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Counter-Piracy:  
Derivative Sovereignties In the Waters off the Horn of Africa

DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

in Anthropology

by

Benjamin Cox

Dissertation Committee:  
Associate Professor Kristin Peterson, Chair  
Professor Victoria Bernal  
Professor Bill Maurer



# **DEDICATION**

To

Clarity and Stamina

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To my family, be careful, there might be snakes out there.

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# **CURRICULUM VITAE**

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## **ABSTRACT OF THE DISSERTATION**

Counter-Piracy:  
Derivative Sovereignties in the Waters off the Horn of Africa

By

Benjamin Cox

Doctor of Philosophy in Anthropology

University of California, Irvine, 2019

Associate Professor Kristin Peterson, Chair

This is an ethnography of counter-piracy in the waters off the Horn of Africa between 2008-2018. I trace the origins and decommissioning of the Global Anti-Piracy (GAP) program and argue that counter-piracy is best understood through the imbrication of sovereign experiments and the financial logic of risk in a form I call derivative sovereignties.

## An Introduction to Piracy, a Vortical Story

“What do you think the main cause of Somali piracy is?” This was the question posed to me by the CEO of a small shipping company in the Netherlands in August 2011 while I was doing preliminary research for this project. I had met his team in their downtown office to discuss the effects of the dramatic rise in maritime piracy off the Horn of Africa over the previous five years. Over an hour or two, they told me about the logistics of operating vessels in the Western Indian Ocean, new protocols and emerging security infrastructures, negotiations with insurers, and plans to design their ships with the cutting edge of anti-piracy technology: non-lethal weapons including water cannons, sound weapons, barbed and razor wire, and a fortified citadel to safeguard the crew in case the ship was boarded. Now their attention turned to my opinion of the situation.

I didn't have a ready-made answer, so I started a conversation about the historical context of the rise of piracy in the region. The conversation shuttled along at a fast pace for twenty minutes or so. State collapse. Civil war, drought, famine. A generation of economic, political, and social precarity. Unscrupulous profiteers. Long coastlines and teeming marine life. Illegal fishing and toxic waste dumping. Kalashnikov, khat, and clans. Strategic shipping lanes. Flags of convenience and containerization. The law of the seas. I don't think any of us were sure how it all fit together, but we could agree that pirate groups in Somalia had developed a sophisticated and highly successful maritime piracy strategy based on hijack and ransom. How does a speedboat in open water with less than ten people take over an oil tanker, and hold it for months in exchange for millions of dollars? The rhythm of the conversation slowed, and with impeccable timing, the CEO suggested we go for a coffee. The team needed to prepare for an afternoon call.

He met me in the atrium after a few minutes. “I have heard a very different theory,” he said immediately, “but I am little embarrassed to say it in front of everyone. I wonder what you will think of it?” We walked to a café around the corner and ordered two espressos. We found a quiet corner and he told me a story I had never heard before. The real cause of Somali piracy, according to some of his industry colleagues, was the mysterious appearance of an interdimensional vortex in the Gulf of Aden.

The Gulf of Aden Stargate, he said, appeared as a whirlpool that reached the ocean’s floor, disappearing and reappearing in different locations around the Horn of Africa as spectral alien craft catapulted out of the sea and into the horizon. Maybe some fishermen had seen the vortex, or a merchant vessel, but he had heard the story from more than one person. The perceived threat encouraged unprecedented transnational cooperation as the world’s best scientists and militaries were needed to understand the phenomenon. Everyone showed up, out of both fear and curiosity. Were they all there to protect the Earth from an invasion, or perhaps to share the great powers unleashed by the vortex, whether on purpose or by accident? Anyway, something strange was happening there, and Somali piracy was a convenient story to tell the world to cover up the real cause of the massive mobilization of forces off the coast of a failed state.

I didn’t know what to say. As it turns out, though, this story, steeped in conspiratorial fantasy, provides a great introduction to the problem of (Somali) piracy. This is true for at least three reasons.

First, the emergence of the maritime pirate in the 21<sup>st</sup> century appeared out of joint. Somali piracy seemed so inexplicable that an interdimensional vortex made more sense for some (or at least it was more fun). Piracies today are often configured in the language of intellectual

property, the politics of the copy, and the technologies of advanced global capitalism. The return of the maritime pirate, though, is important for understanding the coordinates of belonging in an age of globalization and the criss-crossing governmental technologies that are increasingly used to format and manage a postmodern and financialized seascape.

Second, the pirate has been codified into international law as the *hostis humani generis* (“enemy of humankind”), and the paradigmatic target of extraterritorial and universal jurisdiction (Heller-Roazen 2009, Poier 2009). The pirate is therefore a kind of alien, a figure defining the limit of normative ideas about human moral horizons and the terms of political inclusion at local, regional, and global scales from the oceanic outside of Westphalian political geographies. These universalizing abstractions might seem strange – after all, piracy is just robbery at sea – but they showcase the power that the seas have as a plane for projecting our fantasies. These fantasies may be utopic, heterotopic, or steeped in the anxiety of the presumed anarchic potential of our worst fears.

Third, the vortex is a dynamic system of turbulent flow and circulation. Its kinetic potential transforms whatever it encounters, taking it apart, mixing it up, and recombining it. The story of Somali piracy that I tell in this dissertation gives primacy to the morphological form of the derivative and the increasingly important role financial logics of both risk hedging and risky speculation play in global governance regimes. The vortex is a good analogy for the power of flexible recombination – it has the power to channel and redirect but it can also destroy. This dissertation adopts a kind of vortical method that tries to identify the pieces and processes that are jammed together in the experimental laboratory of counter-piracy in the waters off the Horn of Africa.

This dissertation is an ethnography of counter-piracy in the context of the rise and fall of Somali piracy. Between 2005-2012, 179 ships were hijacked in the waters off the Horn of Africa and Somali pirate groups claimed over \$400 million in ransom payments. I trace the origins of piracy in the region and the international attempts to suppress the escalating threat at sea. I tell this story through the lens of an American counter-piracy NGO, the Global Anti-Piracy (GAP) program of the Hundred Year Peace Foundation (HYPF) where I volunteered in 2017-8. The program began at the height of the piracy phenomenon in 2010 and became an influential partner in the counter-piracy architecture that developed. The program was decommissioned in 2018. Over the life and death of the GAP program, I configure how their theory of multi-stakeholder governance evolved through their partnerships in counter-piracy.

My argument relies on the idea of the derivative sovereign. This idea expresses three related relationships. First, sovereignty has always been a derivative concept, depending on the conflation of other transcendental categories like God or the people to claim its authority. As the myth of Westphalian sovereign supremacy within a territory falters in the age of globalized financial capital, among other things, the fragmentations of the mythic sovereignty are another version of this point. They depend on the power of the myth even as they replace it. Second, derivative sovereignty expresses the increasing power and influence of financial logics and elites – the derivative as sovereign. This financial logic combines two contradictory uses of the derivative – it is both a risk-hedging technology and a speculative mode of systemic risk spreading. Third, the morphological form of the derivative, like the vortex, becomes a method to trace the flexible organizational forms in which the first two senses of the derivative sovereign are expressed.

## *A Note on Method*

Piracy can be a difficult object of analysis to pin down. The dialectics of the high sea and the failed state of Somalia are hard to access for an American graduate student. I have therefore tried to ground my analysis in counter-piracy regimes and *their* attempts to pin down the pirate. Nevertheless, these systems have also proven to be dispersed, international, and often temporary. After exploring how piracy affected Kenyan legal institutions and Dutch shipping companies during preliminary fieldwork, I landed in an American counter-piracy NGO. I conducted over 70 interviews with, and adjacent to, the GAP program and spent eight months doing participant observation over two research trips in 2017-8.

This ethnography adopts a lateral perspective (Maurer 2005). The absent object of the pirate, disappearing and reappearing like the Gulf of Aden vortex, is as true for counter-piracy analysts as it is for the anthropologist. This dissertation is based in my calibration of the joint attention we – the counter-piracy NGO and I – bring to the absent object of the Somali pirate. This attempt to study sideways has had important implications for the conceptual framework of this dissertation. I have tried to build my analysis of counter-piracy through an extrapolation of the founding philosophy of the organization where I volunteered. Thus, I have built upon and recontextualized their idea of non-territorial sovereign organizations into derivative sovereignties. This attempt has produced surprising convergences that help, I think, better explain the position of the counter-piracy group within their own organization and their partnerships in the broader counter-piracy architecture. There are derivative sovereignties everywhere in what lies ahead. These derivative sovereignties sometimes express one or two of the senses I elaborated above, and sometimes all three. One of the effects of the derivative, like

the vortex, is recursive and iterative disambiguation and recombination, so some confusions are part of the point.

In Chapter 1, I describe the founding philosophy of HYPF – the non-territorial sovereign organization – and extrapolate the idea of derivative sovereignty from it. I explain how this idea brought them, almost accidentally, to the problem of piracy.

In Chapter 2, I chart the ways the seas have come to be understood in relation to the figure of the pirate, some transformations in global capital, and the territorial sovereignties of the Westphalian system. The Global Anti-Piracy (GAP) program, through the derivative formation of the Contact Group, needed to confront the genealogies and contradictions that I map here in order to make sense of the emergence of the Somali pirate. This chapter sets the stage and provides the resources for the kinds of experimentations and interventions that I will describe in the following two chapters.

In Chapter 3, I trace how counter-piracy worked through the idea of catastrophization. I detail the institutional form of the Contact Group and the modalities of risk that format different governmental orientations to the problem of piracy among its diverse stakeholders.

Finally, Chapter 4 is set in the context of the expanding mandate beyond piracy to address transnational crime at sea. I compare how this expansion gets refracted into figurations of the pirate, in Somalia, and new programmatic agendas, at the NGO, that result in two things: the decommissioning of the GAP program, and the identification of the figure of the Somali pirate with the figure of the financier. I show how the power of derivative sovereignties operate through the mirroring of organizational form between John Rackham and the Hundred Year Peace Foundation, and the object of his flagship foray into global governance, the Somali pirate-financier.

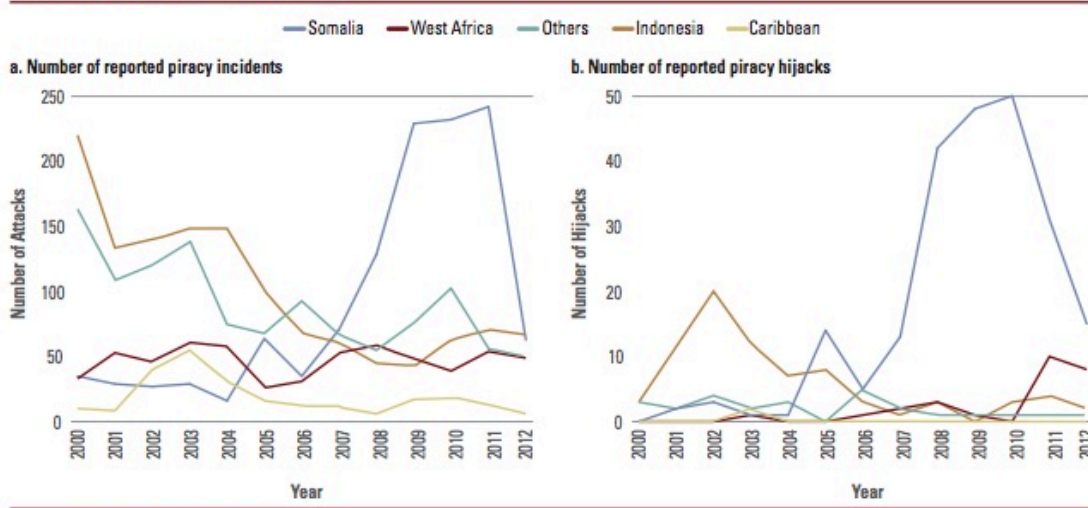


## 1. Derivative Sovereignties: Somali Piracy as Laboratory

In the late 2000s, a surprising figure emerged in the waters off the Horn of Africa with fascination and significance for international politics. The Somali pirate, a young Muslim African armed with a Kalashnikov plying the high seas in a fiberglass speedboat, proved to be a threatening figure for international shipping and, in the process, tested the underlying spatial order of the international system. As the complex reorderings that takes place under the banner of globalization create new transient formations of interconnection and interruption, the phenomenon of Somali piracy has become a site of contestation with far reaching effects. On 25 September 2008, the self-appointed Central Region Coast Guard captured the MV *Faina*, a Ukrainian cargo ship carrying thirty-three T-72 battle tanks and a cache of small arms bound for Kenya. The pirate group sailed the ship toward familiar shore networks in Somalia and docked near the village of Hinbarwaqo. Despite the pursuit of two American warships, who remained within shouting distance of the *Faina* for weeks, the pirate group was able to negotiate a ransom of \$3.2 million in exchange for the release of the ship and crew in February 2009.

Three weeks later, on November 15<sup>th</sup>, a different group of Somalis hijacked the MV *Sirius Star*, a Saudi tanker loaded with \$100 million worth of crude oil. This hijacking, which took place four hundred fifty nautical miles southwest of Kenya, signaled that Somali pirate groups were able to coordinate attacks in a seascape in excess of 2.5 million square miles. After a ransom of \$3 million, the ship and crew were released on 9 January 2009. At the time of the hijacking of the MV *Sirius Star*, pirate groups were holding eleven vessels and their crews.

**FIGURE 1: PIRACY IN NUMBERS**



Sources: IMB 2012; UNODC-WB 2012.

Figure 1. Piracy in Numbers (World Bank 2013).

Between 2007-2012, the phenomenon of Somali piracy escalated yearly. The number of successful hijackings peaked in 2010 when 49 ships were captured and ransomed. Though hijackings decreased to 28 the following year, attacks increased from 219 to 237(Figure 1).<sup>1</sup> But as the success rate declined, the average ransom continued to rise toward an average of \$5 million (Figure 6.5).<sup>2</sup> The highest reported ransom was \$13.5 million for the *Irene SL*, a Greek-flagged Very Large Crude Carrier (VLCC) transporting two million barrels of oil worth \$200 million from Kuwait to the United States in 2011. Pirate groups from Somalia captured dhows, yachts, cargo tankers, VLCCs, and even attacked Naval ships sent to patrol the region. In the early years of the phenomenon, legal ambiguities made interventions difficult, and even when warships were able to capture suspected pirates, they often just let them go. Nevertheless, by the

<sup>1</sup> See the accompanying Figure 1 and 2, from World Bank. 2013. “The Pirates of Somalia: Ending the Threat, Rebuilding a Nation.” Washington, DC: World Bank.

<sup>2</sup> See the accompanying Figure 3, from World Bank. 2013. “The Pirates of Somalia: Ending the Threat, Rebuilding a Nation.” Washington, DC: World Bank.

second half of 2012 attacks and hijackings plummeted to nearly zero after a significant collaborative and international response. An unprecedented number of contributors including nation-states, multi- and inter- national organizations, private industry, and non-governmental organizations participated. This counter-piracy regime, and their experiments in remaking the sovereign and legal space of the high seas, is the main subject of this dissertation.

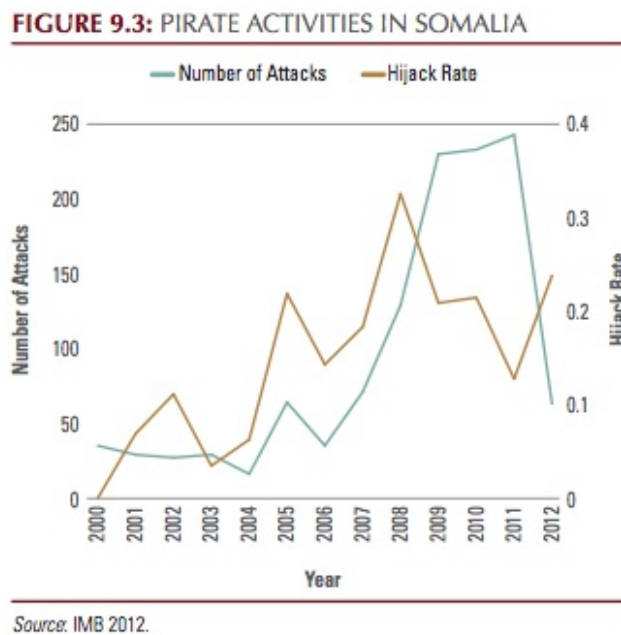


Figure 2. Pirate Activities in Somalia (World Bank 2013).

