WHY STATES ARE UNABLE TO DEFEAT PIRATES

- an actor perspective on the state's conflict with pirates

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Abstract

This thesis is investigating the conflict between the state and pirates in an actor perspective. It shows that the conflict contains both an *indirect-* and a *direct* conflict. The first is a military and juridical struggle where the state tries to defeat pirates. The latter is a competition on controlling the large values transported via sea. I conclude that the state has not defeated pirates because the state has lost both the *direct-* and *indirect conflict* to the pirates. This is because states - as organisations - are slow at adjusting to the situation, while the pirates' use of a cartel structure, with no limits in territory and ideals, makes it a highly adaptive and agile opponent of the state.

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Executive summary

Pirates have come back from the past and are now the newest addition to the growing family of violent organisations, which are being fought by states and international organisations all over the world. In truth, pirates never left the international stage as they have been active throughout history.

The concepts of the state and state organisations have established a violence monopoly on a global scale. Yet the conflict between several states and the pirates has lasted for two years, and piracy is only escalating. This is extraordinary since the state, theoretical and empirical, has dominated with its violence monopoly globally for four hundred years. In this context, it is interesting to understand why the states have not put an end to piracy. Thus my research question was: *Why are states unable to defeat pirates?*

Some researchers have explained the rising piracy using the concept of "failed states", where a state has disappeared and piracy occurs as a symptom. Contrary, this thesis is investigating the state and pirates as actors in a conflict. Since this approach is new, I created a theory. By using Charles Tilly's article *"War Making and State Making as Organized crime"* as a starting point, I argue that conflicts actually include a direct and an indirect part. The direct conflict is the activity where state and sub-state actors are trying to destroy and take over each other by means of organized violence. Tilly describes this conflict as the relation between *war making* and *state making*. This is what we normally refer to as war. The indirect conflict is a competition between the state and the sub-state within civil society, which is based on controlling society via so-called '*Protection*' , for the purpose of *extracting* money from civil society with the threat of violent reprisals. The goal for both parties is economical profit. This gives me a theory that allows me to investigate the struggle between the state and pirates as a conflict containing both a direct and indirect conflict.

The research is done by use of a qualitative research design. Denmark as country is used for gathering material concerning state, civil society and pirates. This material is used for two separate analyses, each containing two sub analyses. I thereby structure the research according to the described conflict, terms and fields mentioned above. The advantages of this design is that I can respect the characteristics within the different sub categories, and also take into account significant structural conditions, thereby achieving a holistic understanding of the actors in the conflict.

Finally, I conclude that the state has not annihilated pirates because the state has lost both the *direct-* and *indirect conflict* to the pirates.

In the *direct-conflict,* states lack in several areas of their organisation. Concerning *war-making*, the states´ navies lack in their ability to identify the pirates. Both are fully exploited by the pirates who are using tactics similar to Guerrilla-war. By using "civilian-masks", pirates cannot be distinguished from civilian ships by the navies. Consequently, they accomplish a small tactical edge which is sufficient to conduct piracy. Regarding *state-making,* the states lack in institutions that are capable of organising counter-piracy measures with other states and that can implement laws against the pirates outside their territory. This was also the situation in the 16th till 18th century. Back then the empires used their global sovereignty for establishing law and order in the areas infested with pirates and pirate havens. To achieve the same extent of sovereignty as the empires, states must work together(both legally and coordination of forces). However, this is difficult since states work together via complex and slow diplomatic channels. If states solve this problem they may tip the balance in their favour on the fight against pirates. UN offers a possibility to solve this problem.

Regarding the *indirect-conflict,* most significant is the way the pirates organise themselves for *protection* into a cartel. The organisation of the pirates with a pirate leader at the centre, created a parasitic organisation capable of penetrating all levels of society in Somalia, and most likely in the whole area around the Gulf of Aden. This organisation spans from fishers along the coast, till the state leader of Puntland. The vast span of the organisation makes it highly adaptable to any challenges coming its way, since it can pay any person offering a solution. Furthermore, this cartel of pirates proved capable to outcompete the states in the ability to *extract* capital from the civilian merchant fleet. The pirates and states are both *extraction* capital from the merchant fleet. The states preferences of allowing ship-owners to pay ransoms, instead of risking lives by freeing the crew, have given pirates an easy income. The ransoms give them the ability to access the huge values of the merchant fleet. These values would be inaccessible if the pirates had to sell ship and cargo on a market, since the pirates are not a part of international shipping. This means that the reason for escalation of piracy - contrary to other research - is the great ransoms. This also implicates that the state can deprive the pirates from their motivation and income by stopping the ransoms from being paid. This is however a very unpopular solution.

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1 Introduction

Pirates have come back from the past and are now the newest addition to the growing family of violent organisations, which are being fought by states and international organisations all over the world. In truth, pirates never left the international stage as they have been active throughout history. However, it is only within the last two years that piracy has escalated dramatically.

The location of the new pirate haven is the Gulf of Aden, more precisely along the coast of Somalia. Pirate attacks on civilian vessels within the Gulf of Aden have increased from 25 in 2007 till 70 in 2008, which means that pirate activity is close to tripled in a year. The significance becomes even clearer when you look at 2004, where the total number of pirate attacks was only 5! (Midleton.p3) Furthermore, what started as pirate attacks on small, slow-going vessels with an insignificant cargo has turned into well organised attacks on super oil tankers with a multibillion dollar cargo. In 2008, civilian ship-owners paid a total amount of 150 million $ to pirates in Somalia[1]. The newest investigations show that the paid ransoms are not passed on to the pirates who captured the vessels; instead they are divided among different people. This all shows that the pirates in Somalia aren't disorganised hungry fishermen who conduct piracy out of need, but an organisation which is living from piracy.

Theoretically, the states as organisations have a complete monopoly on organised violence all over the world. Still several states have fought piracy, with all necessary blessings of the Security Council, for nearly two years but the pirates are still in full force. This is against all assumptions of the states superiority, which makes the struggle between states and pirates interesting.

Although technological achievements made it possible for information and capital to travel around the world in a split second, and thereby allowing goods to be bought instantly, the world is still divided by its oceans. Consequently, 90% of all trade in the world is transported by ships across the sea. Moreover, all ships that carry cargo from Asia to Europe and the east coast of the Americas are within reach of the pirate havens in Somalia. For world trade, control over the oceans and especially the main trade routes is vital. Piracy has not hit the frontlines of the world media with one single blow, as was the case of the 9/11 terrorist attacks. But the consequences for the world may, in the end, be even more dramatically as the above numbers may indicate that states are losing their grip on the world seas.

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[1] http://edition.cnn.com/2008/WORLD/africa/11/21/pirates.ransom.payments/index.html

2 Purpose/Research question

The concepts of the state and state organizations have established a violence monopoly on a global scale. Yet the conflict between several states and the pirates has lasted for two years, and piracy is only escalating. This is extraordinary since the state, theoretical and empirical, has dominated with its violence monopoly globally for four hundred years. In this context, it is interesting to understand why the states have not put an end to piracy. Thus my research question is:

Why are states unable to defeat pirates?

Since the reason for this most likely can be found in both the state's ability of fighting the pirates and also in the characteristics of the pirates as such, I will add two sub questions:

What are the internal factors that prevent the states from annihilating the pirates?

and

What are the internal factors that give the pirates the ability to prevent the states from annihilating them?

2.1 Contemporary research on piracy

Although the main part of all armed conflicts in the world are fought between non-state actors, or between a state and a non-state actor, there is a surprising lack of theories and generalised results to use for further research on these non-state actors (Ramsbotham.p61). An exception is the famous research of Mary Kaldor on the former Yugoslavian war. She focused on a "new war" where all aspects of war have changed; even the actors are different from an "old war"(Kaldor). However, as so many other research projects on contemporary conflicts, she investigates the war in Yugoslavia as a case on its own. This means that the described actors are specific for that case, and therefore they cannot be perceived as actors with specific interests and goals independent from that specific case. Unlike theories about the relations between states, Mary Kaldor's non-state actors do not have a distinct set of characteristics. By this I don't mean a narrow definition as Neo-Realism has or other actor-centric theories, but instead I mean any sort of description of non-state actors as such. In my opinion this is a weakness in contemporary political science and research conducted within international relations.

The problem described above about non-state actors is also occurring in the very limited research conducted on piracy. Although piracy is as old as seafaring itself and even older then the concept of states, all contemporary research is investigating piracy as a result of a specific condition; in this

case the internal struggles in Somalia. This is another example of a violent non-state actor being considered a symptom, instead of a phenomenon on its own. Since pirates and other non-state actors can be dated much further back in history than states, considering them a symptom is simply wrong. I argue that instead, piracy should be understood as a phenomenon on its own. Research conducted on piracy should be theorised so that it can be understood throughout history and across cases. Therefore, my conclusion is that, as such, there is no established research field on piracy. Even though several researchers have produced papers and rapports on the subject, there is not an overall theory for conducting research on the field. Thus an essential part of my master thesis is to establish a theoretical framework which is beneficial for conducting research on piracy..

To provide a theoretical stand I will have to look at other research fields for a complementing theory. My search has brought forward theories on state building. In these theories the goal is to understand state-building and how the state as a phenomenon came to pass. There are several researchers who have conducted research in this area and the amount of material is abundant. This research is of great interest to me, because it theorises on why the state overcame other users of organised violence. I am not trying to compare the condition of our world with the period after the dawn of the state. But as mentioned previously, the main part of all conflicts today are including violent organisations. Therefore, it is not a farfetched conclusion to say that states are still in conflict with other violent organisations.

In my opinion, theories on state building regard the state as 'one' violent organisation among many. Thus violent organisations are opponents to the state instead of symptoms of the condition of the state. As piracy is a violent organisation, this approach makes it possible for me to analyse piracy as organisation which is in a conflict with the state. Therefore, I don't perceive piracy in the Gulf of Aden as an interesting curiosity, but instead I regard the "pirate attacks" as a power struggle. On one side are the established power systems in the world, where the state is in the centre as a monopoly holder on violence. On the other side are the pirates who are challenging the state on its supremacy on ruling the waves.

3 An overview of the thesis

This thesis contains five chapters. The first part is a theory chapter, were I develop a theory which is applicable for understanding the conflict between the state and the pirates. The second chapter is a description and development of method and my qualitative research design. The third chapter is my analysis which consists of two sub-analysis about a direct- and indirect conflict. The fourth chapter gives is a discussion of validity and reliability for my method and. Finally, comes a summary of results answering the research question, followed by a discussion.

4 Theory

There are many books about pirates and piracy, and even more about the state. But there are no theories on the field. Thus the goal in this chapter is to derive theory, which accepts the existing knowledge and theories on states and pirates, but still gives a theoretical frame that makes it possible to understand the relation and the resulting conflict.

4.1 Scientific theory

Any sort of research project includes a series of choices about scientific theory and methodology. The scientific theory choices involve the making of a definition of science, whereas the methodological choices involve the methods that can be used for bringing forward knowledge. The different scientific theory choices(or stands) are in many ways components in the research, each with their own characteristics and benefits. It is well known in social sciences that the scientific theory choices are critical for the selection of methods that can be used. When architecting a research design, the scientific theory choices can be understood as components that serve as a base for methods, analysis, explanations, discussions and conclusion. But it also involves the very perception of the world as such(Berg.p103,Bryman.p5-25) Therefore, the scientific theory choice is, in my opinion, best made by going through perceptions of the research field.

In the previous chapters I made several scientific theoretical stands by describing the research field and contemporary research on it. One of my major claims is that violent organisations, such as pirates, revolutionary Guerrillas and Mafias, are actors on the international scene. When set in a scientific theoretical perception, this implies two elements for a scientific theoretical stand. First of all, it suggests that there are actors which can be objectively analysed and observed empirically. Thereby, I state that there is a 'world' which exists independent of human perception. Secondly, I imply that an important part of research is to define relevant actors as the definition of an actor is

not always clear. This gives me an ontological stand which is neither positivistic - since I think that actors must be defined before they can be observed – nor is it hermeneutical/constructivistic, since I imply that there is a given world which can be observed empirically. In summary, there is a given world which can be observed. However, what and how we observe this world is a matter of definitions. Therefore, the most fitting scientific theoretical stand is critical relativism. It implies the existence of a world which can be observed and, as the scientific terms and descriptions of this world are human made constructions, a great part of doing research is to define good terms(Patomäki.p9). This stand is beneficial because it allows me to describe actors as being recognisable on the international stage. On the other hand, it implies that the definition of an actor is uncertain, and, consequently, that an important part of research is to define actors.

