

PIRACY AND STATE STRUCTURE OFF THE HORN OF AFRICA

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Abstract

This paper offers a critique of the ideological framework within which counter-piracy efforts off the Horn of Africa are constructed. In a first instance the critique of *state failure*, as the dominant paradigm within which Somali piracy is apprehended by political discourse, reveals the processes of state structural transformation behind the dehistoricized category. What comes into focus then are the historical and contemporary processes of state rescaling at work on the Horn of Africa. Counter-piracy, in turn, is analyzed as one such a process of rescaling in which military, security and juridical apparatuses of the state are reconvened from nation to supranational scales. The role of the Somali Transitional Federal Government within counter-piracy is then analyzed through the expanded concept of state structure. In a second instance the conditions within which the juridical category of piracy is (re-)produced is analyzed at the particular site of the piracy trials at the Mombasa Law Courts. In this section I draw upon both fieldwork conducted at the courts and historical exposition of the political and economic context within which modern piracy law emerged. As such the intimate relationship between the moral and political economies of piracy are brought into relief.

Keywords: Piracy; State Failure; State Theory; Somalia; Force of Law; Juridical Field; Ideology

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List of Acronyms

AMISOM	<i>African Union Mission in Somalia</i>
BIMCO	<i>Baltic International Maritime Council</i>
CTF-151	<i>Combined Task Force-151</i>
DPP	<i>Department of Public Prosecutions</i>
EC	<i>European Commission</i>
EU NAFVOR	<i>European Union Naval Force</i>
EEZ	<i>Exclusive Economic Zone</i>
ICU	<i>Islamic Courts Union</i>
IMB	<i>International Maritime Bureau</i>
IRTC	<i>Internationally Recommended Transit Corridor</i>
MARLO	<i>Maritime Liaison Office</i>
MSCHOA	<i>Maritime Security Center for the Horn of Africa</i>
NATO	<i>North Atlantic Treaty Organization</i>
NSC	<i>North Atlantic Treaty Organization Shipping Center</i>
TFG	<i>Transitional Federal Government</i>
ROLS	<i>Rule of Law and Security Program</i>
SHADE	<i>Shared Awareness and Deconfliction</i>
UKHO	<i>United Kingdom Hydrographic Office</i>
UKMTO	<i>United Kingdom Maritime Trade Office</i>
UNCLOS	<i>United Nations Convention on the Law of the Sea</i>
UNDP	<i>United Nations Development Program</i>
UNISOM	<i>United Nations Mission in Somalia</i>
UNHCR	<i>United Nations High Commission on Refugees</i>
UNODC	<i>United Nations Office of Drugs and Crime</i>
WFP	<i>World Food Program</i>

1. Introduction: Piracy as Symptom?

“Piracy is just a symptom overshadowing the real disease: the collapse of the state and lawlessness and anarchy in the country...”

-The Guardian (Bettochi, 2010)

As with all metaphors of illness when applied to society, those of disease and decay found in descriptions of piracy in Somalia are profoundly political. Nor can these metaphors be reduced to mere popular descriptive embellishments, benignly ornamenting otherwise objective analyses. Intimately interwoven with political scientific, economic and sociological languages, metaphors of decay, collapse and disease are constitutive elements enabling the political, juridical and military responses to piracy. While we find its popular articulation in newspaper articles such as *The Guardian*’s “Piracy: a symptom of Somalia's disease,” policy oriented research at *The Heritage Foundation* grounds its analysis in a cleansed version of the same metaphor, “Piracy: A Symptom of Somalia's Deeper Problems,” (Bettochi, 2010; Schaefer, 2010). The journalistic account’s conceptually vague invocations of anarchy and lawlessness find their analogues in the latter’s historical account of state failure and the lack of the rule of law—in both cases piracy is interpreted as a symptom of state collapse. According to *The Brookings Institution*, “the growth of piracy in Somalia is directly related to the lack of law and order in the country and has become a symptom of the country’s insecurity,” (Williams, 2010). And at a higher order of political discourse: the 2009 International Donor Conference on Security in Somalia was convened in Brussels by the United Nations and the African Union in support of the new

Transitional Federal Government in Somalia. Speaking at the conference, the President of the European Commission, José Manuel Baroso, stated: “If we only treat the symptoms, piracy at sea, but not its root causes – the decay of the state and poverty – we will fail,” (AFP, 2009). And in his concluding remarks UN Secretary General Ban Ki Moon stated that: “[p]iracy is not a water-borne disease. It is a symptom of anarchy and insecurity on the ground. Dealing with it requires an integrated strategy that addresses the fundamental issue of lawlessness in Somalia,” (Moon, 2009).

Even on its own terms, however, the epidemiological metaphor opens itself to the important question of interpretation and diagnosis. While an implicit consensus seems to have emerged that state failure is the disease of which piracy is the symptom, like any diagnosis the opinion is open to contestation and reevaluation on scientific grounds. In this respect it is fortuitous that both the symptom and the disease—piracy and state failure—are objects with which scientific inquiry has long been concerned. Of course the case could be made that these turns of phrase are merely rhetorical flourish, and that the metaphor here only stands in as shorthand for more rigorous analyses wherein such ornamental language is foregone. In this paper however I would like to take precisely the opposite approach. By taking metaphor seriously as an epistemological device that is equally constitutive for political, philosophical and scientific thinking (De Man, 1997), I seek rather to understand the ideological, conceptual, epistemological and political content of the metaphorical thinking itself. This

approach is built on the premise that the interpretation of the social phenomena ultimately structures the range of policies, interventions and state responses.

As the interpretation of the symptom creates the general framework in which subsequent responses (medical or political) are conceived, so too does the interpretation of piracy as symptom serve to frame the proposed political, military and juridical solutions to piracy. In its practical application the epidemiological metaphor often articulates a conceptual schema in which it is said that the symptom at sea must be treated through a solution on land. For example, such language is used to frame the work of the United Nations Office on Drugs and Crime (UNODC), which has been one of the principle institutions involved in the juridical aspects of counter-piracy operations in East Africa under the auspices of their Counter Piracy Program. Thus, we may read in the annual report of its first year in operation (2008), that “[m]aritime patrolling alone ... has not proved to be an adequate deterrent for piracy. Experts agree that the roots of maritime piracy are on land, and that counter-efforts therefore need to include strengthening the rule of law in the region,” (UNODC, 2008: 3). Thereby, the political project of “establishing the rule of Law in Somalia and building institutions capable of responding effectively” to piracy translates into the concrete activities of building and renovating prisons in the Puntland and Somaliland provinces of Northern Somalia (UNODC, 2009).

But perhaps the material consequences of the epidemiological metaphor are best captured by the political outcome of the International Donors Conference itself. The conference raised \$213 million (USD) in aid money mostly pledged

towards building the military and police capacities of Somali state. The task, said the Secretary General, is “first, to establish the Transitional Federal Government’s authority throughout the country; second, to rebuild State institutions,” (Moon, 2010).¹ The *cure* for the illness is sketched in no unclear terms: if state failure and lawlessness are the disease then the task is to establish a strong central government and the rule of law. In this way piracy, through the metaphor of symptom, is mustered in support of a large-scale state building project in Somalia.

These material expressions of the metaphorical thinking afford us with a privileged perspective from which to observe the constitutive role of rhetorical tropes in the very functioning of ideology. For it is arguably through the poetic displacement of complex social phenomena into language of symptoms and disease that interventions are conceived, legitimated and enacted. As Žižek (2004) has argued: “these poetic displacements and condensations are not just secondary illustrations of an underlying ideological struggle, but the very terrain of this struggle,” (Žižek, 2004: 77). One of the primary tasks of this paper then is to map the ideology of counter-piracy, and to offer a thorough critique of the very categories through which piracy and its suppression are thought. Thereby the approach proceeds by way of critiquing the principle categories through which the social phenomenon itself is thought: namely, “piracy” and “state failure” themselves.

¹ Of the 72 million euros pledged by the European Commission, 60 million would be allocated to support for the African Union Mission in Somalia (AMISOM), whose principle mandate is to protect the Transitional Federal Government. The other 12 million from the EU was allocated to the UNDP Rule of Law and Security program, and would go into building policing capacities, (AFP, 2009).

Researching Piracy and the State

Piracy is phenomenon which does not lend itself easily to social research. Studying piracy from an anthropological perspective runs the up against the well known methodological problems of studying crime and violence (Dennis, 2001). This of course is compounded by the war-like context within which Somali piracy is embedded.² Those who have ventured journalistic research on piracy in the more politically stable areas of Puntland have often been accompanied by heavily armed guards³—a measure which would be unsuitable for ethnography. Secondly, it is thought that much of the contemporary Somali piracy is being funded by “international criminal syndicates,” (Interview, Buhler).⁴ These institutions, by their very nature seek to maintain their invisibility. Even high-level governmental research (e.g. at the UNODC) into this connection has been hampered by the relative secrecy with which different national security institutions guard their own investigations into national criminal rings (*ibid.*). Although existing social research conducted within Somalia (especially those studies that have relied on interviews) has often found “no trace” of this international funding of piracy, this may testify more to the successful efforts of those involved to hide this connection than to its non-existence (Hansen, 2009).

² On May 2nd, 2010, Xaradheere, one of one the largest ports used by pirate groups in Somalia was taken over forcibly by militants, forcing the pirates to flee (Gettleman, 2010). Mbembe remarks that the perpetually *war-like* condition renders divisions between war and peace in certain areas of the post-colony is an increasingly meaningless distinction (Mbembe, 2001).

³ Veronique de Viguerie’s photo journalist project about Somali pirate is a case in point; when some of her work was published in the *Guardian* we read: “Due to the security risks in Somalia, visitors require private escorts of armed men at all times to avoid being attacked by the different militias operating in the area. Fifteen armed men were required as escorts for the photographer, Veronique de Viguerie.” (Viguerie, 2009); Jay Bahadur’s in depth reporting on piracy in Puntland has also require armed guards (Bahadur, 2009, 2010)

⁴ The names of all interviewees have been changed for the purposes of privacy.

If ethnographic research on piracy is rendered difficult due to insecurity, researching counter-piracy and the state are hampered by the opposite problem: hyper-securitization. As many of the important sites are closed to public or inaccessible (naval headquarters, warships, high-level political meetings), social science runs up against the well-known problems of researching elites and the state (see, e.g. Simmons, 1994; Abrams, 1988; Aretxaga, 2003). Moreover, the de-centralized nature of these particular state apparatuses makes the field itself problematic.⁵ And as the majority of important communication within the “security community” actually occurs behind closed doors, on protected servers, and at a level of military and naval planning simply unavailable to the civilians, a fully ethnographic approach seems to be similarly foreclosed in studying counter-piracy.

One of the apparent consequences of this difficulty is that contemporary research on piracy is currently overwhelmingly dominated by security oriented research institutes (Onuoha, 2009, Chalk 2008) and state sponsored research projects, (see, e.g. Sörenson, 2008; Hansen 2009; Ploch et al, 2009). Although these are certainly valuable contributions that provide us with an appreciable amount of information and analysis of piracy and counter-piracy operations, they

⁵ Some of the important sites in this decentralization state apparatuses include: London (at Northwood, the Operational Headquarters for the NATO and EU naval forces); New York (UN Headquarters, hosts meetings of the Contact Group on Piracy Off the Horn of Africa) Dubai (UKMTO, first point of contact and registration for ships entering the Gulf of Aden/West Indian Ocean); Bahrain (MARLO, the interface between the merchant shipping and the United State Navy in the region); Djibouti (Military Bases which facilitate the transfer of pirate suspects to Kenya and Seychelles-based courts); Mombasa (site of piracy trials); Nairobi (UNODC East Africa Office); but also the national naval headquarters of each country with a naval presence in the flotilla are important sites; as well as those floating sites of the warships themselves, not least of which the flagship which happens to be the commanding vessel of the coordinated international naval presence at any given time.

are also inevitably limited by the aims and requirements of policy-making. Further, the intellectual independence of social scientific research in such cases is often compromised by the aims and interest of the sources of funding. This of course yields an underlying political dimension to the much of the research on piracy which, through the sheer over-representation of these studies, seems to influence the general discourse on piracy towards discussions of techniques and practices of intervention.

This paper is in part an effort to redress this politically weighted situation by offering a critique of some of the major concepts and discourses within which current research is currently being conducted.

