Pirates, Fishermen and Peacebuilding: Options for Counter-Piracy Strategy in Somalia

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Piracy has always been a danger to seafaring people, yet modern pirates surpass their predecessors in numbers and riches. Indeed, with the end of the Cold War, piracy became more prevalent than at any other time in history. With incidents reported on a weekly or even daily basis, Southeast Asia, the Bay of Bengal, the Strait of Malacca, the coast off Nigeria, and the Horn of Africa have become major piracy hot spots since the 1990s. For some, ‘piracy is the world’s longest running armed conflict, a de facto low-level war that has simmered on the seas for thousands of years’. Such an interpretation sees piracy as a simmering militarized conflict between pirates on the one side, and fishermen, seafarers, shipping companies and private security companies on the other. Piracy however does not only pose a danger to the lives of seafarers, fishermen and their families; also, as the Somalia case exemplifies, it can affect people dependent on humanitarian aid; increase security problems, for instance through the influx of small arms in already fragile situations; and challenge legitimate local and regional governance systems.

Despite its seriousness, in the past decades piracy has often been approached as an affair to be dealt with by fishermen, seafarers, shipping companies and their associations and private security-providing partners. While nation states in which affinity incidents occur, or whose property is at stake, have been called for assistance, dealing with piracy has been primarily a matter for private or corporate actors.

Since 2007 this evaluation has substantially changed. Triggered by piracy incidents off the coast of Somalia, there is a new evaluation of the piracy problematique and indeed a new level of international political engagement. Somali piracy has become a frequent subject of United Nations Security Council (UNSC) deliberations, which have led to a substantial number of resolutions, such as Resolutions 1816 and 1851. An international coordination group (the Contact Group on Countering Piracy off the Coast of Somalia, hereafter The Contact Group) was established at the United Nations in 2009 as the major global mechanism to coordinate and direct the fight against piracy. Several international naval missions have been employed to address piracy. Missions coordinated by the North Atlantic Treaty Organization (Combined Task Forces, Operation Allied Provider, Allied Protector, Ocean Shields) and a European Union (EU)-led operation (Operation Atalanta) have been sent to the Gulf of Aden to take action against piracy. Until recently the international legal order was seen as sufficiently developed to address piracy. This has changed. In the face of
coordination and implementation problems and a lack of legal capabilities, even the creation of a new international tribunal was discussed.⁵

Somali piracy is no longer primarily understood as a local or regional problem; it is now addressed as a threat to international peace and security. Current international political activities demonstrate the growing international attention to piracy and an increasing willingness to engage concertedly. A new international legal and military infrastructure is under development. Such a development is a necessary consequence of the fact that piracy is a problem which escapes the boundaries of the nation state. It is a problem of transnational or even global dimensions, due not only to the fact that piracy incidents occur on international waters, or that pirates harbour in one nation’s waters and attack in another’s, but also to piracy’s opportunity structures. The conjunction of weak states and geographical proximity to navigable and important waterways of steadily increasing global commerce and trade makes piracy more attractive. There is also – although contested – a potential link to terrorism. Piracy might be used to finance terrorist activities or to undermine international embargoes. This increases willingness to place the complex matter of Somali piracy on the international agenda.

Despite the new willingness to address piracy through international cooperation, our analysis finds that the policies in place are astonishingly limited. Current policies are narrowed down to military surveillance and deterrence solutions and criminal prosecution mechanisms. The majority of activities focus on the sea and not the land. Moreover, the policies do not draw on experiences gathered in coping with other threats. Rather than considering the broader repertoire of policy options the international community has at its disposal, current strategies are narrow and unsustainable in the long run. Moreover, the increased resources for current policies, although showing some effect, have not significantly reduced piracy incidents. There are indications that piracy organizations have adapted to the international programmes and reacted by tightening their transnational organizational structures, increasing their operational terrain, and improving their tactics and use of intelligence as well as navigation and communication technology. Even if the international community devotes more resources to its current naval patrolling programme, it is doubtful that such a policy can be maintained in the long run. If piracy off the coast of Somalia is only one instance of contemporary piracy, and if the international community is indeed willing to seek a new level of engagement to address piracy globally, the experience gathered in Somalia will be fundamental in order to determine the direction that future engagement in other regions may take. Policy alternatives are needed.

In this article we develop a more encompassing perspective on the piracy problem. We demonstrate the value of approaching piracy as a problem of ‘peacebuilding’. Such a shift is not merely rhetorical. It is an attempt to provide a restructuring of the piracy problem, a reframing that recognizes that the repertoire of policy solutions for addressing piracy is much wider than currently conceived. This repertoire may include development and security assistance programmes as well as state-building programmes. It is, moreover, to integrate the lessons learned in the frame of international peacebuilding operations into counter-piracy strategies.
Specifically, these lessons include avoiding technocratic solutions, paying attention to power constellations, integrating local knowledge and pursuing incrementalism. Drawing on these experiences, we can identify more efficacious as well as more sustainable solutions. Considering peacebuilding experiences leads us to the outline of a substantially revised and more sustainable counter-piracy strategy. In this paper we outline the principles of a strategy that we dub an incremental strategy, and present different policy alternatives based on these considerations. In contrast to existing research, which is primarily geared towards improving existing policies, we demonstrate the need to reframe the problem and think about new and different measures within such a frame.

Our argument unfolds in three steps. In the next section we review the international community’s current responses to Somali piracy. We demonstrate that three options currently direct the policy discourse: deterrence, prosecution and military intervention. Criticizing this spectrum, we argue for a shift in perspective that adopts the lens of peacebuilding. We turn to the contemporary literature on peacebuilding. Section three summarizes the core lessons from the academic discourse on peacebuilding. Based on these lessons, we argue for the necessity for an incremental strategy experimenting with the wider repertoire of peacebuilding. Drawing on peacebuilding lessons, the final section develops a portfolio of policy alternatives. We argue that if the international community wishes to take piracy seriously and respond to its complexity, it would be well advised to adopt a policy in which these alternatives are considered.

The Promises and Perils of Current Counter-Piracy Discourses

The growing number of reported incidents and the rising media interest in piracy are two factors which led to intensified policy debate in Western public and state administrations, as well as international organizations. The main protagonists of the debate consist, in principle, of three types of actors: first, the victims; that is, seafarers reporting their experience; second, members of the military profession or strategic studies; and third, criminal prosecution lawyers and legal theorists. The nascent academic discourse is dominated by security studies scholars elaborating (naval) counter-piracy strategies and tactics and legal researchers debating the deficiencies of national and international (public) law and practical problems of prosecution and human rights. While this is not an argument against the scope of authority of the security and legal professions, their supremacy is certainly a factor in two related major discrepancies in the contemporary discourse on piracy. The first concerns the lack of apprehension of the local causes, structures and practices of piracy. The second regards the limitations of policy options. It is the latter discrepancy we are concerned with here.