4.2 Establishing a theory on piracy

To establish an applicable theory on piracy, I have to base a theory on the scientific theoretical stands which I described previously. Due to Critical realism, theory is not wrought out of thin air but must reflect a existing empirical world; to ensure this I will use already conducted research and theory(Patomäki.p8). Thus, in this chapter I will develop a theory based on already conducted research on the field. For establishing my theory, I will start with a key feature; the relations and conflicts between the state and other users of organised violence.

One of the first theorists who discussed and analysed this issue is Thomas Hobbes. In *The Leviathan* he describes the establishment of a state. For Hobbes, the natural way of living for humanity is *"solitary, poor, nasty, brutish and short"(*Hobbes.p86)*. To escape this way of live, individuals should make a *social contract* where they give up their natural given unlimited freedom in exchange for security. The trade off should not be understood as infinite but as a limited restriction on the individual's freedom. The contract results in a sovereign state and, according to Thomas Hobbes, can be referred to as *The Leviathan(*Hobbes.p86) – The leviathan is a gigantic biblical sea monster, which Hobbes uses because it is an invisible force.

Although Hobbes' approach is normative, it is very relevant for my research since he describes the essence of the state's relation to its citizens; it has to fight internal violence to uphold security but it also has to secure the citizens from violence from the outside.

To establish my theory, three aspects from Hobbes's approach can be used. First, the very essence of the state is to hold its grasp on violence, secondly, any organisation which is using organized

violence is the eternal enemy of the state, and thirdly, the states monopoly on violence is legitimate since it is for the common good. These aspects are, of course, purely theoretical in a normative sense. Simply stating that the state and violent organisations are enemies because Thomas Hobbes says so is not enough. Therefore, I need a more methodical and systematic understanding of the relation between violent organisations and the state, so that I can use it for in-depth analysis of the phenomena piracy.

As mentioned in my introduction, theories on state building offer an understanding of how the state emerges out of the anarchy, which Hobbes calls *the natural condition*. Since the emergence of a state implies the establishment of a monopoly on violence, a theory on state building has to include a description on how a state can overcome other violent organisations. Additionally, it has to include a description of the relation between state and a violent organisation. An interesting paper for this purpose comes from Charles Tilly, "War Making and State Making as Organized crime". Tilly describes how the evolution and building of the state is a result of the state's ability to accumulate capital from a territory. In this paper he describes how the evolution and building of the state can be understood as the states ability to accumulate capital from an area, which is called extraction, by protecting the citizens in the same way as a Mafia would. This capital is then used for building of the state's institutions called state-making and expanding the states boarders with war-making(Tilly.p181). Charles Tilly uses four terms for describing a dynamic process which is essential to understand the development of the state. These are *Protection, Extraction, State Making* and *War making(*see figure 1).

Protection is the activity where the state is giving protection against all sorts of violence, but also the activity where the state forces its will on its citizens with violence(Tilly.p170-172).

Extraction is consuming capital from the territory which is dominated by the state. This must be understood in a broad sense where the state is making money in any way possible, for example taxes, companies, plundering, kidnapping and so on. This may sound controversial for some, as *Extraction* is mostly taxation in the Western world. But historically, and in other areas of the world, extraction has also been similar to what a Mafia would make its money on. For example, North Korea has a huge income from producing opium, while other states are systematically getting ransoms for freeing prisoners. Only moral standards, imagination and what is possible sets the limits on how a state can *extract* capital. *Protection* plays a vital role here, because the extraction is not voluntary but forced on the citizens(Tilly.p182).

War Making is the state's ability to conduct organised violence for defending and enlarging its territory(Tilly.p184-186).

State Making is creating and running an administration; this means establishing a government with laws, institutions and hired bureaucrats. This is a consequence of all the other activities mentioned, which demands an organisation of any sort to ensure the implementation of the previous mentioned activities and the daily administration of them(Tilly.p182).
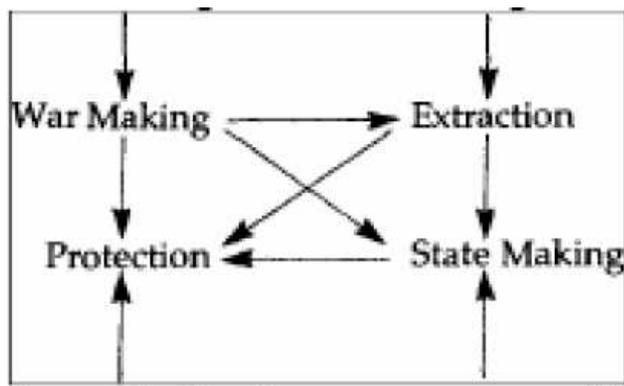

Fig.1 A graphical illustration of how the four main activities of the state are part of a whole. It also shows that they are affecting each other (Tilly; 1985; 183).

4.3 Introducing "The violent organisation theory"

I will modify Charles Tilly's theoretical frame in such a way that it can describe the conflict between the state and violent organisations. I hypothesize that Charles Tilly's four terms describe the relation between the state and any violent organisation. Therefore, I have concentrated his four terms, and all its relations, into two basic conflicts between a state and a violent organisation; these conflicts can be indirect and/or direct(see figure 2).

4.3.1 Indirect conflict

The indirect conflict is a competition between the state and violent organisations within civil society, and is based on controlling society via so-called '*Protection*'. In this context, protection is demanding money from civil society with the threat of violent reprisals. The goal for both state and violent organisations is to gain economical profit. In short, states and violent organisations don't fight each other; instead they fight(as competitors) over the civil society for economical profit.

A description of a violent actor as an economical criminal organisation that only exists to make money is empirically easily falsified. Many violent organisations today, and throughout history, have and had political goals. All revolutionary groups − both political and religious – concentrate

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their efforts on achieving goals which are political, and can be forced through by taking over administration of a territory(*state making*) and by continuing to expand this territory(*war making*).

4.3.2 Direct conflict

This brings me to the other conflict which I have named the direct conflict. The direct conflict is the activity where a state and a violent organisation are trying to destroy each other, and on the same time try to maintain/take over the administration of the territory. This can be done in a direct military engagement, where the goal is termination of the opponent, but also by obstructing the other parts ability to administrate a territory and thereby implementing laws and other political norms. This conflict is in my opinion what resembles a civil war, but it can also be an insuring force from outside the territory.
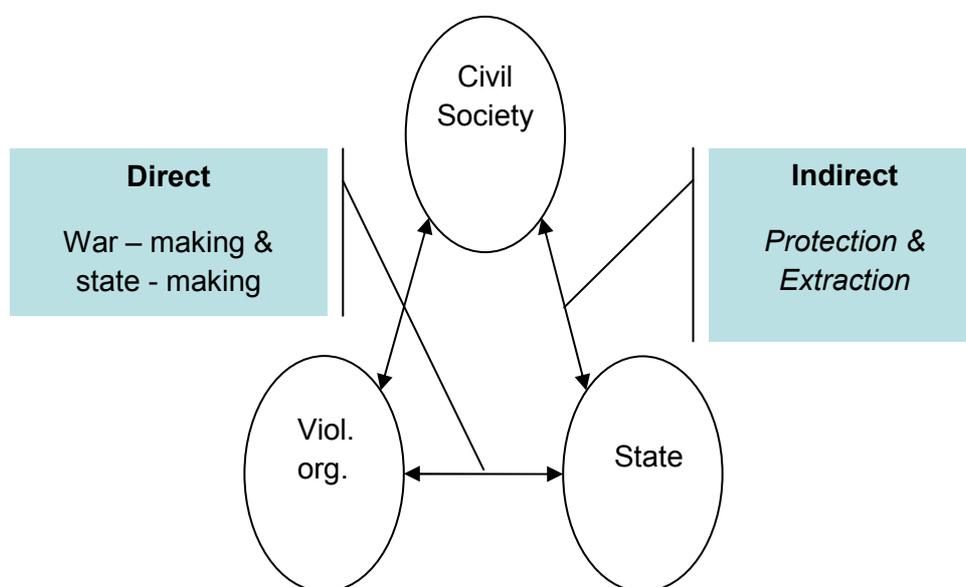
Fig.2. The violent organisations' relations to the civil-society are similar to that of the state. This results in indirect conflicts between the state and violent organisations, where the goal is to raise capital from civil society. At the same time, they have a direct conflict with each other, which has the characteristics of war.

Discussion of theory

The above mentioned theoretical approach has both advantages and disadvantages. The first advantage is that it gives an understanding of violent organisations as having goals and means, and are autonomic from the state. Their goals are *extraction* to make money, there means are *protection* as a two edged sword; it both threatens and protects the people they take money from. However,

they also have the goal of overthrowing the state and to take control of some or all of the state's territory; here the means are *state making* and *war making*. Furthermore, it shows that violent organisations are not only enemies of the state because the state wants a violence monopoly, but also because violent organisations have means and goals which are competing with the goals and means of a state. The consequence is a conflict. Moreover, the theory shows empirically what would be of interest for further investigation.

Critics would argue that a disadvantage is that the theory, as an approach, isn't separating the different violent organisations. By this I mean that, empirically, we can see that there are organisations who mainly conduct economical crime, while others are revolutionary state overthrowing groups. The theory is not separating these groups, instead it suggest that, in theory, they are similar when one perceives them as challengers to the state. However, at the end of the day the true test for this theory is to answer my research question and the sub-question - this will bring forward both advantages and disadvantages.

5 Method - how to do research on the conflict between pirates and the state

Whereas the theoretical chapter focussed on **what** science is, the methodological chapter is about **how** to conduct science. The major decision to be made in this chapter is if I should use Qualitative or Quantitative methods or both. As mentioned in my theory part, the scientific theoretical stands and my general perception of the research are important considerations, since these matters will fit better with some methods than others(Berg.p103).

I decided to use a critical realistic scientific theoretical stand which may use both a Qualitative and a Quantitative research design(Potamaki.p99). Since an essential part of critical realism is to define concepts which are as close to the empirical world as possible, I prefer a Qualitative design over a Quantitative one as the first design is more flexible. It would include the use of semi-structured interviews which - compared to Questionnaires - have the benefit of elasticity. It is possible doing an interview to dig further into matters which turn out to be of interest, and I would be capable to use observations from the media and other research to define and discuss different matters(Maxwell p5).

5.1 The design of the research

My overall research design is based on the criteria made by Joseph A. Maxwell. Maxwell has an overall model which shows how qualitative research can be done(fig. 3).
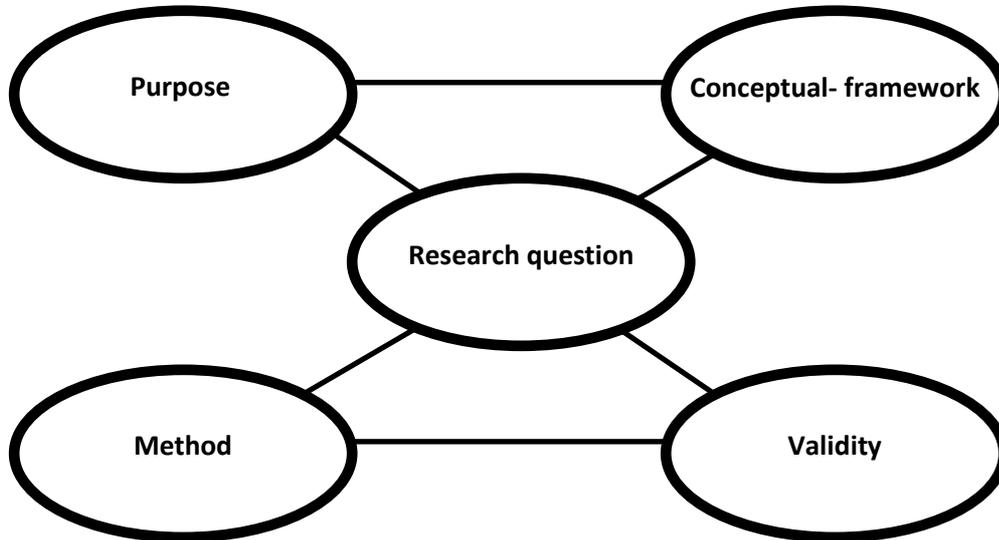
Fig 3

The idea and how to use the model is that is serves as a set of considerations which has to be kept in mind. Which considerations are there to be made? And how important are they? The 5 points have to fit together so that they establish a good design. This is best described by Maxwell himself:

> *"I find it useful to think of them as rubber bands. They can stretch and bend to some extent, but they exert a definite tension on different parts of the design, and beyond a particular point, or under certain stress they break. This metaphor represents a qualitative design as something with considerably flexibility, but in which the certain parts impose constrains on each other, constrains that, if violated, make the design ineffective(Maxwell.p5).*

All five points and their relationship to each other will be described in this chapter. Some of the considerations have already been explained previously. The relationship between *Research question, Purpose* and conceptual framework is the relationship between theory, scientific-theory, purpose and the research question. What remains are the methods applied; here I mean the practical way of collecting material and my considerations on how to ensure that these methods are corresponding well with my other choices.

