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


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Abstract: The dominant approach to counter-piracy strategy off Somalia is astonishingly narrow minded. Deterrence, surveillance and military operations do not provide a sustainable or efficient solution. Better strategic alternatives must drawing on the lessons of 21st century peace operations. This perspective leads to an understanding of counter-piracy as a problem of peacebuilding. This allows restructuring and re-framing the problem to permit a much wider repertoire of policy solutions than currently conceived. This repertoire may include development and security assistance programmes as well as state-building programmes. The approach also permits integration of lessons learned in the frame of international peacebuilding operations, including avoiding technocratic solutions, focusing on power constellations, integrating local knowledge and incrementalism. If the international community takes piracy seriously and tries to respond to its complexity, it is well advised to adopt a policy in which such alternatives are considered.

Keywords: Piracy; Somalia; Incremental Strategies; Peacebuilding.
The Global Fight against Piracy and the Need for an Advanced Strategy

Piracy was always part of the history of seafaring. Yet, modern pirates surpass their predecessors in numbers and riches. Indeed, with the end of the cold war, piracy has become 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.” In such an interpretation piracy is a simmering militarized conflict between pirates on the one side, and fishermen, seafarers, shipping companies and private security companies on the other. Piracy threatens however not only the life of seafarers, fishermen and their families. 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; or it can challenge legitimate local and regional governance systems.

Despite its seriousness, piracy has in the past decades 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 was primarily in the hand of private or corporate actors.

The latest since 2007 this evaluation has substantially changed. Triggered by piracy incidents off the coast of Somalia, there is a new apprehension for 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 leading to a substantial number of resolutions, e.g. Resolution 1816 and 1851. At the United Nations an international coordination group (the Contact Group on Countering Piracy off the Coast of Somalia, hereafter The Contact Group) as the major global mechanism to coordinate and direct the fight against piracy was established in 2009. Several international naval missions have been employed to address piracy. Missions coordinated by the North Atlantic Treaty Organization missions (Combined Task Forces, Operation Allied Provider, Allied Protector, Ocean Shields) and an 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 likewise has changed. Faced with coordination and implementation problems and a lack of legal capabilities, more recently even the creation of a new international tribunal was discussed.
Somali piracy is not anymore primarily understood as a local or regional problem, it is now addressed as a threat to international peace and security. Welcomed, requested and taken activities proof the growing international attention to piracy and a growing willingness to engage concertedly. A new international legal and military infrastructure is under development. Such a development is consequential given that piracy is a problem escaping the boundaries of the nation state. It is a problem of transnational or even global dimensions. This concerns not only the fact that piracy incidents occur on international waters, or pirates harbour in one nation’s waters and attack in another’s. It concerns the opportunity structures for piracy. The conjuncture of weak states and the geographical proximity to navigable and important waterways of steadily increasing global commerce and trade makes piracy more attractive. Finally, there is – although contested – a potential link to terrorism. Piracy might be used to finance terrorist activities or to undermine international embargoes. All this adds up to the willingness of putting the complexity of Somali piracy on the international agenda.

Despite the new willingness to address piracy through international cooperation, our analysis finds the policies in place to be 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 the 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 moreover unsustainable in the long run. Moreover, increased resources for current policies, although showing effects, have not significantly reduced piracy incidents. There is indication that piracy organizations have adapted to international programmes and reacted in tightening their transnational organizational structures, increasing their operational terrain, improving their tactics and use of intelligence as well as navigation and communication technology. Even if the international community will devote more resources to its current naval patrolling programme, it is doubtful whether 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 for determining the future directions engagement in other regions may take. Policy alternatives are needed.

In this contribution we argue for and 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 a rhetorical one. It is an attempt to provide a restructuration of the piracy problem, a re-framing 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 in the 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 we dub an incremental strategy and present different policy alternatives based on these considerations. In difference to existing research primarily geared towards improving existing policies, we demonstrate the need of re-framing the problem and thinking about new and different measures from such a frame.

