THE PROBLEM OF SOMALIAN PIRACY: THE NEXUS BETWEEN STATE FAILURE AND PIRACY ON WATERS OFF THE COAST OF SOMALIA

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ABSTRACT

Piracy has acquired a more dangerous character and undermines maritime business on waters off the coast of Somalia and in the Gulf of Aden. Ships and fishing vessels are being attacked by pirates who are essentially but not exclusively from Somalia. The study anchors its analysis on the *fragile State thesis* and argues that piracy on waters off the coast off Somalia has to deal with the fact that the underlying reason for the piracy problem is the lack of a functional internal administration that has the monopoly of legitimate use of force in Somalia, which has become a failed state. It is the view of this paper that measures to deal with piracy in Somalia cannot have a fundamental solution without the establishment of a stable internal order inside Somalia.
Keywords: *Somalia, Piracy, Failed state, fragile state,*

INTRODUCTION

The principle of state sovereignty makes the state the ultimate authority in the lives of its citizens. This principle has come under intense challenge by pressures from non-state actors who have assumed the capacity of *state* within sovereign state. Nevertheless, this has not made scholars to shift ground on the indivisibility of state sovereignty. As strongly noted by Nnoli (2003), the state is associated with sovereign power. It looms very large when compared with the power of international organizations and that of sub-state organizations. It monopolizes the means of coercion unknown in the sub-state or supra-state community. When a sovereign state allows other non-state actor(s) to question or usurp the state authority repeatedly unchallenged, the notion of state failure can easily be factored into analyzing the scenario. In Somalia, not only that the state has failed to ensure the rule of law and principles of good governance, it has also failed to provide security. The absence of functional government, security and the rule of law in Somalia make the area in the world the perfect breeding ground for piracy. Ineffective character of the central government and the high intensity of violence and corruption, have placed Somalia on the list of failed states. For several years in a row, *Transparency International* and *Foreign Policy* consider Somalia to be the most corrupt and failed state in the world (*Transparency International*, 2010). In fact, an article titled: *The World in 2010*, predicted that Somalia would be the worst country on earth this year (Leo, 2009). Indeed, in its present state, it is not difficult to foresee a grim future for this nation as aptly noted by Sugio (2009) piracy has skyrocketed in the Gulf of Aden and other waters off the coast of Somalia, and has come to the international community as a critical threat to maritime security. In fact, this menace by the Somalian pirates has taken them to other high seas of the world such as Red Sea, Arabian Sea, Indian

Ocean and Oman. (See *International Chamber of Commerce-International Maritime Bureau*, ICC-IMB, 2010). But it is the Gulf of Aden and other waters off the coast of Somalia that is more threatened if not already endangered. Hitherto, the regions termed as pirates safe heavens for modern piracy were mainly the Strait of Malacca and the island-studded waters of Southeast Asia, but the incidence of piracy in the Strait of Malacca has declined considerably in recent years as a result of composite international efforts and the establishment of an information sharing center under the 2006 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against ships in Asia. But this has not been the same with the Gulf of Aden. The Gulf of Aden forms the entrance to the Red Sea and is part of the extremely vital Suez Canal shipping route that links Asia and Europe. An estimated 18,000 vessels pass through the Gulf of Aden, making it one of the most heavily trafficked maritime paths in the world (Sugio, 2009). In 2003, a new phenomenon occurred off the coast of Somalia and in the Gulf of Aden, ships and fishing vessels were being attacked by pirates. The frequency of this activity slowly increased over the years. These attacks have been essentially but not exclusively linked to Somali pirates. The question becomes: Is state failure implicated in the alarming rate of piracy in the Gulf of Aden and waters off the coast of Somalia? This article addresses this question. This paper is an effort to examine critically, the interface between state failure and piracy on waters off the coast of Somalia. From our analysis, the paper will demonstrate this linkage.

