

In a State of Exception: National and International Perceptions of Piracy in Somalia

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Abstract

This article investigates how international actors respond to piracy in Somalia. It is argued that the root causes of piracy must be traced back to the collapse of Siad Barre's regime in the early 1990s, which resulted in an escalation of foreign illegal activity in Somali waters. This caused Somali entrepreneurs to set up a taxing system that eventually escalated into organized piracy. Simultaneously, the international response to the issue of piracy has gained momentum as an important element in the 'global war on terror' and international political actors have increasingly approached piracy as a security concern rather than a development issue. Such discourse legitimizes a radicalization of the Western response motivated by an increasingly militarized and 'by-all-means-necessary' approach resulting from laws that effectively suspend basic human rights. The article argues that international response towards piracy in Somalia thus serves as a significant example of modern totalitarianism as described by Giorgio Agamben, where entire categories of citizens are considered incapable of being fully integrated into the political system. In terms of reducing the number of piracy incidents, this strategy has proven successful. But simultaneously it protected important members of the global political elite to from facing judgment on their responsibility of the depletion of resources in Somalia.

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Introduction

Piracy in Somalia is gaining considerable attention in the international political community. There are obvious reasons for this attentiveness as the strategic geographical area of Somali piracy disrupts international trading patterns. The international community has a grand interest in preventing the continuation of piracy. However, little attention has been paid to the question of *why* some Somalis turn to piracy as a means of income. The lack of importance given to local political grievances suggests that the international response to piracy is first and foremost embedded in vested economic interests, with little or no interest in addressing the root causes of piracy on the ground. Piracy in Somalia is framed in a political discourse that portrays Somali pirates as being directly linked to terrorism. This allows international actors to respond to the 'problem' of piracy within a political framework shaped by the discourse of the global 'war on terror'. The forceful response to piracy is thus legitimized by a discourse that portrays military responses as *commonsensical*. Within this framework it has officially been announced that "all necessary means" (UNSC, 2008) are appropriate in the fight against piracy, even though none of the means seem to confront the root cause of piracy in Somalia.

This essay seeks to investigate the root cause of piracy through the implementation of a criminological theoretical framework. This is followed by an analysis of how the international community responds to the reality on the ground. This analysis will especially draw on Agamben's theory of the state of exception (2005) as well as the Foucauldian regime of truth (1980) and in particular its relation to Abrahamsen's theories of securitization (2005). However, a brief contextual overview is presented first in order to shape the argument that piracy is rooted in socio-political grievances which are largely ignored by the global political community.

Contextual overview

Somalia has for decades been facing a humanitarian crisis, highlighted most recently by the UN declaring a state of famine in the country in July 2011. The consequences of such crises are devastating for any country and often cause people to seek refuge in neighboring countries or to turn towards illicit methods for gaining capital. In Somalia, the genesis of piracy must be considered within a context directly related to the current political situation triggered by historical and political elements (Beri, 2011: 452). The current political condition has especially been shaped by Siad Barre who took control of the country in a coup d'état in 1969. The coup was welcomed locally as Somalis hoped "a central leader would save the nation from political unrest" (Rothe & Collins, 2011: 330). The hopes vanished as Barre's vision of scientific socialism and a 'greater Somalia' triggered a war with Ethiopia in an attempt to gain control over the Ogaden province (Beri, 2011: 453). This coincided with the banning of political parties and extensive corruption as well as internal violence. The general political dissatisfaction led to civil war from 1988 to 1991, causing Barre to flee his position in January 1991. The following years saw continuous violent uproars

concurring with a famine in 1991-1992. Since then, peace-talks and international interventions have tried to stabilize the country with the most recent attempt being the introduction of another transitional government, which regrettably mainly consists of politicians not troubling themselves with "the vexing task of actually governing and without having to subject themselves to…elections" (Menkhaus, 2011: 2).

