somalia and how it would be distributed. The efforts of the UNODC office in Kenya included the use of caravans to distribute media which as per the recommendation of the President of Puntland, spread messages to the population of Somalia that the acts of piracy are *haram*, which in the Holy Quran is against islamic teachings. This recommendation was based on the understanding that Somali people could not argue against the teachings of the Holy Quran. This type of counter piracy effort relied on the followers of the Islamic religion to condemn piracy in order to prevent it from happening. The other offices involved in the counter piracy efforts of the UNODC campaign used similar tactics to frame piracy in the eyes of Somali people as a violation of Somali culture and traditions, an erosion of their countries international reputation, and an act that because of its ‘thieving’ nature, makes the participants more prone to death or imprisonment. In her conclusion of the evaluation of the efforts of the UNODC awareness campaign, Brittney Gilmer writes, “the UNODC awareness campaign appeared to be chasing the money more so than chasing the problem: piracy” (p. 18). While previous counter-piracy efforts used a more aggressive approach to preventing pirate attacks from happening, these types of efforts were met with scholarly disagreement for their lack of taking into account the conditions that existed in Somalia, namely, the “insecurity and underdevelopment” (Gilmer, 2016, p. 23). Critics who assert that the religion based anti-piracy campaigns are ineffective in combating piracy have also criticized the reframing of approaches taken to piracy. The Somali population was not unaware of the piracy that was occurring or that danger associated with it. The population was, however, living in a

post-war, economically and politically weak state, where the job opportunities were limited and resources were scarce.

By failing to consider piracy from both an internal, economic disparity issue and also an external, politically influenced and financed issue, counter-piracy campaigns fell short in implementing long-lasting, effective solutions. Viable counter-piracy solutions could be found by pulling from the grand narrative, which finds that historical context is essential for understanding why piracy began, and the profit narrative, which provides a framework for why it continues. Finding a common ground between these two narratives is imperative when planning future counter-piracy campaigns.

Conclusion:

Who, if anyone, can be blamed or held accountable for the pirate attacks? Returning to Anna Bowden's Geopolicity study, she writes that over the span of a Somali man's working lifetime, estimated at about 29 years, based on the GDP of Somalia, he is expected to make about \$14,500. She then adds that over the span of 3-5 years, which is the average length of career for a pirate, he can expect to earn anywhere between \$168,630 and \$394,000 (p. 12). What a pirate can earn in 5 years, can be up 25 times more than an average Somali non-pirate makes in their entire working life. Looking at this from a humanitarian perspective, it is easy to understand that this type of comparative wealth which will ultimately be reinvested into the community of Somalia will be well worth the risk to pursue. Add to this the idea that the fishing happening on the coasts, in an unregulated, legally unprotected manner, is depleting the most valuable resources of a country. While the profitable incentives are strong, it is important to also consider that the legal and political debates over the declaration of Somalia's EEZ left Somalia's coast vulnerable to exploitation with unenforceable sanctions that could be taken against perpetrators.

This begs the question, if money was not a factor, would the pirates still be taking such large ransoms or conducting pirate activities?

What we have seen is that the pirates are not the only players in the game. Piracy is a business, and like any profitable business, there are many moving pieces and invisible actors involved. Clan militias, government official, Islamist terrorist organizations, outside banks, and other on and off-shore groups all have a stake in the success of piracy in the Gulf of Aden. When looking at the grand scheme of the entire operation, can the individual actors, in this case the Somali pirates, be the ones to blame for these crimes?