THEORETICAL PERSPECTIVE

Scholars in social sciences and political science in particular, tend to anchor analysis on the post-colonial state theory to analyse problems of states in Africa. But the theoretical credentials and propositions of the theory have proved to be inadequate to analyse the problems of African society especially, when most of the problems bedeviling states in Africa did not start in their immediate post-independence. This methodological impurity renders the theory ineffectual for explaining the issue under scrutiny. To appreciate the issue under probe, the study will anchor analysis on the fragile state thesis, which derives essentially from a post-Westphalian, neo-Weberian perspective-as an empirical condition in which a government lacks monopoly of the legitimate use of force, physical control of its geographical territory, and institutional capacity to perform the essential functions of statehood, including provision of basic public services and infrastructures, as well as security of life and property (Sogge, 2008; Omeje, 2010) As the effect of these factors become widespread, popular participation in or civic affairs decreases. This in turn de-legitimizes the government in the eyes of its citizen and non state actors may attempt to fill this void and have a field day in whatever activity they engage in.

From a developmentalist perspective, state fragility is a highly fluid process and not permanent, whose outcomes could be progressive or retrogressive, depending on the actions or inactions of the government and other stakeholders. There are degrees or levels of state fragility and most contemporary analysts have tended to measure them using such empirical indicators as the state's level of institutional coherence and control of its territorial jurisdiction by a central government; level of provision of public services; level of corruption in the public service and societal crime level; proportion of refugee outflow and involuntary population

movements; level of economic growth and human development; and so on (Omeje, 2010). The fragile state thesis, as an analytical tool helps in the explication of the objective conditions of the Somalian state in relationship with piracy on waters off the coast of Somalia. The Somalian state today not only lack functional internal administration but also lacks the legitimate coercive use of force and control of its geographical territory. The essential functions of statehood have become highly elusive in the state and non-state actors are taken laws into their hands. The inability of the Somalian state to provide security against illegal fishing and dumping of toxic waste by foreign ships leveraged Somalians residing on the banks of river to provide this security which eventually snowballed into piracy. Piracy in Somalia is traced to self-help groups that wanted to defend Somalia waters and marine resources in the absence of a navy and coastguard.

BACKGROUND TO STATE FAILURE IN SOMALIA

Since its independence and the unification of British and Italian Somaliland in 1960, the Republic of Somalia has been torn by conflict. At the onset, an unequally high representation of southerners in government, the civil service and the armed forces caused an imbalanced distribution of development and economic wealth, which eventually led to loss of support for the democratic union among the different clans. Instability was fuelled by corruption, nepotism and inter-clan rivalries. A military regime, led by Major General Siad Barre, took power in a coup d'état in October 1969 and proclaimed a socialist state. Initial successes in state reforms and development of education, infrastructure and the economy soon were overshadowed by human rights abuses and other violent means of exercising state control (Afyare and Abdullahi, 2006). To hold firm to power, the despotic regime manipulated territorial differentials and clan repressions, which in turn fed into organized rebel movements in the northwest and south of the country.

According to Meredith (2005) the long decline in the domestic security situation in Somalia reached its most alarming level since the mid 1990s. The rebellion against the Siad Barre regime in 1991, which propelled Somalia into civil war, may best be characterized by intense large-scale fighting pitting different clan groupings, mostly the Darod and the Hawiye, against each other. Several negotiation attempts were made, and two UN missions, *United Nations Operations in Somalia I* and *II* (UNOSOM), managed to partly contain the conflict, but ultimately failed in creating stability and peace. At the end of 1995, both the *International Red Cross* (IRC) and the UN had completely withdrawn from Somalia because of the volatile security situation. Numerous peace and reconciliation efforts were made between 1990 and 2004, both within and outside of Somalia. High-level international conferences in Djibouti (1991), Addis Ababa (1993), Cairo (1997) and Eldoret (2002) resulted in renewed agreements with governments without success. Concurrently, Somaliland in the northwest (1991), Puntland in the northeast and to a lesser extent Jubaland in the southwest (both in 1998) proclaimed their independence and generally did not recognize new governments of unity. The lack of consensus and continuous fighting between the different clans undermined unification and accelerated the unfolding humanitarian crisis (Jan, 2010). In 2004 the Transitional Federal Government (TFG) was established following a two-year peace process, hosted by the government of Kenya and brokered by the Eastern African

