

DENİZ HAYDUTLUĞU İLE MÜCADELE VE TÜRKİYE'NİN KONUMU: SOMALİ ÖRNEĞİ

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The Struggle Against Piracy: The Somalia Case And Turkey's Position

Executive Summary

Piracy and armed robbery at sea have always been detrimental to sea trade and transportation. The recent incidents of piracy on the coasts of Somalia are a good example of this problem. The civil war and state of turmoil in Somalia and the lack of an effective central government is laying the ground for on coast piracy, and the pirates are targeting merchant ships in particular. Piracy is a special term, defined as an international crime in international law of the sea. In this legal context, the UN Security Council authorized member states to take every necessary measure, including the use of force, in cooperation with the Transitional Federal Government of Somalia (TFG). Still, in order to succeed this international effort needs the cooperation and the combined efforts of both regional states and the international community. Additionally, the sea trade sector needs to develop and practice various defensive measures, including the use of private security services as means of protection.

Military operations against piracy are limited to the status of a law enforcement operation. Recently, the Turkish Grand National Assembly resolved to give authority to the Turkish Government with respect to this matter. The resolution determines the strategic and military framework for the deployment of the Turkish Naval Forces in the region.

The naval operation must be planned and executed in conformity with International Law, International Human Rights Law and finally, the national laws of involved states. Operation Allied Provider launched by NATO and the EU's Operation Atalanta are good examples for case study purposes. Operational discipline will be provided by mission specific rules of engagement and code of conduct.

An important challenge relates to rules regarding the treatment of the vessels, persons and goods, captured or seized as a result of an operation. Therefore, (if possible) these issues need to be clarified by special agreements and arrangements. Determination of applicable law/s and designation of state/s having jurisdiction are other crucial issues.

Introduction

Piracy is not a new concept, but the recent, rising incidents of piracy in the Gulf of Aden, especially off the coasts of Somalia, have captured the attention of both people and the media since it poses a great threat to all sea transportation activities and therefore negatively affects international economic and financial environments. Meanwhile, vessels under Turkish flag or possessed by Turkish ship owners have also been subject to piracy in the region. Thus, the subject needs closer examination in order to identify and evaluate feasible measures.¹

A coastal town named Eyl, in Puntland, is known to be the epicenter of Somali pirate activity.² For the time being, it is not likely that Somali national forces will adopt necessary measures, such as the use of force, criminal prosecutions, etc., against those engaged in incidents of offshore armed robbery and piracy.³

A major difficulty in the struggle against piracy derives from the fact that the attacks are often not reported via official channels, since reporting incidents can increase owners' insurance costs, and also cause delays, time consuming investigations and daily harbor charges.⁴ According to the November 2008 figures of the IMO (International Maritime Organization), there have been 440 reported piracy incidents on the open seas of Somalia since 1984. In the year 2008 alone, 120 incidents were reported. Over 35 vessels have been captured by pirates, some 600 of the crew members have been kidnapped for ransom.⁵ As of January 9, 2009, 15 vessels and 290 crew members have reported being held hostage by the pirates⁶

For these reasons, piracy and armed robbery puts an extra burden of 1-16 billion dollars on maritime sector annually. Ship owners, shippers, consignees, lines, forwarders and insurance companies all suffer from piracy. Piracy has pernicious effects on both the international maritime sector and international peace and security. In addition to cooperation and solidarity between states and as a complement to these efforts, the international maritime sector

is seeking to adopt all necessary technical and legal measures on its own behalf.⁷

In this paper, we will discuss the strategic effects and consequences of these incidents while dealing with the current and potential effects of piracy and will examine the political, military and legal dimensions of feasible measures and applicable sanctions.

1. Piracy: The Concept

“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 became inoperative after the Paris Conference Statement in 1865. Today, similar activities are defined as piracy and are considered as international crimes.⁸

Piracy also differs from other forms of armed robbery that may occur at sea and/or in other environments. For instance, robberies recently reported in Europe, which are said to have been committed by Serbian pirates on the Danube River in the Smederovo region near Belgrade, fall outside the technical definition of sea robbery.⁹ Other major crimes: attacks that target vessels anchored at ports and docks, cruising in deep waters or territorial waters; and also fraudulent practices such as the “phantom ship” method designed to obtain insurance payments illicitly are categorized as organized crime.¹⁰

Briefly, 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.¹¹

2. Piracy: Strategic Importance and Consequences

Piracy is seen as a “common” international crime, insofar as it does not involve political or military motives. It is subject to global jurisdiction and since it does not constitute a political or military offence, there are no legal difficulties regarding the extradition of the offenders.

Therefore, acts of piracy can be distinguished from other terrorist activities in general, including those committed at sea. Nevertheless, connections based on mutual interests – which are common among terrorist organizations and other criminal organizations such as narcotics and human trafficking –, makes it likely that cooperation and other transactions with such groups in the case of piracy, with wide-ranging effects and consequences.¹² In fact, after the latest incidents off Somalia, piracy has been situated at the heart of various conspiracy theories prevalent in some circles. One of the arguments introduced in this context claims that Western states that want to deploy military forces in the area and take control of the region are supporting the pirates in order to create a threatening environment and lay the legal groundwork for intervention.¹³

Our opinion is that it would be wiser to focus on the influence of organizations established by radical groups and individuals (non-state actors, though) from states such as Saudi Arabia, Yemen and Pakistan, that conduct an armed struggle against Western states in the form of terrorism, rather than a “conspiracy” pre-planned by the West. In fact, the close relations and cooperation between piracy suspects and local and central authorities have already been widely discussed in the press. At the very least, the protracted civil war and tumultuous state of affairs in Somalia certainly cannot be isolated from the general context.