Due to such methodological consideration, the approach taken in this paper is thus methodologically mixed and decidedly inter-disciplinary. In a first section I draw from historical, political economic, and sociological writings on Somalia to build a critique of the failed state. By engaging a range of theoretical writings on the state, my critique also aims to contribute to state theory and research, specifically by extending the notion of “state rescaling” (Brenner, 2009) to analyze the effects of counter-piracy on the transformation of state structures off the Horn of Africa. The second section of the paper elaborates a critique of the juridical construction of piracy. Here I also use a range of historical, sociological and theoretical sources, but the central focus of section is clearly structured around the fieldwork I conducted in the Law Courts Mombasa. In this respect the Law Courts (and the ancillary penitentiary and bureaucratic structures which support it) came to function as a strategic research site (Merton, 1987) in which I

sought to observe how the juridical discourse on piracy is materialized through juridical practice. As Kenya has been *the* principle state involved in trying pirate suspects caught by the international warships off the Horn of Africa, its law courts have come to play a key role in the juridical side of the international counter-piracy efforts (UNODC, 2009; Authority of the House of Lords, 2010). In this section I seek to trace both how the juridical concept of piracy is produced within the “juridical field” (Bourdieu, 1987), and how this term is also constituted historically (in a broader field of power) by political and economic interests. By tackling these historical, political, and economic underpinnings of the juridical category, the exposition is equally conceived as a critique of *juridico-political ideology* (Jessop, 1990).

2. State Failure: In Theory and Practice

...Nor are we speaking here of a period of transition, a passing moment in the life and times of the postcolony, a moment suspended uneasily somewhere between the past and the future. This is the ongoing present. It is history-in-the-making.

-Jean and John Comaroff, *Law and Disorder in the Postcolony*, p. 41

I. Uncertain Transitions

One of the more subtle effects of the discourse of state failure is its capacity to resurrect the nation-state as a normative ideal and fantasy which structures political desire. Indeed beneath the predominant discourse about Somalia as stateless, we may observe a number of political projects for which the nation-state has become a “screen for political desires,” (Aretxaga, 2003). Secessionist movements in the Northern provinces of Somaliland and Puntland articulate their political aspirations as achieving independence as sovereign nation-states, international interventions are conceived along the lines of reestablishing a strong centralized government, and even revolutionary militant groups, such as the Al Shabaab, come to define their political project in nationalist terms as resisting “foreign” interference.⁶ As an ideal towards which such political projects aspire, the very ideal of the nation-state then seems to

⁶ On July 11th, 2010, the Al Shabaab conducted its first attack against civilians outside of Somalia, targeting groups of football fans as they watched the last game of the World Cup in Kampala, Uganda with a set of three bombs. The given reason for the attack was that Uganda, one of the major suppliers of “peace keeping forces” in Somalia, was meddling in the internal affairs of the country (Fisher, 2010). This is merely the most recent example of how the notion of national sovereignty comes to function as an operative concept within the political ideology of Al Shabaab.

engender a situation in which all intermediary moments are interpreted as *transitional*.

The World Food Program (WFP), for example, has been active in Somalia since the early 90's and fed a staggering 3.3 million people in the country in 2009 (WFP, 2010a); without any signs of the structural predicament abating, the Program still conceives of their operation as an Emergency Relief Operation (WFP, 2010b). Thus we may read in their budget for 2010, set to run at a modest 436 million dollars (US), about the WFP Strategic Plan, Strategy Objective 1: "restoring and rebuilding lives and livelihoods in transition situations," (WFP, 2010b).⁷ Similarly, this ethos of transitionality and temporariness may also be seen in the mandate of the African Union "peace keeping" mission in Somalia (AMISOM), which was contractually defined as a transitional mission, originally mandated to work in Somalia for only six months. The text of the Status of Mission Agreement is indicative of the ethos.

Reaffirming the principles of strict respect for the sovereignty, territorial integrity and political independence of the Somali Republic; ...[The African Union] authoriz[es] the deployment of AMISOM for a period of 6 months, to provide support for the Transitional Federal Institutional of Somalia in their efforts towards the stabilization of the situation in the country (emphasis in the original. SOMA, 2007)

Firmly dedicated to the restoration of sovereign, independent, territorial nation-state, AMISOM was deployed on a temporary and provisional basis, until the situation of normalcy, namely the reestablishment of central state power may resume. The AMISOM forces, comprised mostly of Ugandan and Burundi soldiers, have been stationed in Somalia now for three years. Their mandate and

⁷ The WFP's 2010 budget is available online at: <http://www.wfp.org/content/food-aid-emergency-relief-and-protection-livelihoods>

funding has also recently been reinforced by a series of high-level political meetings and the aforementioned donors conference that have replenished its trust fund (AFP, 2009). The force itself was deployed to take over peace-keeping duties from Ethiopian military which withdraw after having successfully deposed the Islamic Courts Union (ICU) in 2006.

It is interesting to observe how the 2006 Ethiopian military campaign, which was supported financially and tactically by the United States, was itself legitimated by the a broader understanding of Somalia as stateless. The predominant trope used in support of this effort was that of terrorism, with the US alleging that the ICU might have sympathies towards Al-Qaeda. Generally, since 2001 the fear of a stateless, lawless, safe-haven for terrorism has framed the language and thinking of US policy towards Somalia. As one recent UNHCR article put it: “[a]rguably, the reason for American backing the Ethiopian invasion was fear of the Somali ‘failed state’ in which ‘terrorism’ and ‘radicalisation’ would grow. In this view, the ICU were seen as a neo-Taliban who had to be removed,” (Abild, 2009; see also Verhoeven, 2008). As such, the ICU came to be seen as an illegitimate political project and was often conflated with actual militant groups in country, as an “Islamist insurgency that has plagued, and at times partially ruled, Somalia since the 1990s,” rather than an as a legitimate form of political organization and governance (Fischer, 2010).

The ICU, which began as a decentralized network of local courts and alliances, had of course been the first political body to have emerged in 15 years that managed to garner wide spread recognition within the Southern part of the

country, and many observers at the time remarked upon the formidable the level of (relative) stability which the union of courts was able to secure (Lone, 2006). However, through the discourse of state failure, terrorism and insurgency the ICU was stigmatized as an illicit occupier of a “power vacuum” (Henshaw, 2007) and the form of state which it sought to establish was seen as illegitimate. Judged rather as a symptom of state failure than as an emergent form of statehood in itself, the ICU became the object of a military intervention to restore “legitimate” state power.

Arguably what the Ethiopian military intervention attests to is the political expediency of the concept of state failure in enabling geopolitical intervention. It becomes a vehicle through which “the international community”⁸ may seek *to control the form of state formation*. This may occur through symbolic power in conferring or withholding recognition (as in the case of Somaliland),⁹ or through military power to intervene in state-formative processes judged to be illegitimate (as in the case of the ICU). In this way the notion of a failed state also enables moral and political judgment about the legitimacy and illegitimacy of actors who seek to appropriate the political space of the state. Ironically, during the brief tenure of the ICU piracy was dramatically curtailed in the Gulf of Aden and West Indian Ocean (Hansen, 2009; IMB, 2009). This is generally attributed to the

⁸ Here and throughout this essay I will use the term with a healthy dose of skepticism. Well taken is Jonathan Friedman’s (2003) observation that economic polarization has created a “transnational solidarity among [some] elites that sometimes mistake themselves for the ‘international community’” (13).

⁹ Somaliland’s struggle for international recognition of its sovereign independence is well known (See, e.g. Anonymous, 2002). Ironically, this self-proclaimed state has been far more politically stable than the rest of the country since the 1990’s, making it an attractive partner for international development projects. Counter-piracy projects, such as prison building in Somaliland, have run up against the same problems as other development agencies, namely of working in a “place that doesn’t exist,” (Jooma and Hannelore, 2007).

widely the recognized authority garnered by the ICU throughout Somalia, enabling them to enforce a strict prohibition of piracy under Sharia law. A further irony is that proponents of strong state-building agenda in Somalia as part of a “integrated strategy” for counter-piracy now refer to this fact as proof for the need to “restore law and order,” (Moon, 2009; Hansen, 2009; Authority of the House of Lords, 2010).

But perhaps there is no better symbol of the connection between the notion of state failure and transition than the perpetual state of transition within which the Government of Somali finds itself. The Transitional Federal Government whose Transitional Federal Institutions are protected by a temporary external force is at once the quintessential chimera of statehood as well as arguably the most material manifestation of the ideology of the nation-state. As is well known, the TFG has no capacity to levy taxes within the country and is therefore dependent upon and supported almost entirely by external funding.¹⁰ This creates a highly problematic structural disconnection between the state apparatuses and its citizens. Militarily and financially insulated by international forces, the TFG is not only able to weather serious challenges posed by revolutionary social movements within the country, such as the Al-Shabaab, but is also currently preparing for large military offensives against these latter (Gettleman, 2010). The external funding of such a military conflict is of course in turn justified by the presumption that a centralized sovereign national state apparatus is the only

¹⁰ In light of its incapacity to collect taxes, in 2009 the TFG finally signed an agreement with the Republic of Kenya to the effect that the latter would collect import taxes for the TFG at the shared border towns (see, e.g. BBC, 2009). Still, of the TFG’s \$115 million budget for 2010, allegedly 90 percent was expected to come from external funding (Abdi Elmi, 2010).

acceptable mechanism for achieving internal peace. Thereby the incredible violence of this process is legitimated as a necessary step in the long transition towards rebuilding the Somali State.

It seems then, that through the very concept of “state failure” the nation-state is magically resurrected, only now as an absence, a lack towards which political aspiration is channeled (Aretxaga, 2003). Nor is it simply that the influence of external actors in state-building (ostensibly) dilutes what “ought” to be a natural internal process of state formation—all processes of state formation are multi-scalar (Brenner, 2004)—but what are *lost in transition* are the geopolitical determinants, economic dependencies, and inter-scalar relationships that are constitutive of any process of state formation or evolution. The notion of transition is itself built on a binary conceptual framework, with normative ideal of sovereign nation-state on one side as opposed to the state failure on the other. As such the image of a long transition back to the ostensible normalcy of nation-statehood is central to the underlying conceptual framework within which international policy towards Somalia—counter-piracy being a prime example—is constructed. But as these ideal-typical notions of nation-state and state failure become the hegemonic structuring categories of interpretation, what is lost are the important set of discursive, social and political relations within which the concepts themselves function.

While widely employed at the level of political discourse, “state failure” as a category of social scientific analysis is dubious. The apparent lack of a coherent definition, however, in no way impairs the influence of the term on

policy making. It often seems, rather, that the powerful associations and images that the term triggers helps rather than impedes its functioning. Within political science, recent attempts to ground the term in more analytically rigorous methodology have relied on a Weberian theory of the state. By adopting an ideal-typical definition of the state based on Weber's *monopoly of the legitimate violence* model, these approaches measure state failure by quantifying the loss of this monopoly (see, e.g. Bates, 2008).¹¹ Although the methodologies vary, what is common to all such approaches is that they begin with an understanding of the territorially integrated sovereign nation state as the basic of analysis.¹²

As many of these studies take Somalia as the quintessential failed state it may prove useful to assess the accuracy and aptness of the theory in relation to the social, economic and political realities of Somali history. The typical narrative of Somali state failure begins with the deposition of Siad Barre in 1991.¹³ Here the classic bench marks of state failure are most legible: the deposition of the president, the dissolution of the armed forces, and the cessation of activity for the

¹¹ This method is employed by political scientist, Robert Bates, in his influential comparative study of the 46 sub-Saharan African States *When Things Fall Apart* (2008). After a long theoretical treatment of the internal social dynamics that often lead to the decomposition of formal armed forces and police, Bates finally must rely on a fairly crude methodology for assessing state failure. Ultimately, the sustained presence of armed militias over a period of years is taken as the definition of state failure based on the principle that in such cases the sovereign state had clearly lost its monopoly over the legitimate use of violence (Bates, 2008: 143-173).

¹² Another influential quantitative approach to state failure has been the widely cited "failed state index" published by the Fund for Peace and *Foreign Policy*. This annually published study begins by quantifying twelve certain key indicators (e.g. deterioration of public services, movement of internally displaced persons, rise of factionalized elites, etc.) and then scores countries based on their performance (Fund for Peace, 2009; FP, 2009). The index compiled then forms a gradient enumerating the most failed to the least failed, with Somalia, Iraq and Sudan at the top and Norway and Switzerland somewhere near the bottom.

¹³ For a typical formulation of the narrative, see for example the country profile pages for "Somalia" on either the New York Times or BBC websites: (*NY Times*: <http://topics.nytimes.com/top/news/international/countriesandterritories/somalia/index.html?inline=nyt-geo>; *BBC*: http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm)

courts of law and the major state bureaucracies. The Weberian criteria of the loss of monopoly on violence is clearly also met, as the proliferation of militias since the end of the Ogaden war (1977-1978) had been on the rise for over a decade (Ahmed & Green, 1999; Tareke, 2000). Indeed, the more “sophisticated” accounts of Somali state failure cleverly inform us that these militias, soaring external debt, and the increased levels of violent repression in the late Barre years were already warning signs of imminent state collapse (Mohamoud, 2006; Simons, 1994). Somalia has allegedly been without a state ever since (Little, 2003).