'Intergovernmental Authority on Development' (IGAD). More successful than its predecessors, the TFG attempted to reinstate governmental and juridical institutions and gained short-lived popular support. Its tasks to restore order and bring peace to this troubled country have yet to be accomplished. The TFG also proved to be a fragile alliance, prone to internal strives and clan interests. Although it enjoys international support from the United Nations, the African Union (AU), the IGAD and a number of (especially Western) nations, politically, the TFG struggled for national recognition and physical control over Somali territories. In June 2006, the Union of Islamic Courts, UIC quickly took power in Mogadishu. The UIC managed to consolidate its power in and around Mogadishu, but, in December 2006, the UIC were overthrown by a rapid military advance by Ethiopian and TFG allied forces. In 2007, a splinter group consisting of moderate Muslims from the UIC formed the *Alliance for the Re-Liberation of Somalia* (ARS). Although the remainder of the UIC has been considerably weakened by the Ethiopian and TFG advances, they still enjoy support from Eritrea, and in July they had a strong hold of the villages of Beletweyne and Wajid.

This did not douse conflicts in the country, as a result, Ethiopia and African Union, (AU) deployed peacekeeping forces. But this only exacerbated the conflict situation in the country. Ethiopia's intervention only led to more chaos and instability in the country, with humanitarian, political, and security conditions further deteriorating across south-central Somalia. Consequently, Ethiopia withdrew from Somalia in January 2009. The AU on the other hand, deployed a peace support operation in Somalia in 2007. The mission was endorsed by the UN Security Council and was established to provide security support to the TFG as well as to contribute to the creation of favourable conditions for dialogue, reconciliation and the provision of humanitarian assistance. Until today the mission remains unable to fulfill its broad mandate and instability has continued to persist. This has also worsened by the lack of any central policing authority. This in particular has fuelled criminality in the country. It should be noted that Somalia is one of the countries in Africa in which its citizens share similar things. Unfortunately, the country has not leveraged from this and continues to be bedeviled by instability. *The Encyclopedia of the African and African American Experience* (1999:1324) noted that:

> On the surface Somalia is perhaps the most homogeneous country in Africa. Most of its citizens share the same language, ethnic identity, religion, and culture. Yet it has never achieved lasting stability as a nation; since the early 1990s its civil war has been one of the most devastating in modern African history.

PIRACY AND STATE FAILURE: CONCEPTUAL CLARIFICATIONS

Pirates have become a symbol for menace and lawlessness. Historical records from ages indicate that early civilizations, such as the Greeks and Romans, dealt with piracy. A story, tales of Julius Caesar being ransomed by pirates, whom he returned to crucify; ancient Egyptian records tales of Cyprus being attacked by Lukkan pirates; Alexander the Great battled in vain against numerous pirates in the Mediterranean. Some civilizations, such as the Vikings, were based upon the attacking of other ships and raiding villages along coastline.

The Golden Age of Piracy was between 1620 and 1720, when piracy was often authorized by governments, referred to as "privateering," ships were encouraged to attack and plunder ships from other nations, then share profits with their government (Raffaele, 2007).

The United Nations Convention on the Law of the Sea (UNCLOS) adopted in 1982 and entered into force in 1994, defined piracy as:

(a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or private aircraft, and directed:

(i) On the high seas, against another ship or aircraft, or against persons or property on board such a ship or aircraft;

(ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) Any act inciting or of intentionally facilitating an act described in sub-paragraph (a) or (b) above