Our argument unfolds in three steps. In the next section we review current responses of the international community to Somali piracy. We demonstrate that currently three options direct the policy discourse, which are deterrence, prosecution and military intervention. Criticizing this spectrum we argue for a shift in perspective which adopts the lenses 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, section four develops a portfolio of policy alternatives. We argue that if the international community takes piracy seriously and tries to respond to its complexity it is 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 among two factors which led to an intensified policy debate in Western publics, state administrations as well as international organizations. The main protagonists of the debate are in principle three types of actors, first, the victims, that is seafarers reporting their experience, second, members of the military professions or strategic studies, and, third, criminal prosecution lawyers and legal theorists. Also the nascent academic discourse is dominated by security studies scholars apprehending (naval) counter-piracy strategies and tactics, and legal researchers debating 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 for 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 about here.

Our review finds that current policy discourse is narrowed down to three options of countering piracy. First, a policy of surveillance and deterrence via 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; and, third, a policy of combating and eradicating via (serious) military means that even suggests a military intervention to combat piracy on land. Below we review all three and scrutinize why these options are inefficacious and unsustainable or simply unfavourable.

**Military Suppression**

A policy of surveillance and deterrence via 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 build upon the idea of increasing the operational risk for pirates and reducing the chances that ships can be kidnapped and a ransom demanded. Such deterrence relies on the assumption that anything that reduces the estimated probability of operational success could deter.

Initiated in late 2008, as pirate incidents in the Gulf of Aden increased sharply and threatened one of the busiest global shipping lines, the policy is currently implemented in the frame 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 ad hoc basis by non-member countries, among them China, Russia, or India. It has been estimated that at 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.

Strategies are essentially defensive and military means moderate, with force used only for self-defensive purposes. 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)* that manages the corridor and facilitates information sharing between merchant and naval vessels and the *Shared Awareness and De-confliction (SHADE)* mechanism generally coordinating naval forces in the Gulf of Aden, in particular the patrol system in the IRTC. Furthermore, since 2009 international naval forces seek to block the coast and to disrupt suspected pirate groups before they reach the high sea to stage attacks against commercial vessels.

Reflecting upon these strategies, policy discussions and research focus on how to further enhance the operational capacities and effectiveness of naval responses especially by improving cooperation and creating new partnerships in maritime security. For instance, it is suggested to establish a regional coastguard or to introduce new naval strategies, such as tightening the blockade of the Somali coast. International actors aim at maximizing the monitoring capacity and deterring visibility of force and to minimize the 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 the 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 reach the organizational structures of piracy gangs directly, it is assumed that the pirate foot soldiers will be deterred and will not join 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 in hesitation to prosecute pirates at home. Instead it is favoured to rely on bilateral agreements that facilitate the transfer of pirate suspects to regional states, where they are supposed to be tried and imprisoned. Agreements have been notably concluded between
the EU, France, the USA and the UK on the one side and Kenya and the Seychelles on the other. Since early 2009 an estimated number of 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 USA, Spain, Germany, France and the Netherlands have started to selectively prosecuting 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 organisations participating in counter-piracy operations have concluded agreements with regional states to transfer suspected pirates (e.g. Russia or NATO). It is also doubtful whether trials in Kenya fulfil international humanitarian law standards\(^{10}\) and the judicial system of Kenya is increasingly overburdened and even had to temporarily stop accepting suspected pirates.\(^{11}\)

Because of such problems, there is an ongoing debate on how to improve existing legal instruments 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 hold accountable, given the problems of states to prosecute pirates.\(^{12}\) 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. Or bilateral cooperation agreements could be strengthened and expanded to include other regional states, such as Tanzania, Mauritius or Yemen.\(^{13}\) Under the auspices of the United Nations Office for Drugs and Organized Crime (UNODC) and the United Nations Development Programme (UNDP), programs have been initiated to increase the judicial capacities of regional states and guarantee that legal and human rights standards are maintained. It is also planned to refurbish prisons within Somalia, in particular in the regional states of Puntland and Somaliland, where several pirates have already been detained.\(^{14}\) The long term goal of UNODC and UNDP is to return sentenced pirates to the auspices of the Somali legal system.