Currently, nearly two million Somalis are displaced and four million people are in desperate need of food aid (Rothe & Collins, 2011: 331). The insurgent situation in Somalia is an example of how the distinction between war and crime has become increasingly blurred (Kaplan, 1994; Kaldor, 2006) and the loss of *Gewaltmonopol* has caused the distinction between legality and illegality to break down (van Creveld, 1991). Keen argues, "conflict can create war economies ... linked to international trading networks [where] members of armed gangs can benefit from looting" (1998: 11). Under such circumstances it becomes a complicated task to end the humanitarian crisis as its raison d'être "may be precisely the legitimacy which it confers on actions that in peacetime would be punishable as crimes" (ibid: 12). Considering that Somalia is in what is generally considered as the world's "worst humanitarian crisis" (Kennedy, 2011: 7), the desperate need for obtaining basic goods through unorthodox and illegal methods must be considered as the root cause of piracy today (Rothe & Collins, 2011: 331).

Roots of Somali piracy

After the collapse of the Somali state the fishing grounds outside the coast of Somalia remained unprotected (Murphy, 2011: 12). Within the same month that Barre's regime collapsed, foreign illegal fishing activity alongside the dumping of toxic waste escalated outside the Somali coast (ibid), and environmental movements raised concern of the consequences of the bi-catch of turtles, dolphins and dugongs, as well as the destruction of reef habitat (ibid: 18). Participating were fishing vessels from Japan, China, South Korea and certain European countries that flew under flags of convenience in order to circumvent EU restrictions (ibid). Their actions depleted the fishing stocks, and local Somalis began to impose a 'tax' (Hari, 2009) on these fishing vessels demanding not money, but diesel fuel, fishing materials, and fish (Murphy, 2011: 19). As these 'taxes' escalated so did the confrontations between Somalis and foreign fishermen, with the Somali fishermen beginning to use weapons as well as to take hostages in the aim of implementing what can be referred to as illicit taxing systems shaped by the lack of access to basic needs. We can say, therefore, that the collapse of the state clearly triggered an escalation of illegal foreign activities outside the coast of Somalia. This escalation in turn generated a local initiative shaped by the strategic geographical location of Somalia as a means of gaining access to basic resources.

The criminological framework

Piracy cannot be seen exclusively as a logical consequence of geographical location combined with specific political grievances. These desperate responses are also outcomes of an individual cost-benefit analysis. Rothe & Mullins argue, "the more individuals have at stake to lose, the greater the likelihood they would desist and/or reject additional criminal activity as the absolute cost is higher" (2010: 100). Additionally, the outcome of this cost/benefit analysis is determined by *social location*. If the outcome is favoring a criminal act, the deterrent function of the rule of law has failed to demotivate criminal acts, as the potential *cost* is low and the potential *benefit* is high. This could be seen in the 2010 trials in the Netherlands where one pirate claimed, "I have

no country, no family, nothing, I got into this situation because I am prepared to do anything" (O'Cinneide, 2010). Here, the deterrent value of the rule of law becomes impotent and perfunctory as the result of the cost-benefit analysis was favoring the *opportunistic criminal activity*.

Within the field of criminology it is attested that "large-scale organized violence directed towards strategic goals commonly co-exists with opportunistic criminal violence" (Green & Ward, 2009: 611). Opportunistic criminal activities can be perceived as criminal acts mainly motivated by economic interests. Such opportunistic criminal activities are relatively normal in states without a monopoly over organized violence (van Creveld 1991: 204). This results in a dispersal of violence where the new internal power actors seek patent on the *Gewaltmonopol* and in the process they blur the boundary between opportunistic violence and politically motivated violence. Green & Ward refer to this as 'dual-purpose violence' as it may serve private and political goals correspondingly. This can be considered a "common feature of conflict zones where the state monopoly of violence has collapsed" (Green & Ward, 2009: 609).

The collapse of the *Gewaltmonopol* and the relevant governmental institutions capable of intervening in cases of emergency has caused "desperation to obtain basic needs" amongst the local populations in Somalia (Rothe & Collins, 2011: 334). This desperation turns opportunistic criminality into a matter of survival as the individuals who "look at the occupational options available, see no conventional choices" (ibid) causing them to turn towards opportunistic criminal enterprises "to provide what is not available through 'legitimate' means" (ibid). These activities must be considered as one side of the dual-purpose criminality.

