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The Pirates of Somalia: Opportunistic Predators or Environmental Prey?

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THE PIRATES OF SOMALIA: OPPORTUNISTIC PREDATORS OR ENVIRONMENTAL PREY?

DR. RANEE KHOOSHIE LAL PANJABI*

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INTRODUCTION

One of the most significant lessons that this planet has learned from its twentieth-century venture into globalization is the importance of not leaving any nation or population behind in the frantic race toward progress, prosperity, and plenty. Globalization must benefit everyone or the entire world will suffer the consequences when any exploited and neglected group of people insists on its right to a decent economic lifestyle. The world is

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I dedicate this article to my mother, Lata K. Panjabi, poet, author, artist, musician, diplomat, and the best Mom in the world. I also dedicate this to my wonderful father Khooshie Lal Panjabi, author, journalist, diplomat, and Seeker after Truth. To my dear pals Lenny and Gugi who suggested this subject, I hope I have fulfilled your expectations.

now so inter-connected by its communication networks and air, road, and sea travel routes that information is disseminated instantaneously across the planet. The result is that there are very few really remote areas left and populations have now acquired a universal consensus in terms of their rising expectations about a better life. Go to any part of the world today and people's goals are similar—sufficient food, a decent wage, a comfortable home, education for their children, and good health care are on almost everyone's wish list. The problem is that while globalization has undoubtedly made human beings across the planet more aware of each other and therefore more attuned to diverse cultures and to what constitutes a desirable way of life, it has also raised expectations to the point where lack of achievement breeds an acute sense of alienation and resentment. This resentment grows more acute when it becomes apparent that there are some fortunate souls who enjoy a comfortable, even luxurious life—virtual islands of prosperity surrounded by a sea of poverty, hunger, and misery. These disparities in the division of the global economic pie are now not as easily tolerated by those whose share is minuscule. Unfortunately, as the first decade of this new millennium comes to a close, we have not yet been able to close sufficiently the gap between the haves and have-nots, nor to alleviate the misery of those for whom getting something—anything—to eat is the main challenge of each day. In short, globalization has not yet reached the entire globe and therein lies the potential for all the political and economic threats of our time. The world today faces a dichotomy wherein there is a globalization of human expectations and aspirations but only local, insular pockets of affluence and political influence. Those disparities pose our biggest challenge and constitute the gravest threat for the so-called “First World”, which, until the recent recession, has enjoyed the highest standard of living ever achieved in human history.

One of the most significant cases to demonstrate the truth of the maxim that no people should be left behind is Somalia—an ancient land, now deprived for decades of any effective government; a failed state, prey to violent and oppressive marauders; a country where the one growth industry happens to be piracy and where environmental degradation has added to the misery and tragedy that mark everyday life. As Bruce Hickling, of the International Rescue Committee stated, “[t]he piracy epidemic is just one symptom of the appalling humanitarian conditions and chronic instability in Somalia.”¹ Somalia's long-simmering political

¹ Int'l Rescue Comm., Focus on Piracy Must Not Divert Attention from Massive Humanitarian Needs of Somalis, Apr. 22, 2009, <http://www.theirc.org/news/focus-piracy-must-not-divert-attention-massive-humanitarian-needs-somalia-irc-media-release-4468>.

and economic crisis resulted in anarchy, social breakdown, and acute misery for its civilian population.² The meltdown of law and order institutions in that state gave the green light for infamous bands of Somali pirates to hijack and loot foreign ships, supertankers, yachts, container vessels, and sailboats traversing the very popular ocean trade route between Europe and the West that goes past Somalia's very long coastline in the Horn of Africa.³ Most significantly, the pirates have attacked American shipping, an action guaranteed to bring their story to the forefront of world news.⁴ Where piracy is concerned, "anyone can be a target."⁵

By hunting international prey, the pirates brought the political crisis prevailing in their homeland back into the consciousness of the world.⁶ Ironically, by globalizing their own predatory crimes, the pirates of Somalia may have indirectly publicized internationally the terrible combination of misrule, oppression, environmental pollution, and economic collapse with attendant poverty and hunger that afflicts the lives of millions of Somalis.

By most accounts, the Somali pirates have been, by and large, very successful at their infamous venture.⁷ As Jeffrey Gettleman commented: "In Somalia, it seems, crime does pay. Actually, it is one of the few industries that does."⁸ International piracy, by one estimate, costs the global economy approximately \$10 billion in losses per year.⁹ The International Maritime Bureau, which set up a Piracy Reporting Centre in 1992,¹⁰ estimated that there were approximately 111 recorded attacks in the waters off the Horn of Africa in 2008, a figure that doubled the number of attacks

² See *infra* Part I.B–D.

³ See *infra* Part I.B–D.

⁴ See, e.g., *Pirates Threaten Americans; France Fights Back*, MSNBC.COM, Apr. 16, 2009, <http://www.msnbc.msn.com/id/30204891>.

⁵ Posting of David Bezmozgis to The Afterword, An Interview With Daniel Sekulich, Author of Terror on the Seas, <http://network.nationalpost.com/np/blogs/afterword/archive/2009/05/16/david-bezmozgis-an-interview-with-daniel-sekulich-author-of-terror-on-the-seas.aspx> (May 16, 2009, 10:00 EST) [hereinafter Bezmozgis].

⁶ See Roger Middleton, *Piracy Symptom of Bigger Problem*, BBC NEWS, Apr. 15, 2009, <http://news.bbc.co.uk/2/hi/africa/8001183.stm>.

⁷ See, e.g., Douglas A. McIntyre, *Somali Pirates are Getting Rich: A Look at the Profit Margins*, TIME.COM, Apr. 15, 2009, <http://www.time.com/time/business/article/0,8599,1891386,00.html>.

⁸ Jeffrey Gettleman, *Somalia's Pirates Flourish in a Lawless Nation*, N.Y. TIMES, Oct. 30, 2008, at A1, available at <http://www.nytimes.com/2008/10/31/world/africa/31pirates.html>.

⁹ Bezmozgis, *supra* note 5.

¹⁰ Donald R. Rothwell, *Maritime Piracy and International Law*, CRIMES OF WAR PROJECT, Feb. 24, 2009, <http://www.crimesofwar.org/onnews/news-piracy.html>.

in 2007.¹¹ Because many ships do not bother to record or document minor incidents, the actual number of attempted attacks and thefts may be considerably higher.¹² Estimates vary, depending on how one defines a pirate attack, but between January and September of 2009, an estimated 156 attacks had occurred.¹³ The Piracy Reporting Centre reported a total of 306 piracy attacks worldwide in the first nine months of 2009; during these attacks, ships were boarded in 114 instances, 661 crew members were taken hostage, 12 were kidnapped, and 6 were killed.¹⁴

Extensive research into this subject makes it amply clear that this world has to either share the benefits of globalization more equitably or suffer each time a band of marauders decides to help itself to the spoils. The people on this planet are becoming less inclined to passively accept and tolerate huge economic inequity and obvious injustice. Those who live in poverty see no particular reason why their lives should be doomed to endless misery. It is no longer possible, as it was in the past, for established political and religious institutions to convince them that God willed it thus or that certain aristocratic sectors are just naturally destined for economic benefit while they are destined for lifelong poverty. Neither religion, nor birth, nor Fate are widely acceptable as justification for such serious economic inequity. The economically deprived are more than ever inclined to seize any opportunity to enrich themselves. The ethics or morality of their actions to seize what wealth they can appear to give way to the expedient joy of having the wherewithal to live as they have dreamed of living. Where we allow egregious poverty to exist, we imperil not just the lives of those who live through that bleak existence but ultimately ourselves as well. Somalia has been frequently termed a 'failed state.'¹⁵ Perhaps, we should look inward—we in the far wealthier Western nations—and ask ourselves whether, in allowing the Somalias of the world

¹¹ LAUREN PLOCH ET AL., PIRACY OFF THE HORN OF AFRICA Summary (Congressional Research Service, Sep. 28, 2009), available at <http://www.fas.org/sgp/crs/row/R40528.pdf> [hereinafter PLOCH].

¹² See Christopher Torchia, *Pirate Attacks Go Unreported*, NEWS24.COM, Aug. 7, 2009, http://www.news24.com/Content/World/News/1073/a770b67c2166425f8e2945057160e3ff/08-07-2009-11-51/Pirate_attacks_go_unreported.

¹³ PLOCH, *supra* note 11, Summary.

¹⁴ Int'l Chamber of Commerce [ICC], *Unprecedented Increase in Somali Pirate Activity*, ICC COM. CRIME SERV., Oct. 21, 2009, http://www.icc-ccs.org/index.php?option=com_content&view=article&id=376:unprecedented-increase-in-somali-pirate-activity&catid=60:news&Itemid=51.

¹⁵ See, e.g., *The Failed State Index 2009*, FOREIGNPOLICY.COM, http://www.foreignpolicy.com/articles/2009/06/22/the_2009_failed_states_index (last visited Feb. 08, 2010).

to continue in their cycle of poverty and misery, we are not making this a 'failed world.'

It is clearly and essentially in our own self-interest to find a workable solution for the long-suffering Somali people.¹⁶ The prevalence of very successful piracy along a major world oceanic route has a direct impact upon every consumer in the West.¹⁷ Ninety percent of the world's trade by volume travels through the Gulf of Aden and the Suez Canal.¹⁸ By one estimate, approximately 20,000 ships traverse Somali waters annually.¹⁹ These vessels of all sizes carry oil, gas, and huge containers filled with every type of consumer product through this route.²⁰ As the wealthy world has dedicated itself to the development and enhancement of globalization, at the very least, the transformation of a key trade route into a pirate alley is self-defeating to that aim. By April 2009, the scope of the pirate alley extended over one million square miles in the Gulf of Aden and the Western parts of the vast Indian Ocean.²¹ Most serious of all was the danger posed by pirates to humanitarian food shipments destined for people in East Africa who are in dire need of these supplies.²²

There are few stories as compelling and as tragic as that of modern-day Somalia. A country once rich in resources, history and culture, today, Somalia struggles for bare survival.²³ Its lands and waters have fallen prey to extreme environmental degradation caused by internal and foreign polluters.²⁴ Its infrastructure is in ruins.²⁵ Violence afflicts its cities and villages.²⁶ Somalis who could, have fled, forming a significant diaspora scattered around the globe.²⁷ The majority of those who are stranded at

¹⁶ See PLOCH, *supra* note 11, at 17, 24.

¹⁷ See *id.* at 12.

¹⁸ Hopewell Radebe, *Africa: Economic, Political Aid 'Needed to End Piracy,'* BUS. DAY, Apr. 24, 2009, <http://allafrica.com/stories/printable/200904240054.html>.

¹⁹ *Nigeria: Piracy in Somali Waters*, DAILY TRUST, Apr. 24, 2009, <http://allafrica.com/stories/printable/200904240371.html>.

²⁰ See Radebe, *supra* note 18.

²¹ PLOCH, *supra* note 11, at 11.

²² See *id.* at 14.

²³ See SOMALIA: A COUNTRY STUDY 3, 45–53 (Helen Chapin Metz ed., Library of Congress, Federal Research Division 4th ed., 1993), available at <http://rs6.loc.gov/frd/cs/sotoc.html> [hereinafter SOMALIA COUNTRY STUDY].

²⁴ See *infra* Part II.

²⁵ See SOMALIA COUNTRY STUDY, *supra* note 23, at 117–18; see also *infra* Part I.B–D (for a discussion on the general collapse of Somalia).

²⁶ See *infra* note 109 and accompanying text.

²⁷ See SOMALIA COUNTRY STUDY, *supra* note 23, at 112–17; see also PLOCH, *supra* note 11, at 8 n.20.

home, particularly agrarian villagers, can only eke out a miserable living unless their young men take to piracy, which appears to be the most lucrative make-work project in that part of the world.²⁸ As Chris Albin-Lackey, Senior Africa Researcher at Human Rights Watch, commented, piracy is “a symptom of state collapse.”²⁹

Somalia provides an important case study of the nexus between environmental devastation and consequent criminal actions against international targets.³⁰ Although the piracy is entirely criminal and totally unjustifiable, it is understandable, given the political and economic background. Somalia also provides a case study of brazen violations of international law, both by the Somalis and by foreigners, who have taken advantage of the absence of effective government, to wreak environmental havoc on the weakened nation.³¹ Although the Somali pirates can be termed ‘predators,’ it must be appreciated that their country has suffered at the hands of predators from many nations who have polluted their waters with toxic and even nuclear waste and looted their oceans of fish.³²

The research establishes the need for international adherence to maritime and environmental law by all parties with respect to Somalia.³³ It also demonstrates the necessity for the world to assist Somalia to acquire political stability so that piracy and its attendant crimes can be brought under control.³⁴ In a world that is increasingly globalized, it is in every nation’s interest to ensure that there are no areas left behind or left out of the benefits of international trade and market economics. Given the severity of the world-wide economic recession that has tarnished the image of globalization, it is all the more important that we not neglect the poorest and least developed of nations, for their people are the most vulnerable. Roger Middleton, of the think tank Chatham House, aptly commented that “Somalia is one of the poorest, most violent, least stable countries anywhere on Earth.”³⁵ While such countries, including Somalia, may not be very significant in terms of generating vast global income, they can and have generated enormous mayhem by attacking the very symbols of

²⁸ See *infra* Part III.

²⁹ Ken Dilanian, *Chaos Onshore in Somalia is Driving Piracy Epidemic*, USA TODAY, Apr. 9, 2009, http://www.usatoday.com/news/world/2009-04-08-pirateinside_N.htm.

³⁰ See *infra* part II.

³¹ See *infra* part II.

³² See *infra* part II.

³³ See PLOCH, *supra* note 11, at 8, 17, 18.

³⁴ See *id.* at 35.

³⁵ Middleton, *supra* note 6.

globalization, the huge ships and tankers that sail past that coast.³⁶ World trade, without international safety and security on the oceans, poses too many unacceptable risks for the lives of sailors.³⁷ Arguably, by addressing the basic problems that plague Somalia, by providing alternate forms of ensuring a decent economic lifestyle, and by cleaning up the terrible environmental oceanic devastation caused by the dumping of toxic waste by foreigners, the world may ensure safe and secure shipping in those waters.³⁸ The old adage about “the butterfly that flaps its wings and ends up causing a hurricane on the other side of the world,” is apt in providing us with a realization that local actions can have global consequences.³⁹

I. THE SCENE

A. *International Law Definition of Piracy*

An old Greek proverb somewhat cynically states that “[w]here there is a sea, there are pirates.”⁴⁰ The proliferation of piracy in this new millennium threatens the entire interwoven network of global trade and ultimately imperils the world economy.⁴¹ In its present recessionary state, the world can hardly afford the added burden of the human and financial costs of piracy.⁴² Nor can the world ignore this problem or neglect those countries, like Somalia, where anarchy, two decades of conflict, and ecological damage on a massive scale have given rise to piracy as the ultimate ‘make-work’ program.⁴³ There can be no doubt that the major trading nations of the world have not equipped themselves to deal with this

³⁶ *See id.*

³⁷ *See supra* notes 11–14 and accompanying text.

³⁸ *See, e.g.*, PLOCH, *supra* note 11, at 35–36.

³⁹ Alex Perry, *Analysis: To Beat Somalia’s Pirates, Fix Their Country*, TIME, Dec. 15, 2008, <http://www.time.com/time/world/article/0,8599,1866361,00.html>.

⁴⁰ John C.K. Daly, *Somalia Pirates of the Gulf*, INT’L RELATIONS AND SEC. NETWORK—SEC. WATCH, Mar. 12, 2009, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?id=97585&lng=en>.

⁴¹ *See* U.S. DEP’T OF TRANSP. MAR. ADMIN., ECONOMIC IMPACT OF PIRACY IN THE GULF OF ADEN ON GLOBAL TRADE (Dec. 2008), http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf; *see also* PLOCH, *supra* note 11, at 12; *see also* James G. Stavridis, *Sailing Across the Bridge*, 135 PROCEEDINGS MAGAZINE 1280 (2009), available at http://www.usni.org/magazines/proceedings/story.asp?STORY_ID=2050.

⁴² *See* PLOCH, *supra* note 11, at 24; Editorial, *Horn of Africa Piracy Wars Mask Wider Struggle*, BUS. MONITOR INT’L, Nov. 19, 2008, <http://www.riskwatchdog.com/2008/11/19/horn-of-africa-piracy-wars-mask-wider-struggle>.

⁴³ *See* PLOCH, *supra* note 11, at 8–9.

phenomenon with sufficient vigor or with any long-term solutions in mind.⁴⁴ Thus far, the initiative has been taken by the pirates, while the ship owners, their governments, and the United Nations have been largely reactive in approach.⁴⁵

Until the entire global mindset changes to some rational and all-encompassing solutions that address piracy, poverty, environmental degradation, and human rights violations in tandem, piracy will continue to plague the ships sailing the oceans on this planet.⁴⁶ "Piracy is going to get worse, because it's so easy," predicted Eric Ellen, Executive Director of the Commercial Crime Services of the International Maritime Bureau ("I.M.B.").⁴⁷ That forecast, made in 1997, has unfortunately turned out to be accurate.⁴⁸ Now, twelve years later, the world's approaches are still ambivalent and hesitant, and the countries where piracy originates are in worse economic shape.

International law does provide the world with an effective basic formula for understanding the problem of piracy.⁴⁹ The comprehensive United Nations Convention on the Law of the Sea ("UNCLOS") provides the following definition of piracy in Article 101:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft,
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

⁴⁴ See, e.g., Posting of Galrahn to Information Dissemination, Observing the Obama Administration Somali Piracy Policy, <http://www.informationdissemination.net/2009/04/observing-obama-administration-somali.html> (Apr. 10, 2009, 01:00).

⁴⁵ See PLOCH, *supra* note 11, at 18–24.

⁴⁶ See, e.g., Middleton, *supra* note 6.

⁴⁷ Helen Gibson, *High Seas: A Plague of Pirates, Modern Buccaneers with Machine Guns Instead of Cutlasses Are Once Again the Scourge of the Oceans*, TIME, Aug. 18, 1997, <http://home.wanadoo.nl/m.bruyneel/archive/modern/plague.htm>.

⁴⁸ See PLOCH, *supra* note 11, at 4.

⁴⁹ See generally United Nations Convention on the Law of the Sea [UNCLOS], Dec. 10, 1982, 1833 U.N.T.S. 397.

- (b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁵⁰

The extensive research undertaken for this article explores piracy committed by Somalis against the global trading community as well as predatory activities committed by individuals from many nations against Somalia. If the word “depredation,” as used in Article 101(a) above, is taken in its usual sense to refer to pillage and plunder, then this tragic saga about Somalia concerns two types of piracy. First, there is the well-known, highly publicized, and terrifying piracy committed by Somalis against foreign ships.⁵¹ Second, there is an equally threatening form of piracy—over-fishing without licenses or compensation and, worse, dumping of nuclear and other forms of toxic waste into Somali waters—being perpetrated by ships from a significant number of foreign nations.⁵² Any balanced assessment must examine both forms of piracy and also ponder why the United Nations has neglected the second type, which has so many perpetrators, while energetically galvanizing the world to fight the first type, that is carried out by criminal interests in Somalia.

The number of pirate attacks has galvanized the world community into some measures of preventative action.⁵³ At present, naval forces from many countries now patrol the waters off Somalia in an effort to protect their own national vessels.⁵⁴ The scale of Somali piracy has prompted such action. In 2008 there were, by one estimate, over 100 attacks, 42 successful hijackings, and 815 crew members taken hostage.⁵⁵

The universal application of international law and adherence to fairness for both Somalia and peaceful international shipping are not beyond the reach of globalized institutions, provided the will exists to implement an international consensus acknowledging that all forms of piracy must cease. If hijacking a ship is piracy, then looting fish must also be deemed piracy. Additionally and realistically, in a world that has

⁵⁰ *Id.* at 436.

⁵¹ *See infra* Parts III–IV.

⁵² *See infra* Part II.

⁵³ *See* PLOCH, *supra* note 11, at 16–24.

⁵⁴ *Id.* at 16, 36.

⁵⁵ Oliver Hawkins, *What to Do With a Captured Pirate*, BBC NEWS, Mar. 10, 2009, <http://news.bbc.co.uk/2/hi/7932205.stm>.

outlawed dumping of nuclear and toxic waste in the oceans, is it not an egregious form of environmental depredation or piracy for nations to despoil Somali waters?

B. Demography

The pirates of Somalia were quick to seize the opportunity created by the geographic location of their country and its importance to world shipping.⁵⁶ Their country, which is somewhat smaller than Texas, is located in East Africa, with the Gulf of Aden to the North and the vast Indian Ocean to the East.⁵⁷ Ships traveling between the Middle East, Europe, Africa, and both South and Eastern Asia frequent the Indian Ocean sea routes that effectively make globalized trade a reality for millions of people worldwide.⁵⁸ Approximately 20,000 ships traverse the Gulf of Aden every year.⁵⁹ By one estimate, over thirty percent of the world's oil is moved through the Gulf of Aden.⁶⁰ Fortuitous location along these vital commercial routes provides ample opportunity for pirate attacks on international ships that ply those waters, carrying huge cargo containers and oil through the Gulf of Aden to the Suez Canal and the West or to Asia.⁶¹

Of even more benefit to pirates is the fact that Somalia has the longest national coastline in Africa, 3,025 km.⁶² Such a coast provides numerous hiding places for hijacked ships.⁶³ The resemblance of that part of Eastern Africa to a rhino's horn has given this strategic location an international nomenclature as the Horn of Africa, an area that includes

⁵⁶ See PLOCH, *supra* note 11, at 11–12.

⁵⁷ U.S. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, Somalia (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/so.html> [hereinafter CIA WORLD FACTBOOK].

⁵⁸ See *id.* at Indian Ocean, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/xo.html>.

⁵⁹ *World Pirate Attacks Soar in First Quarter*, THE STRAITS TIMES, April 21, 2009, http://www.straitstimes.com/Breaking%2BNews/World/Story/STISStory_366502.html.

⁶⁰ Helen Kennedy, *Piracy Big Boon to Somalia Economy; Hotels, Restaurants Sprout in Port of Eyl in Pirates' Presence*, N.Y. DAILY NEWS, Apr. 9, 2009, http://www.nydailynews.com/news/national/2009/04/10/2009-04-10_piracy_boon_to_somalia_economy.html.

⁶¹ See *Turkey Pledges to Help Train Somali Armed Forces*, REUTERS.COM, Apr. 18, 2009, <http://www.reuters.com/article/worldNews/idUSTRE53H0TN20090418>.

⁶² Federico Carbone & Giovanni Accordi, *The Indian Ocean Coast of Somalia*, 41 MARINE POLLUTION BULL. 141, 141 (2000).

⁶³ See, e.g., Jeffrey Gettleman, *Hijacked Arms Ship Limpers into Port*, N.Y. TIMES, Feb. 12, 2009, at A12, available at <http://www.nytimes.com/2009/02/13/world/africa/13pirate.html>.

Somalia, Ethiopia, Eritrea, Djibouti, and Kenya.⁶⁴ Yemen lies just across the Gulf of Aden.⁶⁵ Eritrea and Ethiopia have been extensively involved in Somali internal politics in recent years and have been accused of extending their conflict with each other to Somalia.⁶⁶

Having claimed sovereignty over territorial waters, reaching 200 nautical miles, the Somalis attempted to utilize the rich fishing areas just off their shore and on the continental shelf.⁶⁷ Unfortunately for the local fishermen, foreigners in much larger ships also wanted to take advantage of the food resource that was so easily available.⁶⁸ According to the Somalis, the outsiders plundered the fish, taking full advantage of the absence of effective government in the country.⁶⁹ The foreign ships had no worries about being accosted by the Somali coastguard, who generally did not require any licenses or permits.⁷⁰ According to Shohreh Naji and colleagues from Carleton University, "Somalia's marine resources are being quickly depleted, primarily by foreign trawlers, due to a lack of coastal security."⁷¹

As a land of limited physiographical contrast,⁷² Somalia's terrain has encouraged both a nomadic and semi-nomadic, or partly rooted agrarian lifestyle, a fact that makes population enumeration extremely problematic.⁷³ By one estimate, approximately sixty to seventy percent of the population is nomadic or has nomadic affiliations.⁷⁴

The results of Somalia's first census, conducted in 1975, are highly questionable for a variety of political and clan-related reasons.⁷⁵ In 1991, the United Nations estimated the size of the Somali population at 7.7

⁶⁴ LIBRARY OF CONGRESS, PLACES IN THE NEWS, SOMALIA, http://www.loc.gov/today/placesinthenews/archive/2008arch/20081118_somalia.html (last visited Feb. 08, 2010).

⁶⁵ See CENTRAL INTELLIGENCE AGENCY, MAPS, SOMALIA, <https://www.cia.gov/library/publications/cia-maps-publications/maps/802851.jpg> (last visited Feb. 08, 2010).

⁶⁶ See, e.g., Bernard Gwertzman, *Lyons: Ethiopia-Eritrea Conflict Fueling Somali Crisis*, COUNCIL ON FOREIGN RELATIONS, Aug. 22, 2007, <http://www.cfr.org/publication/14074/lyons.html>.

⁶⁷ SOMALIA COUNTRY STUDY, *supra* note 23, at 59.

⁶⁸ See Ishaan Tharoor, *How Somalia's Fishermen Became Pirates*, TIME, Apr. 18, 2009, <http://www.time.com/time/world/article/0,8599,1892376,00.html>.

⁶⁹ PLOCH, *supra* note 11, at 8.

⁷⁰ See Tharoor, *supra* note 68.

⁷¹ COUNTRY INDICATORS FOR FOREIGN POLICY, SOMALIA: A RISK ASSESSMENT BRIEF, (Shohreh Naji et al. eds., Carleton University 2009), <http://www.carleton.ca/cifp/app/serve.php/1212.pdf> [hereinafter SOMALIA RISK ASSESSMENT BRIEF].

⁷² SOMALIA COUNTRY STUDY, *supra* note 23, at 60.

⁷³ See *id.* at ch.2, Population and Settlement Patterns.

⁷⁴ IOAN M. LEWIS, UNDERSTANDING SOMALIA AND SOMALILAND: CULTURE, HISTORY, SOCIETY 3 (2008).

⁷⁵ SOMALIA COUNTRY STUDY, *supra* note 23, at 66.

million,⁷⁶ a figure that increased to approximately 10.7 million by 2005.⁷⁷ Somali life expectancy ranges from forty-seven years for men to fifty-one years for women.⁷⁸

Socially, the Somalis are divided into various clans, subclans, and sub-subclans⁷⁹ who have fought each other ferociously for years, particularly over water rights and grazing land.⁸⁰ Somali “[c]lan membership is genealogical, and some of the smaller subclans may be little more than large extended families,” explained Stephanie Hanson and Eben Kaplan of the Council on Foreign Relations.⁸¹ “Somali clan organization is an unstable, fragile system, characterized at all levels by shifting allegiances.”⁸² Any analysis of Somalia has to consider the clan issue, but it must be realized that the “clan system is a fundamental but deeply controversial factor in Somali society, which can both divide and unite, depending on [the] context.”⁸³

Ethnically, the majority of the population is Somali and the overwhelming majority religion is Sunni Muslim.⁸⁴ According to Ioan Lewis, the “Somalis are firmly attached to Islam.”⁸⁵ Like most Africans and Asians, Somalis are frequently multi-lingual, although Somali is the national language.⁸⁶ It is almost impossible to estimate the size of the Somali diaspora, possibly now numbering in the millions and potentially one of the largest from any part of Africa.⁸⁷ The diaspora is critical in terms of its dispatch of

⁷⁶ *Id.* at 67.

⁷⁷ Somalia Int'l Finance Centre, About Somalia, <http://www.somaliainternationalfinancialcentre.com/about.aspx> (last visited Feb. 08, 2010).

⁷⁸ CIA WORLD FACTBOOK, *supra* note 57.

⁷⁹ WORLD BANK, CONFLICT IN SOMALIA: DRIVERS AND DYNAMICS 7 (2005), <http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf>.

⁸⁰ SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71.

⁸¹ Stephanie Hanson & Eben Kaplan, *Somalia's Transitional Government*, COUNCIL ON FOREIGN RELATIONS, May 12, 2008, <http://www.cfr.org/publication/12475>.

⁸² LIBRARY OF CONGRESS, COUNTRY STUDIES, SOMALIA: LINEAGE SEGMENTATION AND THE SOMALI CIVIL WAR, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+so0054\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+so0054)) (last visited Feb. 08, 2010).

⁸³ UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN—HABITAT), LAND, PROPERTY, AND HOUSING IN SOMALIA 11 (2008), *available at* <http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=2601> (follow “Download” hyperlink) [hereinafter UN—HABITAT].

⁸⁴ *See* PLACES IN THE NEWS, SOMALIA, *supra* note 64.

⁸⁵ LEWIS, *supra* note 74, at 16.

⁸⁶ *See* CIA WORLD FACTBOOK, *supra* note 57.

⁸⁷ *See* HASSAN SHEIKH & SALLY HEALY, UNITED NATIONS DEV. PROGRAMME SOMALIA, SOMALIA'S MISSING MILLION: THE SOMALI DIASPORA AND ITS ROLE IN DEVELOPMENT 4, 6–7 (2009), *available at* <http://www.so.undp.org/index.php/Somalia-Stories/Forging-Partnerships-with-the-Somali-Diaspora.html> (follow “downloadable pdf file of the full report” hyperlink).

remittances, estimated by the U.N. to be worth about one billion dollars annually,⁸⁸ to family members in Somalia, an economic action that staves off abject hunger for thousands of Somalis,⁸⁹ whose per capita gross national income was estimated in 2007 at only \$140 USD.⁹⁰ Although raw data is not precise, specialists estimate a 2009 urban unemployment rate in Somalia at 66% and the rural equivalent at 41%.⁹¹ The World Bank estimated that 43.2% of the Somali population exists below the international poverty line of \$1 per day, with poverty afflicting 53% of the rural population and 24% of urban dwellers.⁹² The Food and Agriculture Organization (“FAO”) estimated that between 2000 and 2002 approximately 71% of Somalis were undernourished.⁹³ In August 2008, the same organization reported that 3.2 million people in Somalia required humanitarian assistance.⁹⁴ This large number represented a 77% increase since January 2008.⁹⁵ Given such dire economic conditions afflicting so many Somalis, the lure and attraction of quick and easy money through piracy is explainable if not morally justifiable. As one pirate commented: “It is the only way to make money now.”⁹⁶

As is the case in many other developing countries, Somalis are particularly at the mercy of their own climate. “Climate is the primary factor in much of Somali life. For the large nomadic population, the timing and amount of rainfall are crucial determinants of the adequacy of grazing and the prospects of relative prosperity.”⁹⁷ Drought in 2006 wrought

⁸⁸ Lucas Barasa, *Piracy Cash Not Funding Kenya Projects, Says MP*, DAILY NATION, Apr. 30, 2009, <http://www.nation.co.ke/News/-/1056/592568/-/u65mnt/-/index.html>.

⁸⁹ SOMALI SUPPORT SECRETARIAT, FOOD SECURITY & ECON. DEV. COMM., <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7P6GW3?OpenDocument> (last visited Nov. 30, 2009).

⁹⁰ Canadian Int’l Dev. Agency, Somalia—Facts at a Glance, <http://www.acdi-cida.gc.ca/acdi-cida/ACDI-CIDA.nsf/eng/JUD-222121358-N8A> (last visited Feb. 08, 2010).

⁹¹ Daly, *supra* note 40.

⁹² SOMALI SUPPORT SECRETARIAT, *supra* note 89.

⁹³ Twenty-Eighth FAO Regional Conference for the Near East, Mar. 12–16, 2006, *Report on FAO Activities in the Near East Region, with a Focus on the Achievement of the World Food Summit (WFS) Target and the Millennium Development Goals (MDGs)*, tbl. 1, NERC/06/02 (Mar. 16, 2006).

⁹⁴ U.S. AGENCY INT’L DEV. (“USAID”), BUREAU FOR DEMOCRACY, CONFLICT AND HUMANITARIAN ASSISTANCE (“DCHA”), OFFICE OF U.S. FOREIGN DISASTER ASSISTANCE (“OFDA”), SOMALIA: COMPLEX EMERGENCY, SITUATION REPORT #4 (2009), http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/somalia/template/fs_sr/fy2009/somalia_ce_sr04_01-15-2009.pdf.

⁹⁵ *Id.*

⁹⁶ Steve Bloomfield, *The Pirate Hunters*, HERALD SCOTLAND, May 2, 2009, <http://www.heraldscotland.com/the-pirate-hunters-1.829627>.

⁹⁷ SOMALIA COUNTRY STUDY, *supra* note 23, at 59.

havoc for the people of Somalia.⁹⁸ When the absence of effective government and personal safety and security are factored into so precarious a situation as climate, the perils facing thousands of Somalis become very serious indeed. The land is prey to recurring drought that can cause famine and floods resulting in both disease and food shortages.⁹⁹ Jean-Francois Leon and Michel Legrand, in their interesting environmental study of mineral dust sources in the North Indian Ocean, commented that the “climate of Somalia is well known to have a high inter-annual variability leading to severe droughts or devastating floods.”¹⁰⁰ It has been estimated that since 2006 over two million Somalis have suffered the effects of severe drought.¹⁰¹ As of 2009, some parts of Somalia have endured a Spring season of severe water shortages and drought, “exacerbating the humanitarian crisis in the country.”¹⁰²

Given its ancient history, rich culture, and unique traditions, it is indeed tragic that this country is now deemed one of the most dangerous places in the world,¹⁰³ and is “one of the world’s poorest and least developed countries.”¹⁰⁴ In 1996, Somalia rated 172 out of 174 countries on the United Nations Development Programme’s Human Development Index.¹⁰⁵ Subsequently, lack of reliable data, likely due to increased violence, has precluded any ranking of Somalia.¹⁰⁶ It is evident, however, that Somalia’s health standards “are some of the worst in the world.”¹⁰⁷

The absence of any effective governing structure has had a drastic impact on the people, particularly on those most vulnerable—the poor, the elderly, and the children. By one estimate, less than twenty percent

⁹⁸ See Denise Shepard-Johnson, *Somalia Afflicted By Worst Drought in Decade*, UNICEF, Feb. 8, 2006, http://www.unicef.org/infobycountry/somalia_30967.html.

⁹⁹ JAMIL ABDALLA MUBARAK, FROM BAD POLICY TO CHAOS IN SOMALIA: HOW AN ECONOMY FELL APART 23–24 (1996).

¹⁰⁰ Jean-Francois Leon & Michel Legrand, *Mineral Dust Sources in the Surroundings of the North Indian*, 30 GEOPHYS. RES. LETT. 1309, 1311 (2003).

¹⁰¹ SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71.

¹⁰² U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS [OCHA]—SOMALIA, SOMALIA HUMANITARIAN OVERVIEW, 2 SOMALIA HUMANITARIAN OVERVIEW, Mar. 2009, at 1, available at <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1109454>.

¹⁰³ Zack O’Malley Greenburg, *World’s Most Dangerous Countries*, FORBES.COM, Mar. 4, 2009, http://www.forbes.com/2009/03/04/most-dangerous-countries-lifestyle-travel_dangerous_countries.html.

¹⁰⁴ Carbone & Accordi, *supra* note 62, at 141.

¹⁰⁵ U.N. Somalia InfoCenter, Fact Sheets, <http://www.unsomalia.net/infocenter/factsheets.htm> (last visited Feb. 08, 2010) [hereinafter Fact Sheets].

¹⁰⁶ See *id.*

¹⁰⁷ SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71.

of Somalis have access to safe drinking water; cholera, tuberculosis, malaria, and diarrhea prevail.¹⁰⁸

Somalia's capital city, Mogadishu, has been the scene of terrible violence against civilians for a number of years as the country has struggled to establish an effective government for decades.¹⁰⁹ According to Oxfam, over one million Somalis have been forced to flee from their homes between 2007 and early 2009.¹¹⁰ Somalia is the prototype of a 'failed state,'¹¹¹ and, hence, neither the extent of environmental degradation nor the resort to piracy by a portion of its population should cause any great surprise.

Regionally, in comparison with Djibouti, Eritrea, Ethiopia, Kenya, and Sudan, Somalia has been deemed by the United Nations to have the lowest GNP per capita, the lowest adult literacy level, the highest rate of infant mortality,¹¹² and the second lowest life expectancy.¹¹³

What has been termed a "strong informal economy,"¹¹⁴ focusing on remittance funds, livestock sales, and telecommunications, has shown some growth, but Somalia's GDP "is one of the lowest in the world."¹¹⁵ The United Nations has determined Somalia to be "the most pressing humanitarian emergency, even worse than the crisis in Darfur, Sudan."¹¹⁶ The Food Security Analysis, conducted by the United Nations, estimated that as of September 2008, approximately 41% of Somalia's population needed humanitarian assistance, an alarming growth of 77% from January 2008.¹¹⁷

This nation—ravaged by decades of war, its infrastructure looted and vandalized, its land and waters polluted, and its civilian population at the mercy of warring militias—is now one of the most frightening places on

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., Katie Nguyen, *Analysis—Mogadishu Street Violence Sign of Deeper Insurgency*, REUTERS.COM, Mar. 22, 2007, http://www.reuters.com/article/homepageCrisis/idUSL22165154._CH_.2400; see generally Theodoros Dagne & Amanda Smith, *Somalia: Prospects for Peace and U.S. Involvement*, in SOMALIA: ISSUES, HISTORY AND BIBLIOGRAPHY, 1, 18–19 (Nina Fitzgerald ed., 2002) (describing Somali government and politics).