In line with International law, Micheal (2010) noted that any illegal acts of violence and detention which are committed within the State's territorial waters are not defined as piracy. In order to overcome the distinctions between the high seas and territorial waters the International Maritime Organization (IMO) defines piracy as follows`: "an act of boarding or attempted boarding, with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act (Ian, 2003). Piracy can be defined as an armed robbery at sea. Piracy aims to derive personal material gains by capturing ships and therefore indirectly undermines sea trade activities. The main objective is to demand and recover ransom money in exchange for valuable cargo, crew and passengers. "Piracy" and "privateering" are different concepts. Until 1865, when the Paris Conference Statement outlawed privateering, it was deemed a lawful activity by the international Law of Armed Conflict; whereas today, privateering is a concept with only historical significance. A corsair (or privateer) was a privately owned trade vessel, authorized to attack and seize enemy vessels and their cargo by the belligerent nation to which it gave its allegiance. The concept as noted by Ian (2003) became inoperative after the Paris Conference Statement in 1865. Today, similar activities are defined as piracy and are considered as international crimes.

Piracy can be both a *means* and an *end*: a *means* for certain states to weaken adversaries and enrich themselves and/or an *end* for the individual pirate who could stand to profit a great deal from the profession. The Elizabethan Sea Dogs were a means for the English Crown to fight Spain and protect itself. Their subsequent effect in repelling the Spanish Armada, in 1588, also increased the English Crown's willingness to use privateers. But, for the pirates and the privateers themselves, it was clearly an end in itself. For privateers like

Drake, Raleigh, Cavendish and Cumberland, privateering was a way not only to enrich themselves, but also to make a career (Jale, 1975). On the other hand, state failure or discourse on failed state is a recent but now often discussed phenomenon in social sciences. As noted by Akpan (2008) the terms *weak, failing* and *failed* states have become engagingly popular among scholars of peace and conflict studies globally. The states that are seen to be failed states are states that are unable to settle their internal political, economic and social crisis. These crises usually create an environment of lawlessness, which leads to violence and instability.   Consequently, Chomsky (2005) sees a failed state as that which cannot protect its citizens from violence and has a government that regards itself as beyond the reach of domestic or international law. Similarly, Anyanwu (2005) refers to it as that which is unable to meet the needs and aspirations of its masses. It is a state in which the leaders have failed to meet their own part of the social contract they entered into with the governed. This is strongly corroborated by Miller (2005) for whom the term refers not only to nation-state's inability to provide services and security, but also to its unwillingness to meet such responsibilities. Thus, state failure can be attributed to numerous factors, including corruption, mismanagement of institutions, weak political process, overwhelming security or criminal threats beyond the capacities of a government, and external interventions aimed at destabilization. As the effect of such factors become widespread, popular participation in or civic affairs decreases. This in turn de-legitimizes the government in the eyes of its citizen and non state actors may attempt to fill this void and have a field day in whatever activity they engage in. Since 2005, the United States think-tank, the *Fund for Peace* and *Foreign Policy Magazine* has been publishing an annual index called the Failed State Index. The list only accesses sovereign states, determined by membership in the United Nations.

The *Fund for Peace* is an independent research organization that uses its conflict assessment tools, a methodology it had developed and tested for over a decade using 30,000 publicly available sources to gauge the status of states in the world. The data used are usually collected from May to December of every year. There are twelve (12) indicators which they use to gauge the status of states. These indicators are grouped into three (3): Social indicators, economic indicators and political indicators.

Social Indicators:
> Mounting demographic pressures
> Massive movement or refugee or internally displaced persons creating complex humanitarian emergencies.
> Legacy of vengeance seeking group grievance or group paranoia.
> Chronic and sustained human flight

Economic Indicators:
> Uneven economic development along group lines.
> Sharp and/or economic decline

Political Indicators:
> Criminalization and/or delegitimization of the state.

- ➤ Progressive deterioration of public services.
- ➤ Suspension or arbitrary application of the rule of law and widespread violation of human rights.
- ➤ Security apparatus operates as a *state within a state*
- ➤ Rise of factionalized elites.
- ➤ Intervention of other states or external political actors.

Any keen observer of events in Somalia would agree that the country is not immune to these indicators of a failed state. Somalia occupies unenviable first in the failed state index of 2010. Somalia is a typical example of a state where national institutions of enforcement, execution and decision making are no longer guaranteed.

