The Dilemma Behind Somali Piracy: How Territorial Integrity Hinders Effective State Response.

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Assignment: Master Thesis
Date: 11-06-2012
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Introduction

The significance of the Indian Ocean lies in the fact that the ocean is strategically of great importance. Geopolitical dynamics make this region an interesting issue for political scientists (Onuoha, 2009: 32). The Indian Ocean is important for various states because it contains very important trade chokepoints. Controlling ocean traffic and flight paths is therefore a necessity. These chokepoints include for example The cape Sea Route and the Gulf of Aden (Onuoha, 2009: 32). In November 2008 the international community was shocked by the hijacking of the oil carrier Sirius Star by Somali Pirates. This attack was considered severe because pirates previously never chose such large and fast vessels as targets (Bateman and Ho, 2008: 1-2). Somali pirates are using more advanced technology and weapons and seem to be more coordinated. Furthermore, they execute more and more sophisticated operations (Bateman and Ho, 2008: 1-2). Somali pirates pose a serious threat to maritime security. Attacks against oil-laden ships can result in the undermining of the maritime ecosystem. Moreover they are a threat against vessels, crews, tourists, workers etc. irrespective of their nationality (Gilpin, 2009: 6). Because of the piracy attacks insurance premiums for ships have increased. This has serious consequences, especially for the economic growth for Somalia's neighbors (Gilpin, 2009: 6). Estimates of the direct and indirect costs of piracy to the global trade are around the 16 billion dollars (Gilpin, 2009: 6). The international community recognizes that combating Somali pirates needs to be a multinational effort. Despite the deployment of a multinational armada in 2008 however, piracy hijackings have increased during the last years (Gilpin, 2009: 6). For instance, hijackings in 2009 were ten times higher than in 2008 (Gilpin, 2009: 6).

International effort to combat Somali piracy is not enough. My research for the master thesis will focus on the state response to piracy. I will argue that states cannot combat piracy in an efficient way, because they are hindered by the concept of territorial waters. The United Nations Convention of the Law of the Sea defines piracy as a violent act on the high sea. Furthermore, it stresses the importance of the sovereignty of the coastal states to pursue pirates in their territorial waters. This leaves states in a dilemma because international law limits them in acting against pirates in the Somali coast. Changing the Convention however in a way that makes states able to pursue pirates in territorial waters is not feasible because that means that states will have to accept a breach in the sovereignty of their territory. The first section of the thesis will provide an overview of the evolution of the maritime international law. This part is divided into a part that explains the history of the concepts of sovereignty and territorially regarding the sea and a part that explains the process that led to the international

law of piracy. The second section of the thesis will go into the case of the Somali piracy and will provide the background to the case. The third section is an elaboration on the general response of the international community to the Somali piracy problem. The next section will explain the position of states on the issue of modifying the aspect of territorial waters of international law. The last section is an overall conclusion.

Research Question

The complexity of state response to Somali Piracy leads me to formulate the following research question: Why is there no collective response to change the United Nations Convention of the Law of the Sea to combat piracy, while it is in the interest of the international community to do so?

Relevance beyond the Somali Piracy

The reason why Somali piracy must be studied is because the subject provides a platform where international law and lawmaking can be discussed. First, we cannot discuss the severity of the pirate attacks along the coast of Somalia without ending up with discussing the political, economical and cultural situation in Somalia. Many scholars, policymakers and diplomats have argued that the phenomenon of Somali piracy is in fact a result of the collapse of the Somali state, the lack of security and the degradation of humanitarian rights in the country. Literature on the emergence of piracy attacks on the Somali coast tends to focus on the problems in Somalia. For instance the same scholars, policymakers and diplomats are the ones who stressed out the importance of a comprehensive approach that would address the roots of the crisis. Indeed, this mentality was reflected in the positions of member states of the Security Council and all the adopted Resolutions addressing the humanitarian situation in Somalia.

I am not contesting the importance of the political, economical and humanitarian situation in Somalia. Nor do I disagree with the argument that these factors are directly related to the current security problem that is the Somali piracy. I do however think that the relevance of Somali piracy is beyond the complexity of the failed state. What is happening on the coast of Somalia is a much more complex puzzle. Subjects such as failed states, colonial history and third world problems all rise up when we start studying the dynamics behind the piracy attacks. This research however, links Somali piracy to international law, specifically the international law of the sea. International law of the sea is in many ways an evolution of ideas

and norms regarding the sea. More importantly, the international law of the sea is the result of a century's long negotiating process. It took states centuries to reach a consensus and create a document that would provide a legal framework and establish rights of states regarding the sea. It took states centuries to create the international law of the sea mainly because of two reasons. First, international law differs from national law in a fundamental way. International law cannot be enforced. It is based on treaties and conventions and on state consensus. There is no real authority in the international system that could enforce the law in the same way that there is no real lawmaking organ. Thus, all rights and responsibilities of the states and the rules regarding the sea which are stipulated in the international law of the sea had to be based on the consent of states. It comes to no surprise that reaching such consent was a process that needed time. However, the main problem in the establishment of the international law of the sea was the controversial debate on the dominion of the sea. States were divided over two main principles. One group of states defended the principle of territorial integrity and sovereignty over the sea. The other group of states advocated the importance of the principle of free navigation. The international law of the sea had to ascertain a balance between these two principles.

The significance of Somali piracy as a research topic is that it adds to the debate on the international law of the sea. The law provides for regulations regarding piracy. At the same time it establishes the rights of coastal states regarding the integrity of their territoriality and the sanctity of their sovereignty. The case of Somali piracy provides a challenge to this legal order. It is a case where international law of the sea fails to work, but most importantly is it is a case where the presumed sanctity of territoriality and sovereignty over the sea can be put under question.

Limitation

The limitations of this research are caused by two things. First, the problem of the piracy attacks along the coast of Somalia and the Gulf of Aden is an ongoing problem. Somalia continues to be an important agenda point for the UN Security Council. The Council continues to address the piracy issue and to provide for new frameworks that can deal with the territory aspect of the problem. For instance, this thesis is written at a time where the international community is considering conducting a land operation in order to combat piracy. Such an operation would put the debate on territoriality and sovereignty in a different perspective. Secondly, the data for this research exists mainly of Security Council meeting

records, press releases and statements of states' representatives. Those are reports and documents of formal meetings. Many decisions however, are taken during informal meetings. This is illustrated by the decision taken regarding Resolution 1816. The text draft was circulated two months before the adoption of the Resolution. During this period negotiations between the member states of the Security Council led to modifications of this draft. There are no direct records of these negotiations. Published records contain mostly statements and standpoints of members of the Security Council in a formal setting, and always during the meetings the days the Resolutions are adopted.

Literature review

The first problem that arises when we discuss Somali pirates is defining what we consider to be piracy. Definition of piracy is important because it creates a link to the politics behind the law of the sea (Benton, 2005: 704). Piracy is a very old phenomenon. In ancient Greece, the Thracians were seen as pirates. The same was true for the Vikings in the pre middle and middle ages and the Barbary corsair on the Barbary coasts (Sörenson, 2008: 31). According to Benton piracy was historically not only a challenge to the established order. It was also a link to questions of legitimate sponsorship and sovereignty (Benton, 2005: 704). These links are traced back to the seventeenth century and to the existence of privateers. Privateers were often commissioned by states to attack pirate ships or enemy ships in times of war. The term piracy was applied to an array of actions that varied from mutiny, shipboard felonies and various kinds of raiding. This resulted in a blurry distinction between pirates and privateers, even though privateers were authorized by states in their missions (Benton, 2005: 706-710). Privateers were originally commissioned to assist navies or to pursue pirates. Their legitimacy was based on a system of state authorized commissions and marks. In reality, privateers were allowed to attack foreign ships even without war. For example, a French privateer could be commissioned by the British government to attack a Spanish navy or trade ship. In addition, commissions and marks were considered legal, only if they were provided by recognized sovereign states (Benton, 2005: 706-710). The system of commissions and marks left a large room for legal interpretation. Privateers often committed what we consider to be pirate acts. In case they got caught, there were ways to defend themselves that varied from forged commissions to blaming the crew of mutiny. At the same time pirates were often hired by states to protect their cargo ships from attacks (Benton, 2005: 711-714).

The problem of defining piracy is significant for the case of the Somali pirates because it implicates that it is a matter of degree and not of characterization what differentiates the activities of pirates (Sörenson, 2008: 28). For instance, pirates in Somalia can be seen as a consequence of the lack of law enforcement, political disorder and severe impoverishment in the country. Political and economical instability with the proliferation of weapons led to an environment that encourages and nourishes piracy. As a result it became difficult to pinpoint the Somali pirates (Jenish, 2009: 124-125). For example, a large group of Somali pirates consists of unemployed fisherman who saw their incomes vanish after the collapse of the Siade Barre regime in 1991. Furthermore; ransom negotiations are often interpreted by jobless teachers (Jenish, 2009: 124-125). In addition to this, the newly appointed Somali coast guards, who are trained to improve domestic security, are often the ones who provide pirates of seamanship. Moreover, many ships hijackings were performed by a group who called itself the Somali marines. While there is no evidence that this group consists of actual marines, it did enjoy support of the Somali population because it targeted western ships that fished near the Somali coast (Sörenson, 2008: 28). Piracy in Somalia can thus be seen as criminal economy that was extended to the sea (Onuoha, 2009: 36-38).