5.2 Bridging the gap between research- design and method

To ensure a high standard when doing qualitative research, a high grade of transparency is essential(Dahler-Larsen.p80). Therefore, I will describe the considerations and the followed procedures before, during and after gathering the research material. It also includes the practical matter relating to the interviews; conducting the interviews, why the interviewed people were chosen and how. But it is even more important to show how the research and paper as such are constructed. Thus a complete walk through the research design and the different measures is necessary to ensure a high standard of research. I will therefore describe my research design and the methods applied.

As mentioned in the introduction and the resource question, what is interesting for me are the actors "the state" and "the pirates", and the relations between them. Thus the method applied has to give me knowledge about these actors. "The violent organisation theory" implies that these actors are the state, civil society and the pirates. However, these theoretical terms have to be made into practical usable terms, which can be used as sources, analytical concepts and for referring to already establish research. This is bridging empery and theory, to fit together the world of ideas with the real physical world. Alan Bryman calls this step "Selecting relevant sites and subjects", which shows that it is about the "who" to do research about which is relevant(Bryman.p269). Empirically there are plenty of states. In this case, a state is needed which has a civil society being attack by pirates. On the world seas civil society is the merchant fleet. A country has to be selected which has a state and a civil society involved in a conflict with the pirates, not to be used as a case study but only as source and tool for reflections and analysis.

As most other research projects, I will end up using a compromise between what is optimally desired and what is possible. This means that practical matters have to be considered when crafting a research design; such as resources, time, accessibility and so on. Since I do not have a budget for doing research, I have to make research which only demands working hours and no expenditures. The major practical methodological problem for my research is that the research field is 7000 kilometres away, while the people who are accessible are in Denmark. Together, this means that I have two practical matters which have to be met. First of all, the material gathered has to be for free, and secondly, it has to be within the vicinity of Denmark. Therefore, I have settled on a research design that is based on using Denmark as a state and a civil society which is in a conflict with the pirates in the Gulf of Aden.

The Danish merchant fleet transports 10 % of all world trade and was one of the first countries which was attacked by pirates and actually started fighting pirates in the Gulf of Aden[2]. Although the state of Denmark will not represent all possible aspects of the conflict with pirates in the Aden bay, it will easily suffice in my analyses. Since Denmark is a large seafaring nation, it is a perfect opportunity to gather knowledge on this state and its civil society. Thus I will use Denmark as example and source for my analysis, but not as a case study. Clearly, pirates are not located in Denmark but in the Gulf of Aden. In either way, interviewing the pirates would be almost impossible and, as it isn't essential for my analyses, I do not consider this a large problem. I will instead use the sources I have in Denmark and the already conducted research to triangulate the nature of the beast – pirates.

There are many aspects which have to be investigated to give a comprehensive and full answer to the research question. "The violent organisation theory" shows that very different matters are a part of a complete holistic understanding of the conflict, and this has consequences for the structure of the research e.g. for example the direct conflict involves war-making and state-making. These two subjects are containing their own research fields. For *war-making* the appropriate theory tradition is strategy and tactics, while for *state-building* it is domestic and international organisation and laws. In the indirect conflict *protection* has a field in the tradition of research on fighting organised crime while *extraction* is about economy and economical crime. Charles Tilly's theory shows that there is interdependence between all the four terms. Therefore, I have to respect the difference of these fields while doing research and show how they affect each other.

Another important issue on the research design is the theoretical solitary focus on actors and not the conditions of the conflict. It is obvious that the conditions matter as well, but in an actor-based research design it is only important to describe and analyse those who are of relevance to the relation between the actors.

My solution is a research design made up of three major parts. I start with a short description of relevant structures which is then followed by two separate analyses, each containing two sub analyses. I will thereby structure the research according to the described conflict, terms and fields mentioned above. The advantages in this design is that I can respect the characteristics within the

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[2] http://www.shipowners.dk/danskskibsfartogoffshore/noegletal/danskskibsfartsinternationaleplacering/?nav=rel

different sub categories, and also take into account significant structural conditions, thereby achieving a holistic understanding of the conflict phenomena. Finally, the results from both the conflicts and conditions are discussed in the end(Discussion chapter) as well as the benefits and disadvantages of the method applied.

5.3 Collecting material – Semi-structured interviews

There are two parties that would be interesting to interview: the state and the civil society. Obviously, there are practical problems in this aspect of gathering material. First of all, I now have to take the full step from theoretical approach to practical approach. This means that I have to specify who I practically want to interview to get proper information on the state, civ.org and pirates. In a modern state as Denmark there is not one person who is responsible for all aspects concerning a matter for the state, moreover, there is most certainly not one institution which has all knowledge regarding a certain phenomena. Different state institutions are responsible for different matters in different resorts. Keeping the theory in mind, I need institutions from the state who are engaged in the direct and the indirect conflicts with the pirates. I also need one or more civil organisations for understanding the civil part of the indirect conflict in the Aden bay. To find the right institutions and persons to interview, I used the following criteria:

1) The institutions must take part in either the direct or the indirect conflict with the pirates.
2) The person interviewed must be in a position where he has experience and knowledge on the subject.
3) The person must be working together with or against some or, if possible, all of the other state institutions and actors(civil society and pirates).

Clearly, the institution which would meet all the criteria is the Royal Danish Navy. The second national institution which could be relevant is the Ministry of Foreign Affairs. In Danish foreign relations, this ministry makes the decisions and is, as such, the highest authority before the political level. On the civil side the Danish Ship-owners Association meets the criteria.

As mentioned previously, my research ended up being somewhat of a compromise. I couldn't access one of the sources I wanted to(the Danish Ministry of Foreign Affairs), but on the other hand I found other good sources via the people I interviewed. Regarding the Danish Ministry of Foreign

Affairs, it was impossible to establish a proper meeting because there was a constant shift in the persons in charge of handling piracy. Furthermore, there were several persons responsible for different aspects on the same time. This put me in a methodological dilemma; at several points doing my research I would get a contact with one person, who had or was responsible for one minor part of an aspect on piracy for a short time(1-3 months). This made it impossible to find a person, who would fit my above criteria. Moreover, the knowledge and data I could get from interviewing them would be lacking long-term reflections and experience regarding piracy. At a certain point, the chairman of a newly established taskforce on the legal matters in the ministry said to me: "we are basing our considerations on a rapport coming from Lars Struwe which is not published yet". I made an appointment with Lars Struwe who then cancelled. Lars Struwe's rapport came out in April 2009, this was used as an alternative source for interviewing the Ministry of Foreign Affairs. It was easy to find sources from both the Royal Danish Navy and the Ship-owners Association. During the interviews, I was recommended to contact Niels Mathiesen from the ship-owner company "Clipper Group A/S", who was a negotiator when one of the companies' ships was hijacked by pirates. He turned out to be a very good source, since he had worked together with both foreign embassies, local Somalian negotiators and many other people involved in piracy. His company had also recorded conversations from the pirates on their ship, which meant that I could access information from the pirates themselves. The "discovery" of Niels Mathiesen showed that the flexible design proved to be an advantage.

The material for this analysis came from three interviews. The first interview was made with the Royal Danish Navy's leader of the international department. I decided to interview him because he led NATO's taskforce in the period of the midsummer 2008 to April 2009. The second interview was made with the Danish Ship-owners Association leader of the navigational division, and the third with Niels Mathiasen, who all fitted the criteria.

For reasons of keeping this chapter short and because all were conducted in the same manner, I did not describe all three interviews. Instead, I have selected the interview with the Danish Ship-owners Association as representative of the rest. The interview was agreed ahead by e-mail. In this e-mail, I gave a short introduction, the research question and few questions on the subject. This was done for two reasons: to convince the Danish Ship-owners Association of participating, and to ensure that they would do a very basic reflection on the subject before the interview. There were two responders participating, the interview was done by using an interview-guide, it was recorded and I

made notes during the interview for personnel reflections and non-recordable observations. I chose to do a semi-structured interview to ensure that the subjects I wanted to get further knowledge about was covered, but it also allowed me to be open for changes during the interview; such as the order of the questions, and I could go in debt with subjects that proofed to be of interest(Bryman.p113).

6 The conditions of the conflict

The conflict between the state and the pirates is set on a stage. Even though my focus is on the actors, it is still important to understand how this stage influences the conflict between the state and the pirates, so that the full picture of the conflict can be made. Globalizations and the end of the cold war has been used and abused. I have selected aspects of the structures of this stage which I regard as significant. First of all, the field which is the Gulf of Aden, and secondly how globalization and the end of the cold war has influenced the relation between state and violent organization. There is no doubt that these two phenomena have had an enormous impact worldwide. In this thesis the most important is the state's loss of monopoly on arms.

6.1 A description of the field – the state, pirates and a planet covered by oceans.

As I will show in the case of pirates in the Aden Gulf, it is very important to understand how the seas of this planet are a world which is set apart from the way we normally describe and understand politics, wars and all other aspects of social science. Moreover, the scientific theoretical choice that I made previously suggests that the correct description of the field and case is of outmost importance, since it is here that terms are made to describe the already existing world. Therefore, I will try to give a different perspective on the seas and how they are "ruled". Although states are spread over our planets landmass, the major part of all seas is stateless. Law and order are concepts which derive from a state, not the seas. Yet there are also laws at sea. Some of these laws are traditions, others are made by the UN in its maritime organisation IMO, and others are remnants from previous large seafaring nations: e.g. the British Empire simply enforced its maritime rules on all of the world seas. These historical backgrounds of laws at sea show to a great extend why the seas are different, in a social science sense, from the land world. Looking at the historical background of the laws, one can rightfully claim that the British Empire didn't rule one third of the world. Although the British Empire covered one third of all landmasses, they ruled all of the world seas. Effectively, the planet was British except for two thirds of the land mass. The control of the oceans is a key to understand why the British Empire gained the size it did, and it shows why the

control of the seas is important for any state. For a seafaring state or organisation, oceans are not dividing countries. Instead, they are bringing them closer when accessible via the seas without the use of large resources. This may seem a silly notion, but the point I am trying to make is that the oceans are a place where the actors are present from all over the world. The trade routes going through the Aden Gulf have an international population. The pirates in this area may be from Somalia, but they could be from any other place in the world with a coast. Compared to land, the seas have no "friction" physically and politically, only weather and supplies sets a limit on how far a ship can go. According to a Norwegian navigator who has served on several super oil tankers going through the pirate infested seas, the conditions along the east African coast are exceptionally good for small boats. In other areas of the world, small boats would have a much shorter reach. Some researchers have been surprised that the pirates have been capable to go far from the coast of Somalia. The reason is that there are few limitations on where the pirates can strike, both from its opponent the state, but also by the conditions at sea. Therefore, one must understand that the world seas today are a place were different sort of institutions and organisations are travelling through. Piracy as such is an activity which is set in this arena – on a truly international stage.

6.2 The world has changed in favour of violent organisation

On a global scale the free market economy has given easy access to weapons. During and before the cold war, states almost had a monopoly on weapons trade. If a Guerrilla or terrorist organisation wanted to do any sort of violence with weapons in an area, they had to become allies to one of the sides in the cold war. Access to weapons was monopolised by the west and the east, and any use of organised violence could only be committed with the blessing from one of these sides. In the movie "Lord of war", Nicolas Cage plays an arms dealer who is ecstatic when the cold war ends. First of all, because it makes it possible for him to sell weapons for any organisation which would pay for it, and secondly, it made it possible for him to purchase cheap weapons in the Soviet Union. Even though the movie is fiction, the effect from the end of the cold war is the same as the movie shows; weapons are for sale all over the world, and can be bought for the right price(Klare.p116-117).