Our review finds that current policy discourse is narrowed down to three counter-piracy options: first, a policy of surveillance and deterrence via the means of military suppression resembling police work that aims to improve surveillance for preventing and deterring attacks by a visible naval presence; second, a policy of deterrence via legal means that aims to build up and strengthen mechanisms of legal prosecution; third, a policy of combating and eradicating piracy via (serious) military means,
which could even suggest military intervention to combat piracy on land. Below we review all three and scrutinize the reasons why these options are inefficacious, unsustainable or simply unfavourable.

**Military Suppression**

A policy of surveillance and deterrence via the means of military suppression resembles police work and centres on a visible naval presence to improve surveillance and to prevent and deter attacks. This policy is built upon the idea of increasing the operational risk for pirates and reducing the chances of ships being kidnapped and a ransom demanded. Such deterrence relies on the assumption that pirates could be deterred by anything that reduces the estimated probability of operational success.

Initiated in late 2008, as pirate incidents in the Gulf of Aden increased sharply and threatened one of the busiest global shipping lines, this policy is currently implemented in the frames of three international counter-piracy missions off Somalia: the EU’s Operation ‘Atalanta’, NATO’s Operation ‘Ocean Shield’, and the US-led Combined Task Force-151. These EU and NATO missions are supported on an *ad hoc* basis by non-member countries, among them China, Russia, and India. It has been estimated that on any day between 30 and 40 naval vessels participate in the patrolling programme. These operations are authorized under consecutive UNSC resolutions, starting with resolution 1816 (2008). The resolution authorized and actively encouraged naval forces to enter Somali waters and to use military measures to repress piracy.

The strategies are essentially defensive and the military means moderate, with force used only in self-defence. According to resolution 1816, measures include ‘but [are] not limited to boarding, searching and seizing vessels engaged in or suspected of engaging in acts of piracy’. Patrolling the Gulf of Aden, navies are primarily monitoring the sea, searching and disrupting pirate groups; if necessary, fighting off piracy attacks against merchant vessels, and if possible arresting them. These activities are supported through the International Recommended Transit Corridor (IRTC), where military assets are deployed strategically to deter pirates and provide protection; the Maritime Security Center-Horn of Africa (MSC-HOA), which manages the corridor and facilitates information sharing between merchant and naval vessels; and the Shared Awareness and De-confliction (SHADE) mechanism, which generally coordinates naval forces in the Gulf of Aden, in particular the patrol system in the IRTC. Furthermore, since 2009 international naval forces have sought to block the coast and to disrupt suspected pirate groups before they reach the high sea to stage attacks against commercial vessels.

The majority of current policy discussions and research focus on enhancing operational capacities and increasing effectiveness of naval responses, most notably by improving cooperation and creating new partnerships in maritime security. For instance, it is suggested that a regional coastguard could be established or new naval strategies introduced, such as tightening the blockade of the Somali coast. International actors aim at maximizing the monitoring capacity and deterring visibility of force and minimizing reaction time to incidents. In sum, the aim of
current strategies and suggested improvements is to reduce acts of piracy by increasing the operational risk of piracy through patrolling.

**Prosecution: Legal Means**

A policy of containment and deterrence via legal means concentrates on the building up and strengthening of legal prosecution. From late 2008, impunity came to be seen as a major obstacle. Deterrence will not work without demonstrating willingness to punish and putting effective prosecution mechanisms in place. The underlying logic is that pirate organizations will be threatened by the risk of imprisonment. While such deterrence does not directly reach the organizational structures of piracy gangs, it is assumed that the pirate foot soldiers will be deterred from joining such organizations.

Security Council resolution 1851, adopted in December 2008, encouraged states and regional organizations to facilitate the prosecution of pirates and since 2009 several legal mechanisms have been established to pursue that aim. Most states with a naval presence in the Gulf of Aden remain hesitant to prosecute pirates at home. Instead they favour relying on bilateral agreements that facilitate the transfer of pirate suspects to regional states, where they are supposed to be tried and imprisoned. Notably, agreements have been concluded between the EU, France, the US and the UK on the one side and Kenya and the Seychelles on the other. Since early 2009 an estimated 100 suspects have been deported to these countries and some already have been tried. France has also deported pirates to the Somali regional state of Puntland. Meanwhile, the US, Spain, Germany, France and the Netherlands have started to selectively prosecute pirates in their own courts, especially in cases that involve ships sailing under their flag.

Prosecution of pirates remains a complex legal and practical issue. In contrast to international law, domestic legislations often lack piracy laws and are thus not sufficiently developed to deal with pirates. Moreover, not all states and organizations participating in counter-piracy operations have concluded agreements with regional states to transfer suspected pirates (for example, Russia or NATO). It is also doubtful whether trials in Kenya fulfil international humanitarian law standards; in addition, Kenya’s judicial system is increasingly overburdened and at one point even had to temporarily stop accepting suspected pirates.

Because of such problems, there is an ongoing debate about how existing legal instruments should be improved, or whether new ones have to be created. Some argue that an international or regional tribunal is the only way to guarantee that pirates are held accountable, given states’ problems in prosecuting pirates. Most scholars, however, point out that international law is sufficiently developed to deal with pirates and stress that national legislations should be further clarified to facilitate the prosecution of pirates, and respective capabilities developed. Alternatively, bilateral cooperation agreements could be strengthened and expanded to include other regional states, such as Tanzania, Mauritius, or Yemen. Under the auspices of the United Nations Office for Drugs and Organized Crime (UNODC) and the United Nations Development Programme (UNDP), programmes have been initiated to
increase the judicial capacities of regional states and guarantee that legal and human rights standards are maintained. There are also plans to refurbish prisons within Somalia, in particular in the regional states of Puntland and Somaliland, where several pirates have already been detained. The long-term goal of UNODC and UNDP is to return sentenced pirates to the auspices of the Somali legal system.

A Military Intervention

While the first two policy options rely on a strategy of ‘deterrence by denial’, the third set of options circulating in policy discourses are more offensive. A policy of combating and eradicating via (serious) military means is centred on combating piracy on land. Discussions about military intervention of some sort, involving the employment of ground troops or air strikes in Somalia, have been ongoing since 2008. Such a view draws on received wisdom from strategic history that piracy can only be fought on land: ‘There really isn’t a silver-bullet solution other than going into Somalia and rooting out the bases’, to quote James Carafano, senior research fellow at the Heritage Foundation.

As it is argued, piracy can only flourish because of the absence of a monopoly of violence in the state of Somalia. The prospects of re-establishing a functioning Somali state to fight piracy onshore, however, appear to look rather bleak, at least in the near future, given that the country is embroiled in a bitter power struggle between the government and Islamic militias and varying other groups. Hence, in order to target and destroy pirates’ safe havens on land, military intervention is seen as the only viable option.

In contrast to other options, which are based on defensive military and legal measures, military intervention in Somalia is an offensive strategy that strives to directly tackle and solve the Somali piracy problem. It aims not only to address the symptoms of piracy (the hijacking of ships), but also to treat and eradicate the root (pirates). An offensive strategy does not necessarily mean full-blown military intervention; it can also mean targeted killings.