The problem of piracy swirls around questions of sovereignty and jurisdiction in maritime space set against the commitments and constraints of Westphalian international governance. The Westphalian international system organizes global space into a patchwork of sovereign states that hold the monopoly of force within mutually recognized territorial boundaries. The international legal definition of piracy connects the pirate to the space of the high seas, the waters beyond the sovereign authority of any state. Since Ciceronian Rome, the

figure of the pirate has been identified as the paradigmatic *hostis humani generis* (“the enemy of humanity”) and the target of universal jurisdiction, the ability of any state to prosecute regardless of a direct legal nexus (Heller-Roazen 2009, Poier 2009). This conceptual schema frames the pirate not only as a threat to individual state interests in specific piratical events, but more generally as the enemy of the state system itself, who presents a challenge to the “sovereignty of sovereignty” from the oceanic outside (Cowen 2014, 142). Attempts to govern the high seas and diffuse the power of the pirate have immense consequences for both the regions in which piratical figures emerge and the architecture of global governance.

**FIGURE 6.5: RANSOM AMOUNTS**

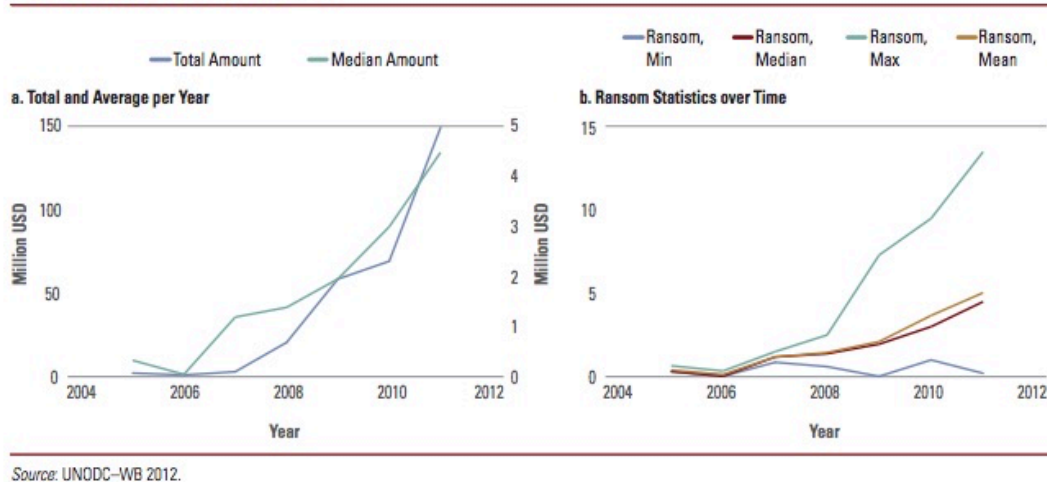


Figure 3. Ransom Amounts (World Bank 2013).

The emergence of Somali piracy and counter-piracy regimes offers a unique perspective from which to calibrate how the normative units of the Westphalian international system – states – and the major conceptual architecture that guarantees their preeminence – sovereignty – are being mobilized by new actors – both pirates and counter-pirates alike – in ways that suggest a

dramatic reworking of accepted sovereign forms into post-Westphalian iterations under the influence of globalization, financialization, and the evolving security concerns of the early 21<sup>st</sup> century.

In this dissertation, I trace the emergence of the counter-piracy regime built to confront the Somali pirate. As noted, the problem of Somali pirate is necessarily international, literally “between nations” in the space of the high seas, and brought together a wide range of interested parties. This exploration can only be partial, though I hope it will provide an understanding of the major players and events in addition to a reflection on the experimental methods of new global governance interventions and their potential non/applicability in other domains. I tell the story of counter-piracy through the experiences of the Global Anti-Piracy (GAP) program<sup>3</sup>, where I volunteered in 2017-8. GAP is the flagship program of the Hundred Year Peace Foundation (HYPF), a single-donor non-governmental organization (NGO) founded by a billionaire philanthropist committed to ending war by the year 2100. HYPF is dedicated to building peace through governance, to tackling complex issues through empirical rigor and multi-stakeholder engagement, and motivated by a long term vision of peace in an increasingly interconnected global world with potentially planetary scale problems. As their founder notes in an annual update, the organization will “solve problems emerging as globalization outpaces governance in the 21<sup>st</sup> century” (personal archive).

The GAP program existed for ten years between 2009 and 2018. In that time, the program became a vital player in a concerted counter-piracy regime organized around the Contact Group for Piracy off the Coast of Somalia (Contact Group), an ad hoc association of states, multilateral and international organizations, industry, and non-governmental organizations. Throughout the dissertation, I am concerned with both the internal influence of

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<sup>3</sup> I have pseudonymized the names of the organization and its programs.

GAP on HYPF, as a proof of concept for a unique kind of peace and governance organization, and the external influence their vision of multi-stakeholder governance had on the Contact Group and the larger conversation about global piracy.

In this chapter, I trace the philosophical foundations of HYPF – both the unintended consequences and unrealized intentions - and the perhaps surprising convergence of their orientation to the problem of Somali piracy through GAP. I extrapolate from their theory of the non-territorial sovereign organization to develop a theory of derivative sovereignties. Derivative sovereignties mimic the form of the financial derivative through fracturing, recombining, and circulating the features of sovereign authority in ways that stress both the growing ways that financial logics are gaining power in political arenas and that the notion of sovereignty, and the scholarly engagements with it, have always depended on the derivative, even if Westphalian sovereignty imagines itself as supreme and without qualification. These tendencies are magnified when dealing with the space of the high seas, the oceanic borderlands between states.

Derivative sovereignty, as method, allows me to trace the forms of fragmentation, amalgamation, and circulation of these features of sovereign authority (the state of emergency, the decision of the exception, the ability to protect, kill, punish, and discipline with impunity) in the multi-stakeholder assemblages of experimental governance created to address the problem of piracy.

*The Birth of an NGO: Catalysts not Substrates*

John Rackham<sup>4</sup> and his wife founded the HYPF in 2007. Rackham, a very successful real estate developer and financier, predicted the collapse of the subprime mortgage market in the United States that set off the global financial collapse of 2007-8. He made more than \$1 billion dollars by selling off his residential and commercial properties and moving that money into a hedge fund that shorted real estate and related industries like banking and construction. He decided to use the massive profits to start a foundation to address the question of war and violence in human societies.

The influence of Rackham on the vision and culture of the organization is hard to overstate. He is self-styled in the mold of a pessimistic and skeptical scientist pretending to be a businessman. Rackham wears a long grey ponytail, drives a Prius, and likes to pace back and forth while in conversation. He has training in molecular biology, and there is a sense of cycles, patterns, and systems thinking that pervades his thought. “Violence is productive,” he told me at a residential property he owned that had been converted into the office space for the small program development team of HYPF, “but not as productive as non-violence” (personal interview). He sees governance as a set of rules that fill the gap between violence and peace. Violence is a waste of resources and an inefficient means of resolving human conflict. The search for adaptive systems of governance is a smarter and more efficient solution. There is the added benefit that efficient systems replicate more successfully, creating positive feedback loops in the system. Rackham is fond of saying that the organization is seeking to identify, and to itself

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<sup>4</sup> I have anonymized the names of my research participants. I consulted the “List of pirates” and “Women in Piracy” from Wikipedia, which lists 474 men and 40 women pirates from antiquity to the present. I imported this list into a spreadsheet and used a random number generator to select an anonymous pirate name for each research participant. There is nothing to read into any of the choices or their histories beyond randomness.

become, a catalyst for change. They are not interested in the substrates as much as the processes of transformation. He imagines HYPF as a kind of “meta-learning hub” that can analyze and reproduce the most effective forms of governance through empirical proof over long time horizons. The organization will be a “think and do tank,” learning recursively through their on the ground programming. Rackham is a contrarian. He told me that once someone has an answer, “it scares the shit out of me.” One of the biggest distortions and biases of the human condition, for Rackham, is optimism. He spends much more attention in his real estate deals on the potential risks of a new venture than the benefits. He grounds his theories of change at the organization in empirical proofs. He demands this same kind of engagement from his employees, who sometimes find his constant questioning and demand of proof taxing, especially when his passionate preoccupation with one idea quickly moves in a new direction.

Rackham’s outlook has been important to his success in real estate. His is a student of long-term macroeconomic trends and cycles, devoting 20 hours a week to reading widely about domestic and international markets. The real estate cycles during his lifetime have also provided important lessons. Rackham dropped out of his PhD program in molecular biology to build a small company in the food industry, which he sold before moving into real estate in the mid 1980s. His timing was not good, as the Savings and Loan Crisis was just beginning. He struggled for a few years, before gaining a reputation for filling empty buildings. He was able to buy distressed properties at bargain prices and adjust the rents low enough to attract tenants and squeeze a small profit. Over the next twenty years, Rackham built an empire financing, developing, and building commercial and residential properties.

In 2005, Rackham and his business partners began to see worrying signs in the subprime mortgage market. In addition to signs like the doubling of mortgage debt on commercial



properties in a single year in the United States, he told me that he also started to notice ripples of the effects in Scandinavian markets, connecting the risk of mortgage defaults in the United States to global markets and banking institutions. At the height of the market, Rackham sold 85% of his commercial and residential properties and moved the cash into a private hedge fund, which he used to short the real estate markets and related industries like construction companies and overleveraged banks, betting they would fail. He made over \$1 billion.

In the aftermath of the global economic crisis, he was able to reuse his old playbook from the 1980s. Now flush with cash and short on assets, Rackham was well positioned to take advantage of the real estate rebound in a consolidated market where most independent players had not survived. His company began buying distressed condominiums and other properties in oversupplied markets. In addition, they become an outlet for financing to riskier local builders who could not find local funding. In the midst of this thriving real estate company, less than a dozen new employees of the Hundred Year Peace Foundation moved into a basement office that shared a kitchen with the accountants. Over the first year, Rackham convened a series of conversations with consultants, academics (mostly political scientists and philosophers), and entrepreneurs to determine the best strategy for building an organization to create a world without war.

### *An Essay Contest: Non-territorial Sovereign Organizations*

In the fall of 2008, the HYPF sponsored an essay contest. The theme of the essay was supposed to address the founding mission of the organization: the elimination of war within one hundred years. Hans Pothorst submitted the only essay that directly addressed this question. He

proposed that the international system was an outmoded monoculture dominated by the self-interest of states, for whom violence was a legitimate right and often a compelling strategy to resolve conflict. A future without war depended on changing international norms, especially concerning the concept of sovereignty, and populating governance regimes with a “new species” of organization capable of flexibly meeting the unique global challenges of the 21<sup>st</sup> century. The goal was to create the conditions necessary to decrease the reasons that states might engage in war and eventually for states to lose the ability altogether. This would be analogous to what Einstein did to Newtonian physics, Pothorst told me. A change of scale would recalibrate the system. He called these new players non-territorial sovereign organizations. His prize for winning the contest was to become the Executive Director and Chief Vision Officer of HYPF in March 2009. His goal was to build HYPF into a “purposely created non-territorial sovereign organization” (personal interview).

Pothorst has an eclectic background. He describes himself as someone who “dabbles with intensity” (personal interview). He has worked in areas as diverse as Israel/Palestine mediation and World Cup skiing qualification scoring, but the bulk of his career has focused on developing special economic processing zones in settings across the globe. He had just returned from Iraq, where he had worked as a special advisor to the British government administering export-processing zones in the postwar landscape. Pothorst had known John Rackham casually for years, and they began a conversation upon his return that resulted in his essay.

Pothorst’s argument for the non-territorial sovereign organization was laid out in two subsequent co-authored working papers at HYPF, and influenced other conversations that led to the creation of the original Internal Logic Framework of the organization (personal archive). These papers frame the emerging concerns of global governance as “wicked problems,” a term

used by Rittel and Webber (1973) in the context of social planning and later generalized by Conklin (2005). Conklin's formulation presents a wicked problem as one that is not understood until a solution has been presented; these problems are "wicked" (instead of "tame," like clearly delineated computation or stepwise scientific inquiry) precisely because they are incomplete, contradictory, and constantly changing, and therefore impossible to solve. The problems never stop, but spiral into new configurations that continually demand unique engagements from an unclear pool of evolving stakeholders. There is often disagreement over what exactly the nature of the problem actually is. Some popular examples of wicked problems are climate change, nuclear proliferation, poverty, or pandemic disease control. HYPF is interested in tackling these kinds of problems in the context of eliminating the root drivers of organized political violence.

The main argument for non-territorial sovereign organizations, as the name might suggest, is to diminish the importance of territory from the classic definition of sovereignty and displace it metaphorically into "issue-specific domains" where networked expertise will replace or cooperate with the legitimate authority of the state, among others. The papers trace the emergence of Westphalian governance from its seventeenth century origins in the Treaty of Westphalia (1648), which established independent kingdoms and effectively ended the Thirty Years War, through to the development of welfare states in the early 20<sup>th</sup> century when the responsibility to provision public goods was taken as an ideal, then onward into the post-World War II period when the Westphalian form gained global dominance as an ideological and political construct. Through decolonization, the political geography of the globe transformed from imperial spheres of influence into an international community of presumably equal states with clear territorial boundaries. The state became the unquestioned locus of authority in global governance.

The authors identify three fundamental attributes of the modern sovereign state: the sovereign has (a) legitimate authority and (b) supremacy (c) within a territory. Externally, sovereigns operate as equals and are bound by a rule of non-interference within the internal affairs of other states. This creates two significant problems for the Westphalian system. Firstly, there is a “territorial myopia,” in which the sovereign is by design an avatar of the self-interest of the state. “Westphalian states have acquired global mandates that are structurally inconsistent with their parochial capacities, obligations, and interests,” they argue, “The resulting gap perpetuates a governance paradigm that is incapable of meeting today’s governance challenges. These shortcomings in turn often act as drivers of violence themselves.”

Secondly, the authority and supremacy granted to the sovereign creates a “sovereign prize” for political players within a state. No matter the tactics used to compete for the sovereign prize, once the mantle of sovereignty is attained, international recognition coupled with non-interference confers de facto immunity. There is no accountability beyond the mutual recognition of each state’s sovereign status and the idiosyncratic political structures they adopt. The post-World War II human rights accords, and recent debates about universal jurisdictional forms of intervention (including piracy), whether from the International Criminal Court or other international bodies, are important caveats to this trend, but the authors argue that these international governance organizations, like the United Nations or the World Bank, are “caught between their responsibility to act and a conceptualization of sovereignty that denies them the right to act.” Importantly, they argue, territorial myopia and the sovereign prize are still structural features of international bodies populated by states with veto power.

Given these fundamental structural constraints, Pothorst argues that the Westphalian system is “outmoded” and an “obstacle” to more effective, peaceful, and just regimes of global

governance. Luckily, there is another species of organization capable of filling the gaps. Non-territorial sovereign organizations are “issue-specific nonstate-centric networks of affected stakeholders making compulsory and enforceable decisions over a given social issue or merit good domain.” In the forms of global governance that lie in the future, and promise to promote a world without war, non-territorial sovereign organizations will not replace the Westphalian nation-state, they argue, but will cede the authority of states over specific issues, instead of territory, in multi-stakeholder alliances that will sometimes collaborate with and sometimes appropriate the legitimate authority currently vested solely in states.

Non-territorial sovereign organizations are not utopic projections; they already exist. The papers carefully list a diverse group of organizations that exude the qualities they describe. The primary examples they use are the International Olympic Committee (IOC), the Federation Internationale de Football Association (FIFA), the International Committees of the Red Cross and Red Crescent, and even Microsoft Windows operating system. Their favorite example is the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit based in California that administers the domain name system of the internet. The goal of HYPF is to reproduce the “professional neutral” regulatory function and legitimation that some of these bodies inspire.