What these accounts fail to take into account however is that, when treated as an ideal-type, the nation-state becomes de-historicized and we lose sight of the contingencies and processes within which the nation as a state-form emerged and evolved (Wallerstein, 2006; Tilly, 1990). Recently, the critique of the nation-state as dominant mode of analysis has been articulated through the notion of *methodological nationalism* (Glick-Schiller & Wimmer, 2002). But of course an older strain of critique centered around the critique of capitalism has long been privy to the limits of sociological and political economic analyses whose focuses are artificially circumscribed by the national container (Luxembourg, 2003 [1913]; Hobson, 2005 [1902]; see also, Harvey, 2003; Callinicos, 2009; Wallerstein, 2006; Arrighi 2000). “Methodological nationalism” merely gives us a label (albeit a very useful one) with which to categorically identify a discourse and vein of research whose results often violently misrepresent the social phenomena with which they are concerned. Indeed, the notion of state failure is

arguably one of the most violent exponents of methodological nationalist discourse.

In the case of Somalia we may begin to construct a critique of the methodologically nationalist notion of the failed state by looking at the ostensibly sovereign and independent state before its collapse. If one focuses rather on the geopolitical context and external economic dependencies, the history of state failure looks quite different indeed.

Laitin and Samatar have argued that the post-independence history of Somalia up to the mid-1980's can be characterized by least four major shifts in Somalia's "external" political-economic dependencies (Laitin and Samatar, 1984). In an initial period (1960-1969), from declaring its independence to the military coup, Somalia refused to align itself fully with either capitalist or socialist camps, skillfully played the two superpowers against one another, and thereby successfully secured more international aid per capita than any other African country (62). Much of this aid went into the creation and sustenance of a huge bureaucratic state apparatus in Mogadishu, rather than being productively invested in industry. In the second period (1969-1977), from Barre's military coup to the Ogaden war, the Soviet Union helped Somalia, now committed to "scientific socialism," build the largest military on the African continent (Tareke, 2000). Foreign debt grew exponentially over this period, and by 1977 the country owed 3000 million Somali Shillings, about seven times the total value of their annual exports (Laitin and Samatar: 68). The profile of the creditors involved, however, already foreshadowed the two subsequent periods of Somali economic

dependency. By 1979 “about one third of this debt is owed each to the Eastern bloc, OECD countries, and OPEC countries,” (69). After the Soviet Union retracted military support for Somalia and began assisting Ethiopia, resulting in the terrible defeat of the Somali army in Ogaden, the Barre regime, faced with political strife at home, was left with very few financial options other than turning in earnest to the West and solidifying its dependency on the International Monetary Fund (69; see also Samatar, 1993; Little, 2003). This third period was characterized by renewed capital investments in the key sectors of the Somali economy, such as the banana industry, but with the predictable caveat that much of the profit would be pocketed abroad (Samatar, 1993). This process also accelerated uneven development and fragmentation within the erstwhile socialist economy. We may speak of a fourth period as partially contiguous with the third, characterized by a deeper economic dependency on OPEC countries and an explosion in livestock exports to Saudi Arabia. By 1978 livestock exports to Saudi Arabia constituted “nearly 90 percent of its export earnings” (Laitin and Samatar, 70).¹⁴ With the collapse of the banana industry in the 80’s causing a contraction of nearly all other important sectors, the economic profile of the country changed so significantly in favor of this single export market that Laitin and Samatar speak of a possible “sub-imperialism,” (Laitin and Samatar: 71).

The state-form which was produced during this period of geopolitical struggle and alternating economic dependencies was one in which a nominally independent military autarchy was able to exert some real and symbolic power

¹⁴ On the how this was to affect differential development in different parts of the country, see: Little, 2003.

over much of its designated territory. It is important to note however that in many parts of the country, the state—even at the apogee of its power—exerted only formal or symbolic control. At the “local” level, the everyday lives of many people, especially in Southern herding communities, were left relatively untouched by either Italian colonialism or the bloated state apparatuses (military and bureaucratic) of the Barre regime (Little, 2003). As Little (2003) argues, “[f]or most Somali herders and farmers, services and infrastructure were minimal, reliance on judicial means of dispute was nominal, and support for the established leadership was almost non-existent,” (14); with patterns of migration and modes of social reproduction remaining nearly the same as in pre-colonial times, it seems that the local herdsman were only ever formally subsumed into the Somali state. This arrangement has been described by Luling (1997) as one wherein the state was “suspended above a society” (289), whose pre-colonial decentralized clan structures continued to function below the formal authority of state power.¹⁵ Although state power was surely experienced differently and differentially throughout country—with certain groups and cities more fully incorporated into the state apparatus, others experiencing state power directly as targets of antagonism—the general concept of the *suspended state* seems to capture a qualitative reality of Somalia’s immediate postcolonial state-form. The Somali state was *suspended* between the global scale of geopolitical struggle (from which it drew much of its military, economic, institution and political power) and the local scale over which it presided (which contained a variety of forms of social integration, such as clan structures, societies of herdsman, but also the vibrant

¹⁵ Quoted in Little (2003: 14). On decentralized clan structures, see also Lewis (1998).

urban cultures of Mogadishu). This “inter-scalar hierarchy” (Smith, 1995) was constitutive of the particular form of nation-state taken by the Republic.¹⁶

The end of the Cold War brought about not only the end of the general power nexus within which the Somali state had previously existed, but also the particular economic and military ties which had given cohesion to the Barre regime. These had surely been in decline since the Ogaden war and had themselves amply contributed to the instability of the state. As the military apparatus was economically dependent on external support for its own reproduction, the structural fragility of this relationship became a vital threat to the state itself.

Finally, the collapse of its national-state apparatuses and institutions did not, as is commonly alleged, leave Somalia stateless; rather, it could be argued that Somalia, like much of the world in the post-cold war era, has undergone a process of “state rescaling” wherein supranational, sub-national, urban and local levels have become paramount in the transformation of state structures (Brenner, 2004, 2009; Jessop, 2001, 2002; Sassen, 2003). The emergence of “warlords” and sub-national states such as Somaliland and Puntland are indeed as symptomatic of this rescaling as were the international interventions such as the ill-fated UN Operation in Somalia (UNISOM) and the US Operation Restore Hope. One might even argue that, counter-intuitively, it is actually only after the so-called failure of the state that Somalia becomes subjected to its most intensive period of

¹⁶ The “Republic of Somalia” refers to the post-independence state which was formed out of the union of the British protectorate of Somaliland in the North (present day Somliland) and Italian Somaliland (which form the majority of territory of Somalia today). The social state called itself “Democratic Republic of Somalia,” here I use simply “Republic” so as to encompass both post-colonial regimes.

contestations over statehood: intensive secessionist movements, militant groups seeking to capture the state, warlordist para-states, and internationally funded state-building projects. The international policing and regulation of Somali waters under the aegis of counter-piracy should certainly also be considered as a new institutional arrangement between state structures at multiple scales.

II. Counter-Piracy and State Rescaling

Counter-piracy operations off the coast of Somalia have grown steadily in response to the rapid rise of reported incidents of piracy in the region since 2007. While initial responses by national navies acting independently yielded a chaotic dynamic of ad-hoc security measures geared at protecting individual, national and corporate interests, the subsequent developments, stemming largely from a set of UN Security Council resolutions in 2008, have seen an unprecedented level of strategic coordination of international naval efforts in the Gulf of Aden and the Somali Basin (Authority of the House of Lords, 2009; Strickmann 2009). Since September of 2008, with the founding of SHADE (“Shared Awareness and Deconfliction”)—a monthly intelligence sharing and strategic coordination meeting in Bahrain—the major Naval Forces have progressively coordinated their activities in the Region (EU NAVFOR, 2009).¹⁷ This in turn has been supported by a set of new institutional arrangements facilitating the integration of the military, informational and juridical structures of states involved in the efforts.

¹⁷ It is interesting to note that this group meets more frequently than the Parliament of Somalia’s TFG. The Transitional Federal Parliament’s much publicized meeting on May 17th, 2010, wherein Prime Minister Omar Abdirashid Sharmarke was voted out of office, was the first time this governing body had met since December 2009 (Mohamed, 2010).

Although widely celebrated as a sign of “international cooperation” and partnership *between states* (see, e.g. US Department of State, 2010b), it is my contention that many of these new institutions and sites of coordination might also represent a fundamentally novel transformation and rescaling of state structures.

One of the central organizations involved in this effort has been the Contact Group on Piracy off the Coast of Somalia. Formed in 2009 at the behest of the UN, the Contact Group is self-reportedly one of the principle “mechanism[s] for political coordination in the fight against piracy off the Somali coast,” (Department of Public Information, 2010). The Group meets quarterly¹⁸ at the UN headquarters in New York and its membership is comprised of 50 countries (of otherwise quite disparate national interests), as well as 7 international organizations and 2 international shipping industry associations (see, Appendix 1).¹⁹ As a mechanism for political coordination, the function of the contact group is to establish a common political interpretation and representation of piracy among the participants and to coordinate a joint international response accordingly.²⁰ At a material strategic level, the Contact Group seeks to coordinate between naval, juridical and penitentiary aspect of counter-piracy. Since January

¹⁸ Though the Contact Group itself only meet quarterly its four Working Groups engage in more frequent colloquia, continuous research, and advising of both the UN and the naval forces on specific target issues. These four groups focus respectively on: (1) Military and Operational Coordination, Information Sharing, and capacity Building, (2) Judicial aspects of piracy (in conjunction with the UNODC), (3) Strengthening Shipping Self-Awareness and Other Capabilities, (4) Improving Diplomatic and Public Information, (US Department of State, 2010; Bureau of Political and Military Affairs, 2009a).

¹⁹ Countries of such disparate national interest Yemen, the United States, Russia, China, Mexico, the United Arab Emirates, Ethiopia and the Somali TFG participate in this counter-piracy forum (US State Department, 2010a). For a complete list see Appendix 1.

²⁰ Specifically bulk of the work done by The Contact Group’s “Working Group 4” on public relations is to target (a) Somali, (b) Regional, and (c) International audiences and media representation of piracy in order to “[c]reate international support for and legitimacy of international counter-piracy operations,” (see archival source: “Proposed Communication Strategy, 2009).

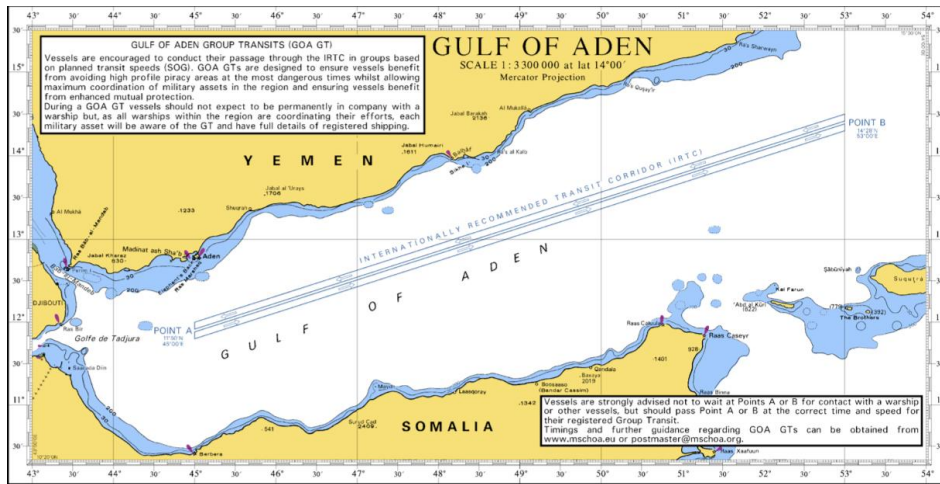
2010 the Group has directed the UN Trust Fund Supporting the Initiatives of States Countering Piracy off the Coast of Somalia, which is directly engaged in building the judicial and penitentiary capacities of partner countries in East Africa, (US Department of State, 2010c; UN News Center, 2010). For example, since April, 2010, a project to help the renovating and building of new prison facilities in Puntland and Somaliland has been put in place to coordinate prison building and the development of local police capacity, with additional UNODC programs for “mentoring” prosecutors, and providing assistance for local courts to increase their capacity (UNODC, 2009; US State Department, 2010b; UN News Center, 2010).²¹ These projects, which coordinate regional penal and juridical capacities with the needs of the international naval efforts, produce a new nexus of institutional integration: with national, local, and supernational resources being mobilized and integrated under the heading of counter-piracy.

At the level of coordinating the naval operations, the SHADE meetings have provided a pivotal forum wherein new intelligence and research on piracy is exchanged. Concrete manifestations of their coordinating efforts have been the establishment of a new Internationally Recommended Transit Corridor (IRTC) in the Gulf of Aden (see, Map 1).²² The purpose of the new ITRC was to standardize the shipping routes taken by merchant vessels transiting through the Gulf in order to better coordinate the naval efforts with the shipping industry.