¹¹⁰ Press Release, Oxfam, Piracy Must Not Overshadow Humanitarian Crisis at Donor Meeting (Apr. 23, 2009), available at <http://www.oxfamamerica.org/press/pressreleases/piracy-must-not-overshadow-humanitarian-crisis-at-donor-meeting>.

¹¹¹ See *The Failed State Index 2009*, *supra* note 15.

¹¹² SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71 (estimating 111 deaths per every 1000 live births); see also CIA WORLD FACTBOOK, *supra* note 57 (estimating 109 deaths per every 1000 live births).

¹¹³ Fact Sheets, *supra* note 105.

¹¹⁴ SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71.

¹¹⁵ *Id.*

¹¹⁶ *Id.* (Assessment by UNHCR).

¹¹⁷ *Id.*

earth.¹¹⁸ By one estimate, nearly two million Somalis have been displaced from their homes as of April 2009, and half a million eke out a miserable existence in refugee camps in neighboring countries.¹¹⁹ “The same lawlessness that makes big ships in high seas vulnerable to the scourge of piracy affects the common Somali man or woman inland, who unfortunately cannot count on the protection provided by mighty international forces.”¹²⁰

Somalia's internal conflicts and problems have now spilled over into the global arena with desperation and opportunity, as well as enormous profit-motivating criminal activity that targets shipping and the citizens of numerous countries. Although the world may act decisively to police the oceans near Somalia, or to kill pirates whenever necessary, such actions will do little to provide any lasting solution to the problem. Until the various governments of the world act multilaterally to address the humanitarian issues that plague Somalia, there is little likelihood that the piracy threat will permanently cease.

C. *Brief Historical Background I*

The scope of this paper precludes any detailed examination and analysis of the history of Somalia. Rather, the aim is to provide some indication of the reasons why this area has succumbed to years of lawlessness and economic and environmental degradation. The focus of this article is the present series of crises related to piracy and environmental degradation in Somalia. The examination of the past is accordingly necessarily selective and exclusively intended to provide some insight into the current situation. Additionally, the background could provide the reader with a glimpse of the atmosphere of a collapsing anarchistic society. An inclusive history of modern Somalia would require volumes to recount and would be far beyond the length constraints of this article.

If the problem of piracy—now so much on the minds of world leaders—is to be successfully addressed, it is imperative that we attempt to understand how this culturally rich country reached such a nadir of poverty and deprivation. It should then come as no surprise that a lawless land should generate lawless criminals like the present-day pirates.

Interestingly, Somalia was not always deemed a synonym for violence, poverty, hunger, misrule, and all the negatives that dominate

¹¹⁸ See Greenburg, *supra* note 103.

¹¹⁹ Guillermo Bettocchi, *Piracy: A Symptom of Somalia's Disease*, GUARDIAN.CO.UK, Apr. 16, 2009, <http://www.guardian.co.uk/commentisfree/2009/apr/16/somalia-piracy-aid>.

¹²⁰ *Id.*

current foreign perceptions of that land.¹²¹ In ancient times, the region now referred to as constituting the Horn of Africa was said to be rich in gold, exotic fragrance oils, rare species of wood, ivory, objects prized in ancient Egypt, and much sought after by Egyptian pharaohs who sent expeditions to trade with the exotic Land of Punt, which may have been modern Somalia, Ethiopia, or Djibouti.¹²² An abundance of fish and wildlife made for a region rich enough to be deemed fabled, even by the luxurious standards of ancient Egypt.¹²³

Politically and socially, the very homogeneity of the present-day Somali people should preclude rather than encourage animosity. Unlike many other nations that work each day to reconcile diverse cultures, religions, and traditions into one national unit, Somalis “are a culturally, linguistically, and religiously homogeneous people, who are divided along clan lines and sparsely scattered over a harsh dry land.”¹²⁴ Ironically, the unifying factor of homogeneity has been overtaken by clan loyalties that appear, according to scholars, to be at the root of the internecine conflicts that have plagued that land for decades.¹²⁵ As the United Nations has commented: “[c]lan, territorial and economic identities stratify Somali society.”¹²⁶ The challenges of forming and adhering to modern concepts of nationalism and loyalty within the geographic boundaries of the nation state pose problems for a people whose political identity has been shaped for centuries on family genealogies, tracing descent from male ancestors.¹²⁷ “Membership in clans and lineages shaped the allocation of individual rights and obligations.”¹²⁸ The volatile combination of familial ties of loyalty, scarce resources for grazing cattle and water,¹²⁹ easy access to weapons, and a tradition of local militia culture has contributed to an incessant pattern of conflict as the clans have fought for domination and control of the country. It has aptly been suggested that “[n]early all armed conflicts in contemporary Somalia break out along clan lines.”¹³⁰

¹²¹ See generally SOMALIA COUNTRY STUDY, *supra* note 23, at ch.1 (discussing Somalia’s rich history).

¹²² See ROBERT COLLINS & JAMES McDONALD BURNS, A HISTORY OF SUB-SAHARAN AFRICA 96–97 (2007).

¹²³ See SOMALIA COUNTRY STUDY, *supra* note 23, at 3.

¹²⁴ *Id.* at 57.

¹²⁵ E.g., *id.* at 71–94.

¹²⁶ U.N. Somalia InfoCenter, Somalia History, <http://www.unsomalia.net/infocenter/history.htm> (last visited Feb. 08, 2010).

¹²⁷ See LEWIS, *supra* note 74, at 28.

¹²⁸ SOMALIA COUNTRY STUDY, *supra* note 23, at 57.

¹²⁹ *Id.* at 73.

¹³⁰ WORLD BANK, *supra* note 79, at 15.

In the past, this pattern of clan conflict leading to a “segmented social order”¹³¹ made the entire region easy prey for Western colonial ambitions.¹³² After Britain had developed its economic strangle-hold on India, which became the ‘jewel in the crown’ for England, it was deemed imperative to secure all oceanic routes to and from that rich imperial colony.¹³³ The Red Sea was critical for this imperial aim as was the Suez Canal which opened in 1869.¹³⁴ By 1884, Britain and other European countries were feverishly engaged in their presumptuous ‘scramble for Africa’ which was ‘validated’ via an international conference held in Berlin that year.¹³⁵ The various disunited Somali clans fared badly as targets of European imperialism. They fell, not into the hands of one imperial power, that could have unified them, but four: Great Britain, France, Italy, and Ethiopia.¹³⁶ Ethiopia occupied the Ogaden region; Britain established the protectorate of British Somaliland; Italy colonized the south, establishing Italian Somaliland; and France took over an area, now located in Djibouti.¹³⁷ According to Ioan Lewis, “divisions within the otherwise generally homogeneous Somali national culture facilitated the imperial partition of this region during the scramble for Africa.”¹³⁸ This African version of the proverbial imperial ‘carving of the melon,’ a phrase also aptly applied to China, led to serious long-term consequences for the entire Horn of Africa.¹³⁹ It ensured disunity and division, and the Africans, after independence, inherited a mishmash of imperial structures and institutions that ignored their indigenous social systems.¹⁴⁰ This resulted in an era of endless war.

While this region was under the European powers, the easiest way to ensure the longevity of imperial control, was the tried and true system of keeping the local population at war with itself.¹⁴¹ The maxim ‘divide and rule’ became the methodology for dealing with local populations in Somalia,

¹³¹ SOMALIA COUNTRY STUDY, *supra* note 23, at 58.

¹³² LEWIS, *supra* note 74, at 28.

¹³³ See SOMALIA COUNTRY STUDY, *supra* note 23, at 10–11.

¹³⁴ Somalia History, *supra* note 126.

¹³⁵ See MURIEL EVELYN CHAMBERLAIN, *THE SCRAMBLE FOR AFRICA passim* (2d ed. 1999).

¹³⁶ Somalia History, *supra* note 126.

¹³⁷ *Id.*

¹³⁸ LEWIS, *supra* note 74, at 28.

¹³⁹ MARTIN MEREDITH, *THE FATE OF AFRICA: FROM THE HOPES OF FREEDOM TO THE HEART OF DESPAIR: A HISTORY OF FIFTY YEARS OF INDEPENDENCE* 1–14 (2005).

¹⁴⁰ See *id.*

¹⁴¹ See Julius O. Ihonvbere, *The World Bank/IMF Structural Adjustment Programs and the Somali Crisis*, AFRICA UPDATE, Winter 1994–95, <http://web.ccsu.edu/afstudy/upd2-1.html>.

exactly as it was used in India, Egypt, Ireland, Kenya, and a number of other colonies.¹⁴² According to Julius O. Ihonvbere, “[a]s part of the politics of divide-and-rule, the colonial powers did everything possible to play one clan against the other sowing seeds of discord and conflicts.”¹⁴³

During the Second World War, Britain and Italy fought for control of the Horn of Africa, with Britain emerging the victor.¹⁴⁴ After the War, Italian Somaliland became a United Nations trust territory under the control of Italy.¹⁴⁵ The fledgling Somali nationalist movement championed the twin causes of independence and unity of Somali peoples.¹⁴⁶ Both British and Italian territories of Somalia gained independence and united in 1960 as the new Republic of Somalia.¹⁴⁷

Unfortunately, political independence did not prove to be the panacea that was so widely anticipated. It brought neither peace nor plenty to the Somali people.¹⁴⁸ There were numerous reasons for this, including the fact that the “segmented social order, with relatively minor modifications, was carried into the independence period.”¹⁴⁹ The pan-Somali movement was further complicated by the nomadic traditions of some of the clans, which made for rather vague geographic boundaries in terms of defining precise national territories.¹⁵⁰ The fact that Western imperial powers delineated African national boundaries with little thought to the actual location of particular tribes and clans may well be considered the primary cause of inter-African wars that have so plagued the latter half of the twentieth century and extended into the new millennium.¹⁵¹

In the Horn of Africa, this imprecise situation geographically led to competing political claims and conflict between Somalia and its neighbors Kenya and Ethiopia.¹⁵² In effect, as they departed, European imperial powers inflicted an artificial Western centralized nation state structure on ancient decentralized African social systems, that were grounded in clans, “leading eventually to a zero-sum struggle between clans for control of the state apparatus and its resources, including land.”¹⁵³

¹⁴² *See id.*

¹⁴³ *Id.*

¹⁴⁴ SOMALIA COUNTRY STUDY, *supra* note 23, at 14–16.

¹⁴⁵ *Id.* at 16.

¹⁴⁶ *See id.* at 22–26.

¹⁴⁷ *Id.* at 26.

¹⁴⁸ *See id.* at 28.

¹⁴⁹ *Id.* at 58.

¹⁵⁰ MEREDITH, *supra* note 139, at 464–65.

¹⁵¹ *See id.* at 1–14, 464–65.

¹⁵² *See* SOMALIA COUNTRY STUDY, *supra* note 23, at 28.

¹⁵³ UN—HABITAT, *supra* note 83, at 10.

African political aspirations, seeking to adjust to the discordant realities of imperial geographic boundaries, found outlet in grandiose and bellicose assertions of sovereignty and supremacy that led to conflict and enduring misery for civilians caught in the cross-fire.¹⁵⁴

Although Somalia was a seriously under-developed state, it paid primary attention to the development of its military which grew from 5,000 in 1960 to 65,000 in 1990.¹⁵⁵ The enormous sums expended on the military were inevitably at the expense of the social needs of the people who lagged behind in the fundamentals of civilized society: a clean environment, effective health care, and efficient education systems.¹⁵⁶

The intrusion of Cold War rivalries further entangled the complex skein of Somali politics as the superpowers vied for influence in Africa, by providing a liberal supply of arms to a region that desperately needed industries, agrarian development, infrastructure, and education.¹⁵⁷ The Cold War game of patron-client politics was played out with deadly consequences for many states in the Horn of Africa. The superpowers armed their clients to the teeth and fought each other vicariously as thousands of Africans died.¹⁵⁸

The deadly combination of pan-Somali aspirations, economic under-development, clan-to-clan rivalries, corruption,¹⁵⁹ and external interference was a recipe for political meltdown. On October 15, 1969, Somali President Abdi Rashid Ali Shermarke was assassinated by a bodyguard, who was subsequently executed.¹⁶⁰ The resulting political uncertainty provided an opportunity for military control of the government under Major General Mohamed Siad Barre.¹⁶¹ Barre was initially welcomed by the people, who hoped desperately for greater efficiency and less corruption.¹⁶² The "vibrant but corrupt and eventually dysfunctional multiparty democracy"¹⁶³ had unfortunately failed and was now replaced by a personality-cult style dictatorship. As is the practice of most dictators, there were some positive

¹⁵⁴ See SOMALIA COUNTRY STUDY, *supra* note 23, at 28–30.

¹⁵⁵ *Id.* at 181.

¹⁵⁶ See *id.* at 204.

¹⁵⁷ See *id.* at 30.

¹⁵⁸ See DAVID ANDERSON, *THE COLD WAR IN AFRICA: A HISTORY* (forthcoming 2010). For a brief description of the project see http://www.africanstudies.ox.ac.uk/research/research_programmes_and_projects2/the_cold_war_in_africa_a_history (last visited Feb. 08, 2010).

¹⁵⁹ Somalia History, *supra* note 126.

¹⁶⁰ SOMALIA COUNTRY STUDY, *supra* note 23, at 36.

¹⁶¹ See Somalia History, *supra* note 126.

¹⁶² *Id.*

¹⁶³ WORLD BANK, *supra* note 79, at 9.

attempts at social improvement.¹⁶⁴ In 1973, the Somali language acquired standardized written form, using the Latin script, and extensive literacy campaigns targeted urban and rural areas.¹⁶⁵ The result was an increase in literacy from 5% in 1972 to a United Nations estimate of 24% by 1990.¹⁶⁶ However, the approximately two decades of Barre's dictatorship sowed the seeds for long-term state meltdown. As Julius Ihonvbere commented, "corruption reached unprecedented proportions, clannishness became the fundamental basis of politics, infrastructures were run down, the legitimacy of the state, its institutions and agents were clearly eroded, and [Barre] carried out several bloody persecutions of opposition elements."¹⁶⁷

Like many dictators in other countries, Barre contributed generously to the upkeep and enhancement of the Somali military and continued the tradition of lavish spending on the armed forces.¹⁶⁸ Although precise figures are not available, by one estimate, between 1961 and 1979 the military imported a staggering \$660 million in armaments and its annual expenditures during the 1980s amounted to approximately \$44.5 million.¹⁶⁹

Barre considered himself a Scientific Socialist and became an ally of the Soviet Union, concluding a treaty of friendship and cooperation in 1974, until the Soviet Union decided to support its client state in Ethiopia.¹⁷⁰ Barre, quite pragmatically, switched sides in 1977, expelled the Soviet advisors and became a client of the United States of America.¹⁷¹ American development aid brought some assistance to Barre's plans for improving the Somali infrastructure and modernizing the country through elaborate education programs.¹⁷² However, Barre's hold on power was decimated by the factor that has caused the downfall of dictators throughout history: war. Between 1977 and 1991 the Somalis fought three wars.¹⁷³ The first was the Ogaden War with Ethiopia between 1977–78, which Somalia initiated and lost at a cost of 25,000 lives.¹⁷⁴ The second war was internal, between the Government and the Somali National Movement, a conflict that was

¹⁶⁴ See Somalia History, *supra* note 126.

¹⁶⁵ SOMALIA COUNTRY STUDY, *supra* note 23, at 44.

¹⁶⁶ *Id.*

¹⁶⁷ Ihonvbere, *supra* note 141.

¹⁶⁸ See SOMALIA COUNTRY STUDY, *supra* note 23, at 204.

¹⁶⁹ *Id.*

¹⁷⁰ See globalEDGE, Somalia History, <http://globaledege.msu.edu/countries/Somalia/history> (last visited Feb. 08, 2010).

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ WORLD BANK, *supra* note 79, at 9.

¹⁷⁴ *Id.*

clan-generated and resulted in the death of approximately 50,000–60,000 people, including civilians.¹⁷⁵ This internal conflict eventually led to the secession and proclamation of the state of Somaliland in 1991.¹⁷⁶ However, as of 2009, no state has recognized the Somaliland Republic.¹⁷⁷ The punitive nature of Barre's regime, "generally directed at clans,"¹⁷⁸ resulted in violent resistance against the government. A bloody, free-for-all third war erupted in the late 1980s and early 1990s, with the government fighting numerous groups simultaneously until the collapse of the Barre government on January 26, 1991.¹⁷⁹ Barre was exiled, eventually moving to Nigeria, where he died in 1995.¹⁸⁰ The main suffering of his long and bloodthirsty dictatorship was borne by untold thousands of Somali civilians because "military policy was devastating much of the area and driving it into famine."¹⁸¹

Tragically, it is possible to formulate a clear connection between the policies of Siad Barre—policies that resulted in an oppressive government which exploited its people, extorted their resources and massacred thousands—and the present lawless situation in Somalia, where internal crime has now become an international problem because of the activities of the pirates.

However, it is important as well to direct responsibility for some of this prevailing crisis to the superpowers who perceived the Horn of Africa as strategically important at the height of the Cold War and then sidelined the area once the Soviet Union had imploded.¹⁸² "As the Cold War waned in the late 1980s, Somalia's strategic importance to the West diminished."¹⁸³ The unique twist whereby Somalia was initially a Soviet client and then came under American patronage, seriously weakened any hope for the effective development of a viable functioning Somali unified state. Barre's crucial mistake was to align himself with the most grandiose of Somali

¹⁷⁵ See *id.* at 10.

¹⁷⁶ *Id.*

¹⁷⁷ BBC News, Africa, Regions and Territories: Somaliland, http://news.bbc.co.uk/2/hi/africa/country_profiles/3794847.stm (last visited Feb. 08, 2010).

¹⁷⁸ GlobalSecurity.org, Somalia: Operations Other than War, Appendix A: Recent History, http://www.globalsecurity.org/military/library/report/call/call_93-1_appxa.htm (last visited Feb. 08, 2010).

¹⁷⁹ See WORLD BANK, *supra* note 79, at 10; Richard Greenfield, *Obituary: Siyaad Barre*, THE INDEPENDENT, Jan. 3, 1995, <http://www.netnomad.com/barregrnflldobit.html>.

¹⁸⁰ Greenfield, *supra* note 179.

¹⁸¹ Somalia: Operations Other than War, *supra* note 178.

¹⁸² See WORLD BANK, *supra* note 79, at 10.

¹⁸³ *Id.*

imperial ambitions, and then attempt, with external patronage, to implement his dreams. In the process, he destroyed his own regime and any hope for long-lasting stability for his country. This collapse was, according to Hussein Adam, a “consequence of the policies and practices of dictator Barre and his ruling elite.”¹⁸⁴ The Barre regime has been called a “kleptocracy in which those who had political pull stole from those who did not.”¹⁸⁵

The Somali political crisis affected neighboring states as well,¹⁸⁶ some of them were undergoing their own political upheavals. Ethiopia, long the target of Somali territorial frustrations, continued to foster and assist dissident elements within Somalia.¹⁸⁷ In this rather tragic saga, we witness at once, internecine clan conflict, civil war, rebellion, national war, and international interference and intervention.¹⁸⁸ The fact that so many Somalis have turned to international crime should come as no surprise. The absence of feasible economic options and a state awash in firearms can be a deadly combination.

This unfortunate truism was validated in the years following the fall of Siad Barre. Somalia disintegrated and virtually imploded into a lawless land where gangsterism, random violence, cut-throat criminality, and clan-based militia attacks prevailed, taking a physical and psychological toll on civilians.¹⁸⁹ A Report written in 2005 for the World Bank explains that the “ouster of the Barre regime was followed not by a replacement government but by a prolonged period of violent anarchy and warfare.”¹⁹⁰ Thousands fled, wherever they could, and neighboring states found desperate Somali civilians begging for entry and safety.¹⁹¹ The infrastructure, much of it constructed as part of Barre’s public-works projects, was systematically looted or fell into disrepair.¹⁹² The economy virtually collapsed, although for a price, certain goods, particularly weapons, enjoyed a brisk trade.¹⁹³ Neighboring nations made frantic attempts to bring the

¹⁸⁴ HUSSEIN ADAM, *TYRANNY TO ANARCHY: THE SOMALI EXPERIENCE 2* (2008).

¹⁸⁵ Jess Walker, *Against All Flags, Questions and Answers About Pirates and Somalia*, REASON.COM, Apr. 17, 2009, <http://www.reason.com/archives/2009/04/17/against-all-flags>.

¹⁸⁶ See WORLD BANK, *supra* note 79, at 37–39.

¹⁸⁷ See SOMALIA COUNTRY STUDY, *supra* note 23, at 45–48.

¹⁸⁸ See WORLD BANK, *supra* note 79, at 10.

¹⁸⁹ See *id.* at 11.

¹⁹⁰ *Id.*

¹⁹¹ See SHEIKH & HEALY, *supra* note 87, at 12.

¹⁹² See SOMALIA COUNTRY STUDY, *supra* note 23, at 117.

¹⁹³ See *id.* at 121; see also WORLD BANK, *supra* note 79, at 31 (stating “the collapse of the Somali army led to the proliferation of militias and weapons”).

many Somali factions together at external meetings, hoping to broker a peace. Ethiopia, most accused of interfering in Somali politics, hosted several peace initiatives, while Egypt, Yemen, Kenya, and Italy attempted to find solutions.¹⁹⁴ What was formulated lasted briefly before disintegrating once again in the reality of long-festered resentments and political ambitions that would not be assuaged with anything less than total victory.

A Report prepared for the World Bank, although specific to 1991 and 1992, eloquently articulates the nightmare of life in a lawless state:

The wars, which began as struggle for control of the government, quickly degenerated into predatory looting, banditry, and occupation of valuable real estate by conquering clan militias. Young gunmen fought principally to secure war booty, and were under only the loosest control of militia commanders. Powerful merchants and warlords were implicated in this war economy too. The principal victims of this violence were weak agricultural communities and coastal minority groups caught in the middle of the fighting. . . . Warlords' power base depended on a chronic state of insecurity, so that their clan constituencies needed them for protection. Illiterate gunmen saw war, plunder, and extortion as their only livelihood. Some businessmen were enriched by war-related criminal activities such as weapons sales, diversion of food aid, drug production, and exportation of scrap metal. And whole clans found themselves in possession of valuable urban and riverine real estate won by conquest, which they stood to lose in a peace settlement.¹⁹⁵

Desperate people demolished their environment to provide themselves with some kind of a living. Trees were cut down by the thousands for firewood and the land became degraded.¹⁹⁶ Absent any effective government, the lack of basic services like garbage collection and disposal further endangered both the environment and the health of people, particularly the most vulnerable—the elderly and children.¹⁹⁷ Food was so scarce that

¹⁹⁴ See globalEDGE, *Somalia History*, *supra* note 170.

¹⁹⁵ WORLD BANK, *supra* note 79, at 11.

¹⁹⁶ UN—HABITAT, *supra* note 83, at 90.

¹⁹⁷ See UNICEF, *SOMALIA, WATER, ENVIRONMENT AND SANITATION*, <http://www.unicef.org/somalia/wes.html> (last visited Feb. 08, 2010).

most people were seriously malnourished.¹⁹⁸ By one estimate, approximately 350,000 Somalis died between 1991 and 1992 from a lethal combination of disease, war, and starvation.¹⁹⁹ Cities like Mogadishu, the capital, swelled in numbers as starving refugees from the countryside wandered there, hoping to find work and food for their families.²⁰⁰ To all the world watching Somalia implode, there appeared to be only one possible solution, humanitarian intervention, particularly by the United Nations.

D. Brief Historical Background II—The Role of the United Nations in Somalia

It became quickly evident that while the rest of the world might have perceived Somalia as being in desperate need of outside help and involvement, many in Somalia felt quite differently.²⁰¹ The years of international intervention in Somalia highlight both the good intentions and the failings of humanitarian attempts to assist civilians living in a state of anarchy.²⁰² Ray Murphy has explored the problems of peace-keeping in Somalia, commenting that “it was a mixture of peacekeeping, peace-making, peace enforcement and nation-building.”²⁰³ The United Nations was actively involved in Somalia between April 1992 and March 1993 in United Nations Operation in Somalia (“UNOSOM”) I and between March 1993 and March 1995 in UNOSOM II.²⁰⁴ The failure of the United Nations to deal with this crisis on land does not presage well for any efforts by that international organization to cope with the instant piracy crisis emanating from Somalia.

If words alone could have resolved the internal and international problems of Somalia, the United Nations would have earned kudos for its efforts. A veritable flood of verbiage poured forth at U.N. headquarters

¹⁹⁸ See *Red Cross: Somalia Facing Severe Famine*, CNN.COM, Jun. 4, 2008, <http://www.cnn.com/2008/WORLD/africa/06/04/somalia.food.crisis/index.html>.

¹⁹⁹ See *id.*; see also Timelines, Somalia, <http://www.timelinesdb.com/listevents.php?subjid=230&dayinhist=0&date1=9999> (last visited Feb. 08, 2010).

²⁰⁰ See SOMALIA COUNTRY STUDY, *supra* note 23, at 57.

²⁰¹ See, e.g., GEORGE B.N. AYITTEY, CATO INST., *THE SOMALI CRISIS: TIME FOR AN AFRICAN SOLUTION* (1994), <http://www.cato.org/pubs/pas/pa-205.html>.

²⁰² See, e.g., Dominic Johnson & Dominic Tierney, *The Wars of Perception*, N.Y. TIMES, Nov. 28, 2006, <http://www.nytimes.com/2006/11/28/opinion/28johnson.html>.

²⁰³ RAY MURPHY, U.N. PEACEKEEPING IN LEBANON, SOMALIA AND KOSOVO: OPERATIONAL AND LEGAL ISSUES IN PRACTICE 48 (2007).

²⁰⁴ THOMAS G. WEISS ET AL., *THE UNITED NATIONS & CHANGING WORLD POLITICS* 50, tbl. 3.3 (5th ed. 2007).

in New York and in the international community in a universal litany of distress and dismay about Somalia. All this concern resulted in a plethora of well-meaning, albeit wordy Security Council resolutions, only a few of which can be considered within the length constraints and scope of this article. The dilemma facing the United Nations was clearly explained by Ken Rutherford, who stated that the “key factor in the lack of major international action was how the U.N. could resolve the chaos and whether it should intervene without consent.”²⁰⁵

On March 17, 1992, the United Nations Security Council passed Resolution 746 expressing its concern about the “magnitude of the human suffering caused by the conflict,” and calling on the Secretary General to “pursue his humanitarian efforts in Somalia.”²⁰⁶ By April 1992, UNOSOM I had been established to assist and continue earlier international efforts to aid the vast numbers of Somalis who were facing famine, disease, and physical danger.²⁰⁷ Just fifty unarmed²⁰⁸ United Nations observers were tasked with monitoring a cease-fire in Mogadishu, and they commenced their activities on site by July 1992.²⁰⁹ In an effort to curb the unlimited violence prevailing in Somalia, the Security Council, on January 23, 1992, had instituted an embargo on all weapons deliveries to that nation.²¹⁰ As the country was already awash with weapons from the Barre years,²¹¹ such U.N. efforts were doomed. The ineffectiveness of the embargo was apparent when the Security Council passed Resolution 751 on April 24, 1992, seeking “recommendations to the Council on ways of increasing the effectiveness of the embargo,” and for measures to deal with violations of the weapons embargo.²¹² The success of this embargo can be gauged by the reality that today, nearly two decades later, the pirates of Somalia have no trouble getting hold of the most sophisticated weaponry for their attacks against commercial shipping.²¹³

²⁰⁵ KENNETH R. RUTHERFORD, *HUMANITARIANISM UNDER FIRE: THE US AND UN INTERVENTION IN SOMALIA* xv (2008).

²⁰⁶ S.C. Res. 746, ¶ 4, U.N. Doc. S/RES/746 (Mar. 17, 1992).

²⁰⁷ See S.C. Res. 751, ¶¶ 2, 7, U.N. Doc. S/RES/751 (Apr. 24, 1992).

²⁰⁸ U.N. DEP'T OF INFO., *SOMALIA—UNOSOM I* (1997), <http://www.un.org/Depts/DPKO/Missions/unosomi.htm>.

²⁰⁹ See *id.*; see S.C. Res. 751, *supra* note 207, at ¶ 3.

²¹⁰ S.C. Res. 733, ¶ 5, U.N. Doc. S/RES/733 (Jan. 23, 1992).

²¹¹ See WORLD BANK, *supra* note 79, at 31.

²¹² S.C. Res. 751, *supra* note 207, at ¶¶ 11(b)–(c).

²¹³ See Rosemary Black, *Somalia's Modern Day Pirates Use Grenades, Not Swords, in High Seas Life of Crime*, N.Y. DAILY NEWS, Dec. 3, 2008, http://www.nydailynews.com/news/national/2008/12/02/2008-12-02_somalias_modern_day_pirates_use_grenades.html.

The best that can be said of UNOSOM is that at least the international community tried. Having only brokered a tentative cease-fire, and being in Somalia with the consent of the main warring factions,²¹⁴ there was just not that much the United Nations could achieve. There was so much anarchy that humanitarian food convoys and relief supplies had to be guarded by troops.²¹⁵ That became the quagmire that sucked in the United Nations.²¹⁶ For civilians the situation became intolerable. The Secretary General explained that the “desperate and complex situation in Somalia will require energetic and sustained efforts on the part of the international community to break the circle of violence and hunger.”²¹⁷ Ironically, while the member States of the United Nations believed they had a moral obligation to create a meaningful presence in Somalia, it was obvious that the Somalis were largely opposed to the foreign presence.²¹⁸ It was a veritable free-for-all with the Somali factions, headed by ambitious warlords, fighting not just each other but the United Nations as well.²¹⁹ A deadly kaleidoscope of factions that united and parted in quick succession ensured a maximum of anarchy as warlords competed for the spoils, any spoils, including humanitarian aid convoys for starving Somali civilians.²²⁰ Predatory looting was such a marked feature of Somali political life that the present resort to piracy on the high seas should come as no surprise. The United Nations encountered a formidable enemy in the Somali militant General Mohamed Farrah Aidid, who was determined to expel the peace keepers, observers, and everyone else representing the United Nations in his country.²²¹

By July 27, 1992, the Security Council engaged in its recurrent activity of passing resolutions, this time expressing deep concern “about the availability of arms and ammunition in the hands of civilians and the proliferation of armed banditry throughout Somalia.”²²² The Security Council authorized an airlift of humanitarian aid and repeated its earlier calls for cooperation by all Somali parties with the international efforts.²²³ By August 1992, the United States agreed to participate in the airlift, but

²¹⁴ SOMALIA—UNOSOM I, *supra* note 208.

²¹⁵ See Timelines, Somalia, *supra* note 199.

²¹⁶ See AYITTEY, *supra* note 201.

²¹⁷ SOMALIA—UNOSOM I, *supra* note 208.

²¹⁸ See AYITTEY, *supra* note 201.

²¹⁹ See SOMALIA—UNOSOM I, *supra* note 208.

²²⁰ See WORLD BANK, *supra* note 79, at 11.

²²¹ See SOMALIA—UNOSOM I, *supra* note 208.

²²² S.C. Res. 767, U.N. Doc. S/RES/767 (July 27, 1992).

²²³ *Id.* at ¶¶ 2–4.

soon thereafter, it became obvious that American troops would be required to protect the food cargo from predatory looting inside Somalia.²²⁴ Welcoming the logistical support of member states for this difficult mission, the United Nations drew attention to the threats and violence from Somali factions against relief personnel, and agreed with the Secretary General that the situation in Somalia was intolerable.²²⁵

The United States military mercy mission to bring humanitarian aid to Somali citizens was termed Operation Restore Hope, and it commenced in December 1992 with a famous televised marine landing in the ravaged country.²²⁶ The Unified Task Force ("UNITAF"), as it was also called, was tasked to protect relief efforts in Somalia.²²⁷ Twenty-four countries contributed troops to UNITAF,²²⁸ which was under the operational command of the United States of America.²²⁹ Instead of a grateful population, eager for aid, the United Nations and the United States encountered ferocious opposition and extensive violence that resulted in many deaths of international personnel and Somalis, including many civilians.²³⁰ The vortex of clan conflicts, prevailing through much of the country, pulled in the external forces, and the escalating casualty rates were deemed unacceptable for what was envisaged as a mission of mercy.²³¹ International forces found themselves fighting the very people they were supposedly helping. Aid distribution became more a task of running a gauntlet of rioters and looters.²³² The foreign compounds were also infiltrated by thieves looking for booty. Television screens across America displayed cheering Somalis dragging the body of an American soldier, a dead Ranger, through the streets of Mogadishu on October 4, 1993.²³³ It was a pivotal and searing moment for America, haunting the nation for years to come. The American people had had enough of Somalia and its unstoppable anarchy.²³⁴ On

²²⁴ See Timelines, Somalia, *supra* note 199; see also S.C. Res. 794, ¶¶ 6–8, U.N. Doc. S/RES/794 (Dec. 3, 1992).

²²⁵ See S.C. Res. 775, U.N. Doc. S/RES/775 (Aug. 28, 1992); S.C. Res. 794, U.N. Doc. S/RES/794 (Dec. 3, 1992).

²²⁶ See SOMALIA—UNOSOM I, *supra* note 208.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ WEISS ET AL., *supra* note 204, at 70.

²³⁰ See WORLD BANK, *supra* note 79, at 12.

²³¹ See U.N. DEP'T OF INFO., SOMALIA—UNOSOM II (1997), <http://www.un.org/Depts/DPKO/Missions/unosom2b.htm>.

²³² See *id.*

²³³ See Timelines, Somalia, *supra* note 199.

²³⁴ See Johnson & Tierney, *supra* note 202.

October 7, 1993, United States President Bill Clinton announced that American forces would be withdrawn from Somalia by March 1994.²³⁵

Earlier, in March 1993, the United Nations Secretary General admitted that security had not been achieved in Somalia.²³⁶ The failed UNITAF mission eventually transitioned in 1993 to a new UNOSOM II intervention, with ambitious goals of restoring peace and stability, rebuilding the economy, and achieving both national reconciliation and a democratic government.²³⁷ With a strength of 28,000 personnel, UNOSOM II drew support from a variety of U.N. member States, including the United States of America, and thirty-two other nations.²³⁸ However, the anti-U.N. rhetoric of warlord leader General Aidid and the failure of the United Nations to curb or catch him, despite a \$25,000 bounty on his head,²³⁹ seriously hampered UNOSOM II in its operations.²⁴⁰ “Hunting a single individual in a foreign and unforgiving land can be demoralizing for troops.”²⁴¹ Aidid, with significant Somali support, continued to defy the United Nations and its forces and caused the death of large numbers of international troops. Aidid played the political game to enhance his own power base, exacerbating divisions and manipulating the clans to serve his own aim to secure power in Somalia.²⁴² Aidid managed to undo the noble aims of UNOSOM II, denigrate international efforts at intervention, and in the process, seriously brutalized his own people, thousands of whom fled abroad to escape the violence. He was accused of having his militias rob trucks carrying food aid to sell it and fund his continuing war.²⁴³ Aidid died in 1996, never having been captured by his United Nations foes.²⁴⁴ He was succeeded by his son Hussein, ironically, a former United States marine who had served in Somalia in 1993.²⁴⁵

On November 4, 1994, the United Nations in effect admitted defeat in its peacemaking efforts for Somalia, deeming the cost in human life too high for the tolerance level of the countries that had contributed troops

²³⁵ See Timelines, Somalia, *supra* note 199.

²³⁶ See SOMALIA—UNOSOM I, *supra* note 208.

²³⁷ See SOMALIA—UNOSOM II, *supra* note 231.

²³⁸ WEISS ET AL., *supra* note 204, at 70.

²³⁹ ANDREW J. BACEVICH, AMERICAN EMPIRE: THE REALITIES AND CONSEQUENCES OF U.S. DIPLOMACY 144 (2002).

²⁴⁰ See WORLD BANK, *supra* note 79, at 12.

²⁴¹ WEISS ET AL., *supra* note 204, at 71.

²⁴² See SOMALIA—UNOSOM II, *supra* note 231.

²⁴³ K'Naan, *Why We Don't Condemn Our Pirates in Somalia*, ALTERNET.ORG, Apr. 14, 2009, <http://www.alternet.org/story/136481>.

²⁴⁴ See Dagne & Smith, *supra* note 109, at 4.

²⁴⁵ *Id.*

for the worthwhile cause of establishing peace and stability in Somalia.²⁴⁶ Admitting that its objectives had been undermined in Somalia, the Security Council authorized withdrawal of the international force.²⁴⁷ The United Nations had earlier acknowledged that “the people of Somalia bear the ultimate responsibility for national reconciliation and reconstruction of their own country.”²⁴⁸ The Security Council also reminded “all parties in Somalia, including movements and factions, that continued United Nations involvement in Somalia depended on their active cooperation and tangible progress towards a political settlement,”²⁴⁹ a conclusion that is as valid today as it was in 1993.