A Military Intervention

Now, while the first two policy options rely on a strategy of “deterrence by denial”, the third set of options circulating in policy discourses are a more offensive. A policy of combating and eradicating via (serious) military means is centred on combating piracy on land. Discussions about a military intervention of some sort, involving the employment of ground
troops or air strikes in Somalia, have been ongoing since 2008.\textsuperscript{15} Such a view draws on the 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.\textsuperscript{16}

As it is argued, piracy can only flourish because of the absence of a monopoly of violence in the state of Somalia. 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 the country is embroiled in a bitter power struggle between the government and Islamic militias and varying other groups. Hence, to target and destroy pirate safe havens on land, a military intervention is seen as the only viable option.

In contrast to other options, which are based on defensive military and legal measures, a military intervention in Somalia is an offensive strategy that strives to directly tackle and solve the Somali piracy problem. It aims at not only addressing the symptoms of piracy (e.g. the hijacking of ships), but to treat and eradicate the root (pirates). An offensive strategy does not necessarily mean a full blown military intervention, but 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 frequently been used in different 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.\textsuperscript{17} Resolution 1851 already authorizes such measures when allowing to “take all appropriate measures in Somalia”\textsuperscript{18} to fight piracy. Special Forces of different countries have already acted on Somali territory to recapture vessels. For instance, in April 2008, French Special Forces have already acted onshore, pursued and arrested pirates and recovered part of the ransom money that was delivered to free a French Yacht.\textsuperscript{19}

\textbf{Evaluating the Options}

Certainly the option of a full blown military intervention in Somalia appears the least promising, given the historical records of military intervention overall and the problems they cause in the 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, intervening will mean to become part of a violent struggle where it is often unclear who is the legitimate party and how a valuable exit strategy can look like. Moreover, there is the risk that an intervention
further exacerbates the situation in Somalia and leads to a further radicalization of parts of the population, notably of Islamic groups.

Also, the effectiveness of targeted strikes against pirates seems doubtful. While such measures could substantiate the seriousness of deterrence, given the threat of vital punishment, the success is not necessarily guaranteed. 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 they can result in alienating the local population and thus strengthen piracy gangs or even fill into terrorist activities against international actors.

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

First, pirates seem not significantly threatened and deterred by prosecution to a degree that they would stop to engage in piracy. Despite the fact that since the beginning of 2010 several smaller gangs of pirates were disrupted, arrested and convicted, the overall number of pirate attacks was 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 (1600 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 U.S. 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, whether an international presence could significantly increase the operational risk for piracy is doubtful.
Fourth, the probability that piracy will rise again the moment naval missions decrease or are withdrawn altogether remains high. 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, even if further improved, will significantly reduce acts of piracy in the long run, or contribute to a sustainable solution.

We find such arguments valid, and hence, see the need of widening 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 of the solution, in so far as it hinders the elaboration of policy alternatives. The too limited focus on military and legal means shadows important insights and policy approaches from the wider experiences gathered in 21st century international interventions. Guiding questions should not be in the first place ‘is it legal?’ or ‘can the military do it?’, but to investigate which problem 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 interferences and interventions in countries such as Afghanistan, Iraq, or former Yugoslavia, than it is how problematic a policy is, which tries to separate short term security concerns from long term stabilization and development concerns. 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, in 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 is found by the current spectrum of policies.
There are some plausible reasons for 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 can 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 there are other interests at stake. This includes the organizational interests of navies – many of which engage in a major mission going beyond logistical support for the first since the end of the cold war –, geo-strategic interests and ambitions as well as attempts to re-evaluate and reorganize maritime security in broader terms.26

In the following section we primarily address the cognitive and discoursive side, in arguing for translating the problem of piracy into a different problem frame, that is, to approach piracy from a peacebuilding angle.

