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# Piracy in a Failed State: How State-Building Can Stabilize the Situation off the Somali Coast?

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*The main purpose of this paper is to examine an alternative approach to state-building in Somalia to resolve issues regarding maritime piracy off the Somali coast. The sharp increase in piracy in Somalia is often regarded as a consequence of the collapse of the State after 1991. Solutions for curtailing piracy therefore depend upon the reconstruction of the State in Somalia. However, as has been the case in many post-conflict countries, Somalia has experienced a number of unsuccessful attempts at state-building because the current state-building model based on the western conception of statehood does not account for the realities of Somali society. Reviving a unified Somalia is thus counter-productive to securing peace, order and stability. By closely examining state-building approaches, this paper shows that the 'mediated state' approach is the most appropriate model not only for resolving issues regarding state-building, but also for tackling the root causes of piracy in Somalia.*

## Keywords

Somalia, Piracy, State-Building, Failed State, Negotiating Statehood, Mediated State

## I. Introduction

The dramatic upsurge in incidents of piracy off the Somali coast in recent years has posed significant challenges to maritime security in general, and international shipping and maritime trading in particular. Since 2008, multi-national organizations, such as the

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European Union (“EU”) and the North Atlantic Treaty Organization (“NATO”), and various countries have dispatched warships to combat piracy. On February 1, 2009, finally, the Maritime Security Centre-Horn of Africa (“MSC-HOA”) established the International Recommended Transit Corridor (“RTC”). According to the International Maritime Bureau (“IMB”), however, 47 of the 219 vessels attacked by pirates in 2009 were successfully hijacked.<sup>1</sup> In comparison, 111 attacks were reported in 2008, which in turn represented a 200% increase from 2007 levels.<sup>2</sup> In 2010 and 2011, Somali pirates accounted for approximately 54% of the world’s piracy; the overall number of Somali piracy incidents has continued to increase from 219 in 2010 to 237 in 2011, although the number of successful hijackings decreased from 49 to 28 over the same period.<sup>3</sup> The strategy of using naval patrols in the Gulf of Aden and the Somali Basin has reduced the number of successful hijackings, but pirates have shifted their operations to attack vessels as far as 1200 nautical miles from the Somali coast (toward the western and southern coasts of India in the Indian Ocean). Further, pirates are also attacking vessels close to the coasts of Tanzania, Kenya, Somalia, and Yemen. In 2011, an anchored vessel was hijacked by Somali pirates within the territorial waters of Oman.<sup>4</sup> These hijacking cases indicate that Somali piracy cannot be successfully countered without addressing its root causes, because piracy is interrelated with the state of anarchy and lack of rule of law in Somalia. Thus, rebuilding the Somali state is considered crucial to solving the problem of piracy.<sup>5</sup> How to rebuild the Somali State remains a matter of debate, however. There are two major approaches to state-building; the ‘top-down’ approach and the ‘bottom-up’ or ‘building-block’ approach. The international community has attempted to (re)build so-called ‘failed states’ by employing the conventional top-down approach to state-building.

Since the fall of Siad Barre’s regime in 1991, however, there has been no central government in operation; rather, Somalia has been divided into the three administratively- separate territorial entities: Somaliland, Puntland, and the South (See Map 1). The Transitional Federal Government (“TFG”), which is regarded as the “legitimate central government of Somalia,” exercises no control over most regions of

<sup>1</sup> ICC Commercial Crime Service, 2009 World Piracy Figures Surpass 400 (January 14, 2010), available at <http://www.icc-ccs.org/news/385-2009-worldwide-piracy-figures-surpass-400> (last visited on Feb. 1, 2012).

<sup>2</sup> ICC Commercial Crime Service, Piracy and Armed Robbery against Ships, ANNUAL REPORT 2008, available at <http://ddata.over-blog.com/xxxxxy/0/50/29/09/Docs-Textes/Pirates2008RAP-BMI0901.pdf> (last visited on Feb. 1, 2012).

<sup>3</sup> ICC Commercial Crime Service, Piracy Attacks in East and West Africa Dominate World Report (January 19, 2012), available at <http://www.icc-ccs.org/news/995-piracy-attacks-in-east-and-west-africa-dominate-world-report> (last visited on Feb. 1, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> Akiko Sugiki, *Rethinking ‘State-building’: Piracy Off the Coast of Somalia and Rebuilding ‘Somalia,’* 110 J. INT’L L. & DIPLO. 8 (2011) (「国家建設」モデルの再考序論—ソマリア沖海賊問題と「ソマリア国家」の事例から、国際法外交雑誌 第110号、2011年) (available only in Japanese).