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The Piracy Predicament: Somali Pirates and External State-Building in the Horn of Africa¹

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¹ The views expressed in this commentary are the sole responsibility of the author and do not necessarily reflect those of KFIBS.

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Introductory Remarks

Piracy has become a lucrative enterprise in the Gulf of Aden and pirate attacks have doubled from 2008 to 2009 alone. Piracy disrupts humanitarian aid deliveries, increases the cost of international shipping, could cause an ecological disaster, and is a potential source of income for international terror networks. The international community has therefore tried to curb piracy through increased military presence on the open sea and through efforts to re-establish the Somali state to address poverty and legal anarchy, the supposed root causes of piracy. However, a strong Somali state will not end piracy. Somalis have long organised their economy and society beyond the state and have only experienced central power as oppressive force. If the international community is serious about ending piracy, it needs to work with alternative institutions of social control like the moral leadership of Islamic leaders. However, this could mean negotiating with groups with supposed links to Islamic fundamentalist networks. The international community's dilemma how to balance the need to curb piracy with potentially conflicting geopolitical goals like the 'War on Terror' is therefore the real predicament of Somali piracy.

Piracy on the Rise

On 10 June 2010 Dutch authorities handed over ten Somalis to Germany. The men are about to be tried in Hamburg in what will be the first piracy trial in the city since some 400 years ago. They are accused of having hijacked the German vessel 'Taipan' 900 km off the coast of Somalia in April this year. The ship was freed by Dutch marines a few days later. The upcoming trial is only the latest addition in the international community's ongoing attempt to stamp out piracy off the Somali coast.

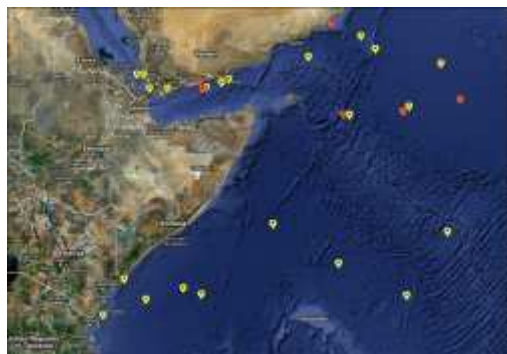
Piracy has become a lucrative enterprise in the Gulf of Aden. A far cry from its beginning as side-income for coastguards and fishermen, piracy now sustains entire towns in north-eastern Somalia. The International Maritime Bureau registers rising numbers of piracy attacks worldwide and its statistics show that the Somali coast has by far the most attacks. Here, attempted hijackings there went up to 217 in 2009, nearly double the 111

recorded in 2008. Somali pirates were responsible for 35 of the 67 attacks so far in 2010. Although only a small proportion of attempts were indeed successful, the pirates managed to take over one in four attacked ships last year, between 160 and 200 sailors are still held as hostages.

Besides the immediate danger for sailors and their cargo, the rise in piracy holds potentially wider threats to international security and world trade. In Somalia, piracy disrupts the flow of critical food imports and humanitarian aid deliveries to Somalia. Pirates have recently started to target food vessels, probably to use them as mother ships to hijack other vessels. This has already led to food shortages and higher food prices on the Somali mainland, which could eventually result in a humanitarian crisis, because 42 per cent of the Somali population relies on food aid.

For international trade piracy means soaring costs of transport as ship owners have to pay premium insurance prices for their vessels or choose to take longer and more costly routes to avoid the danger zone. One in five German shipping companies has already been a victim to Somali pirates and insurers have introduced an insurance that pays the pirates' high ransom demands. Shipping lines now often choose to send their vessels on the longer route around the Cape of Good Hope. However, this results in substantially higher transport costs and leads to a price rise on the European market in manufactured goods from Asia and oil from the Middle East.

The surge in piracy attacks could also have devastating effects for the environment. The high ransom payments of the past have enabled pirates to buy ever more sophisticated weapons and they now even carry rocket-propelled grenades. Analysts warn of an environmental catastrophe if an oil vessel under attack is damaged or sinks. Ever-heavier ammunition and increasing range of piracy attacks also make pirates potential attractive allies for international terror networks. Some analysts argue that the ransom money is already helping to pay for the war in Somalia, including funds to Al-Shabaab, a rebel faction that is listed on the US list of international terrorist organisations. However, the connection between pirates and terror networks remains unproven.



Incidents of Somali pirate attacks from January to April 2010 (source: http://www.icc-ccs.org/index.php?option=com_content&view=article&id=406:worldwide-hijackings-rise-as-pirates-expand-area-of-operation&catid=60:news&Itemid=51).