The years since the demise of UNOSOM II have seen a succession of peace initiatives, changes in leadership, and the inevitable kaleidoscopic coming together and dispersal of clans and families.²⁵⁰ Any detailed examination of those actions is beyond the scope or objectives of this article.²⁵¹ The essential brutal reality is that since the expulsion of dictator Siad Barre, the Somalis have lacked any effective unified government.²⁵² Additionally, two regions, Somaliland and Puntland, have separated, the former declaring independence in 1991 and the latter declaring its autonomy in 1998.²⁵³

The grim reality was that Somalia in the early 1990s was already a land given over to brigands, with little hope for the civilian victims caught in the middle. The Somali situation is both tragic and unusual because in “Somalia, a single ethnic group sharing the same religion, history, and language split into heavily armed clans.”²⁵⁴ With a developing tradition of lawless banditry, the emergence of piracy from the region was only a signal that there was nothing left to loot internally and so external prey was now sought.

²⁴⁶ See S.C. Res. 954, U.N. Doc. S/RES/954 (Nov. 4, 1994); see also SOMALIA—UNOSOM II, *supra* note 231.

²⁴⁷ S.C. Res. 954, *supra* note 246, at ¶ 5.

²⁴⁸ S.C. Res. 886, U.N. Doc. S/RES/886 (Nov. 18, 1993).

²⁴⁹ *Id.* at ¶ 9.

²⁵⁰ See WORLD BANK, *supra* note 79, at 12–14.

²⁵¹ See generally Interpeace, New Study on Peace Initiatives in the Somali Region Launched, <http://www.interpeace.org/index.php/Latest/New-study-on-peace-initiatives-in-the-Somali-Region-launched.html> (last visited Feb. 08, 2010) (providing links to discussions and reports of peace initiatives in Somalia).

²⁵² See BBC News, Africa, Country Profiles: Somalia, http://news.bbc.co.uk/2/hi/africa/country_profiles/1072592.stm (last visited Feb. 08, 2010).

²⁵³ BBC News, Africa, Country Profiles, Timeline: Somalia, http://news.bbc.co.uk/2/hi/africa/country_profiles/1072611.stm (last visited Feb. 08, 2010).

²⁵⁴ WEISS ET AL., *supra* note 204, at 69.

The extent of anarchy in Somalia can be gauged by the fact that the creation of a governmental structure for the country had to be undertaken in neighboring Kenya.²⁵⁵ In 2004 with the encouragement of a number of countries, Somalis formed a Transitional Federal Parliament as part of a new state, conveniently termed the Transitional Federal Government (“TFG”) which included: a Charter; adoption of Islamic Sharia law as the foundation for its legislative system; and a proportional system of clan representation in Parliament that was immediately condemned.²⁵⁶ Because of the volatile situation in Somalia, the transitional team governed from Kenya and only convened in Baidoa, Somalia in February 2006.²⁵⁷ The Somali President, Abdullahi Yusuf Ahmed finally arrived in Mogadishu in January 2007.²⁵⁸

Ethiopian intervention into Somalia seriously imperiled the survival of the transitional government.²⁵⁹ After Ethiopia finally withdrew, a more inclusive transitional government—“TFG version 2.0”—emerged in January 2009 with much hope for its success.²⁶⁰ At a conference held in Brussels in April 2009, the international community pledged over \$200 million to support the transitional government and effective nation building support structures for Somalia.²⁶¹

However, Mogadishu remains prey to increasing violence that occurs daily between Islamic militants, warlord militias, criminal gangs, and anyone else who has a mind inclined toward mayhem and murder.²⁶² One consequence of eighteen years of non-government is that a number of individuals, specifically some of the warlords, have acquired a “vested interest in maintaining instability within Somalia.”²⁶³ That rather unfortunate agenda poses a serious challenge for any future peace that might be contemplated.

²⁵⁵ See Hanson & Kaplan, *supra* note 81.

²⁵⁶ See Transitional Federal Charter of the Somali Republic, arts. 1, 8, 30 (Feb. 2004, Nairobi), available at <http://www.iss.co.za/AF/profiles/Somalia/charterfeb04.pdf>.

²⁵⁷ Hanson & Kaplan, *supra* note 81.

²⁵⁸ *Id.*

²⁵⁹ See Ken Menkhaus, John Prendergast & Colin Thomas-Jensen, *Somalia: Beyond Piracy—Next Steps to Stabilize the Country*, ALLAFRICA.COM, May 8, 2009, <http://allafrica.com/stories/200905080532.html>.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² See Interview by Liane Hansen with Gwen Thompkins, NPR field reporter, *Weekend Edition: Battles Escalate in Mogadishu; Thousands Flee*, (NPR radio broadcast May 24, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=104505488>; see also Hanson & Kaplan, *supra* note 81.

²⁶³ Hanson & Kaplan, *supra* note 81.

Politicized Islamic fundamentalism has added a new wrinkle to the already tangled situation in Somalia. The years-long absence of political stability provides an opportunity for terrorists. Somalia's location on the Horn of Africa makes it an expedient gateway to other Arab states and Europe. Somalia could thus become a convenient stopover for terrorists planning to attack European and North American targets. Additionally, the prevailing lawlessness in the country could enable terrorists to acquire weapons easily and to use Somalia as a base from which to launch attacks against the West. The threat of piracy morphing into terrorism is a very real concern.²⁶⁴ In an article criticizing the United Nations and Western powers, Moign Khawaja asked the world whether it was "ready to let the pirates transform into terrorists."²⁶⁵

Mark Mazzetti of *The New York Times* reported that according to experts there is "no evidence . . . of any links between the pirates and Islamic militants in Somalia."²⁶⁶ Although there is little reliable open source information about connections between pirates and Islamic militants, there are indications that the latter have sought to woo the former to the over-arching anti-American, anti-Western jihadist agenda.²⁶⁷ Militant Islamic fundamentalists "appropriated" the hijackers of the *Maersk Alabama*, calling them "religious fighters because they are at war with Christian countries that have exploited Somali waters for decades."²⁶⁸ However, the pirates thus far appear by and large to have eschewed political orientation—except insofar as Somalia's environmental problems are concerned—and seem dedicated only to the acquisition of money through ransom.²⁶⁹ Secretary of State Hillary Clinton correctly called them "nothing more than criminals,"²⁷⁰ and, hopefully, they will continue to be greedy and avoid becoming political or religious zealots. The religious radicalization

²⁶⁴ See, e.g., Dina Temple-Raston, *Morning Edition: Experts Fear Al-Qaida May Turn to Piracy*, (NPR radio broadcast Apr. 14, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=103064945>.

²⁶⁵ Moign Khawaja, *Somalia: Pirate, Who?*, SOMALIWEYN.COM, Apr. 27, 2009, http://www.somaliweyn.com/pages/news/Apr_09/27Apr29.html.

²⁶⁶ Mark Mazzetti et al., *Navy's Standoff With Pirates Shows U.S. Power Has Limits*, N.Y. TIMES, Apr. 10, 2009, at A8, available at <http://query.nytimes.com/gst/fullpage.html?res=9500E6DF133CF933A25757C0A96F9C8B63>.

²⁶⁷ See Posting of Khaled Wassef to WorldWatch, *Al Qaeda Urges Somalis To Attack Ships*, <http://www.cbsnews.com/blogs/2009/04/16/world/worldwatch/entry4949488.shtml> (Apr. 16, 2009, 08:56 PST).

²⁶⁸ Alisha Ryu, *Somali Militants Express New Support for Pirates*, VOANEWS.COM, Apr. 13, 2009, <http://www.voanews.com/english/2009-04-13-voa23.cfm?renderforprint=1>.

²⁶⁹ See Mazzetti et al., *supra* note 266, at A8.

²⁷⁰ *Id.*

of the Somali pirates would be the greatest threat to the West. That would take piracy to the far more threatening plane of international terrorism and make decisive military action a vital necessity. American experiences in Iraq and Afghanistan should serve as a potent reminder of the challenges of fighting a war against terrorism in a foreign country. There is no reason to suppose that such an operation in Somalia would fare any better for the West.

There appears to be some support for fundamentalist Islam in the Horn of Africa countries.²⁷¹ Religion, especially militant religion, can easily take hold and gain popularity in an economically desperate society.²⁷² Where the population has seething resentments against Western interference or involvement, the situation can quickly become volatile. It is imperative that Somalia not become the next Iraq or the next Afghanistan. We in the West can hardly afford to engage in endless wars all over the world. Some more rational solution has to be found.

It is frustrating, futile, and self-defeating for us in the secular West to seek to pigeon-hole the many varieties of Islamic thought and the diversity of political opinion into neat categories termed “moderate,” or “militant,” or “fundamentalist,” or “radical,” or “jihadist,” in an effort to sort out friend from foe.²⁷³ There is a huge diversity of reaction to the West among Islamic populations. Every human being is after all, the product of his life experiences played on the mindset of his political and cultural values. It is impossible to categorize people and either laud or condemn them simply on the basis of our priorities for them. Categorization may be a comfortable exercise from our perspective but it can be counter-productive if we make mistakes. This has occurred time and again. The war against terrorism has to be fought, and very vigorously, against those who would

²⁷¹ See David H. Shinn, *Ethiopia: Coping with Islamic Fundamentalism Before and After September 11*, 7 AFRICA NOTES 1, at 2–7 (2002), available at http://csis.org/files/media/isis/pubs/anotes_0202.pdf (describing the fundamentalist threat in Ethiopia, Sudan, and Somalia); see also INSTITUTE FOR SECURITY STUDIES, CONCEPT NOTE: INTER-REGIONAL CHALLENGES OF ISLAMIC FUNDAMENTALIST MOVEMENT IN NORTH AFRICA IN RELATION TO NETWORK SUPPORT, BACKGROUND AND RATIONALE OF THE CONFERENCE 1, 2–3 (2009), available at http://www.iss.co.za/dynamic/administration/file_manager/file_links/CONCEXTREM.PDF?link_id=5391&slink_id=7742&link_type=12&slink_type=13&tmpl_id=3 (explaining the growth of fundamentalism in North Africa arising from economic conditions).

²⁷² See RAND CORP., U.S. STRATEGY IN THE MUSLIM WORLD AFTER 9/11, RESEARCH BRIEF 1, 2–3 (2004), http://www.rand.org/pubs/research_briefs/RB151/index.html (follow “Full Document” hyperlink).

²⁷³ See, e.g., Chip Berlet, *Terms & Concepts: Use with Caution*, PUBLIC EYE.ORG, <http://www.publiceye.org/frontpage/911/clerical-911.html> (last visited Feb. 08, 2010) (clarifying the various labels used indiscriminately by commentators).

threaten the secular democratic way of life that we in the West have worked centuries to create and which we cherish, particularly for the human rights that we enjoy.²⁷⁴ However, all Muslims need to be perceived and interacted with not as extensions of our political agendas but within their own context and on the basis of their own national and social priorities.²⁷⁵ If the West can achieve that, it may well find that there are more Muslims willing to be equal partners with the West than terrorists determined to destroy our way of life. If we refrain from over-simplifying our interactions with the Islamic populations and approach them with an emphasis on mutual respect, mutual “live and let live,” and mutual benefit, they will, on their own, by their reactions, demonstrate whether they are friend or foe. By putting the onus on them, we allow them to categorize themselves rather than doing it ourselves and making the mistakes which have cost so many lives on all sides in the past few years. Where they are inclined to violence, whether or not they quote religious verses to justify their attacks against us, we fight them in the way a secular democracy would fight any political enemy, with the utmost determination to succeed. By refusing to categorize them or to prejudge them, we allow those who would engage with us peacefully the opportunity to do so, diminishing in no way our own values while appreciating theirs as well.

The implementation of such an approach for Somalia could result in the West seeking to curb piracy but insisting that it is entirely up to the Somalis to determine and create their own government. The West could assist the process by ensuring that more arms do not reach that embattled country; that humanitarian assistance is offered, provided Somalis guarantee its protection and distribution to those who need it; that technical assistance of all types is made available, should they ask for it; and that their oceans are protected from international predators.

The Somali political debate has focused on the effectiveness or otherwise of the various Islamic groups which united under the Islamic

²⁷⁴ See President George W. Bush, President’s Address Before a Joint Session of the Congress on the United States Response to the Terrorist Attacks of September 11 (Sep. 20, 2001), in 1 PUB. PAPERS 1140. “They hate what they see right here in this chamber: a democratically elected government. . . . They hate our freedoms: our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.” *Id.* at 1141–42.

²⁷⁵ See Fawaz A. Gerges, *Commentary: Obama Must Speak to Young Muslims*, CNN.COM, <http://edition.cnn.com/2009/WORLD/meast/06/02/gerges.obama.speech/index.html> (last visited Feb. 08, 2010) (suggesting in advance of his speech in Cairo that “[t]o be effective, the president must simultaneously address not only thorny regional conflicts but also the fears, hopes, and aspirations of young Muslims for a better life.”).

Courts Union, also known as the Supreme Council of Islamic Courts.²⁷⁶ Bitter fighting erupted between this religious group and some more secular clans as well as those who supported the Transitional Government.²⁷⁷ It was the usual violent free-for-all with civilians being the main targets and suffering the most.²⁷⁸ The Youth Wing of the Islamic Council, Al-Shabaab, undertook much of the actual fighting and gained notoriety for its attacks against civilians.²⁷⁹ The group made news in 2007 when it allegedly threatened prospective peacekeepers from African Union countries, warning them that “Somalia is not a place where you will earn a salary—it is a place where you will die.”²⁸⁰ Al-Shabaab is on the United States terrorist list.²⁸¹

By June 2006, the Somalia Islamic Courts Council had, for a time, seized Mogadishu and the port of Kismayu, Somalia’s third largest city, and had declared a jihad against Ethiopia.²⁸² Ethiopia and its regional rival Eritrea got involved on different sides in the Somali crisis, Ethiopia invading Somalia in July 2006, purportedly to sustain the Transitional Government.²⁸³ The two rivals, Ethiopia and Eritrea have been accused of resuming their long historical conflict, this time via a proxy war in Somalia.²⁸⁴ The U.N. Security Council has accused Eritrea of arming Islamic militants, an action that violates the U.N. arms embargo imposed on Somalia.²⁸⁵ Eritrea has denied the charge.²⁸⁶

²⁷⁶ See BBC News, Africa, Profile: Somalia’s Islamic Courts, <http://news.bbc.co.uk/2/hi/5051588.stm> (last visited Feb. 08, 2010).

²⁷⁷ See BBC News, Africa, Country Profiles, Timeline: Somalia, *supra* note 253.

²⁷⁸ See, e.g., Posting of Daniel Graeber to War Crimes: The World Affairs Blog Network, Hundreds of Civilian Casualties in Somalia Fighting, <http://warcrimes.foreignpolicyblogs.com/2007/04/23/hundreds-of-civilian-casualties-in-somalia-fighting> (Apr. 23, 2007, 08:37 EST).

²⁷⁹ See NATIONAL COUNTERTERRORISM CENTER, TERRORIST GROUPS, AL-SHABAAB, http://www.nctc.gov/site/groups/al_shabaab.html (last visited Dec. 30, 2009).

²⁸⁰ *Somali Militants Post Video Warning to African Peacekeepers*, ASSOCIATED PRESS (“AP”), Jan. 30, 2007, <http://www.aparchive.com/Search.aspx?remem=x&st=k&kw=Somali+Militants+Post+Video+Warning#preview>.

²⁸¹ See NATIONAL COUNTERTERRORISM CENTER, TERRORIST GROUPS, AL-SHABAAB, *supra* note 279.

²⁸² See BBC News, Africa, Country Profiles, Timeline: Somalia, *supra* note 253.

²⁸³ See *id.*; see also BBC News, Africa, Somalia: Who Supports Who, <http://news.bbc.co.uk/2/hi/africa/5092586.stm> (last visited Feb. 08, 2010).

²⁸⁴ See, e.g., Garoweonline.com, Editorial: Ethiopia-Eritrea Rivalry Should Not Dictate Somalia Politics, May 17, 2009, http://www.garoweonline.com/artman2/publish/Editorial_29/Ethiopia-Eritrea_rivalry_should_not_dictate_Somalia_politics.shtml.

²⁸⁵ Megan Davies, *UN Cites Reports Eritrea Aiding Somali Militants*, REUTERS.COM, May 15, 2009, <http://www.reuters.com/article/idUSN15313368>.

²⁸⁶ See Abdurrahman Warsameh, *Somalia: Al-Shabaab Defiant, Determined*, INT’L RELATIONS AND SEC. NETWORK—SEC. WATCH, Jun. 4, 2009, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?id=101131&lng=en>.

To further complicate the Somali anarchic mess of competing militias, armies, mercenaries, brigands, home-grown terrorists, and garden-variety criminals, there were also allegations of Al Qaeda involvement in Somalia.²⁸⁷ This situation brought direct American intervention in 2007 with air strikes and special forces deployments against suspected Al Qaeda allies of the Islamic groups.²⁸⁸ By one estimate, “[i]nitial intervention to eliminate Islamic militancy supported by the US has ultimately led to . . . a drastic increase in Islamist extremists.”²⁸⁹ The United States Government of President George Bush, determined to prevent Islamic fundamentalism from turning a vital strategic state into a terrorist haven, is said to have assisted and funded the Somali Alliance for the Restoration of Peace and Counter-Terrorism, an action that allegedly had the unexpected consequence of popularizing the Islamic cause in Somalia.²⁹⁰ Somali government troops defected to the insurgency.²⁹¹ The Islamic Courts Union was militarily defeated in December 2006 by a combination of Ethiopian and Somali government troops.²⁹² However, now in insurgent “mode,” the Islamic militants continue the war and in Mogadishu, in particular, the random and violent free-for-all prevails.²⁹³

With respect to the subject of piracy, it is worth noting that while it held power, the Islamic Courts Union took steps to curb the pirates and launched military campaigns against pirate strongholds.²⁹⁴ Piracy was declared a capital offense and beheading was the punishment.²⁹⁵ It is also worth noting that no other Somali authority appears to have exercised any effective control over the pirates.²⁹⁶

²⁸⁷ See, e.g., *World, Timeline: Chaos in Somalia*, REUTERS.COM (U.K.), June 3, 2007, <http://uk.reuters.com/article/idUKL0367271320070603>.

²⁸⁸ See, e.g., Lloyd de Vries, *U.S. Strikes In Somalia Reportedly Kill 31*, CBSNEWS.COM, Jan. 9, 2007, <http://www.cbsnews.com/stories/2007/01/08/world/main2335451.shtml>.

²⁸⁹ SOMALIA RISK ASSESSMENT BRIEF, *supra* note 71.

²⁹⁰ See Emily Wax & Karen DeYoung, *U.S. Secretly Backing Warlords in Somalia*, WASH. POST, May 17, 2006, at A1, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/05/16/AR2006051601625_pf.html.

²⁹¹ See BBC News, Africa, Q&A: Somalia's Conflict, May 13, 2009, <http://news.bbc.co.uk/2/hi/africa/4760775.stm>.

²⁹² BBC News, Africa, Country Profiles, Timeline: Somalia, *supra* note 253.

²⁹³ See *id.*

²⁹⁴ See Tony Karon, *Battling the Somali Pirates: The Return of the Islamists*, TIME, Nov. 25, 2008, <http://www.time.com/time/world/article/0,8599,1861698,00.html> (noting that while they were in power, the Islamists “had some success in stamping out piracy”).

²⁹⁵ John S. Burnett, Opinion, *Grand Theft Nautical*, N.Y. TIMES, Dec. 5, 2008, at A39, *available at* <http://www.nytimes.com/2008/12/05/opinion/05burnett.html>.

²⁹⁶ See *id.*

Somali history of the past few years makes it painfully clear that any international peace-keeping force is likely to receive short shrift at the hands of the Somalis. Ironically, while Somali groups, clans, tribes, and even families fight apparently never-ending wars against each other, the one factor that seems to provoke a common voice from many of them is the prospect of international intervention in their country. Many Somalis are fiercely opposed to the presence of outside military forces in their country and have apparently yet to appreciate that in that insular (us vs. them) but patriotic view may lie the seeds of nationalism, that could some day unite them.

The international support provided to the Transitional Government may have caused it more harm than good. By May 2009, the likelihood of a radical Islamic regime being established in Somalia was already being articulated as a possibly “devastating blow to U.S. counter-terrorism and anti-piracy efforts in East Africa.”²⁹⁷

Meanwhile, having failed so miserably to cope with the byzantine politics of Somali warlords and their gun-toting followers, the United Nations turned to the African Union in 2007 to create a regional force of peacekeepers with the mandate of supporting the fledgling and faltering transitional government of Somalia.²⁹⁸ This force was titled the African Union Mission to Somalia (“AMISOM”) and its mandate has been extended several times, most recently until January 31, 2010.²⁹⁹ African nations that have contributed troops for these attempts to keep the peace in Somalia have met considerable resistance from some Somali factions and a number of their soldiers have been killed and wounded.³⁰⁰ Some Somalis resent this African force “as yet another foreign occupier.”³⁰¹ The loss of life and the cost of this mission have to be assessed very carefully in order that its aims and agenda are made very clear to all parties. Kalundi Serumaga, writing for *The Independent*, asked about the African Union’s objective: “[I]s it to prop up a state that clearly does not want to be propped up? Is it to prevent the growing emergence of home-grown states according to the

²⁹⁷ Shashank Bengali, *Somalia Government Close to Collapse*, BARTAMAHA.COM, May 16, 2009, <http://www.bartamaha.com/?p=2513>.

²⁹⁸ See EUROPEAN COMM’N, EXTERNAL COOPERATION PROGRAMMES, AMISOM, http://ec.europa.eu/europeaid/where/acp/regional-cooperation/peace/peace-support-operations/amisom_en.htm (last visited Feb. 08, 2010).

²⁹⁹ *Id.*

³⁰⁰ See BBC News, Africa, Country Profiles, Timeline: Somalia, *supra* note 253.

³⁰¹ Bruce Crumley, *Ridding Somalia of Pirates: Hard Choices for the West*, TIME, Apr. 30, 2009, available at <http://www.time.com/world/article/0,8599,1894395,00.html>.

needs of the locals . . . ? Is it part of the former war on terror?"³⁰² According to Jennifer Cooke, Director of the Africa Program at the Center for Strategic and International Studies, the African Union's peacekeepers are ineffective.³⁰³ Islamic leader, Sheikh Hassan Dahir Aweys referred to these African peacekeepers as "bacteria" and vowed to fight them.³⁰⁴ Another commentator declared that "every AMISOM soldier is an enemy of the Somali nation."³⁰⁵ Instability and frequent violence in Somalia make any peace-keeping mission an exercise in futility.³⁰⁶ The greatest tragedy is the humanitarian disaster that confronts nearly half the population who depend on foreign shipments of food and other necessities to survive.³⁰⁷

Author Issaka K. Souare has concluded that "the solution to Somalia's protracted political problems is not to be found in battlefields, and that insistence on sole military means can prove counterproductive."³⁰⁸ In line with this reasoning, adopted by many Somalis, are the numerous efforts by various nations and regional groups to bring the warring Somali factions together for peace negotiations.³⁰⁹ The most significant of these many attempts occurred in Djibouti and concluded with a UN-mediated agreement announced on June 9, 2008.³¹⁰ This Djibouti peace agreement

³⁰² Kalundi Serumaga, *Somalia Piracy, A Chicken or Egg?*, THE INDEPENDENT, Apr. 28, 2009, available at <http://www.independent.co.ug/index.php/column/interview/69-interview/866-somalia-piracy-a-chicken-or-an-egg>.

³⁰³ Dilanian, *supra* note 29.

³⁰⁴ Mohamed Mohamed, *Somalia's Kingmaker Returns*, BBC NEWS, Apr. 28, 2009, <http://news.bbc.co.uk/2/hi/africa/8020548.stm>.

³⁰⁵ Muhammad Shamsaddin Megalommatis, *Every AMISOM Soldier is an Enemy of the Somali Nation*, AMERICAN CHRONICLE, May 7, 2009, <http://www.americanchronicle.com/articles/101708>.

³⁰⁶ See, e.g., WALTER S. POOLE, THE EFFORT TO SAVE SOMALIA: AUGUST 1992–MARCH 1994 38–40, 66–71 (Joint History Office, Office of the Chairman of the Joint Chiefs of Staff 2005); Xan Rice, *Ethiopia Ends Two-Year Occupation of Somalia*, THE GUARDIAN, Jan. 27, 2009, <http://www.guardian.co.uk/world/2009/jan/26/ethiopia-ends-somalia-occupation>.

³⁰⁷ Oxfam, *supra* note 110.

³⁰⁸ Issaka K. Souare, *Conclusions: Towards a Revived Somali State*, in SOMALIA AT THE CROSSROADS: CHALLENGES AND PERSPECTIVES ON RECONSTITUTING A FAILED STATE 206, 210 (Abdullahi A. Osman & Issaka K. Souare eds., Adonis & Abbey 2007).

³⁰⁹ See Marc Lacey, *Somalis Reach Peace Deal After Dozen Years of Fighting*, N.Y. TIMES, Jan. 30, 2004, at A3 (describing multiple failed peace agreements prior to the 2004 agreement that is the subject of the article); see also Paul Salopek, *Somali's "Jubilant" at News of Cease-Fire Agreement*, CHI. TRIB., June 11, 2008, at C10 (placing Djibouti peace agreement in context as "the latest in a stack" of peace agreements and pointing out that all previous such deals have failed); see also Rice, *supra* note 306.

³¹⁰ See Jeffrey Gettleman & Mohammed Ibrahim, *Hope and Doubt Greet Peace Deal in Somalia*, N.Y. TIMES, June 11, 2009, at A9.

was almost immediately condemned by Sheikh Hassan Dahir Aweys³¹¹ and has been recognized more in breach than by faithful implementation of its provisions, which included a ceasefire, an agreement to accept an international stabilization force from friendly countries, and withdrawal of Ethiopian troops, who supported the Transitional Government.³¹² Most important, the agreement provided a road map for the cessation of armed confrontation in Somalia.³¹³

This discussion of the role and failure of the United Nations and its member States in the Somali conflict served the purpose of providing the reader with some background to appreciate the extent of havoc in the civilian population and environment caused by the long period of political anarchy that has prevailed in that country. As of Fall 2009, violent conflicts have broken out in Mogadishu and there appears to be no end in sight to the agony of the people.³¹⁴ While food is scarce in parts of Somalia, weapons are not.³¹⁵ Arms monitoring has revealed that the weapons, with which Somalis have been killing each other for decades, come from many countries including the United States, Iran, China, Saudi Arabia, Israel, Ukraine, Finland, and North Korea.³¹⁶ An ancillary purpose for delineating some aspects of the history of Somalia, including international attempts at resolution, is to learn whether there can be any future possibility of a stable government that will overcome clan differences and unify that tragic land. Unless all of Somalia acquires a peaceful government that is dedicated to establishing the rule of law in a highly weaponized country, there is little hope for resolution of either the piracy problem that plagues outsiders or the social and environmental problems that have made life so unbearable for Somalis.³¹⁷ The prognosis for that ancient land is rather

³¹¹ See *id.*; The Secretary General, *Report of the Secretary-General on the Situation in Somalia*, ¶ 10, U.N. DOC. S/2008/466 (July 16, 2008).

³¹² *Id.* ¶ 9.

³¹³ See *id.*

³¹⁴ See, e.g., Lufti Sheriff Mohamed, *Somalia Shelling Leaves 20 Dead*, L.A. TIMES, Oct. 23, 2009, <http://www.latimes.com/news/nationworld/world/la-fg-somalia-shelling23-2009oct23,0,4649696.story> (describing an exchange of artillery fire that killed 20 civilians in Mogadishu).

³¹⁵ Olivia Ward, *Somalia a Land of Chaos, Awash in Weapons*, INSIDESOMALIA.ORG, Mar. 2, 2009, <http://insidesomalia.org/20090302188/News/Editorial/Somalia-a-land-of-chaos-awash-in-weapons.html>.

³¹⁶ *Id.*

³¹⁷ Perry, *supra* note 39 (pointing to a lack of government as the source of piracy and humanitarian problems); Interview by Akwe Amosu with Fatima Jibrell, Founder, Horn of Africa Relief and Development Organization, in Johannesburg, South Africa (Jan. 13,

grim in terms of its future and its ability to rejoin the community of peaceful nations.³¹⁸ Philippe Lazzarini, the United Nations' chief humanitarian official for Somalia, expressed his belief that "this is the worst humanitarian crisis on the continent, possibly in the world."³¹⁹

Piracy is both a symptom of Somalia's collapse and a consequence of that breakdown.³²⁰ While there can be no doubt that the world has to be extremely concerned about this situation and the way it imperils our march to a globalized future, until Somalia acquires some national consciousness and acts to create and sustain a viable government, it will remain a rogue state, a failed state, and an anarchy that will be both opportunistic predator and prey, environmentally, economically, and socially.³²¹

II. THE ENVIRONMENTAL CRISIS

A. *Introduction: Environmental Degradation of Somalia*

The story of Somalia is tragic on many levels: political, economic, and social. The resulting anarchy, poverty, and crime affect the daily lives of all persons unfortunate enough to be caught in the vortex of a state descending into chaos.³²² However, on a different level, Somalis are doomed not just in the present but for the future as well. The extent of environmental degradation that afflicts this once-fabled ancient land is a tragedy that will impact future generations and may well be irreparable.³²³ Dr. Abdulkadir Abow, commenting on the escalating environmental disasters in Somalia, stated that "those who, due to extreme poverty, turn everything found on Somali soil into either a commercial venture or a short-term

2003), <http://allafrica.com/stories/printable/200301130987.html> (stating that the weakness of Somalia's government allows environmental destruction by Somalis and foreigners).

³¹⁸ See SHAUL SHAY, *SOMALIA BETWEEN JIHAD AND RESTORATION* 195 (Transaction Publishers 2008).

³¹⁹ Jason McLure, *Africa's Worst Crisis*, NEWSWEEK, Mar. 17, 2008, <http://www.newsweek.com/id/120119>.

³²⁰ See Middleton, *supra* note 6.

³²¹ See Perry, *supra* note 39.

³²² See Middleton, *supra* note 6.

³²³ See Carolyn Hemminger, *Complex Emergency Situation in Somalia Exacerbated by Environmental Degradation*, MEDIAGLOBAL.ORG, Apr. 27, 2009, <http://www.mediaglobal.org> (follow "Archives" hyperlink; then scroll to April 2009 and select article title); Abdullahi E. Mohamed, *Somalia's Degrading Environment: Causes and Effects of Deforestation and Hazardous Waste Dumping in Somalia* (Somali Ctr. for Water and Env't June 2001), <http://www.banadir.com/a.htm> (pointing out serious environmental challenges facing Somalia and the barriers to dealing with them).

survival solution inflict the heaviest environmental damage.”³²⁴ The Natural Resources and Environmental Development Agency—Somalia (“NERDA”), a non-governmental organization in Somalia, commented that “poverty is the main direct source of Somali ecological problems,” and emphasized the circumstances of “extreme poverty, violations of human rights, tribalism, xenophobia, and, not least, environmental degradation,” which was deemed “the most serious problem.”³²⁵

It is also important to realize that those who are afflicted with poverty depend far more on a stable and healthy environment than the wealthier elements of society, who can utilize technology to ensure a more comfortable lifestyle.³²⁶ The Somali Centre for Water & Environment (“SCWE”) published a report by environmental engineer, Abdullahi Elmi Mohamed, which emphasized that “[e]nvironmental degradation increases the poverty of those who are already poor especially in those parts of the world where livelihoods and lives are closely dependent on natural environment.”³²⁷

While the atmosphere of political instability, violence, and crime have resulted in some of the onshore pollution and ruination of the environment, the oceans of Somalia have been looted and polluted by outsiders.³²⁸ The world bears responsibility for having allowed such crimes to go unpunished and for allowing those who have despoiled Somalia’s offshore wealth to continue their predatory actions.

As in many parts of Africa, there is a clear nexus in Somalia between poverty and environmental destruction.³²⁹ In Somalia, chronic

³²⁴ Abdulkadir Abow, *Environmental Problems in Somalia*, RIFT VALLEY WILDLIFE FOUNDATION, <http://www.riftwildlife.org/media/Rift%20Wildlife%20Flash%20site.swf> (follow “Welcome” hyperlink; then follow “Programs” hyperlink; then follow “Wildlife News” hyperlink) (last visited Feb. 08, 2010); see also Hemminger, *supra* note 323; see also MOHAMED, *supra* note 323 (describing use of firewood and charcoal by many Somalis as contributing to deforestation).

³²⁵ National Res. & Env’tl. Dev. Agency—Somalia, *Current Environmental Degradation in Somalia*, (June 6, 1997) (prepared by Quasim H. Farah), <http://www.angelfire.com/ne/NEDRA/NEDRA.html>.

³²⁶ See MOHAMED, *supra* note 323 (describing how large-scale charcoal production enriches a few Somalis while making the land unsuitable for grazing).

³²⁷ *Id.*

³²⁸ See Craig Offman, *In Defense of Pirates: Are Somalia’s Pirates Reacting to International Abuses?*, NAT’L POST, Apr. 17, 2009, <http://www.nationalpost.com/story.html?id=1508124>; Leigh Phillips, *Commission Ready to Investigate European Illegal Fishing Off Somalia*, EUOBSERVER.COM, Apr. 22, 2009, <http://euobserver.com/13/27983?print=1>.

³²⁹ See Edward G. Howard-Clinton, *The Emerging Concepts of Environmental Issues in Africa*, 8 ENVTL. MGMT. 187, 187 (1984).

underdevelopment drives people to pollute their environment because they have few options.³³⁰ Lacking adequate garbage disposal systems, Somalis are forced to pollute any area convenient for dumping refuse.³³¹ The United Nations Environment Programme ("UNEP") explained that a garbage tipping site was located on the coast at Mogadishu and commented that "[u]rban solid waste dumps form another possible source of local pollution in Somalia."³³² Dr. Abdulkadir Abow, articulating a lengthy list of environmental disasters afflicting Somalia, pointed out that solid waste is scattered "all over cities and villages."³³³ UNEP expressed some concern over the fact that untreated domestic and municipal waste winds up in the Red Sea.³³⁴

This type of activity increases land and ocean pollution and generates even more disease. Absent reliable electricity, the people are compelled to cut down trees for firewood, and this adds to the decline of soil quality, erosion of agricultural and pastoral land, and eventually desertification.³³⁵ "Huge areas that were once tree covered rangelands have been reduced to treeless plains, with the result that wildlife has all but disappeared."³³⁶ With soil destruction come food shortages; consequently, hunger and malnutrition are inevitable.³³⁷ In order to protect crops from insects, farmers are inclined to overuse pesticides. The United Nations has drawn attention to the "extensive use of pesticides, insecticides and herbicides for agriculture and other purposes" in Somalia.³³⁸ Although in the West too much development is responsible for many of the environmental nightmares being faced today, ironically, in Africa, chronic under-development is more likely to be the major reason for pollution and ruination of the environment.³³⁹

Although the Somalis have, as a matter of personal survival, had to pollute and degrade their environment, the focus of this article will be

³³⁰ Farah, *supra* note 325.

³³¹ UNITED NATIONS ENV'T PROGRAMME [UNEP], THE STATE OF THE ENVIRONMENT IN SOMALIA: A DESK STUDY 26 (2005), http://www.unep.org/DEPI/programmes/Somalia_Final.pdf.

³³² UNEP, RED SEA & GULF OF ADEN: REGIONAL PROFILE 24, <http://www.unep.org/regionalseas/programmes/nonunep/redsea/default.asp> (follow "Regional Profile" hyperlink) (last visited Feb. 08, 2010).

³³³ Abow, *supra* note 324; *see also* UNEP, THE STATE OF THE ENVIRONMENT IN SOMALIA, *supra* note 331, at 26.

³³⁴ UNEP, RED SEA & GULF OF ADEN, *supra* note 332, at 24.

³³⁵ *See* SOMALI SUPPORT SECRETARIAT, *supra* note 89.

³³⁶ *Id.*

³³⁷ *See* UNEP, THE STATE OF THE ENVIRONMENT IN SOMALIA, *supra* note 331, at 30, 49, 51.

³³⁸ UNEP, RED SEA & GULF OF ADEN, *supra* note 332, at 25.

³³⁹ *See* Howard-Clinton, *supra* note 329, at 187.

on two aspects of environmental damage committed largely by external agents: namely over-fishing and marine pollution caused by the dumping of toxic waste in the oceanic waters adjacent to Somalia.

B. Ocean Pollution

In recent decades, the world has become much more conscious of and conscientious about the need to protect the ecology of Earth's oceans, which occupy approximately seventy-one percent of its surface.³⁴⁰ "From oil to tin, diamonds to gravel, metals to fish, the resources of the sea are enormous."³⁴¹ As these oceans produce a vital food source for millions of human beings, it is self-evident that pollution should be avoided. Who in their right mind would set about contaminating a vital food source? The Somali situation provides some depressing answers.³⁴²

Expanding populations and diminishing food resources from the oceans lend urgency to the need to protect the oceanic environment from all forms of pollution that could imperil that food resource.³⁴³ Particularly threatening is the waste dumped by ships and oil tankers.³⁴⁴ In the 1970s, Greenpeace actively campaigned against ocean dumping, particularly emphasizing the dangers of radioactive waste pollution.³⁴⁵

Although most of the toxic waste has been produced by the developed world as an unfortunate by-product of its rush to industrialization and the creation of a consumer-oriented market economy, the most

³⁴⁰ Memorandum from Emily E. Baine & Margaret P. Simmons of the U.S. Army Engineering & Support Center, Mitigating the Possible Damaging Effects of Twentieth-Century Ocean Dumping of Chemical Munitions (2005), <http://www.dstl.gov.uk/conferences/cwd/2005/pres/17.pdf>.