²¹ These prison building efforts of the Contact Group supplement similar work already being done by the United Nations Development Program (UNDP) and the UNODC under the auspices of the latter’s Counter Piracy Program (UNODC, 2009).

²² The corridor itself replaced a previously corridor in 2009 after the first year of coordinated counter-piracy efforts began to produce more accurate data the geography of piracy.

Map 1. Internationally Recommended Transit Corridor²³



The SHADE group also developed an “IRTC coordination guide” for merchant vessels which designates a set of times and speeds with which to transit the Gulf of Aden in clusters called “group crossings,” (EU NAVFOR, 2009). These group crossings are in turn more easily monitored by the international naval forces, and patrolling is coordinated such that any group may be reached within 30 minutes of a distress call (Conversation, Lazard). To facilitate the coordination of these patrols an agreement on the use of a common geographical reference system was also developed at the Bahrain meetings (EU NAVFOR, 2009). Finally, in cooperation with Maritime Security Center for the Horn of Africa (MSCHOA)²⁴ a protected digital internal communication board called MERCURY allows for continuous communication between members of SHADE for a real-time dissemination of security related information and news of pirate attacks amongst

²³ Map produced by the United Kingdom Hydrographic Office (UKHO).

²⁴ MSCHOA functions as a liaison and coordination point between shipping companies and the international naval forces, primarily those of the EU NAVFOR. It is integrated both institutionally and *physically* with the EU NAVFOR Operational Headquarters: both being based out of Northwood, London. MSCHOA is sponsored by the EU and was set up as part of the European Security and Defence Policy initiative of 2008 to suppress and combat piracy off the Coast of Somalia (see. MSCHOA, 2010).

the Naval forces. This informational and tactical integration of military structures, supported by regionally focused military intelligence community (SHADE) arguably constitutes a rescaling of certain state functions from national to regional/supernational levels as well as a reorganization of inter-scalar relations.

On the one hand this involves classic examples of state rescaling such as the creation of a European Naval force. Operation Atlanta is the European Union's first joint naval operation and presents us with a clear case of the upward rescaling of military functions from the national scale to that of a supernational governing body. Operation Atlanta was launched in 2008 in response to the aforementioned set of Security Council Resolutions encouraging international cooperation in suppressing piracy in Somalia. Originally mandated for one year, Atlanta has since been renewed and continues on a year to year basis, assumedly until the threat of piracy off the coast of Somalia abates.²⁵ The integration of these erstwhile national forces into a single command structure within the Operation and the establishment of new institutional organs for facilitating Naval Force (such as the MSCHOA and the Northwood Headquarters) are tangible expressions of rescaling.

On the other hand we may understand the institutional integration of the Kenyan and Seychelles judiciary, Somaliland penitentiary system, European Naval forces, and a regionally focused intelligence community as a complex form

²⁵ Atlanta has by far the largest single contingent of warships currently patrolling the region and has thus taken on a leading role in coordinating between the naval forces and the shipping industry. Currently eight EU member states make a permanent contribution to the fleet of twelve naval vessels which that constitutes Operation Atlanta, while another five member states have personnel at the Operational Headquarters in Northwood. Norway also participates as a "third country" in Operation Atlanta; under this auspice its vessels are also fully integrated into the command structure of the EU Naval Force, (EU NAVFOR, 2010).

of state structural transformation. The purpose of these efforts is avowedly to ensure the free transit, “freedom of navigation” and circulation of shipping through the Gulf of Aden that has been threatened by piracy, (see, e.g. MSCHOA, 2010; National Security Council, 2008).²⁶ The integration of national, sub-national, local, and supernational resources for the suppression of piracy are then conceived as an “integrated approach” for suppressing by juridical, penal and military means those social actors (pirates) who threaten this circulation (Moon, 2009). As such, these institutions are concerned not only with the regulation international waters, but also fundamentally seek to regulate upon the social actors themselves—a regulation of the social which is enforced through the classic mediums of state power: Law and Military force. It is precisely as a regulation of social dynamics *on* the Horn of Africa (i.e. the complex set of social dynamics which have led to piracy) as “they spill into the seas,”²⁷ that these new institutional arrangements may be understood as a set of new state-like structures *off* the Horn of Africa, and indeed, *suspended* above and around the erstwhile territory of Somalia.

Within these structures, the Somali TFG and its institutions also still perform vital functions. Notably, the TFG was instrumental in the drafting of the UN Security Council Resolution of 2008, which, beyond triggering the advent of the Contact Group and Operation Atlanta, also provided some novel legal mechanisms for the naval efforts themselves (Guilfoyle, 2009). Particularly, Resolutions 1816 and 1846 grant “cooperating states” the authority to enter

²⁶ The underlying concept being that of *Mare Liberum* (or, “freedom of the seas”) dates back to Grotius.

²⁷ The phrase used by Ban Ki Moon at the International Donors Conference, (Moon, 2009).

Somali territorial waters for the purposes of combating piracy “in a manner consistent with the international law applicable on the high seas,” (Resolution 1816; Resolution 1846; see also, Guilfoyle, 2009: 146). Later, Resolution 1851 created provisions for “cooperating states” to engage in operations on land within Somali territory as well. Previously, only one such operation had taken place in Somalia, namely the *Ponant* case in which French marines stormed a pirate encampment in Puntland to capture the erstwhile hijackers of the French yacht (Zone Militaire, 2008). In that particular case, the French Government had acquired special permission from the TFG to pursue this operation. The novel feature of these Resolutions however, is that they effectively institutionalize the authority of foreign states to pursue these missions without explicit prior authorization.

As Guilfoyle (2009) has pointed out, one of the practical consequences of these Resolutions is that states who might otherwise not have a direct diplomatic contact with the TFG may now, by virtue of their status as a “cooperating state,” avoid such a diplomatic and political interface all together:

Some States find it politically or constitutionally easier to commit military forces to UN mandated extraterritorial operations. Others may doubt the TFG’s ability to give timely authorization. Having a system for granting authorization in advance is certainly faster than negotiating ad hoc with high-ranking officials under pressure of time. *Crucially, States not having formally recognized the TFG can rely on the Resolutions, rather than direct TFG consent.* (emphasis added, Guilfoyle, 2009: 147)

These Resolutions thereby constitute novel legal mechanism granting *a priori* permission for foreign militaries to use force within Somali territory. By institutionalizing the legitimate and legal use of violence by external powers, the Resolutions represent an interesting variation on the Weberian theory of violence

and the state. Though the act perhaps reinforces the symbolic power of the TFG insofar as its sovereign permission is required for the legality of these Resolutions and interventions—at the same time, by licensing out its monopoly on the legitimate use of force, the state effectively signs away the formal conditions of its own national-statehood.

That the avenues of bi-lateral diplomatic protocol which usually regulate such exceptional situations are foregone in favor of a general license to military intervention also creates a fundamentally new state-structural arrangement. In scalar terms, bi-lateral diplomacy functions at the level of *intra*-scalar (international) relations between the “sovereign equality of states” (to borrow a term from International Law). The Resolutions, on the other hand, forge a new inter-scalar arrangement wherein military and policing functions are formally and materially re-constituted at a supranational level, and diplomatic channels between sovereign equals is displaced by supranational political mechanisms.

This rescaling of the political, military and security functions of the Somali state (i.e. the regulation of Somali social dynamics) thus takes place through a transformation of existing state structures. On the one hand the political regulation of the territory rescaled upwards, decision making takes place at a supranational level (e.g. with UN Security Council Resolutions, or more broadly with the deliberation at an international level about what types of projects to fund within Somalia). On the other hand, military, security and policing decisions are displaced to specialized, regionally and supranationally organized groups (e.g. the Contact Group, SHADE, and regionally organized programs such as the

UNODC's "Rule of Law and Human Security Regional Programme" [*sic*]). Meanwhile the TFG is structurally transformed from a "sovereign equal" to a mere signatory in the rescaling of juridical, military, and policing state functions which are design to regulate social dynamics within its territorial jurisdiction.

Indeed through this process the TFG progressively comes to resemble that model of postcolonial state described by Jean and John Comaroff (2006) as "less an ensemble of bureaucratic institutions, more and more a licensing-and-franchising authority"(17), it becomes subsumed as a *dispositif* within a larger state structure.

III. Security over the Postcolony

According to Mbembe (2001), this "may well be the final defeat of the state in Africa as we have known it in recent years. ... its replacement by *dispositifs* that retain the name but have intrinsic qualities and modes of operation quite unlike those of a conventional state," (68). On the other hand it might also be the first victory of a supernational security regime and the range of new state structures suspended precariously above a territory whose population intermittently becomes an obstacle to commerce. Certainly much of the state-building in Somalia and of course the counter-piracy operations themselves are explicitly conceived as providing security.

On the other hand the emergence of security as a dominant trope of contemporary statehood is of course not particular to Somalia. European and American scholars have long theorized "globalization of (in)security" (Bigo,

2006), the emergence of a “culture of control” (Garland, 2001), and the explosion of penitentiary system that increasingly seems to be replacing the welfare-state model as the principle mediating interface between labor and capital (Wacquant, 2001). According to Agamben (2005) it might be said that, “the state of exception has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government,” (14). But while there seems to be a relative consensus that security has become an important paradigm, the question of the consequences that this has had on the structure and form of the state remains controversial. Are we, as Wacquant (2009) suggests, seeing the generalization of a “Penal State”? Or is the state no longer a useful paradigm, as the Foucault (allegedly) suggests, and should we not rather focus our energies on the emergence of new *dispositifs*, techniques of power, and the history of governmentality (Mitchell, 1991; Foucault 2004: 108)? Without erecting the pretense of being able to definitively settle these questions here, I would rather suggest that both “security” and processes of state structural transformation should be questioned with regard to the agents and interests involved. For whom is security being provided? Against whom? What are the interests which drive processes of transformation? And how are these interests institutionalized?

From this vantage point we may readily identify some of the key interests and social relations behind the securitization and state structural transformations precipitated by counter-piracy. Firstly, we may observe that “security” is unabashedly and overwhelming conceived of as the security of free transit through the Gulf of Aden (see, e.g. MSCHOA, 2010). Although the discourse of

“Human Security” has made its way into other aspects of UN work in East Africa, it seems to be absent from most of the literature on counter-piracy. The security which is being constructed is thereby quite plainly the security of shipping industry interests. Moreover these shipping industry interests avowedly have no stake in broader solutions for the human crisis in Somalia. As one representative from the Baltic International Maritime Council (BIMCO) wisely put it:

The statements by governments that the solution ashore remains the only solution to piracy is of little interest or use to the industry. It will take some considerable time before Somali society, itself so pestiferous and so prone to faction-forming and to shifts in opinion before any style of joined up government occurs. [*sic*] (BIMCO, 2010)

As BIMCO is one of the two international shipping organizations to be admitted as a member of the Contact Group, these sentiments cannot but strike us as shockingly cavalier. But it is indeed these interests which are being institutionally integrated into the very central organs of the military and juridical apparatus of the new state structures.

Indeed the EU Naval Force may be taken as a prime example. Celebrated as a model of military efficiency, Operation Atlanta prides itself on its dynamic interaction with “the merchant shipping community,” (Conversation, Lazard). While the two other major naval coalitions operating off the Horn of Africa (the US-led Combined Task Force-151 and the NATO Operation Ocean Shield) rely on external liaison offices for their coordination with the shipping community,²⁸ EU NAVFOR has integrated this institution into the very structure of its Operational Headquarters. As one of my interviewees boasted: “its half civilian,

²⁸ The interface for the US Combined Maritime Forces (of which the CTF-151 is a part) to the shipping interests is its Maritime Liaison Office (MARLO) in Bahrain. Meanwhile the NATO Shipping Center (NSC) provides this function for the latter.

half military, ready for quick communication between ships and naval force, unlike this outdated Cold War beast,”²⁹ (Interview, Lazard). As a civilian-military hybrid MSCHOA is indeed an innovative institution which has also been centrally involved in the securitization of the Gulf of Aden. It also represents the clearest case of the institutionalization of capitalist class interests at the heart of the security apparatus.

Finally, this is perhaps what the state failure paradigm ultimately mystifies: that behind a ideological discourse of progressive transition towards sovereign statehood is being constructed an essentially repressive supernational security state whose military, juridical and penitentiary apparatuses are poised to police, contain and suppress the instances when the social crises of the postcolony spill into the seas and become obstacles to the global circulation of capital.

²⁹ “Cold War beast” evidently referred to NATO. The mixed civilian/military composition of MSCHOA is confirmed by their own publications (see, e.g. MSCHOA, 2010).