### *Sovereignty and Territory*

Pothorst told me that academics and publishers typically responded to the idea of a non-territorial sovereign organization as nonsensical. Territory, after all, was a fundamental aspect of

the accepted definition of Westphalian sovereignty. Nevertheless, the approach he adopted at HYPF has some affinities with a lot of emerging scholarship on the relationship between states, sovereignty, and territory across the social and humanistic sciences, with some important differences. Scholars from a wide range of disciplines and orientations have taken up sovereignty in the last thirty years in the wake of the mobilities, flows, and reorderings of globalization, which have dramatically upset the “sedentarist metaphysics” (Malkki 1992) and Herderian unities often prescribed to the nation-state form. Sovereignty has become an object of fascination again at precisely the moment that there is wide agreement that its modern form is dying (Brown 2010, 153). In part because of this burgeoning attention, the concept of sovereignty has been fragmented (just like its traditional state form) and repurposed in a number of dynamic and important ways that nonetheless muddy the conceptual terrain.

“We speak of sovereignty today as if we know what we mean when we discuss its existence, achievement, violation, assertion, jurisdiction, or even waning,” notes Wendy Brown, “Yet sovereignty is an unusually amorphous, elusive, and polysemic term of political life” (2010, 59-60). Brown uses George Bush to express the confusion this drift can create: “sovereignty means... you’ve been given sovereignty...and you’re viewed as a sovereign entity” (Brown 2010, 60). The tautological quality of Bush’s definition has been a recurrent feature of many definitions of state and sovereignty. They ontologically presuppose one another: what is the state if not the territorially bounded purview of the sovereign, and what is the sovereign if not the supreme authority of a state? What is perhaps interesting about Bush’s quote is that it implies a mutual recognition – “you’ve been given” and “you’re viewed as” – that legitimates the sovereignty under question. Sovereignty, not as founding myth, but as project and aspiration,

depends on the recognition of another, whether the people within a state or other sovereigns outside it. This search for legitimation is a central feature of the early years of HYPF.

In the mid 1990s, John Agnew wrote a groundbreaking critique of the field of international relations. He cautioned that the field had been captured in a “territorial trap,” an intellectual snare that overdetermined the spatial modalities and units of analysis they used. In the trap, territorial spaces were reified as fixed units of secure sovereign space, the domestic was unnecessarily separated from the foreign, and the territorial state was imagined as a preexisting container for society (Agnew 1994, 2015). This geographical imagination had become so dominated by the traditional view of Westphalian sovereignty and states as the primary actors in international relations that there was no room to consider other geographies, scales, and relationalities. Agnew suggested a new generation of scholars take up questions framed through networks and flows. This resonates with Pothorst’s formulation of territorial myopia and the sovereign prize, in addition to the aim of the HYPF to build non-territorial (or at least otherwise territorial) networks of collaborative experts in a specific issue domain.

There are two main trends in the critical theory of sovereignty. The first trend is related to Giorgio Agamben’s (1998, 2005) reading of Carl Schmitt’s political theology and law of emergency. Schmitt defines the sovereign as “one who decides the exception” (Schmitt 2006, 5). Agamben (1998) traces the implications of a structural analogy between the classical sovereign and *homo sacer*, the “sacred man,” a figure of Roman law. *Homo sacer* is a legal figure who is expelled from the body politic and stripped of rights who can be killed by anyone but not sacrificed in religious ritual. *Homo sacer* is included in the law (this status being assigned as punishment) only through the exclusion it entails. The sovereign also has a double relationship to

the law, but it works in the other direction: he is included in the law, as a natural person who can be tried or convicted, and excluded because he remains supreme to the law and can suspend it.

This inclusive exclusion of *homo sacer* demonstrates the imbrication of politics, law, and violence. Legal authority gains power over and through those it condemns to “bare life” (bodies stripped of political rights or ontological standing). For Agamben, the organizing principle of modernity is the (concentration) *camp*, when the power of this distinction is most visible. The power of this reading is that it situates violence and the state of emergency – the decision of the exception – as the foundation of sovereign rule. He then uses Walter Benjamin, for whom the exception has become the norm, to generalize this state of emergency to modernity through the camp.

The exclusion at the heart of the sovereign decision has clear spatial underpinnings. The connotation of *sacer* in pre-Christianized Rome suggests “sacred” in the sense of “set apart” or “cursed.” Wendy Brown (2010, 55-59) situates Schmitt’s political theology in relation to his etymological account of *nomos*, which is usually translated as law, regulation, or norm. Schmitt suggests that the word also has a clear spatial dimension, meaning both “to divide” and “to pasture,” and establishes a necessary connection between all law and enclosure. Brown uses this to show the explicit connection between early modern theories of sovereignty, from Locke to Kant, and how they “formulated land appropriation as the foundation of political sovereignty and the essential precondition of public and private law, ownership, and order”: “there is first the enclosure and then the sovereign” (Brown 2010, 56, 57). This makes Schmitt’s friend-enemy distinction, a pivotal part of his thought, easier to understand. The political community is defined against the other, the enemy, the stranger, who remains outside the enclosure. This has the spatial implication that civilization resides within the polity. Outside the polity, the other is either friend



or foe. The foe is imagined as brutish and uncivilized, which paradoxically justifies forms of violent intervention from the polity that would not be accepted within it. The implications for settler colonialism, and as we will see, piracy are clear. In more general terms, the inheritance of this tradition creates a tension for formal definitions of the Westphalian state – at the border, the hierarchy of the interior meets the anarchy of the exterior.

The second major trend in critical theories of sovereignty include a growing number of scholars who abandon the formalisms and territories of the juridical state and explore the effect of popular sovereignties as tentative and contested forms of authority. The connection to violence remains. This emphasis does not ignore juridical sovereignty as an organizing principle; it focuses on calibrating the interrelationships between Westphalian sovereignty and local forms of overlapping and distributed agency and *de facto* sovereignties - the ability to protect, kill, punish, and discipline with impunity. These scholars stress the “informal” sovereignties enacted in the “the murky, secretive underworld of pirates, bandits, criminals, smugglers, youth gangs, drug lords, warlords, Mafiosi, traitors, terrorists, *en fin* outlaws and liminal figures [who] seem to persist and mutate despite state laws and powerful institutions entrusted with the responsibility of eliminating them” (Hansen and Stepputat 2006, 305). Scholars have created a host of theoretical descriptors to explore the processes of fragmented legal authority. Buur (2005) describes “nested” and “outsourced” sovereignty in the postcolony. Ong (1999) explores the effects of the “grading” of sovereignty associated with the introduction of free-trade zones in Asia in the 1980s. Chalfin (2010) stresses the “uneven” and multiscalar implications of sovereignty enacted across domestic, territorial, and international spheres. Sassen (1999) shows how transnational legal codes and supranational institutions like the World Trade Organization and universal human rights covenants decouple sovereign authority from the nation-state. Finally, Benton

(2010) argues that the fiction of sovereignty in European imperial states was always contingent, contested, and partial – sovereignty on the seas was “lumpy” and “worm-holed,” a series of corridors of contestation.

This transition from juridical or Westphalian sovereignty to the *de facto*, popular, transnational, and/or imperial forms of sovereignty displace the preeminence of the state in favor of contingent assemblages of power. These emergent forces threaten the presumed supremacy of territorial authority from outside, above, and within, depending on the scalar geometry you prefer. Many of these approaches are embedded in poststructuralist debates about the production of subjectivity and the nature of power. Michel Foucault’s genealogy of the forms of capillary knowledge-power that came after and replaced the juridical sovereignty of the king are highly influential. His neologism “governmentality” explores the ways that government gets adapted through the mentalities, rationalities, and techniques used to produce and manage subjects under the anatomo-political regimes of discipline (such as prisons, schools, clinics) (1975), and the biopolitical formations (2004) that take the administration of life and population as targets. These new technologies of power work in different ways than the juridical sovereign power of the decision, and expand the tools, sites, and units of analysis.

Yarimar Bonilla (2017) has suggested that these types of qualified sovereignties, though they try to abandon the juridical state, still reinscribe the classical model of political sovereignty by differentiating their terms of art from it. She calls for a deeper interrogation into the power of sovereignty as concept, norm, and ideal in the context of empire. Bonilla illustrates how sovereignty has always been connected to “concrete material practices of dispossession, the practical work of disenfranchisement, and the creation of legal regimes of difference” in the service of imperial and colonial experiments. Westphalian sovereignty is a founding myth that

helped codify and regulate the forms of dispossession and displacement practiced through European expansion. It must, therefore, be “unsettled” – shaken up and denuded of this imperial haunting – suggesting that the forms of territory embedded in the conception of the Westphalian state and the non-territorial sovereign organization are already steeped in histories of violence and war with ongoing legacies of systemic inequality.

This second trend presents a more unclear relationship to the territoriality expressed in Pothorst’s non-territorial sovereign organization. On one hand, the fragmentation of sovereignty, its displacement from the nation-state, and the assemblages of networked and transnational affiliation that assume these discarded sovereign functions, finds resonance with the framing of the problem in HYPF’s papers. On the other hand, abandoning the formalisms of the juridical state present a host of more complex interactions and theorizations of the forces that perpetuate violence.

### *Sovereignty and Capitalism*

The idea of the non-territorial sovereign organization is related to what Pothorst and his co-authors call non-territorial sovereign entrepreneurs, the innovators of these organizations. They always mention these individuals at length in the papers when possible. Just as there are political, social, and commercial entrepreneurs, there are now, in this formulation, opportunities for sovereign entrepreneurship. This is a smart framing to attract the interest of John Rackham, who narrates his own experiences as a risk-taking entrepreneur. The mission of HYPF and non-territorial sovereignty converge around an appreciation for the power of commercial actors and

global business networks to become more involved in solving the wicked problems of global governance.

The role of business in this imagination resonates with what Albert Hirschman (1977) has called the “doux commerce” thesis. In short, this thesis asserts that individuals in a market transaction express their self-interest through gentle manners, politeness, and civility. Disagreement is bad business. In *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*, Hirschman explores seventeenth and eighteenth century political discourse and narrates an ideological transformation at the birth of capitalism that transforms the pursuit of material interests, previously understood as avaricious sin, into a virtue in relation to its ability to contain the destructive whims of various passions. Because passions can neither be repressed nor harnessed, a countervailing passion must be identified and pitted against the others to divide and conquer the most destructive impulses. The “interests” become the most effective countervailing passion.

Hirschman then describes the linguistic drift that accompanied the notion of the interests. The “interest” of the sovereign ruler is generalized to the “interests” of groups and individuals. Eventually, the conception of interest narrows to mean simply “material, economic advantage” (38-40), which as *doux commerce* (60), “softens and polishes” (61) the rough edges of the passions: economic activity is reckoned as polite social intercourse that creates peaceful bonds of mutual interest. Interest, then, becomes a wedge between passion and reason, the two cornerstones of various ideas about human progress, civility, and happiness. Hirschman concludes that capitalism succeeded in doing exactly what it was supposed to do: make humans more one-dimensional in order to counteract the destructive capacity of the passions (132). In the context of HYPF, we might say that the goal is for commercial society in networked non-

territorial sovereign organizations to fill the gap between peace and war through governance. The self-interest of economic rationality coupled with the creative risk-taking of the entrepreneur can lead to innovative catalytic systems of mutually beneficial peace.

These papers justify the need for non-territorial sovereign organizations by adopting a functionalist typology of the ways that humans allocate scarce resources. They suggest a threefold distinction that is already an economized language for understanding how human communities organize themselves. Government, or political society, rules through power. Commercial society trades through markets. Civil Society mobilizes through moral values. “The balance between and among civil, commercial, and political society needs to be realigned,” they insist, “such that rule making and enforcement is no longer vested solely in the state.”

This proposed rebalance between civil, commercial, and political society also recalls Karl Polanyi’s (1944) famous idea of the double movement. In the *Great Transformation*, Polanyi describes the Enclosure Movement at the birth of the Industrial Revolution in England. He suggests that the birth of industrial capitalism and the modern state were co-constitutive events that produced what he called market society, a utopic vision of liberal planners who sought to subject society to the rules of the market. In a market society, the newly consolidated powers of government restructured the economic relationship of their subjects as the market, imagined as a self-regulating logic, was disembedded from the social ties of mutual debt, reciprocity, and redistribution that had dominated human societies until that point. Part of this process required the ability to alienate and make mobile humans and nature for the production of capital, so that land, labor, and money were made into fictitious commodities. Private property regimes took over, and the rural poor were forced into the factories of emerging cities. This transformation was great because it not only dramatically reengineered social institutions of capital and

government, it also changed human nature through recalibrating economic relationships. “Laissez-faire,” he famously concluded, “was planned” (141). Against the formalist and universalizing tendencies of neoclassical economic thought, Polanyi called for an ethnographic approach he called substantivism, which rejects the maxim of economy as the logic of rational maximization of scarce resources and celebrates a second sense of the word that focuses on the experiences of how people provision goods to meet basic material needs.

The idea of the double movement asserts that the history of political economy is a dialectical process that oscillates between attempts to dis- and re- embed the market into society (Polanyi 1944). In his exploration of early 20<sup>th</sup> century England, as above, this dialectic traced how laissez-faire reformers created the market society and the countermovement that resulted in calls for social protections, labor laws, and tariffs within the newly transformed social and economic environment. In this way, the dialectic is about the relationship between society and economy and suggests that if the logic of commercial society becomes too dominant as a disembedded ideal, then it will slingshot back under the spontaneous and uncoordinated protest of civil society.

HYPF’s framing seems caught somewhere in the middle of this dialectic process. On one hand, the call to privilege global business networks in new governance regimes seems to suggest a restaging of the first movement on the global scale, by disembedding the market and subjecting societies to the logic of efficiency and optimization within issue-specific domains buttressed by the moral hope of *doux commerce*. HYPF suggests that as business “increasingly reaps the benefits of globalization, it also encounters inconsistent rules and no reliable global governance platform, which impedes growth and reduces efficiency” (personal archive). The creation of clear global rules, best practices, or dispute settlement systems within issue-specific domains will

no doubt improve the revenue streams and operating efficiencies of business firms, but following Polanyi, the question to ask is how these non-territorial networks understand the nature of labor, land, and money and the ways they are embedded in culturally diverse societies and how violence might be refracted through this entanglement.

On the other hand, HYPF suggests that they need to show global business networks that they “benefit from reliable and efficient global governance in order to encourage them to utilize a portion of that benefit to support such new governance” (personal archive). HYPF identifies commercial society as an untapped stakeholder with significant resources, but one that will need to break the paradigms in which they operate to think more systematically and holistically in conjunction with civil society and government in order to work toward a lasting peace.

Both Hirschman and Polanyi were concerned with the origins of capitalism, but their ideas have been popular again in the midst of globalization and the growing influence of finance in the way global capital is organized. Polanyi’s double movement was a useful resource for many audiences, on the right and left, grappling with the rise of neoliberal rationality since the 1980s. Neoliberalism is an economic system in which the logic of the market becomes the arbiter of social and political relationships. Since the Reagan and Thatcher administrations of the 1980s, neoliberal policies based in the ideological and economic theories of the Chicago and Austrian Schools have dismantled the social protections of the Keynesian welfare state. Neoliberal policies advocate free markets, open borders, deregulation, privatization of public goods, austerity, and individualism. The waning sovereignty of the Westphalian state is directly related to the increased power of market forces and private interests taking control of traditional state responsibilities, like schools, prisons, and healthcare. This recession of state institutional support for the public procurement of goods and services has increased the role of non-governmental

organizations, which often take up these responsibilities in the name of development at home and abroad through a capacious set of forms and functions that support arguments for both the strengthening of states, by building a strong civil society, and the weakening of states, by smuggling in neoliberal or imperialist agendas and reconfiguring the relationship between state and citizen (Bernal and Grewal 2014, 4).

Processes of financialization have accompanied neoliberal policy agendas over the last thirty years in parallel to neoliberalism. Financialization describes the growing influence of financial institutions, markets, and elites over economic and political institutions. Financial reason is a logic of amalgamation, interconnection, and mutual indebtedness. It trades in the circulation of risk, debt, and credit. The derivative is the “apotheosis of the new financial regime” (Martin 2007, 31). Financial industries were massively deregulated in the 1970s following the decision to decouple the American dollar from the gold standard and create “nonsovereign” money. As Randy Martin notes, “The history of finance is conventionally told as a succession of sovereignties, or currency reigns, of one standard yielding to another as gold, then the dollar, and then derivatives edge each out for primacy” (2012, 69). As evidenced by the Global Financial Crisis of 2007-8, if there is an emerging sovereign in the convolutions of globalization and the waning of traditional Westphalian sovereignty, it is global capital in the form of the financial derivative, a kind of “sovereignty without a sovereign” (Brown 2010, 77).