Maintaining the safety of waterways and strategic chokepoints is beyond the capacity of one state (Onuoha, 2009: 38). That is why cooperation between states and national navies is needed, especially in a world where non state actors such as pirates can have access to arms, intelligence and high-tech equipment. However, states in this region do not have well trained navies and other resources to deal with piracy (Onuoha, 2009: 38). This seems to be recognized by the international community. There are three multinational naval operations trying to suppress piracy acts along the coast of Somalia (Onuoha, 2009: 38). The first multinational operation was an European Union operation launched in November 2008 and called Operation Atlanta. The operation's main aim was to ensure the safety of ships in the region and to make sure that the UN World Food Program (WFP) ships are able to provide aid to Somalia. These vessels are popular targets for the pirates (Percy and Shortland, 2010: 11). The second operation was an NATO operation started in October 2008. This operation acted under the same mandate as the EU's. Its primary goal was to protect the WFP. The oper ation was replaced by Operation Allied Provider in March 2009 and its mandate had been extended to include counter-piracy (Percy and Shortland, 2010: 11). The last operation, Combined Task Force 151, started in 2009 and aimed to deter, disrupt and prosecute pirates. The operation's contributors were Britain, France, Germany, the US, Turkey, the Netherland and Australia.

Combined Task Force conducted patrols on the Gulf of Aden, the Gulf of Oman, the Red Sea and other strategically important waterways. The operations mentioned above are backed up with the authority of the UN Security Council (Percy and Shortland, 2010: 11; Onuoha, 2009: 40).

Despite these efforts state response to Somali piracy is inefficient because of the legal framework that covers the prosecution of piracy on the sea. The legal framework that deals with piracy in international law is based on the United Nations Convention on the Law of the Sea (UNCLOS) (Fink and Galvin, 2009: 369). Articles 100 to 107 and Article 107 of the UNCLOS deal with aspects of piracy. According to the Convention piracy consists of the following acts: *"(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft"* (Fink and Galvin, 2009: 369). Furthermore, The UNCLOS regulates the seizure of pirates on the high sea or in any other place outside the jurisdiction of a state. This is stated in Article 105: "*Every State may seize a pirate ship, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board"* (Roach, 2010: 398-401).

The problem with the UNCLOS is that it considers piracy as violent acts on the high seas and encourages states to pursue pirates on those waters. By doing so, the UNCLOS excludes piratical acts on territorial waters. Article 58 of the UNCLOS empathizes the sovereign rights and jurisdiction of a coastal state that must be respected by states engaged in counter piracy (Roach, 2010: 398-401). Article 56 underlines the enforcement rights of a coastal state in suppressing piracy in its economic water zone. Thus, international law of piracy does not apply to the sovereign waters of a state. This led to the adoption of Resolution 1816 by the Security Council in June 2008 (Roach, 2010: 398-401). The Resolution authorized cooperating states to take the same action against piracy in the territorial waters of Somalia as the law of sea normally permits in the high sea. This Resolution was however passed under a major objection. Indonesia for example insisted that this will not be the basis for new customary international law (Roach, 2010: 398-401).

Theoretical framework

I will analyze my research question from a realist perspective. Realism is connected to the "states". It views the international system as a system of anarchy where states are the main unitary actors. Furthermore, the realist theory sees states as rational actors. This means that the state is treated as an entity that can have interests and goals and is able to act according to them. According to Waltz structures in an anarchical international system are defined by the number of great powers. These great powers are marked because of their capabilities (Waltz, 1990: 29-30). Calculations and behavior of states are bound to the composition of the system and the change of the number of these great powers (Waltz, 1990: 30). In the realist theories politics is in essence bound to the concept power. To be recognized as a power, certain minimalist criteria must be met. A state must be recognized externally and internally as a sovereign within its territory. The main goal for states is to be able to survive in the anarchical system (Dunne and Schmidt, 2008: 91-97). The rational theory presumes that actions of states are derived from their main interests. Therefore, rational theories predict that the actions of states reflect their need of survival. That means that states will act according to the interest of their national security. Sovereignty over their territories is directly linked to control over the national security (Dunne and Schmidt, 2008: 91-97). The same principle is true for territorial waters. States will recognize that their sovereignty over their territorial waters must stay undisputed. Moreover, territorial waters provide for important economical recourses that benefit states. Territoriality and sovereignty are thus crucial elements in power relations (Dunne and Schmidt, 2008: 91-97).

Argued from this theory the international community will not accept a modification of the UNCLOS that would permit states to pursue pirates in territorial waters. Two security strategies will clash in this case. On the one hand, there is the need to combat a non state security threat such as piracy. The international community would realize that interstate action is necessary in order to deal with this threat in an effective way. They would recognize that a national approach to the Somali piracy to do this is not sufficient. Therefore, action to change the definition of piracy and to permit states to enter territorial waters without permission is necessary. On the other hand, they are bound by their need to ensure their sovereignty over their territories. I argue that the second need will overcome the first one. Changing the UNCLOS in a way that defines piracy as acts of robbery on the high sea as well as on the territorial waters and permitting states to pursue them on these waters would create a possibility where they could lose authority and sovereignty in their territory in the future. This

is something states can never accept according to the realist theories. Therefore, I would expect that the international community will block any attempt to change the international law of the sea to permit states to pursue pirates in territorial waters without the permission of the coastal states.

Hypothesis

Discussions about modifications of the United Nation Convention on the Law of the Sea and a multinational response to the Somali Piracy will take place in the United Nations. I expect the first discussions to be held by the Security Council. My expectation is that any proposal to modify international law of piracy in a way that would mean that states can pursue pirates in territorial waters will be opposed by members of the Security Council.

Data and methodology

This research is based on the question of why the international community is reluctant to change a territorial aspect of international law to deal with a collective problem. Somali piracy is an illustration to this problem. My method of research will therefore be a case study where I will examine state response to Somali pirates and agreements the states make on how to combat them. My research will be based on second literature. I will study the United Nations Convention on the Law of Sea. I will look at its limitations and how the international community deals with them. My data will consist mainly of records of meetings of the UN Security Council. Statements that the members make regarding Somali Piracy will be analyzed. While Somalia has been a significant issue for the UN Security Council for some decades, the issue of Somali piracy however became significant in 2008. Therefore, I chose to analyze the Security Council meeting records regarding Somalia and Somali piracy between 2008 and 2010. Furthermore, I will research the monthly forecasts of the Security Council regarding Somalia in the same time frame. Particularly the meetings that led to the adoption of Resolution 1816 will be analyzed. I will investigate responses of member states of the Security Council to these Resolutions and the degree of their acceptance. I identified the member states of the Security Council (excluding the permanent members) at the time that the Resolution was adopted as: Panama, Burkina Faso, Belgium, Croatia, Indonesia, Italy, Libyan Arab Jamahiriya, South Africa and Vietnam.

The evolution of the sovereignty of the sea

The early ideas and debates on the sovereignty of the seas can be traced back to the Roman Empire and the Roman law. According to the Roman law the sea was common and free to all (Fulton, 1911: 3). That was why no ruler could claim dominion over the seas. This principle started to change during the middle ages. The idea of sea appropriation was introduced by a handful of scholars. Jurisdiction over the near waters of coastal states became a principle of law (Fulton, 1911: 4). Judicial conceptualization of the sovereignty of the sea did not go without difficulties in this period. First, the principle of dominion over the sea was complicated by conceptualization of the term state. Questions of the source of the supreme power made it difficult to ascertain the rule over the sea to an authority. There were different ideas about the source of power and the authority of the ruler (Fulton, 1911: 4). Furthermore, the scope of said power was under question. During the late Middle Ages questions of the location of the supreme power became problematic. Judicial scholars asked themselves whether the power should lie in the office or the person who holds that office (Fulton, 1911: 4). Moreover, the attitude toward law provided difficulties in asserting sea rights. Law in this period was not made, it was discovered. The law was interpreted and not created according to medieval customs (Fenn, 1926:466). Thus the idea of lawmaking did not exist in the middle ages. This meant that when the jurists claimed that the sea could not become private property according to the law of nature, the matter was not put under debate (Fenn, 1926:466).

Several phenomena changed these perceptions. During the thirteenth century the powerful and wealthy Venice claimed sovereignty over the Adriatic Sea (Fulton, 1911: 3-4). Venice did not posses both shores of the Adriatic Sea, yet it was able to uphold the sovereignty over that sea by using force. The use of force enabled the city to win the right to levy taxes on the foreign ships that navigated the Adriatic Sea and to prohibit their passage if that was necessary (Fulton, 1911: 3-4). Eventually the European countries and the Pope recognized the Venetian claim (Fulton, 1911: 4). The second phenomenon that paved the way to sovereignty over the sea in this period was the lawlessness of the sea itself. The anarchy on the coasts that was the result of the fall of the Roman Empire led to the emergence of piracy along these coasts. Scandinavian pirates navigated the Baltic and the North Sea. Saracens and Greek pirates preyed in the Mediterranean (Fulton, 1911: 4). Ships were under constant threat of piracy attacks. Because of the insecurity and lack of a sovereign authority over the seas, merchants formed associations among themselves to provide protection (Fulton, 1911: 5). These associations grew and became powerful over time. They became a significant actor in the

enforcement of security of navigation (Fulton, 1911: 5). Princes and rulers made use of the armed flees of these associations. Not before long they became the policing entity on the seas. They enforced maritime laws and customs which they developed themselves. This was regarded as one step farther from the assertion of exclusive dominion over the sea (Fulton, 1911: 6).