3. The Force of Law: On the Moral and Political Economies of Piracy

The Shimo La Tewa prison is a half an hour's drive North of Mombasa on the coastal road that leads up to the Somali border. Located only a few hundred yards from the luxury resorts and private villas that line the Mtwapa Creek where it meets the Indian Ocean, the prison—which holds the majority of Kenya's 117 pirate suspects and convicts—fits unobtrusively into the eclectic landscape of shopping centers, shanty-towns, hotels, cement factories, and other niceties of uneven development and tourism. The presence of the pirates has drawn both political attention and funding to the institution. After receiving substantial aid money from the UNODC for the building a new sewage system, renovation of its kitchen facilities, a new supply of 2,500 mattresses, and a complete cleaning and repainting of the facilities, Shimo La Tewa has become “the model prison” in the Kenyan penitentiary system (UNODC, 2009: 4; Interview, Abasi). Priding itself as it does on its prisoner rehabilitation programs and “prison management as a community project,” the institution does not readily reveal its blemishes beneath the PR-ready façade. Interviewing the Chief Warden, Ms. Margaret Abasi,³⁰ a 15-year veteran of the Kenyan penitentiary system who had only recently been appointed to Shimo la Tewa, I was surprised to hear her echo what I had previously only heard in the heavy-laden rhetorical diatribes of defense attorneys at the court house. Namely, that “one of the main problems we have [with the

³⁰ The names of all the interviewees have been changed for the sake of privacy.

Somali pirate suspects] is convincing them of the legitimacy of the trials” and their detention (Interview, Abasi).

An analogous statement was expressed by the Deputy Chief Magistrate at the Mombasa Law Courts. Hosting a delegation of diplomats, naval personnel from the EU Operation Atlanta, and UNODC staff, who were being given a tour of the facilities, the question was posed to the Magistrate, what the principle challenges the court faced in the piracy trials. The four main challenges were said to be, (a) providing security at the law courts, (b) finding interpreters for the cases, (c) that the cases were taking longer than expected, and (d) “*that the accused persons do not have confidence in the courts,*” (Conversation, Deputy et. al). While the first three issues are of a more or less technical nature,³¹ only this last raises the problem of the *social relation* between the foreign nationals in the domestic legal process. Both the Warden and the Deputy Chief Magistrate framed this as an apprehension on the part of the pirate suspects about whether they would have a fair trial in Kenya, (Interview, Abasi). This concern, the Magistrate assured us, was unfounded as the cases were all open to observation by the public, and the severity and professionalism could be measured by the length of time that each of the cases took to process.³²

³¹ Technical problem to which technical solutions were discussed on the spot: particularly with respect to security at the Courts, a UNODC staff member announced a contract with a private security firm who would soon be taking up the issue of providing security at the trials, (Conversation, Deputy et. al).

³² Indeed the cases tried in Mombasa have taken a notoriously long time to complete. Unlike the mock trials that take place in Puntland which may take no more than 24 hours (Interview, Buhler), the piracy trials in Kenya have strict requirements on evidentiary collection procedures, demand a host of expert witnesses (e.g. ballistics experts to assess the weapons used), and require all witness to testify in person. This latter requirement is certainly the primary cause of delays, as the witnesses must be flown in from around the world and coordinating the schedule of the court with the schedule of, e.g., a ship captain who spends much of the year in transit can prove logistically

The question of legitimacy arguably strikes at the heart of the “juridical field” (Bourdieu, 1987). On the one hand, as a question of the legitimate authority of the state to impose its laws, it raises issues about the power relations between actors within the juridical process itself. How are criminal categories produced and maintained through juridical practice? Who is able to speak in the Court of Law? And through what types of discursive modalities? On the other hand, legitimacy also raises distinctly political questions about external power relations which structure the juridical process itself—e.g. the place Courts within the broader counter-piracy operations, or in the language of fields, *the place of the juridical field within the broader field of power* (Bourdieu, 1987: 815).

We will begin by examining the ontological power of the Law to name its objects and produce legitimate categories for the division and classification social reality. This naming process, however, inevitably runs up against lived social reality and the categories proper to the sphere of everyday life. The ensuing symbolic struggle has an explicitly political dimension which arguable becomes accentuated in the case of “piracy.” Secondly, juridification is examined as a process through which *the political* is neutralized. Particularly in the lines of defense open to the accused at the piracy trials in Mombasa, are analyzed from the vantage point of the political factors which they occlude. In a third section I seek to reconstruct the specific relationship between legitimacy and jurisdiction

problematic (Conversation, Lazard).³² In the case of the MV Polaris that I observed, a weapons expert had been flown to Mombasa from the United States for the third time to give testimony, but due to the defense attorney having fallen ill, the case could not proceed. The next hearing had to be postponed until the expert witness would have another free week in which to return to Mombasa. As a result the court would not reconvene for another three months, a long break considering that the MV Polaris case had already been dragging on for over a year. Financially, each visit of this expert witness would cost over \$10 000 (US)—a costs of which would be paid for out of the budget of the UNODC, (No. 791, MV Polaris, 2010; see also, UNODC, 2009).

particular to laws of piracy. The issue of universal jurisdiction is examined as a social and political relation raising an interesting set of question about of “legitimate domination” (Weber, 1999) and the inter-state system. Finally, I offer a historical account of the emergence of modern piracy law as a juridico-political mechanism for regulating legitimate and illegitimate violence over long distance trade routes during the emergence of the modern capitalist world system. As such, the micro-symbolic struggles over *naming* the act of piracy are put into the context of the *longue durée*, and the modes of political and economic subjugation behind the symbolic struggles are exposed.

I. What’s in a name?

The term piracy has not always enjoyed the universal recognition which it is accorded today. Indeed, the history of political, economic, and naval struggles has also been accompanied by intense discursive battles over the naming of maritime predation. While historical examples of these discursive battles abound, we may take two cases from regions that have once again become “troubled waters” (Xiaokun and Kuang, 2009) in recent times, namely: the straits of Malacca and the West Indian Ocean. Recent scholarship has shown that the translation of the European term *piracy* in both of these areas was problematic and coincided with economic interests in the region. Writing about the history of trade in the straits of Malacca, Chenoweth argues that “the terms ‘pirate’ and ‘piracy’ were exported to and applied in Asia by British political and intellectual figures of the seventeenth century,” in tandem with the eastward expansion of the

British Empire (Chenoweth, 1999: 120). The term thus found its way into the historiography of the region and was retroactively conferred upon subjects for whom the very concept would have found no linguistic, legal or cultural corollary. Similar observations have been made by Patricia Risso (2001), that in regard to the history of the West Indian Ocean, “the English term piracy is often applied inappropriately to indigenous naval warfare and to commercial competition from British India,” (Risso, 2001: 296). Its application, argues Risso, was rather part of a discursive strategy that legitimated and legally sanctioned naval interventions. Particularly, in the West Indian Ocean and around the Arabian Peninsula, the British used the term to justify the suppression of competition from other maritime powers. But as Risso points out, the term was not universally accepted or recognized. Primary among the regional powers who resisted the term was the Mughal Empire. Due to this withholding of recognition, the term remained a “legal fiction” in the region during the initial phase of the East India Company’s activity (Risso, 309). Over the course of the long eighteenth century, as the British navy’s effective power in the Indian Ocean grew, the term became more widely recognized and eventually found pride of place in treaties signed with powers in the Persian Gulf (316). Risso argues that in this manner the British “were able to impose their own *cultural norm*,” in the region (318).

Of course an analogous point can be made about the application of the term in conjunction with the economic interests in securing uninhibited circulation through the Gulf of Aden. Similar to its 18th century analogue, the set of terms used to describe the *act* of contemporary piracy are divergent and

contentious. According to Bahadur (2009) the nearest translation of the word “pirate” in Somali is *burcad badeed*, which means “ocean robber.” But, as this term carries pejorative connotations, it is not used by the “pirates” in their own self-identification. Instead, the term more commonly used among the pirates of Puntland was rather *badaadinta badah*, which means “saviour of the sea.” While Risso’s argument ultimately rests on an assertion of difference between cultural norms, it seems that in the case of Somalia there is a recognition of the term “piracy” and an explicit rejection of the category. Rather than a cultural difference—which posits separate cultural, linguistic and symbolic systems that evolve separate sets of terms—the difference here seems to be political. Unlike the Mughal Empire though, the Somali “pirates” seem to lack the requisite symbolic power to resist the application of a legal discourse to their practice.

There are two levels at which we may view the *naming* of “piracy” as itself a political act. (1) The first level of pertains to the overtly political message of some of the *badaadinta badah*. By identifying themselves explicitly in relation to illegal fishing and illegal dumping of toxic waste off the coast of Somalia, the notion of “savior of the sea” is explicitly thought of as a political act protecting Somali waters from foreign exploitation and spoilage. Of the seven known major “pirate groups” operating in Somalia, the National Volunteer Coast Guard, the Central Regional Coast Guards, the Ocean Salvation Corps, and the Somali Marines, have an explicitly political message, claiming to have formed in the 1990’s as a response to the illegal fishing and dumping of waste (Interview, Aadeel; Asseal, 2009; Mwangura, 2001). After the dissolution of the Somali Navy

in the early 1990's the waters off the coast of Somalia became vulnerable to unregulated over-fishing and illegal dumping, and these groups claim to defend the waters against such activity (Mwangura, 2001; AFP, 2008). By merely criminalizing all these acts as "piracy" the political dimension of *badaadinta badah* is suppressed. Thus the discursive struggle over naming is itself a site of politics.

The second vein (2) in which the very the naming of the *act* may be considered political is in its erasure of difference between the complex and variegated groups currently engaged in "piracy" off the Horn of Africa. Apart from the more overtly political groups mentioned above, there are a reportedly wide range of organizational types, varying from single skiffs operated by a team of father and son to larger groups of up to 200 individuals (Backhaus, 2010). By all accounts clan-based social ties are important in the organizational structure and dynamics between and within groups, with certain clans and sub-clans found to predominant in different areas of operation (see, e.g. Backhaus, 2010; Hansen, 2009). Other groups function on what appears to be a more overtly capitalist business logic of profit maximization, such as the example reported by Hansen (2009) of a lobster company in Eyl that transformed its fleet into a pirating venture and began recruiting "pirate expertise" and veterans from around the country (Hansen, 2009: 27). It is also widely suspected that "international criminal syndicates" have begun to invest in pirating operations (UNODC, 2009a; Interview Buhler; Interview, Milner; Interview Aadeel). These "syndicates" allegedly hire poor Somalis to do the actual attacking of merchant vessels,

suggesting that many of those who actually operate the skiffs are merely the “foot soldiers”³³ in broader operations, (Interview, Milner; Interview, Aadeel).

As such, the question of legitimacy may also refer to the legitimacy of the very category, which both suppresses the political content of other names and subsumes a great diversity of social forms into a simplified and reductive notion of “piracy.” Political determinants are neutralized and diversity (of groups and practices) is universally reduced and juridified as “piracy,” and in this process what are lost are the particular historical, economic and political contingencies that have shaped the phenomenon in question.³⁴

Juridification as a process of *naming*, classification and codification arguably always involves a degree of symbolic violence. On the one hand it produces an interpretive schema and principle of vision structuring the very perception of new phenomena (Bourdieu, 1987). On the other hand, as the phrase “law enforcement” clearly indicates, in the very formation of its objects the Law must often rely on extra-judicial expressions of force (Derrida, 1992). By fixing a category in Law the term necessarily becomes a *real abstraction*³⁵ to which social phenomenon are both *a priori* expected to correspond, and to which they are made to correspond through the processes of policing, standardization (of, e.g.

³³ The term was perhaps coined by Andrew Mwangura, although the metaphor seems to be one that has captured the imagination of the police investigators and EU NAVFOR personnel alike, as it recurred consistently throughout my interviews.

³⁴ Bourdieu (1987) speak of the *neutralization effect* and the *universalization effect* as the two major effects produced by juridical language itself (819).

³⁵ According to Habermas (1989) *real abstraction* occurs only when the communicative structure of the lifeworld becomes distorted by the Law. However, it seems inconceivable to imagine a legal process in which at least some of the participants are not relegated to silence by their lack of requisite professional knowledge of the conventions of the field (Bourdieu, 1987). Moreover, it seems plausible to assume that the very categories of criminal law often if not always appear to the criminal as foreign, abstract and disconnected from the crime. This is the sense in which I argue that Law *necessarily* produces real abstraction.

evidentiary collection procedures), incarceration, and of course through the trial itself.

From the moment of their arrival in Kenya the individuals are interpellated as “pirates” through the standardized of processing of the accused. After all, it is only as a properly identified criminal category that the individuals can appear as subjects before the law. After being disembarked from the Naval vessel, suspects are taken into the custody of the Criminal Investigation Division (CID) and “rearrested,”³⁶ their statements are taken by the Kenyan police, the evidence collected is handed over from the naval personnel to the Kenyan authorities and all are put into holding cells for the night while awaiting to appear before a judge on the following day (Interview Milner).³⁷ A pool of defense attorneys are available for them to chose from and they will all be prosecuted by one or more of the seven public prosecutors which form the DPP’s Piracy Team.³⁸ This initial round of procedures of course culminates in the *plea*, whereby the accused either accepts the charge or claims innocence. In this last moment the *interpellation* as “pirate suspect” is forcibly completed as the accused is given no choice but to *respond* to the charge.