*Toward Derivative Sovereignties*



In what follows, I extrapolate from the idea of the non-territorial sovereign organization to develop what I call derivative sovereignties. I then briefly revisit the history of sovereignty, territory, and capital I have narrated in order to recontextualize what is at stake for the Hundred Year Peace Foundation and the Global Anti-Piracy program. This logic will be the central analytic of the ethnographic exploration in the following chapters, and a method to understand the forms of temporary, ad hoc, and experimental multi-stakeholder formations of global governance tested in the waters off the Horn of Africa to meet the threat of the Somali pirate.

The derivative is a technology used in fields as varied as medicine, law, mathematics, grammar, and music, and refers to the “transmission of some characteristic from an originating source to a consequent site, expression, or manifestation” (Martin 2012, 65). A financial derivative is a tradable contract whose value is tied to the performance of an underlying entity, such as bulk commodities, interest rates, currencies, corporate shares, weather, really anything that can be priced. The power of the derivative lies in its ability to “bring together things that are far apart and make the future actionable in the present” (Martin 2012, 65). There are many kinds of derivative technologies in finance, such as futures, options, swaps, or the exotic forms of collateralized debt obligations and credit default swaps that were pivotal in the Global Financial Crisis. For my purposes, I do not distinguish between these forms.

The irony of the logic of derivatives is that they work as forms of risk mitigation, at the micro level, but they nonetheless have the potential to massively increase market instability, at the macro level, through speculative bets on the performance of bundles of amalgamated risk recombined in ways that dissolve traditional silos of market exchange. To provide a simple example, a farmer might purchase a derivative contract to sell his crop of soybeans at the market

rate at the time the contract is drawn at some future date. If the market price for soybeans increases during this time, the farmer can sell at the new higher price, losing only the price of the derivatives contract. If the price of soybeans goes down, the farmer has the right to sell his crop at the previously agreed higher price, locking in a profit, so that the derivative contract acts as a form of insurance against the uncertainty of the future and the volatility of the market.

But, as Bill Maurer (2002) explains, a financial trader who has no intention of ever owning, buying, or selling the soybeans might also purchase a derivative. The trader is interested solely in speculating on the commodity's price fluctuations. The possibilities become dizzying for these speculative players, who can separate and recombine different promises to buy or sell any number of entities over different time scales. This speculation can be incredibly profitable, beyond the rates of return for traditional industrial capital enterprises. But it can also contaminate the global economy, as in the Financial Crisis of 2007-8, where the risk of subprime mortgages was parceled out and combined with all sorts of other financialized entities, and when the underlying asset of the mortgages failed, the ripple effects were massive.

Derivatives “allow debt to serve as a productive medium from which countless commodities can be spawned” (Martin 2007, 31). In 2007, the notional value of publicly traded and over-the-counter (firm to firm) derivatives contracts was over one quadrillion dollars, nearly fifteen times the entire world's gross domestic product (Martin 2012, 67). Derivatives tend “to destabilize price and simultaneously increase speed and volume in circulation,” says Randy Martin, “The trade in risk avoidance devolves into a profit on risk itself” (Martin 2007, 33). In the recombinatorics of derivatives, referentiality is troubled (Maurer 2002) as all grounding is eliminated to create recursive circulation, thus affirming the derivative and the financial logics of

risk management as a promising model of a truly non-territorial sovereign in the early 21<sup>st</sup> century.

Many scholars are turning to finance and the derivative to unravel emerging social and political formations in a wide range of disciplinary and geographical contexts (Maurer 2002, 2012, LiPuma and Lee 2004, Martin 2007, 2012, Peterson 2014, MacKenzie 2009). For my purposes, the model of the derivative as a logic of conglomeration, abstraction, and circulation that combines risk hedging and the simultaneous proliferation of systemic risk provides a useful theoretical tool to understand and contextualize the foundational philosophy of the non-territorial sovereign organization presented by HYPF.

Derivative sovereignty suggests that derivatives, and the financial logics of modern global capital, are emerging as a new kind of sovereignty, a kind that subverts the need for a sovereign altogether. By insisting on calibrating their intervention at the level of a system that most observers agree is antiquated in form though powerful as myth and social fact, HYPF overlooks the structural logic that presented their founder with the opportunity to profit from the subprime mortgage crash and build the organization in the first place. These same financial logics and their despatializing tendencies also hold the promise of dramatically transforming the strategies, techniques, and understandings of war and violence in the coming decades.

HYPF is the product of the increased power and influence of financial logics and elites. As a “meta-learning hub,” in the words of John Rackham, HYPF adopts the organizational form of the derivative. The organization creates issue-specific programs that bring together different amalgamations of stakeholders, each with their own interests and strategies, to iteratively address wicked problems of global governance. These programs are stitched together by a shared underlying interest in creating peace.

If derivative sovereignty expresses the new sovereignties of the derivative, it also illustrates how sovereignty has always been a derivative concept. The paradox of the myth of Westphalian sovereignty is that the supremacy granted to the sovereign within the territorial borders of the state accrues its value through an underlying transcendental identification. This is true of early modern states, where the divine right of kings established sovereigns as avatars of God on earth, and in democratic republics after the revolutions of the late 18<sup>th</sup> century, when this transcendental identification was secularized and projected from the will of the people. The qualified forms of sovereignty explored earlier, following Bonilla (2017), are derivative of the myth of Westphalian sovereignty, and they illustrate a secondary derivative function: the forms of sovereignty inscribed in the mythic Westphalian territorial state can be fractured, recombined, and allowed to circulate through other formations, networks, and flows. In this way, the idea of a non-territorial sovereign is not at all nonsensical. We already see sovereignties within and outside the state, and states that are not sovereign.

Derivative sovereignty, as method, allows me to trace the forms of fragmentation, amalgamation, and circulation of these features of sovereign authority (the state of emergency, the decision of the exception, the ability to protect, kill, punish, and discipline with impunity) in the multi-stakeholder (recalling the shareholders of financial capital) assemblages of experimental governance created to address the problem of piracy. As Valayden (forthcoming) has argued, “[S]overeignty must be approached, not simply as a product or products of laws and theories, but from a view of sovereignty as a set of situated behaviors, relations, actions, and self-conceptions that exist in relation to other entities.” These situated behaviors, relations, and self-conceptions are what is opened to analysis through the derivative. The goal of this dissertation is to outline the ways these groups temporarily mitigate the risk posed by piracy, the collaborative

techniques they use, and the effects these ad hoc and temporary interventions produce for the figure of the Somali pirate.

*From Think Tank to Do Tank: Piracy and the Contact Group*

Now that HYPF had an orientation to addressing the elimination of war through non-territorial and issue-specific sovereignties, they needed an issue. As Hans Pothorst tells it, John Rackham was on the phone with a friend who had just seen headlines about the hijacking of the *Maersk Alabama*, the event that led to the film *Captain Phillips*, starring Tom Hanks. The Hundred Year Peace Foundation made plans to start their first implementation program as a proof of concept related to the problem of piracy.

Over the next fifteen months, Pothorst and a small team researched the ongoing developments in the waters off the Horn of Africa and began to map the institutions and potential stakeholders affected by Somali piracy. They developed a plan to create the Global Anti-Piracy (GAP) program in the summer of 2010. They hired John James as the Director in September along with as Associate Director and a Research Associate. The team worked closely with Pothorst and a handful of other researchers connected to HYPF.

The problem of piracy was a good problem for an aspiring non-territorial sovereign organization. There was a clear governance void at the margins of the international system with low levels of physical violence. In addition, the space was not filled with other NGOs or think tanks, so that HYPF and GAP would be well positioned to exert influence in order to parlay any successes into other wicked problems with greater levels of violence. The problem was small enough to make a real impact. Their initial investigations showed the many of the stakeholders

never talked to one another. The shipping industries were the main victims of piracy, so bringing in business interests was a clear priority. What does a non-territorial sovereign organization look like in practice?

The original plan set out a six-year trajectory in which GAP would convene a Ad Hoc Assembly (AHA) to convene the stakeholders from industry, government, and civil society that they had mapped. This assembly would act as a governance forum for global piracy and support research about the effects of piracy and the best ways to combat it. The first AHA would define the piracy problem, identify regional differences, determine informational needs, and select leaders. The members of AHA would decide the agenda for subsequent meetings. The goal was to institutionalize this framework in an informal way within three years, to form a Piracy Alliance with the stakeholders of the Assembly, a research initiative, and national coalition groups, which would identify countries affected by piracy and similarly convene a meeting with relevant stakeholders from civil society, business, and government within the country. The Alliance would begin to be self-financing, though HYPF would continue to fund its direct costs. The sources of funding would be determined by the group, but the original plan suggested an excess stamp charge on seafarer credentials, security fees on all shipping companies, tonnage taxes, or rebates from insurance premiums related to attending certification or training sessions organized by the Alliance. After six years, the Alliance would evolve into a World Piracy Council, a brick-and-mortar institution of global governance funded by its members and relevant for all forms of global piracy. The terms of this evolution depended entirely on the uptake they got from relevant stakeholders and the directions multi-stakeholder conversations might lead. The World Piracy Council would represent the grand vision of the non-territorial sovereign

organization come to life. Pothorst wanted the body to absorb a global mandate for piracy after the United Nations and states lost interest in Somali piracy.

The first AHA meeting in London, the center of the maritime world, proved to alter the course of GAP in January 2011. John James, the new Director of GAP, was more affable than Pothorst, and he had a different orientation to the international system. He had most recently been a NATO attaché to the EU. James called himself “a glue and mortar kind of guy” in one conversation, and a future colleague suggested that his past as a naval pilot helped explain his organizational way of being. The colleague, who had been in the French Navy, suggested that the naval ship was conducive to specialization and direct roles, but the plane meant all three pilots had to work together to do everything in a shared mission. James was pragmatic; he was skeptical about the way the framing of the non-territorial sovereign organization would sound to potential stakeholders and tried to underplay its importance. He had a different, more humble kind of multi-stakeholder engagement in mind. His had a more narrow focus on building GAP through interventions in Somali piracy.

At the London AHA meeting, twenty-five people came. HYPF had a list of over a thousand potential contacts, but they were happy at the turn out. They debuted their Piracy Report, an analysis of the economic costs of Somali piracy to the global community. They estimated the cost to be between \$7 and \$12 billion dollars. There was some haggling over the numbers, but in general the audience was receptive. GAP walked away from a successful meeting with the promise to convene again and three mandates: continue writing the annual Piracy report, add a report detailing the human cost of piracy related to the experiences of crews and hostages, and continue to map international counter-piracy efforts.

Most importantly, contacts in the shipping industry and some multilateral partners got James connected with the Contact Group for Piracy off the Coast of Somalia (Contact Group). The Contact Group was founded in 2009 by the United States as an ad hoc deconfliction forum outside the United Nations framework, but sanctioned by UN Security Resolutoin 1851. It started as an international governance mechanism to coordinate actions powerful states, like the United States, France, and England, and the multilateral organizations, like NATO and the EU, who were trying to suppress Somali piracy. Pothorst found this convergence anathema – GAP was seeking legitimacy through the nation-state hierarchy and was being captured by the territorial logics it was trying to transform. Within six months, though, Pothorst was no longer at HYPF. The vision of the World Piracy Council died in the aftermath of the London meeting. He told me that James convinced Rackham that the non-territorial sovereign organization was “silly and unrealistic.” Nevertheless, many of the hallmarks of this foundational philosophy continued to resonate with the approach James adopted at GAP. Over the next ten years, the derivative sovereignties of counter-piracy would circulate through the Contact Group, which eventually included more than one hundred organizations from political, civil, and commercial society.



## 2. Dialectics of Land and Sea: The Problem of (Somali) Piracy

Stefan Helmreich has described seawater as a “theory machine” that often mediates the categories of nature and culture in anthropological and social theorizing (2011,132). “Water as nature,” he explains, “appears as both potentiality of form and uncontainable flux” that is channeled by culture (as land or territory) through technologies like dams, locks, tanks, or irrigation networks (132). Helmreich traces how the substance of water has changed from an atheoretical object of meditation in early 20<sup>th</sup> century anthropological thinking<sup>5</sup> to a dominant metaphor in many social, political, and economic theorizations of modernity and postmodernity linked to capitalism. For Helmreich, idioms of currents, flows, and circulation suggest that “globalization might also be called ‘oceanization,’” a “reorientation toward the seas as a translocally connecting substance” (2011, 133, 137). In this proliferation of oceanic imaginaries, we find liquid modernity (Bauman 2000), the bubbles and foam of spherology (Sloterdijk 2011), the new thalassology (Peters 2003, Horden and Purcell 2006), and wet ontologies (Steinberg and Peters 2015), among others. The derivative, as a composite technology to hedge risk or speculate on the future (“potentiality of form”) coupled with the danger it poses as vector and exposure to systemic risk (“uncontainable flux” – after all, the oceans are rising!) is another way to imagine how the financialized capitalism of the 21<sup>st</sup> century reflects idioms of the sea, and vice versa.

In *The Social Construction of the Ocean*, Philip Steinberg (2001), a geographer, systematically traces the dialectical imaginaries of land and ocean as they inform and reflect dominant modes of economic and social life. In his accounting, postmodern forms of capitalism

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<sup>5</sup> One could imagine, for instance, Malinowski’s famous opening lines: “Imagine yourself suddenly set down surrounded by all your gear, alone on a tropical beach close to a native village, while the launch of dinghy which has brought you sails away out of sight” (1932, 3).

configure the seas as a strange composite of three historical ideal-typifications. The seas can be land-like territory, a space of everyday transportation not unlike a highway, like how Micronesians imagined the seas connecting their islands. The seas can alternatively be “a placeless force-field,” a space of competitive stewardship (without ownership) and the asymmetric projection of power between different societies, as in the Roman construction of the Mediterranean (Steinberg 2001, 43). Finally, the ocean can be a “great void,” a frictionless and asocial “non-territory” immune to state power and a medium to connect coastal cities through long-distance trade, like the Indian Ocean before European colonialism (ibid.). The postmodern amalgam of these perspectives reflects the tension in capitalism between infinite extension and fixed sites of accumulation and production. Postmodern capitalism constructs

the idealization of the deep sea as a great void of distance, suitable for annihilation by an ever-advancing tendency toward capital mobility; the portrayal of specific points in ocean-space as territories, extension of land that may be developed through the application of spatially fixed investments; the designation of specific elements or functions as special spaces of stewardship, suitable for systemic social regulation but to be insulated from state appropriation and territorial enclosure (163).

In this chapter, I chart the ways the seas have come to be understood in relation to the territorial sovereignties of the Westphalian system, transformations in global capital, and the figure of the pirate. The GAP program, through the derivative formation of the Contact Group, needed to confront the genealogies and contradictions that I map here in order to make sense of the emergence of the Somali pirate, whose rise I contextualize both within brief histories of piracy and Somalia. This chapter sets the stage and provides the resources for the kinds of experimentations and interventions that I will describe in the following two chapters.

The legalities of piracy are framed in the United Nations Convention of the Law of the Seas (UNCLOS), the codification of international customary law. Part VII, Article 101 of

UNCLOS defines piracy as:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

UNCLOS defines piracy as a private crime perpetuated by non-political actors on the “high seas.” This definition depends on a specific spatial orientation, also enshrined in UNCLOS, that configures the reach of the sovereign authority of coastal states over the seas and reflects the postmodern amalgam described by Steinberg. The sovereign authority of coastal states includes limited territorial seas. The waters beyond these limits are the “high seas,” an exceptional space that is mutually entangled with the figure of the pirate.

The high seas function as a global commons – *res communis* – that support a vital function: “the free movement of ships, goods and services in order to enhance maritime trade and commerce” (UNCLOS 1982). The legal geography of the seas laid out in UNCLOS can be traced to early 17<sup>th</sup> century debates between rival European imperial powers.

*The Doctrine of the Freedom of the Seas: Grotian Legacies*

Four centuries before the rise of Somali piracy, another depredation on the seas set the stage for a legal debate that enshrined the doctrine of the freedom of the seas and established the legacy of Dutch jurist Hugo Grotius as a preeminent legal scholar and father of international law. The legacy of Grotius is remarkably relevant to anthropologies of piracy and counter-piracy today. I devote considerable attention here to how Grotius' elaboration of the doctrine of the freedom of the seas manifests some of the fundamental tensions that continue to haunt contemporary iterations of piracy and counter-piracy.