The debate about the sovereignty in the seas was hold by two camps. One camp stood for the principle of *mare liberum* while the other supported the principle of *mare clausum*. As was mentioned above, laws about the sea can be traced back to the Roman law where the principle of *res communis* was the basic legal assumption (Tuerk, 2012: 3). The sea was free for all mankind. This principle fell after the disintegration of the Roman Empire. When Spain and Portugal started exploring new territories during the sixteenth century, they started arguing that the sea was capable of being subjected to authority and sovereignty. They stayed true to their statement by claiming various seas. Spain claimed the Pacific Ocean and the Gulf of Mexico, while Portugal claimed the Atlantic Ocean and (Tuerk, 2012: 4). The two countries signed a bilateral treaty in the Spanish Todesillas regarding the sovereignty of the sea which was in line with the Papal Bull. This was the starting point of the *mare clausum*; the principle of sea authority. England and Holland protested the effort of Spain and Portugal to dominate the seas (Tuerk, 2012: 4). The Dutch lawyer Hugo Grotius wrote the essay *mare liberum* in which he strongly argued against this trend. He embraced the principle of *res communis* and argued that the sea was only under the dominion of god and thus the sea belonged to all. Therefore it could not be appropriated by one man (Kempe, 2009: 393-395). England however left this principle and began to see the advantages of subjecting the sea to sovereignty. In his writings Seldan compared free navigation on a sea subjected to sovereignty with the free passage on the roads in other countries. Free navigation was thus possible in a sea under the sovereignty of other countries. Furthermore, he rejected the argument that the sea cannot be dominated by mankind by pointing out that rivers, lakes and other waterways were under the sovereignty of rulers (Fulton, 1911: 10). While most European countries supported the ideas of Seldan in the beginning it was Grotius' principle that became the basis of the customary international law. The decisive reason was that the freedom of the sea equaled the freedom of navigation. As a result coastal states were not allowed to intercept foreign ships on grounds that they were entering private territory (Tuerk, 2012: 6-7).

The other reason why *mare liberum* became the basic principle of the international law between the seventeenth and nineteenth century was because during that time the only known sea exploitation was fishery (Tuerk, 2012: 9). It was unthinkable back then that foreign ships from far countries would travel a large distance to fish along the coasts of other countries (Tuerk, 2012: 9). This changed in the twentieth century. The need to protect the coastal communities was strong especially for the developing countries. They were afraid of the long distance ships of industrialized countries that came to fish or dump their waste along their coasts (Tuerk, 2012: 12). Furthermore, countries wanted to protect their national security and maritime scientific knowledge which was perceived as national wealth. This resulted in President Truman claiming sovereignty over the American continental shelf. With this he claimed jurisdiction over the natural resources and the exclusive rights for fishery (Tuerk, 2012: 9). This doctrine of the continental shelf was soon imitated by other countries such as Mexico, Peru and Argentine. This resulted in a unilateral extension of the territorial seas by coastal states (Tuerk, 2012: 12).

As a result the International Law Commission (ICL) submitted a draft concerning the codification of the development of international law regarding the territorial waters under the command of the UN general assembly. The ICL concluded that the international practice of claiming sea shelf's was not uniform regarding the delimitation of territorial waters (Tuerk, 2012: 16). Furthermore, international law did not permit extension of those waters beyond 12 nautical miles. That is why the ICL advised the general assembly to agree on the breath of the territorial waters in an international conference (Tuerk, 2012: 16). Despite this advice it was difficult for the international community to reach a two third majority supporting a certain breadth of territorial seas. Propositions varied from three to 200 nautical miles (Tuerk, 2012: 16). Four Geneva conventions regarding the law of the sea entered in 1958: The Convention on the Territorial Sea and Contagious Zone, the Convention on the Continental Shelf, the Convention on Fishing and Conservation of the living resources and the Convention on the Living Resources on the High Seas (Tuerk, 2012: 17). Yet, despite these conventions and two United Nations conferences on the Law of the Sea, there was no wide spread acceptance of an international law of the sea. The 1958 convention did succeed in setting rules regarding the continental shelf. Most of the valuable areas of the seabed were nationalized without disadvantaging landlocked states (Tuerk, 2012: 17).

A problem surfaced in the 1960's when oil companies started to move farther into the sea in order to drill for oil and gas. The major maritime powers and the de coastal states felt there

was a need for a new legal framework concerning the oceans and seas. The maritime powers for instance desired a new law that would deal with the use of force on the seas (Tuerk, 2012: 17). This was because of their strategic interest in important sea passages and straits. The coastal states wanted laws regarding the security of the maritime environment, oceanic jurisdiction, sea resources and their security (Tuerk, 2012: 17). In 1967 the Maltese ambassador, Arvid Pardo, spoke to the international community and asked their attention for the natural resources outside state jurisdiction. He pointed out that the international community should agree on a set of rules that ensured that these resources were "common heritage for all mankind'' (Tuerk, 2012: 17). Following this proposal the UN general assembly held a third conference on the Law of the sea, were the Declaration of Principles on the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction was unanimously adopted (Tuerk, 2012: 20). This re-opened the discussions about the limits of territorial waters. At this point 25 states claimed a three mile sea territory, 66 countries claimed a 12 territorial sea limit, eight states claimed 200 miles and the rest claimed between four and 12 miles of territorial waters (Tuerk, 2012: 23). Two groups of Latin American and African countries adopted Declarations calling for the creation of zones where national jurisdiction would extend to 200 miles (Tuerk, 2012: 23-25).

The United Nations Convention on the Law of the Sea

These discussion, declarations and conferences became the basis of the United Nations Convention on the law of the Sea. Issues such as territorial waters, free navigation, innocent passage, natural resources, authority, territory disputes and enforcement were given a legal framework (UNCLOS, 1982). First, the Convention declared the High Seas free to all states, whether coastal or landlocked. It was a zone free of sovereignty claims, whether territorial or functional. The doctrine of *clausum liberum* prevailed in this area (UNCLOS, 1982). The only recognized sovereignty on the High Sea was the sovereignty of states over their flagships (UNCLOS, 1982: Article 91). The freedoms of the states under international law were summarized in article 87 of UNCLOS. Those freedoms included freedom of navigation, the freedoms to lay submarine cables, the freedom to construct artificial islands, fishing, scientific research and so on (UNCLOS, 1982: Article 87). Matters of enforcement such as the deployment of warships were defined within the legal framework of the UNCLOS as well. As for the territorial waters, Article 3 declared that states had a right to establish a 12 miles breadth of sea territory. The laws of the coastal states applied within this limit (UNCLOS, 1982: Articles 2 and 3). States were given the right to enforce their laws and to exploit the

resources within these waters. These rights were not free of conditions. For instance, Article 17 stated that the freedom of navigation and innocent passage had to be protected. This meant that the rights of territoriality were not allowed to undermine the right of free navigation (UNCLOS, 1982: Article 17). Besides jurisdiction over the territorial waters states were given jurisdiction over the Contiguous zone and the rights to patrol it. This was an area that bordered states' territorial waters (UNCLOS, 1982: Article 33). In this 24 miles zone, states were allowed to "*prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea*" (UNCLOS, 1982, Articles 33 and 35). The rights of the archipelagic states were especially defined in part five of the UNCLOS. This specific part with its conceptualization of archipelagic states and their rights was considered a new concept in international law (UNCLOS, 1982). This part mainly dealt with aspects of sovereignty in territorial waters and regulations on waters between islands. It stressed the importance of the preservation of free navigation and passage (UNCLOS, 1982). With this, many important strategic passages such as the Strait of Malacca were placed under national sovereignty. A new introduced concept was the concept of the exclusive economic zone (EEZ) covered in the fifth part of the UNCLOS. This zone covered an area of 200 miles from the baseline of the territorial waters (UNCLOS, 1982). Coastal states had sovereign rights in exploring, exploiting and conserving all natural resources and other economic activities in this zone (UNCLOS, 1982). All these rights were a result of a historical evolution. They would have not come into being without the transformations of norms and values of lawmaking, power, authority and dominion. Most importantly, state's sovereignty over the sea was the result of a long fought battle.

International law of the sea and the concept of piracy

The discourse on Piracy

Historically piracy has always provided a challenge to the existing legal order. This was mainly so because of the difficulties that came along in describing piratical acts. Still, what is commonly thought as piracy now has existed for a long time. Historians have argued that piracy could be traced back to the beginning of navigation. Some of the earliest writings that included piracy were writings from the classical Greek period (Goodwin, 2006: 976-977). Writings such as the Homeric poems showed that the Greeks used the words *leistes* and *peirates* for to piracy which meant 'an armed robber' or 'a plunderer at sea'. While the act of piracy was described as an unfavorable act in the Homeric poems, there was no distinction

between the methods of piracy and warfare (Goodwin, 2006: 976-977). For instance, there was little difference between the pirates and the heroes in the Odyssey as they both seemed to travel to foreign shores to plunder and kill (Goodwin, 2006: 976-977). Piracy was considered evil, yet the acts of piracy could bring prestige and higher status. Anyone who was attacked on the open sea called his attacker a pirate, while the attacker would perceive the attack as an act of war (Goodwin, 2006: 976-977). Pirates posed problems for the Romans as well. Piracy was in the time of Julius Caesar such a problem that Pompey declared he was going to rid the Mediterranean of pirates militarily because of a threat of grain shortage. What is interesting to note is that modern type acts of piracy were considered normal by the Romans (Goodwin, 2006: 976-977). When Pompey talked about pirates he meant small communities that threatened the Roman hegemony. These communities did not follow the rules of war by declaring war first and that was why the Romans considered them to be in a constant state of war (Goodwin, 2006: 978-979).