Another important consideration here is the legality of the actions taken by the pirates. Here it is imperative to consider again the United Nations definition of piracy, “all illegal acts of violence, detention or any act of depredation committed for private ends by the crew or passengers of a private ship on the high seas.. in a place outside of the jurisdiction of any State (United Nations).” The arguable terms to consider here are “illegal,” “outside of the jurisdiction of any state.” Recalling the issues over the declaration of an Exclusive Economic Zone and a territorial sea, for a period of around 30 years Somalia did not have internationally recognized and clearly defined, legally traceable maritime borders. While Somalia signed onto the United Nations Convention on the Law of the Sea in 1982, agreeing to to pass a law clarifying that they claim 12 nm worth of territorial sea contained within a 200 nm EEZ, it was not until 2013, when Hassan Sheikh Mohamud, the President of Somalia, made the first, formal executive statement clarifying Somalia’s maritime zones, announcing claim to a 12 nm territorial sea, 24 nm contiguous zone and a 200 nm EEZ. Having a legally declared territorial sea would mean that Somalia would have the power to “legislate on matters concerning the safety of navigation, the preservation of the environment, and the prevention, reduction, and control of pollution without

any obligation to make these rules compliant with international standards" (Territorial Sea). Additionally, the resources located within the territorial sea cannot be used by any other country besides Somalia. This means that within those 12 nautical miles, Somalian people have the right to protect their natural resources from outsiders, and take steps to ensure that their resources are not being depleted. Thinking back to the piracy for protection narrative, there are Somali pirates who have defined their "piracy" activities as action that would be taken by a coast guard.

Next is the issue of declaring an Exclusive Economic Zone (EEZ). Having a legally declared EEZ would give Somalia the power to "regulate the use of resources as it finds in its best interest and impose penalties on those who do not abide by these regulations" within the 200 nautical miles of the recognized territorial sea (Exclusive Economic Zone)." Unlike a territorial sea, which concerns matters of navigation, safety, and pollution, the EEZ limits a country's legislative powers to only have jurisdiction over their natural resources within 200 nm. Anything beyond those 200 nm, which can be seen in Figure 1, is considered the high seas. Taking these two definitions into consideration, along with the United Nations definition of piracy, the conclusion can be drawn that any attacks that happened within the territorial sea, or within the EEZ with the purpose of protecting natural resources, cannot legally be considered piracy.

What is left is the question of whether or not Somalia was whether Somalia's territorial sea and EEZ were legally declared and internationally recognized. This is a question that many scholars still cannot answer. Technically speaking, although the President of Somalia did not make an official announcement regarding the territorial sea and EEZ declaration until 2013, Somali passed the Law of the Somali Sea which brought Somalia's territorial sea into conformity with the LOSC in 1989. However, because the country was engulfed in a civil war at the time, those records were lost and not found until the early 2000's. This leaves open the questions of

whether or not any of the attacks between 1989 and 2013 within the territorial sea and EEZ of Somalia were illegal acts of piracy or defensive acts of a coast guard. The only way to answer this question is to conduct an analysis of every attack that happened between this period of time to pinpoint the exact location and intention of the players involved.

All circumstances considered, the Somali people are living out the consequences of weak governance, unenforceable international laws, and civil war. The population of Somalia is not to blame for the further implications of those consequences, like the lack of economic stability, job training, employment opportunities, or general poverty of their nation. Regardless of how the issue of piracy is framed, whether through the piracy for profit or piracy for protection understanding, people act in response to their circumstances. In Somalia, the circumstance was one of bleeding from the inside. The failure of multiple counter-piracy campaigns that centered their approach internally, trying to dissuade Somali people from becoming pirates, made clear that by not addressing the external factors, piracy could not be prevented.

In order to fully understand the reason and solutions for the crimes that occurred in the Gulf of Aden there must be a unison of the two narratives. Future research must work to understand the extent to which organizations outside of Somalia had a stake in the activities taking place on their coasts. Holding the largest stakeholders accountable for their monopolization of criminal activities on the high seas would be the most effective way to prevent piracy from continuing.

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Appendix:

EEZ: Exclusive Economic Zone. When declared an EEZ allows the state for which it is declared the right to protect, conserve, and exploit the natural resources of that area and prosecute states which violate it.

LOCS: United Nations Convention on the Law of the Sea. Adopted in 1982, it lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources.

UNODC: United Nations Office on Drugs and Crime