³⁶ This strange term used by the Mombasa CID testifies to the relative arbitrariness of some of the ancillary terms involved in a process of standardization.

³⁷ Kenyan Law demands that suspects must appear before a Judge within 24 hours of their arrest.

³⁸ The Department of Public Prosecutions’ Piracy Team was formed in 2009 after Kenya sign Memorandums of Understanding with the major naval power to accept pirate suspects for prosecution in Kenya. As per the defense, during the same period, four defense attorneys in Mombasa seem to have taken on all of the piracy cases. Certainly this is partially due to the expertise and symbolic capital which accrues to experience. However the limited number of options for the accused is equally an expression of standardization.

But arguably by the time the suspects reach the Mombasa Law Courts the groundwork for their interpellation has already been thoroughly laid.³⁹ An enormous amount of “juridical labor” (Bourdieu, 1987: 808) has been performed in readying a space for the absorption of these suspects into the national legal system. In the juridical division of labor, organizations such as the UNODC and the Contact Group on Piracy off the Coast of Somalia have helped draft legislation and agreements, and have provided workshops for prosecutors on international maritime law to ready the Kenyan legal system (and that of the Seychelles) for the piracy trials. On the naval vessels themselves, military police are provided with a standardized set of instructions on evidentiary collection specific to the requirements of Kenyan law. And of course the investments in prison facilities—including a “remand review initiative” that has lead to the release of a number prisoners at Shimo La Tewa (UNDOC, 2009; Interview, Buhler)—assures that every pirate brought to trial will have a place waiting for him in prison.

Part of this labor also includes periodical meetings between the various actors in the juridical, political and military aspects of the endeavor, partially in order to coordinate their activities but also often simply to exchange tokens of recognition that serve to reproduce the set of alliances and social ties which support the apparatus. For one such meeting in Mombasa my contact at the UNODC invited me to participate in a tour of the prison and law courts hosted for personnel from EU Naval Force and the European Commission to get acquainted with the “legal side” of the Operation Atlanta. After an hour ceremoniously spent

³⁹ Much like the name that awaits the unborn child in Althusser’s (1984) famous example.

at the Law Courts in which a number of official expressions of appreciation, gratitude, and congratulations were exchanged and an honorary plaque was awarded to the Deputy Chief Magistrate by a Rear Admiral, we were given a tour of the holding cells, court rooms and archives. The same ritual was repeated at the prison, with the notable variation that here the group of officials requested to “see” the pirates. Though normally such a request would have to be submitted formally and processed in Nairobi, the security protocol was waived for the official delegation and after conferring with her superiors the Warden lead us to the remand cells where around ninety of the suspects are held.⁴⁰

Although the interaction itself was brief, the few sentences exchanged between the two groups seemed to capture something essential about the force of law and the juridical field in which it operates. The narrow corridor through the block of cells opened up into a small court yard in the back, hemmed in by high walls on three sides and the cell block on the other. As we were lead into the courtyard, two of the six guards that were accompanying us gathered the prisoners and corralled them into the courtyard where they were to sit in rows facing the dignitaries who remained standing. Eventually Hans, a UNODC prosecutions adviser, took the initiative to greet the group. In return one of the prisoners stood to respond while a guard translated between English and Somali:

Hans: *Hello, we are from the United Nations. We know that you are a long way from home right now, and a long way from your families. We’ve come here to check on you to see that you are ok.*

⁴⁰ At the time of writing only 18 of Kenya’s 117 prisoners has been convicted, the rest are at various stages of the trials and are held as remand prisoners at Shimo La Tewa.

Prisoner: *Hello, we thank you for coming. We don't get many visitors and we are happy that you are coming to check on us. But we would also like it if human rights people would come to see the prison.*

Hans: *Have you had any problems? Here at the prison, or at the Court House?*

Prisoner: *We haven't had problems here. But at the Court House we have problems.*

As we exited the cell block Hans commented that it was better just to present us all as “UN people” because, “they probably wouldn’t have been happy to know that the Rear Admiral here is responsible for putting some of them behind bars.” In a first instance, it struck me as an apt metaphor for one of the prevalent relationships between juridical professionals and the accused within the juridical field of the piracy trials. The juridical professionals through the guise of officialdom (“UN people”) nominally present themselves as being there to help (“coming to see that you are ok”), while hiding the fact that they are involved in the process of putting them behind bars. Though perhaps less consciously dissimulating, are not the defense attorneys representing the accused themselves similarly implicated in the slow interpellation and seemingly predetermined conviction of the accused as pirates? But it was perhaps Hans’ response to the second issue, that of the “problems” that the Somalis had reportedly been encountering at the courts, which expresses an actual axiom of the juridical field.

The last event of the day would be a dinner for the participants of the tour at one of the beachfront luxury resorts just North of Mombasa. As some point in the evening I asked Hans about the “problems” that the prisoner had mentioned,

as the issue had not been clarified during the brief interaction at the prison. I explained that I had interpreted this to mean that perhaps the guards at the Courts were mistreating them, or that they found the dark, humid, underground holding cells we had seen at the Courts to be inhumane. After all they had asked for “human rights people” to come see them. Hans disagreed: “No, they mean that they’re having problems with the cases.” He then went on to explain how the naval forces have strict guidelines as to the types of evidence that the Kenyan courts will need for a conviction; and that they are therefore highly selective about the cases which they actually bring to Mombasa. Only those cases in which a conviction is almost certain ever reach the Courts (Conversation, Buhler et al.).⁴¹ Hans then added, with chuckle: “they say they are having problems at the court. Well, yes, of course they are. It’s structured that way.”

II. The Juridification of the Political

The axiom that the juridical field is structured in such a way as to guarantee certain results given a requisite amount of juridical labor finds its negative analogue in the axiom that it also structurally precludes other elements from emerging at all. One such element is the discussion of the political. To a certain degree legal discourse itself produces internal obstacles which prevent the political aspects of piracy to emerge in court. We may observe this preclusion of the political in the lines of argumentation available to the defense councils in the piracy trials at Mombasa.

⁴¹ In cases where such evidence is lacking the standard protocol is simply to destroy the skiffs and weapons suspected of being used for piracy and to release the suspects with one boat and enough fuel to reach the coast (for a typical case see, e.g. EU NAVFOR 2010b).

Beyond the fairly standard procedures of challenging the credibility and substantivity of evidence and testimonies, the defense have principally taken two lines of argumentation that may be said to be particular to crime of piracy (Interview, Mosi). That (a) the suspects were mistaken for pirates while actually engaging in some other activity. This line has a number of variations, quite interesting in themselves; many have claimed to have been wrongly apprehended fishermen (No. 1695, MV Nepheli, 2010), while in other cases the defendants have openly stated that they were engaged in either human smuggling or arms trafficking (No. 1784, MV Anny Petrakis 2010a; 2010b). The second main line of defense (b) is to challenge the jurisdiction of the court. This too has its variations, with early cases seeking to challenge the Kenyan Penal Code's provisions for prosecuting the crime of piracy (Interview, Mosi),⁴² and in more recent cases raising issues such as the location of the incident (No. 1784 MV Amira, 2010),⁴³ or the evidentiary collection procedures (No. 1784, MV Anny Petrakis, 2010b).⁴⁴ It is interesting to note that although the juridical category of piracy has historically been defined as a non-political act performed for "private ends," a line of argumentation beginning from the question of the political has not been taken in any of the cases.

⁴² This was the line of argumentation taken by the defense in the first Kenyan piracy trial in 2006 (Criminal Case No. 434 of 2006), as well as in the appeal made against the ruling in this case. (see, archival source: "Judgment of the Honourable Magistrate F. Azangalala in the High Court of Kenya at Mombasa"—hereafter referred to as "Azangalala, 2009")

⁴³ In the MV Amira case the defense alleged that evidence was not sufficient to establish the exact location of the attack on the vessel. Plausibly, the incident may have occurred within the 200 nautical mile Exclusive Economic Zone of Yemen (EEZ), thus the defense argued that: "it is a recipe for chaos if this Court were to move into territories that are in the jurisdiction of the Republic of Yemen," (No. 1784 MV Amira, 2010).

⁴⁴ An important question that was raised in a number of cases was under what condition the Court could admit evidence collected by authorities other than the Kenyan Police, and the ramifications of this question on the jurisdiction of the Court (Interview, Milner; No. 1784, MV Anny Petrakis 2010a).

Although the legal definition of piracy varies between different national legal codes and between the relevant texts of International Maritime Law, one of the common elements shared by most modern legal definitions is the qualification that piracy is act committed for “private ends,” (see, e.g. UNCLOS Article 101.a). This clause is generally understood to have been held over from an era wherein the principle legal difference between *piracy* and *privateering* was whether an act of maritime depredation was committed by individuals acting with the consent of a state (privateering) or without it (piracy), (Heller-Roazen, 2009). In this classificatory division privateering was defined as a *political act*—as “waging a public war by private means”—whereas piracy was defined as an *act for private ends*. Despite the obsolescence of the institution of privateering, the legal definition of piracy seems to have preserved this juridical dichotomy.

Given the explicitly political nature of some of the major “pirate groups” in Somalia it seemed that a compelling line of defense could be constructed around the argument that the acts of depredation are not acts of piracy due to their political nature. Indeed an important structural analogy with the definition of privateering could be drawn: that in the absence of a normal maritime force some groups have (at least nominally) claimed the role of an informal *national* naval force and coast guard. The protection of Somali national resources (fisheries, territorial waters, Exclusive Economic Zone) by private vessels is arguably a form of waging a public war by private means. Certainly not all of the *badaadinta badah* who are currently hijacking ships around the Horn of Africa are the noble minded and selfless servants of public good that their names might suggest.

Indeed the supposed connections to international crime rings testify as much. Nonetheless, the very possibility that some of the apprehended are members of groups whose stated purpose is both political and public seems to warrant the possibility of an argument centered on the “private ends” clause in the definition of piracy.

As per why this line of argumentation has not been taken, an EU NAVFOR legal adviser in Mombasa offered a plausible explanation: that an act of maritime violence committed for political ends would categorically be defined as an act of terrorism (Conversation, Lazard). This explanation indeed resonated with much recent scholarship that has emphasized the “private ends” clause in piracy law as what differentiates it in contemporary legal terms from “maritime terrorism” whose aims are considered to be specifically *political* (Ronzetti, 1990; Lorenz, 2007). Thus the argument that Somali piracy is political in its aims is apparently foreclosed to the defense by the threat of opening up the more serious charge of terrorism.

The emergence of “terrorism” as an important category in the legal discourse on maritime violence has thus arguably precipitated a fundamental restructuring of the system of objects which constitute the legal discourse of piracy. As terrorism has displaced privateering as the second term in the dichotomy, the legal space of the *political act* of is once occupied by a political category (privateering) is now occupied by a criminal category (terrorism).

What is at stake in this juridification of the political as terrorism has import well beyond a mere definitional dispute of what constitutes an act of

piracy. Through this juridification what is foreclosed is the very possibility of discussing and judging the nuance of political claims, political motivations, political actors, and by extension the range of social, economic, and historical factors that may lead to politicization. These factors, which are certainly constitutive for any understanding of the phenomenon, are evacuated from the discussion of piracy by their displacement into the category of terrorism. As such, terrorism becomes the idiom through which the legal discourse on piracy precludes the emergence of the political.

III. Legitimacy and Jurisdiction in Mombasa

It is likely due to the fact that many avenues for raising questions of legitimacy seem to be foreclosed to pirate suspect that the practice of challenging the jurisdiction of the Court has been taken as a strategy of the Defense in all of the Kenyan trials to date (Interview, Mosi).⁴⁵ The issue of jurisdiction is at once a legal problem of a technical nature, as well as an expression of the social relation between the subjects of law and the State. As a technical problem, it is quite simply the question of the conditions under which a crime committed outside the territorial boundaries of a state may be tried under the auspices of its domestic penal code. As a social problem, on the other hand, the issue of jurisdiction raises important pertaining to the relationship between the state and its subjects, by

⁴⁵ Kenyan law is a common law system wherein the rule of precedent guides subsequent rulings. On this issue of jurisdiction over the crime of piracy, however, only the Court of Appeals, Kenya's highest courts, would have the sufficient authority to settle the issue with finality. Contesting the jurisdiction of the lower Courts has thus been taken up in each of the piracy trials to date (Interview, Mosi).

extension questions of recognition, citizenship, and representation become central to the problem of legitimacy.