The piracy incidents that are the subject of this paper have been taking place in the Indian Ocean and Gulf of Aden, especially off the coasts of Somalia and Yemen. Lack of an effective central government in Somalia since 1991,

the long – lasting political, military and civil chaos, and the rise of de-facto formations such as the “Galmudug Federal State” or “Puntland Federal State” which damage national unity – these are the factors that have determined the political, economic and social background of piracy.¹⁴

On the other hand, the states of the Red Sea region gathered on November 20, 2008 at a conference hosted by Egypt and Yemen in order to discuss the potential threat to the Arab World posed by the buildup of foreign naval presence in the region. Saudi Arabia, Sudan, Jordan, Somalia, Eritrea and Djibouti attended the conference.¹⁵ In their final communiqué, the participants condemned the political turmoil in Somalia: the struggle of the US backed central government against an uprising led by Islamists. According to the participating states, the increase in incidents of piracy around Somalia is the result of the deterioration of security and political and humanitarian conditions in Somalia. The participants urged the regional Arab states to launch a joint operation against piracy, called for the establishment of a monitoring center for piracy in Yemen and advised others to respect the national sovereignty of regional states.¹⁶ The main reason why the regional states are concerned about the growing presence of foreign marine forces has to do with their perceptions regarding the internationalization of the Red Sea. According to Egyptian Brig. Gen. (ret.) Gamal Mazloum, piracy is the instrument foreign actors will use to internationalize the Red Sea in order to serve the interests of the USA and Israel. In the 1980's, Israel was the first state to suggest the establishment of a naval force in the region, but the offer was immediately refused and has never been discussed again. According to Aymen Abdelaziz Salaama, during the Arab-Israeli War in 1973 Egypt, Yemen and Somalia successfully cooperated to close the Mandeb Strait (between the African Horn and the Arab Peninsula). They did not impede merchant marine navigation, but only blocked Israeli vessels. These three states could collaborate against piracy, too.¹⁷

Another striking argument claims that some unjust practices which followed on the heels of the Asian Tsunami in December 2004 have somehow been ignored by the press and the media for unknown reason. Tons of radioactive waste and toxic chemicals left in the sea basin off the Somalian coasts were brought to the surface by the giant tsunami waves and thousands of Somalians were infected through physical contact with the waste. An estimated 300 victims have died from contamination. The UN held an inquiry upon request. In the 1990's, some companies used the coast as a dumping area for toxic materials in accordance with agreements signed by Somalian politicians and militia leaders. The Swiss firm, Achair Partners and Italy's Progresso are the companies that lead the list.¹⁸ The country was headed for civil war while this practice became prevalent. Despite the facts that were revealed after the tsunami, the investigation was terminated. No compensation amount was settled, and the area has not been cleaned. Similarly, Somalian fishermen filed a complaint with the UN in 2006 against foreign fishing fleets for plundering Somalian fish stocks. Not only that, but these foreign fleets have often used the Somalian militia to intimidate and humiliate the Somalian fishermen. The UN took no action despite repeated requests. The Somalians grew angry as they saw their waters being poisoned and their fish stocks plundered, and eventually they opted for handling the situation in their own way. The fishermen took up arms and began to act as unofficial guards. In late 2005, they began to seize cargo ships, deluxe yachts and tuna fishing boats. The vessels were held for ransom. According to a Somalian pirate leader, Ali Jama, their primary aim was to avoid toxic discharges. For example, the ransom they asked for a Ukrainian vessel would be expended to clean the waste. Although this account is not very convincing, whatever the initial motive was, the nature of the pattern has changed over time. With the inclusion of some members of the Somalian government, piracy turned into a multi-million dollar industry, and a way to make a living. The open waters of Somalia have

practically become a free fire zone since Indian and US naval ships regularly open fire on almost every Somalian fishing boat which comes too close to other cargo and fishing vessels. In clearly contradictory fashion, while the EU conducts Operation Atalanta, European, US and Asian vessels continue to discharge their toxic wastes and plunder fish stocks in the region.¹⁹

The situation in Somalia reveals some general African perceptions of the West and USA. The state of anarchy that paved the way to piracy appeared during the collapse of the Somalian government in 1991, and seems to have worsened after the unsuccessful US humanitarian intervention in 1992. UN figures indicate that 2 billion dollars were allocated for the American intervention and 90% of this amount was spent on military operations. The US Africa Command Headquarters had to be built in Germany, since no country on the continent of Africa was willing to host US forces. The reason for piracy in Somalia is a failed state's inability to protect the rights of its fishermen. In the 1990's, outrageous numbers of foreign fishing vessels came to Somalia in order to exploit its vast tuna resources. These facts forced the Somalian fishermen to arm and defend themselves.²⁰

3. Piracy: The Environment

Sea transportation accounts for 80% of all international trade. Approximately 46,000 vessels carry 12-15 million containers of freight and visit 4,000 major ports. Sea transportation traffic keeps growing, so vessels have to slow down when navigating congested passageways such as the Malacca, Bab-el Mandap, the Hormuz straits and the Suez and Panama canals. This leaves them vulnerable to attack. Economic/financial crises and growing unemployment, lack of coastal defenses and port security in some states, region-wide political instability, corruption, bribery and the intentions of international terrorist organizations are among the major factors that lay ground for piracy and armed robbery.²¹ Particularly Southeast Asia

and the Indonesian archipelago as well as the Somalian coasts, Nigeria, Gulf of Aden, Red Sea, Tanzania, Peru, Bangladesh, Malaysia and South China Sea are the most sensitive regions and countries.²²

As long as they are seen to involve “low risk and high income,” illegal activities such as piracy and armed robbery will continue to intensify. Pirates act fearlessly because they think that there is no real procedure for bringing them to trial, even if they happen to get caught. It seems that there are many questions that need to be answered by jurists: Is it legal to open fire on a vessel suspected to have pirates on board? Who is responsible for the casualties of armed engagements between pirates and private security guards? Which state will be authorized in terms of jurisdiction? And so on.²³

In particular, divergent practices and interpretations concerning, for instance, which vessels may intervene and when they may do so, or what kind of legal proceedings should prosecute the offenders, could cause problems. Therefore it is worth examining the potentially tough issues which are most likely to cause difficulties during the exercise of local and international law: regulations concerning the boarding, search, recordkeeping, and seizure of vessels and the arrest of suspects.

4. International Law

Some arguments claim that international law and international circles hamper the operations of naval forces engaged in fighting piracy and armed robbery. On the other hand, another argument, with which we concur, claims that the legal framework is sufficient and clear. Literally, the area of operations against piracy might be restricted to the high seas, but this does not mean that such operations must be considered illegal when they occur within the territorial waters of a state, nor does it mean that a coastal state does not have the right to take necessary measures within its own territorial waters on its own or with the help of other states²⁴. Prob-

lems concerning security and legal issues in the struggle against piracy are similar to those involved in combating terrorism. Problems usually result from the lack of political will or power, rather than legal ambiguity. Some regional countries may not be fully aware of their powers already conferred on them by international law, which may be another reason. States must adopt a clear approach regarding the issue and should apply concrete measures, compatible with their abilities.²⁵

4.1. The Legal Status of Merchant Ships Operating on the High Seas

The basic principle that determines the legal status of a vessel on the high seas is known as the flag law. According to this principle, a ship is subject to the laws, administration, law enforcement and jurisdiction of the State whose flag she flies. Thus, the ownership and the nationality of a ship are separate issues. A ship owned by a Turkish citizen but registered in Malta and flying the Maltese flag is a Maltese subject and jurisdiction will be exercised by Malta. However, third party states may have exceptional and limited powers over vessels, in cases of piracy, narcotics smuggling, illegal human trafficking, unlicensed broadcasting on the high seas, ships flying no flag or terrorism.²⁶

4.2. Piracy

United Nations Convention on the Law of the Sea (UNCLOS), dated December 10, 1982 set up-to-date regulations regarding piracy. According to the article 101 of the UNCLOS, piracy consists of any of the following acts:

- (a) any illegal act 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 person or property on board such ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property

in a place outside the jurisdiction of any State;

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

Article 100 of UNCLOS includes the duty to cooperate in the repression of piracy and states: “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State”.