The opportunistic criminal response can thus be considered a local response to the transnational criminal activities that have increasingly appeared outside the coast of Somalia since the collapse of the Barre regime. According to Mullins & Rothe it can even be considered an entrepreneurial activity that helps provide the basic needs that the "satellite government" (Harper, 2012: 177) fails to deliver. Such 'entrepreneurial' response adds a certain degree of political and innovative elements to the discussion. Even though it is argued that piracy is driven by opportunistic criminalities, there is a political element that legitimizes piracy constituting the second part of the dual-purpose criminality. This political purpose is mainly local. It is described as "defensive piracy" (Murphy, 2011: 17) where local fishermen are portrayed as defending their fishing grounds from "illegal, uncontrolled and unregulated (IUU) activity of foreign fishing vessels" (ibid). Marchal (2011) refers to this as the 'moral economy of piracy', as the feeling of injustice constitutes a local acceptance of acts related to piracy. Therefore, local acceptance of piracy is constituted mainly by two reasons: Firstly, the profits; these profits are increasingly causing a trickle-down effect as pirates spend money on "houses, SUVs, laptops, alcohol, prostitutes and multiple wives" (Murphy, 2011: 111) and their earnings increasingly spread out to the community in terms of new businesses to provide "pirates with the goods and services their new-found wealth demanded" (ibid: 112). Secondly, the political motivations; Pirates are often perceived as "heroes, not criminals" (ibid) as defensive piracy protects "our resources from those looting them" (ibid: 113). Therefore, even though piracy is not universally condoned in Somalia, it is considered a logical reaction to "foreign pillages trying to put their fishermen out of business" (Rothe & Collins, 2011: 334). Hence, as overfishing as well as dumping of toxic waste has destroyed Somalia's resources, Jasparro argues that piracy can mainly be considered a resource swap: "with Somalis taking \$100 million annually in ransoms while Europeans and Asians poach \$300 million in fish"

(2009: 2). This 'tax' has for a long time been accepted locally, which stretches the importance for considering piracy as being both politically motivated and rooted in desperation. Green & Ward argue looting provides "opportunities for private enrichment. This can encourage participation in armed conflict but also sidetrack fighters from the pursuit of strategic political goals" (2009: 611).

There is no clear line between the defensive and the private motives. It is therefore relevant to investigate whether the argument that pirates are defending their fishing grounds is true, or if it has become an excuse so it might give them victim status among Western audiences? Such a crucial question must for now be left unanswered due to the notorious difficulty of conducting fieldwork in the area. What is important is *not* to deprive the pirates of their political agenda as the political motive is generally accepted at the local level. However, neither must they be considered exclusively as political actors. Piracy can be considered a local response triggered by international, illegal acts as well as local political grievances rooted in the lack of any control of the waters combined with desperate situations on the ground.

The criminological framework has provided an analysis of piracy as being linked to socio-political issues. It has been argued that it is a blurred motive between opportunistic crimes and political motives that stimulate piracy in Somalia, constituting a kind of dual-purpose criminal activity. The political aspect is important as it may have a legitimizing effect at the local level.

Global political response

Just as piracy in Somalia cannot be considered to be detached from political agendas, neither can the international response. This chapter argues that there is a persistent gap between the root causes of piracy on the ground and the international response, which is attempting to frame piracy as anti-political and exclusively in a discourse related to the global war on terrorism.

The international policies towards Somalia have been dictated "for years by post-9/11 U.S. counterterrorism policy" (Marchal, 2011: 31). The U.S. dominated fight against piracy is one that displays no will to address the root causes of piracy on the ground nor to showing interest in why piracy is enjoying increasing support locally. Instead, the U.S. approach to terrorism is dominated first of all by a concept based on the assumption that "contacts and mediations with groups or leaders considered as terrorists were unacceptable and prohibited" (ibid: 33). Piracy is thus playing a paradoxical role as terrorism only can be considered a marginal aspect of today's humanitarian crisis in Somalia. Still, it managed to trigger a "genuine process of international cooperation and policy emulation" (ibid) as the international community quickly gathered and planned policies from the assumption that piracy was directly linked to terrorism. Piracy is thus forced into a discourse directly related to the global war on terror, which shapes the policy response to it and also actively depoliticizes piracy through the use of what Abrahamsen refers to as "speech acts" (2005: 58) where pirates are actively labeled as security threats, making their connection to terrorism an objective condition. The humanitarian issues are thus re-shaped into security issues. Such discourse "brings in its own dangers" (Abrahamsen, 2005: 57) and allows methods as the one recently formulated by the UNSC (2008) of the acceptance of "all necessary means to fight piracy off Somalia coast".