THE NEXUS BETWEEN STATE FAILURE AND PIRACY ON WATERS OFF THE COAST OF SOMALIA

The central argument of this study is that the collapse of the Somalian state is implicated in the rise of piracy on seas off the coast of Somalia. Piracy which had existed in Somalia acquired a most disturbing trend recently, began as an attempt by Somali residents who live on the banks of river to streamline and regulate illegal fishing and dumping. When the recognized government in Somalia collapsed, the fishing fleets of many countries believed they had been giving the leeway to abuse waters around Somali land. This aggressive overuse occasioned by unregulated fishing angered and threatened Somali indigenes who had fished there over the years. Other ships as noted by Horand (2008) dumped vast amounts of toxic chemicals to avoid the costly disposal processes required in their home land. Expectedly, with the collapse of the government that is expected to regulate these unwarranted activities around the waters surrounding Somali, groups of Somalis that lived along the coast began to police the waters themselves. In the course of policing the sea, they seized ships to prevent them from fishing and dumping toxic waste. The rewards offered to release any of the seized ships were seen to be enormous. Because of this, their raids escalated, they became more sophisticated and better equipped. More importantly, they never saw themselves as pirates despite international condemnation. They argued that they are serving as vigilantes and protecting their livelihoods since the government that has such responsibility can no longer perform. Today, their actions have moved from vigilantism to theft.

The above notwithstanding, there are other factors that are connected to the fragile state of Somalia to fuel piracy. Some of these factors spotlighted by Jeff (2009) are:
- ➤ Permissive environment
- ➤ The ransoms offered for captured ships and crews are large
- ➤ The ransoms induces an ostentatious lifestyles on the pirates
- ➤ Wealthy businessmen from Dubai have historically invested in pirate activities

Politically, the lack of a central government and effective policing force has eliminated the coercive power of law. There is no coastguard commanded from Mogadishu to deter the pirates. The arrival in recent months of a multinational force has somewhat changed this

situation. According to Alex (2008) the average ransom exceeds $2 million and this may double with ships with more valuable cargo. According to the CIA World Fact book on Somalia (2008) with average annual per capita incomes in the country hovering near $600, those who find financial success in piracy are emulated, not shunned and captured pirates have produced limited insight into their financiers, but their existence is certain and mostly from Dubai. When Somalis are unable to procure necessary weapons and equipment on their own, outside investment fills the gap. The situation is not helped by support they get from some government officials who share the ransoms with them. According to media reporting recounting interviews with captured pirate(s), a great deal of pirate money goes directly into the government's pockets. Pirates typically divide up their loot with 20 percent going to their bosses, 20 percent going to future missions in order to cover essentials such as guns and fuel, and 30 percent going to the gunmen on the ship, and the 30 percent going to government officials (Gettleman, 2008).
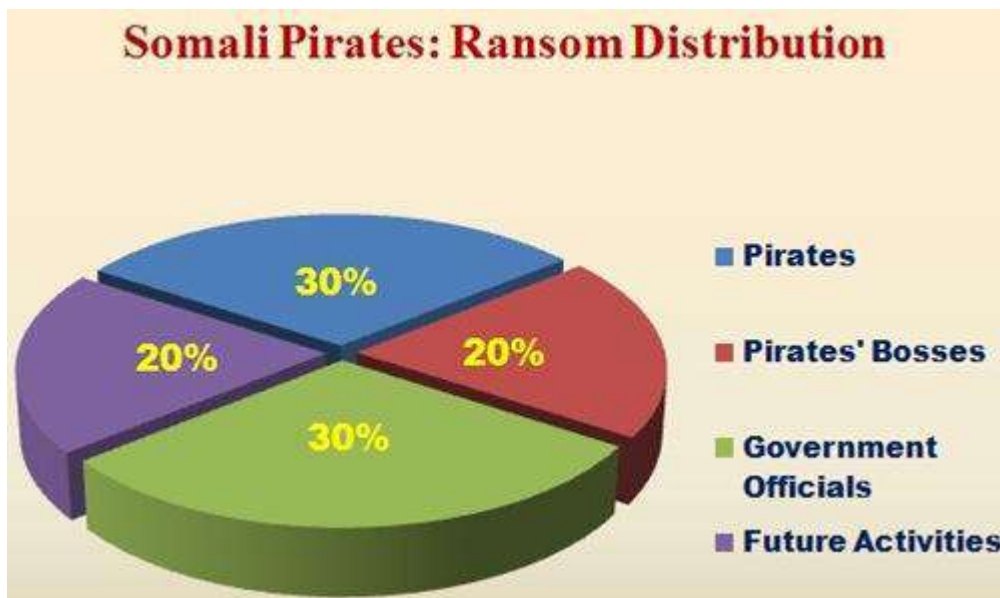
Source: Micheal (2010) *The Origins and Challenges of Somali Pirates*