Article 103 defines a pirate ship or aircraft: “a ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act”.

Article 105 sets the regulations regarding seizure of a pirate ship or aircraft: “On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith”. However, freedom of navigation on the high seas is a significant rule and arbitrary exercise of the intervention and seizure here described should be avoided, otherwise a state could be held responsible for unjust treatment and seizure of a trade vessel. In fact, article 106 sets the terms of liability for seizure without adequate grounds: “Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate

grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure”.

Article 107 defines ships and aircraft which are entitled to seize on account of piracy: “A seizure 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”.

Article 110 defines the conditions that give the right to inspect a suspected ship or aircraft: “Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity is not justified in boarding it unless there is reasonable ground for suspecting that: the ship is engaged in piracy, the ship is engaged in the slave trade, the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction, the ship is without nationality or though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. In these cases the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained”.

4.3. Other Related Clauses

Besides the related resolutions set by the International Security Management Code (ISM Code) and the International Maritime Organization (IMO), though not directly related, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Naviga-

tion (SUA Convention), dated 1988, the International Convention for the Safety of Life at Sea (SOLAS), dated 1974, the United Nations Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, dated 1988, and the supplementary Palermo Protocol are considered significant documents that frame the legal issue of piracy.

5. Implementation: The UN Security Council Measures

Piracy incidents in the Aden region, and the threat it poses to international trade activities, have been on the agenda of the UN Security Council (UNSC) for a while and the council has emphasized the severity of the threat by a series of resolutions.

The UNSC emphasized the threat posed by Somali pirates with consecutive resolutions no. 1814, dated May 15, 2008 and no. 1816, dated June 2, 2008, and supported the efforts initiated by the EU and other international bodies.

The UNSC resolution no. 1838, dated October 7, 2008, makes assessments regarding piracy and incidents of armed robbery off the coast of Somalia and the serious threat it poses to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to fishing activities conducted in conformity with international law. The resolution also authorizes vessels that are participating in naval operations in the Somali waters to extend their operations to the high seas off the coast of Somalia as well. The resolution states the following:

- The United Nations Convention on the Law of the Sea of 10 December 1982 sets out the legal framework applicable to combating piracy and armed robbery at sea.
- The breakdown of the World Food Program (WFP) in Somalia is unacceptable. For the above mentioned reasons, states that have the capacity to do so are urged to cooperate

with the Transitional Federal Government of Somalia (TFG) and take necessary means by the use of naval vessels and military aircraft in the fight against piracy and armed robbery at sea.

The UNSC resolution no. 1846 dated December 02, 2008, welcomes initiatives by Canada, Denmark, France, India, the Netherlands, the Russian Federation, Spain, the United Kingdom, the United States of America, and by regional and international organizations to counter piracy off the coast of Somalia pursuant to previous resolutions 1814 (2008), 1816 (2008) and 1838 (2008), the decision by the North Atlantic Treaty Organization (NATO) to counter piracy off the Somalia coast, including by escorting vessels of the WFP, and in particular the decision by the EU on 10 November 2008 to launch, for a period of 12 months from December 2008, a naval operation to protect WFP maritime convoys bringing humanitarian assistance to Somalia and other vulnerable ships, and to repress acts of piracy and armed robbery at sea off the coast of Somalia.

The UNSC resolution no 1851, dated December 16, 2008 states the following:

- The UN is affirming that the international law, as reflected in the United Nations Convention on the Law of the Sea of 1982 (UNCLOS), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities, and reiterating that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation.
- Taking into account the crisis situation in Somalia, and the lack of capacity of the TFG to interdict, or upon interdiction to prosecute pirates or to patrol and secure the wa-

ters of the coast of Somalia, including the international sea lanes and Somalia's territorial waters and noting the several requests from the TFG for international assistance to counter piracy off its coast, the UN is welcoming the launching of the EU operation Atalanta to combat piracy off the coast of Somalia and to protect vulnerable ships bound for Somalia, as well as the efforts by the North Atlantic Treaty Organization, and other States acting in a national capacity in cooperation with the TFG to suppress piracy off the coast of Somalia.

- As already stated in resolution no 1846 of 2008, the UN encourages member states that have the capacity to do so, take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, by obtaining the advance consent of the TFG, and decides that for a period of twelve months, until 9 December 2009, states and regional organizations to co-operate in the fight against piracy and armed robbery at sea off the coast of Somalia. However,
- Any measures undertaken pursuant to the authority of this paragraph shall be undertaken consistent with applicable international humanitarian and human rights law and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention.
- States and regional organizations fighting piracy off the coast of Somalia are invited to conclude special agreements or arrangements with countries willing to take custody of pirates.²⁷
- The authorization provided in this resolution applies only with respect to the situation in Somalia and shall not be considered as establishing customary international law.
- The UN also welcomes the communiqué issued by the International Conference on Piracy around Somalia held in Nairobi, Kenya, on 11 December 2008 and notes that escalating ransom payments are fuelling the growth of piracy in waters off the coast of Somalia.
- The UN urges the IMO to continue to de-

velop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in waters off the coast of Somalia,

- And finally states to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity.²⁸

6. The Struggle against Piracy

6.1. Strategic Approach

The elimination of the threat posed by piracy requires development of feasible strategies, compatible with the circumstances and the nature of the threat. The international community realized the gravity of the situation when the Saudi Arabian vessel *Sirius*, a VLCC (very large crude carrier) carrying 2 million barrels of crude oil at the value of 100 million Dollars, was seized by the pirates on 15 November 2008.²⁹ This sophisticated operation showed that the pirates have a comprehensive crime network consisting of negotiators, interpreters, officers and informers. The international community must come up with an efficient remedy for this country which has little or no economy and suffers from starvation and civil war for almost two decades. It must be realized that the deteriorating situation is pushing the idle fishermen, business men and military personnel to find a common alternative way; piracy. Formation of a strong government in Somalia is the prerequisite of lasting a success in security.³⁰