6.2.1 Small Arms

Michael T. Klare has committed research on the access to small arms. His conclusions are disturbing in many ways. As such, access to these weapons is very easy today and the prices are within range of most people in the world. He concluded that this easy access is a major reason for the collapse of many states(Klare.p121-125). The price of the most used weapon by pirates, the AK

47, is around 15 $, which means that a group of five pirates can be equipped for around 75 $(Klare.p123). I say that the real problem is actually not the easy access to weapons, but that capital itself is the only resource which is needed to enlarge any violent organisation. This creates a loop, where a ransom paid to the pirates is turned into weapons, which again makes the pirates stronger and so on. This causality has been observed among other violent organisations as well. The FARC in Colombia is *extracting* capital by kidnapping and the production of cocaine. Since FARC has excellent contacts to the black market, their military strength has become far stronger over the last decade because of its large incomes from the cocaine production(Hartlyn.p11, Steinitz.p10). One can argue that this effect, on its own, is not disturbing since state-owned weapons are superior to old weapons like the AK-47. Moreover, this is observable in any direct confrontation today between a state and any violent organisation. However, as Klare argues: "Small arms are enough for disturbing law and order". I would add that it is enough for controlling an unarmed civil society, or to stick to the point; it is enough for conducting piracy.

The consequence of a free black marked for weapons is of more importance than what meets the eye. In historical days, when states where fighting different violent organisation all over the world, the superiority in weapons technology in favour of the state was enormous. Rifles and machine guns against spears and shields was the general rule. There are recorded incidents from the late 19th century were 2-10 western soldiers would gun down adversaries numbering up to 10,000. European dominance in this period was caused by this superiority in weapons technology in combination with the fact that the enemies of the major powers couldn't access such weapons(Lawrence.p23). During the cold war, more and more violent organisations obtained small arms from major or super powers. However, this would still only apply when a violent organisation would fight for one of the sides. I say, that the free black market of small arms has changed this situation completely. Even though the different states' navies are having a large superiority to the pirates at sea, it is far from the superiority in the 19th and 20th century(Lawrence.p20-25). As a consequence, marines and special-forces entering a hijacked ship would meet resistance from small arms that are not that inferior at all. Moreover, these small arms are actually superior to the non-lethal 'weapons' that are used by civilian merchant ships.

7 Analysis

The analysis contains two parts. One is about the direct conflict, which is the military and legal conflict, and the other is about the indirect conflict, which is the competition between the state and pirates on the control of the trade route in the Gulf of Aden.

7.1 The direct conflict - the state versus pirates

For as long as the state has striven for a monopoly on violence and for controlling its own territory, different sorts of violent organisations have challenged the state. Some of these organisations have disappeared to emerge again later, while others have stayed active over the centuries(Jönson and more.71-84). Even though technology and society has changed over time, the basic challenge from these organisations is always the same; they challenge the state by using violence for their own or others end.

Nothing in my theory or in the material I read and collected to make the analysis suggest that piracy is best understood as a unique phenomenon. On the contrary, there are many different aspects on the direct conflict which are relevant to analyse when striving to understand the reason why the state hasn't been capable of annihilating the pirates in the Gulf of Aden. "The violent organisation theory" and the empery indicate that the struggle between states and pirates is just one struggle, among many, of states fighting violent organizations. This opens up the possibility to analyse the pirates in the Aden Bay in different aspects; both in a comparison with other violent organisations who are in a direct conflict, but also in a historical sense where today's conflicts with pirates are understood as a timeless phenomena in which previous solutions and cases can be used for enriching an analysis.

Regarding the direct conflict, there are a number of different aspects which are relevant to investigate further. The thesis should give a holistic understanding of all the aspects on the direct conflict considering the issues *War-Making* and *State-making*. First, I give an understanding of the direct conflict as such, by describing a typical pirate attack in the Aden bay. Secondly, I make an analysis on the military conflicts, regarding both the tactical issues and the question of how violent organisations as such have become stronger because of overall changes in the world. In this context, the navies' hunt for pirates has aspects which resemble non-symmetric warfare; the high-tech and well trained naval ships of the states have great problems with fighting the ill-equipped and self-made pirates. Finally, I will analyse the legal matters concerning violent organisations and pirates.

As with many other direct conflicts, the legal matters have been a hefty issue in the media. The Royal Danish Navy has been forced to put several pirates ashore without any legal reprisals. The issue of how to legally handle pirates as a violent organisation is not unique – for instance the issue of the non-combatants imprisonment in Guantanamo serves as an example of the opposite solution to the same problem. This shows that an important part of analysing the direct conflict has to include an understanding of the legal matters, since the state uses law for legitimizing its counteractions to violent organisations.

7.1.1 A pirate attack!

This is a description of how a typical pirate attack in the Aden bay proceeds, from the moment the pirates are coming till the ransom is paid and the merchant ship is back on its route. All of the below data is based on both the interviews with the Royal Danish Navy, the Danish Ship-owners Association and Clipper Group A/S. Their explanations of how pirate attacks proceeds are very similar; the only real difference will be explained in the end of the chapter.

Right before the attack is set in motion, a pirate vessels crewed by a *tactical team*[3] will hide by using the same boats as the fishers do, called a Skiff. Should they decide to expand their radius of action, they fuel up by using a supplier resembling a typical cargo vessel called a Dhow. As fisher ships are often clustered in groups and remain on a spot for quite a while, the pirate boats are nearly impossible to distinguish from the others. If a merchant vessel comes in the near, the first thing that happens is that the pirate Skiff is increasing its speed and sets its course towards the merchant vessel. The pirates favourite pray is a small slow moving(16 knots) merchant vessel within a low freeboard(distance between water surface and deck). Such a merchant ship is easy to catch for the fast moving skiffs and getting on board is even easier. The short time between the pirates' Skiff is increasing its speed and the entering and boarding of the merchant vessels is where the navy's are fighting the pirates. Once the pirates are onboard, all possibilities for the navy to intervene with low risk for casualties cease. The merchant ship has only few possibilities for fighting back the pirates, thus the merchant ship is in the control of the pirates as soon as they are onboard. After the merchant ship is in the control of the pirates, the course is set for the waters outside of "Caluula" at the tip of the African Horn, hear a *Guard team* will come onboard, who will be guarding the captured vessel until ransomed. Upon arrival the pirates will anchor up the ship, after which the *tactical team* leaves. The guards take control of the ship and its crew for a period of two weeks,

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[3] These terms are the terms which the pirates who captured Future Clipper were using

after which they are relieved by another group of guards who then again are relieved after two weeks and so on. During this time, a contact-person/negotiator from the ship-owner and one from the pirates will negotiate a ransom. At some point, the ship-owner and the state which colours the ship is flying will agree on paying the ransom. In contrast to what most people think, the ransom is not paid to the pirates who took the ship. Instead, it will be given to a man from Kenya who arrives in a boat only for collecting the money. After the ransom is paid, the pirates who took over the merchant ship in the first place will take it to sea again where they will hand the ship over to its crew. After this point, the Royal Danish Navy, Clipper Group A/S and the Ship-owners Association are disagreeing. The Ship-owners Association and Clipper Groups A/S says that there have been problems with how far the pirates guarantee that other pirates will not take over the merchant ship afterwards. On the other hand, the Navy said that the pirates are guaranteeing safe passage through the entire Gulf of Aden. Except for this point, both sources are agreeing in almost all aspects of how a pirate attack proceeds.

Overall, the procedure of the pirate attack indicates that the pirate attacks are well organised. Not in the way that there is one organisation who is managing do to an overall plan. But in the way that business partners are working together. An example is the construction of a house, here different companies are working together whit a common goal on one task, but they are focused on one aspect without having the complete construction in mind. Hear it should be mentioned that there are different groups of pirates and guards, but the man who collects the money is from my knowledge always the same. A more thorough analysis of the internal organisation of piracy will be made in the chapter regarding the indirect conflict.

7.1.2 War-making: The pirate hunt –why it is similar to a Guerrilla war

The Direct Conflict between the pirates and the state resembles in many ways a guerrilla war(Taber.p149-173). The described scenario from the Royal Danish Navy and the Danish Ship-owners Association shows a number of similarities with a Guerrilla war: the advantage at sea for pirate vessels towards naval and civilian vessels and the problem of fighting a violent organisation as such.

7.1.2.1 Skiffs – and the use of 'civilian-masks'

The way weapons are used by violent organisation when fighting states is interesting when one wishes to understand the direct conflict between the state and pirates. Due to Professor Wilhelm Agrell, the development of weapons has played a vital role in how wars are fought, since it can tip

the power balance in a conflict(Agrell.p129). Thus trying to understand why the state has not won over the pirates must also include an analysis of this aspect.

The boats which the pirates use in the Aden bay have, as a weapon, a great deal in common with car bombs used by terrorists all over the world. Not its goal, plundering versus destruction, but its characteristics gives it its advantages(Davis.p131). The skiffs used by the pirates are not hard to see, but they are hard to distinguish from other vessels in the area. This is similar for car bombs. A car bomb on a highway is impossible to distinguish, since it looks the same as all other cars. Violent organisations of any sort are often using civilian vessel or common structures for hiding. It shows that a violent organisation which is using a 'civilian-mask' as a camouflage is hard to find and fight for a state. Often this camouflage is used in coordination with a specific tactic; the violent organisation lowers its mask when the states' forces cannot prevent an attack. However, the civilian-mask is also the only feature which a skiff has that makes it superior to a navy warship. In armour and armament, the skiffs and the mother-ships are no treat to a naval ship, but they are to civilians since they have no weapons and armour at all. The advantage for the pirates is small but sufficient.

In a sense the states' navies are in the same situation as was the case in anti submarine warfare before the invention of the sonar. Surface vessels could not recognize a sub-marine till the attack was in progress. This comparison is interesting because it shows that the technological development in the navy has not included recognizing small civilian vessels which could be potential hostiles. Interestingly, terrorists previously used a similar method to attack the USS Cole(Perlp.2). One could argue that checking out all vessels by boarding them and using human surveillance would compensate for this. However, distances at sea are enormous. The area which the combined naval forces in the Aden bay have to cover is the size of the United States of America. Some think that modern radar and the like equals up for this. The truth is that technological development makes a difference, but it is far from enough for covering the entire area.

Within the last 100 years, most – if not all - guerrilla wars have been fought ashore, and not at sea. Therefore all weapon technology and tactical developments within the navies are directed to 'land' fighting and do not meet the problems fighting pirates at sea. In the case of Denmark, the Royal

Danish Navy's development program has in many ways been forthcoming to these types of conflicts. Yet, even they have problems in handling the pirates[4].

7.1.2.2 Problems of fighting the pirates as a Guerrilla

There are also other similarities with a guerrilla war and the direct conflict regarding pirates. One of the issues which Taber described is that Guerrillas need control of areas not just for extracting capital but also as a base of operations. With "the violent organisation theory" in mind I would argue that the pirates in the Gulf of Aden have the need for a controlled landmass as well. The pirates need a place of operations, for resupplying, anchoring up hijacked ships, and to enjoy the fruit of their labour. This need of a base is probably not permanent. The expression *marauders* refer to pirates who are conducting deep sea piracy, and who do not have a safe harbour as a base. Instead, their ability to travel far gives them the capability to go where conducting piracy is easy and where there are harbours to enter safely. This is also of interest as it shows the possibility that the pirates in the Gulf of Aden won't be dependent on Eil in the long run. When one compares them with Guerrillas and/or international terrorists, the ability of violent organisations to shift base of operation, depending on how the conditions are changing in different places in the world, are important to acknowledge. In fact, Al-Qaeda and the Pirates in the Aden bay have a great deal in common when one compares them using the violent organisation theory. When the Al-Qaeda made its attacks on 9/11, the way that the United States of America - together with its Allies -decided to fight them was to attack their main base of training and operation in Afghanistan. After 8 years of war, the Al-Qaeda and the Taliban have taken a severe blow in Afghanistan but they are far from beaten. Moreover, the pressure in Afghanistan has had the unintended effect that both violent organisations have spread to Pakistan(Schneider.p2008). This is of course possible because that Pakistan offered the right conditions. However, the right conditions are also the only thing that pirates need. An unruly place like Somalia where a few handfuls of armed men can take control of a small fisher harbour, with the purpose of creating a pirate haven, is not unheard of in the world, especially not in Africa. The fact that pirates, just like terrorists, are in need of local allies to make the piracy work is actually only making the matter worse. Pirates do not need ideological allies,

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[4] For methodological reasons I would like to make a note here. The comment on the material used by the Royal Danish Navy is based on an interview with the Danish Ship-Owners Association. Since they have an ongoing understanding of ship development for specific tasks, it is fair to say that their opinions on its state counterpart are objective and based on knowledge along with experience.

they only need business partners who are interested in making easy money - those sorts of allies can be found all over the world. In fact, all that pirates need is a link to the international black market and the crime organisations involved, which will be discussed in the chapter on the indirect conflict.