³⁴¹ UNITED NATIONS DIV. FOR OCEAN AFFAIRS AND THE LAW OF THE SEA [DOALOS], THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A HISTORICAL PERSPECTIVE (1988), http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm.

³⁴² See generally Mohamed Abshir Waldo, *Somali Complains and Appeals on Illegal Fishing and Hazardous Waste Dumping*, SOMALI FISHERIES SOC'Y, http://soma-fish.org/index.php?option=com_content&view=article&id=11&itemid=13&showall=1 (last visited Feb. 08, 2010) (discussing problems with toxic waste dumping and lack of meaningful international intervention).

³⁴³ See generally David Pimentel & Marcia Pimentel, *Population Growth, Environmental Resources, and the Global Availability of Food*, SOC. RESEARCH, Spring 1999, http://findarticles.com/p/articles/mi_m2267/is_1_66/ai_54668885/ (warning that human populations are exceeding food supplies and preservation of land and sea resources is needed).

³⁴⁴ See OCEANA, THE DUMPING OF HYDROCARBONS FROM SHIPS INTO THE SEAS AND OCEANS OF EUROPE: THE OTHER SIDE OF OIL SLICKS Executive Summary, 7–11 (Oceana 2003), <http://www.oceana.org/uploads/media/oil-report-english.pdf>.

³⁴⁵ See GREENPEACE INT'L, HISTORY OF OCEAN DUMPING (1997), <http://archive.greenpeace.org/odumping/radioactive/reports/history.html>.

sought-after dumping grounds for this waste have inevitably been in the developing world.³⁴⁶ The poorer nations of the world, lacking the means of protecting their environment, regularly became dumping grounds for industrial, hospital, and even radioactive waste produced by the richer nations of the West.³⁴⁷ The desperate requirement for hard currency has often forced governments in the developing world—the South—to accept such dangerous trash from the developed world—the North.³⁴⁸ Allegedly, on occasion in some countries, politicians have been paid off or persuaded to permit the pollution of their countries.³⁴⁹ The use of countries in the South as dumping grounds for Northern waste has provoked intense rage among populations in the South.³⁵⁰ The NIMBY, not in my backyard, effect so familiar in North American politics, generated considerable agitation against the polluters, who were mainly business interests attempting to dispose of waste as cheaply as possible.³⁵¹ Ironically, attempts to improve the environment of the North via stronger legislative measures, public awareness campaigns, and the like made it more likely that the undesirable waste materials generated by the North's consumer society would land in the soil and oceans of the South.³⁵² The dumping has been termed "toxic colonialism," and widely condemned.³⁵³

The failure of some European waste disposal companies to find any place willing to accept their unhealthy cargo impelled the situation that has now become so serious in Somalia.³⁵⁴ Because there has for nearly two decades been no effective and stable government to protect the Somali environment and no local coastguard to drag the polluters through national judicial systems, business interests—thought to be from Europe—saw a great opportunity of vast profits and took advantage of the situation.³⁵⁵

³⁴⁶ See, e.g., Ben Webster, *Britain's Dirty Little Secret as a Dumper of Toxic Waste*, THE TIMES, July 18, 2009, <http://www.timesonline.co.uk/tol/news/environment/article6718689.ece#>.

³⁴⁷ *Id.*

³⁴⁸ See RANEE K.L. PANJABI, THE EARTH SUMMIT AT RIO: POLITICS, ECONOMICS AND THE ENVIRONMENT 93–155 (1997), for a detailed analysis of the North-South conflict.

³⁴⁹ *Id.* at 126.

³⁵⁰ See *id.* at 126.

³⁵¹ *Id.* at 126–127.

³⁵² See Letter from Jim Puckett, Coordinator, Basel Action Network Secretariat, to Melinda L. Kimble, acting Assistant Secretary of State (May 8, 1998), <http://www.ban.org/Library/usletter.html>.

³⁵³ *Id.*

³⁵⁴ Paul Adujie, *Africa: Dumping Europe's Toxic Wastes on Africa*, ALLAFRICA.COM, Oct. 12, 2009, <http://allafrica.com/stories/printable/200910130454.html>.

³⁵⁵ See MOHAMED, *supra* note 323.

Although one can accuse such interests of exhibiting egregious amounts of greed, demonstrating crass indifference to the consequences of their actions, and so on, it is the negligence of their home governments in policing their national waste disposal companies that must also be considered. To turn a blind eye to such actions is, in effect, to condone by inaction the environmental destruction of Somalia.³⁵⁶ That the United Nations has also not taken effective action to stop this practice reflects very negatively on the world organization.³⁵⁷ When one compares the lethargic absence of international action to stop the waste-dumping and over-fishing that daily despoils Somalia with the energetic, frenetic activity from all quarters to deal with Somali piracy, the sense of imbalance in approach becomes glaring indeed.³⁵⁸

The earlier view that the oceans constituted common property was, in the twentieth century, replaced by an increasing tendency for nations to extend their sovereign control over waters adjacent to their coastline.³⁵⁹ These oceanic waters became part of a country's economic interests, subject to various national laws, licensing systems, fee payments, penalties for violators, and the like.³⁶⁰

The discovery of offshore oil has induced most nations to claim all oceanic territory they can; a trend begun by the U.S. President Harry Truman, who in 1945 extended national jurisdiction over all natural resources on the continental shelf.³⁶¹ Other nations followed, laying varied claims to areas up to two hundred miles into the ocean.³⁶²

"Customary international law" that assured "freedom of the seas" became contentious,³⁶³ particularly with the appearance of enormous fishing vessels that could literally scoop out entire sections of seafood from the ocean.³⁶⁴ "The oceans were generating a multitude of claims, counter

³⁵⁶ *See id.*

³⁵⁷ *See id.*

³⁵⁸ Interview by Amy Goodman with Mohamed Abshir Waldo, *Somalia Piracy Began in Response to Illegal Fishing and Toxic Dumping by Western Ships off Somali Coast* (Democracy Now! television/radio broadcast Apr. 14, 2009), available at http://www.democracynow.org/2009/4/14/analysis_somalia_piracy_began_in_response.

³⁵⁹ *See* Becky Mansfield, *Neoliberalism in the Oceans: "Rationalization," Property Rights, and the Commons Question*, 35 *GEOFORUM*, 313, 313–314 (2004).

³⁶⁰ *See id.* at 314.

³⁶¹ DOALOS, *supra* note 341.

³⁶² *Id.*

³⁶³ Baine & Simmons, *supra* note 340, at 10.

³⁶⁴ Edward N. Kimani, Gladys M. Okemwa & Johnson M. Kazungu, *Fisheries in the Southwest Indian Ocean: Trends and Governance Challenges*, in *THE INDIAN OCEAN: RESOURCE AND GOVERNANCE CHALLENGES* 3, 9, 12 (Ellen Laipson & Amit Pandya eds.

claims, and sovereignty disputes.”³⁶⁵ By 1982, the international community finally succeeded in concluding the UNCLOS, which came into force in 1994.³⁶⁶ It is important to highlight the extensive international efforts and the realization of imminent peril from competing interests that precipitated this Convention.³⁶⁷

The present oceanic anarchy—piracy, pollution, and predatory fishing—that prevails off the coast of Somalia provides insight into what the situation would have been globally if the countries had not agreed to limit national interest in favor of the greater good of all mankind.³⁶⁸ Professor Donald Rothwell, a specialist in the Law of the Sea, stated that the Convention “is generally considered to be reflective of customary international law,” and with respect to the instant problem of piracy, he stressed that it “outlined an international regime for the repression of piracy and effectively recognised universal jurisdiction on the part of all states to suppress pirate acts.”³⁶⁹

While any detailed analysis of the Convention is beyond the constraints of this article, it is imperative to note the scope of the Convention: covering rights of navigation, territorial sea limits, economic jurisdiction, passage of ships through straits, appropriate conservation of marine resources, and protection of the marine environment, among other provisions.³⁷⁰ While this Convention created a legally controlled environment in the oceans, the Somali situation with oceanic dumping of toxic waste, over-fishing and piracy demonstrates the fragility of such a system when land-based enforcement mechanisms are absent.³⁷¹ Somalia’s oceans are today a mirror of a Hobbesian state of nature where conditions of life are “nasty, brutish and short.”³⁷² For this situation, the entire world bears responsibility. It is important to note that the Convention establishes the “fundamental obligation of all States to protect and preserve the marine environment.”³⁷³

Stimson 2009), available at http://www.stimson.org/rv/pdf/Indian_Ocean%28PDF%29/Indian_Ocean-Chapter_1_Kimani.pdf.

³⁶⁵ DOALOS, *supra* note 341.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ See MOHAMED, *supra* note 323.

³⁶⁹ Rothwell, *supra* note 10.

³⁷⁰ UNCLOS, *supra* note 49.

³⁷¹ Waldo, *supra* note 342.

³⁷² See THOMAS HOBBS, LEVIATHAN 104 (Dutton 1950) (1651).

³⁷³ DOALOS, *supra* note 341.

Ironically, while Somali factions may disagree on almost every issue, they appear to have one unified voice when it comes to articulating their justified grievance concerning the environmental degradation of their country by foreigners.³⁷⁴ In September 1995, leaders of all twelve major Somali political factions complained formally to the United Nations, the European Union, and the Arab League, among others, about the environmental problems caused by illegal fishing and the dumping of hazardous waste by foreign vessels in Somali waters.³⁷⁵ This letter asked the United Nations to establish an organization, such as the International Marine Organization, to protect their oceanic ecology until a viable government could be formed in Somalia. Subsequently, Ministers of Fisheries from the Puntland State of Somalia appealed to various nations and international organizations to help prevent poaching and pollution.³⁷⁶

As early as 2002, BBC News reported that thousands of dead fish were washing ashore along the coastlines of Somalia and Kenya.³⁷⁷ Marine expert David Olendo suggested that this disaster could be related to significant pollution near war-ravaged Somalia.³⁷⁸ According to the United Nations Environment Programme, “[a]s much as 80% of the pollution load in coastal waters and the deep oceans originates from land-based activities.”³⁷⁹ In their study of the Indian Ocean coastline of Somalia, Federico Carbone and Giovanni Accordi found recent acceleration in human alteration of the ecosystem.³⁸⁰ These authors expressed concern that “the continental shelf is not adequately monitored or protected, so coastal habitats are being degraded, living marine resources are overexploited, and pollution levels are increasing, all of which affect natural resources and biodiversity.”³⁸¹

Although human activity has caused serious damage to the ocean environment across this planet, it is also true that awareness of this problem has generated a plethora of international legal instruments that address pollution in the seas.³⁸² While length constraints for this article

³⁷⁴ See MOHAMED, *supra* note 323.

³⁷⁵ Waldo, *supra* note 342.

³⁷⁶ *Id.*

³⁷⁷ *Mysterious East African Fish Deaths*, BBC NEWS, Jan. 31, 2002, <http://news.bbc.co.uk/2/hi/africa/1793838.stm>.

³⁷⁸ *Id.*

³⁷⁹ UNEP, THE GLOBAL PROGRAMME OF ACTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT FROM LAND-BASED ACTIVITIES, Apr. 22, 2009, <http://www.gpa.unep.org/>.

³⁸⁰ Carbone & Accordi, *supra* note 62, at 141.

³⁸¹ *Id.*

³⁸² See NAT'L OCEANIC AND ATMOSPHERIC ADMIN. [NOAA], 1998 YEAR OF THE OCEAN: A SURVEY OF INTERNATIONAL AGREEMENTS ATMOSPHERIC J-2 to J-3 (1998), available at http://www.yoto98.noaa.gov/yoto/meeting/intl_agr_316.html.

preclude concentration on all these agreements, it is important, just briefly, to note the scope of pollution now prohibited or restricted by the body of international law. Appropriate observance of this group of laws by ships of all nations would have prevented the Somali ocean areas from being turned into a toxic dumping ground.³⁸³

Acknowledgment of the environmental threat posed by oil pollution inspired the 1954 International Convention for the Prevention of Pollution of the Sea by Oil ("OILPOL").³⁸⁴ OILPOL established prohibited zones extending at least fifty miles from land and prohibited all but minimal oil discharges in those areas.³⁸⁵

The International Convention for the Prevention of Pollution from Ships ("MARPOL")³⁸⁶ was adopted in 1973.³⁸⁷ It was improved with a Protocol in 1978 and entered into force in 1983 to reduce and eliminate garbage disposal from ships into the world's oceans.³⁸⁸ Certain zones were declared Special Areas where discharges were severely restricted.³⁸⁹ The Special Areas include the Gulf areas and the Red Sea.³⁹⁰ Discharge of noxious liquid substances was restricted by international agreement in 1987,³⁹¹ and the agreement dealing with pollution by sewage emanating from ships entered into force in 2003.³⁹² Clearly, there is now an extensive and comprehensive, albeit imperfect, body of international law that only requires that countries, and particularly their business interests, ensure honest compliance.³⁹³

Ironically, the growth of environmental protection in the Western world and the proliferation of restrictive laws against pollution could have

³⁸³ See Interview by Amy Goodman with Mohamed Abshir Waldo, *supra* note 358.

³⁸⁴ INT'L MARITIME ORG. [IMO], INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL OF 1978 RELATING THERETO (MARPOL), <http://www.imo.org> (follow "Legal" hyperlink; then follow "IMO Conventions" hyperlink; then follow "MARPOL" hyperlink) (last visited Feb 09, 2010).

³⁸⁵ See The International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1340 U.N.T.S. 61, 202, which incorporates the earlier OILPOL.

³⁸⁶ *Id.* at 61.

³⁸⁷ IMO, *supra* note 384.

³⁸⁸ Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, Feb. 17, 1978, 1340 U.N.T.S. 61, 263.

³⁸⁹ *Id.*

³⁹⁰ *Id.* at 264.

³⁹¹ *Id.* at 233.

³⁹² *Id.* at 256.

³⁹³ See INT'L CHAMBER OF SHIPPING AND INT'L SHIPPING FED'N, SHIPPING INDUSTRY GUIDANCE ON ENVIRONMENTAL COMPLIANCE: A FRAMEWORK FOR ENSURING COMPLIANCE WITH MARPOL (2007), [http://www.marisec.org/environmental-compliance/Environmental Compliance.pdf](http://www.marisec.org/environmental-compliance/Environmental%20Compliance.pdf).

made Somalia an irresistible attraction for European waste disposal interests, who stood to profit significantly by dumping their toxic cargo into Somali waters instead of the more laborious and expensive disposal procedures demanded in Europe.³⁹⁴

It appeared to Somalis that the ocean dumping off Somalia's lengthy coastline was being perpetrated by foreign individual business interests, who appeared not to be concerned about violating international law.³⁹⁵ A few environmentalists and analysts across the world voiced their concern about the practice. According to author Ken Menkhaus, "[c]ompanies have exploited Somalia's unpatrolled coastline to dump toxic waste."³⁹⁶ Unfortunately, the world community expediently chose to ignore the precautionary warnings articulated by these environmental experts.³⁹⁷

Not only was the dumping in Somali waters illegal, but the very action of ferrying such dangerous material, including nuclear waste, all the way from Europe to Somalia was also illegal.³⁹⁸ Illegal traffic in hazardous waste was deemed criminal by the Basel Convention,³⁹⁹ which was adopted in 1989 and came into force in 1992.⁴⁰⁰ The Basel Convention attempted to deal with problems caused by the need to dispose of an estimated 400 million tons of hazardous waste produced annually on this planet.⁴⁰¹ The Convention proposes to reduce such waste, manage it according to accepted environmental standards, and dispose of it as close to the source as possible.⁴⁰²

The continuation of rampant pollution of Somali waters is indicative of the failure of international law to protect the environment of a weak state. The deliberate and callous destruction of Somalia's ocean ecology and the resulting threat to a vital food source so important for a country that lives on the edge of incessant famine is almost beyond comprehension.

³⁹⁴ See generally MOHAMED, *supra* note 323.

³⁹⁵ See KEN MENKHAUS, *SOMALIA: STATE COLLAPSE AND THE THREAT OF TERRORISM* 53 (Tim Huxley ed., 2004).

³⁹⁶ *Id.*

³⁹⁷ See MOHAMED, *supra* note 323.

³⁹⁸ Basel Convention, Mar. 22, 1989, 1637 U.N.T.S. 57.

³⁹⁹ *Id.*

⁴⁰⁰ Miles L. Buckingham, *The Basel Convention*, 10 *COLO. J. INT'L L. & POL'Y* 291, 291 (1999).

⁴⁰¹ *E.g.*, Sejal Choski, *The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation*, 28 *ECOLOGY L.Q.* 509, 512 (2001) (citing UNEP, *THE WORLD ENVIRONMENT: TWO DECADES OF CHALLENGES, 1972-1992* 264 (1992)).

⁴⁰² Basel Convention, *supra* note 398; Int'l Inst. for Sustainable Dev. Reporting Services, *A Brief Introduction to the Basel Convention*, Sept. 12, 2005, http://www.iisd.ca/process/chemical_management-baselintro.htm.

Where economic interest for profit precedes the food resource needs of human beings, the inaction of organizations like the United Nations lends credence to the apprehensions of Somalis about that world body.⁴⁰³ No amount of humanitarian food aid collected by the World Organization for Somalia can atone for the organization's inaction regarding the criminal pollution of its oceans.

Humanity is moving this planet on an inexorable course toward environmental degradation.⁴⁰⁴ The short-sightedness of some human beings—fueled by the greed for individual short-term gain at the expense of collective long-term pain—raises the possibility that some day, perhaps in this new century, all the world will turn into Somalia.⁴⁰⁵ Unless the international legal instruments are not simply passed but obeyed and implemented, the gloom and doom apocalyptic scenarios sketched out by some environmental activists can no longer be written off as mere fantasy.⁴⁰⁶

If the United Nations and its leading member states, particularly the permanent members of the Security Council, wish collectively to address this problem of ocean pollution, ending the crime in Somalia would be not only beneficial for that country but would also boost the credibility of the international effort against environmental polluters.⁴⁰⁷ The United Nations' members have plenty of legal validation for any constructive measures they may wish to take.⁴⁰⁸ Seventeen years before the passage of the Basel Convention and following the path charted by the milestone United Nations Conference on the Human Environment the representatives of ninety-four nations and eight international organizations met in London to draft and sign the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.⁴⁰⁹ The London Convention, regarded as one of the most significant instruments of international law, was adopted on December 29, 1972, and entered into force by August 30, 1975.⁴¹⁰ The Administrative body for this Convention is the International

⁴⁰³ See *Somalia Under UN Transitional Administration*, ALLAFRICA.COM, Oct. 31, 2009, <http://allafrica.com/stories/200911021494.html>.

⁴⁰⁴ See MARTIN REES, *OUR FINAL HOUR: A SCIENTIST'S WARNING: HOW TERROR, ERROR AND ENVIRONMENTAL DISASTER THREATEN HUMANKIND'S FUTURE IN THIS CENTURY—ON EARTH AND BEYOND* 7–8 (2003).

⁴⁰⁵ See *id.* at 22.

⁴⁰⁶ See *id.* at 8.

⁴⁰⁷ See MOHAMED, *supra* note 323.

⁴⁰⁸ UNITED NATIONS, U.N. AT A GLANCE, <http://www.un.org/en/aboutun/index.shtml> (last visited Feb. 09, 2010).

⁴⁰⁹ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, Nov. 13, 1972, 1046 U.N.T.S. 120 [hereinafter London Convention].

⁴¹⁰ *Id.*

Maritime Organization (“IMO”),⁴¹¹ which was created in 1948.⁴¹² The purpose of the London Convention is to control and prevent marine pollution.⁴¹³ “It prohibits the dumping of certain hazardous materials, requires a prior special permit for the dumping of a number of other identified materials, and a prior general permit for other wastes or matter.”⁴¹⁴ With reference to the apparent dumping of nuclear and toxic waste in Somalia, it is interesting to note that in 1993 the London Convention was amended to phase out the dumping of industrial wastes by December 31, 1995.⁴¹⁵ Pursuant to a resolution in 1983 calling for a moratorium on the dumping of low-level radioactive waste, the 1993 London Convention amendments banned such dumping.⁴¹⁶

The growing global awareness of pollution precipitated a Protocol in November 1996, which reflected the new, more restrictive approaches to the environmental degradation of the oceans.⁴¹⁷ The 1996 Protocol entered into force in March 2006, and the ocean dumping indulged in by foreign vessels in Somali waters was a clear violation of this international law.⁴¹⁸ The 1996 Protocol seeks to replace the 1972 London Convention by initiating a “precautionary approach” to the marine environment, by specifying the principle that the polluter should bear the cost of pollution, and by emphasizing, significantly, that the “[c]ontracting Parties should ensure that the Protocol should not simply result in pollution being transferred from one part of the environment to another.”⁴¹⁹ On point for the analysis of the Somali situation is Article 6 of the Protocol, which specifies that “[c]ontracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea.”⁴²⁰ An analysis of the Convention and the Protocol would suggest that those nations whose individual business interests have indulged in ocean dumping of toxic

⁴¹¹ IMO, LONDON CONVENTION AND PROTOCOL, http://www.imo.org/home.asp?topic_id=1488 (last visited Feb. 09, 2010).

⁴¹² IMO, INTRODUCTION TO IMO, <http://www.imo.org> (follow “About IMO” hyperlink) (last visited Feb. 09, 2010).

⁴¹³ London Convention, *supra* note 409, at art. I.

⁴¹⁴ IMO, CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972, http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=681 (last visited Feb. 09, 2010); London Convention, *supra* note 409, at art. IV.

⁴¹⁵ IMO, CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER, 1972, *supra* note 414.

⁴¹⁶ *Id.*

⁴¹⁷ *See id.*

⁴¹⁸ *See id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

waste in Somali waters and on its beaches have to hold their nationals legally liable and force them to pay appropriately for the pollution they have caused.⁴²¹ Until that is accomplished, the Somalis can quite rightly and justifiably be enraged that their internal problems have been exploited by foreign criminals, who, in their eyes, are the real pirates.⁴²²

It is interesting to note that, while many sources date the emergence of foreign toxic waste to the fall of the Barre Government or shortly prior to that time frame, the UNEP, in an Environmental Assessment, traced the notorious practice back to the early 1980s, when Somalia was receiving “countless shipments of illegal nuclear and toxic waste dumped along the coastline.”⁴²³ Continuing, the UNEP Report stated that much of the waste was dumped on the beaches of Somalia “in containers and disposable leaking barrels which ranged from small to big tanks without regard to the health of the local population and any environmentally devastating impacts.”⁴²⁴ UNEP emphasized that such dumping was a violation of international treaties.⁴²⁵

Subsequent to the fall of the Barre Government and taking advantage of the absence of effective legal authority in Somalia, multinational companies and others were allegedly dumping toxic waste into the Indian Ocean very near Somalia.⁴²⁶ According to BBC News, maritime sources in Mombasa, Kenya, claimed that “ship captains have been paying ransom money to Somali militia to enable them to dump the waste.”⁴²⁷ Some Somali warlords were alleged to have been complicit in accepting money to allow the illegal toxic dumping to occur without any obstruction.⁴²⁸ According to the BBC, “several UN agencies in 2000 revealed massive pollution by toxic materials caused by dumping along Somalia’s coastline.”⁴²⁹ More recently, Dr. Abdulkadir Abow explained that “[r]esearchers also

⁴²¹ IFEOMA YVONNE AJUNWA, THE ILLICIT TRANSFER AND DUMPING OF TOXIC WASTE: THE ADVERSE EFFECTS OF TOXIC AND ELECTRIC WASTES ON HUMAN RIGHTS, REPORT TO THE 4TH SESSION OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL 15–16 (2007), http://www.humanrightsadvocates.org/images/HRC_Ajunwa_Illicit%20Transfer%20Dumping.doc.

⁴²² See Najad Abdullahi, *Toxic Waste Behind Somali Piracy*, ALJAZEERA.NET, Oct. 11, 2008, <http://english.aljazeera.net/news/africa/2008/10/2008109174223218644.html>.

⁴²³ UNEP, AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT 134, http://unep.org/tsunami/reports/TSUNAMI_report_complete.pdf (last visited Feb. 09, 2010).

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ See MOHAMED, *supra* note 323; see also *Mysterious East African Fish Deaths*, *supra* note 377.

⁴²⁷ *Mysterious East African Fish Deaths*, *supra* note 377.

⁴²⁸ MOHAMED, *supra* note 323.

⁴²⁹ *Mysterious East African Fish Deaths*, *supra* note 377.

traced contaminants in the Indian Ocean to foreign ships which use Somali shores to dispose of thousands of gallons of toxic waste (specifically residue of pesticides).⁴³⁰ A leading Somali environmental activist, Fatima Jibrell, complained about foreign ships that flushed their systems in Somali waters to avoid the expense of cleaning their vessels in their home ports.⁴³¹

Environmental Engineer Abdullahi Elmi Mohamed provided a number of important reasons why Somalia became such a desirable dumping ground for toxic and nuclear waste from European countries.⁴³² According to Mr. Mohamed, it was more than the absence of a government in Somalia that propelled this matter.⁴³³ Somalia's central location reduced the cost of transporting the waste, and it was much cheaper to dump the barrels into the Indian Ocean than incinerate and dispose of the toxic materials in the country of origin.⁴³⁴ Additionally, caught up in a violent civil war, Somalis were not initially attentive to the horror being perpetrated offshore, and some local leaders were amenable to allowing this practice, provided they were themselves compensated.⁴³⁵ As for the corporate justification that they had paid for permission to dump the waste in Somali waters, United Nations envoy for Somalia, Ahmedou Ould-Abdallah, appropriately countered: "How can you negotiate these dealings with a country at war and with a government struggling to remain relevant?"⁴³⁶

Although the international community is justifiably concerned about Somali piracy, it is interesting to note that the Somalis themselves appear more worried about their environmental problems, specifically those caused by foreigners.⁴³⁷ Ex-Somali Army Colonel, Mohamed Nureh Abdulle, informed the BBC of this concern, shared by his fellow residents of Harardhere, and remembered that in 1991 when the Somali government fell, "certain large corporations took advantage of this. European ships started appearing off the coast of Somalia, dumping thousands of barrels of toxic waste into the ocean."⁴³⁸ According to Colonel Abdulle, the people living near the coast fell ill, and children were born with deformities.⁴³⁹

⁴³⁰ Abow, *supra* note 324.

⁴³¹ Interview by Akwe Amosu with Fatima Jibrell, *supra* note 317.

⁴³² MOHAMED, *supra* note 323.

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ Abdullahi, *supra* note 422.

⁴³⁷ See, e.g., Richard Block, *Somalia Piracy: It's the Pollution Not the Money*, ASSOCIATED CONTENT, Apr. 12, 2009, http://www.associatedcontent.com/article/1644219/somalia_piracy_its_the_pollution_not.html.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

The United Nations has expressed serious concern about the fact that Somalis are being poisoned by nuclear and hazardous waste including chemical contaminants and radioactive uranium.⁴⁴⁰ The lethal mix also contained mercury, cadmium, and industrial waste.⁴⁴¹ The toxic brew originated as waste from European hospitals as well as garbage from factories.⁴⁴²

The tsunami of 2004 washed evidence of foreign dumping onto the shores of Somalia; barrels filled with lethal waste materials washed ashore.⁴⁴³ In February 2005, the United Nations confirmed that these illegally dumped barrels contained nuclear waste, and some of them had broken open.⁴⁴⁴ To date, there have been no consequences for the perpetrators.⁴⁴⁵ Ahmedou Ould-Abdallah, United Nations Envoy to Somalia, explained that “[t]here has been no clean-up, no compensation, and no prevention.”⁴⁴⁶ He also confirmed to Al Jazeera News Service that the United Nations had “reliable information” of European and Asian companies dumping toxic and nuclear waste in Somali waters, but stressed “that no government has endorsed this act, and that private companies and individuals acting alone are responsible.”⁴⁴⁷

Nick Nuttall, a spokesman for UNEP, indicated in 2005 that this practice of European companies and others dumping nuclear and hazardous waste in Somali oceans had been going on for the previous fifteen years.⁴⁴⁸ Mr. Nuttall explained the economic reasons for this pollution, stating that “it cost European companies \$2.50 per ton to dump the wastes on Somalia’s beaches rather than \$250 per ton to dispose of the wastes in Europe.”⁴⁴⁹ As industrialized countries produce approximately ninety

⁴⁴⁰ UNEP, *AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT*, *supra* note 423, at 11, 134.

⁴⁴¹ *Id.* at 134.

⁴⁴² *Id.*; see also Johann Hari, *Are You Being Lied to About Pirates?*, THE INDEPENDENT, Jan. 5, 2009, <http://www.independent.co.uk/opinion/commentators/johann-hari/johann-hari-you-are-being-lied-to-about-pirates-1225817.html>.

⁴⁴³ UNEP, *AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT*, *supra* note 423, at 134; see also William Jelani Cobb, *Commentary: A Lesson of Somali Pirate Attacks*, CNN.COM, Apr. 19, 2009, <http://www.cnn.com/2009/WORLD/africa/04/19/cobb.somalia.piracy/index.html>.

⁴⁴⁴ Cobb, *supra* note 443.

⁴⁴⁵ *Id.*

⁴⁴⁶ Hari, *supra* note 442.

⁴⁴⁷ Abdullahi, *supra* note 422.

⁴⁴⁸ Cathy Majtenyi, *UN: Nuclear Waste Being Released on Somalia’s Shores After Tsunami*, VOANEWS.COM, Feb. 23, 2005, <http://www1.voanews.com/english/news/a-13-2005-02-23-voa23.html>.

⁴⁴⁹ *Id.*

percent of the world's hazardous waste,⁴⁵⁰ the financial incentive to violate international law and despoil the waters of a fragile political entity is too tempting to resist. Commenting wryly, Mr. Nuttall noted that “[i]t’s not rocket science to know why they’re doing it because of the instability there.”⁴⁵¹ The political instability inside Somalia and the fact that the lengthy coastline was unguarded provided a real opportunity for the illegal dumping.⁴⁵² The health consequences for Somalis in the contaminated coastal region were articulated in grim detail by this United Nations spokesman: “These problems range from acute respiratory infections to dry, heavy coughing, mouth bleedings, abdominal hemorrhages, what they described as unusual skin chemical reactions So there’s a whole variety of ailments that people are reporting from these villages.”⁴⁵³ An untold number of Somalis were said to have died after opening the containers filled with toxic waste, and there were also reports of premature births.⁴⁵⁴

As the tsunami of December 2004 struck during the peak fishing season, which lasts between October and February, the coastal communities were more densely populated,⁴⁵⁵ and more people became vulnerable to the horrors both of the tsunami and its toxic aftermath.⁴⁵⁶ UNEP grimly concluded that, after the tsunami, the “economic potential of Somalia’s marine resources has been seriously affected and threatened, whilst dumping of toxic and harmful waste is rampant in the sea, on the shores and in the hinterland.”⁴⁵⁷ Radioactive waste contamination such as has occurred in Somalia can, according to UNEP, have serious long-term impact on human health and on “groundwater, soil, agriculture and fisheries.”⁴⁵⁸ Ironically, a few months before the tsunami provided Nature’s own wake-up call to hazardous pollution, UNEP launched a three-year multimillion dollar project, funded by Norway and the Global Environment Facility, to cut pollution from the Western Indian Ocean in recognition of the fact that approximately thirty million people from Kenya, Mozambique, Somalia,

⁴⁵⁰ UNEP, AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT, *supra* note 423, at 135.

⁴⁵¹ Majtenyi, *supra* note 448.

⁴⁵² See Hari, *supra* note 442.

⁴⁵³ Majtenyi, *supra* note 448; UNEP, AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT, *supra* note 423, at 134.

⁴⁵⁴ MOHAMED, *supra* note 323.

⁴⁵⁵ OCHA—SOMALIA, TSUNAMI WORSENS EXISTING VULNERABILITY IN SOMALIA, FORCED MIGRATION REVIEW 51, 51 (July 2005), available at <http://www.fmreview.org/FMRpdfs/Tsunami/full.pdf>.

⁴⁵⁶ *Id.*; UNEP, AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT, *supra* note 423, at 134.

⁴⁵⁷ UNEP, AFTER THE TSUNAMI: RAPID ENVIRONMENTAL ASSESSMENT, *supra* note 423, at 129.

⁴⁵⁸ *Id.* at 134.

South Africa, Tanzania, Mauritius, and the Seychelles are financially dependent on marine and coastal resources.⁴⁵⁹

Despite the existence of international laws against such activity, decades of dumping of toxic waste in Somalia and offshore has created a global hazard of frightening proportions. It might already be too late to clean up so vast an area.⁴⁶⁰ Geoff Olson, writing for the Vancouver Courier, graphically and dramatically explained: "The world's oceans remain the First World's toilet, and the global south its garbage heap—particularly Africa."⁴⁶¹

Again, as with many issues of global concern, the problem lies not with the law but with the absence of its implementation. As we have seen from a brief view of a few of the relevant international conventions, there are plenty of international prohibitions against the activities that are despoiling the environment of Somalia, but there appears to be little or no international will to insist on their implementation.⁴⁶² By leaving the policing of such criminal activities as dumping toxic waste to the nation states, the United Nations has left a huge loophole for polluters, who can take full advantage of areas like Somalia that cannot, in the present political context, protect their people or their environment.⁴⁶³

C. *Overfishing by Foreigners*

From the Somali perspective, there is a far more serious form of piracy in their oceans than that perpetrated by their own nationals against international shipping. This is the "piracy" of overfishing being committed by crews of many nations that continue to fish without licenses, without any permits, and without any thought to the sustainability of the species they are plundering.⁴⁶⁴

The global demand for fish is so immense that fishing boat owners and crews do not hesitate about breaking international and national laws and conventions in their frenzied pursuit of multi-million dollar catches.⁴⁶⁵

⁴⁵⁹ Sorcha Clifford, *Multi Million Dollar Fund to Cease Western Indian Ocean Pollution*, EDIE.NET, July 9, 2004, http://www.edie.net/news/news_story.asp?id=8575.

⁴⁶⁰ See David Adam, *Pollution, Overfishing Destroying the Oceans*, THE HINDU, June 19, 2006, <http://www.hindu.com/2006/06/19/stories/2006061901871500.htm>.

⁴⁶¹ Geoff Olson, *Ocean Pollution Joins Jellyfish with Pirates: Real Raiders Wear Pinstriped Suits*, VANCOUVER COURIER, May 1, 2009, <http://www2.canada.com/vancouvercourier/news/letters/story.html?id=00810583-73c1-4f7e-90c7-95c9573af01f>.

⁴⁶² See Tharoor, *supra* note 68.

⁴⁶³ See Abdullahi, *supra* note 422.

⁴⁶⁴ See Tharoor, *supra* note 68.

⁴⁶⁵ *Id.*

THE HINDU, an Indian newspaper, reported that in 2005, a staggering 85 million tons of fish were hauled out of the world's oceans.⁴⁶⁶ Greenpeace, commenting in September 2008 on the global fisheries crisis, concluded that globally, 3.5 million fishing boats work the world's oceans.⁴⁶⁷ The United Nations stated in 2008 that "76 percent of the world's fisheries [were] either fully exploited, overexploited or depleted."⁴⁶⁸

It has been estimated that in the absence of an effective Somali government and navy, foreign fishermen have plundered "more than \$300 million worth of tuna, shrimp, and lobster" every year from the Somali coastal region.⁴⁶⁹ The sum is appropriately deemed staggering "[i]n any context" by Gustavo Carvalho of the environmental group Global Witness.⁴⁷⁰ This marine resource, one of the richest fishing grounds in the world, constituted the country's second largest industry.⁴⁷¹ In 2005, the United Nations FAO estimated that approximately 700 foreign ships were engaged in unlicensed fishing in Somalia.⁴⁷² The foreign fishing vessels allegedly originate from Italy, Pakistan, India, Korea, Yemen, Spain and Japan.⁴⁷³ Engaging in the notorious practice of using flags of convenience, these ships also hail from China, France, Germany, the United Kingdom, Honduras, Kenya, Portugal, Saudi Arabia, the Soviet Federation, Sri Lanka, Taiwan, and Thailand.⁴⁷⁴ According to Dr. Joseph A. Bailey, II, as these fishermen from so many countries lack permission and licenses, "this constituted piracy ('sea robbers')."⁴⁷⁵

Somali fishermen alleged that they were intimidated by large foreign ships and "aggressive crews" fishing to excess in areas essential for Somali fishers' livelihood.⁴⁷⁶ In 2006, Somali fishermen complained that

⁴⁶⁶ Adam, *supra* note 460.

⁴⁶⁷ GREENPEACE, FACT SHEET: OCEANS UNDER THREAT (2008), <http://www.greenpeace.org/raw/content/australia/resources/fact-sheets/overfishing/oceans-under-threat.pdf>.

⁴⁶⁸ *Id.*

⁴⁶⁹ Olson, *supra* note 461.

⁴⁷⁰ Tharoor, *supra* note 68.