The increasing number of piracy incidents off the coasts of Somalia is actually the reflection of the chaotic atmosphere in the country. Therefore, simultaneous international response and determination of diplomatic, political, military and legal resources which key states could provide are the initiative steps of an overall strategy. Contributive states must establish coordination in terms of military contact and the absence of problems should not be perceived as a success criterion. In order to struggle with

this crime, it must be demonstrated that the offenders will undergo a trial and will be punished for their crimes in any case.³¹

Regional states, particularly the African Union can make great contributions to this struggle. In this context, Kenya sets a good example for conducting legal proceedings against the delivered pirates in various cases.³²

Lawrence of Arabia once said that countering insurgency is a messy and slow process, like eating soup with a knife. The West's attempts to protect maritime transportation from piracy are reminiscent of Lawrence's metaphor. In our case, the situation is even more complicated as the pirates' playground is the vast ocean. The elimination of these actions require a strong authority within the territorial domain of Somalia; an authority which is stronger than the pirates. The Islamic Courts Union which took control over Mogadishu until it was occupied by Ethiopia with the support of USA, defined the hijacking of the Saudi Arabian super tanker as a major crime to Islamic Law and threatened to use force if they won't let it go.

The US backed Somalian TFG is a loose coalition of rival tribes and it doesn't have an overall influence. The situation was far more stable in Southern Somalia and Mogadishu during the Islamic Court's reign. But since the Islamists have provided shelter for a limited number of Al-Qaeda members, the USA chose to back the current transitional government and the Ethiopian occupation. The current Somalian TFG's security is dependent to the Ethiopian occupation force which is itself intimidated by the radical al-Shaabap insurgence. Some observers claim that the Shaabap insurgence is cooperating with the pirates and is protecting them in exchange of naval combat trainings for insurgents. According to another group of observers, the Islamists are still appropriate potential allies. International naval operations are very costly and difficult in the long term. It seems that the key actors in Somalia will take coercive measures against piracy only if and when their

political and economic gains will beat their current interests gained by piracy.³³

The US Defense Department spokesman has contended that, "You could have all the navies in the world having all their ships out there, you know, it's not going to ever solve this problem. It requires a holistic approach from the international community at sea, ashore, with governance, with economic development."³⁴ It appears that the piracy issue which is posing great threat to international peace and security is inseparable from the overall issues in Somalia. It takes a comprehensive and well-attended peace environment and a strong central government to eliminate the Somalia originated piracy incidents. Actually, piracy is just one of the indications of the anarchic atmosphere in the country. Regional states must sign agreements in order to fight piracy, terms of detention and jurisdiction must be clarified and the offenders must be punished for their actions. Still, the unwillingness of the international community to establish a multi-national force and to take necessary measures is disappointing. Giving weight to the African Mission in Somalia (AMISOM), deploying a peace force in the country and establishing a naval mission force with the capacity to respond the offenses immediately are some of the feasible measures to be adopted. But there is no doubt that the commitment of the Somalians is essential.³⁵

In this context, the UNSC must efficiently implement the weapon sanctions stated in the UN resolution no 733, dated 1992. Freezing the funds and other financial assets of persons subject to this measures and the assignment of the monitoring group to exercise actions as stated in the additional assignment instruction as referred in the UN resolution no 1844 and dated November 20, 2008, might form complementary instruments of a successful struggle against piracy.

According to J. Peter Pham, there is increasing evidence that at least part of the proceeds from the piracy has gone to fund the Islam-

ist insurgency (Alliance for the Re-Liberation of Somalia: ARS) against the internationally-recognized, but otherwise utterly ineffective, TFG of Somalia. The insurgent “Alliance for the Re-Liberation of Somalia” (ARS) is led by al-Shabaab (the Youth), a group with ties to al-Qaeda which was formally designated a “foreign terrorist organization” by the USA. If the link between Somali piracy and Somali Islamist terrorism grows beyond the current level and deepens the consequences of such a development on the ongoing maritime economic warfare will even become worse. Since 90% of the food aid is shipped by sea transportation, it is obvious that the status of ordinary Somalis will deteriorate. Therefore;

First, commercial vessels need to be better prepared to protect themselves.

Second, a strong naval force with the capacity to respond piracy is crucial.

Third, while an international anti-piracy coalition as advocated by the French is well but the coalition can only be as effective as its components. Therefore, the UNSC Resolution on authorization has weaknesses in terms of applicability.

Fourth, in addition to eschewing entanglements with obstacles like the TFG, it is imperative that ties be forged with effective authorities capable of helping in the fight against piracy.

Fifth, while naval operations can be undertaken to clear the sea lanes of the pirate menace and commando raids launched to rescue hostages, the long term security of the waters requires the development of maritime capacity of states neighboring Somalia.

Finally, even with the naval capacity enhancement initiatives and the development of maritime capacity of neighboring states there would still remain a security gap. Therefore, considering the adaptation of other measures besides the leveraging of non-traditional security resources within the private sector would help to fill the security vacuum.³⁶

Within the framework of facts stated above, an overall strategy to be developed against piracy could consist of the components below:

•General:

- Rule of Law: Appreciation of significance of the International Law.
- Investigation and prosecution of the offence.
- Claiming losses and damages.
- International cooperation, judicial assistance, extradition of the criminals.
- Improvement of Collective Security: Supporting states such as Somalia, Afghanistan, and Palestine within the context of common human values.

•Particular:

- Effective cooperation among regional states.
- Security measures to be taken by the commercial ships.
- Physical security measures.
- Surveillance, early warning systems.
- Tactics: Navigation – maneuver techniques.
- Use of force.
- By Crew
- By Private security

The adaptation and implementation of the mentioned general and specific measures are closely related with the establishment of a successful cooperation and common approach among the states that hold a major stake on sea trade, the regional states, the sea trading companies, the flag countries of intimidated vessels, states having their nationals on board of an intimidated vessel, other states and insurance companies. Therefore, the designation of; a joint action plan frame, a feasible joint operation plan and a code of conduct, cooperation procedures, authorized points of contact and other necessary details -similar as in the case of a military practice- could be effective.

Presently, sea trading companies have established the International Maritime Bureau (IMB) to act as a collective monitor-response contact point against piracy. One of the specialization

areas of the IMB is the struggle against piracy.