7.1.2.3 Pirates are matching the states΄ Navies

As I made my interview with members of the Royal Danish Navy, I was struck by the respect with which they talked about the pirates. They described them as excellent seamen and saw them as tough and professional. The expression handicraftsmen was used several times as a term for describing the pirates' high level of skills. This is interesting because it shows that the Royal Navy is regarding their opponent as a match and, on occasion, they also described them as more than a match. Analytically, this would suggest that the old weaponry and fisher vessels of the pirates have matched the navies' multimillion euro vessels and highly trained crews. In a state-to-state war this should be recognized as almost impossible, but when one compares it with a guerrilla war it makes sense. The Guerrillas use the conditions, strategy and civilian masked weapons makes them excellent opponents, the pirates in the Gulf of Aden have achieved this edge toward the states navies. It is this excellence as opponents which the Royal Danish Navy is recognising.

7.1.3 State-making: what to do with pirates? – the legal matters

When regarding the media today, the major question on piracy is how the state can prosecute pirates, or more precise, who will take them into custody for prosecution. In the case of Denmark, the Royal Navy had to put several pirates ashore because that there were no possibilities for a legal prosecution in Denmark and no other nation or international organisation can or will do it. The consequence is that the pirates can continue with their attacks. It may seem that this problem is a new phenomena - in contrast, it is as old as piracy itself. In this chapter I will go through this important issue using "the actor theory", and also by using historical examples in addition to other present-day examples. I have deliberately avoided a discussion and analysis of international law as paragraphs and the institutions upholding them. Though this may be relevant, I will instead try to understand the problems in a more general sense and investigate solutions that have worked previously.

For a state to win the direct conflict over the pirates, it must use its institutions of law to legitimise its fights in order to annihilate its enemy(Christer.p80). Since the state – keeping Thomas Hobbes in mind – is striving to be a legitimate user of violence for the common purpose of security, the use of law is important for the acceptance of violence by the population and other states as well. One part

of the state's direct conflict with pirates is therefore the construction of a complete legal system to prosecute pirates. This means both making it illegal by law, and making any sort of prosecution system which is followed by some sort of facility where the pirates can get there penalty. Pushing these matters through has always been problematic for the state, both in a historical view regarding pirates, but also when it comes to other violent organizations today. An example in modern times is the issue of the "non-combatants" who were being imprisoned in Guantanamo without any legal prosecution. The recent decision of releasing these "non-combatants" shows that, on the long term, modern states can't imprison people without legitimizing it. In agreement, the Royal Danish Navy has had a number of pirates which it had to put ashore after two weeks, with exception of five pirates who were in custody for 6 weeks who then were handed over to Dutch authorities. Freeing the "non-combatants" and pirates may be a solution in a juridical sense. However, since the state - having Thomas Hobbes in mind – has to guarantee the security of its citizens, freeing the "non-combatants" is not a solution as violent organizations are a threat to security for any state's citizens - this applies for pirates in the Aden bay, but also for other organizations like Al Qaeda, who also attack citizens of different states and can be described as acting on the international stage. In view of Thomas Hobbes theory, the state is legitimating its limitation of the individuals right by guarantying security for them; any state is obligated to annihilate pirates and any other violent organisations members. By freeing the pirates, the state of Denmark has guaranteed the pirates to be protected from illegal reduction of freedom. However, the state of Denmark has not guaranteed the security of its own citizens against the pirates who are violating the Danish merchant seamen. Clearly, freeing captured pirates is not a sustainable solution concerning security for Danish and other merchant vessels. Thus a legal solution has to include not just the prosecuted individuals' rights but also the security of the states citizens. The balance between these two points can be very difficult. On one side, a pirate who isn't proven to be so is a civilian and has to be handled as innocent. On the other side must the state regard pirates as pirates, whether they can be prosecuted legally or not. This means that pirates are a security problem - if not for the state than for its citizens - whether the law defines them as such or not, and should be fought with the appropriate countermeasures, namely law and the institutions which are needed for it. The normative, philosophical and legal arguments in favour for prosecuting the pirates of the Aden bay are there. However, when it comes to international law, in my opinion, the diplomatic matters are often more crucial when a decision is made than the legal matters. This suggests that a deeper understanding must include an analysis of the international and national institution regarding the legal matters.

7.1.3.1 The states lack of law regarding violent organisations

The problem of the non-combatants being illegally imprisoned and the pirates being set ashore without punishment is in my opinion two sides of the same coin – both are the results from lack of law and institutions to implement them. In the case of the pirates being set ashore, the state of Denmark is using its lack of law institutions for freeing its opponent - the pirates. If the state is to win the direct conflict over the pirates, it must use its institutions to fight **for** and not **against** itself. In the case of the non-combatants, the United States of America imprisoned its opponents in the name of security with doubtful regards for the non-combatants individual rights. Both examples show that modern democratic states, as organisations, have a tendency to prefer either security or legal rights and not combine them. This means that the previous named balance between security and rights is absent since one is favoured over the other.

All in all, the two examples show that today's states are not able to make the necessary initiatives for creating all the legal institutions necessary for fighting any violent organization. As such, violent organizations who are acting internationally are not falling under any international law, since there are no laws concerning violent organizations as a general topic. The reason for this is that these rules are made to create a common stand on issues concerning interstate wars – in a way they are diplomatic agreements concerning war(Bring.p14-16). However, this does not mean that the state cannot do anything. All violent organizations within a state's territory are illegal, and the state has never had any reluctance on creating and enforcing those laws(Jönson.p80-83). In fact, I would argue that, historically, laws are made by states for the purpose of creating security for the common good, and the destruction of any other user of organized violence. What is new is that for a state to guarantee its own citizens security it must legitimize its fight outside its borders, this regards both terrorist and pirates. The real problem is then that international law is obsolete when it comes to prosecuting and fighting violent organisations outside of any states territories. On the other hand, the issue of "rights" for violent organisations is unique for our time. Previously, western states didn't regard enemies from other parts of the world as civilized(Lawrence.p12). In agreement, some of the first restrictions on war made between the states of Europe did not apply when fighting forces outside of Europe. An example of this is the use of the dum-dum bullets, which was considered illegal in Europe but which was used randomly against "savages"(Bettz)[5]. However, the fight against pirates was a different matter as in previous times piracy was, in one way or another, conducted by westerners. Moreover, pirates were often coming from leading European seafaring

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[5] http://www.zum.de/whkmla/sp/0910/pillow/pillow1.html

nations, and perhaps therefore were not regarded as savages. Back then, the legal matters were problematic because pirates were considered by states as potential mercenaries and were not declared illegal till late 18th century(Thomson 1994.p69-72). This means that the legal matter of piracy, just like today, was a complex matter which had to be handled carefully. It also means that the way the legal matters where solved previously are relevant to understand the legal matters of handling violent organisations today, and also for studying the possible solutions, since pirates just like today were outside the borders of a state but were not outside of the state's laws.

7.1.3.1 A history of pirate law – how to beat the pirates legally.

In the 16th to 18th century, pirates were not that illegal at all. The British Empire in particular was using pirates as privateers for fighting and harassing its enemies, and in general for enlarging its fleet. When the European major powers were at peace for a while, the privateers would become pirates again and attack any cargo vessel. The situation of pirates being potential mercenaries for the king meant that the states interest in fighting pirates was very small(Thomson.p22-26,54). Nevertheless as time passed by, pirates became a treat to trade for the major powers of Europe. Like today, it turned out that getting rid of piracy was easier said than done(Thomson.p69-76). The previous consideration of piracy being a grey legal zone, where pirates in times of war were merchants and in peace times pirates, made it hard for the states to prosecute them, but it also meant that restricting the port possibilities for the pirates was hard. Since piracy had been accepted all over the world, many colonies(including the Americas) had made piracy into big business(Thomson.p49-53). This meant that large parts of the world colonies and states outside Europe had no interest in helping the major powers in solving the global pirate problem. As a consequence, the implementation of laws against piracy was problematic. Pirates also had several pirate havens which were under control of the pirates themselves, the most famous being "Libertalia" a country completely ruled by pirates(Anand.p113). Those pirate havens were, so to speak, a no-state country, which meant that there were no local authorities which could be persuaded or demanded to handle the problem.

Just as today, pirates were either existing as a consequence of local governments blessings, or because of a lack of a local government. I cannot say whether it is a coincidence or a consequence of the same similarities, but back then it was also states far from where the pirates were conducting piracy, which had to fight the pirates(Thomson.p50-51).

Since there were different reasons for piracy, the solution to the 16th to 18th century pirates was a combination of several initiatives. As such, solutions to the problems were very different, and did basically depend on how the pirates where capable of surviving in the area. In areas where the pirates were surviving because of a local independent state's government allowing their activities, the solution was to give the local government a steady fee every year, so that ships from states who had paid the local government could pass by unharmed(Janice.p115). In the cases where no local authority could or would prosecute the pirates, two other ways of fighting the pirates were put in motion. One was appointing a new government official located centrally in Europe, who then would take control of the area where piracy was tolerated; this was of course only possible when the pirates came from one of the empires colonies(Thomson.p51). The other was to strike hard against the pirate controlled areas, by invading the pirate havens thereby arresting and prosecute all pirates(Thomson.p53). Though these solutions seem specific for their time, they are still of interest when looking at the problems today. In fact, I would argue that similar initiatives have been used in our time but against other violent organisations, whether this will work remains unknown. An example is the invasion of Afghanistan, which was regarded as a Terrorist haven and a key stone in the war on terror. This operation may have put the Al-quaida back, but it is still far from solving the terrorist problem and the war against Al'Quaida has in effect become a war against the Talliban.

Some researchers have argued that the establishment of a Somalian state is the only true solution to the pirates of the Aden bay since this would bring the necessary law and order needed. The unruly situation in Somalia is very comparable with the pirate havens of the 16th to 18th century. It can be argued that Somalia is controlled by several different violent organisations; the pirates are in control of Eil and other villages making them pirate havens. A plan of invading it, as the British navy did in the 16th to 18th century, is easier said than done. The movie "Black Hawk down" is based on a true story about a military action to arrest one person in Somalia's main city Mogadishu. In reality the operation was a complete disaster, the United States forces had to literally run away after sustaining losses, and without any villains imprisoned. Even though this happened in a large city, and an invasion of Eil would be in a smaller village, one should keep the operation in Mogadishu in mind. It shows that making a hit and run operation may not be that easy at all. Another possibility is to take complete control of an area, for the purpose of imprisoning and arresting assumed pirates. This

would take a military force to fight any resistance to the arrest of pirates, followed with a long term control of the area.

As mentioned previously in this analysis, enormous resources have been used in both Afghanistan and Iraq for trying to fight terrorist havens, and there are no signs that this will result in a success in the near future. Thus controlling an area for the purpose of catching pirates would take large resources for long periods, without guaranteeing any success. This serves as criticism for the suggested solution of establishing a Somalia legal prosecution system. Keeping the previously mentioned problems of winning the conflicts in Iraq and Afghanistan in mind, the establishment of a Somalian state may not be easy at all- not to mention the mentioned a problem of the pirates moving away from Somalia. Consequently I would say that the establishment of a legal system in Somalia for prosecution, imprisonment and illegalisation of piracy is a theoretical solution. But seen in a more practical view, there are many steps to be taken before this can be achieved, and any force trying to take them would most likely falter.

In the 16th to 18th century, the question of who and where the prosecution should take place was also an important issue. Since the worlds waterways were largely controlled by the British Empire it was natural that the prosecutions should take place in the empire's capital London(Thomson.p109-120). However, this proved to be practically impossible, since the pirates were taken far from Britain; the transportation to London would often take months. This journey was often considered to long and the pirate were freed or, more often, died before completing the journey to London(they were probably not that popular onboard). The solution was to create a series of local prosecution courts within the empire; each would handle the pirates locally. Pirates who didn't originate inside an empire were, over time, turned into the responsibility of the state where the pirates originated from(Thomson.p109-120,116). The latter is why today the pirates of the Aden Bay are not being prosecuted; international law prescribes that they should be prosecuted in Somalia, since the Somalian state does not exists, they are simply not prosecuted. It shows again that international law is old - no one anticipated these problems, and the customs that exist are obsolete today. Therefore, no one can pinpoint who should do the prosecution today. I have no doubt that had there been a global empire as the British Empire, they would have prosecuted the pirates in London, since it would be considered an empirical problem. Today empirical problems are global problems but the globe has no capital, and there is no global authority or law either. With this being the case, what options are there?