**Lessons from 21st Century Peace Operations**

Meanwhile it is a widely shared position that international assistance to war torn societies cannot rely only on military instruments alone, but requires to be combined, coordinated, and from time to time replaced with measures aiming at the transformation of societies, governance structures and economies. A concept by which this more encompassing repertoire has been approached and organized since the late 1990s is the concept of “peacebuilding”. The concept has made a considerable career to structure and coordinate intervention and to reconceptualize how transnational security problems emerging out of situations of fragility can be addressed.27 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 to be valuable to address 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 subject of an ongoing academic debate, many of which are scholastic in character. Not all of these debates are of relevance here. If in
the following we summarize some of the core lessons of peacebuilding operations and how
they could be translated to piracy, our thrust is in broadening the repertoire of policy options
and not to provide a state of the art of peacebuilding discourse.

At the heart of peacebuilding discourse is the observation that countries tend to relapse into
conflict, once the international attention towards 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.²⁸ 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 to recognize the relapse problem and the flexibility of piracy as well
as to respond to the need for elaborating sustainable strategies.

Although prominently introduced in Bouthrous Ghali’s Agenda for Peace in 1992, the
concept of peacebuilding became only mainstreamed following the 2000 Brahimi report.
Peacebuilding became 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. Such a “peacebuilding
consensus”²⁹ that war torn societies should be modelled after the modern, liberal Western
state came however 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 complete
the tasks they undertake, and insufficient commitment of resources;
- unresolved tensions in relations between the military and non-military participants in
these operations;
• 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 operations to an effective close.”

Our argument for framing piracy as a problem of peacebuilding acknowledges these revealing considerations and to take them 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 optimism is unfounded, and, as peacebuilding experience tells, also directs policies in the wrong directions. The lesson learned in peacebuilding is that not wishful thinking, but a context-sensitive, pragmatic incrementalism is the right strategy to be pursued. Existing 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 as 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 planning theory, wicked problems. Peacebuilding requires planning for policies that considers 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 identification of the best solutions, that are the most effective and efficient ones. The problem is, however, that objectives are often ambiguous or even conflicting and that policies might have unintended consequences. This notably concerns short-term objectives. The objectives and strategies of peacebuilding agencies often contradict each other by virtue. Military actors prioritize security issues, development actors see effective governance and poverty reduction programs as pivotal and humanitarian agencies aim at creating humanitarian spaces unaffected by other interests. Moreover, it is uncertain 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”.32 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, require to be tried out. The value of such incremental strategies has already been shown in general planning theory, policy studies and development studies.33 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 similar beneficial to all parties involved. Policies are part of a play of power and will create winner and loser. In other words, policies will spur resistance by 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.34 For instance, excluding representatives from local constituencies, or branding actors as spoilers might hinder progress in conflict management or peacebuilding processes by creating new dividers and conflict potential.35 Instead of excluding actors, strategies integrating them are often favourable, if violent resistance is to be avoided and compliance wants to be achieved.

For the case of piracy this will require to re-evaluate 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.36 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 objectives37. 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 in local governance and social structures and when taking into account that they provide public goods to parts of the local populations, for instance in channelling part of their profit to families and clans.  

When thinking of piracy as a special kind of organised crime generally the economical (private profit-seeking) interpretation is advanced. Other explanations are often ignored. These include the political interpretation which advances the idea of illegal governance structures within states, or the sociological interpretation which stresses the idea of weak, particularly marginalised 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.  

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 apprehended as much as 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. Various reasons have been identified for such inattention. For example, Manjikian argues that an underlying “illness narrative” explains inattention. The narrative directs policies that projects existing structures as “sick” to which only the international community as “doctor” may know the cure, but not the patient itself. Pouligny explains inattention by the tendency of the international community to look for structures that correspond with the forms of modern Western societies. Vennesson and Bueger argue in drawing upon Albert Hirschman’s work that the international community has fostered a strategy of pre-requisites, which does not see the fragility of a local context as opportunity to transform, but understands is as a major problem, which needs to be tackled before a meaningful transformation of the society can take place. 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, but no meaningful institutions or order is 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 degenerating into chaos. 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.\textsuperscript{46} 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 a in-depth study of the local contexts, its formal and – even more important - informal institutions, regional and local customary laws, and the reciprocal effects any taken measure may have on these. Yet, incrementalism does not only imply to apprehend local complexity and informal structures, it also requires considerations on how to draw upon and work with these.