The history of Grotius' ideas about the freedom of the seas cannot be divorced from early modern Dutch imperialism and colonialism (van Ittersum 2006, Pagden 2003). In 1603, Jacob van Heemskerck, an agent of the Dutch East India Trading Company (Verenigde Oostindische Compagnie, or VOC) captured the *Santa Catarina*, a large Portuguese carrack, off the coast of Singapore without the authorization of the VOC. Heemskerck felt justified because a Portuguese captain had recently accused Dutch sailors in the East Indies of being illegal pirates and hanged them. Portuguese officials claimed Heemskerck's seizure was a piratical event that could not go unpunished. An international scandal erupted.

Dutch inroads into the lucrative trade markets in the East Indies, previously dominated by the Portuguese, were vital to the Dutch United Provinces in the war of independence they were waging against the Spanish. Access to the East Indian spice markets simultaneously denied revenue to the Spanish and solidified the reputation of the emerging maritime power of the Dutch. In response to the sensitive political climate, the VOC advocated for Hugo Grotius, only twenty, to offer a legal justification of Heemskerck's seizure. The theoretical attack levied by Grotius against Iberian trade monopolies, grounded in a novel theory of natural rights, radically

reconfigured the way people imagined their relationships to the seas and to one another. Can the seas be owned, and by whom? If they remain free to all, what responsibilities, obligations, and rights does this entail?

Grotius crafted a philosophical treatise titled *De Jure Praedae* (On the Law of Prize Booty), also referred to as *De Indis* in homage to the Spanish theologian and jurist Vitoria, who wrote a similarly titled tract from which Grotius drew inspiration. *De Jure Praedae* argued that not only was the seizure legal, but that it was in fact just, honorable, and beneficial. Nonetheless, Grotius' VOC patrons quieted the project after an Admiralty Court in Amsterdam ruled in favor of the VOC in 1604. The full manuscript was never published. But when a copy of this treatise was discovered in a random trunk in 1864, scholars quickly recognized that it not only laid the foundations for his later *De Jure Belli ac Pacis* (On the Law of War and Peace) (1625), a seminal work in international law, but that *Mare Liberum*, published separately in 1609, was an edited version of the twelfth chapter of *De Jure Praedae*, one piece of a larger argument.

The VOC encouraged Grotius to rewrite one chapter of his unpublished response amid escalating attempts by the Spanish to encourage the United Provinces to denounce their right to trade in the East Indies. This chapter was released anonymously as *Mare Liberum*. Though a treaty was reached just before the publication of *Mare Liberum*, the ideological justification contained in Grotius' tract signaled a new imagination about the ordering of the seas in early modern Europe.

*Mare Liberum* attempted to dismantle Spanish and Portuguese claims to the world's oceans by opening the seas to all nations through a systematic and nuanced survey grounded in a revolutionary interpretation of the law of nature. Well beyond the scope of a simple polemic, Grotius, for the first time in history, expounded a political imaginary of the seas as truly

international. Grotius argued that Heemskerk's seizure was legitimate as an act of just war against the Portuguese trade monopolies in the East Indies. He made this defense through four arguments. First, he affirmed that all nations had the right to access the waters leading to the East Indies. Second, Indian natives could not be deemed infidels and thus divested of rights of ownership to their lands, whether by discovery, papal grant, or war, which might allow the Portuguese to claim these territories. Third, neither the seas nor rights to navigation could become the exclusive possession of any party, whether by seizure, papal grant, or custom. And finally, the law of nations affirmed that the right to trade and communicate with another nation is a fundamental right of all (Vieira 2003, 364).

This fourth argument operates as a foundational maxim for Grotius. He argues that the "most specific and unimpeachable axiom of the Law of Nations [...], a primary rule or first principle, the spirit of which is self-evident and immutable, to wit: Every nation is free to travel to every other nation, and to trade with it" (Grotius 1972 [1609], 8). Here, Grotius imagines the seas as a common medium, a *res communis omnium*, open to all parties for the benefit of trade and communication. War can be waged to defend against any action that threatens this first principle. The law of nations contains a natural concept of the freedom of trade, to which the freedom of the seas is a necessary corollary. This sense of internationalizing the seas was completely novel: it contradicted the conception of the seas that dominated the European imaginary at this time. In that construction, the Treaty of Tordesilla (1494) established the line of demarcation, an imaginary meridian three hundred miles to the west of the Canary Islands from which Spain, sailing west, and Portugal, sailing east, could claim exclusive dominion over all discoveries as Christian stewards of the earth. *Mare Liberum* reimagined this orientation of binary "ownership." It was not only a systematic theoretical justification of Dutch interests; it

also initiated a sea change presaging the political, economic, and theoretical dominance of the Dutch and English at the expense of the Iberians in the century to come.

The seas were a special type of *res nullius* – unlike the fish in the seas that could be possessed, but had yet to be claimed, the seas were a common property of all (*res communis omnium*). They remained outside exclusive ownership for two reasons. First, it is impossible to occupy the constantly moving waves of the seas – no labor can transform the surface of the ocean, thereby marking claims to exclusive ownership. “It is obvious,” he wrote, that “a ship sailing over the sea no more leaves behind itself a legal right than it leaves a permanent track” (Grotius 1950, 240). Second, the inexhaustibility of the seas assures that any act of granting exclusive dominion would never increase overall utility in the same way that parceling out private property on land increases expediency.<sup>6</sup> Quite simply, the oceans were a fundamental and irretrievably common good to be used by all, and remained outside rights of ownership.

Richard Tuck (1979) has described Grotius as the “most important figure” in the history of natural rights (80). This is in part because he represents a vital pivot between medieval neo-Thomist and Aristotelian Protestant thinkers and the modern natural rights theories of Hobbes and Locke, who have had such a profound impact on modern theories of law and property (Tuck 1979, 58). Grotius’s great contribution to the evolution of this paradigm was to make man the subject of *rights*. Grotius’ state of nature was a simpler, “untheistic” version compared to earlier theorists because it translated divine providence into the history of human relationships – God’s design was evident only indirectly and embedded in an evolutionary history of mankind concretized in positive law (Tuck 1979, 60). This theorization simplified the older Aristotelian natural virtue paradigm that mandated necessary responsibilities toward others into a survivalist

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<sup>6</sup> This inexhaustibility argument is obviously no longer accepted, though it speaks to the construction of the oceans in the early 17<sup>th</sup> century that such a claim, dating to earlier Roman traditions, could be argued without reply.

state of nature that required only the respect of rights of security: “Rights [had] come to usurp the whole of natural law theory, for the law of nature is simply, respect one another’s rights” (Tuck 1979, 67). This state of nature couples self-preservation, “that all His creation should preserve itself in being” – with the right to punish those who infringe, or might infringe, on the rights of others. Grotius builds outward from this limited conception of natural law to advocate for free trade, commerce, and communication because they create relationships that increase the likelihood and quality of that preservation. Thumfart has called Grotius’ theory a kind of “economic theology” (Nifterik and Nijman 2009, 11), a divine order manifested in human commercial relationships grounded in imperial and colonial expansion. Moreover, this natural law paradigm could be universalized to all people.

### *The Battle of the Books: Ownership of the Seas?*

This theorization prefigures an international community of sovereign states – the Treaty of Westphalia was still forty years in the future – through a scalar mirroring: states in the international community resemble individuals in the state of nature. The law of nations should therefore resemble the law of nature, which is based in self-preservation. Trade and commerce positively affect the ability to promote self-preservation. The seas are the common property of all and the medium that connects the world these rights-bearing entities. Any attempt to impede the natural rights of all to freely trade with one another, and thus any attempt to possess the seas, is a violation of the law of nature and justly punishable through war. Heemskerk’s seizure, therefore, is a just response to the “infringement” of the Portuguese against the freedom of all, and especially the Dutch, to utilize the seas in the pursuit of free trade. The consideration of the



seas enabled Grotius to radically alter the direction of legalistic thinking in relation to early modern states and the imperial encounters that were initiated in the Age of Exploration.

As new nations gained maritime power, the question of owning the seas could not be dismissed. In 1617-8, John Selden was petitioned by the British King to write a book on the defense of British territorial seas. Not published until 1635, *Mare Clausum* (Closed Seas) argued directly against Grotius' *Mare Liberum* by proclaiming the seas were not a common good for all, but in fact could be owned in the same way as land. Selden argued that there was no reason to suppose that the boundaries between land and sea were absolutely fixed. Imaginary lines produced with instruments such as compasses could be used to establish or move those boundaries. Parts of the seas adjacent to land, such as harbors, bays, or even seas, could therefore be owned.

In what has become known as the "Battle of the Books," (Ittersum 2006, Vieira 2003) the qualities of the free or closed seas were debated throughout the first half of the seventeenth century. William Welwood, a Scottish jurist, attempted to protect British territorial waters and refute Grotius in 1613 in *An Abridgement of All Sea-Lawes*. The reply from the Iberian peninsula, *De Iusto Imperio Lusitanorum Asiatico* (Of the just Portuguese Asian Empire) came in 1625 from the Portuguese friar Seraphim de Freitas. Unfortunately ignored for much of the intervening centuries, this point-by-point refutation of Grotius from an expert familiar with Vitoria and Suarez, influences of Grotius, is receiving more attention now. Neglect of his book seems to reflect the general ascendance of power by the British and Dutch; his theories lost influence in proportion to the diminishing maritime power of the Iberians. Freitas' main objection to Grotius is a misunderstanding of the object of ownership under question. Echoing

later theories of intellectual property, Freitas defended Iberian interests by claiming that they owned, through discovery, the *sea routes* used to reach the East Indies, not the seas per se.

The Battle of the Books eventually produced a compromise: *mare clausum* for territorial waters and *mare liberum* for the waters beyond. But where should the limits be drawn?

Cornelius Bynkershoek, another Dutchman, wrote *De Dominio Maris* in 1702, which popularized the idea of limiting the dominion over territorial seas to the distance of cannon fire from the shore; territorial seas reflected an empirical potential to protect the seas under question. This became known as the three-mile rule.

This compromise remains more or less unchanged in the 1982 United Nations Convention of the Law of the Seas, our current configuration of the oceans. The three-mile limit was extended to 12 miles after much debate, and supplemented by a contiguous zone extending an additional 12 miles and an economic exclusive zone (EEZ) extending 200 miles into the sea. Coastal states retain limited control over the contiguous zone to prevent or punish "infringement of its customs, fiscal, immigration or sanitary laws and regulations" (UNCLOS, Section IV, Art. 33). States retain rights to the exploration and use of marine resources in the EEZ. The political geography enshrined in UNCLOS can be directly traced back to Grotius' original defense of an act of depredation in the East Indies four hundred years ago.

The work of Grotius, especially *De Jure Praedae* (On the Law of Booty), is all about making distinctions between the legitimacy of acts that might otherwise appear similar. The question of piracy has always participated in the ambiguous distinction between just seizure and unwarranted aggression, the authority to arbitrate the difference, and the mechanisms of prosecution and punishment that follow, often buttressed by asymmetric power relations between and within states. The publication of Grotius' *Mare Liberum*, grounded in the universalization of

a natural rights paradigm coupled with the internationalization of the seas, established the paradigm under which modern observers understand piracy. The legacy of Grotius, as both polemicist of empire and just war theorist of peace, speaks to the primary tension that accompanies the figure of the pirate in political and legal discourse.

*Hostis humani generis: A Genealogy of Piracy*

Piracy is an ancient legal category that serves as a limit function for the geographical and theoretical imaginaries of political communities, now symbolized by the modern nation-state, and the concomitant moral epistemologies that structure the relationship between inclusion and exclusion in and between these communities (Rubin 2006, Pennell 2001, Dawdy 2011, Heller-Roazen 2009). The pirate, as a foundational “other,” becomes the figure against which imaginaries of the state and “humanity” are founded, not unlike *homo sacer* or the Schmittian enemy-stranger discussed in chapter one.

Daniel Heller-Roazen (2009) has documented the philosophical and legal implications of the figure of the pirate, tracing a genealogical history from Cicero’s famous description of the pirate as *hostis humani generis* (“the common enemy of all”) through medieval interpretations of the “enemy of the human species,” to contemporary debates about “crimes against humanity”. Throughout this “piratical paradigm,” Heller-Roazen isolates four distinctive characteristics (12).

Firstly, piracy takes place in a region in which exceptional rules apply. Secondly, the pirate is an agent who displays a generalized antagonism beyond individual or political association that approaches the universal (11). Thirdly, as a consequence, piracy confuses, or even collapses, the distinction between criminal and political categories. Beyond the scope of either common criminals or lawful enemies, there can be neither war nor peace with the pirate

(12). Finally, piracy transforms the concept of war. The logic of piracy assumes that any interaction with a pirate, who by Cicero's definition is incapable of acting in faith (a kind of trickster figure), will necessarily render the other piratical as well, demanding technologies of security, politics, and police that cannot remain formally identical to the measures used against recognized criminals or belligerents. The pirate remains outside ("out-law"), but also casts a specter throughout the entire legal and political universe. "In speaking to a pirate, in dealing with a pirate, no matter one's acts, no matter one's word, and no matter one's faith, one cannot fail to don a mask," says Heller-Roazen, "one becomes a pirate oneself" (2009, 21).

The structural logic that Heller-Roazen traces raises a fundamental paradox: the pirate, as the "enemy of all," cannot possibly be included as one of the "all." The implications of this inclusive exclusion haunts the idea of universality at the heart of the modern definition of piracy. For the Greeks, piracy was a loose category of plunder, to be castigated when they were victimized, and celebrated when the roles were reversed. The use of this term during Cicero's era was more nebulous, accounting for collectivities (often entire peoples), on land or at sea, that lay beyond the known limits of the political territory – the "all" was never meant to account for all people. The Romans during this period developed a more systematic legal definition in conjunction with granting Pompey exceptional powers to dominate Mediterranean trade networks. The pirate was defined against the warrior and the merchant, the figures who traveled out into the world and to whom recognized rules of war of trade applied.

Following 1648, the Westphalian system emerged. Border zones were replaced with borderlines. This Westphalian sovereignty prohibited international interference in the affairs of state within these boundaries, thereby structuring the "international" as a collection of mutually recognized states. The pirate was eventually relegated to the seas, a space beyond the sovereign

reach of individual states. As protracted wars of succession subsided on the European continent, these newly formed states battled one another for supremacy of the seas. This period also represented a transition from the period of “Renaissance Piracy” (circa 1450 – 1650) to the “Golden Age of Piracy” (circa 1650- 1730) (Rediker 2004, Pennell 2001, Dawdy and Bonni 2012).

Renaissance Piracy was limited for the most part to the Mediterranean, dominated by the conflicts between the Barbary corsairs and privateers from expanding imperial monarchies, such as the French, Spanish, and English. These privateers were basically “legal” pirates, contractually backed through “letters of marque” or “patente,” pieces of paper that justified acts of war or property seizure in the name of sponsoring states. During this period, the line between piracy and privateering depended on this contractual recognition and many privateers were fiercely loyal to national interests. Others fell victim to the fickle whims of sponsoring states, which might disregard, ignore, or nullify these documents if the political implications were favorable. Piracy was an “aristocratic” affair in which “elite military men and ambitious entrepreneurs” commanded their crews with “firm discipline and authority, and little payout or democracy” (Dawdy and Bonni 2012, 679).