⁴⁷¹ Judith Achieng, *Environment—Somalia: Local Fishermen Battle Foreign Trawlers*, SOMALI CTR. FOR WATER & ENV'T, Mar. 26, 1999, <http://www.somwe.com/fishmen.html>.

⁴⁷² Waldo, *supra* note 342.

⁴⁷³ Achieng, *supra* note 471.

⁴⁷⁴ Gabobe Hassan Musse & Mahamud Hassan Tako, *Illegal Fishing And Dumping Hazardous Wastes Threaten the Development of Somali Fisheries and the Marine Environment*, SOMALIA, MARITIME AND FISHERIES INSTITUTE 1999, <http://www.mbali.info/doc236.htm> (last visited Feb. 09, 2010).

⁴⁷⁵ Joseph A. Bailey, II, *Causes of Somali's Piracy*, BLACK VOICE NEWS, Apr. 30, 2009, <http://www.blackvoicenews.com/content/view/43106/3/>.

⁴⁷⁶ Abdinasir Mohamed Guled, *Who are the Somali Pirates?*, THE SOMALILAND TIMES, May 8, 2009, <http://www.somalilandtimes.net/sl/2009/380/33.shtml>.

700 foreign ships were “vacuuming up” the vital food resource from the ocean off Somalia.⁴⁷⁷ Foreign ships were accused of using illegal fishing methods like dynamite and breakage of the fragile coral reefs.⁴⁷⁸ This resort to blast, or dynamite, fishing has been outlawed, but absent an effective government in Somalia, the practice continues.⁴⁷⁹ The foreign fishing vessels were alleged to be willfully destroying endangered species like orca, sharks, baby whales, and sea-turtles.⁴⁸⁰ The huge fishing ships come equipped with steel nets with long metal spikes that can dig deep into the living coral to reach the lobsters and fish, “leaving the Somali coast an ocean graveyard.”⁴⁸¹ These destructive practices only diminish the sustainability of the resource over the long-term.⁴⁸²

A Somali fisherman, Jeylani Shaykh Abdi, complained that the foreigners are “not only taking . . . our fish, but they are also trying to stop us from fishing.”⁴⁸³ Somali fishermen complained to the United Nations, appealing for help against the illegal activities being perpetrated in their ocean.⁴⁸⁴ As the sea provided the only means for the survival of Somalia’s fishing communities, the incursions of foreign vessels provoked some fishermen in the late 1990s into forming armed vigilante groups to guard their coastlines.⁴⁸⁵ These village vigilantes encountered stiff opposition from foreign vessels fishing in Somali waters. It was alleged that the Somalis endured having boiling water poured on them, gunshots fired at them and worst of all, having their nets and fishing boats destroyed by the far larger vessels.⁴⁸⁶ There were also allegations that some Somali fishermen were missing after encountering the foreign ships.⁴⁸⁷ The problem was exacerbated when foreign navies protected the allegedly predatory activities of their fishing vessels.⁴⁸⁸

⁴⁷⁷ Offman, *supra* note 328.

⁴⁷⁸ Achieng, *supra* note 471.

⁴⁷⁹ See Tharoor, *supra* note 68.

⁴⁸⁰ Waldo, *supra* note 342.

⁴⁸¹ Bob Astles, *Captured Youth Will Expose European Atrocities Against Somalia*, BLACK STAR NEWS, Apr. 26, 2009, <http://blackstarnews.com/news/135/ARTICLE/5614/2009-04-26.html>.

⁴⁸² See generally Encyclopedia of Earth, Somali Coastal Current Large Marine Ecosystem, http://www.eoearth.org/article/Somali_Coastal_Current_large_marine_ecosystem.

⁴⁸³ Waldo, *supra* note 342.

⁴⁸⁴ *Id.*

⁴⁸⁵ Achieng, *supra* note 471.

⁴⁸⁶ See Bailey, *supra* 475.

⁴⁸⁷ *Somalia: Getting Tough on Foreign Vessels to Save Local Fishermen*, IRIN, Apr. 2, 2009, <http://www.irinnews.org/Report.aspx?ReportId=83755> [hereinafter *Getting Tough on Foreign Vessels*].

⁴⁸⁸ See *id.*

The largely artisanal, small-scale fishing activities of Somalis dates back many years and became particularly important economically after drought in the 1970s and 1980s led to the resettlement of thousands of starving nomadic families to the coastline,⁴⁸⁹ where they adapted to a new lifestyle. They adjusted their formerly pastoral pursuits to fishing and focused their livelihood on inshore fisheries that were abundant in the Indian Ocean off the Somali coastline.⁴⁹⁰ Having once been uprooted and having their economic base wiped out by drought, this new attack from foreign overfishing threatened their very existence as viable communities.⁴⁹¹ Given the importance of family and tradition in Somali culture, this foreign action that threatened their basic way of life was viewed with as much hostility as were the United Nations troops who had intervened in their country.⁴⁹² Many Somalis believe that they should be left to sort out their own political future without external interference.⁴⁹³ They also complain about the piracy of sustained and prolonged looting of their fish by so many nations, who took advantage of their weakness and lack of an effective government.⁴⁹⁴ The Somali perspective links foreign military intervention, foreign fish pillaging, and foreign ocean dumping and concludes that all these actions harm their country, their way of life, and their economy.⁴⁹⁵

Illegal fishing by foreign vessels in Somali waters is only an exacerbated version of a situation that has become a serious environmental problem worldwide. In the latter half of the twentieth century, artisanal fishing, of a cottage industry variety, was superseded by large vessels that literally scooped up all the living resources of the ocean and transferred the catch to even larger mother ships, capable of holding substantial quantities of fish.⁴⁹⁶ Inevitably, such large vessels destroyed oceanic fish stocks, and as former lucrative fishing grounds became depleted, the fishing crews hunted desperately for fish wherever they were to be found.⁴⁹⁷ The

⁴⁸⁹ Is'haq Modibbo Kawu, *Nigeria: The Flipside of the Hijack Coin*, ALLAFRICA.COM, Apr. 29, 2009, <http://allafrica.com/stories/200904290030.html>.

⁴⁹⁰ *Id.*

⁴⁹¹ See Achieng, *supra* note 471.

⁴⁹² See *supra* Part I.D.1; see also North Atlantic Treaty Org. [NATO] Parliamentary Assem., Committee Reports, 2009 Annual Session, *The Growing Threat of Piracy to Regional and Global Security*, ¶ 81, 196 CDS 09 E (2009) (describing local population's resentment toward illegal foreign fishing and the need to consider this resentment when developing international intervention programs).

⁴⁹³ See Waldo, *supra* note 342.

⁴⁹⁴ *Id.*

⁴⁹⁵ See *id.*

⁴⁹⁶ DOALOS, *supra* note 341.

⁴⁹⁷ *Id.*

combination of rich fishing grounds off Somalia and the non-existence of any watchful government onshore ready to punish trespassers was too irresistible a combination for the fish-hungry foreign business interests that crowded even inside Somali coastal waters for the most prolific catch.⁴⁹⁸ As approximately ninety-nine percent of the world's fisheries fall under the jurisdiction of one or another nation,⁴⁹⁹ the Somali situation of political anarchy and a rich resource was unique, and the temptation too great to resist.

So great was the lure of the fish that foreign business interests from many countries freely violated international law in their frenzied quest for all the fish they could catch.⁵⁰⁰ Their home governments were disinclined to penalize them, and no Somali authority existed to put a stop to their practices.⁵⁰¹ International law was not an issue of any concern to these crews or the ship owners, who made huge profits from looting the oceans off Somalia.⁵⁰²

Length constraints of this article preclude any detailed analysis of every international instrument that could have been utilized to protect Somali interests from foreign predators. Suffice it to say, the examples provided in this article are relevant and on point if the international community can adopt an ethical approach and strive to implement the laws that already exist. In the realm of environmental matters, the plethora of wordy instruments and the brazen and flagrant violations of those laws make for a very disenchanting and disheartening perception of the world community.

The UNCLOS provides a viable framework that could be utilized—if States were willing to observe the law—to provide international protection for the Somali fish resources.⁵⁰³ Although the situation in Somalia is somewhat unique given the absence of an effective and stable government, the provisions of the Convention could still be applied by governments of all nations were they inclined to protect Somalia from predatory fishing vessels of all nations.

Article 61 of the Convention addresses the need for appropriate conservation and management of the resource in order to prevent over-exploitation.⁵⁰⁴ There is a role for international organizations to play in

⁴⁹⁸ Achieng, *supra* note 471.

⁴⁹⁹ DOALOS, *supra* note 341.

⁵⁰⁰ Mara Caputo, *The 'Other' Pirates*, ISN, May 6, 2009, <http://www.isn.ethz.ch/isn/layout/set/print/content/view/full/73?id=99858&lng=en>.

⁵⁰¹ *See id.*

⁵⁰² *See id.*

⁵⁰³ *See generally* UNCLOS, *supra* note 49, at 397.

⁵⁰⁴ *See id.* art. 61, ¶ 2.

assisting States in this endeavor.⁵⁰⁵ That provision could enable a more ethically-inclined United Nations to urge all Member States to cooperate to protect Somalia's vital resource until the Somalis are able to assume that responsibility. There is specific reference to the "economic needs of coastal fishing communities."⁵⁰⁶ Article 62(4) is relevant for our consideration of the plundering by foreign vessels of the Somali fish resources: "Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention. . . ."⁵⁰⁷

The legal framework exists for the United Nations to take measures to assist and protect Somalia by preventing illegal fishing. The Somalis can be excused for being more than skeptical of an international community that is determined to curb their pirates, even to the point of entering Somali territory to accomplish this end.⁵⁰⁸ That same group of governments shows no interest or will to curb global pirates from various nations who daily—under the benign eye of so many foreign navies—plunder the fish without licenses or any compensation for the people of that tragic country.⁵⁰⁹ An even-handed analysis of this tragic saga can only lead to the conclusion that there are two groups of pirates at work here, one that is being hunted and one that is being protected. The action of the United Nations in ignoring the international laws it has sponsored and passed when it is inconvenient or not expedient to promote implementation could be considered sheer hypocrisy, particularly by any Somali pondering the plight of his ancient country.

In 1995, the FAO sponsored and urged over 170 members to adopt an important, but non-binding, Code of Conduct for Responsible Fisheries.⁵¹⁰ The Code emphasized "that the 'right to fish' carry[d] the obligation to do so responsibly."⁵¹¹ In 2001, the FAO prepared the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported*

⁵⁰⁵ See *id.*

⁵⁰⁶ See *id.* art. 61, para. 3.

⁵⁰⁷ See *id.* art. 62, para. 4.

⁵⁰⁸ See Lauren Caldwell, *International Community Uniting Against Pirates, Official Says*, AMERICA.GOV, June 1, 2009, <http://www.america.gov/st/peacesec-english/2009/June/20090605094149allewdlac0.3318903.html> (discussing the increased use of international naval patrols to intervene against pirate activity).

⁵⁰⁹ See *Getting Tough on Foreign Vessels*, *supra* note 487.

⁵¹⁰ David Douman & Rolf Willmann, *FAO Code of Conduct for Responsible Fisheries*, ID21 INSIGHTS, No. 25, Dec. 2006, <http://www.id21.org/insights/insights/65/art06.html>.

⁵¹¹ *Id.*

and Unregulated Fishing ("IPOA-IUU").⁵¹² This was a voluntary instrument within the framework of the Code of Conduct for Responsible Fisheries, and it called on States to "give full effect to relevant norms of international law, in particular as reflected in the 1982 U.N. Convention, in order to prevent, deter and eliminate IUU fishing."⁵¹³ The Rome Plan attempted to make states deal with the perpetrators of IUU fishing. This suggestion applied not merely to the expedient flag states but to the domicile states of crew members and boat owners who were engaged in IUU fishing as well.⁵¹⁴ Sanctions were proposed:

States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.⁵¹⁵

Had the nations that have dispatched navies to the Horn of Africa intended to protect both their own interests as well as those of Somalia, they could voluntarily have implemented measures like these to prevent over-fishing and consequent depletion of this Somali food resource. Their focus on Somali piracy and their negligence concerning global piracy over fish stocks have deprived the foreign armadas of the high moral ground, and that will probably come back to haunt the West in the future.

The nexus between the onset of piracy and the depleted fishery is fairly obvious. Helplessly seeing their fish disappearing into foreign trawlers that also destroyed the vital coral and ocean plant life, several fishermen sought the far more lucrative, albeit dangerous, world of piracy.⁵¹⁶ The plunder and destruction of their environmental resources left them few alternatives.⁵¹⁷ While so many nations were happily looting Somalia's resources in a predatory free-for-all, the world was largely ignorant of

⁵¹² United Nations Food and Agriculture Organization, *International Plan of Action to Prevent, Deter, and Eliminate Illegal Unreported and Unregulated Fishing*, Rome, 2001, available at <http://www.fao.org/DOCREP/003/y1224e/y1224e00.htm>.

⁵¹³ *Id.* Part IV, ¶ 10.

⁵¹⁴ *Id.* Part III, ¶ 9.1.

⁵¹⁵ *Id.* Part III, ¶ 21.

⁵¹⁶ See Gettleman, *supra* note 8.

⁵¹⁷ See Tharoor, *supra* note 68.

the ecological and environmental disaster that was occurring in a vital and strategically important area.⁵¹⁸ Without excusing or justifying their present penchant for criminally attacking peaceful shipping, the initial motivation of these “pirates” was to protect their own livelihoods from foreign predators.⁵¹⁹ One of their vigilante fleets was titled the “National Volunteer Coastguard of Somalia.”⁵²⁰ Their efforts in small boats to scare off large shipping vessels appeared to Somalis to be very much a David-Goliath saga in modern times.⁵²¹ Their success was both astounding and bewildering to a world that had consigned the notion of pirates to a colorful past portrayed very romantically by Hollywood.⁵²² Their vigilante motivation made the pirates initially very popular within Somalia.⁵²³ This further entrenched their influence and drew vast numbers of unemployed young men to the pirate gangs.⁵²⁴ Bronwyn Bruton, an International Affairs Fellow at the US Council of Foreign Relations, commented that Somali “awareness of how foreign countries are profiting from their country’s misery has increased the pirates’ popular support.”⁵²⁵

The sophistication of the Somali pirates can be gauged by their focus on promoting the cause that allegedly drove them to their criminal action, namely the need to protect Somalia’s oceans from over-fishing and toxic dumping.⁵²⁶

This public relations exercise has resulted in a significant amount of international media coverage. Pirates have spoken with, and even courted, the world’s media, giving numerous interviews—a somewhat unusual activity for pirates—during which the justification has been articulated time and again.⁵²⁷ Indeed, in this rather bizarre situation, pirates from Somalia now have media spokesmen to deal with the press.⁵²⁸

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

⁵²¹ See Abdulkadir Khalif, *How Illegal Fishing Feeds Somali Piracy*, THE SOMALILAND TIMES, Nov. 15, 2005, <http://www.somalilandtimes.net/200/08.shtml>.

⁵²² See *Somali Pirates a Far Cry From Hollywood Version*, MSNBC.COM, Apr. 11, 2009, <http://www.msnbc.msn.com/id/30169545/>.

⁵²³ Deanne Corbett, *International Community Mulls Response to Somalia’s Piracy Problem*, DW-WORLD.DE, Apr. 16, 2009, <http://www.dw-world.de/dw/article/0,,4182876,00.html>.

⁵²⁴ *See id.*

⁵²⁵ *Id.*

⁵²⁶ Jeffrey Gettleman, *Q. & A. With a Pirate: “We Just Want the Money,”* THE LEDE BLOG, NYTIMES.COM, Sept. 30, 2008, <http://thelede.blogs.nytimes.com/2008.09/30/q-a-with-a-pirate-we-just-want-the-money/> [hereinafter Gettleman, *Q. & A. With a Pirate*].

⁵²⁷ *See id.*

⁵²⁸ *Id.*

The Somali pirates have deemed themselves protectors of their country.⁵²⁹ “Think of us like a coast guard,” said Sugule Ali, pirate spokesman, in a satellite phone interview conducted from one of the hijacked ships.⁵³⁰ Ali continued, denouncing the illegal fishers and waste dumpers as the real sea bandits.⁵³¹ According to commentator Najid Abdullahi, the pirates argued that the ransom demanded was “nothing compared to the devastation that we have seen on the seas.”⁵³² Clearly, among some Somalis the pirates have found a sympathetic audience. As Somali-Canadian musician, K’naan, commented, “our pirates were the only deterrent we had from an externally imposed environmental disaster.”⁵³³

Many Africans and global African experts understand the reason for the initial ventures by fishermen against foreign ships, even if they are apprehensive about the escalating crime and violence that now exists in the western Indian Ocean. “[I]llegal trawling has fed the piracy problem,” commented Tsuma Charo of the East African Seafarers Assistance Programme.⁵³⁴ Roger Middleton, writing for BBC News, pointed out that “people who have been forgotten by the world and who hear of toxic waste being dumped on their beaches and foreigners stealing their fish have difficulty being concerned when representatives of that world are held to ransom.”⁵³⁵ Jerry Okungu, writing a column from Kampala, Uganda, admitted that the pirates “have taken the law into their own hands, which is wrong, but desperate circumstances may call for desperate measures.”⁵³⁶

Ironically, while nonviolent Somali complaints about the predatory activities of foreigners were largely ignored by the world, the pirates, by dramatically engaging in violence, were able very successfully to draw international attention to themselves and to their country.⁵³⁷ As Eid, a Somali lobsterman, commented to a journalist, “we were shouting to the world about our problems. . . . No one listened.”⁵³⁸ Merca fisherman Mohamed Hussein accused the international community of being concerned only with the piracy problem and neglecting the very real problems

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² Abdullahi, *supra* note 422.

⁵³³ K’Naan, *supra* note 243.

⁵³⁴ Tharoor, *supra* note 68.

⁵³⁵ Middleton, *supra* note 6.

⁵³⁶ Jerry Okungu, *East Africa: Desperate Situations Call for Desperate Measures*, ALLAFRICA.COM, Apr. 30, 2009, <http://allafrica.com/stories/200905010187.html>.

⁵³⁷ See Shashank Bengali, *At Former British Prison, Somali Pirates Tell Their Side*, MCCLATCHY, Apr. 29, 2009, <http://www.mcclatchydc.com/227/story/67142.html>.

⁵³⁸ *Id.*

of foreign over-fishing and waste dumping.⁵³⁹ Puntland's minister of planning and international cooperation, Farah Dala, commented: "After all the suffering and war, the world is finally paying attention to our pain because they're getting a tiny taste of it."⁵⁴⁰ A Somali pirate named Dahir Mohamed Hayeysi told BBC News that the only solution was to have an effective government in Somalia that would protect the fishery.⁵⁴¹ "Then," said Hayeysi, "we will disarm, give our boats to that government and will be ready to work."⁵⁴²

In the wake of their dramatic hijacking of numerous ships, the pirates' media blitz has won converts in the West among those who have studied the problem.⁵⁴³ In a thought-provoking article, *You Are Being Lied to About Pirates*, journalist Johann Hari asked:

Did we expect starving Somalians to stand passively on their beaches, paddling in our nuclear waste, and watch us snatch their fish to eat in restaurants in London and Paris and Rome? We didn't act on those crimes—but when some of the fishermen responded by disrupting the transit-corridor for 20 percent of the world's oil supply, we begin to shriek about "evil." If we really want to deal with piracy, we need to stop its root cause—our crimes—before we send in the gun-boats to root out Somalia's criminals.⁵⁴⁴

Maritime analyst Jim Wilson was equally blunt, commenting that "[t]he international community can keep killing Somali pirates until the end of time; that will not stop piracy."⁵⁴⁵ Robert Maletta, the policy adviser for Oxfam, deplored the lack of economic opportunity that was the motivation for piracy and the simultaneous absence of law and order to control that criminal activity.⁵⁴⁶ And Mara Caputo, writing for ISN Security Watch, Zurich, commented that "piracy has emerged as a backlash against the

⁵³⁹ Waldo, *supra* note 342.

⁵⁴⁰ Jeffrey Gettleman, *For Somali Pirates, Worst Enemy May Be Waiting Back on Shore*, N.Y. TIMES, May 9, 2009, at A1, A9, available at <http://www.nytimes.com/2009/05/09/world/africa/09pirate.html>.

⁵⁴¹ Mohamed Olad Hassan, *'It's a Pirate's Life for Me'*, BBC NEWS, Apr. 22, 2009, <http://news.bbc.co.uk/2/hi/8010061.stm>.

⁵⁴² *Id.*

⁵⁴³ See, e.g., Hari, *supra* note 442.

⁵⁴⁴ *Id.*

⁵⁴⁵ Radebe, *supra* note 18.

⁵⁴⁶ *Aid Groups: Humanitarian Crisis Leads to Piracy*, CNN.COM, Apr. 23, 2009, <http://www.cnn.com/2009/WORLD/africa/04/23/pirates.somalia.humanitarian/index.html>.

exploitation of Somali natural resources by foreign powers—a situation that receives much less attention in the media in part because it levies a stinging indictment against much of the international community.”⁵⁴⁷ Ms. Caputo continued, blaming foreign governments for playing a “damnable role in creating and perpetuating the piracy phenomenon.”⁵⁴⁸ Writing to the United Nations Development Programme, John Laurence, Fishery Consultant for PanOceana Resources, faulted the United Nations for taking no action to prevent the ravaging of one of the five richest fishing zones in the world.⁵⁴⁹ Laurence blamed the United Nations for “turning a blind eye to the activities of the fishing vessels.”⁵⁵⁰ Notably, it was reported that United Nations monitors proposed an embargo on fishing off Somalia in 2005 and 2006, but “their proposals were overruled by members of the UN Security Council.”⁵⁵¹

It appears that pirate activities may be having some impact. According to BBC News, French and Spanish fleets that normally catch significant amounts of tuna near Somalia had to move further east away from the pirate-infested Somali coast.⁵⁵² As these fleets are based in Seychelles, that island economy suffered losses, and the Somali pirate impact on foreign fishing was measured by reduced supply and higher prices.⁵⁵³

In an effort to avoid the pirates and protect their own crews and vessels, some shipping companies have opted to avoid the Gulf route altogether.⁵⁵⁴ One of the world’s largest shipping companies, Denmark’s Maersk Line, decided to abandon the Gulf with its perils and instead send its vessels via the much longer southern African sea route.⁵⁵⁵ If this trend spreads to other companies, it could well have a very damaging impact on tolls collected in the Suez Canal.⁵⁵⁶ Shashank Bengali explains the fact “[t]hat a few hundred men like these have wreaked so much havoc

⁵⁴⁷ Caputo, *supra* note 500.

⁵⁴⁸ *Id.*

⁵⁴⁹ See Waldo, *supra* note 342.

⁵⁵⁰ *Id.*

⁵⁵¹ Modupe Ogunbayo, *War on Piracy: The Enemies Within*, NEWSWATCH MAG., Apr. 26, 2009, http://www.newswatchngr.com/index2.php?option=com_content&task=view&id=870&Itemid=1.

⁵⁵² See *Somali Piracy Reduces Tuna Haul*, BBC NEWS, Jan. 22, 2009, <http://news.bbc.co.uk/2/hi/africa/7845173.stm>.

⁵⁵³ *Id.*

⁵⁵⁴ Louis Wasser, *Somali Piracy Costs Suez Canal Business*, S.F. CHRON., Apr. 29, 2009, at A3, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/04/28/MNOK16RIRV.DTL>.

⁵⁵⁵ *Id.*

⁵⁵⁶ See *id.*

in the seas off of East Africa is a testament to the sheer power of guts and greed.”⁵⁵⁷

Almost two decades of foreign degradation and destruction of Somalia’s coastline and oceanic zones cannot be halted or effectively curbed by small bands of pirates demanding, and often acquiring, million-dollar ransoms from some vessel owners who would rather pay quietly than admit their ships are fishing without licenses and their dumping of toxic waste violates all norms of international law.⁵⁵⁸

It is now quite obvious that the enormous ransoms acquired by the pirates of Somalia are luring increasing numbers of predators to this type of very lucrative criminal activity. Although some pirates may have begun as vigilantes with the intention of saving their environment and their way of life,⁵⁵⁹ that justification does not appear as convincing now. The lure of easy plunder has attracted “ex-warlord-affiliated militiamen,”⁵⁶⁰ and such additions inevitably dilute the moral base that might have explained the earlier vigilante-pirate attacks on foreign shipping. The crime has proven to be too lucrative, and, as much of the wealth has not apparently been used in any organized or comprehensive way to rebuild Somalia, the economic consequences are not, in the long term, of any visible benefit to its starving people.

There can be little debate about the grim fact that “Somalia is in a state of a major environmental degradation,”⁵⁶¹ and that “[v]ast marine resources are under unprecedented threat from overexploitation and pollution by outsiders.”⁵⁶² Aside from the cycle of drought and flooding, much of the environmental damage is attributed to human intervention including water pollution, deforestation, overgrazing, soil erosion, salinization caused by inefficient irrigation systems, waste dumping into the ocean, unhealthy land disposal of human and other waste, excessive hunting, and degradation of the coastline.⁵⁶³ The United Nations commented that “[s]ince 1991, Somalia has been subjected to extreme environmental degradation both natural and manmade associated with the current war and

⁵⁵⁷ Bengali, *supra* note 537.

⁵⁵⁸ Tharoor, *supra* note 68.

⁵⁵⁹ See, e.g., Gettleman, Q. & A. *With a Pirate*, *supra* note 526 (documenting an interview with a Somali pirate spokesman who characterized the pirates’ actions as protective of their seas and as a response to the illegal actions of others).

⁵⁶⁰ Caputo, *supra* note 500.

⁵⁶¹ FARAH, *supra* note 325.

⁵⁶² MOHAMED, *supra* note 323.

⁵⁶³ *Id.*

lawlessness.”⁵⁶⁴ This destruction has imperiled energy sources.⁵⁶⁵ The United Nations Environment Programme explained how increased demand for forest products and wood used for firewood and charcoal exports to the Middle East “contributed to the destruction of the forests, woodlands, mangroves and the entire natural habitat in Somalia.”⁵⁶⁶

To some extent, the Somali situation is only a more severe form of an ecological disaster that affects many parts of the African continent.⁵⁶⁷ The Food and Agriculture Organization has commented that “anyone who has travelled through the continent has observed that land degradation is widespread and serious.”⁵⁶⁸ The Somali situation is particularly tragic because the nationals of so many countries have taken advantage of that country’s internal problems to wreak environmental and ecological havoc that will have an impact for generations.⁵⁶⁹ The prognosis for Somalia’s environmental future is grim. There can be no doubt that “[i]n its totality, the damage done to Somalia’s natural environment is unimaginable and seems unmanageable even long after a solution is found for the current difficult prolonged political crisis.”⁵⁷⁰ Environmentally, even if the world now belatedly acknowledges responsibility for the plundering and despoiling of Somalia’s oceanic wealth, the damage done may well be irreversible, with much of Somalia a wasteland and nothing left to salvage.⁵⁷¹

The environmental problems that have been inflicted on Somalia since the dissolution of effective government in 1991 leave any researcher with a distinctive ambivalence about the moral issues surrounding this subject of piracy. On the one hand, there can be absolutely no doubt, on any moral plane, that pirate attacks against unarmed vessels engaged in peaceful trade are illegal and immoral and unjustifiable. That the Somali pirates have not killed many sailors and travelers thus far is fortunate for all concerned. International law outlaws such activity,⁵⁷² and rightly

⁵⁶⁴ UNITED NATIONS ENVIRONMENT PROGRAMME, AFTER THE TSUNAMI, *supra* note 423, at 129.

⁵⁶⁵ *Id.* at 130.

⁵⁶⁶ *Id.*

⁵⁶⁷ See S.C. NANA-SINKAM, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) LAND AND ENVIRONMENTAL DEGRADATION AND DESERTIFICATION IN AFRICA, THE MAGNITUDE OF THE PROBLEM (1995), <http://www.fao.org/docrep/x5318E/x5318e00.htm> (discussing the various types of land degradation that affect the continent).

⁵⁶⁸ *Id.*

⁵⁶⁹ See MOHAMED, *supra* note 323.

⁵⁷⁰ *Id.*

⁵⁷¹ Dalmir Kahin, *Somalia: Piracy vs. Blind Western Justice*, SOMALILAND TIMES, Issue 379, May 2–7, 2009, <http://www.somalilandtimes.net/sl/2009/379/41.shtml>.

⁵⁷² See UNCLOS, *supra* note 49, at 436–37.

so. However, from a different perspective, the Somalis' activities in taking the law into their own hands—when no one else would—in defense of their way of life and to protect their environment, also deserve some consideration on a moral plane. Human Rights Watch commented that, "Somalia was the most ignored tragedy in the world."⁵⁷³ It is all too regrettably true that the Somalis were largely ignored until they committed their actions of piracy, specifically against the American vessel, the *Maersk Alabama*.⁵⁷⁴ That single action propelled the story to the forefront of global concern, and with it came some acknowledgment that Somali piracy is not as clear-cut a case of criminality as initially assumed.⁵⁷⁵ The analysis of the environmental issues—particularly those perpetrated by foreigners⁵⁷⁶—leaves a researcher laying equal responsibility on the community of nations and on the United Nations for not having taken active steps to deter foreign plundering of Somalia's fisheries and foreign violations of international laws against ocean dumping.⁵⁷⁷ As with most matters involving international law, the problem is not necessarily with the intention or with the law but with its non-implementation and the absence of accountability, particularly for politically significant states.⁵⁷⁸

In an incisive commentary, writer Alie Kabba provides an interesting comparison to situations prevailing in other parts of Africa where the collapse of government precipitated foreign predatory activities. Kabba explains:

Like Sierra Leone, Liberia, the Democratic Republic of [the] Congo, Angola, and other places that have witnessed civil wars and collapse of all institutions of governance, greedy armies of foreign corporate interests saw the chaos in Somalia as an opportunity to loot the natural resources of this warring nation. It was blood diamonds in the case

⁵⁷³ *Somali Shoppers Killed by Shells*, BBC NEWS, Oct. 7, 2008, <http://news.bbc.co.uk/2/hi/africa/7656272.stm>.

⁵⁷⁴ *See U.S. Crew Seized by Somali Pirates*, BBC NEWS, Apr. 8, 2009, <http://news.bbc.co.uk/2/hi/7989474.stm>.

⁵⁷⁵ *See id.*

⁵⁷⁶ *See generally* Hari, *supra* note 442 (suggesting that although some pirates are criminals, others are trying to thwart illegal dumping and overfishing).

⁵⁷⁷ *See* Alie Kabba, *Somalia: Pirates or Patriots of the Sea?*, THE PATRIOTIC VANGUARD, Apr. 27, 2009, <http://www.thepatrioticvanguard.com/spip.php?article4078>.

⁵⁷⁸ *See generally* Hari, *supra* note 442 (stating that Western nations have used the unstable political system in Somalia to overfish and dump nuclear waste in the country's water without any consequences).

of Sierra Leone, timber and gold in the case of Liberia, and enormous amount of mineral wealth in the case of the Congo. It's the old law of the jungle: You fall on your back, the vultures soon land for a good meal.⁵⁷⁹

III. POVERTY, PIRACY AND PLENTY

The nexus between poverty and piracy is clear. "Poverty is the driving force behind the increase in piracy, not just off the coast of Africa, but in the Caribbean, South America, India, Bangladesh, and Southeast Asia."⁵⁸⁰ To appreciate the extent of the inducement to join the pirates for young Somali men from very deprived families, consider that the estimated amount paid to them in ransom in 2008 was said to be approximately \$150 million.⁵⁸¹ As some shipowners are reluctant to reveal exactly how much they paid to get back their vessels and crews, there are widely varying figures for the total amount of ransom collected by pirates.⁵⁸²

The Somali pirates appear to be aware that they have crossed the strongly-held moral and religious boundaries of their ancient and traditional way of life.⁵⁸³ Their justification is grounded in absolute necessity because, as they see it, piracy is their only route out of poverty.⁵⁸⁴ A pirate nicknamed Boya commented: "We understand what we're doing is wrong. But hunger is more important than any other thing."⁵⁸⁵ Donna Hopkins, the State Department's program manager on piracy issues, commented that "[p]iracy offers quick money to young Somalis who have few alternatives that pay as well as piracy."⁵⁸⁶

⁵⁷⁹ Kabba, *supra* note 577.

⁵⁸⁰ JOHN S. BURNETT, DANGEROUS WATERS 117 (2002).

⁵⁸¹ Bettocchi, *supra* note 119.

⁵⁸² See, e.g., Jan M. Olsen, *Owner: Pirates Free Danish Ship Held for 2 Months*, AP, Jan. 16, 2009, available at: <http://www.huffingtonpost.com/huff-wires/20090116/piracy/> (explaining that ransom usually ranges between one and two million dollars); David McKenzie, *Somali Pirates Free Tanker After Ransom*, CNN.COM, Jan. 10, 2009, <http://www.cnn.com/2009/WORLD/africa/01/10/pirates.tanker/index.html> (reporting that allegedly the pirates demanded three and a half million dollars in ransom).

⁵⁸³ See Gwen Thompkins, *Morning Edition: In Somalia, Piracy Is An Attractive Career Option* (NPR radio broadcast May 6, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=103815312>.

⁵⁸⁴ See *id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ Caldwell, *International Community Uniting Against Pirates*, *supra* note 508.

For a while, there was considerable social cachet for Somali pirates when they returned to their home ports, their pockets bulging with ransom money.⁵⁸⁷ “They wed the most beautiful girls,”⁵⁸⁸ built large homes, traveled in expensive cars, and enjoyed a life far removed from their poverty-stricken origins. The short-term and immediate financial impact of the huge million-dollar ransoms can be observed in a number of pirate havens like the Somali port of Eyl, where now “[b]ig villas and hotels are sprouting, former subsistence fishermen are driving Mercedes-Benzes, and gold-digging women are showing up. So are accountants.”⁵⁸⁹

Local girls “speak of pirates as good marriage prospects.”⁵⁹⁰ Some small towns in Somalia have seen the influx of sudden wealth, with pirates displaying their social skills by hosting lavish parties.⁵⁹¹ Having attended an expensive two-day wedding with abundant food, a foreign band, and non-stop dancing, Fatuma Abdul Kadir declared that she was “now dating a pirate.”⁵⁹² A pirate boasted that his wife did not ask where the money came from.⁵⁹³ “She just takes it,” he said.⁵⁹⁴

Pirates have definitely stimulated the economy of their home ports and villages, injecting an estimated \$35 million USD into Puntland in 2008.⁵⁹⁵ Peter Lehr of the University of St. Andrews also commented on the very visible economic boon in the pirate port of Eyl that now boasts new hotels, restaurants, and “a whole entertainment industry,” thanks to the pirates.⁵⁹⁶ Pirates may, legally, also marry an additional wife, and these weddings, as described above, are paid for from their

⁵⁸⁷ See Robyn Hunter, *Somali Pirates Living the High Life*, BBC NEWS, Oct. 28, 2008, <http://news.bbc.co.uk/2/hi/africa/7650415.stm>.

⁵⁸⁸ *Id.*

⁵⁸⁹ Kennedy, *supra* note 60.

⁵⁹⁰ Colin Freeman, *Parties, Women and New Cars in Lawless Land where Everyone Wants to be a Somali Pirate*, TELEGRAPH.CO.UK, Nov. 22, 2008, <http://www.telegraph.co.uk/news/worldnews/piracy/3502475/Parties-women-and-new-cars-in-lawless-land-where-everyone-wants-to-be-a-Somali-pirate.html>.

⁵⁹¹ *Id.*

⁵⁹² Gettleman, *supra* note 8.

⁵⁹³ See Freeman, *supra* note 590.

⁵⁹⁴ *Id.*

⁵⁹⁵ Jonathan Clayton, *Business Booms in Somali Pirate Village Eyl*, THE AUSTRALIAN, Nov. 19, 2008, <http://www.theaustralian.news.com.au/story/0,25197,24674415-32682,00.html>.

⁵⁹⁶ Barrett Sheridan, *Treasure Ship: Seizing the Sirius Star was an Audacious Raid for Somalia's Emboldened Pirates*, NEWSWEEK, Nov. 19, 2008, <http://www.newsweek.com/id/169886>.

ransom money.⁵⁹⁷ News accounts detail lavish pirate celebrations for various occasions, also financed with ransom money.⁵⁹⁸ The leap from abject poverty to sudden affluence on this scale has led to inevitable spending sprees as pirates purchase all the consumer items they want and enjoy life in a way they had not imagined possible.⁵⁹⁹

Peter Chalk, a maritime security analyst with the Rand Corporation, believes that “at least 20 percent of ransom payments are re-invested back into coastal communities,”⁶⁰⁰ creating a vested interest in protecting the pirates.⁶⁰¹ The millions paid in ransom to the pirates may have led to an economic boost of sorts in some parts of that country,⁶⁰² but the long-term impact is likely to be negligible given the vast and serious economic crisis that prevails in Somalia. True, some formerly poverty-stricken people have become millionaires and are now enjoying lives beyond their wildest dreams. Their good fortune, however, cannot alleviate the misery of the starving millions who every year depend on humanitarian aid from overseas.⁶⁰³ By one estimate, about three and a half million Somalis require emergency assistance.⁶⁰⁴ Nor is the acquisition of sudden wealth by a few individuals engaged in illegal enterprises likely to assist Somalia’s return back to economic viability that can attract investment, infrastructure development and reconstruction of social services such as schools and hospitals.⁶⁰⁵ Economically, piracy as a ‘make-work project’ has paid very handsomely for the few who participated and for their beneficiaries. However, its economic impact on the country as a whole is negligible and possibly more harmful in the long term because it has attracted career criminals to the coastline, denigrated the country to the status of not just a failed state but a pirate haven, and thwarted the possibility of sound economic growth and development for some time to come.⁶⁰⁶

⁵⁹⁷ *See id.*

⁵⁹⁸ *See* Freeman, *supra* note 590.