Piracy was perceived and described differently between the sixteenth and eighteenth century as well. What is considered as piracy in the modern time could be seen as heroic actions in this period. Sir Frances Drake and his roaming were an example. Drake was seen by many as a pirate (Galvin, 1999: 42). However, he flew under the English flag and legitimized his actions by arguing that he acted on behalf of England. Yet, he attacked and plundered Spanish ships and towns when Spain and England were not in war. Clearly, the Spaniards saw his action as pirate actions. England did not punish him however. In fact Queen Elizabeth knighted him abroad his ship (Galvin, 1999: 42). Drake's image varied from a patriotic pirate to a national hero in certain times. Many countries in this period encouraged piracy. This was often because the pirates undermined the commerce of other nations and helped fill the treasuries of their rulers (Goodwin, 2006: 979-980). When trade of goods became the largest component in the economy in the 1700s, pirates were seen as a plague instead of patriots. The reason behind this shift in perception was economical. It would have been difficult for trade to flourish if pirates could roam free and attack indiscriminately (Goodwin, 2006: 981). England started holding trials for pirates and the English court attested that pirates must be stopped for the good of the innocent English people, the world trade and the Indian commerce (Goodwin, 2006: 981). It was during this time that privateering flourished. While pirates were prosecuted, the privateers were encouraged by European countries to attack enemy ships with the marks they received from their national country. Spoils were often shared between the country and the privateers (Goodwin, 2006: 980-981). Privateering supported the countries

economically and militarily. The only distinction between the pirate and the privateer was a letter of mark obtained from the privateer's sovereign. Outside this piece of paper, the methods and rationales of the pirate and the privateer were the same (Kempe, 2009: 393-395).

It is interesting to analyze the way legal scholars tried to define and understand piracy and the way they framed it legally. These scholars acknowledged the difficulties that piracy created for the legal order. The Italian jurist Alberico Gentili defined piracy as any taking without the permission of a sovereign (Benton, 2005: 704-705). This definition placed piracy in the same category as robbery on land. Defining lawful sovereignty became an important subject within this approach. More importantly, enemy states could not be declared as piratical since that would fall outside the legal framework. This approach was majorly criticized because it created problems in explaining the Barbary Corsairs on the coast of North Africa (Benton, 2005: 704-705). The Barbary Corsairs lived in state like cities on these coasts. Their main economical revenue was raiding and robbing of ships. Gentili's definition did not treat these states as piratical (Benton, 2005: 704-705).

Hugo Grotius rejected Gentili's argument which proclaimed that actions could not be piratical if these actions occurred with the consent of a recognized and legitimate authority. According to Grotius, lawful capture was not possible outside the state of war. In the case of the Barbary Corsairs he claimed that the European countries were in a constant state of war with them (Kempe, 2009: 395; Benton, 2005: 705). Privateers still formed a challenge within this approach. During times of war the demand for privateers grew. The action of privateers in times of war made them perfectly legal and legitimate according to Grotius (Benton, 2005: 707). The same privateers though kept engaging in raids and robbery in unprotected places in times of peace. The legality of their actions depended on legal interpretations. They were judged on the basis of whether the time, location and targets of raids fell within the often dubious commissions (Benton, 2005: 707). Captains, common sailors and even marines were often apt at presenting their commissions as legal, which made their assets and cargo legal. The lawlessness of the sea made this possible (Benton, 2005: 707-709). In the nineteenth century piracy seemed to be less of a concern for maritime security. This was perhaps the case because of the Declaration Respecting Maritime Law which was signed in Paris in 1856. This declaration outlawed states sponsored piracy which meant that privateering became illegal. However, the resurgence of piracy in the late twentieth century and especially in the last decade in South-East Asia made a sophisticated international legal framework for piracy necessary (Tuerk, 2012: 74-75).

History and development of legal work

Legal definition of piracy has provided for the necessary problems in the modern time as well. Piracy was first codified in the 1958 Geneva Convention. Under the Convention piracy seemed to contain various acts including robbery and acts of terrorism (Dubner, 1980: 37-39). In 1932 the Harvard Research Group in international law drafted a convention that examined the diversity of the definition of piracy, the view of various legal jurists and municipal law regarding whether piracy could be seen as an offense against all nations. The Group examined the existence of a definition that could be common to all states of the international community (Dubner, 1980: 37-39). The Harvard Research Group sought to develop this common definition. They did this in reaction to the Report of the subcommittee of the League of Nations Committee of Experts for the Progressive Codification of International Law, which stated that *" it would be preferable for the Committee to adopt a clear definition of piracy applicable to all States in virtue of international law in general"*(Dubner, 1980: 41). The Harvard Research Group concluded first that because the characteristics of piracy varied in municipal law, convictions and punishments of the acts could vary likewise depending on the state that enforced the law. They stated that within the international community there was no certain authority that could coordinate piracy enforcement (Dubner, 1980: 41). Thus, while the possibility of criminal acts occurring in international zones existed, the available legal tools to address these acts were only municipal and lacked an international authority to coordinate them (Dubner, 1980: 41).

The Group asserted that problems with defining piracy started when the international community tried to use municipal law to create a definition for acts that could apply to international zones such as the High Sea. A universal definition was difficult to achieve because of the different views states had on the scope of acts of piracy and the geographical reach of these acts (Dubner, 1980: 41). Still, pirates were considered to be, *hostis humani generis*, an enemy of the human race. This conceptualization of a crime against mankind was the reason why there was a common agreement that nations had the responsibility to act against pirates should they encounter them. This meant that pirates were subjected to municipal law if they were captured (Dubner, 1980: 41). If a ship was attacked by pirates in an international zone, it could under its own law, prosecute the pirates. Thus, every nation could prosecute a "common" enemy, while using its national legal tools which contained many differences regarding the characteristics of piracy (Dubner, 1980: 41-42).

Acts of piracy were considered special offenses because they were punishable where encountered. As was mentioned before, every nation had the right to punish pirates should they encounter them. Problems arose because of a lack of an efficient and a real 'international' law. Yet, even if nations would agree on an universal piracy law and even with the presence of an international authority or tribunal that prosecuted pirates, private persons could not be legal persons under international law (Dubner, 1980: 41-43). When the Harvard Research Group combined these views they came to the conclusion that there was no such offence as piracy under national law (Dubner, 1980: 41-43).

Based on these findings the ICL brought a report which became the basis of the 1958 Geneva Convention. Articles 14 and 22 of the Geneva Convention addressed the issue piracy. These articles were almost literally repeated in articles 100, 107 and 110 of the UNCLOS. The UNCLOS however, provided a more extensive definition of piracy (Tuerk, 2012: 75). For instance, Article 101 described piracy as:

> *a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:*
>
> > *(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
> >
> > *(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;*
>
> *(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;*
>
> *(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)* (UNCLOS, 1982: 61) .

Furthermore, the ICL argued that piracy did not necessarily have to be linked to motives such as robbery, when they drafted this definition for the UNCLOS. Pirate acts could also be driven by motives such as hatred (Tuerk, 2012: 76). Moreover, they asserted that piracy could only be committed by private ships and not by warships or other government ships. This excluded cases of mutiny (Tuerk, 2012: 76). State response to piracy was addressed in Article 100 of the UNCLOS. The article stated that: *All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State* (UNCLOS, 1982: 62). The definition of piracy and the related state response

provided a limitation because of the High Sea component. The territorial sea, internal waters and archipelagic waters are excluded. Furthermore, the reference to the High Sea made from the Economical Exclusive Zone (EEZ) an interesting subject because it failed to make clear how states should act in this zone when they encounter pirates. During the Third United Nations Conference on the Law of the Sea a proposition to include the EEZ in the definition of piracy was rejected (Tuerk, 2012: 76). However, the UNCLOS did provide a way to combat piracy in this area. Article 58(2) stated that Articles 88 to 115 of the international law applied to the EEZ so far as they were not incompatible with this part (UNCLOS, 1982: 44). Moreover, the EEZ included the contiguous zone as was defined in Article 55. This meant that piracy acts outside the territorial waters were treated as if they were committed on the High Sea.

The Somali Piracy

In 2003 fishing ships started to become targets of pirate attacks on the Coast of Somalia and the Gulf of Aden. The frequency of these attacks increased slowly over time (Percy and Shortland, 2010: 6). Still, these attacks became a concern for the international community ever since the pirates began to target commercial ships. Data from the International Maritime Organization showed that 22 attacks occurred in the year 2000 (Percy and Shortland, 2010: 6). In 2008 this number increased to 108 attacks. In the first half of 2009 alone this number rose again to 143 attacks (Percy and Shortland, 2010: 6).