In 2006, in one of the first trials of suspected Somali pirates to take place in Kenya, ten suspects were tried and convicted of the crime of piracy and subsequently sentenced to seven years in prison. In 2008 an appeal was made to review the case on the basis that “the court lacked jurisdiction to try the case,” (Judgment, 2). Although the appeal was ultimately dismissed by the court, the judgment on this appeal has become one of the principle reference points for subsequent cases in which the issue of jurisdiction has been raised (Interview, Mosi). The judge reviewing the appeal, Mr. Azangalala, determined that the Magistrates Court in which the case had originally been tried indeed *did* have the jurisdiction to try the crime of piracy. Reaffirmed the initial ruling of the Principal Magistrate on the issue of jurisdiction, Mr. Azangala writes:

On the issue of jurisdiction, the Learned Principal Magistrate determined that she had the jurisdiction to hold the trial under the Penal Code which is in accord with International Law. She specifically held that piracy is “*a crime against mankind which lies beyond the protection of any state.*” (emphasis in the original, Azangalala, 2009: 5)

It is interesting to note that while the first assertion, namely that the Kenyan legal code has provisions within which the crime of piracy may be tried and that these provision are in accordance with International Law, should theoretically be a sufficient basis upon which to prove that the court indeed had jurisdiction to try the case (Gathii, 2009). The reference to “a crime against mankind,” invoking the old Latin formulation of *hostis humani generis* (literally, “enemy of the human species”), reveals a need to go beyond a mere technical proof of jurisdiction

within the confines of Kenyan Law. Rather the pronouncement appeals to external legal authority for confirmation of its legitimacy. The text continues:

Under [Section 69(1) and (3) of the Penal Code], the offense of piracy is triable and punishable in this country, There are no limitations under the Section. ... The Learned Principal Magistrate therefore clearly had jurisdiction under the Penal Code and the Criminal Procedural Code ... to try the appellants.

Even if the penal code had been silent on the offense of piracy, I am of the view that the Learned Principal Magistrate would have been guided by the United Nations Convention on the Law of the Sea which defines piracy in Articles 101.

Azangalala then quotes a long section of the Convention (UNCLOS), and cites another submission demonstrating that these articles had been both ratified and “domesticated” by Kenya.⁴⁶ He then continues:

I would go further and hold that even if the Convention had not been ratified and domesticated, the Learned Principal Magistrate was bound to apply international norms and instruments *since Kenya is a member of the civilized world and is not expected to act in contradiction to the expectations of member states of the United Nations*. (emphasis added, Azangalala, 2009)

There are two levels of juridical discourse at work here. At a first level of discourse, the judge must prove the legal and technical basis for the Court’s jurisdiction. As piracy occurs by definition outside the territorial boundaries of the state, applying a domestic legal code always requires the uneasy provision of extra-territorial jurisdiction. However on this issue UNCLOS and other international conventions are quite clear: in the case of piracy, these conventions recognize the right of the state to apply both extra-territorial jurisdiction and

⁴⁶ Domesticated is a term used to refer to the process whereby the domestic legal code is modified to conform to International Law. In the case of piracy law the Kenyan Penal Code seems to have only partially “domesticated” UNCLOS. Apart from this case in which the Magistrate seems to domesticate the international laws by decree there are indications that the Convention was only domesticated by a political process, namely ratifying the Convention. The actual text of the Penal Code’s provision on Piracy were not modified after the 1982 Convention.

universal jurisdiction. What is interesting is that the judge feels the need to go beyond mere citation of the Convention and provide a rational and moral legitimation of the judgment. This is the second level of juridical discourse within which these statements function. The reference to the civilized world and acting in accordance with the expectations of member states of the UN is less a matter of legality and more an expression of a political relation. Incidentally, it may also be read as a direct expression of the nexus within which piracy law arises historically. As an agreement between nation states to absorb within their own juridical systems a certain crime which take place beyond their sovereign territories, and thus over which none ought theoretically to have jurisdiction, modern piracy law is written into national codes but must constantly make appeals outward for its own legitimation.

A notable expression of this is found in the very formulation of piracy law within the Kenyan penal code.⁴⁷ Section 69, reads:

69. (1) Any person, who in territorial waters or upon the high seas, commits any act of piracy *jure gentium* is guilty of the offense of piracy.⁴⁸

⁴⁷ The relevant section itself falls within Chapter Eight of the Penal Code, on “Offenses affecting Relations with Foreign States and External Tranquility.” But, beyond the dubious notion of external tranquility which was raised numerous times within the hearings, and seemed to hold an esteemed place within the arguments about jurisdiction, it is interesting to note the titles of the other two sections of this chapter: (a) *The Defamation of Foreign Princes*; (b) *Foreign Enlistment*.” This is but one of the symptomatic expressions of the era (and aura) of regulation of the interstate system from whence piracy law comes down to us.

⁴⁸ see, Penal Code, Chapter 8, Sec 69(1). ([www.kenyapolice.go.ke/resources/Penal_Code_\(cap_63\).pdf](http://www.kenyapolice.go.ke/resources/Penal_Code_(cap_63).pdf))

The key term is clearly piracy *jure gentium*, Latin for “by the law of nations.”⁴⁹ As we know, the concept of “the law of nations” comes down to us from the Romans, who divided law into three constituent parts: *natural law*, pertaining to the order of nature; *civil law*, which regulates relations within a society, and *the law of nations* pertaining to the rule which govern the relationship between nations (Heller-Roazen, 2009). Insofar as piracy is construed within the sphere of the latter, it becomes an issue of the regulation of inter-national relations. With the subsequent emergence of the Westphalian system, the realm of *civil law* was absorbed into the domestic legal systems of sovereign states, while modern International Law was erected on the foundations of *the law of nations*. What is interesting to note here is the precarious position of the juridical construction of piracy within the double-bind of Westphalian Law. As both a category of *civil law* (written into the domestic legal codes of nations) and simultaneously defined against the external sphere of the *jure gentium* (finding its authoritative formulation in International Maritime Law), piracy is codified as an issue of both national and international concern.

This dual position of piracy law also raises some interesting problems with respect to legitimacy and recognition. Arguably, the structural requirements of legitimate domination are quite different in the fields of national and international law. As Weber has argued, legitimate domination based on the *rational grounds*

⁴⁹ It is interesting to note that there is no definition of piracy *jure gentium* within the laws of Kenya. Thus in every case the very definition of the crime demands external references, usually in the form of citing authoritative legal texts. The Kenyan definition of piracy is interesting in this respect, as UNCLOS (1982) and the other relevant recent conventions give a self-contained definition of piracy; defining piracy through the underdetermined notion of *jure gentium* dates back to an early era of piracy law.

of legality ultimately “rest on the belief in the legality,” i.e. its recognition by the subjects of the law (Weber, 1999: 125). Thus, if the ground of legitimacy in the realm of *civil law* is the recognition of this legality by the *civis* (or “citizens”), the legitimacy of the law of nations on the other hand must be based on the recognition of its legality by states. The tension that arises with “piracy” is that, though it categorically partakes in both of these structures, the requirements for legitimacy in the domain of *civil law* is problematized by the fact that the pirate is by definition not a *citizen* of the state whose laws are being applied.

Arguably it is this tension which the Kenyan Penal Code seeks to resolve by formulating piracy as a crime *jure gentium*. If defined primarily in relation to the *law of nations*, the question of legitimacy seems to bypass the pirate altogether by privileging the relation between states over the relation between the nation-state and its citizens. As a crime against the law of nations, piracy law arguably takes on a super-national regulatory function in the inter-state system. Formulated as a crime *jure gentium*, piracy becomes an offense against the international order itself. Universal Jurisdiction then emerges as a legal device through which individual nation-states could absorb within the fold of their national legal and punitive frameworks a crime that fell outside of their respect territorial sovereignties. This universal jurisdiction to try piracy in turn is based upon the recognition of this jurisdiction by external nations. In this way, Universal Jurisdiction is a pact between nations that performs a social disconnect between the state and the subjects of its Laws.

The question of legitimacy thus finds no respite in the challenging the jurisdiction of the court. As the pirate is bypassed as a legitimate citizen from whom such law would need recognition, the provision of universal jurisdiction is constructed on the basis of the mutual recognition between states. Challenging the legitimacy of the Courts thus seems to uncover the historical disjuncture of between Law and its Subjects at the heart of “piracy” as it (re-)emerged as a modern legal category in the era of European state-formation.

IV. Hostis Humani Generis

The Greek etymology and (alleged) Roman legal foundations notwithstanding, the concept of piracy was neither historically stable in its meaning nor was it in continual use.⁵⁰ Particularly important in this regard is that the term has not always been a predominant category through which Europeans interpreted acts of maritime predation. As Alfred Rubin (1998) notes in *The Law of Piracy*:

For a thousand years after Justinian [d.565] the word ‘pirate’ appears to have remained buried in the Greek and Latin texts familiar to learned monks. ... Norse raiders of the 9th and 11th centuries AD following a career that seems analogous to the ‘pirates’ of the time of Cicero or Pompey were not usually called ‘pirates’ in English or Latin in contemporary documents, but were called by the names they gave themselves “Danes” or “Vikings.” (Rubin, 1998: 13)⁵¹

This terminological lapse is of course absent from popular discourse, in which we hear that “piracy has been around since the beginning of recorded history,” (see, e.g. Sörenson, 2008: 26). On the other hand political discourse finds a fortuitous

⁵⁰ In Ancient Greek: πειρατής (*peirates*) from *πειρα*: to attack, to attempt, to try.

⁵¹ Quoted taken from Gene Chenoweth (1999), page 109.

ally in such an ahistorical notion: when framed as a primordial crime piracy becomes the legitimate object of forceful suppression. This dehistoricization of piracy ultimately finds its way into juridical discourse by way of the concept *hostis humani generis*, or “enemy of the human species.”

The term however is of dubious provenance. As Daniel Heller-Roazen (2009) has pointed out, “the term, although Latin, ... could not be clearly traced to any single ancient source,” (Heller-Roazen, 2009: 23). Roman jurists rather formulated a definition of the pirate as *communis hostis omnium*, or “the common enemy of all.” The philosophical difference between these two categories already indicates a substantive break between ancient and modern treatment of piracy.

The figure of the pirate emerges in Cicero’s *De officiis*, a work devoted to the obligations and proper conduct of Roman citizens, as an important category defining the outer limit of the ethical order (Heller-Roazen, 2009: 16). Heller-Roazen has argued convincingly that Cicero used the category of the pirate, as “the common enemy of all,” to give meaning and cohesion to the ethical order by theorizing a figure who must by logical necessity stand beyond limits of social obligation. As the work (*De officiis*) moves from obligations for close kin outwards towards the obligations that the state must accord to lawful enemies, the figure of the pirate emerges as the enemy beyond the law. In Cicero’s words, “a pirate is not included in the number of lawful enemies, but is the common enemy of all,” (quoted in Heller-Roazen, 2009: 16).

This definition would have immediate consequences for the legal order. Defined as falling outside of the number of lawful enemies, the pirate for Cicero “cannot be considered a criminal, because he does not belong to the city state, yet he also cannot be counted among the foreign opponents of war, since he cannot be included in the number of lawful enemies,” (16). In this formulation piracy cannot be subsumed into either *civil law* or into *the law of nations* for the figure of the pirate himself stands outside of both social orders. Thus the philosophical origins of *communis hostis omnium* seem to stand in direct opposition to the modern definition of piracy which seemingly seeks to subsume the figure into both. By practical necessity—as pirates increasingly threatened the trade routes of the Roman Republic—Roman law ultimately did come to treat piracy within the laws of war (proper to the sphere of *the law of nations*). Arguably, this had a practical function in enabling a particular type of state response to piracy: by treating pirates as lawful foreign enemies, Pompey was able to pursue a naval campaign for the suppression of piracy in the Mediterranean based on a policy of accepting the peaceful surrender of legitimate foreign foes.

The modern legal treatment of piracy took precisely the opposite approach. As we learn from Chenoweth and Rubin, “in Roman usage ‘piracy’ was constructed within laws of warfare, while the British placed ‘pirates’ under English municipal criminal law and procedures of the Admiralty courts,” (Chenoweth, 1999: 109). The paramount difference between these being the rules governing the type force which a state may subsequently use for the suppression of piracy. Subsumed into the laws of war, the pirate is treated as a foreign enemy

against whom naval force is deployed; while the corresponding force for the state response to a crime is rather the police. By Rubin's analysis this simple legal and definitional fact had profound consequences during the British colonial wars, as the suppression of piracy was "rationalized as a police action to enforce the law without recourse to war. It was an assumption of legal authority by those whose conception of law made it indistinguishable from a mere policy to use physical force," (in Chenoweth, 2009: 110). This extension of police force beyond territorial delimitation of sovereign power is fundamental to modern relationship between piracy and the state. Specifically, the right of all states to apply police force in the regulation of extra-territorial spaces emerges as a type of force constitutive of the inter-state system.