The world order has changed allot since the 16th-18th century. The world is no longer under the control of a few empires. However, the UN is a political global force, which has the necessary political authority to override a local Governments authority, and in this case to take control where there is no authority at all. The Security Council has allowed any state who wishes to hunt pirates inside the territory of Somalia to do so(resolution 1772,1814,1838,1851). Still the issue of which law and whose institutions should do the legal part of it remains unsolved. The difference from the 16th-18th century's global empirical authorities to the UN is that the UN does not have any institutions to implement its decision and upholding its legal matters. Since no country has showed that they are willing to do this on their own, another solution must be found. Again a look on how other violent organisations are being prosecuted could be interesting. The militias who commented genocide in the former Yugoslavia, and the violent organisations that did the same in Rwanda, are both being prosecuted at an international tribunal in Den Haag(Buckley-Zistel.p3). Such a tribunal could also be made under the UN for prosecuting pirates and perhaps for non-combatants, terrorist and any other violent organisation. Some would argue against this by saying that these different sorts of crimes can't be compared that easily, and that most states already are handling it on their own. Not to mention that the UN and the UN tribunal does not have the necessary political power to put this through. I would argue that today all violent organisations who are conducting their activities internationally, in one way or the other, are in a shortness of law and legal institutions. Since there are no empires today who have an interest in doing global governing and legal prosecutions, the only real option is to make a tribunal by, and for, all states. Practically this should also be possible, since there are several states that have an interest in the prosecutions of the pirates but are not capable of doing this themselves. Further these nations also have an economical profit to gain if they financed such a tribunal together with others states. Moreover, the problems of coordinating the different states forces in the Gulf of Aden would be solved as well by an overall UN coordination.

7.2 The indirect conflict – competing over the world's main trade route

The analysis of the direct conflict is about the **how,** that is understanding and analysing the armed and legal conflict between the pirates of the Aden Gulf and the state. In contrast, the analysis of the

indirect conflict is about **why** there is a conflict between states and the pirates of the Aden Gulf. One could argue that states navies and pirates always have fought each other. However, in history there are almost as many examples of the opposite, where pirates and states are fighting alongside each other to obtain common goals. Put in a more narrow sense, the indirect conflict is about what conflicting interests and activities the pirates and states have. According to the indirect conflict in the "violent organisation theory" the *extraction* and *protection* made by the pirates is competing with that of the states.

7.2.1 *Extraction:* **The Business of the pirates**

In this part, pirates will not be analyzed as enemies of the state, but as an 'business' organisation which is competing with the state over the control of the trade route going both south and north of Africa. During the analysis I will go through different aspects of this competition and bring forward knowledge about the consequences and challenges for the states are in overcoming these aspects.

7.2.1.1 *The pirates extraction of capital from the Gulf of Aden*

It is relatively easy money making to receive capital directly from ransoms whereas selling the ship and its cargo after stealing it demands an organisation and access to a marked before capital can be accumulated. The following hypothetical example serves as illustration for the point.

The cargo from a super oil-tanker with a full cargo of crude oil may represent an enormous value on the international marked - but only if you can access a buyer. Since there is no secret black marked refinery in the world, it is impossible for pirates who have captured a super tanker to sell the cargo. Thus a captured super tanker is virtually impossible for the pirates to turn into cash, unless someone is willing to pay a ransom for the cargo and the ship.

"The violent organisation theory" would say that, by demanding ransoms for the ships, the pirates have achieved access to international market values for the ships and crews without doing all the work in organising and participating in the international shipping marked. Theoretically speaking, the pirates are using the 'dark side' of *protection*, namely the ultimate ability to destroy what they are controlling. The simple threat of destroying a ship and its crew is enough for *extracting* capital from the trade routes that are within the pirates reach. On the same time, they avoid the *state-building* part of creating a large organisation which would be essential for taking taxes on the

bypassing trade as a state. In summary; the conflict between the state and the pirates is about the control of the trade routes within the reach of the pirates. However, why is it that trade is so important to the state?

7.2.1.2 The states' dependence on trade and the essence of the indirect conflict

The ongoing financial crisis shows that all states economies are interdependent. Modern economy is about globalised trade in produced goods, values and favours. As the violent organisation theory shows(and Charles Tilly describes it, states are accumulating capital out of an area in every possible way. As a theoretical understanding this is true. In realty, *extracting* capital for the state is more about taxation and earning money within its own territories as part of a larger world economy. Thus *extraction* is also a matter of reassuring the place of a state's economies in the world economy. In agreement, an important part of the states business is to give its own citizens the ability to sell goods across the world at the most favourable prices as this enlarges the state's income by taxation. Obviously, the major factor essential for states to achieve any goal is via its extracted capital; the capital decides what is possible in all other areas, whether this is *war making* or creating welfare for the citizens through *state building*. This means that the financial crisis today is a global problem for all states because it affects the *extracted* amount of capital. Consequentially, all state activities are diminished and the state is weakened. Any attempt by a violent organisation to prevent or compete with the state in *extraction* is a huge problem for the state.

Due to the Danish Ship-owners Association, the amount of trade going through the Suez Canal makes it the largest maritime ship route in the world. In my case example with the state of Denmark, the transportation itself is a part of the Danish economy. The Danish merchant transports around 10 % of all cargo at sea(Skibsfarten I tal). To understand the enormous amount this truly represents, one should keep in mind that 90 % of all cargo is moved over sea. The Danish Ship-owners Association estimated that 4-6 Danish merchant vessels a day are sailing through the area occupied by the pirates of the Aden Gulf. This means around 1850 Danish ships the Aden Gulf every year. Therefore, for Denmark the conflict with pirates is higher than most other states.

7.2.1.3. Why paying the Ransoms has and will escalate piracy

It is in all states - and particularly the Danish state – interest to stop the pirates from *extracting* capital by getting ransoms. "The violent organisation theory" would say that the ransoms is a indirect competition to the state, which would suggest that the state would try to stop the ransoms.

Yet be on a few states all states are silently agreeing on the ransoms being paid. This is interesting since it goes against what one should expect in theory.

The pattern today, when a ship and its crew is held hostage, is that the ship-owner pays an agreed ransom. Due to both The Royal Danish Navy and the Danish Ship-owners Association, this is done because it guarantees the security for both the crew and the ship, on top of that it also prevents the conflict at sea from escalating. Due to The Royal Danish Navy this pattern emerged from the Danish ministry of foreign affairs. It started when the Danish Coaster ship "Danica White" was hijacked. The reasoning of the ministry of foreign affairs was based on experiences from kidnappings of Danish civilians by other violent organisation; if there was a possibility for negotiating a ransom, it should be explored fully. Whether it is the same reasoning that has led to similar handling seen in other countries, I cannot say for sure. However, since it is the general pattern today, it is fair to presume that similar reasoning was made by other states in similar situations. There is one state that concluded the opposite: the French Republic. They handled hostage situations using the motto "we don't negotiate".

In a short aspect, there are arguments for the ship-owners to pay the ransoms. As Niels Mathiesen from the company "Clipper Group A/S" said, who had a ship hijacked by pirates:"*For us it was simply a matter of business, we needed the ship and its crew to carry on its voyage*" – and emphasizes "*the crews security was our foremost concern*". He also said that "*when the pirates onboard the CEC Future thought that there was a French crewmember, they went amok; they said they would kill any French crew members*". Although, there were no French crew members onboard the ship I have no doubt that the pirates would have backed their threats with actions. The reason for this hostility was that the French navy in 2008 freed hostages from a ship by killing the pirates. The reaction from the pirates' side was/is to simply kill all Frenchmen. This may seem as a fanatical act in some eyes, yet I would say that in reality it is an act of desperation. The basic pirate is not a fanatical idealist; he is an opportunist who is trying to make easy money with as little risk as possible. Unlike a fanatical suicide bomber, for a pirate death is to be avoided at all costs, even if it means killing others. In truth, their reaction proves that they are afraid of piracy being handled "*the French way*".

Seen from an analytical perspective, the consequence of ransoms being paid is the continuance of piracy. Since it is the business of the pirates to make money from capturing merchant ships, receiving the ransoms is the only purpose of conducting piracy. Thus paying ransom for one seaman actually puts all others into danger of being captured by pirates, since it is ensuring that the pirates will continue their activities. Whether the ship-owners and states want it or not, giving ransoms is practically motivating the pirates to do more piracy.

There are alternatives to paying the ransoms. Declining a ransom offer brusquely would probably result in the execution of civilian seamen. A more promising course of action would be to engage the vessel with proper trained soldiers to free the hostages and, if possible, arrest the guards/pirates alive. Such a course could result in casualties on both sides, which makes it unpopular. Even though there is a risk in boarding the captured vessels, the benefits are great.

Many vessels and crews have been hold for up to 3 months by the pirates. During this time the hostages could have been freed and the guards onboard arrested without any doubt of their guilt. Moreover, most pirates need a long time for taking a captured ship into a safe anchor place. This is also an opportunity to attack the pirates without doubt of whether the pirates onboard the captured ships are guilty. Put in short there are plenty of opportunities to attack and arrest pirates during their operations, if the state is prepared to accept the risks. Which brings me to an argument which has been used often when the pirates boards a ship; that it is hard to do anything against the pirates, and that the pirates have to be taken while they are boarding. This is in my opinion a pseudo argument.

The real issue is that, till now, civilian and military casualties have been unacceptable. However, it is very unlikely that civilian casualties can be avoided all together in a war against pirates. An attack on the coast of Somalia would most certainly also inflict civilian casualties, though these would probably not be from western countries – but black Somalia Citizens. As I argued earlier, such an attack would probably have a limited effect since the pirates would find another safe haven as their base. How high the number of casualties would be is of course unknown, but that also applies for the casualties that would die in a hostage freeing situation. Thus a more interesting question is *"how can a state fight piracy with as few civilian, military and even pirate casualties as possible – to defeated piracy"*. At the end of the day, a decision maker would have to set a course for the states navies in the Gulf of Aden against piracy, which would have the maximum possible effect on the pirates with a minimum number of casualties. Some may say that not paying the ransom and attacking the captured vessels will escalate the conflict. The counter argument to this is

that any decision will result in an escalation; the civilian seamen who have been hostages till now are also suffering. Due to the Royal Danish Navy two of the seamen from "Danica White" considered to commit suicide during their capture. Newspaper articles have said that while the crew were hostages, they were threatened to be killed and taken ashore to be showed their future graves. Whether the last part is true I cannot say, but there is no doubt that tolerating civilian seamen to be hostages also has its price. After nearly two years of escalating piracy, one must wonder how far piracy in the Gulf of Aden would have come if "the French way" of handling the pirates had been used from the beginning.

7.2.2 Protection: the parasitic behaviour of the pirates, the state and civil society.

This chapter describes the nature of the beast; the organisational structure of piracy. In its core, *Protection* is the ability to control a part of the world in such a way that capital can be *extracted* from it. This can be done by controlling territory, a part of society or a network. In this analysis I will show that the organisational structure of piracy is a cartel, ranging from former fishers over clans till top level government officials. All participants have the same goal which is to *extract* their share of the value from merchant ships in the Gulf of Aden. To understand this network it is beneficial to compare pirates with a Mafia organization. Furthermore, investigating the organisation of the pirates is important since it shows how the pirates are achieving their goals of *extracting*. Moreover, it gives an idea of how the actor is capable of matching the state.

In the case of Denmark, the group that needs protection is the Danish merchant fleet. Importantly, this fleet transports around 10 percent of all cargo in the world. This represents a huge value for the Danish civil society and the state but also for the pirates. In 2008, the Danish ship-owners together lost 1 billion Danish crowns(134 million €). As 10% of all ships going through the Suez Canal are Danish, 4-6 Danish ships are in reach of pirates each day[6]. Therefore, the question is how the Danish state and the pirates organize themselves to get as much capital as possible.

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[6] Interview with the Danish Ship-owners Association

7.2.2.1 The pirate cartel

Pirates, like other violent organisations, do not conduct state building and war waging as it demands many resources and organisation. Instead, their goal is to *extract* as much capital as possible to obtain higher profits for all associates, which is the core of a cartel organisation. This view is not unique as it is the concept in many other business corporations and most commercial life. At least for the last two years, the pirates have tried to form new and more effective business methods for *extracting* capital. The interview with Niels Mathiesen about the capture of CEC Future shows how pirates have enhanced their affectivity by improving their organisation[1].