Structural causes of Somali piracy

The causes and growth of piracy attacks on the coast of Somalia were an accumulation of various factors: The failure of the international community and the domestic effort to create a central and functional government in Somalia, the historical background of the country that contained a civil war and was filled with violence, the severe poverty in the country and the geographical location of Somalia (Percy and Shortland, 2010: 6). Creating a consensus on power sharing has been an enormous difficulty in the state-building process in Somalia. The country was divided over various groups and clans (Michealson, 1993: 53). The Somali people belong to one ethnic group and have the same religion. This would have meant that state building in Somalia should have been manageable, were it not for the fact that the Somali people were divided in a different way (Michealson, 1993: 53). Seventy five percent of the citizens belong to the six largest clans: The Darod, Digil, Dir, Hawiye, Isaaq and Rahanwein (Percy and Shortland, 2010: 6). These clans were based on lineage and kinship

and formed the basis of identity formation in Somalia (Michealson, 1993: 53). While Somalia seemed to be anarchic at first sight, the opposite was true. There were well developed and functional legal norms. Fights between the clans were mostly caused by the scarce resources. These fights were solved by the elders of the clans. The elders had a representative role. They would gather in meetings and negotiate until a consensus was reached (Michealson, 1993: 53). It was the Cold War that undermined this system of rule. Colonialism sabotaged the system of self rule and the authority of the 'uneducated' elders. Being a client of the Soviet Union and switching to the side of the United States later during the Cold War resulted in weapon proliferation in Somalia. General Siad Barre came into power after a coup in 1969 (Michealson, 1993: 54). He created a centralized and authoritarian government. Corruption, the disastrous economy, the collapse of institutions and the height of clanism paved the way to the collapse of the regime (Michealson, 1993: 54). The current crisis of Somalia started in 1992 with the fall of the Siad Barre regime (Nincic, 2009: 2-3). The rebellion against the regime pushed Somalia into a bloody civil war with intense and large scale clan fighting. The fights revolved especially around the Darod group and the Hawiye group (Nincic, 2009: 2-3). Two United Nations missions failed to bring peace and stability into Somalia, even though they managed to contain some of the violence (Nincic, 2009: 2-3). In 1995 the UN and the International Red Cross withdrew from Somalia because it became too violent. Two years of negotiations with Kenya led to the establishment of the Transnational Federal Government (TFG) of Somalia. Fear that the new emerged group the Union of the Islamic Courts (UIC) would infiltrate the government was serious while the forming of the government was still in process (Menkhaus, 2003: 405-407). The intervention of Ethiopia repelled all Islamist groups from the formation of the TFG. The UIC did manage to take control over Mogandishu in 2006 but it was overthrown by the TFG and the Ethiopian army in that same year. Still, they did enjoy support in various villages (Sörenson, 2008: 11-12; Menkhaus, 2003: 405-407).

The Somali clans are nowadays divided over three major territories: The South, where most combat occurs, Somaliland and Puntland. The latter two are state-like entities in the north, though they are not recognized internationally (Haldén, 2008: 10). South and Central Somalia have no economy and their people live in severe conditions. The north is better off economically, but suffers from a high rate of criminality and lack of law enforcement. Moreover tensions between Somaliland and Puntland are militarized and cause violent situations (Sörenson, 2008: 13). These conditions resulted in the proliferation of armed militia groups and warlords. These militia groups and warlords engage in piracy or they provide

intelligence for pirates (Sörenson, 2008: 13). The circulations of weapons made it fairly easy for Somali youth to obtain them. The lack of a Somali national government resulted furthermore in the emergence of a criminal economy that was extended to the sea (Onuoha, 2009: 36-38).

The Pirates

The first Somali pirates consisted mainly of fishermen who were angry at the foreign ships that fished on the unpatrolled territorial waters of Somalia since 1991. The fishermen saw their living revenue diminishing because of these foreign vessels. Many saw the fishermen as the modern variant of robin hoods that had a grounded reason to attack these ships (Menkhaus, 2009: 21). The reality was different. What began as an angry reaction of the fishermen became an enterprise lead by militia leaders who demanded cash from the foreign vessels as a form of 'taxes payment', in order to fish in waters they controlled. If they refused to pay, they risked kidnapping. The militia leaders did not concern themselves with the coastal communities and the loss of Somalia's fisheries (Menkhaus, 2009: 22). Small groups of armed former fishermen and militia men used small speedboats to capture a fishing ship. They used these ships as motherships in order to sail deeper into the sea to search for cargo ships (Menkhaus, 2009: 23). The motherships were utilized to carry pirates, fuel, equipment and the speedboats in order to enable the pirates to operate within a large area. The motherships could withstand extreme weather conditions (Menkhaus, 2009: 23). After they took over the ship they attacked, they often brought it to the north eastern coast. From there negotiators took over and started negotiating for ransom (Menkhaus, 2009: 23). What was interesting is the fact that these negotiators were often members of the coastal communities or citizens of the pirates' save havens who were able to read. Technically, they did not operate as pirates in the sense that they actually did not go into the sea and attack ships (Menkhaus, 2009: 24). They were however part of a complex system that made it near impossible to pinpoint the pirates (Menkhaus, 2009: 23).

The intertwining of the pirates with the 'citizens' could be made clear on the basis of the estimates of piracy revenues. It was estimated by the International Maritime Organization that ransom payments of the retained ships brought an amount of 40 million dollars in 2008 alone (Menkhaus, 2009: 24). This amount of money was a significant sum for Somalia which earned 100 million dollars from its exports and livestock yearly (Menkhaus, 2009: 24). This also equaled the same amount that Somaliland earned in a year. This attracted the attention of

many religious and clan leaders. Many of them received a cut of the ransom money. It was difficult to find out where the money went since it touched so many hands in central and Northeastern Somalia. The fear now is that a large part of Puntland is becoming a pirate version of a narco-state (Menkhaus, 2009: 24). This is further complicated by the Somali coast guard. In fact, the groups who conducted the first attacks in the mid-nineties called themselves the 'coast guard', because according to them they were patrolling their territorial waters (Weir, 2009: 19). In 2009 an initiative taken by the regional African countries and sponsored by the European Union had to ensure the training of 500 sailors in order to build up a Somali Coast Guard. This initiative was developed in the hope that the guard would prove to be a valued asset in combating piracy (Kraska and Wilson, 2009: 516). The sophistication of the pirate attacks indicated that pirates received intelligence form the coast guard. Furthermore, many of them leave their positions at the coast guard and become a pirate (Menkhaus, 2009: 25). Thus, answering the question of who are the Somali pirates becomes much more complicated.

Response to the Somali Piracy

As was mentioned above there are various military multinational operations conducted on the Gulf of Aden. Many countries have sent their warships to patrol in this area and other important chokepoints. Not only government vessels conduct these patrols. The private military company Blackwater made their availability known as a security escort of commercial vessels. These escorts include the presence of helicopters and armed security personnel who can operate from small inflatable boats (Kraska and Wilson, 2008: 42). Blackwater is but one of the many private military companies in the world that could take over this task. Still, these efforts have limited success. For instance, in November 2008 Russia, Britain and India managed to stop multiple piracy attacks separately. In the same year the US's fleet stopped 24 attacks (Kraska and Wilson, 2008: 42). In spite of these successes there are many pirate attacks that go undeterred. In fact, pirates seem to become bolder. Moreover, once the pirates take over a ship they take the crew hostage and threaten to sink the ship. This limits the possible action of the warships (Kraska and Wilson, 2008: 42). The warships do face complications other than the threat of sinking the ships. For instance, if the navy boards the hostage ship, do they fire and use military force and risk harming the crew or should they take all security risk reducing steps in order to avoid unnecessary harm?

Further complications are caused by the legal aftermath (Bodini, 2011: 831-837). Many states do not know what to do with the pirates when they capture them. The navy commanders have three options when they capture pirates. They could arrest them and deliver them to their country to prosecute them. They could transport them to another country to be prosecuted or they could release them (Fink and Galvin, 2009: 387; Bodini, 2011: 831-837). Obviously bringing them to Somalia to be prosecuted is not feasible. First, Somalia does not have the necessary resources to conduct a fair trial and secondly International law dictates that prisoners cannot be transported to a country where their human rights is endangered, which is the case if the pirates are brought back to Somalia (Fink and Galvin, 2009: 387; Bodini, 2011: 831-837). Regional states such as Kenya made it known that they were prepared to prosecute captured Somali pirates. This does however burden their national legal system, as most of these countries lack the recourses to prosecute the Somali pirates. The international community recognized that countries such as Kenya could not become the dumping ground for the pirates (Fink and Galvin, 2009: 392). Moreover, it does not mean that other countries do not have the responsibility in the prosecutions even if the matter of prosecution is solved. The country that does the capturing has to provide evidence, witnesses etcetera for the procedures (Fink and Galvin, 2009: 392). In addition, western countries feel that they have the responsibility to ensure that the human rights of the pirates are not violated. To this day, NATO has no detention policy regarding the Somali pirates. NATO states that are engaged in counter piracy operations have to refer back to their national procedures (Fink and Galvin, 2009: 392).

This does create confusion on the matter of responsibility. For instance, it is confusing whether the commander of the warship who captured the pirates should make the decision for detainment, or whether it should be the national authorities of the capturing ship who make that decision (Fink and Galvin, 2009: 392). These problems have opened a debate about the possibility of the creation of an international court or tribunal that would manage the detention and prosecution of pirates (Fink and Galvin, 2009: 392). Of course the creation of such a tribunal brings al lot of difficulties as well. There is a debate on what treaty the tribunal should be based. Creating a new treaty takes a long time because ratifications go through many complex procedures. In addition, there is an uncertainty on whether the tribunal should prosecute Somali pirates only or other pirates as well (Fink and Galvin, 2009: 392-393). These challenges result in the fact that many navy commanders choose to release the pirates.

The Djibouti Code of Conduct

There are examples of successful response to piracy. Piracy in the south east of Asia has been known to reach high proportions, especially during the eighties and nineties of the previous century. Piracy attacks in this region diminished during the last decade (Bateman and Ho, 2008: 2). While comparing piracy attacks in the South East Asia with the piracy attacks on the Somali Coast and the Gulf of Aden has its limitations, there is al lesson to be learned from the Asian experience (Bateman and Ho, 2008: 2). Limitations of the comparison exist in the sense that piracy in this region is not the same as the Somali piracy, because the type of lawlessness and community support for pirates in Somalia does not exist in South East Asia expect for parts of the Philippines (Bateman and Ho, 2008: 2). The Asian case does however show that a regional approach to piracy can be effective in reducing the attacks. States around the Strait of Malacca such as Indonesia, Malaysia and Singapore signed various multilateral agreements in favor of a good cooperation and coordination in pursuing pirates (Bateman and Ho, 2008: 2). Perhaps, it does come to no surprise that Africa lacks a harmonized legal framework to deal with piracy. African states concentrated on the land and ignored the potential of the sea as an instrument for economical growth (Fouché, 2010: 142-145). Since 2007 there was a call for the African Union to recognize the importance of the sea and to develop a regional legal framework. The attacks on the Somali coast and the Gulf of Aden only strengthened this (Fouché, 2010: 142-145).