Responses

The Hamburg trial will only be the latest effort in the international fight against pirates; Germany has been part of several multilateral initiatives to counter piracy. These attempts range from efforts to safeguard the sea route through the Gulf of Aden to international endeavours to cut the pirates' supply chain on the Somali mainland and to ideas for an international tribunal to prosecute pirates.

Since 2008 German war ships patrol the Gulf of Aden in EU cooperative mission to deter pirates. Germany provides a permanent operational contribution to this 'Operation Atlanta', the first maritime operation under the Common European Security and Defence Policy (CESDP). Its renewable twelve months mandate is to escort World Food Programme vessels to secure the flow of humanitarian aid to mainland Somalia. 'Operation Atlanta' operates alongside other multilateral maritime deployments like NATO's 'Allied protector' or the US Navy Task Force 151.

Apart from the states' responses, private security firms have sensed a new market and offer mercenary escort services to ship owners. Security firms like the American Topcat or the French Secopex seek to enter multi-million dollar contracts with governments and shipping companies. However, the death of Somali pirate allegedly at the hand of an international mercenary has revived the debate about the appropriateness of mercenaries and has shown that most ship owners are very reluctant to employ private security firms.

If an international patrol captures a pirate ship, efforts are made to put them on trial. However, these attempts have only very modest success rates with the contemporary state of criminal law. Piracy is an international crime. It is committed on international

territory and can therefore be prosecuted in any country – in theory. However, a BBC report states that out of 238 captivated pirates in 2009 less than half were prosecuted. This is so because most national legislations only allow prosecution of domestic offences, which excludes international crimes like piracy. The majority of captured pirates is thus released shortly afterwards, most of those who face trial are prosecuted in the region and only a small minority appears in a European or US court. Law firms specialising in maritime legislation have therefore expressed doubts that prosecution is currently a viable method to combat piracy. Nevertheless, the international community seeks to enhance the capacity of the judicial systems in Somalia, Kenya and the Seychelles to prosecute captured pirates and the UN Security Council now considers to establish international tribunals to try pirates.

Commentators and policy makers agree that military escorts for vessels and criminal prosecution of pirates can only be one part of response, as it addresses piracy's symptoms and often also leads to unforeseen consequences. The EU puts the increased range at which the pirates operate in part down to its own success in forcing them to attack further afield. The increased operational range of pirates means that current maritime responses are necessarily insufficient. At best of times 'Operation Atlanta' compromises five frigate vessels, five helicopters and two maritime patrol aircraft. Taken together all multinational operations command about twenty warships, in order to cover an area ten times larger than Germany.

The State of the Somalia's Non-State: Piracy's Deeper Roots?

It is not only the comparatively meagre military resources the international community musters that increase doubts whether a strictly maritime effort will stop piracy. The often-repeated argument is that piracy, and hence the fight against it, is taking place within Somalia rather than off its coast. The country's enduring warfare and widespread poverty mean that people resort to criminal behaviour, including piracy, to secure an income. The lack of law enforcement mechanisms implies that piracy is seldom prosecuted and can thus sustain the region's international criminal networks. Only a strong state can supposedly end the continuing fighting, can bring development and thus eradicate the root causes of piracy. The arguments about piracy in fact reiterate older calls

for a Somali state. Previously, a strong Somali state has been presented as panacea to stall the country's economic collapse, to ensure sustainable development and to contain the lurking terrorist threats. And now it is also said to represent the only way to combat piracy and safeguard the open sea in the Gulf of Aden. But is a re-established state in Somalia really the answer to piracy?

The history of the Somali state is a violent one. In 1960, the British protectorate Somaliland and the Italian colonies of Puntland and Somalia became the independent state of Somalia. However, ongoing border disputes with the neighbouring Ethiopia and internal power struggles between dominant Somali kinship lines created an extremely insecure Somali regime and a highly repressive state. Siad Barre, the military general who held power in Somalia between 1969 and 1991, used political terror to uphold his rule for over two decades. Civil war broke out shortly after Barre was ousted and Somalis only retained a memory of the state as distant at best and discriminatory and oppressive at worst. Somalia quickly disintegrated into its original regions: Somaliland, Puntland and Somalia. Whereas Somaliland and – to a certain degree Puntland – have a relative stable government and a basic judiciary, Somalia is carved up into different zones controlled and constantly fought over by warlords for the past 17 years.

The link between Somalia's collapsed state and the rise of piracy, its economic decline and the influx of international terror networks is obvious, but only at first sight. On closer inspection, the connection between the state, or the lack of it, and Somalia's predicament is less clear. The economy has done rather well in Somalia. A recent comparison of Somalia's economy pre- and post-state collapse shows that Somalia's economic performance improved after 1991 and that it fares comparatively well when evaluated against other contemporary African states. A recent study measures Somalia's economy through 13 indicators ranging from infant mortality to mobile phone usage and access to sanitation,³ and finds that in five indicators Somalia ranks in the top 50 percent of African states. Although it ranks in the bottom 50 percent of countries on seven measures, it has actually improved performance relative to other countries since the collapse of the Somali state.