The Future was captured in the south east end of the Gulf of Aden by a so called *tactical team*. At Caluula, at the tip of The Horn of Africa, this *tactical team* was replaced by a *guard team*, after which the Future Clipper had to set course to the south east coast of Somalia where the ship was anchored up and the negotiations started. An American Somali in the United States of America(recommended by the insurance company of Clipper Group Aps) contacted a person in Somalia for the negotiations. In the mean time, food and kat-leafs for the pirates were brought onboard by a *ships chandler* ashore.

The division of labour, conducted as a whole, is showing an organisation which is divided in separate parts with each their own expertise. This is emphasized by the fact that pirates use different 'labels' for the teams that are having different purposes, e.g. *tactical team* and *guard team*. The process of the pirate attack has become big business with many different persons being involved and takes place at different parts of the Somalia coast line. Together, these persons and teams are being part of a large business cartel. Clearly, the relations between the different parts of this pirate cartel are very interesting to investigate.

The organisation at sea is not a hierarchical organisation. Due to Niels Mathiesen, the people in the *tactical team* were constantly afraid that other *tactical teams* would take over the ship. This shows that the bottom level of the organisation is more disorganised. This is not surprising when regarding the pirate organisation as a Mafia. In construction businesses the lowest levels of organisation are often small groups of criminals that are competing against each other for "work"(Servadio.p40-41). As pirates are a violent organisation, it is logical that they are fighting over the same merchant

vessels. Felix Ebbestad from the Royal Danish Navy said: *"we have not seen a fight among different pirates yet, but then again for the moment there are plenty of ships to go after for everybody – it might change if there is a lack"*. Combined with the behaviour noted by Niels Mathiesen, it is reasonable to say that the different groups of the *tactical teams* and the *guard teams* are not fighting because they do not have to, yet their fear of each other show that they still are adversaries. The *ships chandler* on the other hand has – based on the information from interviews I conducted – no competition. Furthermore, due to the Royal Danish Navy the person who is picking up the ransom and divides it between the different parties of the attack is always the same person[7]. This shows that while the bottom of the pirate cartel is somewhat anarchical, the central part of the cartel is more stabile.

The division of a ransom among all the accomplices in an attack is a methodological possibility to investigate the internal power structure of the pirate cartel. Approximately 1.500.000$ ransom had to be divided among the pirates aboard CEC Future; their internal negotiations lasted 28 hours. After completion, the crew inspected the room in which the negotiations were done; there were bloody knifes and clear evidence of fights among the pirates and the negotiators. This shows that the organisation is not apparent since no clear measures were available on how the loot should be divided. Instead, it was divided among rivalries who are only working together for as long as there is a benefit.

Niels Mathiesen says that the ransom was divided the following way: approximately 300.000 dollars went the *ships chandler*, 200.000 $ went to a pirate boss and the rest was shared between the three clans of which the pirates and guards were members. One of the more interesting shares of the ransom was that given to the state leader of Puntland(an area of Somalia with an official government). I have investigated further into the claim that the state leader of the only state-like structure in Somalia is an accomplice in piracy, and have found several claims on the like at other government levels(Middleton 2009.p8). Some would say that examples of parts of a ransom being given to the state leader are not enough to prove his accomplishment. However, given the hard ways of negotiating on board the CEC Future, I doubt that anybody would get a share unless they are very powerful in their claim. Therefore, to me this is sufficient proof of the state-leaders collaboration. This also applies for proving the existence of a land-based pirate 'Godfather' who is

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[7] Felix Ebbestad emphasized that there a few proofs for that it is the same person every time.

controlling and coordinating the pirate attacks; no pirate would give 200.000 $ of the ransom if the person was not capable of forcing it through. All of the above data shows that the organisation of the pirates is a cartel. In the centre of this network few people have monopoly positions which ensures them the major part of the income from piracy, and on the outskirts pirates are competing over capturing and guarding merchant vessels. This brings me to how the cartel, as a network structure, is inflicting and corrupting the civil society which it is a part of.

7.2.2.2 The pirate cartel spreads like a parasite

It takes no specific ideals to be part of the pirate cartel. Everyone can become a member as long as one contributes positively in the common course of conducting piracy. There are no geographical limits either.

In other societies, where economical crime has escalated even more than piracy has in Somalia, the consequences have been dire. The state of Mexico has been in a conflict with the cocaine Mafia for several decades and the same applies for Colombia. The organisations that are faced by the states are not stream-lined fighting machines, but forces that only have the purpose to keep business going. Unlike a Guerrilla war, where there is no hierarchical organization, these Mafia organizations are composed of different groups working together(and partly against each other)(Servadio.p25,34,29,77). Yet, the enormous resources coming from the cocaine are ensuring that these violent organizations are impossible to eradicate(till now).

In 2008, 150 million $ was paid in ransoms; this year there are more pirate attacks and the ransoms are higher. Piracy in Somalia has become big business. I expect that piracy will have similar effects, regarding corruption and power play of the actors, on the civil society of Somalia and the surrounding countries as the cocaine Mafia has in Latin-American. It will be hard, if not impossible, for a legitimate government to create a legal or military system, which has to fight a violent organisation with enormous resources from piracy. The point I am making is that piracy in Somalia and all other countries around the Gulf of Aden has become a huge illegal business, which has corrupted all levels of government and make it even harder to annihilate piracy all together, not to mention to do anything that will be against the will of the pirate cartel. Piracy in the Gulf of Aden is not just a military and commercial factor, but it is also a political factor. This means that piracy went from being a matter of theft to being a security problem. The fragile state of Somalia has

already crumbled to the corrupt might of piracy. Moreover, piracy will not just spread over the sea borders, but over land borders as well. In a global world economy, business does not stop at an invisible red line on the ground called a "border", it is a network between people which needs no allowance, territory or official organisation to spread. All it takes is a contact from any of the many ends of the vast business network of the pirates to a person who is willing to become a part of the network itself. History shows that business networks will shape and reshape a society and even a culture(Wolf.p3-24). This is why pirates are a threat to world security, the states law and order only works in a society where the state is reckoned.

According to the Danish News paper "Politiken" and the danish state favoured the option to fight piracy by establishing a Coast Guard formed by all countries surrounding the Gulf of Aden. This was based on a recommendation made in an analysis by Lars Bangert Struwe, for the Danish Defence Academy, who founded his arguments on the hypothesis that the states around the Gulf of Aden have a common interest in annihilating piracy all together[8]. In contrast, my analysis says that such a project would have to combat enormous problems with corruption since the pirates are capable of expanding their network to any person interested, irrespective of territory or nationality. A more pragmatic solution was made in the UN where different member-states decided to give 100.000$ to the Puntland government for the establishment of a coastguard with the purpose of anti-piracy. Keeping in mind that the state leader of Puntland is getting a share from ships that are being ransomed, I doubt that this budget will be spend on what was intended by the UN.

Taken together, the pirates' way of organising themselves as a cartel matches the states organisations; by including the Somalia government as an accomplice and by their way of handling other states that are fighting them.

7.2.2.3. *Are the pirates in the Gulf of Aden a Mafia?*

The same basic cartel as described for pirates is common in the classical Mafia. In the all time bestseller "Godfather", Don Colleone is Godfather of the New York Mafia. His position is not the leader of a hierarchical organisation; instead he is the spider in the centre of a gigantic web.

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[8] http://politiken.dk/udland/article690036.ece

A Mafia spends its organisation resources on *protecting* a marked or business, since this will ensure more capital to be *extracted*(Servadio.p39). As a violent organization, both Mafia and pirates share a great focus on economical crime. Yet there are large differences as well. The concept of *protection* in the indirect conflict is essential to understand the difference between pirates and a Mafia. In the same way as pirates are doing business in taking ships and making as much money as possible from it, a Mafia is doing business by controlling a marked which the state cannot or won't control for *extraction(*Servadio.p39). The major difference between a Mafia and piracy is that a Mafia is "controlling" a market, while pirates are capturing a civilian vessels or citizen in areas where the state cannot protect them which is theft. On the other hand, the way that the pirates in the Gulf of Aden are conduction piracy is about ransoms, not stealing. The only way you can get a ransom is if you are in complete control of what you are trying to ransom, keeping in mind that you intend to give back what you took. This means that what the pirates are doing comes closer to *protection* then theft, since they take control of one part of the merchant fleet and give over the control of the ship to civil society for a certain fee.

I would say that violent organisations that are focussing their efforts on *extraction* and *protection* have similar internal structures. This is also a benefit of using "the violent organisation theory" since it shows why these organisations seem identical. However, the pirates in Somalia are not a Mafia, though their internal structure shares many features of the Mafia. The fact that the pirates are doing their extracting at sea by taking over merchant vessels is very different from the Mafia's control of a market. The pirates cannot access the true value of cargo, vessel, and crew; their only possibility is to get a ransom which is a small part of the combined value of the trade vessel.

8 Discussion of validity and reliability

My methodological endeavour in this thesis was to make an analysis which investigated pirates and states as actors. The goal, when using qualitative method, is to create new knowledge(Larsen.p79); in this light my method and the use of "the violent organisations theory" is a success. My theory and method using actors as main term has shown that piracy is a far more complex phenomenon. However, there are two major contributions from my analysis. First, the understanding of the indirect-conflict, which shows **why** there is a conflict between states and pirates. Second, the

analysis of pirates as actor brought forward that the pirates are capable of matching the state. Both aspects have been overlooked till now by other researchers.

When it comes to validity and reliability, the method lives up to several different criteria. Here are some examples. *Communicative validity* is whether my analysis can stand a dialog with the participants(Larsen.p76). I had dialogs about my analysis and conclusion with some of the participants of the interviews; they were positive when I presented it and it gave way to long dialogs and reflexions. *Pragmatic validity* is whether the analysis is usable. The analysis made by using the method turned out to be good since I was capable of answering my research question.

The use of interviews was good as well, since its flexibility made me capable to investigate unexpected knowledge. The knowledge of the divisions of ransoms serves as example. Further research could use quantitative tools since this could show whether my conclusion are truly generalisable.

9 Summary and discussion

The state has not annihilated pirates because the state has lost both the *direct-* and *indirect conflict* from the pirates. This conclusion is based on the following data and analyses.

In the *direct-conflict,* states lack in several areas of their organisation. Concerning *war-making*, the states´ navies lack in their ability to identify the pirates. Both are fully exploited by the pirates who are using tactics similar to Guerrilla-war. By using "civilian-masks", pirates cannot be distinguished from civilian ships by the navies. Consequently, they accomplish a small tactical edge which is sufficient to conduct piracy. Regarding *state-making,* the states lack in institutions that are capable of organising counter-piracy measures with other states and that can implement laws against the pirates outside their territory. This was also the situation in the 16th till 18th century. Back then the empires used their global sovereignty for establishing law and order in the areas infested with pirates and pirate havens. To achieve the same extent of sovereignty as the empires, states must work together(both legally and coordination of forces). However, this is difficult since states work together via complex and slow diplomatic channels. If states solve this problem they may tip the balance in their favour on the fight against pirates. UN offers a possibility to solve this problem.

Regarding the *indirect-conflict,* an agile cartel of pirates proved capable to outcompete the states in the ability to *extract* capital from the civilian merchant fleet. The pirates and states are both

extraction capital from the merchant fleet. The states preferences of allowing ship-owners to pay ransoms, instead of risking lifes by freeing the crew, have given pirates an easy income. The ransoms give them the ability to access the huge values of the merchant fleet. These values would be inaccessible if the pirates had to sell ship and cargo on a market, since the pirates are not a part of international shipping. This means that the reason for escalation of piracy - contrary to other researchers - is the great ransoms being paid. This also implicates that the state can deprive the pirates from their motivation and income by stopping the ransoms from being paid. This is however a very unpopular solution.

Most significant is the way the pirates organise themselves for *protection* into a cartel. The organisation of the pirates, with a pirate leader in the centre, has resulted in a parasitic organisation capable of penetrating all levels of society in Somalia, and most likely in the whole area around the Gulf of Aden. This organisation spans from fishers along the coast, till the state leader of Puntland. The vast span of the organisation makes it highly adaptable to any challenges coming its way, since it can pay any person offering a solution. The pirate cartel makes it practically impossible for states to depend on local authorities in Somalia and the surrounding countries, since the pirates most likely will offer a share of the ransoms to the local authorities.