In 2009 a meeting in Djibouti resulted in the adoption of a draft text created at the meeting of Dar-es-Salaam in 2008 (Fouché, 2010: 146). The draft text was an instrument to suppress piracy and robbery against ships in the Western Indian Ocean, the Gulf of Aden and the Red Sea. The meeting was attended by 17 countries, representatives from the United Nations and various international intergovernmental organizations (Fouché, 2010: 147). During this meeting the Djibouti code of conduct was adopted and signed by nine countries in the Region: Djibouti, Kenya, Madagascar, Ethiopia, Maldives, Seychelles, Somalia, Tanzania and Yemen. The member states have agreed to review their national legislation in order to ensure the existence of laws that criminalize piracy and armed robbery against ships (Fouché, 2010: 147). In case prosecution is not possible the Code dictates that states should extradite or hand over the pirates (Fouché, 2010: 147-148). Furthermore, participants of the Djibouti Code have agreed to cooperate, in a manner consistent with the international law, in the investigation, prosecution and arrest of pirates and the interdiction and seizure of suspect ships (Wambua,

2010: 9). Finally, the Djibouti code promotes the implementation of the resolutions adopted by the UN Security Council regarding the repression of Somali piracy (Wambua, 2010: 9).

UN Resolution 1816

Under the pressure of maritime powers the UN Security Council has passed a series of resolutions to repress piracy on the coast of Somalia and the Gulf of Aden. One of the most interesting resolutions is resolution 1816. Resolution 1816 addresses a shortcoming of the definition of piracy which describes piracy as acts conducted only on the high seas (Khalid and Valencia, 2008: 3). Because of this description states are not able to do anything about the attacks conducted on the territorial waters of Somalia. They are also not able to respond efficiently when attacked ships on the High Sea are brought to Somali ports (Khalid and Valencia, 2008: 3). In response to this problem the UNSC adopted resolution 1816 in June 2008. The resolution urges states to:

> "*a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and*
>
> *(b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery*" (UNSC, 2008b).

The Resolution encourages a package of measures such as coordination between the marine vessels on the coast of Somalia, information sharing and cooperation between states, international and regional organizations and encourages states to provide assistance to Somalia and the Coastal States (Guilfoyle, 2008: 695). Furthermore, the resolution uses the words "all necessary means", which implies that the use of force is permitted. Thus, the resolution seems to authorize states to pursue pirate vessels from international waters into the territorial waters of Somalia and to use force to contain them on these waters. Somalia itself consented to this resolution (Guilfoyle, 2008: 695).

This resolution implicates a change in a fundamental part of the UNCLOS, namely the aspect of territoriality. It implicates that states would be willing to accept a change in this fundamental concept if the benefits are large enough (Guilfoyle, 2008: 695). This is however

not the case. The Security Council has framed the resolution cautiously. There are so many limitations in the Resolution that raises the question whether the Resolution really implies a change of the international customary law (Treves, 2009: 404). The first limitation of the Resolution is caused by the extension of its authority to six months only. The report of the application of the resolution was to be submitted within three to five months. After a review of the situation the authority could be extended. This happened in the form of Resolution 1846 adopted in December 2008. Likewise, this Resolution was limited to 12 months (Treves, 2009: 404). The second limitation of the Resolution is that its authority applies only to the case of Somalia. This is clearly stated in the Resolution: *"that the authorization provided in this resolution applies only with respect to the situation in Somalia"* (UNSC, 2008b). This means that the Resolution can by no means be seen as an authorization to pursue pirates in the territorial waters of other states. The third limitation of the territorial aspect of the Resolution is provided by the same paragraph:

> *"and shall not affect the rights or obligations or responsibilities of member states under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law, and affirms further that this authorization has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG"* (UNSC, 2008b).

Clearly, the Security Council thought there was a need to ensure that Resolution 1816 could not be perceived as the next step to change the International law of the sea. By including this clause the Security Council shows that they are maintaining the integrity of the UN law of the Sea. The statement that this is approved by the recognized government of Somalia only strengthens this point. It is however the next limitation that gives the significant evidence that Resolution 1816 cannot be perceived as the first step to a change the United Nations Convention of the Law of the Sea. Paragraph 9 of the Resolution affirms that:

> *"the authorization set out in paragraph 7 has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United*

> *Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG"* (UNSC, 2008b).

This means that the Resolution is adopted only on the basis that the Somali Transnational Federal Government can provide an authorization for entering its territorial waters. This is also stated in the extension Resolution 1846 and the later Resolution 1815 (Treves, 2009: 406). This makes the resolution lose its revolutionary element. A state does not need a resolution to enter and act in the territorial waters of another state if said state gives an authorization to do so. It is possible under the international law of the sea for a state to give the sovereignty of its sea territory to another state (Treves, 2009: 406).This happened in March 1997 when Albania gave the right to Italy to send its naval fleet in order to stop ships that carried Albanian citizens who evaded controls of the Albanian authorities (Treves, 2009: 406). An authorization by the Security Council under Charter VII to exercise jurisdiction in the territorial waters of a coastal state is thus not needed if there is an authorization given by said coastal state (Treves, 2009: 406). This is further illustrated by the example of EU Council's Joint Action: Operation Atlanta. The main goal of Operation Atlanta is to suppress piracy attacks in the waters off Somalia (Treves, 2009: 406). Naval ships can find themselves in the position where they have to transfer arrested pirates for the purpose of prosecution. This provision however is based on the principle that the Somali government agrees with the exercise of the jurisdiction by member states of the EU (Treves, 2009: 406). Thus, the EU did not base the mission's authorization on the UN Resolution.

An interesting notification in Resolution 1816 regarding the consent of the coastal state is the reference to the states responding to piracy attacks. The United Nation Convention on the Law of the Sea encourages 'all states' to cooperate and repress piracy and armed robbery (UNCLOS, 1982: Article 100). In contrast, Resolution 1816 limits the authorization to

> *"States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General"* (UNSC, 2008b).

This seems to emphasize the importance of the consent of Somalia in giving the authorization to act on its territorial waters only to states Somalia is already cooperating with. Thus Somalia maintains control over its territory (Treves, 2009: 408). By stressing the importance of the

consent of the coastal states under charter VII, the UN Security Council seems to achieve three goals. The first is to show the importance of the sovereignty of states and illustrate the Security Council's respect to this principle. This ensures that concerns about a change of the international law of the sea are soothed (Treves, 2009: 408). The second goal is to make the position of Somalia in the United Nation stronger and to especially strengthen the position of the TFG. Somalia lacks the resources to combat piracy off its coast. This measure gives Somalia a sense of power and instruments to fight the pirates off (Treves, 2009: 408). Furthermore, by adding this clause to the Resolution and referring to 'states in cooperation with the TFG' the Security Council succeeds in limiting the presence of the naval fleets on the coast of Somali to the fleets of states that are already involved in combating Somali piracy and to states that are willing to cooperate (Treves, 2009: 408). Finally, asking and receiving the permission of the TFG to operate on the Somali territorial waters makes an end to the debate about the legal width of the territorial waters of Somalia. This debate was the result of the lack of authority in Somalia (Treves, 2009: 408). However, since a permission of Somalia to enter its territorial waters means that warships can be everywhere no matter the width of these territorial waters, a discussion about the limits of these waters is avoided (Treves, 2009: 408).

State Response to the entrance of the Somali Territorial waters

It was the International Maritime Organization (IMO) that first raised the issue of the Somali piracy. This happened in July 2007 at a meeting of the Security Council, when the IMO requested that the topic should be brought to the attention of the Council (United Nations, 2012). The IMO explained the severity of the situation on the coast of Somalia and the Gulf of Aden and elaborated on the role that the territorial waters played in the attacks (United Nations, 2008). The IMO has requested the Council to address this issue for years. It was however in the year 2008 when the Security Council of the UN began to search for solutions to the piracy problem. This need was strengthened because of a letter of Spain to the Council in April 2008 (United Nations, 2008). The letter addressed the issue of piracy and recounted the recent attack of a Spanish vessel. Furthermore, the letter expressed the wish of Spain for an international joint action against Somali piracy (United Nations, 2008). Moreover, the Security Council received a letter from the TFG where the TFG requested the Council for assistance in securing Somalia's territorial and international waters in February 2008 (United Nations, 2008).