Targeted air strikes, rush, or hit-and-run tactics are already part of the repertoire of the war against terrorism and have been used frequently in a number of countries, including Somalia. Since pirate ports and hideouts are quite well known and pirate leaders have already been identified, such tactics can be fairly quickly implemented. Resolution 1851 already authorizes such measures when allowing forces to ‘take all appropriate measures in Somalia’ to fight piracy. Special Forces of several countries have already acted on Somali territory to recapture vessels. For instance, in April 2008, French Special Forces went onshore, pursued and arrested pirates and recovered part of the ransom money that was delivered to free a French yacht.

Evaluating the Options

Certainly the option of full-blown military intervention in Somalia appears the least promising, given the historical record of military interventions overall and the
problems caused in their aftermath. Major parts of Somalia remain in a state of civil war, and even if intervention is prepared and implemented more carefully than in the 1990s, an intervention implies becoming part of a violent struggle in which it is often unclear who the legitimate party is, and how a feasible exit strategy may look. Moreover, there is a risk that intervention could further exacerbate the situation in Somalia and lead to further radicalization of parts of the population, notably Islamic groups.

Also, the effectiveness of targeted strikes against pirates seems doubtful. With the threat of vital punishment, strikes could strengthen deterrence. But this does not guarantee success. For example, pirate gangs are quite flexible and could quickly reorganize and establish new bases elsewhere. Moreover, the human and material costs involved in such strikes can be considerable and can result in alienating the local population and thus strengthening piracy gangs, or even filter into terrorist activities against international actors.

Unsurprisingly then, the ‘softer’ repertoire of surveillance, deterrence, and prosecution measures has received most attention from the international community so far. As described, there are ongoing attempts to improve these measures. It is debatable whether such attempts will however succeed in significantly reducing piracy activities in the long run. Indeed, there are several good arguments why they will not.

First, pirates do not seem sufficiently threatened and deterred by prosecution to the degree that they would stop engaging in piracy. Despite several smaller gangs of pirates having been disrupted, arrested and/or convicted since the beginning of 2010, the overall number of pirate attacks has been only slightly reduced.20

Second, as Middleton puts it, pirate organizations have ‘learned the lessons of being hemmed in by these international navies’.21 They have reacted to the presence of naval forces by adapting and improving their strategies. In particular, they have widened their operational terrain, sometimes using advanced navigation and communication technology, and attacked ships as far as one thousand miles (1,600 kilometres) off the Somali coast.22 With more resources gained through ransoms, pirates may further enhance their strategies to evade coalition forces and increase their operational reach.

Third, the expanding zone of piracy activities currently covers approximately more than 2.5 million square miles, an area too vast to be monitored effectively.23 Even if the number of naval and air patrols were increased significantly, they would be unable to guarantee maritime security and protect merchant vessels off Somalia. As pointed out by Mark Fitzgerald, commander of US Naval Forces, Europe and Africa, ‘we could put a World War Two fleet of ships out there and we still wouldn’t be able to cover the whole ocean’.24 Hence, it is doubtful whether an international presence could significantly increase the operational risk for piracy.

Fourth, the probability remains high that piracy will rise again the moment naval missions decrease or are withdrawn altogether. Given the immense costs of current operations, it is unlikely that they can be maintained forever. While surveillance and deterrence can be important means to contain piracy in the short run, it is unlikely that they will significantly reduce acts of piracy in the long run – even if further improved – or contribute to a sustainable solution.
We find such arguments valid, and hence see the need to widen the repertoire of policy options directed against piracy. The current concentration on military and legal means may appear to be part of the problem, not the solution, in so far as it hinders the elaboration of policy alternatives. The too-limited focus on military and legal means casts a shadow on important insights and policy approaches from the wider experiences gathered in 21st century international interventions. Guiding questions should not initially be ‘is it legal?’ or ‘can the military do it?’, but which solutions are available and could work.

This notably concerns the question of sustainable solutions and exit strategies. Strategies concentrating on fighting the offshore symptoms of piracy pursue short-term objectives and seek to achieve quick results, such as arresting pirates, and impacts, such as deterring pirates. Such a strategy, however, fails to consider mid- or even long-term scenarios and fails to address the local conditions out of which piracy emerges.

Yet the potential consequences of a strategy that concentrates primarily on symptoms and short-term objectives are well known in contemporary crisis management. If there is any lesson to be learned from the recent interference and interventions in countries such as Afghanistan, Iraq, or the former Yugoslavia, it is how problematic a policy which tries to separate short-term security concerns from long-term stabilization and development concerns can be. It seems somehow surprising that such key lessons from 21st century peace operations are not openly welcomed, and respective policies more vigorously proposed, when addressing Somali piracy. Even the European Union, which otherwise spearheads holistic approaches under the frameworks of state-building, human security and good governance, has conceptualized its counter-piracy mission by relying primarily on the military and legal apparatus, and follows short-term objectives.25

In summary, in the light of current policy discourse we find a significant need for elaborating policy alternatives to complement existing strategies. Even if the international community will increase the level of resources – money spent, navies sent – it is doubtful that a sustainable solution can be found in the current spectrum of policies.

There are some plausible reasons why current strategy considerations are narrowed down to military and legal solutions. The first set of reasons is discursive and cognitive. The second set involves issues that go beyond piracy. On a discursive and cognitive level, it is firstly obvious that military and legal thinkers have supremacy in elaborating options. This is partially for historical reasons, since it has been navies who have historically eradicated piracy and international lawyers who have established the norms and rules of addressing piracy in the contemporary legal order. Secondly, much of the counter-piracy discourse is driven by wishful thinking – that is, the idea that international engagement is only necessary for a short time span, as very soon a projected Somali central state will be able to step in and address piracy on its own. A second set of reasons is to be seen in the fact that the international engagement to address piracy is not only about piracy, but other interests are also at stake. This includes the organizational interests of navies, geostrategic interests and ambitions, and attempts to reevaluate and reorganize maritime security in broader terms.26
In the following section we primarily address the cognitive and discursive side in arguing that the problem of piracy should be translated into a different problem frame – that is, that piracy should be approached from a peacebuilding angle.

**Lessons from Twenty-First Century Peace Operations**

It is widely felt that international assistance to war-torn societies cannot rely only on military instruments alone, but must be combined, coordinated, and from time to time replaced with measures aiming at the transformation of societies, governance structures and economies. This more encompassing repertoire, has, since the 1990s, been increasingly structured by the concept of ‘peacebuilding’. The concept has made a considerable impact and has led to a re-thinking and re-organization of international interventions. The peacebuilding discourse offers a different frame and a repertoire of policy tools by which a broader, better integrated strategy for coping with piracy can be conceptualized. Many of these tools are familiar, but have not been considered valuable in addressing piracy. The shift from interpreting piracy only as a problem of deterrence to a problem of peacebuilding hence opens a wider base of knowledge that can inform strategy.

How peacebuilding operations succeed and fail is the subject of ongoing academic debates, many of which are scholastic in character. Not all of these debates are of relevance here. We are seeking to summarize some of the core lessons of peacebuilding operations and how they can be translated to piracy in order to broaden the repertoire of policy options, not to provide a state-of-the-art description of peacebuilding discourse.