Fourth, working with actors, institutions and structures already in place is to give ownership over the strategic directions and the daily activities of operations to them. A lack of ownership has been identified as one of the major obstacles for peacebuilding success. Local ownership has two core functions: it helps to ensure the legitimacy of policies and hence, leads to better compliance and less resistance; and secondly, it also contributes to better direct programs towards the everyday problems (and their solutions) populations face. Consensually worked out strategies do make a difference insofar as through a dialogue on respective measures local populations may perceive measures as legitimate. The 2005 Paris Declaration on Aid Effectiveness emphatically emphasizes that ownership is an important mean of increasing the efficiency and effectiveness of aid. While ownership in such a context means in essence budget support, it remains controversial on how ownership can be practiced in the context of war torn societies.\textsuperscript{47} In such situations state governments are regularly only one of the many parties belonging to the very complex power constellation. Often they are contested and lack legitimacy. Hence, ownership requires to 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.\textsuperscript{48} A careful analysis to which central and local, formal and informal authorities ownership could be given and how is required. A wider strategy therefore, needs not only to evaluate which (local) actors could form a part of the strategy, but how responsibility for planning and implementation could be transferred to those actors and institutions.

Fifth, the 2005 Paris Declaration did not only establish 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 towards the call for more coordination. As elaborated, incremental strategies require refraining from ideas of best solutions. Hence, ideas that the orchestration of all actors active in counter-piracy via a shared central plan of measures is possible are misleading. To provide but one illustration, even an otherwise well integrated body such as the European Union suffers from the lack of harmonization and coordination. As Carbone emphasizes a major reason is that even in the European Union the priorities and interests of single policies fields and their respective communities contradict each other by virtue.\textsuperscript{49} 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 achieving 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 mean to appreciate 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 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 problem solutions. From an incremental perspective coordination will be most successful when paying attention to the question of which international or local actors 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 to investigate 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 produce 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 be identified.
- 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.
- Policies and strategies will often contradict each other and have tensions. Coordination is an important mean to be reflexive towards contradictions, but will not solve these.

**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 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 received less attention so far. It is not our intention to dismiss the current threefold strategic approach as such, but to widen the repertoire of available policies to create a more encompassing and efficacious strategy. That is, to stipulate thinking on the inclusion of other means. Similarly to existing strategies also 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 five proposals for addressing piracy differently. The starting point for each of these is a re-evaluation of the actors which are part of the piracy problem and to consider with whom the international community could work and collaborate by what means. This concerns 1) Somali actors and institutions, 2) the sentenced pirates, 3) the shipping and insurance industry, and 4) the fishermen.

Going Local: Somali actors and institutions

A main partner of the international community so far has been the official governmental authority of Somalia, the Transitional Federal Government (TFG), although it is lacking constitutional and political legitimacy. Its capabilities in fighting piracy are rather limited. Established 2005 in Kenya, it is in essence a creation by the international community. Weak and divided, it controls only a few roadblocks in the capital Mogadishu and has neither the capacities, nor the resources to fight piracy.50

Accordingly, the international community has already started to cooperate with other governmental authorities, including the 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 establish rudimentary but functioning administrative governance structures that guarantee to a significant degree peace, stability and law and order.51 NATO’s Operation Ocean Shield is holding regular meetings with representative authorities from the two entities to exchange information and coordinate activities.52 UNODC and UNDP run a program 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 somehow more complex and consists of more political relevant actors than the representatives of the TFG and the regional entities of Puntland and Somaliland. Every day life in major parts of Somalia is regulated by a multitude of accepted authorities, institutions, and a variety of informal and cultural 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 equally happy of pirates operating in their region. Some businessmen have already mobilised local fighters to free their ships and cargo. As a result local vessels are now rarely hijacked or immediately released without ransom payments.\(^ {57}\) It is important to note, that the often praised success of Somaliland to prevent 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 and they have launched public awareness campaigns against piracy and were able to convince some pirates to abandon their business.\(^ {59}\)
The international community needs to better acknowledge such findings of the local dynamics of piracy. Improved understanding is required on how informal governance structures work here. Understanding these complex relationship and linkages of the pirate-local community nexus and awareness to 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. Establishing local piracy research centres or think tanks in Somalia might be, for instance, a device to further that aim and systematically gather such data on piracy.