The first draft of what would be known later as Resolution 1816 was sponsored by the US, France, the UK and Panama and was sent to the other members of the Security Council in 28 April 2008. This draft was based on the request of IMO to the Security Council to encourage states to take action against piracy and to permit ships to enter the territorial waters of Somalia when they suspect piracy activities or armed robberies (United Nations, 2008). Until this moment the UN Security Council did discourage action of other states taken near the coast of Somalia to protect their commercial ships because of international law (United Nations, 2008). In addition, the Security Council was bounded by its earlier statements and resolutions regarding this aspect (United Nations, 2008). For instance, the Security Council's presidential statement of March 2006 declared the Security Council's respect "*for the sovereignty, territorial integrity, political independence and unity of Somalia, consistent with the purposes and principles of the Charter of the United Nations*"(The United Nations Security Council, 2006). This was reaffirmed in Resolution 1801, where again the Council positioned itself behind the sovereignty of Somalia within its territory (UN Security Council, 2008a). The draft would mean that the Security Council would have to stray from this position. The US, UK, France and Panama supported this draft and perceived it to be consistent with the international law of the sea (United Nations, 2008). Furthermore, they stated that they did not see the draft as a step farther from the modification of the United Nations Convention on the Law of the Sea (United Nations, 2008). They stressed out that they realized that elsewhere the regional and national capabilities were effective in dealing with piracy problems and that the draft only referred to the security problems that Somalia had (United Nations, 2008). The issue was perceived as sensitive and it involved many consultations with the capitals of members of the Security Council (United Nations, 2008).

The position of Indonesia

Indonesia was one of states that opposed Resolution 1816 on the basis that the resolution could be a possible violation of the principle of sovereignty. Indonesia made it known that the first draft of the Resolution was not acceptable. It made clear that the country would not vote for the Resolution if certain conditions were not met (Khalid and Valencia, 2009: 3). The first condition was expressed by the permanent representative of to the United Nations and commented on how Indonesia preferred the draft to be. He explained that the draft should be "*consistent with international law, particularly UN Convention on the Law of the Sea*

(UNCLOS) of 1982, and shall not envisage any modification of the existing carefully balanced international law of the sea which is encapsulated in the Constitution of the ocean, the UNCLOS 1982" (Kleib, 2008). The permanent representative stated furthermore that the draft should not *"become a basis of customary international law for the repression of piracy and armed robbery at sea"* (Kleib, 2008). Indonesia pointed out that like Somalia and most members of the United Nation, Indonesia was a faithful member of the UNCLOS (Kleib, 2008). That is why Indonesia and all member states have a responsibility to persevere the UNCLOS. The Country stressed out that the rights and obligations off all states derived from the UNCLOS were the result of long and careful negotiations to ensure the interests of coastal and landlocked states (Kleib, 2008). As a result, the 'integrity and sanctity' of the UNCLOS should be protected according to Indonesia (Kleib, 2008). The representative declared that was the reason why Indonesia was happy with the addition of paragraph 9 to the resolution draft. He claimed that Indonesia voted for the Resolution mainly because of the addition of this paragraph (Kleib, 2008). This is because Indonesia interpreted the clause as a mechanism to persevere the status quo. The Representative stated: *"The Constitution of the ocean which provides guiding principles for all activities pertaining to the use of the sea and ocean affairs, including international cooperation for the repression of piracy and armed robbery against vessels is therefore not modified, rewrote or redefined. It is in the interests of all that any acts against illegal or criminal acts shall not be done through violation of existing laws and norms."* (Kleib, 2008).

The second condition that had to be met in order to make Indonesia vote for the Resolution was the guarantee that the state intervention to combat piracy should only be excluded to the case of Somalia (Kleib, 2008). As Mr. Kleib explained: *"Thus, we understand that the unique situation of Somalia requires an exceptional measure by the international community to deal with the problem of piracy and armed robbery against vessels. And in this regard, the request and consent from the Somali government serves as the legal basis for the Council to formulate appropriate responses within the parameter of international law, in particular the UNCLOS 1982……. While we are mindful that piracy and armed robbery at sea would affect the safety of international navigation, we constantly are of the view that the Council needs to exercise caution in trying to address such acts in other parts of the globe."* (Kleib, 2008). This sentiment reoccurred during negotiations for Resolution 1838, 1848 and the latter 1851 when the Ambassador of Indonesia declared that the Country would continue to vote for resolutions regarding the Somali piracy only if these two conditions were met (UN Security

Council, 2008b; UN Security Council, 2008c). The emphases that Indonesia has put on these conditions clearly indicate that the country would never have voted or supported these resolutions without the conditions.

Indonesia had always been a strong proponent of the sanctity of the territorial waters. It had always opposed foreign interference that could violate the country's sovereignty in its waters. Indonesia was one of the states that always took, their right to reject the passage of foreign ships in their waters if necessary, seriously. In 1991 the country came widely in the news when it refused to permit passage to the Lusitania Expresso, a ship filled with peace activists, in its Territorial waters (Rothwell, 1992: 427). Although it was questionable whether Indonesia had sovereignty over the waters of East Timor, still the state referred to its sovereign rights to enforce national and international law for the sake of public order (Rothwell, 1992: 427). Indonesia's protest of Resolution 1816 and its insistence that Somalia would give permission to enter its territorial waters lied for a part in the fact that Indonesia had been in the same position as Somalia. As was mentioned above piracy has plagued the region of South East Asia. The severity of the situation had prompted Japan to create an anti-piracy regional approach (Bradford, 2004: 480-482). Since most Japanese ships were attacked in territorial waters, Japan desired an anti-piracy approach that would enable the country to patrol in territorial waters that belonged to the Straits states (Bradford, 2004: 480-494). Indonesia has refused to allow Japanese military ships to patrol Indonesian waters (Bradford, 2004: 497). It was also hesitant to participate in joint training exercises (Bradford, 2004: 497). This was because Indonesia perceived the Japanese initiative as a danger to its sovereignty over its sea (Bradford, 2004: 497).

The danger to this sovereignty had a practical component as well as symbolic one. Indonesia realized that Japanese interference in its waters could be a danger to its practical sovereignty for various reasons (Bradford, 2004: 498). The exclusive jurisdiction over the state's sea territory was an important security strategy to secure the state against external threats as well as irredentist movements. Furthermore, an undermining of the sovereignty of Indonesia in its territorial waters could be a direct threat to the country's wealth since the territorial waters have vast economical resources (Bradford, 2004: 498). Moreover, Indonesia perceived the Japanese anti-piracy approach as a threat to its symbolic sovereignty. The integrity of the sovereignty of Indonesia over its territorial sea waters was an important part of the state's nationalist ideology (Bradford, 2004: 498). The Archipelagic Doctrine, the sovereignty of Indonesia over the archipelagic baselines, was a significant component of the country's

policy. Indonesia has always defended its exclusive authority over its waters. For Indonesia that authority was synonymous with protecting the national territorial security (Bradford, 2004: 497). For a large part, this is caused by Indonesia's colonial history. The Indonesian people had struggled for their independence from the Netherlands and for their unity. During the Independence war, the Netherlands made use of Indonesia's territorial waters including the Straits of Malacca, to supply their forces as well as the separatist movements with weapons. The anger for what Indonesia perceived as an unpunished illegal act made the nation hold its archipelagic sovereignty sacred (Khalid and Valencia, 2009: 4).

China and the UN Resolutions

Although many states allow other states to have jurisdiction in their exclusive economic zones, China has always thought that the legal authority in this zone belonged to the coastal states only (Dutton, 2009: 11-14). Until December 2008 China had refused to participate in anti-piracy missions on the Gulf of Aden. The state was always reluctant to participate in maritime operations, because of its strong believe that when operating in the waters of coastal states, naval vessels needed permission of these states first (Dutton, 2009: 11-14).The same applied for military operations in the economic exclusive zones. China was clear in this regard. Conducting military operations on territorial waters without the consent of coastal states was synonymous with the abuse of the freedom of navigation. It also undermined the peace and the legal order and it violated states' sovereign rights and exclusive jurisdiction (Dutton, 2009: 11-14). China argued that military operations in the exclusive economic zone were an interest of the major maritime powers. Those powers wanted to enforce their agenda without consulting with the 'weaker' coastal states (Dutton, 2009: 11-14). That was the reason why China encouraged coastal states to create a 'new balance' that would protect the exclusive rights of coastal state's jurisdiction and authority on the economic zone. Likewise, by doing this, the national sovereignty and security of the coastal states when dealing with external threats would be protected (Dutton, 2009: 11-14). As support for their argument, the Chinese have referred to Article 56 of the UNCLOS which dictated the following: *"in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other states"*,(UNCLOS, 1982: Article 56). Furthermore, they referred to Article 58 which declared that sates of the international community *"have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations of the coastal State"* (UNCLOS, 1982: Article 58).

It seemed that China prioritized the interests of the coastal states over the interests of the international community. It argued that the UNCLOS gave sovereign rights to coastal states over resources and the jurisdiction to manage them. Moreover, coastal states had security interests near their coasts. Implementing international law would mean that military operations had no room in these zones (Dutton, 2009: 11-14). Thus, China has always refused to accept or engage in the enforcement of international law by navy ships in the 40 percent of the oceans that compromise the exclusive economic zones of other states (Dutton, 2009: 14).

Given this position, it was no surprise that China refused to send a military task force to the Gulf of Aden and the Somali coast. This was the reason why China refused to join Combined Task Force 150 (CTF 150). Initially CTF 150 was sent to the Horn of Africa region to intercept terrorism activities in the aftermath of September 11. The CTF 150 took in anti-piracy tasks after the piracy in Somalia became a serious threat in 2008 (Dutton, 2009: 18). China did never support long standing military operations such as CTF 150. Even when the task force's main order was to combat piracy, the Chinese government refused to contribute. This was despite the fact that CTF 150 was operating to protect Chinese interests among others (Dutton, 2009: 18). The main principle behind their point of view was the fact that unlike many western countries, the Chinese government did not accept legal authorities as a sovereign right without the consent of the coastal state (Dutton, 2009: 18). This explained China's position during the meeting of the Security Council to adopt Resolution 1816. It is first important to note that China realized it had a large interest in maintaining the safety of the Gulf of Aden and the Somali Coast. Like the majority of the countries in the world, China had an important economical interest in this region. Vessels under China's flag use these waters on a daily basis (Dutton, 2009: 18). Furthermore, China declared it had the responsibility to protect its ships and ships sailing under the flags of Hong Kong, Taiwan and Macau, if requested (Dutton, 2009: 18). Moreover, six ships under the Chinese flags were attacked in 2008 alone and 17 crew members of Chinese fisher ships were in captivity (Dutton, 2009: 18). Thus, China understood that it had to act against the pirates and that Somalia's territorial waters did play a large role in the situation (Dutton, 2009: 18).