The general perception of the state till now has been, that the state overcomes other violent organizations with relative ease, and if they don't then the state is failed or to weak. .Contrastingly, my thesis shows that pirates, as violent organisation and actor, is matching the state in both fighting the state and making capital from civil-society. This raises a number of questions. I have selected two which I believe are the most central for a discussion. First, are the reasons for the deadlock between the state and the pirates part of a general tendency? Second, how can the state adapt to fight pirates differently? Both questions will be answered simultaneously. After this I will give a brief discussion on the used method and theory.

9.1 The state versus violent organisations

In March 2009 President Barack Obama said that Mexico was a failed state. He used this term because it has large problems with the cocaine cartels within the Mexican border. Later that same day he had to rephrase himself after the president of Mexico protested severely – apparently the failed state of Mexico had quite a diplomatic impact on the United States of America. This proved that the state of Mexico was not that failed at all. Nevertheless, President Obama may not have been

entirely wrong by comparing Mexico with other "state versus violent-organisation conflicts"; the similarities my lay with the violent organisations involved. In the same way that the state of Afghanistan has its struggle with Taliban and Warlords, and Somalia has it with the pirate cartels so do Mexico struggle with overcoming the cocaine cartels. What the three cases share is that all three states are facing violent organisations that are in control of the largest income of the region. Even though all three states are getting massive economical aid from the international community, they are still matched by a violent organisation. The major difference between piracy and cocaine cartels gives states the advantage in the case of the Gulf of Aden; the income from piracy is a market which the states are interested in and are actually in control of, whereas this is the opposite for cocaine. All merchant ships fly colours of a state , pay state taxes and need harbours within the territory of a state. Another difference is that even though Mexico is capable of conducting diplomacy and defending its borders, it still has great problems with fighting a criminal organisation within its borders. This shows that it may be universal that violent organisations with a large illegal income are hard for the state to defeat, but the cases differ on what this illegal income is.

In my analysis the states lacked institutions for implementing laws world wide against piracy. This problem was created by states themselves. Perhaps the problem of lacking institutions for fighting violent organisations is a general problem which is not unique for piracy. It might be an indication of that the state is incapable of implementing its sovereignty and institutions in a global era. Seen in a macro perspective, these problems point towards that the state as such is using institutions wrongly in the fight on violent organisations. In Denmark, the maritime authority is responsible for the civil society(the merchant fleet) and thereby the indirect conflict. On the same time, the Ministry of Defence and the Ministry of Foreign Affairs are responsible for the direct conflict. This division of labour has consequences. Put in a more theoretical perspective, it is a division of state sovereignty. Janice E. Thomson has made a very relevant article *"State Sovereignty in International Relations: Bridging the Gap Between Theory and Emperical Research"*. She concludes that the state's sovereignty is dependent on what she calls "the functional dimension"; the state's capability to implement its sovereignty. She concludes:

"Indeed, it appears that the breadth of contemporary sovereignty is diminishing in some areas, particularly the "economical" sphere where decision-making authority is being relocated to the market(Janice 1995 p 224)"

Janice conclusion implicates that the state's sovereignty has limits and that they are even diminishing. The reason for this could be that globalisation has made the state lose control over certain parts of its 4 main activities, which results in unforeseen consequences. First of all, the states acceptation of the free market may mean that control of *extraction* and *protection* has partly been given over to "the market"; which result in the easy access to small arms, since they no longer are in the states control(on a global scale). Secondly, the state's self-restrictions on *war-making* and *state-making* to only apply within its territory may be why the states are not in control of the Gulf of Aden anymore, since their competitor, the pirates, have no territorial boundaries. A conformation for this could be that the ship-owners are handling pirates on their own, since commercial companies don't have "globalisations problems". Due to Niels Mathiesen, Clipper Group Aps. had very little official help from the Danish authorities. Instead, they used private companies. The interesting part is that this was not voluntary. Mathiesen explains: *"We contacted the ministry of foreign affairs for help, they asked us two questions, "is the ship flying Danish colours?" and "is the crew Danish?". After answering "no" to both questions they said that we were on our own".* Apparently, the state of Denmark is letting the private sector handling this on its own by choice. The Danish Sovereignty and the subsequent obligations are only concerning Danish crews and ships. One could justify by saying that ships which are only Danish owned but have no national symbols or citizens are not in the interest of the Danish state. However, even within the borders of the Danish state several companies and values who are not Danish in a National sense still represent a huge interest for the state as they are contributing to Danish *extraction*. If a bank is robbed the police do not ask: *"was it Danish currency, and are your co-workers Danish citizens".* Apparently, there is a difference on how the state regards civil society. An explanation might come from Janice E. Thomson who says that the state's sovereignty and the consequent obligations of protection and implementation of law is first of all within its territory. Although my analysis shows that the four basics of the state *protection, extraction, state-making* and *war-making* in a global community give the state interests outside its borders, its reach in a legal and *functional* sense is only going to its own borders.

The cartel organisation of the pirates, and all the advantages that is gives them, makes it virtually impossible for states to reach them. States are territory dependent, yet the problem of pirates and

other international active violent organisations are not territory dependent. In previous times the global empires had no such problems, since they had no clear defined restrictions on there sovereignty. Thus empires were more effective at fighting pirates and violent organisations. The different in "sovereign reach" from state to empire may be why pirates and other violent organisations disappeared during the empires and came back after the cold war(the west and east superpowers did not restrict there sovereignty either).

9.1.1The void – created by the state and sustained by violent organisation

In a sense the state's failure to create global law and order in the Gulf of Aden has created a void which made exceptional good conditions for piracy. This void is not just covering the Gulf of Aden, but also Somalia and other parts. More then 30,000 ships are travelling through this so-called void every year. When a ship enters the void it is leaving the stabile, well organized political world created and dominated by states. Though there are no states in the void, there is still a civil society and violent organisations. Such voids may be present in other parts of the world as well. In fact, what till now has been referred to as "failed states" may just have been examples of stateless voids. There are examples of other voids as well, e.g. parts of cities and regions of some countries have little or no state control, but are under control by one or rivalling violent organisations. On of the oldest examples of a void might be Sicily that, according to Gaia Servadio, has been ruled by the Mafia for five hundred years(Servadio.p108-109). She makes a very interesting observation: *"...the Mafia, then as now, was a governmental force - but an opponent to the state(*Servadio.p34*)"* She says that the Mafia is 'creating' lacks in the states institution so that the Mafia can do better business(Servadio.p34). Robert Taber, a researcher on 'The Guerrilla', makes a similar note on the goals of Guerrillas: *...the business of the guerrilla...is to destroy the stable image of government, and so to deny its credits, to dry up its sources of revenue...(*Taber p.21). This might show that violent organisations are creating the voids or at least sustaining them. Therefore, the conflict between state and violent organisation needs further investigation to understand these voids.

While the state of Denmark needs time for adapting its organisation to be capable of fighting pirates, the merchant fleet, as a part of the international commercial life, has a much easier way of

adapting to the situation. In the same way that piracy has become a big Business network, so has civilian society reacted with an anti-piracy commercial life.

A whole branch of businesses have occurred based on the free-markets causality of supply and demand. As a business, anti-piracy is capable of supplying what the ship-owners ask for. A broad selection of consultants and companies became available that offer advice, experience and know-how on the negotiations and the process of handling pirates as such for a rather high fee according to Niels Mathiesen. Moreover, they offer protection in the form of armed guards. To more liberal free-market agitators, the easiness with which the private civil societies counter piracy, as compared to the states, may seem a clear proof of the superiority of a free market handling such situations. Ultimately, this can be seen as a capitulation of the states' ability to dominate in the use of organized violence. However, the entrepreneurs who are working together in doing anti-piracy may be effective, yet they have no legal legitimacy in fighting pirates by means of organized violence. This was made clear in the article "Mercenaries disrupt pirat-hunt"[9] about private guard companies using armed vessels. Here the commanding officer of H.D.M.S Absalon said: *"If they fire on pirates with no proof, then I am forced to open fire on the private guard vessel. If the pirates are not proven guilty, then the private guards are firing on innocents"(freely translated from Danish).* The commanding officer pointed at the fact that the state is still the sole legitimate guardian of law and order, and any private organisation – either pirates or the merchant fleet – is an illegitimate user of violence.

Another important conclusion from my analyses is that although is seems relatively harmless that the merchant fleet is paying the ransoms to the pirates, in a way it makes them a part of the pirate cartel as it ensures that the pirates can expand their activities. The ship-owners make no profit from piracy. Yet the many companies who offered their services to Niels Mathiesen made profits from their anti-piracy activities. Therefore, stating that it is in the private anti-piracy companies interests to rid the world of piracy is questionable.

As mentioned previously, while the state has great problems with establishing and creating the necessary institutions, as this has to go through diplomatic channels and parliaments, civil society is

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[9] Freely translated from the newspaper *"Morgenavisen Jyllandsposten" org.tit:"Lejesoldater forstyrer piratjagt"*. Sunday 22. Marts 2009

highly adaptive. Commercial life has no ideals which should legitimize any use of force or equipments. Yet as Niels Mathiesen points out: *"the legal matters on using armed guards are very uncertain"*. Even though the state has had a hard time in fighting the pirates, its monopoly on creating law as a legitimate user of organised violence is still uncompromised. All laws on the use of organised violence come from the state, and law ensures the monopoly. There are also practical reasons for that the state should be those who fight the pirates. The Danish Ship-owners Association had one argument above others when they told me why the state should do the fighting part of anti-piracy: "They are the one who knows how to".

9.2 How can the state adapt?

Thus a solution must be found that gives states the ability to implement sovereignty outside a state's border. The Security Council has already allowed all states who wish to engage pirates to do so within the borders of Somalia, both at sea and on land. But allowing states to go inside the borders of Somalia has not been enough. The number of high-tech warships is increasing day by day, but there is no overall coordination of the ships. An example of this is that both the Chinese Navy and the Russian Navy are creating convoys through the Aden Bay, but they do it separately. If the many warships in the area would work together, they could coordinate convoys on a large scale, but this is not happening. Similar observations were made in research done on conflict solutions; in cases of negotiations, state diplomacy is always very slow(Ramsbothan.p159). When for example two states meet to negotiate on one subject, they unavoidably bring all of their other disputes and agreements into the negotiations as well. An agreement on the coordination of warships in the Gulf of Aden will likely have to bridge many other the disputes between the states involved as well before an agreement on piracy can be made. Although coordination is beneficial for all involved states, their diplomatic means are insufficient to solve the problem. In a way, states are slow giants who are hard to manoeuvre into formation, yet when it is done, there common power is enormous. Clearly, a state coordinated solution is preferred, but hard to make. As a consequence, the states, as guardians of law and order, bring each other into a diplomatic deadlock.

Empirically, it is shown that when a state security is threatened by a violent organisation outside its borders, it will still fight them even if it is in another state its territory. This was for example the case with the coalition of the willing invading Afghanistan to attack Taliban. Therefore, the

conclusion made by Thomson is only partly right; the state fights violent organisations inside its borders when they conduct crime. When it comes to security threats, states attack anyway they find necessary. This raises an important question: are pirates in a globalised era truly criminal or are they a security problem?

There are a number of issues pointing towards seeing piracy as a security problem. First of all, the pirates' control of the trade routes is a security problem. Secondly, the way that the extracted capital is being used to expand piracy is a security problem. The money obtained with piracy is used for getting weapons by the clans, and the spreading corruption is undermining the state of Puntland. Capital is power in a country with a broken economy. On the other hand, piracy may be regarded as pure crime. If that is the case, then what are the pirates actually stealing? Even though the pirates threat with killing the crew of the captured ship, the insurance companies who are paying the ransoms are calculating the value of what is ransomed on the value of cargo and the ship. Clearly, the value for the pirates is dependent far more on the amount of people being captured. Therefore, a cruise ship would represent a fare greater value for the pirates than the value of a several billion euro container ship. This brings up the question what is the value of a human being? Domestically speaking, states react to murder and kidnapping by imprisonment and it is considered high priority to solve these matters. Not to mention when a seaman is lost at sea, the rescue operations are easily up to several thousand euros. For the state, humans and particularly its citizens represent a huge value. In this context, pirates are not taking values, but extract money from ship-owners with the threats of killing the crew. Any counter piracy from the state or civil society is about keeping humans alive. My conclusion on this issue is that piracy is first of all a security problem for the state and less importantly economical crime.

Taken together, piracy is a security problem which can only be fought by states that coordinate their actions. If not, the pirate cartel will become stronger.

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