The IMB Piracy Reporting Centre was established in Kuala Lumpur, Malaysia in 1992 for this purpose. The center is observing the global shipping routes, reporting piracy incidents to local police and law enforcement forces and making announcements regarding regions vulnerable to piracy attacks.³⁷ Other assisting organizations are; BIMCO - The Baltic and International Maritime Council, INTERTANKO - International Association of Independent Tanker Owners and IMO - International Maritime Organization, the specialized agency of the United Nations. The main contact point of the Turkish sea trading sector is the DTO – Chamber of Merchant Shipping.³⁸

6.2. Operational and Tactical Approach

It is possible to say that there are ample clauses in the International Law to deal with the struggle against piracy. The intention of British authorities to transfer the captured pirates to Kenya in order have them tried by the Kenyan courts is a significant initiative but practical difficulties pose serious bottlenecks. Danish Naval Forces have captured men they suspected to be pirates in many instances but had to dump them on the shore since the Danish Government decided it did not have jurisdiction. The American warships surrounding the hijacked Ukrainian freighter have intercepted several small skiffs going to the freighter, but let the men aboard go because American officials said they did not want to put the freighter's crew in danger. Besides, there wasn't a proper quarter in the destroyer to detain suspects.

These experiences bring up the idea of employing private security corporations, consisting of professionals who previously served in Iraq or Afghanistan. Burly men with tattooed forearms and black shades are now common sights on the beaches of Oman, Kenya and Djibouti. But despite their tough looks, they are usually unarmed because most countries do not allow them to bring weapons into port, so they are often forced to confront machine-gun-toting pirates with fire hoses.³⁹

The Assembly of the International Maritime

Organization held on November 24, 2005, adopted a resolution on piracy and armed robbery against ships in waters off the coast of Somalia. Accordingly, governments are urged to:

- Issue advice and guidance on any measures or actions they may need to take when they are under attack, or threat of attack, whilst sailing in waters off the coast of Somalia.
- Encourage ships to ensure that information on attempted attacks or on committed acts of piracy or armed robbery whilst sailing in waters off the coast of Somalia is promptly reported to the nearby coastal States and to the nearest most appropriate Rescue Co-ordination Centre.
- Provide a point of contact through which ships entitled to fly their flag may request advice or assistance when sailing in waters off the coast of Somalia and to which such ships can report any security concerns about other ships, movements or communications in the area.
- Bring to the attention of the IMO Secretary-General information on attempted attacks or on committed acts of piracy or armed robbery against ships whilst sailing in waters off the coast of Somalia so as to enable him to promptly convey such information to the other Member Governments for their consideration and any action they may deem necessary under the prevailing circumstances.
- Encourage ships to implement expeditiously, for the ship's protection and for the protection of other ships in the vicinity, any measure or advice the nearby coastal States or any other State or competent authority may have provided.
- Establish, as necessary, plans and procedures to assist owners, managers and operators of ships in the speedy resolution of hijacking cases occurring in the waters off the coast of Somalia.
- Investigate all acts or attempted acts of piracy and armed robbery against ships entitled to fly their flag occurring in the waters off the coast of Somalia and to report to IMO any pertinent information.⁴⁰

7. Piracy: Practices-Patterns

Pirates who previously had only guns and knives are now heavily equipped with sub/heavy machine guns, mortars, bazookas, short-range missiles and rocket propelled grenades.

They are based in maritime environment, in mother vessels, use GPS and radio, have the capability to detect all technical specifications of their target vessel beforehand, can send fake distress signals to interrupt sea communication and traffic and usually do attack in the dark.⁴¹

The incident of November 28, 2008 is a good example to learn from. In this incident, Somali pirates attacked a vessel while a warship on patrol nearby had sent helicopters to intervene in the attack, but they arrived after pirates had taken control of the Liberian-flagged ship that was being operated out of Singapore, though ship master had sent a distress call to the center, which relayed the alert to international forces. Still on board were 25 Indian and Bangladeshi crew members, and the British security guards were rescued after jumping into the sea, officials said.⁴² How should one respond to such attacks? The problem is that the options are limited once the pirates get on board of a merchant ship and take the crew as hostages. Most countries or companies just pay the ransom, which only emboldens the pirates to pull off even more high-profile hijackings. While the U.S. Navy patrols the region, it cannot be everywhere at once. The best, simplest answer is better shipboard defenses and smarter protective procedures. Protecting a commercial vessel on the sea is like protecting a warehouse on land: One wouldn't leave a warehouse full of valuable merchandise unguarded. Shipboard defenses don't necessarily have to involve heavy weapons; some attacks have been repelled by the use of fire hoses. Pirates are usually sneaking up on ships in small boats, and using grappling hooks to quickly board and overwhelm the crews who are often caught unarmed. So the area around cargo ships should be flooded with light, and more people should be posted to watch. Armed security teams could complete the system but such additional costs are

an extra burden for shipping companies. Another fact is that too many commercial vessels are sailing the dangerous waters of the Horn of Africa in too slow speed, making them fat targets whereas traveling at top speed and taking evasive maneuvers could make the job of the pirates much more daunting. Although this option will increase the costs, still it is cheaper than the ransom to be paid.⁴³

7.1. Private Security

Hiring private security service as a means of protection against piracy is a frequently mentioned solution especially for the commercial vessels sailing on the high seas of Nigeria, the Strait of Malacca and the African Horn.⁴⁴ The responsibility of the International Naval Force in the region covers an extensive area of 25.7 million square kilometers and the naval vessels of a limited number cannot be everywhere at once. Therefore, the presence of the US 5th fleet doesn't mean that the threat is entirely neutralized. Armed guards seem to be a practical and direct solution. They can remain on watch, open a warning fire if they see any boats sneaking, can sink the boats if the pirates would not return and the problem would be solved. However, in case of any prosecution, the crew must prove that the persons approaching in speed boats had a criminal intent. According to some definitions, for example, the act of piracy is not completed until grappling hooks are hooked and the act of boarding sets out. On the other hand, the private security approach has positively influenced the related tool-equipment markets. Many products have been developed such as razor blade barriers, cannon sound effects and other sound devices. In brief, brute force is most likely the most effective and deterrent method to be used against pirates since the bandits will have to think twice about possible risks, losses and gains. Still it wouldn't be wise to believe that the methods of the 18th century are still applicable at the present day.⁴⁵