We should understand the emergence of this right—the right of states to use police force to suppress "piracy"—in light of the relationship between piracy and privateering. As we have seen, the two categories were mutually constitutive in an earlier era of piracy law. Defined as an act committed for "private ends" piracy was pitted in opposition to privateering whose aims were immediately political. This delimitation of the two legal concepts was arguably constitutive for the emergence of the inter-state state system. Privateering, on the one hand, became a principal mechanism through which modern nation states could summon a large mercenary naval force by simple issuance of formal letters:

In an epoch in which state navies, in any modern sense of the term, did not exist, this much was, to a certain degree inevitable. Private vessels manned by seafarers who worked for gain were the classic instruments of war at sea, and no sovereign power could forego them. (Heller-Roazen, 83)

As one of the principle means by which states could wage maritime warfare, privateering became a paramount institution in the era of colonial expansion. Piracy, on the other hand, became the term of choice for criminalizing foreign subjects who challenged colonial power at sea (Chenoweth, 1999); interestingly it also functioned as a mechanism whereby states sought to control their own informal naval powers in between periods of formal warfare. Thus, often the very same people who were celebrated as heroic servants of the nation in times of war found themselves vilified as pirates when they continued the very same acts of plundering foreign trade in years of peace.

At the center of institution of privateering stands the “letter of marque” whereby a sovereign state *authorizes* the use violence at sea in its name. We find in Heller-Roazen’s work a historical analysis of the emergence of the “letter of marque” as a legal entity in the debates of early modern jurists. Whatever their disagreements about the conditions of implementing these letters:

[t]o the question of the point at which illegitimate plundering at sea could be told apart from legitimate depredation, ... these various authorities furnished one answer: *‘it is not the act that renders itself legitimate, nor the actor, but the authorization.’* (emphasis added, Heller-Roazen, 2009: 81)

Act of piracy and acts of privateering were thus recognized to be materially indistinguishable in terms of the actual practice. What constituted the difference between the two was rather a distinction of legitimacy conferred purely by symbolic power. Only by authorization of a sovereign state, were acts of plunder to be considered legitimate, and as such they were to be formally considered as acts of war. Those who acted without proper consent and authorization were to be considered illegitimate plunderers and would be defined as pirates. This

distinction allows states a great amount of leverage in controlling their mercenary fleets. By co-opting private expressions of maritime violence into the fold of the national interests (“waging a public war by private means”) states were able to extend their monopolies on *legitimizing* violence over the expanses of long distance trade routes. By criminalizing piracy as an illegitimate use of violence, states in turn reserved for themselves the right to repress this crime with recourse to police force.

When the Treaty of Utrecht ended the wars of Spanish succession in 1713 the peace was accompanied by the *international* cancellations of the letters of marque for the privateers of the English, French and Spanish powers, putting thousands of people out of *legitimate* employment (Konstam, 2008). While privateering had been an effective tool for the regulation of maritime violence in times of war, the peace presented new problems:

Peace revealed the full extent of the problem that Britain had created for herself. When the war ended, all outstanding letters of marque were immediately cancelled. As many as 6,000 former privateersmen – all trained to prey on merchant shipping – found themselves unemployed. (Konstam, 2008: 152)

Although some of these were able to find gainful employment in Britain’s expanding merchant fleet, the industry could hardly absorb the influx of newly freed labor power (Konstam, 2008). For the most part those who were abandoned by their states, simply continued to ply their trade, and became criminalized as pirates. Interestingly, many of these erstwhile privateers, whether out of true patriotism or mere fear of suppression, were often quite concerned with their previous allegiances: “[i]n other words, they turned to piracy, but tried covering

their actions by maintaining a fiction of legitimacy ... limit[ing] their attacks to their old French and Spanish enemies,” (Konstam, 2008:153). This fictional legitimacy however did not deter the criminalization of these figures and the violent suppression of acts now labeled as piracy. Without the blessing conferred by the state, individual actors, regardless of their political inclination, simply lacked the symbolic power to produce recognized legitimacy.

The formal agreements to end hostilities at Utrecht were seemingly accompanied by informal entendres that the suppression of the piracy in the region would be to the benefit of all the imperial powers. Among other provision, Utrecht provided the formal recognition of the British colonies by the Spanish Crown. And in turn the British Government passed a number of new piracy laws expanding the jurisdiction of its colonies to try the crime of piracy (Lesson, forthcoming). Thus the very juridical categories of piracy and privateering provided nations with the power both to summon naval forces in times of war and to suppress them through police force in times of peace. A “dialectic of law and dis/order” (Comaroff & Comaroff, 2006) that would continue up through to the Treaty of Paris in 1856 which finally put an end to the institution of privateering.

In this sense piracy/privateering may be viewed as a dyadic juridical institution central to the regulation of violence, trade and circulation over the maritime interstices of international system during the era of the emergence of the European nation-state. As such piracy/privateering also came to function as one of the principle mechanism for regulating a social crises produced reserve armies (of military labor) when hostilities between states would end and the now redundant

forces became surplus populations. In this light the *Hostis Humani Generis* can perhaps more properly be conceived as the historical enemy of modern international system, rather than an ahistorical enemy of the human species.

4. Postscript on the Suppression of Politics

“The UNDP considers police work to be a service to the community.”

-UNDP, Rule of Law & Security
Program in Somalia

In both its contemporary and early modern guises the suppression of piracy has been constructed on the logic of the police. With the colonial expansion of modern world system from the 16th century onwards, the regulation of long distance trade routes became paramount to the consolidation of state-power. Although *war* remained the privileged the idiom through which direct military conflicts between capitalist powers were expressed, *police* came to embody the principle of social regulation through the application of force without recourse to war. Domestically this was expressed through the advent of the classic modern institutions of policing (Foucault, 2004). Internationally, the extension of this principle over the maritime expanses of the inter-state system was enabled by international laws that criminalized any use of violence unsanctioned by state authority. With this international regulation of legitimate violence came the emergence of the principle of universal jurisdiction, and with it a legal regime for the international policing of the world system. At the heart of this new legal regime was the juridical concept of the piracy.

The contemporary suppression of piracy is built on the same principle. On the one hand this can be seen in Operation Atlanta which resembles more closely a policing mission than a naval operation. Although technically defined as a naval

operation—and indeed the first joint naval operation of the European Union—neither the EU itself nor any of its members have declared war against a lawful enemy. As such it seems to resemble that application of police force described by Rubin (1998) as enforcing the law without recourse to war. It was thus interesting for me to encounter the same conclusion, albeit arrived at by other means, expressed by EU NAVFOR and UNODC personnel in Mombasa and Nairobi: that “Operation Atlanta is essentially a policing and law enforcement mission,” (Interview, Buhler). For, among other reasons, “Operation Atlanta has no ‘end state’ but only an ‘end date’ [therefore] it does not conform to a standard military operation,” (Conversation, Lazard). Of course this assessment could also be extended to all of the other “naval” operations off the Horn of Africa, none of which have made declarations of war.

On the other hand there is arguably a deeper sense in which counter-piracy may be usefully thought of as a policing operation. Beyond mere suppression, the logic of policing is always also about the regulation of the social and the management of populations (Foucault, 2004; Rancière, 2001). According to Rancière (2004), “[t]he essence of the police, ... is not repression but rather a certain distribution of the sensible that precludes the emergence of politics,” (Rancière, 2004: 89). Arguably, it is precisely such an expanded function of *the police* that is at work throughout the various apparatuses and state structures of counter-piracy. Beyond the mere suppression of piracy, the primary purpose of the “integrated strategy” may be understood as a policing activity which seeks to

maintain both a political economic (circulation of capital) and a symbolic order (social and criminal categories).

Within the legal apparatus we may rightly apprehend juridical discourse and juridical practices as themselves incarnating this policing function. Behind the juridical discourse of piracy we find a set of symbolic struggles over naming the *act*—a naming which, through the force of law, imposes a criminal category that often occludes and indeed *precludes* the emergence of politics. Similarly, through juridical practice, the avenues open to the accused in their defense against the accusation of *piracy* are structured such that political considerations of the *act* cannot be discussed. Indeed the very legal space for the consideration of a political act of maritime violence has been subsumed by the category of terrorism. The very space for challenging the legitimacy of this symbolic order is indeed precluded by the structure of the juridical field itself. When ultimately this challenge of legitimacy is funneled into the question of jurisdiction it is confronted with precisely the historical relations between state-powers that originally conspired against it. Against Universal Jurisdiction and “the civilized world” the pirate’s challenge of legitimacy is effectively neutralized and silenced. But of course, “it is structured that way.”

At the level of political and military domination, we may observe that the new state structures *off* the Horn of Africa have as a primary function the policing regulation, and containment of the social dynamics *on* the Horn of Africa. The subsumption of juridical (Kenyan Courts), penitentiary (Kenyan & Somali Prisons), and bureaucratic (TFG’s signatory powers) *dispositifs* into the broader

counter-piracy efforts is performed under the pretext of security. Penitentiary disciplining and juridical process are thus integrated into the broader objectives of the security state. This of course is in line with Foucault's (2004) observation that: "security is a way of making the armatures of law and discipline function in addition to the specific mechanisms of security," (10).

Finally, through the idioms of security and state failure, the "international community" seeks to legitimate interventions into the territory and population of Somalia, and by the same token seeks to impose certain principles of interpretation. Or, in Rancière's terms, a certain *distribution of the sensible*. The very category of state failure may indeed be seen as a partitioning of the sensible that seeks to preclude the emergence of politics. Firstly, through the discourse of state failure, internal political movements are de-legitimized and the military interventions which seek to depose them are de-politicized. Secondly, the concept of state failure seems to veil and dissimulate broader process of state structural transformation at work on and around the failed state by erecting a *fantasy* of a long transition back toward the purported normalcy of the nation-state.

Both *piracy* and *state failure* thereby suppress the political content of the social phenomena with which they are concerned. This depoliticization takes the form of a dehistoricized criminal category and the resurrection of a normative-ideal of socio-political organization, respectively. It has been one of the primary purposes of this paper to expose the social, political and historical processes and relations beneath these categories. After all, both the Law and the State are at their base the expressions of social relations (Poulantzas, 1980; Jessop, 1990).

Finally, it perhaps only in this last sense that we might be able to understand piracy as a symptom. Beyond the cheap reduction of piracy to an epidemiological metaphor of disease and “pestiferousness,” there is perhaps a deeper meaning to symptomatic reading of piracy. As Žižek (1994) has argued, ideology itself is often finds its expression as a symptom—though not a symptom of disease, but rather as a symptom of a social relation. Thus reframed, the question becomes: of what social relation is piracy a symptom? On the one hand, this paper has sought to provide an answer to this question implicitly through the analysis of the social relations and power relations constitutive of the juridical field and state processes. As such, “piracy” as a juridical concept may in a meaningful sense be considered a symptom of the social relationship behind the process of naming—*piracy as a symptom of the force of law*. On the other hand, as it becomes imbricated in the discourses of intervention and state-building “piracy” becomes a constitutive element enabling state structural transformation. In this respect it is interesting to note Heller-Roazen’s (2009) point about the intimate historical relationship between “piracy and polity.” At the present historical conjuncture we might express this relationship as: *piracy as a symptom of state rescaling*. But ultimately it seems that the relationship constitutive of both Law and State power in their respective treatment of piracy, is most aptly expressed by Rancière’s expanded notion of the police. As the attempt to preclude the emergence of politics, *the political and juridical discourses of piracy are always symptoms of the police*.

Appendix 1: Participants of the Contact Group on Piracy off the Coast of Somalia*

45 Countries

Australia
 Austria
 Bahamas
 Belgium
 Canada
 China
 Cyprus
 Czech Republic
 Denmark
 Djibouti
 Egypt
 Ethiopia
 France
 Germany
 Greece
 India
 Indonesia
 Italy
 Japan
 Kenya
 Republic of Korea
 Liberia
 Malaysia
 The Marshall Islands
 Mexico
 Morocco
 The Netherlands
 Nigeria
 Norway
 Oman
 Panama
 Portugal
 Russia
 Saudi Arabia
 Seychelles
 Somalia
 Spain
 Sweden
 Turkey
 United Arab Emirates

United Kingdom of Great Britain and
 Northern Ireland
 Ukraine
 United States of America
 Yemen

7 International Organizations

African Union
 European Union
 International Maritime Organization (IMO)
 International Criminal Police Organization
 (INTERPOL)
 League of Arab States
 North Atlantic Treaty Organization (NATO)
 United Nations

2 Observers

Baltic and International Maritime Council
 (BIMCO)
 International Association of Independent
 Tanker Owners (INTERTANKO)

* Although the Contact Group currently has 50 members, this list of 45 participants is the most up to date list publicly available. As such it represents the composition of the Group as of its Fourth Plenary Meeting in New York, 10 September 2009, (see, Bureau of Political and Military Affairs, 2009b).

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