At the heart of peacebuilding discourse is the observation that countries tend to relapse into conflict once international attention to a former conflict spot drops and the influx of resources decreases. The World Bank team around Paul Collier even suggested that about fifty per cent of the countries in which peace operations have been employed slip back into violent conflict within five years. Peacebuilding is addressed at preventing such a relapse and motivated by the search for sustainable solutions. Approaching piracy as a problem of peacebuilding is hence a matter of recognizing the relapse problem and the flexibility of piracy as well as responding to the need to elaborate sustainable strategies.

Peacebuilding was initially associated with technical support directed at assisting in the creation of state institutions, that is, a democratic political state, a working executive including modern bureaucracy, efficient security forces and a rational legal system, an autonomous civil society and a working market economy. The ‘peacebuilding consensus’ that war-torn societies should be modelled after the modern, liberal Western state however came under considerable critique. The failures, shortcomings and remaining challenges have been well worked out in the literature. As eloquently summarized by Roland Paris, they include:

- inadequate attention to domestic institutional conditions for successful democratisation and marketisation;
• insufficient appreciation of the tensions and contradictions between the various
goals of peacebuilding;
• poor strategic coordination among the various international actors involved in
these missions;
• lack of political will and attention on the part of peacebuilding sponsors to com-
plete the tasks they undertake, and insufficient commitment of resources;
• unresolved tensions in relations between the military and non-military partici-
pants in these operations; and
• limited knowledge of distinctive local conditions and variations across the
societies hosting these missions; insufficient ‘local ownership’ over the strategic
direction and daily activities of such operations; and
• continued conceptual challenges in defining the conditions for ‘success’ and strategies for bringing oper-
ations to an effective close.30

Our argument for framing piracy as a problem of peacebuilding acknowledges
these revealing considerations and suggests they should be taken into account
when proposing policies for addressing piracy. Our argument is, hence, not one
which bets on 1990s peacebuilding enthusiasm that a country such as Somalia can
easily be transformed from the outside to mirror the Western modern state. Such opti-
mism is unfounded and, as peacebuilding experience indicates, also directs policies in
the wrong direction. The lesson learned in peacebuilding is that a context-sensitive,
pragmatic incrementalism, not wishful thinking, is the right strategy to pursue. Exist-
ing deterrence strategies should not be complemented by an ambitious peacebuilding
vision, but made part of an incremental peacebuilding strategy, which combines
deterrence with other means.

What do we mean by an incremental strategy and which of the peacebuilding
lessons do we consider relevant for coping with piracy?

First, a planning attitude is needed which does not rely on technocratic thinking,
but embraces complexity, appreciates the tensions and contradictions between the
various goals pursued and adopts a strategy of probing. Problems of war, conflict
and peace are intricate; they escape easy solutions. They are, to use a term from plan-
ing theory, wicked problems.31 Peacebuilding requires policy planning that con-
siders many actors, interests, contradictions, and conflicts and thus escapes easy
solutions.

Technocratic approaches start from idealized objectives, such as turning Somalia
into a modern nation state, or fully eradicating piracy once and for all. The underlying
idea of these approaches is that such objectives can be reached through the identifi-
cation of the best solutions – that is, the most effective and efficient ones. The
problem is, however, that objectives are often ambiguous or even conflicting and pol-
icies might have unintended consequences. This notably concerns short-term objec-
tives. The objectives and strategies of peacebuilding agencies often contradict each
other. Military actors prioritize security issues, development actors see effective gov-
ernance and poverty reduction programmes as pivotal and humanitarian agencies aim
at creating humanitarian spaces unaffected by other interests. Moreover, it is uncer-
tain which means are better to foster objectives. Any strategy can produce unwanted
and or even counter-intuitive consequences. Indeed, we lack a universal criterion by which best solutions can be identified.

Fully apprehending this problem, probing approaches and incremental strategies start with the identification of possible problem-coping strategies. 'In order to describe a wicked problem in sufficient detail, one has to develop an exhaustive inventory of all conceivable solutions ahead of time'. Under the absence of universal criteria, the decision between strategies is not a matter of knowledge (episteme) but a matter of practical reasoning and judgment (phronesis). In other words, any new idea for a coping strategy may become a serious candidate for a better solution. Incremental strategies will hence require the capability to appraise often ‘exotic’ solutions, which, if judged as worth probing, should be tried out. The value of such incremental strategies has already been shown in general planning theory, policy studies and development studies. In peacebuilding there is a general move towards such strategic thinking. This is, for instance, observable in recent counter-insurgency strategies which attempt to negotiate with violent actors, such as the Taliban in Afghanistan.

Second, if policy solutions are not understood as technological, such a perspective highlights the political character of measures. Any policy solution has consequences and certainly no solution will be similarly beneficial to all parties involved. Policies are part of a play of power and will create winners and losers. In other words, policies will spur resistance from the losers, and strengthen the power positions of others. Strategies that do not draw on a broader analysis of power constellations and how a measure has an effect on these risk exacerbating conflicts. For instance, excluding representatives from local constituencies, or branding actors as spoilers, might hinder progress in conflict management or peacebuilding processes by creating new divisions and potential for conflict. Instead of excluding actors, strategies integrating them are often favourable if violent resistance is to be avoided and compliance to be achieved.

In the case of piracy this will require re-evaluation of actors seen as supporting piracy, and indeed organizations active in piracy as well. In its legal definition, piracy is a crime, the pirate a criminal, and the individual assisting piracy an accomplice. By legal definition piracy is a self-interested, profit-driven activity that does not pursue political goals. In practice, however, the lines between an apolitical pirate and a political organization are difficult to draw. This is nowhere better highlighted than in the case of acts of armed robbery at sea off the coast of Nigeria. These acts are not considered formally as acts of piracy, as the organizations claim political objectives. So far we lack knowledge about any convincingly substantiated political objectives of Somali pirates. Yet, in principle, they could claim those. Without doubt one can argue that pirate organizations are political actors when it comes to their engagement and being part of local governance and social structures, and when taking into account that they provide public goods to parts of the local population, for instance in channelling part of their profit to families and clans.

When thinking of piracy as a special kind of organized crime, the economical (private profit-seeking) interpretation is generally advanced. Other explanations are often ignored. These include the political interpretation, which advances the idea
of illegal governance structures within states, and the sociological interpretation, which stresses the idea of weak, particularly marginalized groups, excluded socially, economically and politically from their (host) society, which strive for protection and exploit illegal markets as the only ones open to them.\textsuperscript{39}

However, recognizing that pirate organizations are part of a political power constellation in Somalia and that they are embedded in and interact with a local political context is a necessity in drafting incremental peacebuilding strategies. Phrased otherwise, pirate organizations should be conceived as being as much a part of the problem as part of the solution.