7.2. Military Approach: Naval Operations

Even before the recent rash of piracy, foreign naval forces have had a significant presence in the area. For more than a decade, the U.S. Na-

vy's 5th Fleet, based in Bahrain, has patrolled the waters in and around the Persian Gulf and Red Sea. Also, a western multinational-naval force mandated with providing maritime security 'Combined Task Force 150' has been based in nearby Djibouti for the past several years.⁴⁶

As the previously mentioned UNSC measures and resolutions were adopted, various international military operations had already started in the region. Besides the operation of the NATO Naval Forces, warships of some European countries and some other states were patrolling the region.⁴⁷

The naval forces deployed in the area as of September 2008 were consisting of the combined task Force 150 (Denmark, USA, Germany, France, Netherlands, United Kingdom, Pakistan, Canada; 3-15 vessels in patrol against piracy), the US 5th Fleet and the NATO fleet that came from the Mediterranean. In December 2008, the NATO naval forces were replaced by the EU naval forces.⁴⁸ During the end of the same month, two Chinese destroyers and a supply ship set sail for the region on a mission to protect Chinese merchant ships and to support international efforts against piracy. The ships were carrying two helicopters and special operations forces.⁴⁹ These forces have been responsible of the covering the Red Sea and Suez Canal regions stretching from north to south with 600 miles length and 3-6 miles width, called the "Maritime Security Patrol Area".⁵⁰

Lately, concrete steps have been taken in Turkey to deploy the Turkish Armed Forces to involve the anti-piracy struggle in waters off the coasts of Somalia. In this context, the Turkish Assembly authorized the Turkish Government for one year. The Government is expected soon to direct the Turkish General Staff in accordance with the previously mentioned UNSC resolutions and the frame which was set by the Turkish Assembly. Accordingly, the General Staff will set, release and conduct operations involving the Cabinet's basis; political and military goals conflict and conduct codes and op-

erational borders. It must be remembered that such a naval operation will occur within the scope of a law-enforcement operation.⁵¹

7.2.1. Contingency Planning

One must admit that both the EU naval force operations and other remaining efforts are short termed, temporary efforts. Besides, if an effective cooperation among these multinational forces cannot be established, pirates may easily exploit any power vacuum. The nature of the threat leads to practical difficulties: Modern vessels equipped with radars, sonar, infrared cameras, helicopters and long range weapons can demonstrate limited efficiency. Pirates also change tactics and keep up with the developing methods and changing circumstances in this hunt, participated by more than twelve warships from Italy, Greece, Türkiye, India, Denmark, Saudi Arabia, France, Russia, UK, Malaysia and USA. Pirates attack their targets with 20-30 small boats, like bees and are heavily armed. One Italian officer said that going after them in a 485-foot-long destroyer, bristling with surface-to-air missiles and torpedoes, was like "going after someone on a bicycle with a truck."⁵²

In this context, it might be useful to examine related concepts and methods with concrete examples for contingency planning.

Suppressive Intervention:

In November 12, 2008, the Royal Navy frigate HMS Cumberland has repelled a pirate attack on a the Danish cargo-ship MV Powerful, shooting dead two Somali pirates in accordance with the rules of engagement. The rest of the pirates surrendered and the vessel was rescued.⁵³

In December 25, 2008, the German Marines saved an Egyptian cargo-vessel from being hijacked. The German frigate Karlsruhe, responded to the distress of the cargo-vessel Wabi Al Arab and sent a helicopter. Pirates who ceased the attack were captured and their arms were destroyed.⁵⁴ Vessels, crew and goods

captured by the pirates:

In the context of several operations by performed by Indian warship INS Mysore, in one incident Indian marine commandos have captured 23 pirates.⁵⁵

Release in return for ransom:

Pirates freed a cargo vessel and its 18 Indian sailors in November 16, 2008, after being paid a ransom.

In August 2008, a Japanese-owned chemical tanker was released in return of 1.6 million Dollars.

Ukrainian vessel MV Faina carrying 33 T-32 tanks to Kenya was seized by the pirates on September 25, 2008 and was held at the port of Hoboyo. The vessel was released on February 5, 2009 against 3,2 million Dollars ransom payment and moved to Kenya. Controversy is looming over the Ukrainian vessel carrying military equipment with reports indicating that its cargo was destined for south Sudan and not the Kenyan military. The content of the cargo and the situation of the vessel makes the situation even more complicated.⁵⁶

7.2.2. The Legal and Military Framework of the Operation

The mission of the International Naval Force was described as; patrolling off the coast of Somalia, struggling against piracy, protection of the humanitarian aid activities and the vessels involved in such activities. In such a complex circumstance, it is crucial to establish cooperation and to define a contact point mechanism for this purpose, as also stated in the UNSC resolutions. Such organization requires special agreements and regulations. The operation must be undertaken consistent with applicable international humanitarian and human rights law.

The sea trade sector is expecting the naval forces to go on board, look for evidence of piracy, confiscate the weapons, confiscate the ships if possible and arrest the pirates.⁵⁷

In order to design efficient tactics against piracy, rules of engagement and codes of conduct

must be feasible and properly defined. The historical background of the operation area and all predictable facts must be properly analyzed so that the staff to participate the operations will not be held legally or criminally responsible for the consequences.⁵⁸

7.2.3. Rules of Engagement

The operation against piracy is an international law enforcement operation, not a war or a domestic security operation. The aim of the law enforcement operation is limited by; deterring a crime, preventing or repressing an offense which is already being committed, finding the offender/offenders and prosecution of crimes. As a rule, a law enforcement operation is not launched to eliminate or kill the suspect/s.

Though, even such operations may result with casualty due to the developed circumstances on the scene. Therefore, "mission specific rules" regarding the use of force must be designed in advance as "rules of engagement". The scope for using force must be limited within the legal limits: accomplishment of mission or self defense.⁵⁹

On the other hand, the aim of a combat or a domestic security operation is limited to eliminating an enemy and submitting the captured ones to judiciary. Such authority includes using of lethal force. Gray Area situations with regard to the scopes of combat and law enforcement are remedied with special operation techniques.

7.2.4. Code of Conduct

The treatment of the vessels, persons and goods, seized as a result of an anti-piracy operation must be defined in the format of a "code of conduct". Terms regarding the delivery of the rescued vessel, determination of the nearest warship to the targeted vessel and protection of the vessel during its remaining course after the rescue are some of the cases that need to be clarified within the terms of this code.

Principles and regulations regarding the specification of the offenders, victims and evidences, and the recording process can be defined

within the complementary rules. Handling of the confiscated weapons and equipments may be subject to a different regulation.