However, existing information already implicate some alternative policy proposals. In Southern Somalia, the international community should engage in an open-minded and constructive dialog with Hizbul Islam, which currently controls an important former regional pirate port. 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. 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 have to 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 risky and to a certain degree unpredictable task when it comes to assess 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 on conditions. If collaborating with local actors the international community should focus on balancing the various local interests and on maintaining or furthering political stability as such. A constructive mutual engagement of local constituencies when responding to piracy has to be based on comprehensive frameworks clarifying the rules of cooperation and 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 to enter another business, as well as commitments by the international community to engage in combating illegal fishing or the dumping of waste in Somalia’s territorial waters and support to 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. In how far it is a form of punishment that has indeed significant deterrence effects is, however, unknown so far. Indeed, it will be difficult to assess in how far Somali are threatened by the risk of being sentenced. Not surprisingly the debate centers not on the deterrence aspect of imprisonment, but on logistical problems and human right standards. Debates concern how the growing number of arrested individuals can be managed under compliance with basic human rights standards. The main share of the piracy program of the United Nations Office of Drugs and Crimes (UNODC) is directed towards these questions and the Office works towards improving the living conditions in prisons.

What seems 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, firstly, as a way of punishing the convicted and thus give justice to the victims of the crime, secondly, to deter others and the convicted of committing the respective crime and, thirdly, as a mean 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 achieve reintegration of criminals to a "useful" life as a member of society. Criminology holds that imprisonment might not be the best strategy for rehabilitation, but that it at least provides the opportunities for it.

Put otherwise, it would be short-sighted to ignore that convicted pirates sooner or later will have to be re-integrated in society. Accordingly, initiatives should be taken to make possible a "new" life and to hinder convicted to relapse in old pirate habits. Being aware of the fact that the time spent and the opportunities offered in prison maybe factors which determine what chances convicted 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 re-join pirate organizations after imprisonment, their prison time can be an access point for 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 trainings. 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 mean for rehabilitation of criminals, also other means of punishment for pirates require careful considerations. 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 e.g. standard to hold families and clans accountable for criminal deeds, and regulate by compensation.  

**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 or 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 suggest 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.  

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 the best management strategies constitutes one concern. Without mechanisms ensuring that international rules and code of conducts 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, in denying them protection in 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, in 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 a 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 the 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. Such a centralized approach may not only have important symbolic effects given the international community has a concerted appearance, but 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 for improving the broader living conditions of the populations in their realm. The investment of ransom money in public infrastructures (roads, hospitals, etc.) 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 the primer to think in such directions and to reflect on ways in which ransom money does more than strengthen piracy organisations. Perceiving the organized piracy syndicates as constituting a neglected potential part of complex governance structure, allows to reflect on how to assure that ransom is not (or not only) spent for 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 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 problematology 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. Fact is that pirates justify their behavior 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 an appraisable cause. Yet, there is hardly any doubt, for international observers that the armed robbery and kidnapping of merchant ships is not an adequate 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 of such rhetoric as a strategy of gaining 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, misbehavior of international actors in the conduct of the mission, ignorance and lack of attention towards the country since the 1990s, the counter-terrorist missions of the last decade, and indeed foreign fishing fleets have filled into prejudices against foreign actors. Many Somali will have difficulties to differentiate between the well-intended 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 fills 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 re-consideration will concern measures at home and abroad. At the national and international level a better
regulation of the fishing industry is necessary. In Somalia additional considerations and activities are required when thinking of ways to de-legitimize the claim 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 “guerilla diplomacy” might be an option.\textsuperscript{67} Such campaigns should however avoid moralizing piracy, or simply contain 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. Additionally, measures could concern the direct support for the Somali fishing industry, for instance, in providing nets and boats or subsidizing fish.