The global 'security threat' Somali pirates are posing cannot be considered *the* objective condition; it is an outcome of the discourse that has allowed the issue to be treated in the context of terrorism.

This is what Wæver refers to as an active labeling of certain issues as security threats through speech acts: "By uttering 'security' a state representative moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it" (Wæver, 1995: 57). Hence, it is the active utterance that perpetuates the objective condition into being a security issue.

Here, the Foucauldian framework of 'truth' becomes relevant as truth is "whatever Power says it is, and as such is constantly changing radically" (Prado, 1992: 164). The discursive regime of securitization can thus be considered as being the core of what Foucault refers to as 'regime of truth' (1980: 131) that serves vested political and economic interests while commanding the majority of power. In order for the discourse to sustain itself, in this context, it depends on what Abrahamsen refers to as the 'securitization' of a subject. The discursive regime is depending on a diametrical opposition of which it itself diverges from. In the case of the pirates, the discursive regime can thus guide the ways in which piracy is discussed and thus responded towards by corresponding political means.

The success of the regime of truth is visible when the real-political response becomes *commonsensical*. According to Vico, "Common sense is judgment without reflection, shared by an entire class, an entire people, an entire nation or the entire human race" (1984: 63). The consequence of this dominating discourse is that the "genuine debate" (Rosenfeld, 2002) is replaced by this "judgment without reflection", allowing for the continuation of a supposedly objective response to the condition. The victory of the discursive "regime of truth" can then be visible as it has shaped both "what is to be known but also what should and is to be done in the political sphere" (Rothe & Collins, 2011: 336) while at the same time not allowing additional truths to vocalise.

In March 2012 the EU expanded its anti-piracy mission to coastal territory and internal waters, which could include the use of warships or helicopters to target pirates connected to the shore (EUNAVFOR, 2012). Such interventions clarify how policies have responded directly to the dominating discourse proving its success - especially when "all necessary means to repress acts of piracy and armed robbery within the territorial waters of Somalia" are legitimized. These exceptional means are allowed because the commonsensical approach has become widely accepted and thus created a consensus that Somalia is a state of exception that must be met with exceptional means. As these exceptional measures are "the result of periods of political crisis [they] must be understood on political and not juridico-constitutional grounds" (Agamben, 2005: 1). Hence, the political means are found in a "paradoxical position of being juridical measures that cannot be understood in legal terms and the state of exception appears as the legal form of what cannot have legal form" (ibid). In other words, the exceptional interventions consist of law that employs the suspension of law itself. The discourse has framed Somalia as being exceptional, or in contrast to 'normal' Weberian conditions. The global response can be considered as 'modern totalitarianism', which Agamben sees as "the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system" (ibid: 2). As these individuals are framed as apolitical and thus outside any political system, they must be confronted using exceptional extra-juridical means that erases the legal status of the individual, reducing their status to "legally unnamable and unclassifiable" and hence putting them beyond any juridical oversight.

At the same time there are no institutional authorities insuring that the implementation of such 'commonsensical' responses are used for the purpose of actually upholding global security. Hence, this modern totalitarianism is liable to itself pose a security threat by its use of totalitarian means. It seems as a direct example of Rossiter's argument that governments "will have more power and the people fewer rights" (Rossiter, 1948: 5). This has established the *state of exception*, with a constant extension of the exception, as seen in the very recent EU decision in March 2012 as previously described. The *state of exception* is increasingly engaging in a contradictory relationship where "the use of constitutional emergency powers may well become the rule and not the exception" (ibid: 297). In other words, the exception becomes the law, and the example of Somalia seems to portray that these permanent states of exception are prolonged as the political responses to the humanitarian crisis may eventually "become lasting peacetime institutions" (ibid: 313).