7.2.5. NATO: Operation Allied Provider

NATO was supporting the Africa Union Mission in Somalia since 2007 by supplying sea transportation. According to UNSC Resolutions nos. 1814, 1816 and 1838 and request of the UN Secretary General of 25.09.2008, NATO defense ministers discussed the issue of supporting the WFP and strengthening the struggle against piracy within an operation, for the first time in a meeting in Hungary.

NATO defense ministers agreed to respond positively to the UN request and deployed seven warships to the region on 9 October, during a meeting held in Budapest by referring to the workshop held in Lisbon on 19-22 May, 2008 with the participation of NATO Peace and Security Science Program (SGS), Italian NGO EuroCrime, the Terrorism, Transnational Crime and Corruption Center (TRACCC) and some other institutions.⁶⁰

The NATO Standing Maritime Group 2 (SNMG2) of the Mediterranean, a multinational, integrated maritime force made up of vessels from different member countries has been ordered to take part in these operations.

The force comprised destroyers from Italy and USA, assault boats from Germany, Greece, Turkey and UK and another Italian vessel deployed to the Horn of Africa where they served between October 24 and December 12, 2008.

The EU naval force took over the next post.⁶¹

The NATO Military Committee, which draws up operational plans for the western alliance, is conducting complementary studies for the EU, US Central Command and other units.

The Operation Allied Provider that lasted until mid-December adopted an overall operation approach against piracy. But what the Military Committee is now looking at is whether NATO needs to be there on a semi-permanent basis. Another central issue was whether the United Nations should now bring all operations under a single flag.⁶²

As a result, the NATO operation enabled 30.000 tons of food to safely arrive Somalia, prevented and deterred many attacks aiming commercial vessels.⁶³

7.2.6. The EU: Operation Atalanta (EU NAVFOR)

The Operation Atalanta is based on the UNSC resolutions no 1814 and dated 15 May 2008, no 1816 dated 02 June 2008, no 1838 dated 7 October 2008, no 1846 dated 02 December, no 1851 dated 16 December 2008 and the EU Commission's related resolution and proceedings within the European Security and Defense Policy (ESDP).⁶⁴ The operation EU NAVFOR started on 08 December 2008 and reached its Initial Operational Capability on 13 December 2008 in order to contribute to:

- the protection of vessels of the WFP (World Food Programme) delivering food aid to displaced persons in Somalia;
- the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast.⁶⁵

EU forces in the Gulf of Aden have prevented several pirate attacks in the last few days and arrested more than 25 pirates.

- In one of the incidents, Somali pirates gave up a raid on a Greek oil tanker on 2 January 2009 after the intervention of EU forces. The pirates, driving speedboats, were trying to board the tanker when a frigate, jet fighter and helicopter dispatched by the European Union's Atalanta mission approached.
- The French Government said that a French navy ship participating in Atalanta stopped two speedboats targeting a Panamanian freighter and arrested the boats' eight crew members.
- On 4 January 2009, the French warship Jean de Vienne stopped Somali pirates in the Gulf of Aden from seizing a Croatian and a Panamanian cargo vessel. It has been stated that the 19 Somali pirates, will be transferred to the Somali authorities.

the operation certainly played a deterrent role, however, Somali pirates are still holding 15 ships with more than 200 crew.⁶⁶

8. The Situation of the Ships Related with Turkey

Some of the seized vessels in the region are either flying the Turkish flag or are owned by Turkish citizens.

- M/V “Yasa Neslihan” vessel, carrying 77,000 tons of iron ore from Canada to China, was seized on 29 October 2008 while sailing in the Gulf of Aden, 16 miles off Yemen. The vessel has 20 crew members on board.⁶⁷ Recent news indicates that the vessel was released in return of a ransom payment of 2 million Dollars.⁶⁸
- The Karagöl, owned by the YDC Maritime Company, was hijacked on November 12, 2008 in the Gulf of Aden while transporting more than 4,000 tons of chemicals to the Indian port city of Mumbai. The vessel which had 20 crew members on board was traced by the Turkish Gökova Frigate then serving in the region. The vessel is still held in Halen/Eyl, Somalia. No information has been received yet regarding the ransom demand.⁶⁹

M/V “Bosphorus Prodigy”, flying the flag of Antigua-Barbuda was seized on 16 December 2008 in the Gulf of Aden. Recent news stories state the release of the ship and its crew.

As seen, in such occasions the options of the authorities are limited and even the negotiation and ransom payment process is conducted in difficult circumstances and takes a long period of time.

Evaluation and Conclusion

Piracy and armed robbery on high seas are the indirect consequences of the global and regional security environment. They influence the global sea trading activities and the global economy in a negative way. The attractiveness of the financial gains obtained through piracy and its abuse by regional or global terrorist organizations is posing a great threat to international peace and security.

It can be said that there are sufficient rules and regulations covering the struggle against piracy within the International Law. The resolutions of the UNSC are verifying this argument and are authorizing member states, in coordination with the TFG and take part in the struggle. The main issue is to develop feasible strategies to establish security within Somalia and coordinate regional states to enhance their defense capacities. In the meantime, the solution requires the efforts of the sea trade sector. Their efforts can be supported by private security and by the international naval forces deployed in the region. The military operations will be undertaken in compliance with the international law, law of armed conflict, human rights law, special agreements and the national jurisdiction of member states.

These developments influence Turkey in a direct proportion on the size of its sea trade fleet. Vessels flying the Turkish Flag or owned by Turkish citizens are also targeted by pirates. Some of those vessels have been released in return of ransom, the rest are still seized by the pirates. The nature of the offense, the distance and some other reasons are limiting the options of the governments and the companies to a large extent.