Third, as highlighting the importance of an analysis of power constellations implies, strategy requires relying on a wide knowledge base, notably including local knowledge. Peacebuilding has often been driven by generic causal assumptions, strategic templates or universalized ‘best practices’. Inadequate attention to domestic institutional conditions and limited knowledge of distinctive local conditions and variations across societies have been identified as major obstacles for peacebuilding.\textsuperscript{40} Various reasons have been identified for such inattention. For example, Manjikian argues that an underlying ‘illness narrative’ explains inattention. The narrative directs policies that project existing structures as ‘sick’, to which only the international community as ‘doctor’ may know the cure, not the patient itself.\textsuperscript{41} Pouligny explains inattention by the tendency of the international community to look for structures that correspond with the forms of modern Western societies.\textsuperscript{42} Vennesson and Bueger argue in drawing upon Albert Hirschman’s work that the international community has fostered a strategy of prerequisites, which does not see the fragility of a local context as opportunity to transform but understands it as a major problem, which needs to be tackled before a meaningful transformation of the society can take place.\textsuperscript{43} In other words, situations in fragile, failing, or failed states, such as Somalia, have often been treated as ‘empty shells’, in which only chaos prevails, with no meaningful institution or order in place.

Insights from anthropological and historical studies challenge such an understanding. For instance, Leeson shows, in drawing on the case of the Anglo-Scottish borderlands in the sixteenth century, that two social groups at constant war with one another can develop a customary legal system which prevents degeneration into chaos.\textsuperscript{44} Hence, even under the condition of hostility an effective legal order can be in place. Studies on so-called ‘hybrid orders’ emerging ‘beside’ the state demonstrate that informal, customary and local authorities often provide essential governance services and thus enjoy a high degree of local legitimacy. Indeed, they can form the nucleus of stable and peaceful polities.\textsuperscript{45} One has to emphasize that respective authorities may also include illicit and criminal networks. While some illicit networks undermine state and local governance institutions, others are in fact integrated into such structures and can be crucial providers of local and regional stability. Rooted in particular social and ethnic groups and linked to state institutions and resources, some of these networks support and protect local people in crisis situations and provide alternative systems of governance and resource distribution. Rodgers, for instance, convincingly illustrates in drawing on the case of Nicaragua how local criminal gangs can be for some a source of insecurity and violence, but for others the
providers of a functioning system of order and governance to organize communal life. Accordingly, fighting such criminal networks may be beneficial for some, while for others such a policy might be disadvantageous and therefore may lead to social and political upheaval. The resulting effect might indeed be more chaos and insecurity for all.

Hence, the lessons from peacebuilding are that intervention needs to carefully consider the multiple and often contradictory effects measures may have in a local context. Likewise, counter-piracy strategies need to rely on an in-depth study of the local context, its formal and – even more important – informal institutions, regional and local customary laws, and the reciprocal effects that any taken measure may have on these. Yet incrementalism does not only imply the requirement of understanding local complexity and informal structures, it also requires consideration of how to draw upon and work with these.

Fourth, to work with actors, institutions and structures already in place is to give them ownership over the strategic directions and daily activities of operations. A lack of ownership has been identified as one of the major obstacles for peacebuilding success. Local ownership has two core functions: firstly, it helps to ensure the legitimacy of policies and hence leads to better compliance and less resistance; and secondly, it helps to better direct programmes towards the everyday problems (and their solutions) that populations face. Consensually worked out strategies do make a difference, in so far as local populations may perceive measures as legitimate through dialogue on respective measures. The 2005 Paris Declaration on Aid Effectiveness emphatically emphasizes that ownership is an important means of increasing the efficiency and effectiveness of aid. While ownership in such a context means in essence budget support, it remains controversial as to what ownership can mean in the context of war-torn societies, and how it can be implemented. In such situations state governments are regularly only one of many parties belonging to the very complex power constellation. Often they are contested and lack legitimacy. Hence, ownership must be referred to other local authorities as well. Indeed, it has been argued that in such context planning and implementation is best based on a broad societal dialogue between the representatives of the diverse local constituencies and international actors. Careful analysis of which central and local, formal and informal authorities ownership could be given to, and how, is required. A wider strategy therefore needs not only to evaluate which (local) actors could form part of the strategy, but also how responsibility for planning and implementation could be transferred to those actors and institutions.

Fifth, the 2005 Paris Declaration not only established a consensus on ownership but also elaborated the need for better harmonizing and coordinating strategies. The need for improved coordination as a criterion for success is well documented in peacebuilding studies. Likewise, in the case of counter-piracy strategies more coordination is seen as crucial for improving the efficacy of strategies. However, some caution is required regarding the call for more coordination. As elaborated, incremental strategies require refraining from ideas of best solutions. Hence, the idea that it is possible to orchestrate all actors in counter-piracy via a shared central plan of measures is misleading. To provide but one illustration, even an
otherwise well integrated body such as the European Union suffers from a lack of harmonization and coordination. As Carbone emphasizes, a major reason is that even in the European Union the priorities and interests of single policy fields and their respective communities contradict each other. For instance, the interests of agriculture and trade policies often contradict goals of development and security policies.

To give examples of contradictions from counter-piracy strategies: programmes aimed at improving the conditions of imprisonment for sentenced pirates thwart achievement of maximum deterrence effects through punishment. Establishing an international tribunal for prosecuting piracy contradicts self-governance and state-building policies. Deterring piracy by military means may set in motion a small-weapon arms race, which contradicts disarmament policies. Indeed, paying ransoms to free hostages and guarantee the safety of seamen goes against the objectives of restricting the resources of pirates. Finally, counter-terrorism policies may be directed at groups which de facto contribute to the suppression of piracy.

In sum, coordination and harmonization will require appreciation of the tensions and contradictions between the various goals of strategies and between different actors, notably military and non-military participants. Simply concentrating on more coordination will not solve these obstacles. Yet a coordination dialogue may dilute the effects of contradicting policies and increase reflexivity towards counter-intuitive effects of individual strategies. In essence, coordination needs to be about sharing information about who does what when and how; about sharing interpretations of the behaviour, attitudes and objectives of local actors and overall trends in the environment in which piracy thrives; and about developing a wide repertoire of potential solutions. From an incremental perspective, coordination will be most successful when paying attention to the question of which international or local actor is best equipped to address which kind of specific problem. This will also concern questions of selective disengagement.

Drawing on the lessons of international peacebuilding we can, hence, condense five key principles for an incremental strategy:

- No ideal best strategy for coping with piracy is identifiable. Piracy is a ‘wicked problem’ and requires investigation of a wide spectrum of policy solutions to make informed judgements about courses of action.
- Strategic actions are not impartial and neutral technocratic procedures, but interventions in a political constellation which produces winners and losers. A careful analysis of power constellations is necessary.
- The complexity of the local context needs to be recognized and local authorities and informal institutions identified.
- Local authorities and institutions can be important resources for policies, and consideration of how solutions can be developed with them and ownership transferred to them is necessary.
- Policies and strategies will often contradict each other and have tensions. Coordination mechanisms can be important devices for increasing the reflexivity towards contradicting policies, but will not resolve these tensions.
Options for a Comprehensive Strategy

Drawing on these principles, in the following paragraphs we outline and illustrate such a strategy for the case of Somali piracy. If the description of a ‘wicked problem’ requires developing an inventory of conceivable solutions, than it is our intention to contribute to a respective portfolio. Out-of-the-box thinking as well as attention to the details of a situation will be necessary. Given the considerable efforts and proposals already made to improving military deterrence, surveillance and legal prosecution, we concentrate and elaborate on alternative policy solutions, which have received less attention so far. It is not our intention to dismiss the current threefold strategic approach, but to widen the repertoire of available policies to create a more encompassing and efficacious strategy. As with existing strategies, our proposals overlap and contradict each other. Yet we argue that taken together with existing proposals they can inform the formulation of a broader encompassing incremental strategy.