⁵⁹⁹ *Id.*

⁶⁰⁰ Andre de Nesnera, *Lack of Effective Somali Government Root of Piracy Problem, Experts Say*, VOANEWS.COM, Apr. 16, 2009, <http://www1.voanews.com/english/news/a-13-2009-04-16-voa47-68733422.html>.

⁶⁰¹ *Id.*

⁶⁰² *See id.*

⁶⁰³ *See* Menkhaus, Prendergast, & Thomas-Jensen, *supra* note 259.

⁶⁰⁴ *Id.*

⁶⁰⁵ *See generally* Freeman, *supra* note 590 (“[I]t is a profession where a grim end to the good times is always on the horizon.”).

⁶⁰⁶ *See generally* Corey Flintoff, *Somali Pirates Threaten Revenge*, NPR, Apr. 13, 2009, <http://www.npr.org/templates/story/story.php?storyid=103035759> (reporting that the port

IV. THE PIRACY CRISIS

A. *Introduction: Dealing with Piracy in Somalia*

International law provides us with a clear definition of what constitutes piracy, as seen in Article 101 of the UNCLOS.⁶⁰⁷ However, while semantically this definition may be acceptable, in the real world that daily faces numerous attacks from pirates, legal definitions can frequently become a hindrance in the search for solutions. As journalist Daniel Sekulich explained, “[t]echnically speaking, piracy only occurs on the high seas—outside the twelve-nautical mile limit of a state’s territorial waters. Any acts that occur within those territorial waters are defined as being merely ‘maritime crime.’”⁶⁰⁸ Professor Donald Rothwell explains further that the UNCLOS definition of piracy relates to actions occurring on the high seas, including “the adjoining exclusive economic zone which extends from the edge of the territorial sea to 200 nautical miles.”⁶⁰⁹ Rothwell’s conclusion is that “the modern law on piracy has been significantly constrained,” and now a differentiation has to be made between piracy beyond the twelve mile limit and such crime within territorial waters, where the “vast majority of global pirate attacks take place.”⁶¹⁰ For the latter, it is generally up to States and governments to police their own waters and arrest those violating their national laws.⁶¹¹

Piracy has thrived, not just off Somalia but in Southeast Asia and other parts of the world,⁶¹² because pirates are notoriously hard to catch⁶¹³ and because those arresting and prosecuting them have to rely on a complex web of international and national legal instruments to pursue these cases.⁶¹⁴ Additionally, shipping crews are constantly on the move, and it is very inconvenient to bring them to a specific place at a

of Eyl is a well-known pirate haven); Raymond Gilpin, *Counting the Costs of Somali Piracy* (U.S. Inst. of Peace, Working Paper, 2009), available at http://www.usip.org/files/resources/1_0.pdf (asserting the upsurge in piracy is a reflection of maritime lawlessness, which will have negative implications on Somalia’s economic development).

⁶⁰⁷ For the UNCLOS definition of piracy, see *supra* note 50 and accompanying text.

⁶⁰⁸ Bezmozgis, *supra* note 5.

⁶⁰⁹ Rothwell, *supra* note 10.

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

⁶¹² *See id.*

⁶¹³ *See Why Somali Pirates Are Hard to Defeat*, MSNBC.COM, Nov. 18, 2008, <http://www.msnbc.msn.com/id/27789400/>.

⁶¹⁴ *See* Rothwell, *supra* note 10 (discussing international and national laws existing before and after the increase of Somali pirate activity).

specific time to testify in court.⁶¹⁵ The more bloodthirsty pirates are inclined to kill all crew members and leave no witnesses to their crimes.⁶¹⁶ There are, therefore, many advantages for pirates and, conversely, many hindrances for authorities who wish to end such illegal activities.

Hijacking a ship is not all that difficult to achieve, particularly since many of the world's oceans are not regularly patrolled by navies.⁶¹⁷ Pirates today have the advantages of modern technical gadgets to facilitate their crimes, and many ship crews have to fight armed gangs with nothing but fire hoses.⁶¹⁸ The enormous size of many container vessels and oil tankers makes them easy targets. They move at such slow speeds that it is relatively easy to board them.

Article 105 of the UNCLOS specifies that on the high seas or anywhere outside state jurisdiction, "every State may seize a pirate ship . . . and arrest the persons and seize the property on board."⁶¹⁹ The arresting State may determine the penalties to be imposed.⁶²⁰ However, according to Article 107, seizures "on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect."⁶²¹

The search for a solution to the Somali piracy problem cannot, in the present context, allow for too much of a bleeding-heart approach. Unfortunately, the piracy the world is now confronting is quite different from the initial efforts by rag-tag bands of fishermen to defend their coastline by exacting tolls on passing and polluting ships.⁶²² To the pirates' credit, they have treated their hostages tolerably well.⁶²³ As of the time of this writing, the pirates have exhibited violence mainly by selectively beating their victims,⁶²⁴ as what they want is cash and loot, not

⁶¹⁵ See Andrew Robinson, *The Prosecution of Pirates—No Walk on the Plank*, DENEYS REITZ ATTORNEYS, Apr. 1, 2009, http://www.deneysreitz.co.za/index.php/news/the_prosecution_of_pirates_-_no_walk_on_the_plank/.

⁶¹⁶ See *Somali Pirates Kill Syrian Captain, Ship Rescued*, CHINA DAILY, Sept. 25, 2009, http://www.chinadaily.com.cn/world/2009-09/25/content_8736437.htm.

⁶¹⁷ See *Why Somali Pirates Are Hard to Defeat*, *supra* note 613.

⁶¹⁸ See BURNETT, *supra* note 580, at 131.

⁶¹⁹ UNCLOS, *supra* note 49, at 437.

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² See Shani Ross & Joshua Ben-David, *Somali Piracy: An Escalating Security Dilemma*, 5 HARV. AFR. POL'Y J., 55, 55–57 (2009).

⁶²³ Mark Thompson, *Washington Wrestles with the Pirate Problem—On Land*, TIME, Apr. 14, 2009, <http://www.time.com/time/nation/article/0,8599,1891129,00.html>.

⁶²⁴ See, e.g., Alison Bevege, *NATO Warship Rescues Indian Sailors Freed by Pirates*, REUTERS.COM (India), June 13, 2009, <http://in.reuters.com/article/topNews/idINIndia-40307220090613?sp=true> ("A NATO warship picked up fourteen Indian sailors off Somalia

trouble.⁶²⁵ Ship owners are inclined to prefer paying ransom to dealing with fatal attacks on their crews.⁶²⁶ As serious as Somali piracy is and as threatening as this problem has become on a global basis, it is still largely an economic issue.⁶²⁷ “The actual cost to global shipping is negligible.”⁶²⁸

However, there is no guarantee that this situation will continue. Piracy in Somalia has morphed,⁶²⁹ and it may soon become as dangerous and as bloodthirsty as piracy in Southeast Asia⁶³⁰ and other parts of the world where private yachts, sailing vessels, large ships, and enormous container vessels and their crews have been attacked with extreme violence and with no regard for human life.⁶³¹ In his book, *Dangerous Waters*, John Burnett wrote a very insightful personal account of the perils that threaten anyone brave enough these days to venture onto the world’s oceans.⁶³² In an age of increasing globalization, the fact that trade routes are no longer safe and secure is a serious impediment to peaceful commerce between nations.⁶³³ So whether the piracy is the rather ruthless type that afflicts the waters of Southeast Asia,⁶³⁴ or the more environmentally-motivated, comparatively less violent sort that is considered in this article,⁶³⁵ the fact remains that the action is criminal and has to be dealt with in that context. The Somali people acknowledge that piracy is an affliction and not a benefit for their country.⁶³⁶

on Saturday, a day after they were freed by pirates who had beaten them during 10 days of captivity.”).

⁶²⁵ Thompson, *supra* note 623.

⁶²⁶ *See id.* (comparing the shipping route through Gulf of Aden to a toll road costing up to three million dollars for a single vessel).

⁶²⁷ Dilanian, *supra* note 29.

⁶²⁸ *Id.* (quoting Peter Chalk, a senior analyst at Rand Corp.).

⁶²⁹ *See* Ross & Ben-David, *supra* note 622, at 57.

⁶³⁰ *See, e.g.*, Dana Robert Dillon, *Piracy in Asia: A Growing Barrier to Maritime Trade*, THE HERITAGE FOUNDATION, June 22, 2000, <http://www.heritage.org/Research/AsiaandthePacific/BG1379.cfm> (“[A]lmost all reported acts of piracy involve armed intruders who threaten and often injure, kidnap, or kill members of the crew.”).

⁶³¹ *See id.*

⁶³² *See generally* BURNETT, *supra* note 580.

⁶³³ BURNETT, *supra* note 580, at Note to the Reader.

⁶³⁴ *See, e.g.*, Dillon, *supra* note 630.

⁶³⁵ *See* Beliefnet.com, *Are Somali Pirates Like Terrorists?*, Apr. 14, 2009, <http://blog.beliefnet.com/cityofbrass/2009/04/are-somali-pirates-like-terror.html>; *see also* Vijay Joshi, *Somalia Says New Coast Guard Can Stop Piracy*, ABC NEWS, May 18, 2009, <http://abcnews.go.com/International/wireStory?id=7611442> (explaining that, in the beginning, the Somali fisherman-pirates would just capture foreign fishing boats and make them release their illegal catch).

⁶³⁶ *See* Hunter, *supra* note 587; *see also* Thompkins, *supra* note 583 (acknowledging that piracy conflicts with traditional Somali values).

It is interesting to note that clan inhibitions do not appear to hinder the effective creation of pirate gangs that cross clan lines “to open new, lucrative, multiclan franchises.”⁶³⁷ Pirates have also apparently felt a need for division of labor in their operations.⁶³⁸ The former fishermen who began these ventures are important for their familiarity with the seas.⁶³⁹ However, former militiamen now form the “muscle” required for the attacks.⁶⁴⁰ They are not likely to flinch from inflicting violence when required.⁶⁴¹ Additionally, in this complex technological world, pirates, like everyone else, require the services of computer specialists to operate the satellite phones, global positioning systems (“GPS”) and other hardware they routinely carry on their missions.⁶⁴² Where they have actually seized large vessels, pirates have realized a need to understand the complex mechanisms and computer systems that are used to steer these huge ships.⁶⁴³

With practice and on-the-nefarious-job training, the pirates are becoming more effective and acquiring relevant information to carry out their activities.⁶⁴⁴ Nicolaos Charalambous, Deputy Director of the International Maritime Organization, explained that piracy off East and West Africa accounted in 2009 for seventy-five percent of incidents reported globally.⁶⁴⁵ The figure for 2008 was sixty-one percent.⁶⁴⁶ According to the International Maritime Bureau, more ships were attacked off Somalia in the first half of 2009 than during the entire previous year.⁶⁴⁷ The reported figure for the first half of 2009 was 133, as compared to 111 throughout 2008.⁶⁴⁸ It might be somewhat consoling to know that fewer of the present attacks are as successful.⁶⁴⁹ Again, it is important to reiterate that ship crews have often not recorded or reported minor incidents, particularly

⁶³⁷ Gettleman, *supra* note 8.

⁶³⁸ See Hunter, *supra* note 587 (discussing three different types of pirate gangs).

⁶³⁹ See *id.*

⁶⁴⁰ See *id.*

⁶⁴¹ See *id.* (noting that the ex-militiamen previously exhibited violence when fighting for Somali warlords).

⁶⁴² See *id.*

⁶⁴³ See Barrett Sheridan, *supra* note 596 (noting the difficulties associated with hijacking large ships while possessing little knowledge of their operations).

⁶⁴⁴ See Ross & Ben-David, *supra* note 622, at 55, 58 (discussing the pirates' increased attack capabilities).

⁶⁴⁵ *Somalia Needs Stability*, BERNAMA, May 18, 2009, <http://www.bernama.com/bernama/v5/newsindex.php?id=411876>.

⁶⁴⁶ *Id.*

⁶⁴⁷ Bevege, *supra* note 624.

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

where the pirates were chased away.⁶⁵⁰ Hence, actual statistics of pirate activity could be much higher.

Commenting on the changes in the tactics of pirates, Nicole Stracke, researcher at the Dubai Gulf Research Centre, explained that “Somali piracy has become a highly organised activity. . . .”⁶⁵¹ Stracke continued: “[P]iracy has developed its own dynamic and now resembles a professional and highly organised business venture, starting from the selection of maritime targets to the final stage of receiving and dispensing the ransom.”⁶⁵²

Along with faster boats, pirates now use GPS, satellite phones, and rocket-propelled grenade launchers.⁶⁵³ There is some indication that they even hire caterers to provision their pirate boats.⁶⁵⁴ Per Gullestrup, CEO of the Clipper Group, a shipping company based in Denmark, recounted his experience when one of his ships and crew were attacked.⁶⁵⁵ After the ransom was paid and the pirates given a ride back to their home base, the crew found pirate time sheets left on board, detailing the dates and hours each pirate spent on board and the total sum he earned.⁶⁵⁶ Mark Hosenball of *Newsweek* reported that a document found on a hijacked ship contained a list of rules of conduct pirates were required to follow, and punishments for infractions such as hitting a hostage.⁶⁵⁷ Some of these conduct rules may be self-serving to prop up the public relations image of pirates as essentially civilized persons driven by deprivation to commit such crimes.

Keeping a positive public image while committing serious international crimes appears to be important for some of the Somali pirate gangs.⁶⁵⁸ There are indications that some of them may have ‘life after

⁶⁵⁰ Torchia, *supra* note 12.

⁶⁵¹ Jumana Al Tamimi, *Military Action Could Make Pirates More Aggressive*, GULF NEWS, May 7, 2009, <http://gulfnnews.com/news/gulf/uae/general/military-action-could-make-pirates-more-aggressive-1.67936>.

⁶⁵² *Id.*

⁶⁵³ Barbara Surk, *Somali Pirates Hijack Saudi Tanker Loaded with Oil*, ABC NEWS, Nov. 17, 2008, <http://abcnews.go.com/print?id=6269111>.

⁶⁵⁴ See Chana Joffe-Walt, *All Things Considered: Behind the Business Plan of Pirates Inc.* (NPR radio broadcast Apr. 30, 2009), available at <http://www.npr.org/templates/story/story.php?storyId=103657301> (citing Peter Pham).

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ Mark Hosenball, *The Danger of Escalation*, NEWSWEEK, Apr. 27, 2009, at 6, available at <http://www.newsweek.com/id/194625/output/print>.

⁶⁵⁸ See, e.g., Thompkins, *supra* note 636 (quoting a pirate who emphasizes that pirates are humans, not animals).

piracy' ambitions to fulfill, now that they have the money to do so.⁶⁵⁹ One former pirate leader expressed his ultimate ambition for a new life when he told a journalist that he wanted to move to the West and work in a chicken processing plant.⁶⁶⁰

Clearly, the pirates of Somalia are now a varied bunch, some still representing the vigilante fishermen and their agenda; others—possibly the majority now—in the crime for the money.⁶⁶¹ Their treatment of hostages is also varied.⁶⁶² There is less violence in Somalia toward hostages than in Southeast Asia.⁶⁶³ However, it is also apparent from the accounts of some freed hostages that they have been exposed to regular beating by Somali pirates.⁶⁶⁴

The Somali pirates have demonstrated their expertise by attacking and holding for ransom enormous oil tankers like the Saudi *Sirius Star*, the largest ship ever hijacked,⁶⁶⁵ with a cargo worth over one hundred million dollars.⁶⁶⁶ Seven times the size of the *Titanic* and longer than the height of the Chrysler Building, the *Sirius Star* was hijacked by about a dozen pirates in two tiny boats,⁶⁶⁷ and eventually ransomed for three million dollars.⁶⁶⁸

The amount of sophistication can be gauged by the fact that pirate gangs now need not only spokesmen but also feel a necessity for “publicists to handle media calls.”⁶⁶⁹ One *New York Times* journalist grumbled about the fact that the pirate spokesman could not be reached for a comment on a particular Friday in September 2008.⁶⁷⁰

⁶⁵⁹ See *id.* (interviewing pirates who see piracy as a means of escaping their poverty and moving on to a better life).

⁶⁶⁰ *Id.*

⁶⁶¹ See Ross and Ben-David, *supra* note 622, at 56–57 (discussing the varying levels of aggressiveness by pirates toward hostages).

⁶⁶² See Al Tamimi, *supra* note 651.

⁶⁶³ Compare Thompson, *supra* note 623 (“The [Somali] pirates generally want cash, not trouble. They’ve treated their hostages well, and violence has been rare.”), with Roland Buerk, *Pirates’ Kill Bangladesh Crew*, BBC NEWS, Oct. 28, 2004, http://news.bbc.co.uk/2/hi/south_asia/3961883.stm (discussing the killings of 14 Bangladeshi fishermen).

⁶⁶⁴ See Bevege, *supra* note 624.

⁶⁶⁵ Mohammed Ibrahim & Graham Bowley, *Pirates Say They Freed Saudi Tanker for \$3 Million*, N.Y. TIMES, Jan. 10, 2009, at A6.

⁶⁶⁶ Daly, *supra* note 40.

⁶⁶⁷ Burnett, *supra* note 295, at A39.

⁶⁶⁸ Ibrahim & Bowley, *supra* note 665, at A6.

⁶⁶⁹ Kennedy, *supra* note 60.

⁶⁷⁰ Jeffrey Gettleman, *Somalia Pirates Capture Tanks and Global Notice*, N.Y. TIMES, Sept. 27, 2008, at A1.

The pirates' lavish expenditures on technical gadgetry and personnel to facilitate these pirate attacks and their aftermath does lend credence to the assumption that the ransom money has totaled multiple millions of dollars.⁶⁷¹ Although estimates may vary, it does appear as though the pirates of Somalia netted about 150 million dollars in 2008.⁶⁷²

London, England serves as the ransom-negotiation center because it is "the business capital of the world's maritime industry."⁶⁷³ The negotiation for ransom and its delivery is now a detailed operation involving highly-paid, skilled and polite professional negotiators on both sides,⁶⁷⁴ including intelligence officers.⁶⁷⁵ Also needed by all parties are Western-based private security firms to protect the vast amounts of cash involved.⁶⁷⁶ The security teams certainly earn their salary because, on occasion, they have to deal with other gangs of pirates attacking them while delivering ransom to the initial group.⁶⁷⁷ "Navigating the high seas with a stash of money is not for the fainthearted."⁶⁷⁸ There were reports in 2008 of a pirate boat capsizing because it was overloaded with cash.⁶⁷⁹ In January 2009, five pirates drowned when their boat capsized.⁶⁸⁰ They had just received three million dollars in ransom and some of the payout was found in the pocket of a dead pirate.⁶⁸¹ Banks are not inclined to get involved with pirate ransom money because it is "now too high-profile, too hot."⁶⁸²

Additionally, the ship owners use teams of lawyers to assist in this surreal process.⁶⁸³ It is in everyone's interest to be civil and professional in demeanor, to negotiate as though this is just one more commercial transaction.⁶⁸⁴ The payment of ransom to pirates is not illegal under British

⁶⁷¹ See Ross & Ben-David, *supra* note 622, at 58.

⁶⁷² Ogunbayo, *supra* note 551.

⁶⁷³ *Who Do Pirates Call to Get Their Cash?*, BBCNEWS, Jan. 29, 2009, [http://newsvote.bbc.co.uk/2/hi/uk_news/magazine/7847351.stm?ad=1](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/uk_news/magazine/7847351.stm?ad=1).

⁶⁷⁴ Joffe-Walt, *supra* note 654.

⁶⁷⁵ See Maxim Tkachenko, *Pirates Release Ship Carrying Tanks, Other Arms*, CNN.COM, Feb. 5, 2009, <http://www.cnn.com/2009/WORLD/africa/02/05/somalia.piracy.ukraine/index.html>.

⁶⁷⁶ See *Who Do Pirates Call to Get Their Cash?*, *supra* note 673.

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.*

⁶⁷⁹ Hosenball, *supra* note 657.

⁶⁸⁰ *Body of a Somali Pirate, Carrying \$153,000 of a Ransom, Washes Ashore*, N.Y. TIMES, Jan. 12, 2009, at A7.

⁶⁸¹ *Id.*

⁶⁸² Sheridan, *supra* note 596 (quoting Peter Lehr).

⁶⁸³ See *Who Do Pirates Call to Get Their Cash?*, *supra* note 673.

⁶⁸⁴ See *id.*

law,⁶⁸⁵ so “as soon as pirates set foot on a ship they know pay day is only a matter of time.”⁶⁸⁶ Pirates have purchased specialized equipment to ascertain that the ransom is not fake currency, and also have cash counting machines to expedite their tabulation.⁶⁸⁷

Many groups are profiting from the activities of the pirates.⁶⁸⁸ A pirate named Ahmed Gel-Qonaf told Nick Wadhams of *Time* that shares of the ransom have to be provided to the Islamic Shabab militia, leaders of the Somali transitional government, regional and federal politicians, as well as pirate commanders.⁶⁸⁹ These payments leave very little for the actual pirates, but they assure that the pirates can operate freely.⁶⁹⁰ It is now deemed essential that prior to a ship’s release, all these vested interests “have to agree about the money.”⁶⁹¹ This considerably delays the negotiations for ransom.⁶⁹² Peter Lehr explained that because “the Islamic movements could clamp down on piracy very hard if they liked. . . . lots of money is flowing into their coffers as well.”⁶⁹³

Piracy has become a lucrative business, not just for Somalis and individuals from London who become part of the resolution process, but also for Egyptians and Yemenis who operate vessels as pirate taxis, or as mother ships from which pirates set off in small boats to attack the world’s commercial ships.⁶⁹⁴ The Egyptian flag is thought to be a successful lure when a false distress signal is issued.⁶⁹⁵

Additionally, considerable sums of ransom money are being used by pirates to purchase hotels, shopping malls and trucking companies in Kenya, suspected to be “awash in ransom money.”⁶⁹⁶ Stig Jarle Hansen

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.*

⁶⁸⁷ Ogunbayo, *supra* note 551. *See also* Joffe-Walt, *supra* note 654 (discussing accounting practices of pirates and their use of time sheets).

⁶⁸⁸ *See* Nick Wadhams, *A Pirate Ransom Deal: Who Gets the Money?*, *TIME*, Dec. 4, 2008, <http://www.time.com/time/world/article/0,8599,1864300,00.html>.

⁶⁸⁹ *Id.*

⁶⁹⁰ *Id.*

⁶⁹¹ *Id.* (quoting a pirate named Gel-Qonaf).

⁶⁹² *See id.*

⁶⁹³ Sheridan, *supra* note 596 (quoting Peter Lehr).

⁶⁹⁴ *Pirate Taxi for Hire: Egyptian Fishermen Change Jobs*, *HINDUSTAN TIMES* (India), Apr. 9, 2009, <http://www.hindustantimes.com/News/africa/Pirate-taxi-for-hire-Egyptian-fishermen-change-jobs/Article1-398624.aspx>.

⁶⁹⁵ *Id.*

⁶⁹⁶ Shashank Bengali, *Pirates: Yo, Ho, Ho and a Million-Dollar McMansion*, *MCCLATCHY*, May 25, 2009, <http://www.mcclatchydc.com/homepage/v-print/story/68699.html>.

of the Norwegian Institute for Urban and Regional Research is certain that pirate money is being invested in Kenya, without apparent Kenyan controls or monitoring.⁶⁹⁷

Article 110 of the United Nations Convention on the Law of the Sea provides for the “right of visit,” when there is a reasonable suspicion of piracy.⁶⁹⁸ Were the United Nations to equip Somalia with an effective coast guard, an appeal frequently articulated by Somali leaders,⁶⁹⁹ such a fleet would acquire a coastal state’s right to “hot pursuit” as per Article 111 of the United Nations Convention on the Law of the Sea.⁷⁰⁰ Such pursuit is allowable if there is “good reason to believe that the ship has violated the laws and regulations of that State.”⁷⁰¹

In the meantime, including Somali authorities in any international flotilla or armada would lend more credibility and weight to the entire operation.⁷⁰² It might also allay the apprehensions felt by Somalis whenever foreigners attempt to interfere with, or get involved in, their country.⁷⁰³

If Somalia had an effective functioning government, any piracy emanating from its shores would be subject to Somali law.⁷⁰⁴ Somalis have long contended that they are in the best position to root out the pirates, as they are more familiar with the terrain of pirate havens than any outside elements could be.⁷⁰⁵ The terrible fate suffered in the past by United Nations troops and American soldiers in Somalia should caution against further territorial intervention by any outside powers.⁷⁰⁶ Additionally, the involvement of foreign navies with Somali advisors having representatives

⁶⁹⁷ *Id.*

⁶⁹⁸ UNCLOS, *supra* note 49, at 438.

⁶⁹⁹ Edmund Sanders, *Let Us Handle Prates, Somalis Say*, L.A. TIMES, Apr. 15, 2009, at A22.

⁷⁰⁰ UNCLOS, *supra* note 49, at 439.

⁷⁰¹ *Id.*

⁷⁰² *See, e.g.*, Press Release, U.S. Dep’t of State, Announcement of Counter-Piracy Initiatives (Apr. 15, 2009), *available at* <http://www.state.gov/secretary/rm/2009a/04/121758.htm> (discussing the need to work together with Somalians to combat piracy).

⁷⁰³ *See* Katie Stuhldreher, *To Turn the Tide on Piracy, Bring Justice to Its Fisheries*, CHRISTIAN SCI. MONITOR, Nov. 20, 2008, <http://www.csmonitor.com/Commentary/Opinion/2008/1120/p09s01-coop.html> (suggesting that Somalis have good reason to dislike and distrust foreign involvement). For a summary of Somalia’s lengthy history of international interference, see BBC News, Africa, Country Profiles: Somalia, *supra* note 252.

⁷⁰⁴ *See* UNCLOS, *supra* note 49, at 439 (extending power contained in the right of hot pursuit to the coastal state’s authorities).

⁷⁰⁵ Sanders, *supra* note 699, at A22.

⁷⁰⁶ For a discussion of U.N. and U.S. military and diplomatic actions in Somalia during the 1990’s, see *supra* Part I.D.1.

of Somali authority on board could allay some of the fear in that country about again becoming the target of a foreign invasion.⁷⁰⁷

The entire global community and the United Nations must shoulder some responsibility for the fact that the vigilante retaliations of angry Somali fishermen have now developed into a far more sinister and dangerous threat—potentially including terrorism⁷⁰⁸—for all the nations of the world. Had the United Nations taken some effective action to deter egregious violations of international law, such as combating the overfishing and toxic waste dumping that has probably caused permanent damage to the oceans off Somalia,⁷⁰⁹ the acts of piracy might not have escalated to the danger point confronting international commerce today. Had the various nations whose ships were plundering Somali waters and using the area as a dumping zone taken effective action to hold captains and vessel owners legally liable for such violations, the problem might have diminished rather than increasing to this level of threat.⁷¹⁰ By simply neglecting to take effective action in the early stages,⁷¹¹ the United Nations allowed this matter to increase in scope and peril. Somalis are certainly justified in their anger when they compare the frenetic United Nations activity against piracy with its lethargic non-action about the initial poaching and polluting that precipitated their piracy.⁷¹² If the world is now facing an international crisis, it is very much the fault of all involved nations, particularly in their capacity as members of the United Nations. The United Nations could, at the very least, have let loose its usual flood of speeches

⁷⁰⁷ See Country Profile: Somalia, *supra* note 252 (discussing the history of foreign involvement in Somalia).

⁷⁰⁸ See Thomas P.M. Barnett, *Can We Stop a Pirate 9/11?*, ESQUIRE, May 7, 2009, <http://www.esquire.com/the-side/war-room/pirate-terrorism-050709>.

⁷⁰⁹ See U.N. Econ. & Soc. Council, Comm'n on Human Rights, Advisory Services and Technical Cooperation in the Field of Human Rights, *Assistance to Somalia in the Field of Human Rights: Report of the Independent Expert, Mr. Ghanim Alnajjar*, ¶ 49, U.N. Doc. E/CN.4/2003/115 (Dec. 31, 2002) available at [http://www.unhchr.ch/huridocda/huridoca.nsf/2848af408d01ec0ac1256609004e770b/460846883b48bfb6c1256cda00367522/\\$FILE/G0216248.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/2848af408d01ec0ac1256609004e770b/460846883b48bfb6c1256cda00367522/$FILE/G0216248.pdf).

⁷¹⁰ See Christopher Jasparro, *Somalia's Piracy Offers Lessons in Global Governance*, YALE GLOBAL ONLINE, Apr. 6, 2009, <http://yaleglobal.yale.edu/content/somalia%E2%80%99s-piracy-offers-lessons-global-governance> (“What began as a defensive movement by local fishermen has evolved into a complex amalgamation of banditry and insurgency.”).

⁷¹¹ See *id.* (noting that in 2005 the UN estimated there were seven hundred foreign ships in Somali waters, many of which were using “illegal and destructive” fishing methods, and yet the UN did not act on the issue until 2008).

⁷¹² See *infra* notes 827–839 and accompanying text (comparing UN activity in response to piracy concerns with UN activity in response to environmental concerns in Somalia).

and wordy resolutions on behalf of the fishermen of Somalia before they became the far more dangerous pirates of Somalia.⁷¹³

There are also indications that Somali piracy is expanding to include criminal and other elements in neighboring Yemen.⁷¹⁴ According to the United Nations, Somali pirate vessels have been using Yemeni ports as supply stations to provide arms, ammunition, and fuel for pirate mother ships.⁷¹⁵ Yemen also has high levels of unemployment and poverty, factors that could make involvement in piracy an attractive alternative.⁷¹⁶ Peter Lehr of the University of St. Andrews explained that Yemen could mirror the situation in Somalia with its unemployed joining the pirates.⁷¹⁷ The World Bank has expressed concern about the grim fact that nearly half the population of the world, over three billion people, survives on less than \$2.50 per day, a situation likely to worsen in the current economic recession.⁷¹⁸ For such economically deprived people of many countries, the lure of easy money could be irresistible. One can only hope that the Somali pirates have not created the template for a modern version of the rags-to-riches saga.

Unless the Western world is able and willing to fund the long-term cost of naval convoys to patrol the Gulf of Aden and Somali waters during the worst global economic crisis since 1929,⁷¹⁹ it is likely that Somali piracy will not only increase but evolve to far more dangerous forms than we have presently seen. While there have been some successes in capturing pirates in 2009, the problem of piracy has not been solved.⁷²⁰

B. *Somali Reactions to Piracy*

While the Somalis initially lauded the actions of the young men who challenged the large foreign vessels and fought against the pollution

⁷¹³ See Alisha Ryu, *Somali Piracy Exposes Weakness in UN Law of the Sea*, VOANEWS.COM, Apr. 8, 2009, <http://www1.voanews.com/english/news/a-13-2009-04-08-voa67-68785907.html>.

⁷¹⁴ Alisha Ryu, *UN Warns of Ties Between Lawless Groups in Somalia and Yemen*, VOANEWS.COM, May 7, 2009, <http://www.voanews.com/english/2009-05-07-voa47.cfm?renderforprint=1>.

⁷¹⁵ *Id.*

⁷¹⁶ *Id.*

⁷¹⁷ *Id.*

⁷¹⁸ Cho Sung-joon, Opinion, *A Pirate's Life for Me*, KOREA TIMES, May 6, 2009, http://www.koreatimes.co.kr/www/news/opinion/2009/05/137_44449.html.

⁷¹⁹ Chris Isidore, *The Great Recession*, CNNMONEY.COM, Mar. 25, 2009, http://money.cnn.com/2009/03/25/news/economy/depression_comparisons/.

⁷²⁰ See Mike Corder, *EU Says War on Somali Pirates Not Over*, ABC NEWS, Sept. 29, 2009, <http://abcnews.go.com/International/wireStory?id=8701165>.

and over-fishing of their oceans,⁷²¹ it does appear that this enthusiasm has been dulled and muted by the realization that their country is now internationally considered not merely a failed state but a criminal haven as well.⁷²² For a proud people who come from an ancient land with rich traditions and a vibrant culture,⁷²³ this realization must be bitter medicine to swallow. The pirates themselves are now clearly not motivated solely by patriotic or environmentally-protective impulses,⁷²⁴ nor are the present groups of pirates composed mainly of angry fishermen, eager to save their way of life.⁷²⁵ As one journalist has stated: "Somali piracy started two decades ago with more noble goals of deterring illegal fishing and protecting the nation's resources and sovereignty at a time when the state was collapsing. Today's pirates have morphed into a sophisticated criminal ring with international ramifications."⁷²⁶

The huge ransoms collected have dynamically changed perceptions and reality in a number of ways. The monetary rewards of piracy have possibly corrupted and diluted the original motivation and, although pirates repeat their environmental justifications to any journalist willing to hear them, it is also true that the ransom money has not been generally utilized to improve conditions within Somalia.⁷²⁷ The unprecedented growth in Eyl cannot be deemed a serious boost for the overall Somali economy.⁷²⁸ A comment by a Somali politician explains the process by which fishermen/ pirates have morphed into something far more powerful and more sinister. According to Deputy Prime Minister Abdirahman Aden Ibbi, Somali fishermen initially captured foreign fishing boats, seized their catch and let them sail away.⁷²⁹ Then they began

⁷²¹ See *Somalia Appeals for Help to Fight Piracy*, AFP, May 17, 2009, <http://www.google.com/hostednews/afp/article/ALeqM5gn7VBhev-2F3I3elRqiYAVhHd6Mg> (describing the early goals of piracy as "noble").

⁷²² *Id.*

⁷²³ ADDIS ABABA OFFICE, UNESCO, MEETING ON INVENTORYING INTANGIBLE CULTURAL HERITAGE IN ETHIOPIA, DJIBOUTI AND SOMALIA 2 (2007), available at <http://www.unesco.org/culture/ich/doc/src/00062-EN.pdf>.

⁷²⁴ *Somalia Appeals for Help to Fight Piracy*, *supra* note 721.

⁷²⁵ *See id.*

⁷²⁶ *Id.*

⁷²⁷ See Katharine Houreld, *Somali Pirates Seize German Ship, 11 Crew*, ABC NEWS, May 6, 2009, <http://abcnews.go.com/International/wireStory?id=7514190> (noting that public institutions have crumbled despite Somali pirates being paid an average of \$10,000 per successful hijacking).

⁷²⁸ See Abdiqani Hassan, *Ransoms Bring Wealth to Somali Pirate Bases*, REUTERS.COM (U.K.), Nov. 23, 2008, <http://www.reuters.com/article/idUSTRE4AM0QQ20081123>.

⁷²⁹ Joshi, *supra* note 635.

demanding ransom and that produced the “powerful pirates that we see today.”⁷³⁰

Being in the immediate vicinity of the pirate havens, Somalis have realized that piracy has imperiled their country in a way they could not have imagined a few years ago.⁷³¹ Easy and quick ransom money has drawn significant numbers of professional gangsters and former militiamen,⁷³² whose activities cannot be considered motivated by good intentions. Because shipping company owners paid up vast ransoms without protest, they created a situation that was almost irresistible for criminal elements around the world.⁷³³ The huge publicity generated by the pirate situation and the widespread knowledge about the enormous sums to be made have apparently lured far more predatory types to Somalia and thereby threatened the fragile situation in that country even further.⁷³⁴ According to Roger Middleton, an analyst at Chatham House, “what began as a legitimate fight against foreign exploitation turned into a criminal enterprise when everyone discovered its lucrative potential.”⁷³⁵ It appears that the fishermen ventures into piracy have now been largely superseded by more professionally-directed gangs whose motivation is simply monetary, who are very well armed, who are accustomed to using modern technology to carry out these operations, and who likely report to dispatchers and chiefs who reside on-shore or even in foreign countries.⁷³⁶ Whether the original angry fishermen have been subsumed into the new gangs of pirates or whether they operate independently is not clear.⁷³⁷ The Deputy Director of Somalia’s National Security Agency, Nur Mohamed Mohamoud, alleged that “[p]owerful criminal businessmen consider piracy a new business area and want to participate and share in the profits.”⁷³⁸ The ransom payments are a huge attraction.⁷³⁹ As Peter Pham, writing for *World Defense Review*, wryly commented: “[i]ndividual Somalis do not need much persuading to

⁷³⁰ *Id.*

⁷³¹ Letter from the U.N. Pol. Office for Somalia to Members of the Somali Diaspora (May 7, 2009), available at http://un-somalia.org/Letters_to_Diaspora/index.asp (follow the May 7, 2009 hyperlink) (discussing the negative image of Somalia as a result of piracy).

⁷³² See Hassan, *supra* note 728.

⁷³³ See PLOCH, *supra* note 11, at 9.

⁷³⁴ Hassan, *supra* note 728.

⁷³⁵ See Ryu, *supra* note 713.