ENDNOTES

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- 11 For detailed info also see Ian Brownlie, Principles Of Public International Law, Sixth Edition, Oxford University Press, 2003, pp. 228-230.
- 12 Compare: Roger Middleton, "Banditry In Somalia: Threatening Global Trade, Feeding Local Wars", Chatham House, October 2008, <http://www.chathamhouse.org.uk/publications/papers/view/-/id/665/> ; Gal Luft – Anne Korin, "Terrorism Goes To Sea", Foreign Affairs, November/December 2004, <http://www.foreignaffairs.org/20041101faessay/gal-luft-anne-korin>
- 13 We believe that this approach is the easy way out. It ignores the facts that the military power of the West and things to achieve by using military means, are naturally limited, that the West is already pushing its military limits, allocating some of its naval forces to this region is not a desired practice but in the contrary, the abuse of sea piracy and its consequences is a sensible strategy for terrorist organizations.
- 14 The UNSC resolution no 1853 and 1844 stating that the Djibouti Peace Agreement and the following dialogue process, and UNSC resolution no 773 stimulating weapon sanction and freezing of the accounts of involved persons and institutions, are regarded as key facts to solve the Somali issue which poses great threat to international security and peace. The aim and scope of the weapon sanction was further defined by the resolutions no 1744 and 1772. The Committee which was formed due to resolution no 751 regarding practical difficulties was updated, the monitoring group was made functional and the scope of the brief was extended.
- 15 Egypt is closely interested with the negative influences of sea piracy on the Suez Canal which

- connects the Red Sea to the Mediterranean Sea. The charge paid by vessels to cross the canal (7, 5 % of the global sea trade is crossing this canal) is a non-negligible income for Egypt. Nevertheless, most of the big lines have already re-directed their routes to the Cape of Hope.
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- 24 Comparison: Eugene Kontorovich, "International Legal Responses To Piracy Off the Coast Of Somalia", ASIL Insight, 6 August 2009, Volume 13, Issue 2.
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- 29 Also see Andrew England – Robert Wright, "Pirates Raise Stakes with Oil Tanker Hijack", FT.com, 17 November 2008, <http://www.ft.com/cms/s>. It has been informed that the Sirius Star was released in return for 3 million Dollar ransom, the money was airdropped but several sea pirates have drowned during this process due to overturning and the releasing was delayed due to chaos. (see also "Pirates Say Drowning Delay Ship's Release", CNN.com, 9 December 2009, <http://edition.cnn.com/2009/WORLD/africa/01/09/somalia.pirates.sirius.star/index.html>; "Korsanlar, Süper Tankeri Serbest Bıraktı", Deniz Haber, 9 January 2009, <http://www.denizhaber.com.tr/guncel/17087/korsanlar,-super-tankeri-serbest-birakti-.html>; "Somali Pirates Free Tanker After Ransom", CNN.com, <http://edition.cnn.com/2009/WORLD/africa/01/10/pirates.tanker/index.html>)
- 30 Rohit Honawar, "Banditry – Perils & Procedures", Inclusive World Forum, December 2008, http://www.strategicforesight.com/banditry_Perils_Procedures.htm
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- 56 The cargo manifest of the vessel reads “MOD-GOSS – SPLA”. Sudan is in civil war for the last 21 years. If the intelligence is correct, the CPA-Comprehensive Peace Agreement dated 2005 might have been violated. The final user document -which is compulsory according to the Global Weapon Trade Agreement also signed by Kenya-, is missing. One option is to return the weapons to Ukraine in case of release. The vessel has 21 crew members and is surrounded by US warships. (Also see: Pirates To Kill Crew On Arms Ship If NATO Ships Attack”, CNN.com, 23 October

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- 2008, <http://edition.cnn.com/2008/WORLD/africa/10/23/somalia.banditry.ap/index.html>; “Pirates Free Ship, Doubts Remain On Destination”, Time, 6 February 2009, <http://www.time.com/time/world/article/0,8599,1877628,00.html>)
- 57 Robert Wright, “Call For Navies To Seek Out Pirates’ Ships”, FT.com, 18 November 2008, <http://www.ft.com/cms/s>
- 58 The MV Faina, having a special status for being loaded with military equipment and still being seized by sea pirates, can make a good case study in this aspect. Subjects such as how the surrounding sea force will proceed in case of release, delivery of the vessel, gathering information from the crew by the nearest war ship, protection of the vessel during its remaining course, handling of the military equipment and weapons must be evaluated properly and set according to regulations. If weapons are legally supplied there won’t be much to do.
- 59 In a law enforcement operation “using force” doesn’t necessarily refer the use of firearms and the use of firearms doesn’t necessarily refer the use of “lethal force”.
- 60 “Operation Allied Provider”, NATO, 14 January 2009, <http://www.nato.int/issues/allied-provider/index.html>
- 61 “NATO Task Group Of Operation Allied Provider Has Begun Escort Duties”, NATO, 27 October 2008, http://www.afsouth.nato.int/JFCN_Operations/allied_provider/news_release
- 62 James Blitz, “NATO Aims To Combat Somalia Pirates”, FT.com, 3 December 2008, <http://www.ft.com/cms/s>
- 63 “NATO Hands over Counter-Banditry Operation to EU”, NATO, 15 December 2008, <http://www.nato.int/docu/update/2008/12-december/e1215a.html> . We believe that the examination of NATO naval operation in terms of assignment, authorization and jurisdiction would be useful. International Law, BM terms and UNSC resolutions are forming the initial framework. But the operation must comply with the special acts of the NATO convention and the Turkish Law –from the Turkish stand point- as well. The “Operation Allied Provider”- was a force enforcement operation held within the understanding of collective security. But it’s hard to say that such task was defined in the NATO convention. Another significant aspect is that one Turkish warship joined the operation without the permission of the Turkish Assembly. Obviously, the NATO convention has two aspects which are the security & political and the defensive & military aspects. The defensive aspect (military extent) is limited by collective defense. It covers the collective security concept. It is hard to come to another conclusion by considering the 5th act of the NATO convention. On the other hand, Turkish participation to such operation must comply with the Turkish Law. The permission of the Turkish Assembly is the principal condition. Even if relations with NATO are the case, it must be remembered that “preparation” (visit, training, drill) and “action” (active operation) are different concepts. The government might be authorized to decide for the participation to a military drill. But in the case of such extensive operation that covers the act of force use, we believe that the government is not the sole authority.
- 64 Also see “Legal Basis”, Council of the European Union, 14 January 2009, http://consilium.europa.eu/cms3_fo/showpage.asp?id=1519&lang=EN
- 65 “EU NAVFOR Somalia”, Council of the European Union”, 14 January 2009, http://consilium.europa.eu/cms3_fo/showpage.asp?id=1518&lang=en
- 66 Elitsa Vucheva, “EU Forces Prevent Somali Pirate Attack”, euobserver.com, 5 January 2009, <http://euobserver.com/9/27342?print=1>
- 67 “Turkish Ship ‘Distressed’ In Pirate Waters”, CNN.com, 30 October 2008, <http://edition.cnn.com/2008/WORLD/africa/10/30/somalia.pirate/index.html>
- 68 “Somalili Korsanlar Neslihan’ı Biraktı”, Radikal, 8 January 2009, <http://www.radikal.com.tr>
- 69 Bkz. “Turkish Ship Heading For India Hijacked Off Coast Of Yemen”, Today’s Zaman, 13 November 2008, <http://www.todayszaman.com/tz-web>



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