In the following we discuss four proposals for addressing piracy differently. The starting point for each of these is a re-evaluation of the actors that are part of the piracy problem and consideration of whom the international community could work with and collaborate, and by what means. This concerns: Somali actors and institutions; the sentenced pirates; the shipping and insurance industry; and the fishermen.

Going Local: Somali Actors and Institutions

Although lacking constitutional and political legitimacy, the official governmental authority of Somalia, the Transitional Federal Government (TFG), has been a main partner of the international community so far. Its capabilities in fighting piracy are rather limited. Established in 2005 in Kenya, it is in essence a creation of the international community. Weak and divided, it controls only a few roadblocks in the capital, Mogadishu, and has neither the capacity nor the resources to fight piracy.50 Accordingly, the international community has already started to cooperate with other governmental authorities, including regional entities in northern Somalia, namely the Republic of Somaliland and Puntland State of Somalia. In contrast to the TFG, the governments of Puntland and Somaliland are based on broad-based societal consensus and have established rudimentary but functioning administrative governance structures that guarantee to a significant degree peace, stability and law and order.51 NATO’s Operation Ocean Shield holds regular meetings with representative authorities from the two entities to exchange information and coordinate activities.52 UNODC and UNDP run a programme that aims at strengthening the legal systems of Somaliland and Puntland and renovates prisons where pirates could be imprisoned.53

However, the political structure of Somalia is somewhat more complex and consists of a greater number of relevant political actors. Everyday life in large parts of Somalia is regulated by a multitude of accepted authorities and institutions, and a variety of informal and culturally accepted structures, rules and norms.
Since the disintegration of the Somali state in 1991, the clan structure and its customary institutions and (cultural) practices have returned or regained strength in organizing Somali society. Governance is conducted through clan networks, which are in fact the bedrock of any political authority in the country. At the local level, councils of clan elders using traditional customary law regulate social, economic and political affairs. Additionally, regional states, business organisations and Islamic groups are mainly organized along clan lines. That is, clans still or again yield considerable political influence. For instance, powerful merchants cooperate within extended clan networks that allow them to conduct their businesses across clan and conflict lines. Also, regional states and political parties draw support from local clan communities in different locations. The clan system thus links multiple actors, interests and institutions. It provides a flexible framework for local governance where ‘hybrid’ political orders are negotiated and produced. These orders and governance networks, however, are positively described as flexible and negatively assumed to be unstable and fragile, as they are constantly renegotiated and transformed.54

It is important to be aware of the fact that piracy is basically part of these ‘hybrid’ orders and local actors deal with pirates in multiple ways. Moreover, pirates are also organized along these influential clan lines and are linked to or keep relations to local communities, government officials and business people through clan lines. Clan elders and community representatives receive a share from the ransom and in return protect pirates from official prosecution. Pirates are also said to support their clans in conflicts with other clans. Moreover, (senior) state officials and security forces are bribed, while merchants finance piracy ventures and make profitable business deals with pirates.55

Nevertheless, many Somali actors perceive piracy as a problem and seek to counter or cope with it. For instance, some communities have started to deal with the rising insecurity resulting from piracy.56 Islamic communities consider piracy a crime according to their religious principles. In 2006, the clan-based Islamic Courts Union thus banned piracy from southern Somalia. And of course not all businessmen are happy about pirates operating in their region. Some businessmen have already mobilized local fighters to free their ships and cargo. As a result local vessels are now rarely hijacked or are immediately released without ransom payments.57 It is important to note that Somaliland’s often-praised success in preventing piracy rests on its cooperation with local clan communities and militias.58 Additionally, in Puntland Islamic clerics, elders and the government constitute a community in opposition to piracy; they have launched public awareness campaigns against piracy and have been able to convince some pirates to abandon their business.59

The international community needs to better acknowledge such findings regarding the local dynamics of piracy. Improved understanding of how informal governance structures work here is required. Understanding these complex relationships and linkages of the pirate-local community nexus, and awareness of local coping strategies, will provide new ideas and locally accepted means to incorporate into more encompassing counter-piracy strategies. However, for now more information, research and local knowledge is needed to better inform policy makers. For instance,
establishing local piracy research centres or think tanks in Somalia might be a device to further that aim and systematically gather such data on piracy.

However, existing information already indicates some alternative policy proposals. In southern Somalia, the international community should engage in an open-minded and constructive dialogue with Hizbul Islam, which currently controls an important former regional pirate port.60 Likewise, Ahlu Sunnah Wal Jama, a moderate Islamic group that is aligned to the TFG, has forces in the area that could be incorporated when countering piracy hideouts at land.61 Both groups are essentially based on local clans and thus have access to local governance structures. In Puntland, influential business groups and local clan communities should be directly approached to discuss options for cooperation and to find out what kind of incentives may be needed to engage them constructively in countering piracy. Notwithstanding their otherwise maybe problematic attitudes and political position in the complex conflict situation, these groups might be available intermediaries and promising allies in responding to the piracy challenge.

Engagement with local actors will always be a risky and to a certain degree unpredictable task when it comes to assessing unintended consequences. Therefore, special emphasis has to be put on the principle of transparent negotiations, aiming at transforming Somalia’s political setting and turning it against piracy. Once agreement on collaboration has been reached and maybe incentives decided on, these should be provided with consensually agreed conditions. If collaborating with local actors, the international community should focus on balancing the various local interests and maintaining or furthering political stability. A constructive mutual engagement of local constituencies when responding to piracy has to be based on comprehensive frameworks clarifying the rules of cooperation and the respective duties and responsibilities of local and international actors. Part of such a comprehensive framework could be accepting jurisdictional standards for prosecuting pirates in Somalia – which might not necessarily reflect Western ones – incentives for local actors to fight piracy, rewards or micro-credits for pirates entering another business, and/or commitments by the international community to combat illegal fishing and/or the dumping of waste in Somalia’s territorial waters and support local development efforts.

Rethinking Imprisonment and Reintegrating Pirates

Imprisonment, in the current debate, is either evaluated as a deterrent or a mean of establishing justice. Imprisonment is without doubt a legitimate penalty for a serious crime. How far it works as a form of punishment with significant deterrent effects is, however, as yet unknown. Indeed, it will be difficult to assess in how far Somali are threatened by the risk of imprisonment. Not surprisingly the debate centres not on the deterrence aspect of imprisonment, but on logistical problems and human rights standards. Debates concern how the growing number of arrested individuals can be managed under compliance with basic human rights standards. The majority of the piracy programme of the United Nations Office of Drugs and
Crimes (UNODC) is directed towards these questions and the Office works towards improving living conditions in prisons.