From 2006 to 2010, acts of piracy and armed robbery against ships increased around the world with Somali pirates accounting for more of the incidents. For instance, the total number of piracy and armed robbery against ships rose from 239 in 2006 t0 406 in 2009 in the world. According to the *International Chamber of Commerce International Maritime Bureau* (ICC-IMB), *Piracy Report* (2009) of the 406 piracy and armed robbery against ships, a total of 217 incidents were attributed to Somali pirates. Similarly, within the first nine months (January-September) of 2010, a total of 289 acts of piracy were recorded the whole world, from January-September 2010, Somali pirates have been responsible for 127 incidents (See ICC-IMB Piracy Report, 2010). The evidence above shows that piracy in the world is more prone to waters off the coast of Somalia. Whatever the factors that fuel piracy in Somalia may be, it must be noted that many of the pirates have their roots in self-help groups that

wanted to defend Somali waters and marine resources in the absence of a navy and coastguard. This is because in the spring of 1991, Somalia ceased to exist as a state, at least in the modern sense of a state system that functions as a mechanism for control and social organization. The lack of any real functioning government, as well as lack of security and the rule of law in Somalia, makes this area of the world the perfect breeding ground for piracy.

Our central argument is that the pirates in Somalia are having field day in their nefarious act because of lack of central organizing authority. In fact, the only period during which piracy virtually vanished around Somalia was during the six months of rule by the Islamic Courts Union, ICU in the second half of 2006. This indicates that a functioning government in Somalia is capable of controlling piracy. After the removal of the ICU, piracy re-emerged (Roger, 2008). With little functioning government, long, isolated, and a population that is both desperate and used to war, Somalia is a perfect environment for piracy to thrive. As aptly noted by Lehr (2007) for pirates to successfully conduct acts of piracy with a fair chance of getting away with them depends on an "enabling environment". Here the enabling environment is formed by the failed state itself: the absence of a central authority willing and capable to uphold law and order; provide an excellent environment for the spread of illegal activities, among them organized crime and terrorism. That is not to say that if there is the presence of a central authority willing to uphold law and order in Somalia, the state will be immune to acts of piracy but the rate will be drastically checkmated. In fact, the recent decline in the rate at which pirates wreck havoc in waters off the coast of Somalia is attributed to the recent international community response to provide security.

CONCLUSION

The paper explored the interface between state failure and piracy on the waters off the coast of Somalia. We anchored analysis on the fragile state thesis. We argued that this connection is imperative in a state that lacks real functioning central authority. The paper traced the history of the present fragile state structure in Somalia and explicated on the concepts of failed state and piracy. The study revealed that there is a connection between the fragile state structure in Somalia and the rise of piracy on waters off the coast of Somalia. This is because piracy even though it has existed in Somali, became more pronounced as Somali citizens that live on the coast of waters provided security against illegal fishing and dumping of toxic waste by foreign ships on their waters as a result of the lack of a functional internal government. The study is of the view that any discussion of piracy on waters off the coast off Somali has to deal with the fact that the underlying reason for the piracy problem is the lack of a functional internal administration in Somalia, which has become a failed state. We therefore conclude that measures to deal with piracy in Somalia cannot have a fundamental solution without the establishment of a stable internal order inside Somalia.

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