³ The 13 indicators are: the death rate, infant mortality, life expectancy, child malnutrition, telephone mainlines, mobile phones, Internet users per 1.000 population, households with television, DPT immunization, measles immunization, percentage of the population with access to sanitation and an improved water source, and cases of tuberculosis. Powell, B/Ford, R/Nowrasteh, A: Somalia After State Collapse: Chaos or Improvement? *Journal of Economic Behavior & Organization* 67 (2008), pp. 657-670.

Just as the link between economic decline and statelessness is unsubstantiated, the rise of piracy is not caused by a lack of law enforcement mechanisms alone. Somali pirates do not operate in a legal vacuum as analysts often suggested. Puntland, the region where the major centres of pirate activities are located, has in fact an established though severely under-funded government and judiciary. Weak law enforcement is certainly a major factor in soaring piracy, but the idea that piracy flourishes when state infrastructure collapses rests on a number of false assumptions about the nature of piracy.

Piracy is a highly organised enterprise. Pirates do not only have to master the logistics of identifying and hijacking vessels, they need to bring their hostages to safe spot, cater for their captives, enter long negotiations with lawyers or ship owners, and arrange for a safe handing over of the money. All this cannot be managed by isolated individuals and piracy had thus to become the enterprise of an entire region. Pirates need infrastructure and this includes a basic civil administration and a minimum security that is not given in areas of constant warfare. The ‘Pirate capital’, as the BBC once called it, is Eyl. The town with the highest concentration of pirates is located in Puntland, a region with little fighting and a parliament, president, and High Court, thus with the basic administrative institutions of a state. Although piracy requires a certain extent of social networks, in Puntland it seems to be a comparatively local enterprise. To date there is no firm evidence that pirates are linked to or provide financial support to terrorist groups. The argument about the link between piracy and terrorism and their implicit assumption that these ties would be severed by a strong state remains speculation.

Lastly, and most importantly, all calls for a strong state to curb pirates pay very little attention to what Somalis themselves wish for and there is considerable reason for doubt that Somalis would welcome a return of the state. The Somali state has never been benevolent in their experience. Somalis see the revival of a state as a zero-sum game, creating winners and losers in a game with potentially very high stakes. Somalis foresee that the groups that gain control over a central government will use this position to appropriate economic resources at the expense of others. They will use the law, patronage, and the monopoly of legitimate use of violence to protect this advantage. This is the only experience Somalis have had with a centralised government. Their experience of the state thus tends to produce risk-aversion and instigate conflict rather than promote compromise.

A Strong State Is Not the Solution

It is therefore most important to distinguish between anarchy or the complete lack of social regulation on the one hand and statelessness on the other. A strong state in the Horn of Africa is highly unlikely to curb piracy. Instead, analysts and international policy makers need to learn from Somali history which shows that society and economy can survive, even grow, beyond the state. What is most characteristic about the Somali state then is not so much that it has collapsed, but the fact that it had never really been established as social regulator of society. Instead, Somali social order has long been negotiated and redefined through non-state institutions.

Those seeking to end piracy need to use those alternative social regulations rather than try to revitalise a Somali Leviathan, an all-powerful state which had been everything but a benign law enforcer. They need to take Somali experiences and expectations serious and show a real effort to understand the ways in which Somali society works. This might mean to abandon the idea of a strong state and to strengthen those social forces that can actually rein the pirates. When a union of Islamic courts held major parts of Somalia under its control it was able to make moderate inroads in the fight against piracy. The government of Puntland has recognised the key role of religious leaders and has started sending imams to talk to the pirates. However, these efforts need to be expanded, supported and sustained to have a long-term impact.

Recognising the moral authority of Islamic leaders and groups arguably presents a dilemma for the international community. Supporting Islamic groups smacks of promoting or at least tolerating Islamic political movements; a policy that is internationally contested and clashes with other geopolitical strategies, above all with the ongoing 'War on Terror' in the region. The international community has to acknowledge this dilemma as a first step to finding ways to address it. Instead of insisting on an unproven link between Somali Islamic groups and terrorist networks, it might do better to find a flexible approach that uses the moral authority of religious leaders and avoids seeing every religious group as potential terrorists. This is not an easy task. But trying to impose an unwanted state on Somali society will only result in increased antagonism and suspicion. Somalis, as the US knows since the failed UN intervention in 1992, do not take foreign impositions particularly well.

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