What seems to be often forgotten is that imprisonment is not only a problem, but also an opportunity. Many Western legal systems ascribe three functions to imprisonment. It is principally seen as, firstly, a way of punishing the convicted and thus giving justice to the victims of the crime, secondly, a way of deterring others from committing the crime (and the convicted from reoffending), and thirdly, as a means for rehabilitating offenders. The third function is probably the one least thought of. Nevertheless, rehabilitation needs to be regarded as important when it comes to reintegrating criminals into a ‘useful’ life as a member of society. Criminology holds that imprisonment might not be the best strategy for rehabilitation, but it at least provides opportunities for it.

Put otherwise, it would be short-sighted to ignore that convicted pirates sooner or later will have to be reintegrated in society. Accordingly, initiatives should be taken to make possible a ‘new’ life and to hinder the convicted from relapsing into old pirate habits. Awareness of the fact that the time spent and the opportunities offered in prison may be factors which determine the chances convicted pirates have when released, might help to produce creative educational or training programmes for imprisoned pirates. In sum, bearing in mind that many sentenced pirates might rejoin pirate organizations after imprisonment, their prison time could be an access point to educating former pirates to play a different role in Somali society. Such education could range from basic reading and writing skills to more professionalized skills such as agricultural or administrative ones, or more extended job and career training. From a mid- to long-term perspective, former pirates might advance Somali development and indeed assist local authorities to cope with pirate organizations in future.

If imprisonment is not the most effective means for rehabilitation of criminals, other means of punishment for pirates also require careful consideration. Indeed, a broader repertoire of sentences could be considered. For instance, pirates could be sentenced to social and development work. Furthermore, the repertoire might integrate patterns of the traditional customary Somali legal system, in which it is standard, for example, to hold families and clans accountable for criminal deeds, and regulate by compensation.62

Ransom Mechanisms: Re-Evaluating the Private Sector’s Role

Without doubt, the private sector is most directly affected by piracy. Delays due to hijackings, rising insurance premiums, the costs of ransom payments and the costs related to reactive and preventive measures increase the business costs of shipping companies. So far, however, the private sector has only been considered as an actor that can assist in reducing the operational costs of piracy. The ‘best management practice’ (BMP) developed for shipping companies suggests planning, security and reporting procedures for companies and crew. Beyond that companies are largely seen as passive victims, whose capabilities to respond to piracy are constrained by
the dilemma of either paying ransom or losing a ship and risking the lives of its crew.\textsuperscript{63}

However, the private sector is not only a passive victim of piracy. The behaviour of the shipping and insurance industry has a direct impact on the opportunity structures of piracy and on their strategies and tactics. Moreover, companies actively engage with leaders and representatives from pirate organizations directly through ransom negotiations.

The lack of compliance with best management strategies constitutes one concern. Without mechanisms ensuring that international rules and codes of conduct are followed the impact on the opportunity structures and the operational risk for successful piracy operations is not guaranteed. So far the international community has bet on the self-regulation of the shipping industry. Yet more can be done along this line, including, for instance, observing whether insurance companies monitor whether the BMPs are implemented and adjust premiums accordingly. Or shipping companies might be directly sanctioned, for instance by denying them protection if there are cases of earlier non-compliance (or threatening to do so).

Secondly, the reporting of piracy incidents by companies is one of the most important data sources for learning about piracy behaviour and their changing strategies and tactics, and hence for improving counter-piracy strategies. Often shippers avoid reporting incidents as they fear the effects on their reputation and reliability, as well as rising insurance premiums. Increasing incentives for reporting, for instance by guaranteeing anonymity, or setting positive incentives by working with corporate associations is a viable strategy.

Thirdly, and maybe most importantly, the ransoms paid by shipping and insurance companies are what pirates are after. Ransom negotiations make companies active participants in dealing with piracy. In fact, through ransom negotiations, shipping companies are the only international actors dealing directly with pirates. Given that pirates rely on ransom payments, the companies have considerable bargaining power against them. As long as piracy activities cannot be fully stopped, the question will not be whether ransoms will be paid, but how and under what conditions. Ransom negotiations provide a considerable entrance point for engaging with pirates directly. Although little is officially known, so far negotiations have primarily relied on arbitration by local (Kenyan) lawyers, British private military companies, or the East African Seafarer Assistance Programme. Negotiations have been case-by-case without concerted strategies or coordination among ransom payers.

Centralizing ransom payment, for instance through an international public-private trust fund, a coordinating agency or an official ombudsman, could increase the bargaining power of private actors towards pirates. Not only may such a centralized approach have important symbolic effects given the international community’s concerted appearance, but also, equipped with more bargaining leverage, at least attempts could be made to add some form of conditionality to ransoms. An access point for such conditionality could be to take the pirates by their own words and force them to actually use the money to improve the broader living conditions of the populations in their realm. The investment of ransom money in public infrastructures (roads, hospitals, \textit{et cetera}) or the local fishing industry could be made a
condition for payment. Or a condition could be formulated that the money will only partially be paid to the pirate organizations, while the rest of the money is transferred to agreed-on local authorities which can be held accountable for providing transparent and public information on the use of the money.

Certainly this initially sounds exotic. However, the establishment of a more formal ransom system could at least provide a primer to thinking in such directions and reflecting on ways in which ransom money does more than strengthen piracy organizations. Perceiving organized piracy syndicates as constituting a neglected potential part of complex governance structure allows reflection on how to assure that ransom is not (or not only) spent on piracy equipment or the illegal businesses as such, but used otherwise. Looking at it from this perspective, the private sector has the capacity as well as the implicit responsibility to better contribute to counter-piracy efforts, including long-term objectives and strategies.

Delegitimization Strategies: Reconsidering Piracy and Fish

Whether overfishing by international trawlers has caused Somalis to turn into pirates is an issue hotly debated in public and academia. Development professionals tend to point to such a link to argue that the ‘root causes’ of piracy need to be addressed and to stress the responsibility of the international community. Others reject such a causal relationship, tend to neglect the fishing problematique altogether, and point to the criminal motivations of pirates.

Phrasing the issue as a problem of knowledge, in asking whether there is a verifiable causal link between foreign overfishing and piracy, however, misses the point. The fact is that pirates justify their behaviour by arguing that they act to protect the coastline from overfishing and penetration by illegitimate foreigners. It is by this justification that piracy organizations gain legitimacy in a local context and gain a social status as ‘heroes’ protecting the ‘motherland’. The debate about fishing is hence one about whether pirate organizations have a justifiable (and indeed political) cause or not.