The Golden Age of Piracy coincided with more developed merchant capitalism, which proved to be decisive for a new breed of pirate who represent the romantic ideal-type common to contemporary popular culture. These pirates were the first to imagine themselves as nationless. Ships sailing the skull and crossbones of the Jolly Roger signaled to other sailors that normal rules of war and capture did not apply. This was a tactic to encourage full surrender under threat of massacre, but it also represented the social death of the pirate in the relation to the state. The earliest groups of buccaneers were exiles from the colonial fringes, fleeing slavery, impressment,

or the strict and brutal hierarchies of ship life in national navies or the quasi-militaries of early trading companies. Marcus Rediker (1987, 2004), the preeminent historian of Golden Age piracy, constructs an entire counter-culture of pirates across the Caribbean who “developed a distinctive work culture with its own language, songs, rituals, and sense brotherhood (2004, 26). This “Brotherhood” represented a distinct piratical culture that “practiced indirect terror against the owners of mercantile capital” (2004, 15). This pitched ideological battle did not end well for the pirate groups. By 1726, after concerted and ruthless efforts initiated primarily by the English, at least five hundred pirates had been executed, often hanged in port with heads left to rot on spikes to discourage others transgressions against the state. Some individuals and small groups continued to ply the seas as smugglers, tradesman, or privateers in the service of European states warring over colonial territories, but the Brotherhood and its promise were defeated. By 1815, liberalized trade began to flourish in a more peaceful international seascape.

As piracy on the seas diminished, many commentators celebrated the death of a primitive rationality and considered this form of theft obsolete in a modernizing world. The effective disappearance of piracy was most pronounced in legal doctrine and court rulings in Europe and America. The absence of more recent piratical precedent has produced considerable interpretative difficulties in the application of law in cases involving Somali piracy. The precedent of the pirate as the “enemy of all,” however, continued to play a vital role in law’s confrontation with new “enemies” in emerging theatres of war.

Heller-Roazen (2009) describes how the “piratical paradigm” evolved to incorporate slavers, German U-boats, and airplane hijackers. This philosophical and legal history is the foundation upon which current debates about “crimes against humanity”, war crimes, genocide, terrorism, “unlawful combatants”, insurgents, and extraterritorial detention (such as Abu Ghraib

and Guantanamo) are being constructed since the end of World War II. In this way, the legal history of piracy, connected to histories of trade, war, and state development, are vital for contextualizing current debates about the nature, form, and processes of exclusion that confront modern architects of international law and empire, and the related issues of “humanity” that sanction them.

Moreover, contemporary “enemies of all” are no longer linked directly to exceptional spaces. War has become characterized by indirect guerilla tactics, inverting the former relationship of pirate and space: the “pirate may no longer be defined by the region in which he moves,” as Heller-Roazen notes, “the region of piracy may be derived from the presence of the pirate” (2009, 179) What is striking, however, is that in the midst of this pitched conversation, the foundational figure – the maritime pirate – and the connection to the exceptional space of the high seas had largely been forgotten until the emergence of Somali piracy, which created the necessity for the experimentations in sovereignty and governance through the derivative form of the Contact Group. Despite being a foundational legal figure in international law, the postmodern and derivative forms of sovereignty we see today had lost the thread.

### *Somalia: The Dissolution of the State*

Since the collapse of central governance following the fall of dictator Siad Barre in 1991, and violent civil war that followed, Somalia has often been imagined as a lawless and anarchic space subject to the violent exigencies of tribalistic clan allegiances. Unfortunately, the specific dimensions of this “instability” have remained largely unexamined. Or, worse, this “instability” has become the backdrop for the reproduction of essentialized colonial and orientalist stereotypes and the impetus for Western intervention.

Created by the unification of British Somaliland and Italian Somaliland after each became independent in 1960, the Republic of Somalia retained its colonial boundaries. The assassination of then President Shermanke after one decade of independence led directly to the impending dictatorial regime of General Mohamed Siad Barre. Despite successful reforms in literacy and urban development, Barre's regime was marked by authoritarian ideology. In 1991, in the midst of civil war, a coalition of minority factions dispelled Barre. The centralization of the state under Barre dissolved into competing regional interests dominated by local warlords and informed by clan and subclan identities.

Somalia has become the paradigmatic failed state, characterized by a discourse that ignores the de facto sovereignties of local actors. Somalia has been described as an "economy without state" (Little 2003), and a "nation in search of a state" (Laitin and Samatar 1987), and its recent history as the "making and breaking of states" (Lewis 2010). These works cast the nation of Somalia as a homogeneous "imagined community" (Anderson 1991), a unified people who share ethnicity, language (Somali), religion (Islam), and territory.

It has become a truism among political commentators that effective interventions into the threat of piracy on the high seas must address the conditions on land that condition its possibility. In the case of Somalia, nearly all commentators have mobilized the "chaos" and "instability" of this paradigmatic failed state as a commonsense cause of the phenomenon, and often as an intractable obstacle impeding its resolution. This oversimplified refrain simply trades one anxiety (piracy) for another (state collapse) and explains neither. The connection between the emergence of piracy and state collapse in Somalia demands more attention. Anthropologists have laid the groundwork for an interrogation of the failed-state discourse by pointing to its shortcomings as



an explanatory model, and the essentializing narratives it propagates. The failed-state discourse, in its emphasis on unity, ignores regional variation.

Puntland, the region at the tip of the Horn, has been the primary location of pirate groups, which is often calibrated as a goldilocks scenario in relation to its more stable neighbor, Somaliland, and the more unstable southern regions, including the capital Mogadishu. Puntland provides just enough stability in this formulation from which to organize piratical ventures and protect hijacked ships in safe harbors, on one hand, and just enough instability, on the other, to ensure the viability of these morally dubious criminal syndicates (Bahadur 2011). Somaliland (formerly British Somaliland), to the northwest of Puntland, is more stable. It is a semiautonomous zone that declared independence from the rest of Somalia in 1991. Somaliland has the formal characteristics of any state – constitution, flag, currency, democratic elections – but they are not recognized by the international community (Bradbury 2008). Somaliland has pledged support to the counter-piracy initiatives – there are currently pirate jails and courts in Hargeisa, the capital of the region. There is no piracy in Somaliland (Dua, SSRC). The southern territories are too unstable, especially with the role of Al-Shabaab and the AU and Kenyan forces battling them, to support piracy.

Engseng Ho (2006) explores the dynamics of greater Indian Ocean world. He contemplates the long aeons of diasporic time - the hitches and hesitations, channels and obstacles, cycles and revolutions, motivations and moral complexity, that accompanied the growth of a pan-Islamic transcultural diasporic network dotting the perimeter of the Indian Ocean over the last five hundred years.

The contests over control of Indian Ocean sea-lanes, as we have seen, were pivotal to understanding the construction of international legal discourse about the high seas. The pre-

eminence of the British over the seas of the Indian Ocean in the twentieth century offers a regional history that has direct colonial and imperial ramifications. As economic costs fell (because British industrialized shipping was cheaper and faster, effectively remaking the pathways of connection that had been utilized under sail), the British gained more political control. Passage and blockade worked in tandem to create a system of imperial channeling, which ramified across the ocean: “free movement for the approved, interdiction of the troublesome, and surveillance of the suspect”(Ho 2006, 248).

After the British subsumed the Indian Ocean under their military and monopolistic dominance, the process of state making froze the circuits of mobility and forced these "local cosmopolitans" to become (minority) citizens. Foreigners, even as locals, were forced to become natives or become evicted from their new homelands and relegated to stateless nomads. However, this postcolonial and nationalistic "enclosure" is not the final lesson. "Turning our gaze forward," notes Ho, "we can see that evictions are likely to continue to mark the twenty-first century, even as sovereignties promise to become unbundled again, and mobile states and mobile peoples return to playing musical chairs" (328). In the context of diasporic time, the last fifty years are but one small chapter in a much longer and cyclical series of circuits. The mobilities that have become "stuck" will again begin to move.

The Somali diaspora is a good example. The austere conditions and endemic violence in Somalia over the last twenty years has forced many of its citizens to move to the United States, Italy, Saudi Arabia, or London, among other places. For the first time in a generation, and perhaps related to new forms of security aid that double as development (Duffield 2001, 2007) in response to piracy, the great cities of Somalia are being rebuilt and the diaspora is starting to return.

Ho also offers an antidote to exaggerating the ideas of globalization and hypermodern capitalism that stress "time-space compression" (Harvey 1989) or take the speed, fluidity, and flexibility of water to represent contemporary globalized capital, as Helmreich outlined. Ho argues this history demands us to slow down. In the chapters that follow, though I adopt the framework of the derivative and accept the ways it creates new configurations and allows for experimentation through flexibility, the moments when certain configuration "stick," when certain voices dominate, or when one track closes are also a point of emphasis.

### *Piracy in Somalia*

Sugule Ali, a spokesman for the Somali group holding the MV *Faina* (mentioned in the first chapter), described his reaction to labels of piracy in an interview with *The New York Times* (Gettleman 2008) conducted by satellite phone from the deck of the freighter:

We don't consider ourselves sea bandits ["sea bandit" is one way Somalis translate the English word pirate]. We consider sea bandits those who illegally fish in our seas and dump waste in our seas and carry weapons in our seas. We are simply patrolling our seas. Think of us like a coast guard.

Ali refers to his group as the Central Region Coast Guard. He explained that his group detained the MV *Faina* because it was guilty of sailing through "our waters carrying all these weapons without permission" (ibid.). Ali's quotes bring out at least two important dynamics. Firstly, the invocation of piracy is flipped so that the word is used to criminalize foreign fishing vessels that operate illegally in the unprotected waters off Somalia, which Ali's group is now "patrolling" like a coast guard. This binaristic inversion is a popular trope in the history of piracy. It is perhaps best captured by the famous words spoken to Alexander the Great by a captured pirate:

“What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled Emperor” (Heller-Roazen 2009, 56). Read through the piratical paradigm discussed earlier, the pirate is often presented as a counter-sovereign, a sovereign from the seas who thereby represents his antagonism to the seas. In this case, Ali invokes the territory of the nation-state and speaks from the perspective of Somalia, as a coast guard, and criminalizes the illegal fishers, another threat at the margins. This anxiety about Somalia’s status as a legitimate player in international politics or as a perennial victim of international exploitation, including illegal fishers, haunts the forms of intervention that counter-piracy groups negotiated.

Secondly, it is clear from both quotations that the appellation of “pirate” is easily conflated with other words, such as “bandit” or “robber,” perhaps belying the intricacies of legal distinctions. The *New York Times* chose to translate Sugule Ali’s Somali words *burcad badeed* as sea bandit, “one way that Somalis translate the English word pirate” (ibid.) As UNCLOS enshrines, piracy is really only robbery at sea. It accrues its political import through its connection to the seas, not in proportion to the crime in and of itself.

As Ali suggests, the rise of piracy in the waters of the Horn of Africa has been connected to the illegal exploitation of Somali waters by foreign vessels. During the end of the Siad Barre regime and the disintegration of political authority that followed 1991, there is compelling evidence that foreign fishing vessels have pilfered the tuna-rich waters off Somalia over the last twenty years. The fate of the Somali navy is illustrative of the lack of resources and infrastructure able to protect the seas. Somalia established a navy in 1965 through patronage from the USSR in the midst of Cold War tensions (Lehr 2007, 11). The Soviets provided nearly a dozen naval ships and military advisors, setting up naval posts in Berbera, Mogadishu, and

Kismayo. However, the advanced naval technology fell into disrepair following the exit of the Soviet experts who maintained them in 1977. Siad Barre abandoned his project of Scientific Socialism and aligned his regime with the United States at this time. By the end of his regime, the Somali navy was in complete ruin. Following the end of the Cold War, coincident with the end of Barre's regime, global maritime commerce boomed as liberalizing reforms opened new markets and the significant presence of warships on the seas diminished. During this period, foreign fishing vessels began to exploit the unprotected and unregulated waters off Somalia.

Peter Lehr (2007) estimates that European and Asian fishing boats have profited \$300 million dollars annually from the seas. These boats utilize illegal small-mesh nets and advanced underwater lighting equipment. *The East African* reports that foreign ships plundering the waters off Bossaso were so prevalent there appeared to be a "floating city" (Ouyango-Obbo 2009).

In addition to illegal fishing, foreign vessels have illegally dumped toxic waste. Nick Nuttall, a spokesman for the UN Environment Program, reported that following the Indian Ocean tsunami of 2004, barrels of toxic waste washed onto Somali shores and many coastal residents "have fallen ill, suffering from mouth and abdominal bleeding, skin infections and other ailments" (Abdullahi 2008). Highlighting the impact of foreign fishing activity, Yassin Dheere, a self-admitted pirate with some success, said this in an interview with Reuters (2009):

I was forced to hijack foreign ships after the central government collapsed. No one was monitoring the sea, and we couldn't fish properly, because the ships which trawl the Somali coasts illegally would destroy our small boats and equipment. That is what forced us to become pirates.

Reports of intermittent attacks on fishing vessels were reported in the late 1990s. In 1997, the International Maritime Bureau reported the incident of a Cyprus- registered Bulk Carrier M/V Trader:

While underway, four speedboats with four pirates armed with high-powered guns in each boat chased the ship. Despite taking evasive measures, four pirates managed to board forward and attempted to enter accommodation. Crewmembers using fire hoses, rocket flares and iron bars fought the pirates and prevented the pirates from entering accommodation (quoted in Burnett 2005, 146).

In 2005, a group known as the National Volunteer Coast Guard captured three Taiwanese fishing trawlers off the coast of Kismayo in the economic exclusive zone (Lehr 2007, 5). They held the crews hostage and demanded a fine of \$5,000 for illegal fishing, in addition to a tax for each crewmember (*ibid.*). These captures produced little concern from the international community. International shipping companies actually encouraged their crews not to report suspected piratical acts, fearing Protection and Indemnity (P&I) insurance rates might soar. The vast number of piratical incidents goes unreported, even today. The lack of any effective response only increased the incentives for local groups of pirate-coast guards, who continued to reinvest in the efforts. Current groups employ mother ships that dramatically increase the range of their activity. They utilize lightweight speedboats, weapons that are widely available despite UN sanctions, advanced radar, and satellite phones. The capabilities of many current groups resemble those of any traditional coast guard.<sup>7</sup>

It quickly became clear that this rhetoric was exaggerated. Early attempts to target foreign fishing vessels and protect local fishermen gave way to indiscriminate attacks on cargo ships, yachts, and even the naval vessels who were there to protect international shipping lanes. The motive for these attacks became profit – piracy had become a business. Some scholars prefer to view this general evolution as distinct phases of piracy, each with their own logic to be met with varying responses from regional and international communities. Samatar, Lindberg, and Mahayni (2010) describe the evolution of piracy in Somalia from the late 1980s until today

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<sup>7</sup> See the work of Jatin Dua for a careful ethnographic examination of the forms of protection that structure the phenomenon of piracy from the Somali perspective.

as successive phases of defensive, political, resource, and ransom piracy, assigning intermittent responsibility to groups of marginalized Somalis or international shipping abuses, but all directly related to the absence of an effective national Somali government.

*International Shipping: Derivative Sovereignties Par Excellence*

The transnational affiliations of modern ships complicate ideas of sovereignty and law on the seas. They mimic the derivative form and are sometimes a caricature of the effects of globalization, offshoring, and international labor regimes. Take, for example, the two ships mentioned in Chapter 1: MV *Faina* and MV *Sirius Star*. The owner of MV *Faina* is Waterlux AG, based in Panama. The ship is managed by Tomex Team in Odessa, Ukraine, and sails under the flag of Belize. On the voyage in which it was captured, the MV *Faina* was carrying post-Soviet Ukrainian arms bound for Kenya. It was later determined that these weapons were be smuggled into South Sudan before their vote to become independent. The crew included seventeen Ukrainians, one Russian, and three Latvians.

The MV *Sirius Star* is an oil tanker owned by Vela International Marine, based in the United Arab Emirates, subsidiary of Saudi Aramco, the state-controlled oil company of Saudi Arabia. It is registered in Monrovia, flying the flag of Liberia. The crew included nineteen Filipinos, two Britons, two Polish men, one Croatian, and one Saudi Arabian. It is often unclear who is responsible for these ships, crew, and cargo in this constellation of national affiliations. What law applies and who speaks it?

The construction of the high seas as a global commons beyond the sovereign authority of coastal states mandates a legal fiction of territoriality for ships that sail on these waters. The ship is imagined as “floating land” or “moving territory” under the jurisdiction of the flag under

which it sails (Heller-Roazen 2009, 180). This can be compared to the skull and cross-bones of the Jolly Roger that indexes the social death of pirates and their status outside recognized legal stipulations concerning war or commerce. As “floating land,” ships assume the laws of the state of their flag. As international shipping has expanded after the liberalization of the seas following the end of the Cold War, shipping companies have utilized flags of convenience. These companies register ships in other sovereign states to avoid domestic regulations, reduce operating costs, and take advantage of competitive tax policies. The most common states to offer their flags are Panama, Belize, and Liberia, though even land-locked countries such as Mongolia have served this function. Yet, despite the economic and legal benefits these flags of convenience confer to shipping companies, the lack of military power and political influence of these states create other difficulties in relation to piracy.