⁷³⁶ See Jaspardo, *supra* note 710.

⁷³⁷ See *id.*

⁷³⁸ *Somalia Needs Stability*, *supra* note 645.

⁷³⁹ *Id.*

embark on careers in piracy.”⁷⁴⁰ So murky is the situation that it is next to impossible to distinguish between pirates who are only opportunistic predators and those who are reacting to being made environmental prey.⁷⁴¹ Assuming that the pirates form “part of an interconnected, international seafaring mafia of sorts”⁷⁴² may be premature, but the potential risk of that eventually occurring is fairly high.⁷⁴³ The consequences of any such development for global commerce are very serious indeed.⁷⁴⁴ In 1696, Dr. Henry Newton commented about the result of piracy on trade during a trial before the Old Bailey: “Suffer pirates and the commerce of the world must cease.”⁷⁴⁵ Although the Somali problem may not produce that drastic a consequence, there is the potential for considerable damage to the peaceful flow of trade across the world.⁷⁴⁶

Another reason why there is growing disenchantment within Somalia about piracy relates to the realization that as this type of activity continues and proliferates, the country itself could be doomed to a future of endless violence and anarchy.⁷⁴⁷ Somalis have been urged to condemn piracy, even if it is well-intentioned, because “it is the official authorities not individuals who should be implementing the law concerning illegal fishing activities or waste dumping.”⁷⁴⁸ Condonation of criminal activity is not acceptable to Somali traditional thinking and Somalis are becoming concerned about the international perception of their country as a pirate haven.⁷⁴⁹

⁷⁴⁰ J. Peter Pham, *Pondering Somali Piracy*, WORLD DEF. REV., Apr. 23, 2009, <http://worlddefensereview.com/pham042309.shtml>.

⁷⁴¹ See Daniel Flynn & Antonella Cinelli, *G8 Vows Legal Cooperation to Tackle Somali Piracy*, REUTERS.COM (U.K.), May 30, 2009, <http://uk.reuters.com/article/idUKTRE54T1RH20090530?feedType=RSS&feedName=worldNews> (highlighting that pirates range from poor local fisherman to powerful international businessmen).

⁷⁴² See Barnett, *supra* note 708.

⁷⁴³ *Id.*

⁷⁴⁴ See *id.*

⁷⁴⁵ Douglas R. Burgess, Jr., Op-Ed., *Piracy is Terrorism*, N.Y. TIMES, Dec. 5, 2008, at A39 (quoting Admiralty advocate Dr. Henry Newton).

⁷⁴⁶ International Piracy on the High Seas: Hearing Before the Subcomm. on the Coast Guard and Maritime Transp. of the H. Transp. and Infrastructure Comm., 111th Cong. (2009) (statement of Rep. James Oberstar, Chair, H. T&I Comm.), available at <http://transportation.house.gov/News/PRArticle.aspx?NewsID=814>.

⁷⁴⁷ See Letter from U.N. Pol. Office for Somalia to Members of the Somali Diaspora, *supra* note 731, at ¶¶ 4, 6.

⁷⁴⁸ *Id.* ¶ 4.

⁷⁴⁹ See *id.* (recognizing that “one of the main negative consequences of piracy is the association of Somalia with anarchy.”).

When pirates roam the seas at will, attacking ships of various nations, they also threaten the national interests and relations of their own country.⁷⁵⁰ Such was the case when the *Maersk Alabama* and its American crew—particularly its Captain—were attacked.⁷⁵¹ Somali politicians do not particularly relish the thought of alienating the world’s only superpower.⁷⁵² Somali leaders also acknowledge the humanitarian role the United States has played in their country as the largest donor of aid, and are therefore anxious to ensure that Americans are not harmed in encounters with pirates.⁷⁵³

Somali concerns also relate to the fragmentation of their state with the breaking away of Somaliland in 1991 and the self-declared autonomy of Puntland in 1998, the latter being infamous for some time as the home base for many pirate gangs.⁷⁵⁴ Despite this, the president of Puntland, Abdurahman Mohammed Farole, sought international help for an anti-piracy task force and denied any linkage between his officials and the pirates.⁷⁵⁵ In an apparent show of good faith the Puntland forces in May 2009 arrested some pirates and demonstrated that dozens of others had already been sentenced.⁷⁵⁶

Somalis, being on the spot, have more detailed knowledge of the identities of the pirates and therefore have insisted on their right to deal with the problem, seeking only logistical support from the outside world.⁷⁵⁷ They are quite possibly right. A foreign naval crew would have no way of distinguishing between legitimate Somali fishermen and criminally-inclined pirate boats.

⁷⁵⁰ *Id.*

⁷⁵¹ Mark Mazzetti & Sharon Otterman, *U.S. Captain Is Hostage of Pirates; Navy Ship Arrives*, N.Y. TIMES, Apr. 9, 2009, at A6, available at <http://www.nytimes.com/2009/04/09/world/africa/09pirates.html>.

⁷⁵² See Peter Clotey, *Mogadishu Hails American Ship Captain’s Rescue*, VOANEWS.COM, Apr. 13, 2009, <http://www.voanews.com/english/Africa/2009-04-13-voa4.cfm?renderforprint=1> (quoting the Somali Minister of Fisheries, Ibbi, who acknowledged that, “[T]he United States of America is the largest donor of the humanitarian aid to Somalia. . . . [W]e don’t want any more unnecessary actions to happen to any American.”).

⁷⁵³ *Id.*

⁷⁵⁴ *Somalia’s Breakaway Puntland Region Nabs 24 Suspected Pirates*, NASDAQ, May 18, 2009, <http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=200905181026dowjonesdjonline000290&title=somalias-breakaway-puntland-region-nabs-24-suspected-pirates>; see also LEWIS, *supra* note 74, at 100–02.

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ Peter Clotey, *Somali Government Ready to Resolve Privacy Problems*, VOANEWS.COM, Apr. 10, 2009, <http://www.voanews.com/english/archive/2009-04/2009-04-10-voa3.cfm>.

Until they actually attempt to board a ship, pirates look and must legally be perceived as just civilian men in a boat.⁷⁵⁸ The success of piracy in the past and present has often depended on its ability to appear to be non-threatening, that is until the target vessel comes too close.⁷⁵⁹ Professor E. Kontorovich also points to the examples of history, explaining that “[i]n wars against non-uniformed combatants and terrorist groups, national forces have been accused of violating humanitarian law when they did not successfully distinguish between combatants and civilians in an environment where the former freely commingle with the latter.”⁷⁶⁰

Somali politicians have also complained about the foreign navies that have taken over their waters, with the acquiescence of the United Nations. Aside from the infringement this implies on Somali sovereignty, Somalis question whether the vast sums paid in ransom and in naval operations could not have been better directed to assisting their own government to deal with the piracy menace.⁷⁶¹ Their exasperation with the futility of Western efforts is echoed by Peter Pham who argues that, “Somali pirates have hardly been cowed by the international naval presence.”⁷⁶² They have simply moved the piracy activities to unpatrolled areas.⁷⁶³

Roger Middleton echoed these many Somali concerns when he stated:

Lots of people who are pirates now are not from coastal villages. They are not fishermen. They are from inside, former militiamen and they are motivated entirely by money. The fact that illegal fishing and dumping of toxic waste still goes on in Somalia is excellent PR [public relations] for the pirates. It means that when they capture a ship and they talk to a news organization and say, “We are just defending Somali waters,” and so on, that plays very well in the communities they need to get support from along the coast.⁷⁶⁴

The pirate perception is that their work is viewed by coastal villages as legal, and they believe that they are regarded as heroes by people

⁷⁵⁸ Eugene Kontorovich, *Piracy & International Law*, GLOBAL LAW FORUM, Aug. 2, 2009, <http://www.globallawforum.org/ViewPublication.aspx?ArticleId=96>.

⁷⁵⁹ *Id.*

⁷⁶⁰ *Id.*

⁷⁶¹ See Waldo, *supra* note 342.

⁷⁶² J. Peter Pham, *Somali Pirates Undeterred by Naval Build-up, but Risks Heightened*, WORLD DEF. REV., Apr. 2, 2009, <http://worlddefenseview.com/pham040209.shtml>.

⁷⁶³ *Id.*

⁷⁶⁴ Ryu, *supra* note 713.

who depend on them for financial support.⁷⁶⁵ Somalis, having endured years of misrule and anarchy,⁷⁶⁶ are not that naïve.⁷⁶⁷

That said, it has also to be pointed out that despite their international notoriety, the pirates of Somalia may be ranked among the least violent of the various militias and gangs that commit random acts of mayhem and murder in Somalia.⁷⁶⁸ They have generally made a considerable effort to take good care of their foreign hostages,⁷⁶⁹ although there are exceptions involving violent beatings of victims.⁷⁷⁰ According to the BBC, there are special pirate restaurants in Eyl, a Somali home port for pirates, to feed the kidnapped crews.⁷⁷¹ Whether this generally civilized behavior and treatment will continue, remains to be seen.

When they have functioning governments, which can occur between the terrible bouts of random violence, particularly afflicting Mogadishu,⁷⁷² the Somali representatives have appealed to the world community for funding to create an effective national coast guard that would be equipped and trained both to deter the pirates and to deter foreign predators.⁷⁷³ Nur Mohamed Mohamoud, deputy director of Somalia's national security

⁷⁶⁵ See *The World, A View from Somalia on the Pirates* (PRI radio broadcast Apr. 13, 2009), available at <http://www.pri.org/theworld/?q=node/25700>.

⁷⁶⁶ See SOMALIA: HISTORY AND POLITICS, INSTITUTE FOR SECURITIES STUDIES (2004), <http://www.iss.co.za/AF/profiles/Somalia/Politics.html>.

⁷⁶⁷ Shashank Bengali, *Give Us More Money and We'll Fight the Pirates, Somalia Says*, MCCATCHY, Apr. 16, 2009, <http://www.mccatchydc.com/world/v-print/story/66357.html> ("Some pirate groups have attacked ships that belong to their countrymen. Hussein Mohamed Ali . . . has had shipments hijacked and was once forced to pay ransom. 'The Somali pirates are gangs, and they deserve to be killed.'"). Some FM radio stations have also begun to broadcast anti-piracy messages, while some Muslim clerics are exclaiming that piracy is un-Islamic. *Id.*

⁷⁶⁸ See, e.g., David Williams, *Somali Pirates Are Treating Us Well, Says British Hostage on Hijacked Supertanker*, DAILY MAIL (London), Nov. 25, 2008, <http://www.dailymail.co.uk/news/worldnews/article-1089321/Somali-pirates-treating-says-British-hostage-hijacked-supertanker.html> (quoting a hostage who remarked that the Somali "pirates are no problem whatsoever. . . . We have had no mistreatment or anything. Our families don't have too much to worry about at the moment.").

⁷⁶⁹ *Id.*

⁷⁷⁰ See, e.g., Celestine Achieng, *Somali Pirates Beat Indian Crew of Ship: Captain*, REDORBIT, Feb. 14, 2006, http://www.redorbit.com/news/international/391016/somali_pirates_beat_indian_crew_of_ship_captain/index.html.

⁷⁷¹ See Kennedy, *supra* note 60.

⁷⁷² See *Eyewitness: Mogadishu Violence Abates*, BBC NEWS, March 28, 2006, <http://news.bbc.co.uk/2/hi/africa/4852390.stm> (describing the "fierce fighting and horrific war of the last few days").

⁷⁷³ *Somali Anti-Pirate Coastguard Bid*, BBC NEWS, May 18, 2009, <http://news.bbc.co.uk/2/hi/africa/8055088.stm>.

agency, told an international conference in Malaysia that Somalis “do not want pirates in our waters.”⁷⁷⁴ For a variety of reasons, Somali opinion would doubtless agree on the need to eradicate the piracy problem so that nation-building and other constructive forms of development can someday proceed.⁷⁷⁵

C. *International Reactions to Somali Piracy*

The initial reaction in the West to Somali pirates was bewilderment and disbelief, a combination of amazement and some amusement that a group consigned to the dusty pages of history had re-emerged as a serious peril in this sophisticated and technological modern world. Additionally, the world has been conditioned to think of piracy through the lens provided by Hollywood. The Somali pirates do not measure up or down, depending on one's perspective, to any Hollywood representation.⁷⁷⁶ We in the West have had to adjust our perceptions away from Long John Silver, eye-patches, parrots, and lots of ‘yo ho ho’s’ to the new reality of journalist Daniel Sekulich's description of the ‘average’ pirate as a male, “living in poverty in a coastal nation, who has been driven to engaging in a life of maritime crime,” because of a feeling that there are no other viable ways to make a living.⁷⁷⁷ In this incisive profile, Sekulich commented that the pirate “may feel a sense of injustice because of his situation, especially when the wealth of the world sails by just off the coast.”⁷⁷⁸ Sekulich concluded, as have many of those who have researched this subject, that while the reasons for individuals to engage in such activity are understandable, their criminal actions are not justifiable.⁷⁷⁹

Agreeing that modern pirates have “little in common with the romantic rum-swilling rogues of Hollywood,”⁷⁸⁰ John Burnett, who has personally encountered pirates and survived,⁷⁸¹ explains that pirates these

⁷⁷⁴ *Somalia Appeals for Help to Fight Piracy*, *supra* note 721.

⁷⁷⁵ See Beliefnet.com, *Are Somali Pirates Like Terrorists?*, Apr. 14, 2009, <http://blog.beliefnet.com/cityofbrass/2009/04/are-somali-pirates-like-terror.html> (explaining the need for increased investment in Somalia to improve its economic situation and reduce the financial incentives provided by piracy).

⁷⁷⁶ See Bezmozgis, *supra* note 5 (describing pirates as “criminals who prey on the weak”).

⁷⁷⁷ *Id.*

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.*

⁷⁸⁰ BURNETT, *supra* note 580, at 10.

⁷⁸¹ See generally BURNETT, *supra* note 580 (discussing a first-hand experience of a pirate attack).

days are “organized gangs of poverty-stricken young men living alongside busy shipping lanes who attack slow-moving ships that lumber by, rich pickings and perfect targets of opportunity.”⁷⁸² Divergent perceptions, fueled by a lot of disbelief at the re-emergence of a historical criminal menace, may account for the rather sporadic and “haphazard” reaction of the world community to this problem.⁷⁸³

In acknowledgment of the serious threat to global commerce, to humanitarian aid, and to the lives of thousands of crewmen and women, on January 14, 2009, twenty-eight nations, including the United States of America and six international organizations including the Arab League and the European Union, established the Contact Group on Piracy off the coast of Somalia.⁷⁸⁴

This international Contact Group arose after United States sponsorship of Security Council Resolution 1851, adopted on December 16, 2008.⁷⁸⁵ The Contact Group “serves as an informal venue for governments to share information about their policies and programs.”⁷⁸⁶ American self-interest dictates and deems assertive involvement in this matter a priority. U.S. President Barack Obama has stated that, “we are resolved to halt the rise of piracy in that region. And to achieve that goal, we’re going to have to continue to work with our partners to prevent future attacks.”⁷⁸⁷ As the world’s largest importer of oil,⁷⁸⁸ the United States of America has to secure the safety of oceanic routes that facilitate its consumption of twenty-five percent of the world’s total oil demand.⁷⁸⁹ The new American Government is also more inclined to multilateral approaches than the previous Government of President George Bush,⁷⁹⁰ and this may well be

⁷⁸² *Id.* at 10.

⁷⁸³ Rothwell, *supra* note 10.

⁷⁸⁴ Press Release, U.S. Dep’t of State, The Contact Group on Piracy Off the Coast of Somalia (May 18, 2009), available at <http://www.state.gov/r/pa/prs/ps/2009/05/123584.htm>. The Contact Group is now composed of forty-five countries and seven international organizations. U.S. Dept. of State, Contact Group on Piracy Off the Coast of Somalia, <http://www.state.gov/t/pm/ppa/piracy/contactgroup/index.htm> (last visited Feb. 08, 2010).

⁷⁸⁵ S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008).

⁷⁸⁶ Caldwell, *International Community Uniting Against Pirates*, *supra* note 508 (citing Donna Hopkins, State Department program manager on piracy issues).

⁷⁸⁷ *Id.*

⁷⁸⁸ Lester Brown, *Does Saudi Arabia Have the United States Over a Barrel?*, THE GLOBALIST, Apr. 29, 2004, <http://www.theglobalist.com/StoryId.aspx?StoryId=3893>.

⁷⁸⁹ BURNETT, *supra* note 580, at 28.

⁷⁹⁰ See, e.g., Gary J. Schmitt, *The Obama Administration’s Approach to Asia: Early Signals*, AM. ENTERPRISE INST. FOR PUB. POL’Y RES., Oct. 2009, <http://www.aei.org/outlook/100075>

appropriate for dealing with the piracy problem. No nation today—not even a superpower—has the financial means to conduct an unending unilateral policing role in the Indian Ocean.

Insofar as land incursions are involved, active American military involvement once again in Somalia would probably be another tragic mistake. As Bronwyn Bruton, International Affairs Fellow at the US Council of Foreign Relations, commented: “We have a limited capacity to influence events in Somalia. . . . But we have an almost unlimited capacity to make a mess of things.”⁷⁹¹

After the fortuitous and brilliant rescue by U.S. Navy SEALs of American Captain Richard Phillips from his Somali pirate captors,⁷⁹² United States Defense Secretary Robert Gates acknowledged that “[t]here is no purely military solution,” for the Somali pirate problem.⁷⁹³ Explaining the seriousness of the problem, Gates predicted that “it’s probably going to get worse.”⁷⁹⁴

Malaysian Foreign Minister Datuk Anifah Aman told fellow delegates to an International Conference on Piracy and Crimes at Sea, held in May 2009, that the piracy situation in Somalia was serious and complex and required a multi-dimensional solution.⁷⁹⁵

The trading countries of the world that rely on the Gulf-Suez route have reacted to the problem of piracy in the Indian Ocean mainly with an emphasis on their national self-interest.⁷⁹⁶ Although there has been some sympathy for the destruction of the Somali environment, there is far more serious apprehension about the threat to world commerce implicit in allowing a vital oceanic route to become a virtual pirate alley.⁷⁹⁷ However well-intentioned the original pirate attacks might have been, the prevalence

(recognizing President Obama’s intention to utilize a multilateral forum in dealing with North Korea).

⁷⁹¹ See Corbett, *supra* note 523.

⁷⁹² See Robert D. McFadden & Scott Shane, *In Rescue of Captain, Navy Kills 3 Pirates*, N.Y. TIMES, Apr. 13, 2009, at A1, available at <http://www.nytimes.com/2009/04/13/world/africa/13pirates.html>.

⁷⁹³ Thompson, *supra* note 623.

⁷⁹⁴ *Id.*

⁷⁹⁵ *Vital to Address Root Causes of Somali Piracy: Anifah*, SOMALILAND TIMES, May 18, 2009, <http://www.somalilandtimes.net/sl/2009/382/25.shtml>.

⁷⁹⁶ See Jasparro, *supra* note 710.

⁷⁹⁷ See, e.g., U.S. Dept. of State, Threat to Maritime Commerce, Humanitarian Assistance, Disaster Relief, and Regional Security and Development, <http://www.state.gov/t/pm/ppa/piracy/c32661.htm> (last visited Feb. 08, 2010) (noting that pirate attacks off the coast of Somalia “threaten international security, the global economy, and American citizens and commercial interests.”).

of lawlessness in the oceans opens the door to all types of illicit activity to flourish along one of the world's most important trading routes.⁷⁹⁸

The Somali government has appealed for assistance to establish a coast guard to deal with the pirates, but has balked at the idea of any foreign interventions on Somali territory.⁷⁹⁹ The Puntland authorities have also negated any idea of a foreign force entering their land.⁸⁰⁰ Somali leaders have explained their concerns about foreign navies not being sufficiently familiar with the local milieu to be able to distinguish between legitimate Somali fishing boats and pirates, and this ignorance leading to unnecessary violent pre-emptive attacks.⁸⁰¹ There is some merit to those fears. In 2008, an Indian warship mistook a Thai fishing boat for a pirate ship and sank it, killing fifteen Thai fishermen.⁸⁰² It is also apparent that the Somalis fear that their own fishermen venturing out either to fish, or more courageously, to deter foreign fishing boats, will be labeled pirates and attacked by all those naval forces.⁸⁰³

There is a significant difference in focus between the international community and Somali leaders. This became quite evident during the third meeting of the Contact Group on Piracy off the Coast of Somalia, held in New York on May 29, 2009.⁸⁰⁴ Mohamed Omaar, Foreign Minister of the Somali Transitional Federal Government, articulated his plea for the development of a Somali Coast Guard, and reiterated his country's fears about illegal fishing and toxic waste dumping, requesting more effective international action on those issues.⁸⁰⁵ However, the international Contact Group's focus was obviously on piracy.⁸⁰⁶ Its working groups concentrated on security for shipping, facilitation of arrest and prosecution of pirates, including by international or regional mechanisms, and other measures to deal specifically with piracy.⁸⁰⁷

⁷⁹⁸ See *Vital to Address Root Causes of Somali Piracy*, *supra* note 795.

⁷⁹⁹ See Bengali, *supra* note 767.

⁸⁰⁰ See Joshi, *supra* note 635.

⁸⁰¹ *Somali Government Knows Details on Pirates*, USATODAY, Apr. 16, 2009, http://www.usatoday.com/news/world/2009-04-16-somalia-pirates_N.htm?csp=34; see also Clotey, *supra* note 757 (explaining that Somali leaders know the pirates, where they come from, and their tactics).

⁸⁰² Michael Knigge, *Fighting Piracy Requires Better International Cooperation*, DEUTSCHE WELLE, May 18, 2009, <http://www.dw-world.de/dw/article/0,,4251224,00.html>.

⁸⁰³ See Mohamed Abshir Waldo, *The Shipping Piracy & the Invasion of the Somali Seas*, BLACK STAR NEWS, Apr. 26, 2009, <http://blackstarnews.com/print.php?a=5615>.

⁸⁰⁴ Press Release, U.S. Dept. of State, Statement of Contact Group on Piracy off the East Coast of Somalia (May 30, 2009), available at <http://allafrica.com/stories/200905300009.html>.

⁸⁰⁵ *Id.*

⁸⁰⁶ See *id.*

⁸⁰⁷ *Id.*

By not giving Somali concerns about pollution and over-fishing the appropriate recognition and attention they deserve, the Contact Group, international navies, the United Nations, and all other involved parties and organizations are dooming their collective efforts and appear both one-sided and hypocritical. One can hardly blame the Somalis for feeling that their priorities count for little or nothing, and that their nation is now being victimized with the connivance of international flotillas and the world organization.

In April 2009, Somali Prime Minister, Omar Abdirashid Ali Sharmarke complained that Somali personnel were “not being utilized as much as we could be,”⁸⁰⁸ and told reporters that Somalia needed “to fight pirates on land,”⁸⁰⁹ claiming that his people had “information about how [pirates] function and who they are.”⁸¹⁰ The Somali leadership wants to tackle this piracy issue and only seeks a little technical and logistic assistance from the West.⁸¹¹ Instead, they now have to wonder about the prospect of further Western incursions against Somali sovereignty, all in the name of curbing piracy.⁸¹² However, Western landings onto Somali territory appear unlikely in the present context.⁸¹³

There is clear opposition within Somalia, and obvious hesitation among foreign powers, about any land assault against pirate villages or pirate homes.⁸¹⁴ At the moment, no nation appears willing to dispatch amphibious landing crafts and/or a fleet of military helicopters just to attack a few pirates. Jim Wilson, a correspondent for *Fairplay International Shipping Weekly*, a maritime newspaper, commented on the improbability of any pirate in his right mind just standing around and waiting for the helicopters and marines to land and kill him.⁸¹⁵ Wilson then asked the crucial question: “[e]ven if they did how would you be able to tell the

⁸⁰⁸ Corbett, *supra* note 523.

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.*

⁸¹¹ *Somali Anti-Pirate Coastguard Bid*, *supra* note 773.

⁸¹² *See id.*; *see also* Corbett, *supra* note 523 (noting that the U.S. may have plans for a land assault).

⁸¹³ *See* Corbett, *supra* note 523 (“Boots on the ground will not seriously be considered by the international community”) (quoting Corinne Graff of the Brookings Institution).

⁸¹⁴ Douglas Mpuga, *Use of Force May Not be Enough to Deter Somali Pirates*, VOANEWS.COM, Apr. 16, 2009, <http://www.voanews.com/english/archive/2009-04/2009-04-16-voa33.cfm?CFID=301131980&CFTOKEN=53160893&jsessionid=0030eaa88267c2f9e9796c7445131e6b3e6f>.

⁸¹⁵ *Id.* (“No pirate in his right mind is going to stand around and wait for a fleet of helicopters to come disgorge a lot of marines ready to kill him.”).

difference between a Somali pirate and a Somali citizen?”⁸¹⁶ Peter Pham counters that ninety percent of Somali piracy originates from two Somali ports, Eyl and Harardhere.⁸¹⁷ Pham also suggests that having built “ostentatious mansions,” the pirates’ locations are known.⁸¹⁸ It is now also common knowledge that many Somali pirates come from Puntland (the self-declared autonomous province of Somalia),⁸¹⁹ live in the town of Boosaaso,⁸²⁰ and dock their vessels in Eyl, Hoby, or Harardhere.⁸²¹

The previous experiences of the United States of America and of the United Nations in its two missions UNOSOM I and UNOSOM II might deter any serious notion of intervening on Somali territory,⁸²² particularly when the Somalis have such a negative reaction to the very idea of hosting a foreign force again on their soil.⁸²³

At a crucial moment when the world, through the United Nations, could have demonstrated a sense of balance and justice in its search for a solution, the Security Council concentrated on the Somali piracy problem while unfortunately neglecting the foreign dumping and over-fishing problem that plagues Somalia.⁸²⁴ One cannot over-emphasize how critical this mistake has been. If the nations of the North expect to gain any credibility in the South, they have to demonstrate an ability to understand and appreciate the priorities, apprehensions and perceptions of the South. Although the pirates are not thus far terrorists, they have demonstrated in a terrifying manner that a few men in small boats can effectively jeopardize the normal commerce on which the world economy functions.

Dealing with this threat militarily without simultaneously engaging Somalia diplomatically, politically, and in terms of mutual respect and potential friendship is just not feasible. If America, and all the other nations who have navies in Somalia, arrest several hundred pirates every month there will still be hundreds more to take their place. President Obama needs to ensure urgently that the navies in the Gulf of Aden and Indian Ocean do not appear to be an exclusively self-serving military force

⁸¹⁶ *Id.*

⁸¹⁷ Nesnera, *Lack of Effective Somali Government*, *supra* note 600.

⁸¹⁸ *Id.*

⁸¹⁹ Rod Nordland, *Sharks in the Water: How to Finally Rid the Seas of Somalia’s Growing Pirate Problem*, NEWSWEEK, Nov. 29, 2008, <http://www.newsweek.com/id/171315>.

⁸²⁰ *Id.*

⁸²¹ *Id.*

⁸²² See Corbett, *supra* note 523.

⁸²³ See Joshi, *supra* note 635.

⁸²⁴ Offman, *supra* note 328.

bent on eradicating piracy. By insisting that the Americans are there to protect Somali interests as well, by preventing ocean dumping and over-fishing, the Americans will have gone a long way to rehabilitating their image in the minds of Somalis.

In 2009, at the time of the writing of this article, the United Nations Security Council has passed two resolutions on Somalia, 1863 on January 16, 2009⁸²⁵ and 1872 on May 26, 2009.⁸²⁶ To appreciate the serious situation of imbalance between the priorities of the Somalis and those of the United Nations, it is interesting to note that neither of those resolutions mentions the problems of illegal dumping of toxic and nuclear waste off Somalia's long coastline, or of unlicensed over-fishing by so many foreign vessels operating openly in Somali waters.⁸²⁷ These are two important matters for Somalis who daily witness what could become the irreversible degradation of their environment. The priorities of the international community include various measures to support the creation of a stable government in Somalia and an end to the humanitarian disaster.⁸²⁸ These are laudable goals, but it is the complete absence of any mention of the dumping and over-fishing that calls into question the credibility and honesty of the United Nations in its efforts to resolve this Somali crisis. An expression of concern by the Security Council—repeated in every resolution—about the two environmental problems afflicting Somali waters, would have gone a long way to demonstrating a sense of balance and fairness. What, after all, would be the point of establishing a stable government for a country despoiled by nuclear radioactive waste and deprived of a primary food resource by foreign pillaging? To add insult to injury, it is equally worth noting that Resolution 1872 acknowledges the linkage between political instability and the problem of piracy and armed robbery at sea.⁸²⁹

It is beyond the length constraints of this article to analyze the entire body of Security Council resolutions on Somalia passed in recent years. Given the multi-lingual gabfest that resonates at every meeting of the Security Council and the wordy resolutions that follow from the behind-the-scenes horse-trading sessions, such an exercise would require an entire article in length. However, to further illustrate the point of serious

⁸²⁵ S.C. Res. 1863, U.N. Doc. S/RES/1863 (Jan. 16, 2009).

⁸²⁶ S.C. Res. 1872, U.N. Doc. S/RES/1872 (May 26, 2009).

⁸²⁷ See Offman, *supra* note 328 (noting that to date "the eco-pirating problem has not been mentioned as part of a general solution"). See generally S.C. Res. 1872, *supra* note 826; S.C. Res. 1863, *supra* note 825.

⁸²⁸ See S.C. Res. 1863, *supra* note 825.

⁸²⁹ S.C. Res. 1872, *supra* note 826.

imbalance in the ordering of United Nations priorities, one might briefly consider Resolution 1816, which was adopted by the Security Council on June 2, 2008.⁸³⁰ In that resolution, the Security Council expressed its grave concern about, and deplored and condemned the acts of Somali piracy, but was silent about the dumping of toxic waste and illegal fishing.⁸³¹ The United Nations went further in Resolution 1816, granting foreign vessels an initial time frame of six months—later extended to December 2, 2009⁸³²—to enter Somali territorial waters in order to repress piracy and urged flag, port, and coastal states to cooperate with each other to determine jurisdiction for the prosecution of the pirates.⁸³³ The step was unusual, but felt to be justifiable, given the circumstances. Normally, states have “absolute sovereignty over internal waters.”⁸³⁴ Professor Eugene Kontorovich called this United Nations action, “an unprecedented grant of authority to interdict coastal piracy.”⁸³⁵ The resolution was unprecedented but it acknowledged “the reality of Somalia’s inability to provide maritime security within its own waters and the need for the international community to effectively undertake ‘national-type’ policing and enforcement operations.”⁸³⁶ From the Somali perspective, it is important to note that the acknowledgment of Somalia’s inability to protect its own waters was not extended to include a commitment to prevent toxic dumping and over-fishing for Somalia’s benefit.⁸³⁷ The focus on piracy made this resolution appear self-serving.

In Resolution 1838, adopted on October 7, 2008, the Security Council emphasized the importance of “peace and stability, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law” as necessary for the eradication of piracy.⁸³⁸ Conspicuously absent was any mention of toxic waste dumping and illegal fishing.⁸³⁹ The Special Representative of the Secretary General for Somalia, Mr. Ahmedou Ould-Abdallah, was quoted by one news source as commenting about the absence of “mention of the illegal fishing piracy,

⁸³⁰ S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008).

⁸³¹ *See id.*

⁸³² S.C. Res. 1846, ¶ 10, U.N. Doc. S/RES/1846 (Dec. 2, 2008).

⁸³³ S.C. Res. 1816, *supra* note 830, ¶¶ 7–11.

⁸³⁴ Baine & Simmons, *supra* note 340, at 11.

⁸³⁵ Kontorovich, *supra* note 758.

⁸³⁶ Rothwell, *supra* note 10.

⁸³⁷ *See* S.C. Res. 1816, *supra* note 830, ¶¶ 7–11. This resolution calls for aid to prevent piracy without mentioning any underlying environmental cause. *Id.*

⁸³⁸ S.C. Res. 1838, U.N. Doc. S/RES/1838 (Oct. 7, 2008).

⁸³⁹ *See id.* (mentioning piracy and humanitarian needs, but not environmental concerns).

hazardous waste dumping, or the plight of the Somali fisherman.”⁸⁴⁰ Journalist Mohamed Abshir Waldo was even more blunt in his commentary on the two resolutions under discussion. He wondered whether a number of member States of the Security Council had “ulterior motives to indirectly protect their illegal fishing fleets in the Somali Seas,” when they passed those resolutions, “giving a license to any nation who wants a piece of the Somali marine cake.”⁸⁴¹

It was not just the marine cake but the territorial cake as well that drew United Nations’ attention when it passed Resolution 1851 on December 16, 2008.⁸⁴² Resolution 1851 extended authorization for international interventions in Somali territorial waters to include Somalia’s land territory, with the usual caveats concerning observance of international humanitarian and human rights laws by all states engaged in dealing with piracy.⁸⁴³ In fairness to the United Nations, it has to be added that prior to assuming and sharing these sovereign national powers, the Security Council secured the permission of the embattled Transitional Federal Government of Somalia.⁸⁴⁴ There can be no doubt that these resolutions on Somalia “represent some of the most extensive maritime security powers conferred upon States to deal with piracy in the modern Law of the Sea era.”⁸⁴⁵

Realistically, however, it would be very risky for any foreign naval forces to enter Somali territory in pursuit of suspected pirates. For one thing, memories of the debacles of UNOSOM I and UNOSOM II and the fate of American soldiers at the hands of Somali mobs are still raw for all parties.⁸⁴⁶ Somalis may not yet have acquired sufficient nationalism to create a viable and effective nation-state, but they are united in disliking outside incursions on their territory.⁸⁴⁷ They are also likely to react with violence against any such interventions and, as the country is awash with

⁸⁴⁰ Saeed Shabazz, *Somalia: Military Action Won't Resolve Crisis*, FINAL CALL, May 6, 2009, http://www.finalcall.com/artman/publish/printer_5980.shtml.

⁸⁴¹ Waldo, *supra* note 803.

⁸⁴² S.C. Res. 1851, *supra* note 785.

⁸⁴³ *Id.* ¶ 6.

⁸⁴⁴ Rothwell, *supra* note 10 (noting that only States acting in conjunction with the Transitional Federal Government of Somalia are authorized by the UN to enter into Somalian waters and take action against pirates).

⁸⁴⁵ *Id.*

⁸⁴⁶ See Corbett, *supra* note 523 (“Following the botched US incursion in Somalia in 1993, it seemed unlikely that the US—or any other foreign power—would advocate getting involved in another intervention in this failed state in the Horn of Africa.”).

⁸⁴⁷ See *id.* (noting that Somalis are suspicious of foreign governments).

weapons procured from the whole world,⁸⁴⁸ the risk of beach landings would be very serious indeed. On a related issue, that of dispatching yet one more U.N. force to Somalia, Secretary General Ban Ki-moon was decisive and quite blunt when he said that the “insertion of international security forces in Somalia remains a divisive and politicized issue with the potential to exacerbate the conflict.”⁸⁴⁹ The Secretary General had also pointed out that “few countries were willing to send peacekeeping troops to Somalia, as there was no peace to keep.”⁸⁵⁰ For the present, the world appears determined to curb Somali pirates with naval operations.⁸⁵¹ Time alone will tell whether this will deter impoverished young men from taking the risk of joining pirate gangs, or whether the continuing foreign presence in their waters, unending toxic dumping and over-fishing will instead impel Somalis to rally and resist and fight against the external armada. Any student of Somalia knows that there are surprises and shocks and unexpected twists and turns at every stage of this tragic nation’s tortuous progress through history.

In 2009, the nations of the world determined that arresting and prosecuting as many pirates as possible is one of the most effective ways to deal with this threat to global commerce. The challenge has been to find legal means to facilitate that aim. The usual reliance on nationality or state sovereignty conferring jurisdiction to prosecute is unrealistic given the anarchy prevailing in Somalia. The Security Council has attempted, via a series of resolutions, to deal with the jurisdictional issues and facilitate the capture and prosecution of the pirates.⁸⁵²

These innovative solutions have sought by international consensus to alleviate the legal and territorial issues that arise in criminal matters that occur in the ocean. Professor Rothwell provides a clear explanation of the dilemma facing modern sea captains confronting pirates in the ocean:

[T]here must be a genuine link between the State and the ship, or between the State and the waters on which the offences take place. Unless Somali courts are willing and

⁸⁴⁸ ABDEL FATAU MUSAH & ROBERT CASTLE, EASTERN EUROPE’S ARSENAL ON THE LOOSE: MANAGING LIGHT WEAPONS FLOWS TO CONFLICT ZONES, INT’L ACTION NETWORK ON SMALL ARMS (1998), http://www.iansa.org/documents/development/eeurope_arsenal.htm#28.

⁸⁴⁹ *UN Head Against New Somalia Force*, BBC NEWS, Apr. 22, 2009, <http://news.bbc.co.uk/2/hi/africa/8013654.stm>.

⁸⁵⁰ *Id.*

⁸⁵¹ See Rothwell, *supra* note 10 (noting that the U.N. has adopted multiple resolutions giving maritime powers the ability to enter Somali waters in the name of facilitating the prosecution of pirates).