Protecting natural resources from illegitimate extraction is without doubt a good cause. Yet there is hardly any doubt for international observers that the armed robbery and kidnap of merchant ships is not an appropriate practice to address the issue of natural resources. However, this observation should not lead to a dismissal of the fishing issue. What is evident for international observers is not necessarily the case for local populations. The fact that piracy organizations continue to embrace this justification points to its ongoing local success in using such rhetoric as a strategy to gain legitimacy and support. International actors, even if well-intended, do not necessarily have a good standing in Somalia. The unfulfilled promises of the 1990s peacekeeping mission, misbehaviour of international actors in the conduct of the mission, ignorance and lack of attention towards the country since the 1990s, counter-terrorist missions of the last decade, and indeed foreign fishing fleets have filed into prejudices against foreign actors. Many Somali people will have difficulty differentiating between well-intentioned foreigners and others. The occasionally reported incidents of patrolling...
vessels shooting by mistake at (armed) fishermen or soldiers hunting deer from helicopters certainly do not help to change this picture.

Dismissing the fishing issue inevitably and directly files into the legitimacy of piracy as protection against foreigners. Deterrence researchers have highlighted how vital deterrence by delegitimization and counter-narrative can be. Dismissing the fishing issue inevitably and directly files into the legitimacy of piracy as protection against foreigners. Deterrence researchers have highlighted how vital deterrence by delegitimization and counter-narrative can be. Hence, the international community needs to directly tackle the justifications of pirates and discredit them. What is required is a re-evaluation of how counter-piracy strategies address fishermen. Such reconsideration will concern measures at home and abroad. At the national and international level, better regulation of the fishing industry is necessary. In Somalia additional considerations and activities are required when thinking of ways to delegitimize the claims of piracy gangs. Some discursive and practical means are available. Discursive means can be, for instance, public information strategies via the media, as already considered in the Contact Groups working group on diplomatic and public communications. These thoughts have, however, so far not been further developed, let alone implemented. Thinking in terms of public diplomacy or even ‘guerrilla diplomacy’ might be an option. Such campaigns should however avoid moralizing piracy, or simply containing calls for withdrawing from piracy. Instead they should aim at clarifying that pirates do not have a justifiable cause.

Practical measures should be employed to improve the protection of Somali waters, not only symbolically. One ship which is not part of a counter-piracy mission could make a difference. Additional measures could concern direct support for the Somali fishing industry, for instance providing nets and boats or subsidizing fish.

Conclusion

Piracy is a growing tumour in international seafaring and global trade. Despite the increased attention to the problem and willingness to act multilaterally, the current measures are insufficient and unsustainable. As Jack Lang, the UN special adviser on piracy, put it, ‘the race between the pirates and the international community is progressively being won by the pirates’. Our analysis has demonstrated that even if the international community can considerably improve the current policies pursued, it is unlikely that piracy will be contained. A major reason for this failure lies not only in the logistical challenges posed by patrolling, surveillance and criminal prosecution, but also in the fact that the logic of deterrence underlying these does not work. Neither the personal risk of imprisonment nor the increase of organizational risk will lead to Somali disengagement in the business of piracy. If deterrence is not the answer, and more direct military engagement is unfeasible, the challenge is to think in new directions. The international community has manoeuvred itself into a discursive box, in which only military and legal measures appear viable. In order to improve counter-piracy strategies, we argue that it is important to think outside of this box. In order to do so, we suggested reframing the piracy problem as a peace-building problem. Such a shift is not merely semantic. It firstly argues that in order to cope with an intricate problem, the problem must be restructured. As Emmanuel
Adler has argued, ‘restructuration’, that is, transforming the structure and rules of a situation, is a promising move to cope notably with transnational threats. Framing piracy as a problem of peacebuilding is, secondly, a way to recognize that some of the lessons learned in the past two decades of peacebuilding interventions also apply to the fight against piracy.

We argued that the experience with peacebuilding leads us to an incremental strategy. An incremental strategy can be described by a set of strategic principles. Drawing on the peacebuilding discourse we condensed five key principles and translated them to the piracy problem: first, piracy is a ‘wicked problem’ and requires investigating a wide spectrum of policy solutions to make informed judgements about courses of action. Second, strategic actions are not impartial and neutral technocratic procedures, but interventions in a political constellation which produces winners and losers. Hence, a careful analysis of power constellations is necessary. Third, the complexity of the local context needs to be recognized and local authorities and informal institutions identified. Fourth, local authorities and institutions can be important resources for policies, and considerations of how problem solutions can be developed with them and ownership can be transferred to them are necessary. Fifth, policies and strategies will often contradict each other and have tensions. Coordination alone will not resolve these tensions. Coordination attempts are, however, a tool with which to increase reflexive thinking on the contradicting characters of policies.

At the heart of incremental strategies is the idea of developing an exhaustive inventory of all conceivable problem solutions. In other words, the objective is to develop as wide as possible a repertoire of policy solutions, prior to thinking about implementation. These solutions may be exotic, or conventional. From the perspective of incrementalism it is the task of the policy analyst to develop such solutions. In order to put these principles to practice we outlined several options as to how piracy can be addressed differently. We structured these solutions around actors which are part of the piracy problem. We suggested alternative ways to cope with local populations and institutions, using imprisonment for reintegration, developing alternative ransom mechanisms and using delegitimization strategies. As argued, our goal was to widen the repertoire of conceivable policy solutions. Our argument was not that these options can or should replace current measures, but that there should be a change in the way we frame the piracy problem. Piracy is a wicked problem. Wicked problems require consideration of fresh ideas and taking them into account when judging future courses of action. The starting point for policies needs to be the problem, not the questions ‘is it legal?’ or ‘can the military do it?’ Reframing how we approach the piracy problem will, not least, be crucial if the diagnosis holds true that the piracy problem is also spreading to other regions.

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NOTES

1. Here and thereafter we adopt the definition of piracy of the International Maritime Bureau (IMB), which, unlike the United Nations Convention of the Law of the Seas (UNCLOS), does not differentiate between piracy (occurring in the international sea) and armed robbery at sea (occurring in national economic zones). IMB defines piracy as ‘An act of boarding or attempting to board any ship 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’ (ICC-International Maritime Bureau, ‘Piracy and Armed Robbery Against Ships: Annual Report’, 1 January –31 December 2005, p.3).


5. Responding to a request from UNSC, the UN Secretary General has delivered a report laying out several options for a regional or international piracy tribunal: cf. UN Doc S/RES/1816 (2008), paragraph 7. See also Elizabeth Andersen, Benjamin Brockham-Hawe, and Patricia Goff, Supressing Maritime Piracy: Exploring the Options in International Law (Washington DC: American Society of International Law & Academic Council on the United Nations System, 2010).


16. Ibid.

17. Struwe, For a Greater Horn of Africa Sea Patrol (note 9).


42. Pouligny, ‘Peace Operations Seen from Below’ (note 40).


52. See for example ‘Minister of Puntland State of Somalia Visits NATO Flagship. Standing NATO Maritime Group 2’ (NATO Press release 02.08.2010).


60. Despite the fact that the group fights the TFG and its leaders are listed as terrorists, several observers have called for peace negotiations with its pragmatic and more moderate elements. These negotiations could also include the issue of piracy. See International Crisis Group, Somalia’s Divided Islamists (Nairobi/Brussels: International Crisis Group, 2010).