**Conclusion**

Piracy is a growing tumor in international seafaring and global trade. Despite the increased attention to the problem and willingness to act multilaterally, 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.”\textsuperscript{68} Our analysis 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 a disengagement of Somali in the business of piracy. If deterrence is not the answer, and a more direct military engagement 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 argued to think outside of this box. In order to do so, we suggested re-framing the piracy problem as a peacebuilding problem. Such a shift is not merely semantic. It is firstly to argue that in order to cope with an intricate problem, the problem requires to 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.\textsuperscript{69} Framing piracy as a problem
of peacebuilding is, secondly, a mean 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: Firstly, piracy is a “wicked” problem and requires investigating a wide spectrum of policy solutions to make informed judgements about courses of action. Secondly, strategic actions are not impartial and neutral technocratic procedures, but interventions in a political constellation which produce winners and losers. Hence, a careful analysis of power constellations is necessary. Thirdly, the complexity of the local context needs to be recognized and local authorities and informal institutions be identified. Fourthly, 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. Fifthly, policies and strategies will often contradict each other and have tensions. Coordination is an important mean to be reflexive towards contradictions, but will not solve these.

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 an as wide as possible 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 of how piracy can be addressed differently. We structured these solutions around actors which are part of the piracy problem. We suggested alternatives for coping with local populations and institutions differently, using imprisonment for re-integration, 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 to argue for a change in the way we frame the piracy problem. Piracy is a wicked problem. Wicked problems require to consider fresh ideas and to take them into account for judging about 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 the least be crucial if the diagnosis holds true that the piracy problem is spreading also 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 in difference to 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 Jan.-31. Dec. 2005, p.3.


6 Cp. Reuters, Hi-tech navies take on Somalia’s pirates, (16.06.2010).


8 Cp. EUNAVFOR, *EU NAVFOR’s seek, disrupt and destroy policy continues it’s success*, (Brussels, 02.05.2010).


16 Quoted in ibid.

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


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32 Ibid., p.161, italics in original.
36 There is however an ongoing legal debate on how UNCLOS should be interpreted in this regard. For some the definition of piracy as “private” point to economic motives, others interpret it as relating to “non-state” activities primarily. See e.g. the discussion in Treves ‘Piracy, Law of the Sea, and Use of Force’ (note 14); Eugene Kontorovich, 'The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation’, Harvard International Law Journal Vol. 45, No.1 (2003), pp.183-237; and Lawrence Azubuike, 'International Law Regime Against Piracy', Annual Survey of International and Comparative Law, Vol.15 (2009), pp.43-59.
39 Murphy makes this point and argues that these explanations are not mutually exclusive and in fact, each one probably reflects part of the truth, see Martin N. Murphy, Small Boats, Weak States, Dirty Money (London: Hurst, 2009), p.125; cp. also Alex P. Schmid, 'The links between transnational organized crime and terrorist crime', Transnational Organized Crime, Vol.2, No.4 (1996), pp.42, 44.
40 See for instance Beátrice Pouligny, Peace Operations seen from below: UN Missions and Local People (London: Hurst, 2006).
42 Pouligny, ‘Peace Operations seen from below’ (note 40).
47 See. Timothy Donais, 'Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes', Peace & Change, Vol. 34, No. 1 (2009), pp.3-26; and Jonathan Goodhand

48 Goodhand and Sedra, ‘Who owns the peace?’ (note 47).


51 Somaliland was established in 1991 and Puntland in 1998. While the former has separated from Somalia and seeks international recognition as an independent state, the latter sees itself as a federal state of Somalia and supports the TFG. See Brian Hesse, ‘Lessons in successful Somali governance’, *Journal of Contemporary African Studies*, Vol. 28, No. 1 (2010), pp.71-83.

52 See e.g. Minister of Puntland State of Somalia visits NATO flagship. Standing NATO Maritime Group 2. NATO Press release 02.08.2010.


56 BBC, Somali vigilantes capture pirates (BBC news, 28.04.2010).


58 Garowe Online. 18.05.2010. Somalia: Puntland forces arrest wanted pirate in Garowe.

59 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).


67 See UN Doc. S/PV.6473