The dilemma for China was caused by the fact that they needed to engage in a military operation to combat Somali piracy, yet at the same time they had to maintain their principle of noninterference and respect for the sovereignty of the coastal states (Dutton, 2009: 18). That is why China was one of the strong opponents for the restrictions on Resolution 1816. The

Chinese permanent representative to the United Nations explained that China respected the sovereignty, independence and territorial integrity of Somalia. He argued that China would support the resolution if the Security Council maintained: " *that the relevant resolution must be based on the consent of the countries concerned and in line with the wishes of the government and the people of Somalia. It should apply only to the territorial waters of Somalia and not be expanded to cover other regions. It must comply with the United Nations Convention on the Law of the Sea and should not conflict with existing international law*" (UN Security Council, 2008b). China stressed that the Security Council had to act with great caution because piracy touched upon sensitive issues of international law and it could intercept interests and rights of Member States (UN Security Council, 2008b). Thus, while the actions of the Security Council had to coordinate and facilitate the international community's assistance of Somalia, the Council had to make sure that there would be no negative consequences to these actions (UN Security Council, 2008b). These conditions and particularly the consent of Somalia made it possible for China to pursue its interests while protecting the principality of state sovereignty and territorial integrity at the same time.

The position of other member states of the Security Council

China's and Indonesia's reasoning was reflected by the majority of the Security Council. For instance, the permanent representative of Libya to the United Nations, stated at the meeting of 2008 that Libya voted in favor of the Resolution on the basis that the TFG would request assistance of the international community to combat piracy in its territorial waters (Dabbashi, 2008). He expressed that Libya understood that the Resolution did not include any provisions that could violate the sovereignty of other countries or contradict international law or the law of the Sea (Dabbashi, 2008). Vietnam reaffirmed that the Resolution would not permit any action that contradicted the United Nations Convention of the Law of the Sea or the jurisdiction of a coastal state (UN Security Council, 2008b). As The representative of Vietnam stated: *"Viet Nam voted in favour of the resolution and wishes to reaffirm that the resolution shall not be interpreted as allowing any action that is contrary to international law, the Charter and the 1982 United Nations Convention on the Law of the Sea to be taken within the maritime areas under the jurisdiction of a coastal State"* (UN Security Council, 2008b). The fact that this resolution had to be consistent with the territorial integrity and could not be seen as establishing a new law of the sea was a sentiment that was shared by other members of the Security Council. In addition to the countries mentioned earlier, Costa Rica, South Africa and

Russia felt that there was a need to reaffirm the conditionality on which Resolution 1816 was based (UN Security Council, 2008b). For example South Africa said: :"*the resolutions of this Council must respect the United Nations Convention on the Law of the Sea. The Convention remains the basis for cooperation between States on the issue of piracy"* (UN Security Council, 2008b). The same language in Resolution 1816 was used for Resolution 1851. The latter Resolution was an extension of the mission with a year with the request of the Somali government (UN Security Council, 2008d). It was also used in the code of conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden. The code was in line with the international law of the sea. It specified that the participant states had the right to seize a pirate ship outside the limits of the territorial waters of any state (IMO, 2009). Should the pirate ship however enter the territorial waters of a member state, the authority to pursue the ships in that case lied with said state. The code indicated in a literal way that no state should purse pirates in the territorial waters of another coastal state without the permission of that state. Pirates had to be subjected to the jurisdiction of that particular state (IMO, 2009).

Conclusion

Somali piracy continues to be a serious threat to the international security. Vessels all over the world navigate the Indian Ocean on a daily basis. Chokepoints such as the Gulf of Aden are one of the busiest chokepoints in the world. Somali pirates are a threat to these vessels, their crew and tourists. The only case of piracy that is comparable to Somali piracy in the modern time was piracy in the Southeast region in the eighties and nineties. Chokepoints in this region, such as the Malacca Strait, were plagued by pirate attacks. Attacking the vessels that navigated these waters proved to be a lucrative business for the Asian pirates. Piracy in Southeast Asia has diminished in the last decades. This was for a large part because of the regional approach of states to combat piracy in this region. Countries such as Malaysia, Indonesia and Singapore have put much effort in pursuing pirates near their shores. While many states in this region did lack the resources to put a stop to pirate attacks, the regional approach which was launched by Japan could solve these shortcomings. Comparing Southeast Asia piracy attacks to attacks on the coast of Somalia and the Gulf of Aden shows that the same anti-piracy measures cannot work for Somalia in the same way they did for the Asian countries. The situation in Somalia continues to create a breeding ground for pirate attacks. The failure of the international community and domestic effort to create a central, functional

and internally recognized government, the severe poverty level that the Somali people live in, the geographically location of the country and the history filled with violence and civil wars all contributed in creating an environment and opportunity where piracy could prosper.

The situation in Somalia makes it difficult for the central government to combat and pursue pirates. The fact that the country is divided over different clans complicates matters. Furthermore, the central government has trouble enforcing anti-piracy measures because of the fact that the country is divided over quasi separate provinces. Both Somaliland and Puntland claimed sovereignty and while this sovereignty is not recognized, both territories enjoy a degree of self rule. Tensions between Somaliland and Puntland are militarized and cause many violent situations. Militarization led to the proliferation of arms and to the growing power of militia groups and warlords. These militia groups and warlords are for a large part a significant factor behind the piracy attacks. Piracy in Somalia is becoming so intertwined with the Somali society that we can speak of a Somali criminal economy. Warlords and chieftains continue to finance the attacks in order to receive cuts from the ransom money. Ex fisherman, militias and ex coast guards continue to execute the attacks. Teachers and bureaucrats continue to operate as negotiators and everybody is protected by the Somali communities. Lack of resources of the Somali government makes it impossible to solve all these dynamics. Thus, the economical, political and humanitarian situation in Somalia is the root cause of the piracy while at the same time the same situation makes it impossible to create a national approach to solve the problem.

A regional approach to the Somali Piracy such as in the case of Southeast Asia is difficult. For one thing Africa had no harmonized legal framework that dealt with piracy until 2009. While the Djibouti code provides rules of conduct when a country encounters pirates, it is only signed by a minority of countries. The largest obstacle to an African approach to the Somali piracy however, is the lack of resources of many African countries. This is illustrated by the Kenya's incapability to prosecute all the captured Somali pirates. This leaves the international approach as the only possible option. The international community has an interest in solving the Somali piracy problem. Costs of the Somali piracy affects the whole community in the form of lost revenues, ransom money, high insurances and threats to their citizens. This is something that the international community acknowledges along with the fact that it is the international community that has to come up with a solution. Since many of the attacks by the Somali pirates occur along the coasts of Somalia and since attacked ships are always taken to Somali ports, a complication rises in the form of International law of the sea. The United

Nations Convention on the Law of the Sea defines piracy as an act on the high sea. Moreover, the international law of the sea protects the integrity of the territorial waters and the sovereignty that coastal states have over these waters.

The rights of coastal states over their territorial waters are the result of a long fought battle. The debate on the freedom of navigation and the sovereignty of states over their waters ended in the establishment of certain zones where states enjoyed exclusive jurisdiction. This was a necessary development since states felt there was a need to protect their coastal communities. Moreover, states began to link sovereignty over their territorial waters with the protection of their national security. The road to the UNCLOS was a long road filled with many complications and disagreements. Changing the UNCLOS in a way that makes states able to pursue pirates in the territorial waters of other states would mean a violation of rights the international community has fought for. Defining piracy as an act that can occur in territorial waters and urging all states to use all necessary means to stop piracy acts would mean that it would be perfectly normal for states to enter each other's territorial waters under the guise of pursuing pirates. This can be ultimately perceived as threat to a state's national security.

This is illustrated by the protest of members of the UN Security Council during negotiations of Resolutions 1816, 1846 and 1851. Indonesia for instance saw how the permission to enter Somalia's waters could be a danger to its sovereignty over its territorial waters. Resolution 1816 could be a next step to change the UNCLOS, which would mean that there was a possibility states would want to enter Indonesia's waters because of the piracy problems on the Strait of Malacca. This is perceived by Indonesia as a danger to its sovereignty, its national security and its symbolic sovereignty. Furthermore, permitting states to enter territorial waters without the permission of coastal states would open the door to an interventionist mentality. This is something that countries such as China oppose. Entering Somalia's waters in order to combat pirates was perceived as something controversial in the Security Council, even though it was Somalia that requested the help of the Council. Members felt there was a need to ensure that the resolution would not mean a step farther to the modification of international law. They made sure the response of the international community would be limited only to the territorial waters of Somalia and that Somalia would give a prior consent to enter its waters each time. This illustrates that the international community will not change the UNCLOS in order to deal with piracy problems in an effective way. Fears for things such as violation of sovereignty and territorial integrity will stand in the way. Instead they opt for a resolution that seems to be revolutionary at the first sight, but proves to be void in reality.

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