⁸⁵² See, e.g., S.C. Res. 1851, *supra* note 785, ¶ 6.

able to conduct prosecutions, the responsibility for enforcement will predominantly fall upon those members of the international community whose ships are currently patrolling off the coast of Somalia. The ability of a State with a ship in Somali waters to apply and enforce its own laws with respect to piracy and sea robbery will depend on whether the pirate ship or the pirates have the nationality of that State, or the degree to which the national law of the enforcing state makes piracy a universal crime which can be subject to arrest and prosecution anywhere throughout the world.⁸⁵³

The activities of the pirates are without a doubt criminal by the national standards of any State,⁸⁵⁴ and criminal as well, on the basis of established international law.⁸⁵⁵ However, international Conventions analyzed briefly in this article have also clarified the illicit nature of ocean dumping of toxic and even nuclear waste, and the illegal aspects of foreign over-fishing when there are no licenses and where dubious and dangerous methods are used that destroy the habitat of many species.⁸⁵⁶ What is so disappointing is the inescapable conclusion of serious imbalance in the approach taken by the United Nations with respect to the two different types of criminals and their illicit activities.⁸⁵⁷ While on the one hand, the international community is certainly justified in uniting and finding innovative ways to protect from hijacking all peaceful commercial vessels to keep an important trade route open,⁸⁵⁸ the entire process would have been enhanced in terms of credibility had it also been conducted to prevent the devastation of the oceanic environment of a vulnerable state. Had the armada now patrolling Somalia to protect foreign ships with the blessings of the United Nations⁸⁵⁹ also been devoted to protecting Somalia's oceans,

⁸⁵³ Rothwell, *supra* note 10.

⁸⁵⁴ See Hawkins, *supra* note 55.

⁸⁵⁵ James Kraska & Brian Wilson, *Fighting Piracy: International Coordination is Key to Countering Modern-Day Freebooters*, ARMED FORCES J., <http://www.armedforcesjournal.com/2009/02/3928962> (last visited Feb. 08, 2010) ("The Law of the Sea Convention, the constitution for the world's oceans, is the essential framework for peacetime maritime security cooperation, and it defines piracy as an illegal act of violence or detention committed for private ends.").

⁸⁵⁶ See *supra* notes 399–402 and accompanying text.

⁸⁵⁷ For a comparison of the U.N.'s response to piracy and environmental concerns, see *supra* notes 825–841 and accompanying text.

⁸⁵⁸ See Kraska & Wilson, *supra* note 855.

⁸⁵⁹ Muuse Yuusuf, *The Armada is Not the Solution*, WARDHEER NEWS, Apr. 12, 2009, http://wardheernews.com/Articles_09/April/13_armada_not_solution_muuse.html.

that would have been evidence of a balanced and honest approach to a serious political, economic, and environmental crisis. To borrow an apt phrase from Professor Joseph Nevins, and apply it to the instant tragic situation to establish a clear case of a double standard: Somalia proves that there is now “[a]ccountability for ‘mice’ and impunity for ‘lions’.”⁸⁶⁰

The real problem is determining whether the world community has either the means or the will to conduct patrols in the Gulf region into the distant future. This Somali oceanic venture, so encouraged by the West and endorsed by the United Nations,⁸⁶¹ will become incredibly expensive over time and may well not be all that effective a deterrent, given the vast size of the area of ocean that is involved.⁸⁶²

The resort to an armada of naval vessels to escort foreign shipping might have a limited salutary impact on the pirates of Somalia,⁸⁶³ but can the world’s navies keep up this operation for the long haul? That is what it is going to take to deal with this piracy problem. It is entirely possible that the pirates of Somalia could simply wait on land until the international enthusiasm and flurry of activity dwindles, and then as contributing countries order their naval contingents back home, the pirates could re-emerge to carry on with their attacks. The lure of ransom money has been so great that absent any consistent and pervasive force that can continuously patrol vast areas for the next few years, there appears to be no possibility of permanently eradicating this menace from the Gulf of Aden trade route.

However, some confidence that piracy was on the decline was expressed in March 2009 by the members of international shipping associations in a meeting with Efthimios E. Mitropoulos, Secretary General of the International Maritime Organization.⁸⁶⁴ This group attributed the apparent decrease to “intense international activity . . . successful interventions by a growing number of warships . . . coordinated industry advice . . . practical measures adopted by Masters and shipping companies, and, not least, adverse weather conditions.”⁸⁶⁵

⁸⁶⁰ Joseph Nevins, *Pirates v. Emperors*, NEW AMERICAN MEDIA, May 7, 2009, http://news.newamericamedia.org/news/view_article.html?article_id=d4e04fae6fabab5e6560f73aca39eb70.

⁸⁶¹ See Yuusuf, *supra* note 859.

⁸⁶² See *id.* (noting the limited success the fleet has enjoyed thus far).

⁸⁶³ See *id.*

⁸⁶⁴ *IMO and Industry Review Progress on Addressing Seafarer Shortage and the Scourge of Piracy*, INT’L MAR. ORG. Apr. 2, 2009, <http://reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7QVRTZ?OpenDocument>.

⁸⁶⁵ *Id.*

It is already apparent that foreign navies have not dedicated sufficient resources to this venture.⁸⁶⁶ The cost of financing huge anti-piracy ventures during a global recession has to be considered by all governments who must weigh the benefits of protecting their commercial fleets against the need to safeguard dwindling economic resources. Captain Richard Farrington, Chief of Staff for the naval forces of the European Union, estimated a need for about sixty warships to patrol the Gulf of Aden and 150 vessels to oversee the Eastern and Southern coastal regions of Somalia.⁸⁶⁷ However, such an armada may not be able to be assembled or to effectively deal with a problem in such a vast oceanic environment.⁸⁶⁸ In March 2009, NATO dispatched five ships to the Gulf of Aden.⁸⁶⁹ On December 8, 2008, the European Union, in response to the crisis of Somali piracy, launched the one-year Operation Atalanta, its first multinational maritime security mission outside the Mediterranean/North Atlantic region, with approximately twenty-four warships with 1,500 crew members.⁸⁷⁰ Although a number of countries have sent vessels to protect their shipping fleets, these activities are self-directed and not sufficiently harmonized to act as an effective global deterrent to the pirates.⁸⁷¹ As Richard Weitz, Hudson Institute Senior Fellow explains: "While this patchwork of ad hoc multinational and national initiatives has achieved individual successes, defeating several pirate attacks and capturing some pirates, the efforts of the approximately 50 combat ships and thousands of military personnel have been limited by insufficient coordination."⁸⁷² He continued to explain the reason, stating that the "various formations have different mandates, tactics and rules of engagement. They also have become preoccupied with responding to immediate challenges rather than engaging in long-term local capacity-building."⁸⁷³

⁸⁶⁶ See Joshi, *supra* note 635 (noting that although a multi-national fleet is patrolling the Gulf of Aden, nineteen ships and two hundred and fifty sailors are still being held hostage by the Somali pirates).

⁸⁶⁷ Muhammad Shamsaddin Megalommatis, *Immoral, Cynical Sheikh Sharif Turns Somalia to Bloodbath, Serving Only the Somalis' Worst Enemies*, AM. CHRON., May 24, 2009, <http://www.americanchronicle.com/articles/printFriendly/103635>.

⁸⁶⁸ See Joshi, *supra* note 635 (noting that the Somali coastline is 1,900 miles long).

⁸⁶⁹ Richard Weitz, *Global Insights: Harmonizing the International Response to Somali Piracy*, May 5, 2009, <http://insidesomalia.org/20090505877/News/Editorial/Global-Insights-Harmonizing-the-International-Response-to-Somali-Piracy.html>.

⁸⁷⁰ *Id.*

⁸⁷¹ *See id.*

⁸⁷² *Id.*

⁸⁷³ *Id.*

Long-term success for such vast and expensive multi-national fleets appears questionable at best.⁸⁷⁴ Finn Brobersen, senior director in charge of security for the vast Maersk shipping company, believes that “[w]arships are not going to solve the root cause of the problem, which is the government in Somalia.”⁸⁷⁵

While there is an articulated determination to crush the piracy problem, realistically, the world’s resources that can be devoted to this are not infinite. Pottengal Mukundan, Director of the London-based International Maritime Bureau, called for the international community “to take strong action to capture and board pirate ships at sea, board motherships and arrest the pirates and hand them over for prosecution.”⁸⁷⁶ However, Peter Lehr, piracy expert at the University of St. Andrews, commented that navy commanders know that it is “impossible to tackle piracy with a naval mission.”⁸⁷⁷ The problem must be dealt with on land.⁸⁷⁸ However, a land mission can only raise haunting and distinctly horrifying memories of the fate of United States and United Nations troops in Somalia during the 1990s.⁸⁷⁹ John Patch, Professor for Strategic Intelligence at the US Army War College explained that “we don’t have enough will, enough where-withal and enough information to prosecute a sound land campaign. We’re pretty busy elsewhere.”⁸⁸⁰ Patch also concluded that “[p]iracy falls very low on the scale of important global issues that affect national interests.”⁸⁸¹ Of considerable relevance to this discussion is the pertinent view of Peter Chalk, a Maritime Security Analyst with the RAND Corporation. Chalk has pointed out that piracy is a form of crime and as such “[i]t’s a law enforcement problem and to have a military solution to a law enforcement problem, in my opinion, is not the way to go.”⁸⁸²

There is considerable contention with respect to the issue of arming the crews of merchant ships. Currently, some crew members are using

⁸⁷⁴ See Mark McDonald, *Japan Sends Destroyers on Anti-Piracy Patrol*, N.Y. TIMES, Mar. 13, 2009, <http://www.nytimes.com/2009/03/14/world/asia/14pirates.html>.

⁸⁷⁵ *Id.*

⁸⁷⁶ *Officials, Experts to Tackle Pirate Threat*, TAIPEI TIMES, May 18, 2009, at 4, available at <http://www.taipeitimes.com/News/world/archives/2009/05/18/2003443872>.

⁸⁷⁷ Knigge, *supra* note 802.

⁸⁷⁸ *Id.*

⁸⁷⁹ For a discussion of U.N. and U.S. military and diplomatic actions in Somalia during the 1990’s, see *supra* notes 203–252 and accompanying text.

⁸⁸⁰ Joe DeCapua, *Somali Piracy—An Overstated Threat?*, VOANEWS.COM, Apr. 10, 2009, <http://www.globalsecurity.org/military/library/news/2009/04/mil-090410-voa15.htm>.

⁸⁸¹ *Id.*

⁸⁸² See Nesnera, *supra* note 600.

water hoses to ward off pirates attempting to climb their ships.⁸⁸³ A former navy commando from Israel suggested that along with international coordination to protect ships, having armed crews on board with the legal entitlement to shoot to kill once the “‘means and motivation’ of the pirates [are] established,” would be effective.⁸⁸⁴ Those in favor of a more aggressive defense by ship crews argue against that which is deemed the current “misguided policy of restraint against the ever growing threat from pirates,”⁸⁸⁵ appearing “dangerously close to total surrender.”⁸⁸⁶

However, the Director of the International Maritime Bureau (“IMB”), Pottengal Mukundan, feared that arming crews would lead to escalation of the situation,⁸⁸⁷ and was also opposed to the idea of placing armed private security guards on ships.⁸⁸⁸ Captain Richard Farrington, Chief of Staff of the European Union’s Operation Atalanta told BBC, “[i]ndustry thinks it’s a bad thing, we think it’s a dangerous thing and we would not condone it.”⁸⁸⁹ Nicolaos Charalambous, Deputy Director of the IMO, was even more apprehensive about the possibility of turning “the whole area into a naval battle.”⁸⁹⁰ There is also the risk of severe explosion if such a battle erupted on a supertanker under pirate assault.⁸⁹¹ Additionally, there are questions about the type of training that ship crews would require to use weapons effectively.⁸⁹² Nicole Stracke, researcher in security and terrorism at the Dubai Gulf Research Centre, is convinced that “[t]he more aggressive and offensive the counter-measures are going to be, the more aggressive pirates are going to react.”⁸⁹³ Most sea captains are aware,

⁸⁸³ See *Seafarers’ Ban to Somalia-bound Ship Slammed*, INQUIRER, Apr. 22, 2009, http://services.inquirer.net/print/print.php?article_id=20090422-200764.

⁸⁸⁴ Dan Williams, *Interview—Ship Guards, Navy Routes Can Beat Pirates—Expert*, REUTERS.COM, May 18, 2009, <http://www.reuters.com/article/latestcrisis/iduslh648298>.

⁸⁸⁵ David Eshel, *Misguided Restraint Against Somali Pirates Will Only Escalate Attacks*, DEFENSE UPDATE, http://www.defense-update.com/analysis/analysis_somali_pirates_080509.html (last visited Feb. 08, 2010).

⁸⁸⁶ *Id.*

⁸⁸⁷ Williams, *supra* note 884.

⁸⁸⁸ *Arming Sailors Not An Answer to Piracy Menace—Experts*, WALL ST. J., May 18, 2009, available at <http://www.ufs.ph/2009-10/node/325>.

⁸⁸⁹ Frank Gardner, *Taking on Somalia’s Pirates*, BBC NEWS, Feb. 11, 2009, <http://news.bbc.co.uk/2/hi/africa/7882618.stm>.

⁸⁹⁰ Niluksi Koswanage, *IMO Worried About Arming Ships to Fight Piracy*, REUTERS.COM (Africa), May 18, 2009, <http://af.reuters.com/article/topNews/idAFJOE54H0HD20090518>.

⁸⁹¹ Eshel, *supra* note 885.

⁸⁹² *Id.*

⁸⁹³ See Al Tamimi, *supra* note 651.

as well, that no matter how well the ship is defended, determined pirates armed with automatic weapons will be able to get on board.⁸⁹⁴

Hillary Clinton, United States Secretary of State, says she is searching for twenty-first century solutions to the centuries old problem of piracy.⁸⁹⁵ Ms. Clinton has proposed freezing pirate assets as one way of dealing with the problem.⁸⁹⁶ The success of any such venture would depend on whether or not the pirates utilize the world's banking system. Given the proliferation in recent months of bank failures,⁸⁹⁷ the Somali pirates may be less inclined to entrust their ill-gotten gains to institutions where the money is likely to disappear forever. Daniela Krosiak, Deputy Africa Programme Director of the International Crisis Group, suggested the compilation of a list of individuals who are in charge of the piracy business, and resort to travel bans, legal proceedings, and other measures against those persons.⁸⁹⁸

It has also been suggested that instead of expending costly naval forces, several nations should combine to provide an effective flotilla of smaller coast guard vessels to deter the pirate boats from attacking commercial shipping.⁸⁹⁹ Somali politicians have repeatedly asked the West for assistance in creating their own coast guard to deter pirates as well as waste dumpers and unlicensed fishing vessels.⁹⁰⁰

In the past, some states were reluctant to assume the expensive and onerous obligations of arrest, detention and trial of these foreign individuals whose crimes are perpetrated far from the home base of the targeted vessel.⁹⁰¹ For this reason, pirates tended to be captured and released soon after.⁹⁰² There were also apprehensions that pirates would claim refugee status once they landed in European countries.⁹⁰³ They might even

⁸⁹⁴ BURNETT, *supra* note 580, at 87.

⁸⁹⁵ Michele Kelemen, *Morning Edition: Clinton: U.S. to Freeze Pirates' Assets* (NPR radio broadcast Apr. 16, 2009), available at <http://www.npr.org/templates/story/story.php?storyid=103158509&ft=1&f=1004>.

⁸⁹⁶ See Sung-joon, *supra* note 718.

⁸⁹⁷ See Joseph E. Stiglitz, *Commentary: How to Rescue the Bank Bailout*, CNN.COM, Jan. 26, 2009, <http://www.cnn.com/2009/POLITICS/01/26/stiglitz.finance.crisis/index.html>.

⁸⁹⁸ Daniela Krosiak & Andrew Stroehlein, Opinion, *The Key to Security at Sea is Stability in Land*, THE INDEPENDENT (London), Apr. 17, 2009, <http://www.independent.co.uk/opinion/commentators/daniela-krosiak-the-key-to-security-at-sea-is-stability-on-land-1669947.html>.

⁸⁹⁹ See DeCapua, *supra* note 880 (citing John Patch, an associate professor for strategic intelligence at the US Army War College).

⁹⁰⁰ See Joshi, *supra* note 635.

⁹⁰¹ See Hawkins, *supra* note 55.

⁹⁰² See *id.*

⁹⁰³ See Kontorovich, *supra* note 758.

claim immigrant status after the conclusion of their prison sentences.⁹⁰⁴ Accordingly, the jurisdictional issue was continuously articulated as an excuse by Western nations who did not want a number of former pirates becoming permanent residents in their countries.⁹⁰⁵ Monetary considerations aside, apprehensions about jurisdiction are invalid, according to Eugene Kontorovich.⁹⁰⁶ Kontorovich emphasizes that pirates have traditionally been deemed *hostis humani generis*, or the enemy of all mankind, thereby conveying sufficient legal and universal jurisdiction over their capture and disposition.⁹⁰⁷ Kontorovich suggests that “[a]ny ship patrolling off the Horn of Africa can prosecute any pirates it captures, even if the pirate has never attacked” that nation’s shipping.⁹⁰⁸ Recent United Nations Security Council resolutions have considerably cleared the legal path for detention of the pirates.⁹⁰⁹

It has also been suggested that because some countries, particularly in Europe, are not inclined to engage in formal prosecution of Somali pirates, it might be preferable to establish an international criminal court to deal with the perpetrators of this particular type of crime.⁹¹⁰ Douglas R. Burgess, Jr., writing in the *New York Times* suggested that,

[r]ecognizing piracy as an international crime will . . . give individual states that don’t want to prosecute pirates an alternative—the international court. If pirates are recognized under their traditional international legal status—as neither ordinary criminals, nor combatants, but enemies of the human race—states will have a much freer hand in capturing them. If piracy falls within the jurisdiction of the international court, states will not need to shoulder the burden of prosecution alone.⁹¹¹

Professor Donald R. Rothwell also suggested international measures of justice, such as an ad hoc ‘International Piracy Tribunal’ operating under the legal umbrella of UNCLOS, but giving all States the power to

⁹⁰⁴ *See id.*

⁹⁰⁵ *See id.*

⁹⁰⁶ *See id.*

⁹⁰⁷ *Id.*

⁹⁰⁸ *Id.*

⁹⁰⁹ *See, e.g.*, S.C. Res. 1816, *supra* note 830, ¶¶ 7–11.

⁹¹⁰ Burgess, *supra* note 745.

⁹¹¹ *Id.*

detain, arrest, and extradite piracy suspects for trial before that Tribunal.⁹¹² The Government of the Netherlands proposed the creation of this type of tribunal to the International Piracy Contact Group.⁹¹³ Having hosted the International Criminal Court, the International Court of Justice, the International Criminal Tribunal for Yugoslavia and the Permanent Court of Arbitration, the Netherlands has been called the “legal capital of the world.”⁹¹⁴ The idea has clear merit provided it is taken in tandem with effective measures to assist Somalia to create a viable and functioning state apparatus according to the wishes of the Somali people.

Until the international tribunal transpires, Kenya has become a convenient venue for prosecution and detention of captured pirates.⁹¹⁵ The United States, the United Kingdom, and the European Union have signed agreements with Kenya to accept and prosecute suspected pirates.⁹¹⁶ Such agreements have been controversial, given Kenya’s own human rights record.⁹¹⁷ At the time of this writing, at least one pirate, arrested by Germany and dispatched to Kenya, has filed a lawsuit claiming damages against the former for exposing him to unsatisfactory Kenyan prison conditions.⁹¹⁸ Other Somali pirate suspects have also taken various forms of legal action in Kenya demanding legal costs from the German Government.⁹¹⁹ Human Rights Watch has noted some significant problems with the justice system practiced in Kenya, including beating of prisoners, corrupt judges and unfair trials.⁹²⁰ Another problem relates to the fact that justice in Kenya is slow, with a backlog of 800,000 cases,⁹²¹ though it appears that the international piracy cases are being

⁹¹² Rothwell, *supra* note 10.

⁹¹³ *Netherlands Proposes International Anti-Piracy Tribunal*, EXPACTICA, May 30, 2009, http://www.expatica.com/nl/news/local_news/Netherlands-proposes-international-anti_piracy-tribunal_53106.html.

⁹¹⁴ *Id.*

⁹¹⁵ See Jacquelyn Porth, *Countries Victimized by Pirates Pursue Legal Cases*, AMERICA.GOV, June 1, 2009, <http://www.america.gov/st/peacesex-english/2009/June/20090529183323sjhtrop3.464907e-02.html>.

⁹¹⁶ *Id.*

⁹¹⁷ See generally Kenya-Advisor.com, *The State of Kenya’s Human Rights*, <http://www.kenya-advisor.com/kenya-human-rights.html> (last visited Feb. 08, 2010).

⁹¹⁸ *Alleged Somali Pirate Sues German Government*, DEUTSCHE WELLE, Apr. 16, 2009, <http://www.dw-world.de/dw/article/0,,4182586,00.html>.

⁹¹⁹ See *id.* (noting that three suspects also hired German lawyers).

⁹²⁰ Hawkins, *supra* note 55.

⁹²¹ *Navy Ponders, What to do with Pirates?*, MILITARY.COM, Apr. 18, 2009, <http://www.military.com/news/article/navy-ponders-what-to-do-with-pirates.html?ESRC=navy-a.nl>.

fast-tracked.⁹²² An international trust fund has been created to pay for the prosecution of suspected pirates.⁹²³

While the arrested pirates may disagree strenuously, Moses Wetangula, Kenya's Foreign Minister, has emphasized the important contribution his nation is making.⁹²⁴ It is true that "[p]rosecuting pirates puts enormous strain on a country's legal system."⁹²⁵ However, Wetangula insisted that Kenya would "not become a dumping ground for every Somali pirate captured on the high seas."⁹²⁶ Ministers representing the G8 countries met in Rome in May 2009 and agreed to "help strengthen the criminal justice system in poor regions affected by piracy, such as East Africa."⁹²⁷ Kontorovich believes that Kenya, although not involved directly in the incidents, shares jurisdiction "with all the nations of the world who could just as readily prosecute if they had the will."⁹²⁸

CONCLUSION

This study of the Somali tragedy has attempted to analyze the problem from a variety of perspectives, including the very genuine grievances of the Somali people concerning the predatory abuse by some foreigners of their coastline and ocean region, as well as the fear and terror inspired by their retaliatory vigilante actions against the unarmed sailors and crewpersons who traverse the Gulf of Aden only because it is their job to do so. Are there any viable options to curb, and hopefully some day end, this double tragedy whereby Somalia's problems have now become the world's threat? In the short run, it is possible that the international community can take immediate steps acting both under the United Nations umbrella and individually.

The numerous navies patrolling the Somali oceans to protect their own vessels⁹²⁹ could also be charged to ensure that neither their nations' ships, nor those of other nations, dump toxic waste into Somali waters. It is in their best interest to act not merely as policemen over Somali pirates but over the foreign fleets as well. By having a number of vessels, ideally under one United Nations command, foreign vessels may be able

⁹²² *See id.* (discussing the possibility of establishing a special tribunal to handle piracy cases).

⁹²³ Press Release, U.S. Dept. of State, *supra* note 804.

⁹²⁴ Ryu, *supra* note 713.

⁹²⁵ Burgess, *supra* note 745.

⁹²⁶ Hawkins, *supra* note 55.

⁹²⁷ Flynn & Cinelli, *supra* note 741.

⁹²⁸ Kontorovich, *supra* note 758.

⁹²⁹ *See* Jasparro, *supra* note 710.

to effectively patrol a pirate alley area—estimated to be 2.5 million square miles,⁹³⁰ or about four times the size of Texas. If it is too much to expect that foreign navies will openly hurl accusations of waste dumping, at the very least, they could be ordered to report all incidents of oceanic dumping to the United Nations, with hopefully, the name of the vessel perpetrating the action. This type of naming and shaming, particularly with open publicity on that amazing instrument of globalization, the Internet, would go a long way to expose those criminally polluting Somali waters. This would also enable Somali leaders to convince their skeptical population that some degree of decency can still prevail among the outsiders who traverse their waters. There has to be action of this sort for mutual confidence to be created.

The research suggests that national governments have probably not sanctioned either the over-fishing or the oceanic dumping.⁹³¹ The actions, by all accounts, appear to be those of individual business interests who are not averse to engaging in criminal enterprises where the profits are so lucrative.⁹³² The fact that this predatory looting and polluting of Somalia has not been governmentally sanctioned by any nation is a positive sign indicating that governments around the world will have to act individually, and through the United Nations, to ensure that any of their ships, named and shamed, are dealt with through their own internal justice systems, and that criminally-inclined business interests are not allowed free rein in Somali waters.

There is of course, the problem of flags of convenience, and ships adopting registration in countries with lax laws. Such nations will have to be convinced that if they allow shipping sporting their colors to become part of a criminal enterprise, the community of nations may have to levy sanctions against the entire country. The UNCLOS specifies that it is the duty of the flag state where a ship is registered to enforce rules concerning the control of marine pollution, regardless of the location of the infraction.⁹³³

As a number of the countries who hand out these expedient flags of convenience depend quite heavily on foreign investment, foreign aid, and foreign goodwill, their governments might balk at any overt association of their state with plundering and polluting. Once again, world public

⁹³⁰ David H. Shinn, *Rise of Piracy and other Maritime Insecurity in Somalia*, EAST AFRICA FORUM, Apr. 7, 2009, <http://www.eastafricaforum.net/2009/04/11/rise-of-piracy-and-other-maritime-insecurity-in-somalia/>.

⁹³¹ See *supra* Part II.

⁹³² See *supra* Part II.

⁹³³ DOALOS, THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A HISTORICAL PERSPECTIVE, *supra* note 341.

opinion, now so strong in this age of instant communication, could be brought to bear on a naming and shaming exercise. If the United Nations is wary of engaging in this activity, the international community of journalists, activists, and bloggers will not hesitate to participate. It has also to be remembered that with the benefits of modern technology at their command, the developed states, and many developing countries, are in a position to provide very effective surveillance and monitoring of both dumping and fishing activities in Somalia as part of a humanitarian effort to protect the oceans until that tragic land can undertake this task.

If Somalia cannot now declare certain areas as no-fishing-zones, the United Nations has an obligation to do so and ensure that the stocks do not become extinct. Would it not be preferable to protect Somalia's vital food resource instead of providing years-long handouts of food aid to its starving people? There are some indications of a changing approach. Leigh Phillips, writing for the *EU Observer*, stated in April 2009 that the "European Commission has said it is ready to investigate and take action against any European boats or European-owned fishing companies that fly flags of convenience that engage in illegal fishing off the coast of Somalia."⁹³⁴ However, the European Commissioner for Fisheries put the onus on the Somali Government—presently fighting for its survival—to produce the evidence that would trigger an investigation.⁹³⁵ More negatively, Cesar Deben, the European Union's Maritime Affairs Director for Policy, told journalists that in 2008 he encountered Somali allegations of over-fishing and found them to be "facile and stupid rumours."⁹³⁶

As thousands of commercial vessels traverse this vital sea route,⁹³⁷ the United Nations could also call on these ships to name and report any waste dumpers and illegal fishing boats that are observed during their travels through the Indian Ocean and Gulf of Aden. This makes the protecting of Somali waters an exercise of the world community and such actions would go a long way to building better relations.

There has been plenty of commentary about Somalia's present situation as a pirate haven, as a failed state, as an area in a perpetual state of anarchy, and as a region beset with so much violence and inhumanity that the outlook for its future must look grim. However, before we

⁹³⁴ Phillips, *supra* note 328.

⁹³⁵ *See id.*

⁹³⁶ *Id.*

⁹³⁷ *See Somali Pirates Mistake Warship for Commercial Vessel*, ETURBONNEWS, Oct. 7, 2009, <http://www.eturbonews.com/12157/somali-pirates-mistake-warship-commercial-vessel> (noting that Somalian waters are "one of the world's busiest maritime trade routes").

wring our hands and write off Somalia with a sense of resigned despair, it is also necessary to take a similar analytical microscope and examine the motivations of the world community. We must particularly look at its richest and most fortunate nations and the international organization—the United Nations—that was established in 1945 to ensure peace and security, the implementation of human rights, and to secure a better, safer future for all the people on this planet. If the analysis of Somalia regrettably has to conclude that it is today a representative failed state, the examination of the United Nations in relation to Somalia equally and fairly has to lead to the conclusion that in this particular crisis, it has also failed miserably to fulfill its mandate. At its creation, the United Nations was envisaged as a hope for all mankind. Again, with full recognition of the fact that the United Nations, consisting of sovereign Member States, can only be as decisive as its membership will allow, the blame must shift to the global community. The nations of the world have to be deemed responsible for neglecting Somalia's environment, its economic priorities, and for passively allowing the violation, by their own business interests, of fundamental international laws that exist to protect all nations, not just those that have effective governments.

If foreign navies will undertake the dual roles of curtailing Somali piracy and curbing over-fishing and ocean dumping, they will be assisting Somalia by taking over a vital task—ocean policing—until the Somalis can create and sustain a viable government. Here, the prognosis is still dim. Somalia has not had an effective government since 1991,⁹³⁸ and the decades-long internecine warfare of various clan warlords has now been further complicated by the incursion of Islamic fundamentalists who appear determined to step into the power vacuum.⁹³⁹ Their most extreme elements could conceivably turn this strategic area into a terrorist haven. For the world, having Somalia as the ultimate terrorist base would be infinitely worse than having it as a pirate hangout.

The research also establishes that while Somalis may reluctantly tolerate foreign navies protecting their seas, they appear to be unified in their resistance to any foreign forces appearing on their shores.⁹⁴⁰ Any study of Somalia's recent past including the interventions by the United States of America and other countries and the various United Nations expeditions can only lead to one conclusion: the Somalis have to be left to fight this land battle themselves. Unless they can acquire the necessary

⁹³⁸ See *Somalia Needs Stability*, *supra* note 645.

⁹³⁹ See Wadhams, *supra* note 688.

⁹⁴⁰ See *Somali Anti-Pirate Coastguard Bid*, *supra* note 773.

will to unify under one national leader, subsume their clan differences, and create a functioning state and government, there is nothing any foreign power can do to facilitate this situation from within the country. It would be the utmost folly to attempt any landed intervention into Somalia, and there appears to be little desire on the part of any nation to undertake that daunting task. The democratic nations that could be in the forefront of any such expeditionary force to Somalia would be extremely reluctant to have to deal with a country where the local population is both hostile and well-armed.⁹⁴¹

Should the United Nations for once abandon its tendency to feast on its own rhetoric and instead take meaningful action, those Somali leaders who appear to have a more solid base of support could be invited to provide some solutions as to what they consider is necessary for success in creating a viable government. Naysayers will argue, with some justification, that this has been tried and the numbers of fragile governments that have come and gone is well-known. Somalia's ninth president since the fall of Siad Barre in 1991, Sheikh Sharif Sheikh Ahmed, assumed office in January 2009 to confront a daunting combination of problems.⁹⁴²

The research and analysis of Somalia's present plight leads to the conclusion that the world can best assist itself and Somalia by utilizing naval forces vigorously in the ocean trade route areas, providing protection both for international shipping and for Somali waters against over-fishing and toxic waste dumping. The global community should let the Somalis deal with their problems on land. The provision of humanitarian aid, where that can be delivered safely, and the readiness to provide expertise and technical advice are productive ways to engage Somalis in working toward their own reconstruction. By providing Somalis with the capacity to establish law and order on land, it is very likely that they will be in a position to curb and control the piracy that is so menacing to world shipping. They might, in the process, avert any possibility of their country becoming a terrorist base. It would be more cost-effective to subsidize a Somali police force and coast guard than to keep huge armadas of naval vessels from so many countries on permanent patrol in the Indian Ocean.

This article also proposes a somewhat innovative approach for the international community and the United Nations. While it is certainly laudable that so many countries donate millions to feed starving Somalis and provide humanitarian relief on a regular basis, the globalizing and shrinking world also requires that countries act more constructively and

⁹⁴¹ See MUSAH & CASTLE, *supra* note 848.

⁹⁴² See *Somalia Needs Stability*, *supra* note 645.

assertively when any state is in trouble—suffering anarchy, serious civil conflict, and the like. The world must act to help failing states at their moment of crisis, not with unwanted interventions but with clearly protective intentions. The proposal is that the United Nations, acting through its Member States, ensures that the suffering country's external boundaries and oceanic resources are protected from all predators until the internal matters are resolved. This would not necessarily involve land interventions like the tragic UNOSOM campaigns. Rather, it would require that every country assures the United Nations that its own nationals and its fleets will observe all the rules already adopted as international law with respect to the country that is undergoing internal anarchy. It would also ensure that no advantage is taken of the weakness of the State in crisis by any parties, and that no attempts are made by land neighbors to extend their territory. It would certainly prevent the illegal dumping of toxic and nuclear waste because international law clearly prevents such actions. By vigorously applying national and international law to their own nationals who commit crimes against the weakened state, the nations of the world would be demonstrating a global conscience that is vital in this interconnected world. Additionally, if any inhabitants of the anarchic country engage in international crime, as have the pirates of Somalia, then the foreign powers would, again, with the sanction of international law, have the right of arrest, detention, and trial of such individuals. I would also suggest that where such ventures involve the naval forces of many countries, that a joint United Nations command structure be adopted to ensure consistency, and prevent further complications arising from contradictory rules of engagement.

Wherever there appears to be a viable political structure emerging in the country in trouble, the representatives of that system should be included in the United Nations command and control system. Leaders with some credible base of local support should be utilized for their advice and acknowledged as partners in the international efforts to protect their oceans or borders. As we have seen, United Nations interventions have to have some local support in order to gain credibility and work effectively.⁹⁴³

There is an old African proverb that says: "Until lions write their own history, the tale of the hunt will always glorify the hunter."⁹⁴⁴ The

⁹⁴³ For a discussion of U.N. and U.S. military and diplomatic actions in Somalia during the 1990's, see *supra* Part I.D.1.

⁹⁴⁴ Anna Marano, *Somali: Money and the Civil War*, AFRICAN HOLOCAUST, <http://www.africanholocaust.net/articles/Somalia%20Money%20and%20Civil%20War.htm> (quoting an African proverb).

instant saga of two forms of piracy, one purely monetary, the other environmental as well as ultimately monetary, glorifies none of the perpetrators. Instead it shows how ultimately we are all the victims when crime of any type despoils a weak and helpless country.

The tragic saga of piracy in Somalia is not just a story about international crime. It is also and equally a story about economic deprivation so severe that its victims have few alternatives and almost no choices. The tragic reality of this saga is that in seeking to alleviate their own misery, the pirates of Somalia have involved the entire world and have reinforced the truism that in this globalized world, "poverty anywhere constitutes a danger to prosperity everywhere."⁹⁴⁵ It is both a moral and a legal obligation on the nations of the world to forego any selfish thoughts of national aggrandizement or profit from the suffering of a colleague state, and to seek instead, to assist the weak country, without seeming to encroach or poach or take advantage of its status as a failing or failed state. If globalization is really to succeed, then attitudes must change, both in the United Nations and in the world community. There is no reason why a globalized conscience focusing on mutual respect, tolerance, and peaceful interaction should not develop in this new millennium where so much change appears possible. The goal would then be to integrate solutions that address Somali concerns about lawlessness, poverty, and environmental destruction in tandem with measures to curtail piracy. It is simply not sensible to mount huge military operations to deal with the piracy problem and do next to nothing about the problems that generate the piracy. As Professor Mohamed Elmasry commented: "It is up to the international community to address the causes of piracy, not just react to its consequences."⁹⁴⁶

This research concludes with a truism, that globalization will only succeed and advance the interests of the world if it does not occur at the expense of, and to the detriment of, any group or nation. Either we all pull together and succeed in tandem or we all falter and fail. The Somali pirates have certainly proven that in the realm of international politics, power and might are not necessarily the paths to success.

This article titled itself with a question mark that is its ultimate hypothesis, whether Somalia's pirates are opportunistic predators or environmental prey. The extensive research and analysis of the vast material

⁹⁴⁵ See Cho Sung-joon, *supra* note 718 (quoting the Constitution of the International Labor Organization).

⁹⁴⁶ Dr. Mohamed Elmasry, *In Somalia, Where can You Hide \$100 Million?*, CANADIAN CHARGER, June 29, 2009, <http://www.thecanadiancharger.com/page.php?id=5&a=48>.

on this subject lead to the conclusion that both elements are applicable. There can be no doubt that the pirates of Somalia pose a very serious threat to peaceful commercial shipping, a threat with the potential of catastrophic disruption of the global economic system. However, there can also be no doubt that the original bands of pirates—the retaliatory vigilante fishermen—are the victims of environmental degradation on a significant scale caused by the vessels and crews of several nations. The tragedy of Somalia today is that, absent a stable government, its people have had to resort to piracy both as a means of sustenance and to make a point. That people in any country are driven by economic deprivation to engage in international crime is a sorry reflection on all of us who enjoy the benefits of living in the developed world.

Lest we become too complacent and adopt a condescending attitude about the motivations, justifications and activities of these pirates, we might pause to consider that they have had incredible success for such a rag-tag bunch of young men. We should also ponder the reality that these poverty-stricken young men have managed to climb and seize our ships and hold the rich world to ransom relatively easily. They have shown us our own weakness and vulnerability. We cannot, in the so-called First World, continue to live comfortably and even relatively prosperously, and ignore the terrible poverty and deprivation that is spreading in other parts of this planet.