As the “enemy of all,” the pirate is the paradigmatic target of universal jurisdiction (Kontorovich 2010), so perhaps these derivative formations matter less with the flexibility of universal intervention? Universal jurisdiction allows states or international organizations, such as the United Nations, to claim criminal jurisdiction over accused pirates regardless of where or against whom the crime was committed. This paradigm structures the confrontation between pirates and states – only direct state representatives, such as navies or federal prosecutors, can interdict or prosecute suspected pirates.

But universal jurisdiction has remained highly contentious. Proponents argue that some crimes, such as genocide, crimes against humanity, extrajudicial killings, or torture, are so egregious that the international community as a whole – “humanity” – has a moral responsibility to prosecute them. This perspective assumes that some principles transcend the common humanity of all people and these principles can be deduced by reason, an idea originally



formulated by Vitoria and Grotius. Critics, however, question the infringement of national sovereignty, the foundation of mutual recognition and respect on which the international community depends. Henry Kissinger, perhaps the most famous opponent, worried that we “risk substituting the tyranny of judges for that of governments,” a worry that brings into relief the politics of recognition and exclusion that accompany the moral authority of this abstraction of humanity (Kissinger 2001).

The relationship between international law and domestic law is complex, bringing together wide-ranging histories, agendas, and ideologies (Merry 2006a, also see Merry 2006b for a review). The allowance granted to sovereign states under universal jurisdiction depends on black letter law in domestic legal regimes – the allowance must be enfolded with clear definitions and protocols. The implementation and interpretation of these statutes have caused considerable difficulties for states seeking to prosecute suspected Somali pirates. These difficulties stem from a host of generalizable tensions and local specificities. For courts in newer nations or nations with new or rewritten constitutions, these questions remain openly negotiable. For most American and European courts, piracy cases have not been heard since the 19<sup>th</sup> century. This deficit became one of the biggest priorities for counter-piracy groups.

### *Piratical Fantasies: Utopias and Heterotopias*

Throughout this chapter I have traced the role of piracy in law and history, presaging the kinds of organizational and conceptual features that needed to be addressed in counter-piracy conversations. One of the greatest strengths of the pirate is the imaginative horizons this figure represents and constructs for others. Scholars have proposed two etymological accounts to explain the formation of the Greek word *peirates*, related to the Latin word *pirata* and the root of

the English word “pirate” (Heller-Roazen 2009, Dawdy and Bonni 2012). The first, and most popular account, assumes that *peirates* derives from the noun *peira* (trial, attempt, attack) so that the pirate is one who “tests,” “puts to proof,” “wagers,” or “makes an attempt.” A second derivation suggests that *peirates* is related to the verb *pratto* (to act, pass through, or achieve), so that the pirate is “one who accomplishes.” The interpretation of piracy is often associated with utopic fantasies that define themselves against the anxieties of dominant structural relationships such as mercantilism, capitalism, neoliberalism, financial capital, or the state. At stake in these fantasies are alternative imaginations about the nature and form of political and economic relationality, the forms of subjectivity they engender, the relationship of legitimate practice to criminal behavior or terrorism and war, and the way these concerns come together in practice and theory.

As one who “tests” or “puts to proof”, the pirate has often been mobilized in anti-state fantasies, whether socialist or libertarian. Marcus Rediker (1987, 2004), the preeminent historian of classical Caribbean piracy, describes pirates as “people without a nation” (2004, 8) who eschew statist and capitalist ideologies by celebrating “collectivism, antiauthoritarianism, and egalitarianism” (2004, 26) in the self-organized world of floating utopias. These groups shared profits equitably, offered women opportunities as equals, and were organized into cohesive but flexible collectives that foiled the grossly asymmetric and hierarchical organization of both commercial ships and national navies during the seventeenth and eighteenth centuries.

Peter Leeson, an economist, is the author *The Invisible Hook: The Hidden Economics of Pirates* (2011), which casts Golden Age pirates as radical libertarian rational economic actors. If Rediker’s pirates are “communitarian anarchists and proto-socialists,” then Leeson’s pirates are

“Adam Smith individual automatons,” adding a pro-capitalist agenda to an anti-state argument (Dawdy 2011, 371-2).

Hakim Bey (1991) imagines the historical pirate as a prototypical anarchist, living without private property or a coercive rule of law. He uses this symbol to project the possibility of contemporary small scale, temporary, and autonomous pirate utopias at the margins of recognized temporal and spatial territories. These Temporary Autonomous Zones (TAZ), inspired by romantic visions of paleolithic festive nomadic tribes, conjure the transformative potential of Deleuze and Guattari’s (1987) “nomadic war machines.” The key for Bey is that these TAZ experiments must constantly be enacted and re-enacted to avoid the necessary ossification that will invariably allow coercive structures of modernity to co-opt them. To put this another way, the key is to celebrate the TAZ as piratical precisely because it is constantly “putting to the test” or “attempting” to imagine alternatives, which must constantly be reimagined and “accomplished” anew.

Utopic thinking presents alternatives to the present, whether they revisit nostalgic pasts or imagine perfectible futures. As such, utopic thinking is meant to recalibrate the expectations and realities in the present by reaching beyond it to, literally, a “no-place.” Utopias are one kind of inversion, but there are others. Michel Foucault (1967) describes “heterotopias,” “counter sites” which, though they remain distinct and separate, are able to represent, contest, and invert all the other real sites and objects of the world.

In addition to prisons, cemeteries, gardens, or museums, among other examples, the mirror is a good way to understand the significance of his comparison between utopias and heterotopias because it represents both. A mirror is a utopia because it is a “placeless place,” a place where I encounter my reflection, a me that is not-me in a place that is not my place (the

reflection). A mirror is also a heterotopia – “it makes this place that I occupy at the moment when I look at myself in the glass at once absolutely real, connected with all the space that surrounds it, and absolutely unreal, since in order to be perceived it has to pass through this virtual point which is over there” (Foucault 1967). In short, the mirror is a real object that calibrates the way I relate to my own image, making myself in a moment of reflection. Just as piracy has provided a canvas upon which Rediker, Leeson, and Bey can paint their fantasies, and the high seas have become a metaphorical resource for global capital or alterity in relation to the grounded state, the “ship is the heterotopia par excellence” for Foucault (1967):

Brothels and colonies are two extreme types of heterotopia, and if we think, after all, that the boat is a floating piece of space, a place without a place, that exists by itself, that is closed in on itself and at the same time is given over to the infinity of the sea and that, from port to port, from tack to tack, from brothel to brothel, it goes as far as the colonies in search of the most precious treasures they conceal in their gardens, you will understand why the boat has not only been for our civilization, from the sixteenth century until the present, the great instrument of economic development (I have not been speaking of that today), but has been simultaneously the greatest reserve of the imagination. The ship is the heterotopia par excellence. In civilizations without boats, dreams dry up, espionage takes the place of adventure, and the police take the place of pirates.

These fantasies were written onto the (mostly) white, Atlantic, European pirates of the eighteenth century; the question for today is: what might the black, Indian Ocean, Muslim, Somali pirates conjure?

### 3. Agents of Catastrophization

On my first day as a volunteer at the Global Anti-Piracy (GAP) program in March 2017 Somali pirates hijacked a merchant vessel for the first time in five years. As I walked down the narrow hallway at the Hundred Year Peace Foundation (HYPF) that opened into GAP's wing, a man popped out of a doorway and asked me if I had heard the news. "No. What news?" I recognized his face as the Associate Director, but I had never met him. "Pirates took a ship off the coast near Alula. All the news agencies are calling."

He shepherded me into the main room where the GAP team warmly introduced themselves. They had a desk ready for me and a few gifts: a bottle of champagne and a box of chocolates from John Rackham's real estate company, a notebook, a shirt, and some pens. One person asked me coyly who I was again and why I had decided to start on this particular morning. Later in the day, another HYPF colleague made a similar insinuation to a GAP team member, implying the hijacking was a convenient event to highlight the upcoming release of the 2017 Piracy Report. Perhaps it was a little too convenient? The playful paranoia of the security sector, even in a peace and governance organization, bubbles to the surface from time to time.

The GAP team had nine people. The office of the Assistant Director, Cornelius Jol, shared a wall with the office of the Director, John James, who was returning the next morning from a stakeholder meeting in London. Their offices were on one side of the main hallway I had entered through. I learned later that colleagues at HYPF sometimes jokingly call this hallway the Bab el-Mandeb ("Gate of Tears"), named after the 20 mile-wide strait that connects the Gulf of Aden and the Red Sea between Djibouti and Yemen, an early hotspot of Somali piracy. They

told me they tried to stay vigilant meandering the office on busy days to avoid being hijacked in conversation by James or Jol.

The GAP conference room is opposite these two offices. On the walls hang a large world map and framed covers of every Piracy Report they have released since 2011. There are five clocks on the back wall setting the local time against London, Lagos, Kuala Lumpur, and Mogadishu, the regions most affected by contemporary maritime piracy. The room was quickly prepped after our introductions for Jean Bontemps, the East Africa specialist, to give video interviews to major media outlets around the world. A large banner was wheeled in for background.

In the main room, Bontemps' desk shared a bank of cubicles with the West Africa specialist and the communications coordinator. The Piracy Report team rounded out the group; the main author was the team lead for three recently hired researchers. They sat under large pictures of a container ship outfitted with razor wire and another of the Somali-American actors from the film *Captain Phillips*. The team was finalizing the numbers and tables for their 2017 Piracy Report, which was launching in six weeks in London. Everyone in the office was wordsmithing a press release about the new attack. The office was calmly buzzing.

Over the next week, we learned that Somalis had hijacked the *Aris 13*, which had been transporting oil from Djibouti to Mogadishu. It had taken a shortcut through the Socotra Gap near the coast of Puntland. One theory in the office was the crew wanted to get close to land to try to pick up a Wi-Fi signal. The days at sea could get boring. But soon more than twenty Somalis approached in two speedboats, boarded the ship, turned off the tracking system, and steered it to Alula, where they anchored. Three days later there was a shootout between the pirate group and the Puntland Maritime Police Force (PMPF), a group that was created in 2010 at the



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Figure 4. Map of Somalia. University of Texas Libraries.

same time that the semiautonomous state of Puntland passed its first anti-piracy laws in conjunction with international efforts to build local capacity of maritime law enforcement. The PMPF's attempted intervention set off tense negotiations between the PMPF, the pirate group, and clan elders in the region. The ship and the Sri Lankan crew were released within the day. The pirate group did not demand a ransom in part because they learned that a Somali businessman had commissioned the ship.

Over the next month, four other ships were attacked. The crews of two dhows<sup>8</sup> were taken hostage, but released in a short time after the intervention of security forces. In early April, five Somalis hijacked the *OS 35*, a Tuvalan bulk carrier with an armed security detail onboard. The crew sent a distress signal and bunkered in the citadel, a locked room that protected the crew but allowed the pirates to take control of the ship. Naval patrols quickly responded – Chinese special forces boarded the ship under air cover from an Indian helicopter. Two pirates successfully fled, but the Chinese took three prisoners, including a well-known pirate leader who had been the spokesman of the *Aris 13* pirate group. The Chinese later transferred these three suspected pirates to the Puntland maritime authorities for detention and prosecution.

This series of attacks reinforced the main message in the Piracy Report when they launched in late spring. Pirate action groups in Somalia still had the capability and intent to hijack and ransom ships, but the opportunities had been diminished with the mobilization of counter-piracy initiatives. As these initiatives began to scale down and devolve in early 2017, the calculus of opportunity would change. Nevertheless, GAP did not interpret these attacks as a re-escalation of piracy toward the levels seen from 2009-2011. These were opportunistic attacks,

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<sup>8</sup> There were some dhows hijacked in the intervening years, but most commentators didn't count those in their statistics. Some of these events also appeared linked to the conflict in Yemen, which complicated the narrative of Somali piracy. There is a robust dhow economy (Dua 2016) in the region, a fact that often gets occluded in securitized depictions of the seascape as shipping lanes, Somali pirates, and naval patrols.



testing the resilience of the devolving systems. The mechanisms of counter-piracy worked to suppress the phenomenon, but there needed to be vigilance and adherence.

In this chapter, I trace how counter-piracy worked. I detail the institutional form of the Contact Group and the modalities of risk that format different governmental orientations to the problem of piracy. After I calibrate the role of GAP in the Contact Group, I return to this moment, on my first day, to describe the implicit theory of governance that GAP conveys through their model of multi-stakeholder engagement.

### *Agents of Catastrophization*

I frame this chapter with Adi Ophir's idea of the politics of catastrophization (Ophir, 2010). Ophir constructs a conceptual framework for understanding the relationship between man-made disasters, the politics of emergency, and the professionalization of a class of "little quasi-sovereigns" – academics, humanitarian experts, journalists, NGOs, aid workers, etc. – who develop the discursive resources to identify, measure, govern, and even produce the figures of threat that promise to bring catastrophe (Ophir 2010, 52). In the post-World War II period, and especially since the 1980s, Ophir suggests that "with the dramatic growth in the presence of nongovernmental organizations that followed the end of the Cold War, 'the retreat of the political,' and the mediatization of politics, a clear change in the quantity, quality, and variety of the catastrophizing literature can be observed" (Ophir 2010, 47). In the context of counter-piracy, I am concerned with the catastrophizing literature and strategies that accompany the rise of Somali piracy and the derivative sovereignties that conspire to abate the threat, producing in turn new formations of global governance.

The catastrophes of late modernity take many forms. The context of Ophir's analysis is the Occupied Territories of Palestine on the Gaza Strip, but you might also imagine New Orleans after Hurricane Katrina, the towers falling on 9/11, the famine in early 2000s Somalia, or the hijacking of a ship in the Gulf of Aden. What is important about a catastrophe is that it dramatically alters the lived experience of time and space. The nature of time itself changes, so that the "durations, sequences, repetitions, the empty moments of waiting, the interval between one happening and another – all these are transformed during the time of catastrophe and will be recovered only gradually, if at all, when a new normalcy will be established" (Ophir 2010, 41). The space of a catastrophe is set apart in a liminal zone between the deterritorializing effects of the catastrophe and the reterritorializing projects that come after. In these "zones of disaster," Ophir notes how this is the area "where former orders crumble, normal expectations become meaningless, the self-evident dimension for everyday life is lost, and where, amid ruins of all kinds, the survivors experience a dramatic reduction in their ability to move and to communicate" (Ophir 2010, 41).

Catastrophization, as a process, differs from catastrophe, as a punctuated event (unfolding as it will over different horizons, as in the difference between climate change and Hiroshima). The process of catastrophization describes the discursive practices that observe, describe, measure, analyze, and predict the causes and consequences of a catastrophe. Catastrophization, in the language of HYPF, configures a wicked problem. This discursive plane acts as the condition of possibility for recognizing the unfolding of a catastrophe and defining the terms within it. What Ophir has in mind here is the discursive practices that are mobilized to claim a state of emergency and sanction an intervention through a moral call to action. The *lingua franca* of catastrophization in recent decades is statistics, which has encouraged a general trend toward

the rationalization and depoliticization of the genre of catastrophizing literature grounded in the supposed objectivity of numbers. Humanitarian indexes are good examples of this process, as is the Piracy Report developed by GAP. The numbers speak for themselves as facts in the construction of an eminent disaster, but the context and history of the event lose significance in proportion to the tools available to quantify the variables that stand for them.

Processes of catastrophization work in three overlapping modes: legitimization, mitigation, and suspension. The processes of legitimization identify the figure of risk representing a potential catastrophe and sanction the naturalization and political acceptance of their construction as an enemy. This can project threat through the securitized idiom of the racialized terrorist or pirate, or the biopolitical construction of figures of contagion, such as those who contract Ebola or AIDEs, for example. Once a figure has been legitimized as risky, agents of catastrophization mobilize resources through a call to arms to mitigate the structural repercussions of the threat. Finally, catastrophic suspension is a strategy of governance that identifies figures of risk and then operates just outside a catastrophic threshold to keep the worse evils in abeyance. It is a projection of a future state of emergency that has yet to come, while managing an otherwise dire present. Importantly, catastrophic suspension brings together a governmental assemblage that combines the actual forces of catastrophization and the agents of discursive catastrophization that might ideologically oppose them. For example, aid workers might deliver food to a starving population through the routes and on the schedules sanctioned by a ruling elite who helped create the conditions of a famine, whether on purpose, by neglect, or otherwise.