On the ground, and in the waters for that matter, Somalis face no possibility of resistance towards the modern totalitarianism, as the state of exception has suspended the law. As fighting Somali pirates came to be synonyms of the global war on terror, the discourse has legitimized the suspension of law in the name of necessity, and thus necessity created its own law. Therefore, "if something is done out of necessity, it is done licitly, since what is not licit in law necessity makes licit" (Agamben, 2005: 24). Necessity hence has its own legitimacy for creating laws justified by the discourses that actively securitize objects away from their objective condition and into a convenient condition measured by political interests instead of juridico-constitutional interests. In the name of necessity, Somalia has thus become an uncertain zone – a state of exception - where the "antijuridicial pass over into law" (ibid: 29) and the very norms by which international crises are managed are altered to reflect. In this way, the root causes of piracy in Somalia are systematically ignored, and perhaps even aggravated, by global political attitudes.

The regime of truth has allowed a framing of pirates as global security threats. This framing has shaped a commonsensical approach that the matters can be solved through military means. This indicates the presence of a gap between claiming to solve the actual problem of piracy – by responding to the humanitarian crisis - and only fighting the symptoms of the same. Yet, this must not be subscribed to political failure. It has been argued that the international community is involved in the fundamental causes of the desperate situation through toxic waste dumping as well as illegal fishing. By the introduction of Somalia as a state of exception, the commonsensical military approach serves the purpose of protecting European economic interests without having to face their own responsibility in this matter. In that case, the foreign policy towards Somalia has proven successful, as the number of piracy incidents has decreased in 2012 (Hopkins, 2012), and at the same time they do not have to face judgment on their role in the case. This proves the strength of what Agamben refers to as law (2005: 32) where law serves the purpose of suspending itself through juridical means. The implementation of this law is crucial in order to guarantee that piracy is fought on the sea. If the underlying problems were confronted, "the international community would then have to consider the violations of international law perpetrated by some of its [own] major members" (Marchal, 2011: 31).

Conclusion

While this essay has not sought to applaud nor condone specific actions, the goal was to offer a nuanced debate on some of the variables in the debate of piracy, which often seem to go unnoticed.

This in itself proves the dominance of the current discourse in which piracy is framed. The motivation was to investigate the dismissed investigations concerning why some Somalis turn to piracy. Through the application of a criminological framework it was argued that the reason could be traced back to a logical and geographically contextualized cost-benefit analysis rooted in the local historicity as well as political grievances. It was argued that piracy thus is driven by a dual purpose, where opportunistic criminality and political motivations are intertwined. It was shown that piracy is a major concern for the international political community. The concern has triggered several international responses in order to protect the important trade route connecting the transnational business networks. These responses have been highly successful, as they both have managed to decrease incidents of piracy, and at the same time managed to prevent important members of the global political economies to face judgment on their responsibility of the depletion of resources outside the coast of Somalia. This has been managed by framing piracy as an issue exclusively related to the global war on terror, which legitimized military responses to an issue rooted in socio-political issues, with little relation to terrorism. The success of the discourse was explained through a theoretical framework especially consisting of Abrahamsen's theory of securitization, which proved to shape the premise of *necessity*, which was explained using Agamben's theoretical framework of the state of exception. It was then shown how discourse is solidified as it manages to establish a commonsensical approach to dealing with piracy by military means. However, this success is not mirrored locally as the elimination of piracy does not mean deterrence of the humanitarian crisis in which Somalia finds itself. Nor does it provide alternative means of income for those who have turned to piracy when no conventional choices were available.

In conclusion, the war on piracy has depoliticized Somali pirates and legitimised global acceptance of the establishment of an international arena where it has become legitimate to suspend the rule of law and use all means necessary in the name of security.

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In a State of Exception: National and International Perceptions of Piracy in Somalia

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