Ophir explicitly develops this conceptualization of catastrophization outside the academic discourse of sovereignty and its legal implications. He does, however, calibrate his system in a

way that resonates with my framing of derivative sovereignties, “The very existence of nongovernmental agents of discursive catastrophization,” he says, “make it clear that no sovereign can claim today a monopoly over the exception,” and, moreover, that in fact, “humanitarian emergencies are not those declared by a sovereign, but those imposed upon him and those created because sovereign power has shrunk or collapsed altogether” (Ophir 2010, 49-50). He summarizes this line of thinking:

The sovereign decision on the exception, if it has ever been anything more than a hypothetical or imaginary moment in the theory of sovereignty, is now translated into and replaced by numerous local bureaucratic decisions on the exception, and the threshold of catastrophe is redrawn from all directions in various contexts of governance and domination, aid, relief, and subjugation by governmental and nongovernmental agencies alike (Ophir 2010, 51).

These derivative sovereignties, both as a fracturing and derivative manipulation of the Westphalian sovereign decision, and the emerging supremacy of financial logic in the language of risk (the derivative as a new sovereign), bring together a diverse collection of governmental and nongovernmental agencies into ad hoc institutional formations that resemble the composite and amalgamating flexibility of derivative morphology. In what follows, I describe how this worked in the context of counter-piracy in the Gulf of Aden, and how this refracted and reflected my reading of the founding philosophy of GAP and HYPF.

### *The Sovereign Machine of Governmentality: The Contact Group*

Following the first Ad Hoc Assembly (AHA) meeting in London in 2011, GAP abandoned their plans to build a non-territorial sovereign organization in the form of a World

Piracy Council. With feedback from their stakeholders, notably shipping industry advocates, GAP sought to gain legitimacy and influence through the Contact Group on Piracy off the Coast of Somalia (Contact Group). The Contact Group formed in January 2009 in response to United Nations Security Council Resolution 1851 (2008), which encouraged “all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia coast.” Resolution 1851 also gave unprecedented authorization to cooperating states to pursue counter-piracy efforts within the territorial border of Somalia, on land, with the consent of the Transitional Federal Government (now the Federal Government of Somalia, as of August 2012).

The Contact Group is a voluntary, ad hoc coordinating body that brings together more than one hundred groups, including over eighty nation-states, regional and international organizations (Africa Union, European Union, NATO, UN, International Maritime Organization), commercial society (shipping industry associations, maritime insurance companies), and civil society (seafarer advocacy groups and the GAP), and academics (The Counter-Piracy Governance project at Cardiff University). “[The Contact Group] is a laboratory for innovative multilateral governance to address complex international issues,” observed Maciej Popowski, the rotating 2014 Chairman, “The great thing is that it is delivering” (Lessons From Piracy 2015).

The Contact Group can trace its origins to the US State Department. The Bush administration developed a National Strategy for Maritime Security in 2005, which was followed by a specific counter-piracy Action Plan in the following years. This document lays out the

strategy of “hybrid-actor” mechanisms that brings together public and private maritime interests to address security on a global scale. The 2005 report notes that because piracy and armed robbery at sea thrive in areas with significant commercial activity, high levels of political and economic instability, and weak maritime governance capacity, it is necessary to pursue interagency coordination and international cooperation to develop more robust maritime governance (Zach et. al 2013). The United States quickly sought international partners and sponsored resolution language in the UN Security Council. Condoleeza Rice, US Secretary of State, announced to the Security Council that the US would establish a Contact Group to address piracy in December 2012.

The original configuration of the Contact Group did not reflect the multi-stakeholder approach it now adopts. GAP was highly influential in this regard. The language adopted by the Contact Group and GAP in their mutually constitutive exploration of multi-stakeholder methods is clearly visible. The first iteration included only those countries that were regionally affected or were contributing resources to address the problem. It was closed to industry and civil society. This quickly changed, and the group expanded to include the diverse actors we see today. The transition was not entirely smooth, though. One legacy of the earliest iteration was dominance of the nation-state as a form of recognition. Nation-states were “members,” who could sponsor and fold under their banner the industry and civil society groups that started to join. After some debate, which early members of GAP point to as a great success, the language was changed to “participants,” and sponsorship was no longer needed. One interlocutor called this “one of the crowning achievements of GAP” in the early years.

Nevertheless, the nation-states continued to dominant the trajectory of the conversation, an issue to which I will return in the conclusion. The conservatism of diplomacy and the

skepticism of some government personalities created a sense of unease for many of the nonstate actors. One interlocutor told me that he felt like a guest – he would be allowed to participate as long as he behaved. He felt part of an “old boys club” that made him feel “nervous” and “a little paralyzed.” There was a real balancing act – groups wanted to contribute more and more, but they wanted to be invited back. “The international system,” he told me, “will protect itself first and then solve the problem.”

Participants celebrate the Contact Group as a successful experiment in international cooperation and the suppression of piracy because it had no formal rules or procedures, no overarching or shared strategic narrative (and therefore no need to negotiate the language of resolutions). It operated outside of the formal UN framework. There were limited meetings, and things got done. The Contact Group held bi-annual meetings sponsored by “chairman” organizations; this position would rotate on a volunteer basis. The original plenaries were held at the UN Headquarters in New York, but in recent years some chairman organizations have hosted the event. There was not a standing secretariat. Most of the work, though, got done in Working Groups, who would bring recommendations to the plenaries, which would be voted on through consensus and included in non-binding communiqués.

From the beginning, the Contact Group framed the problem of piracy in the region in relation to the weak state capacity of Somalia. The Contact Group adopted five focus areas that became Working Groups: naval cooperation, legal issues, self-defense actions, public diplomacy, and the flow of illegal funds. After the dramatic decreases in pirate activity, the groups were reconfigured and consolidated after 2014. As of 2017, there are four Working Groups: Capacity Building, Virtual Legal Forum, Maritime Counter Piracy and Mitigation Operations, and Disrupting Pirate Networks Ashore. Since the original formation of the Contact Group, there has

been a trend to more regional and nonstate chairs. There is also a growing influence of industry voices in most Working Groups. One interlocutor suggested that counter-piracy was a launching pad for the careers of many people in government and the UN complex. As more and more people shuffled into these positions, the same faces representing industry advocacy groups gained a greater voice, both in specific policy decisions and in general, as the familiar faces in the crowd to whom folks could introduce the new recruits. The Working Groups reflect the dominant governmental modalities and the flexible institutional forms that allowed collaborative counter-piracy to work.

The Working Groups most clearly illustrate the function of the Contact Group as a sovereign machine of governmentality (Mezzadra and Neilson 2013), a term that Mezzadra and Neilson adopt to understand how the violence of the sovereign exception, once decided, depends on the work of other regulatory, disciplinary, and biopolitical ways of knowing and intervening. To put this another way, once the border is established, and the figures of risk are identified, they still must be managed, and this increasingly takes place outside the parameters of the sovereign authority of the original decision. This is the world of the “little quasi-sovereigns” who Ophir describe as agents of catastrophization. This is a clear manifestation of the derivative sovereignties GAP exudes. Caught between the failed state of Somalia and the freedom of the seas, the Working Groups lay out the governmental mentalities and techniques that together constitute the regime of multi-stakeholder counter-piracy in the waters off the Horn of Africa.



## *Modalities of Risk: The Threat Triangle and The Three-Legged Stool of Deterrence*

The message that GAP produced for their 2017 Piracy Report relied on the Threat Triangle to understand the ecology of risk for the pirate. The Threat Triangle is a fairly generic typology used to articulate the capabilities, intentions, and opportunities to potential threatening actors. The counter-piracy conversation is most concerned with their ability to limit the opportunities that make piracy appealing. The pirate is assumed to always exist with intentions to hijack, and the capabilities of different pirate networks are continually updated to reflect the changing contours of political and social life in Somalia. In order to reduce the opportunities to pirate ships, the counter-piracy community relies on what has become known as the three-legged stool of deterrence.

The three-legged stool is an old metaphor that has been used throughout the corporate world to illustrate the need to identify the main drivers of a problem and develop a balanced approach to solving it – if the legs of the stool are not treated with equal care, the stool collapses. In the case of counter-piracy, the three legs of deterrence are naval coalitions, best management practices for ships, and private maritime security contractors.

Naval coalitions are necessary to represent the state system on the high seas. Of course, they also represent vectors of force that can intervene in potential attacks. Piracy, as we know, takes place beyond the sovereign authority of any state, and collapses distinctions between the criminal and the belligerent. The pirate, as *hostis humani generis* and the target of universal jurisdiction, demands that state representatives in the form of navies take them into custody.

Naval assets from more than thirty countries contributed to counter-piracy efforts in the Western Indian Ocean, an unprecedented coalition. The first goal of Working Group 1 was to

coordinate and deconflict naval power. They also sought to develop a network of shared intelligence and information-sharing in order to better monitor and surveil the seas. The main coalitions were NATO's Operation Ocean Shield, EU's Operation Atalanta, and the Combined Task Force 151 — one of three task forces of Combined Maritime Forces, a 33-nation naval partnership. So-called “independent deployers,” such as Russia, China, and India, were enfolded into these partnerships. Two significant developments stand out in the organization of naval coalitions. Combined Maritime Forces launched the Shared Awareness and Deconfliction (SHADE) mechanism in 2008 in response to Somali piracy. It quickly became the de facto forum for naval coordination. The mechanism brought together more than 27 countries and 14 intergovernmental organizations with the shipping industry. It remains independent of the Contact Group, but regularly presents at plenary sessions. This mechanism negotiates intelligence sharing between its members and coordinates joint patrols.

At the height of piracy, ideas emerged to create a convoy system with the proliferation of naval assets willing to contribute. Instead of a convoy system, the Internationally Recommended Transit Corridor (IRTC) was created in the Gulf of Aden. The IRTC centralizes maritime traffic into a corridor that is patrolled regularly in the dangerous chokepoint approaching the Bab el-Mandeb. In addition to the IRTC and SHADE, the European Union created the Maritime Security Centre – Horn of Africa (MSCHOA), which monitors maritime traffic 24 hours a day and acts as a communication hub and registration site for ships entering dangerous waters.

The second leg of the stool is the best management practices developed by industry and insurance partners for the self-protection of ships. The current version, BPM5, outlines how ships are expected to understand the threat of piracy, conduct risk assessments, and implement ship protection measures. BPM5 recommends that ships protect themselves against piracy by

installing razor wire and water hoses on deck, creating a citadel below deck, and requiring anti-piracy training and protocols. In addition, ships are instructed to liaise with the MSCHOA and to sail at appropriate speeds on predetermined routes through the Internationally Recognized Transit Corridor.

BPM5 is more than a self-protection guideline though. Insurance companies demand compliance in order to issue policies. Insurance is an important, if often understated, governmental modality of risk assessment in counter-piracy. Lobo-Guerrero (2012) has argued that “insurantal sovereignty” is a form of sovereignty that is constituted by the imbrications of state sovereignty and the entrepreneurial spirit of insurers, brokers, shipowners, and government agents. (These formulations of fragmented sovereignties are everywhere in the literature.) Through a long history of Lloyd’s of London, the most important maritime insurer, he shows how the insurance broker, whose traditional role was to simply connect companies to underwriters, began to take a more active role in assuring best practices for ships hoping to gain coverage over the last century. The rhetoric of “indirect steering” practiced by underwriters and brokers belied this new agential role. Indirect steering “means to be able to ask, as underwriters, why a claim has been made and how did the insured not prepare for that eventuality in advance” (119). This ability to *ask* transitioned into an active *telling* which promoted necessary standards of safety, training exercises, and other direct interventions into the material construction of ships and the expected behavior of crew. In this sense, underwriting exceeds the boundaries of indemnity, precaution, and preemption, and positions the underwriter and broker as proactive agents who actively evaluate the risk profile of any ship who seeks coverage before each voyage. Lobo-Guerrero argues that insurantal sovereignty becomes the dominant form of liberal governance in the 20<sup>th</sup> century welfare state. In the 21<sup>st</sup> century, the logic of indemnity and

precaution is still embedded in risk-hedging strategies of the derivative, but there is also the speculative potential to increase risk throughout a system and profit or fail miserably. The ethos of the current forms of financialized capital escape the logic of safety of earlier insurantal forms. Nevertheless, the insurance regimes connected to counter-piracy initiatives remains a fascinating point of inflection for these evolving tendencies. They have also been pivotal in the negotiation and payment of ransoms.

The third leg of the stool of deterrence is private maritime contracted security. This is a true innovation of Horn of Africa counter-piracy. The introduction of private security troubles the illusion of the ship as sovereign “floating land”, and complicates the chains of responsibility that accompany the use of deadly force outside the state military apparatus, especially for flag states. Port security has been a big concern, especially in the global security conversations after 9/11, and the ability to arm guards on ships has been difficult. Nonetheless, through floating armories and logistical creativity, private security has proven a successful tactic to protect the moving capital of international shipping. The hijacking of the *OS 35*, a ship with onboard private security, is a rare exception.

The three-legged stool suggests that ships have become hardened and trained to avoid common pirate tactics. If a ship is still attacked, private security significantly decreases the odds of capture. If the ship is hijacked, the crew can bunker in the citadel and wait for naval coalitions to intervene. The naval coalitions patrol corridors of protected sea space, like the IRTC, and centralize the flows of maritime commerce. MSCHOA provides an infrastructure for communication, registration, and surveillance. This apparatus is all based around protecting the free flow of commerce of the Grotian high seas.

The three-legged model of deterrence imagines the problem of piracy from the sea, as a ship, and makes successful attacks unlikely. But the Contact Group also had to solve the problem of land. It has become a truism that piracy at sea is a manifestation of instability on land. The Contact Group worked to build the capacity of law enforcement and juridical infrastructure in the region. They also coordinated radio programming to convince young Somali men to avoid piracy. The messages stressed how it was unIslamic. Some programming also targeted women and tried to convince them not to marry pirates. Capacity building efforts are ongoing, but the majority of the work done in the Contact Group addressed suppression at sea.

The deterrence model does, however, depend on one innovation on land to complete the puzzle. The detention and prosecution of suspected pirates may be the most important experiment in the sovereign laboratory of Somali piracy. As previously mentioned, as late as 2009 naval coalitions were capturing suspected pirates and releasing them. This “catch and release” policy existed because of the unclear jurisdictional nexus of piracy and the relationship between international legal allowances through universal jurisdiction and the black letter on the books in domestic legislations. Many older European states that did have piracy laws were unwilling to prosecute – politicians were afraid of the potential asylum claims of Somalis after serving their time and monetary burden of prosecution, while lawyers were unclear how the older statutes squared with contemporary practices. Though they entertained created something like a World Piracy Court, not unlike the World Piracy Council of HYPF, or the International Criminal Court, they adopted a more pragmatic and time efficient solution. Spearheaded by the United Nations Office of Drugs and Crime (UNODC) Counter-Piracy Programme (now Maritime Crime Program), a regional prosecution model was adopted whereby Kenya, Seychelles, Mauritius and Somalia received development aid to build prisons and train lawyers

and judges. The law was updated in domestic statutes to reflect the internationally recognized definition of piracy enshrined in UNCLOS (1982). The Memoranda of Understanding and Prisoner Transfer Agreements between states and these regional countries make it unclear if they are mobilizing universal jurisdiction, but these East African countries have prosecuted the majority of suspected pirates. There have been more than 1400 Somali men convicted of piracy globally.

Mateo Taussig-Rubbo (2011) argues that as the international community seeks creative legal remedies to “reterritorialize the seas,” that is, to subject the sovereignty-less spaces of the high seas to recognized and coherent forms of authority, a reverse movement is simultaneously producing the “oceanification” of the postcolonial *landscapes* in which these pirate courts are performed. He says “the sovereignty of land is no longer counterpoised to the sovereignty-free high seas; rather, like the sea, land becomes an “open” space” (57). If commercial ships are imagined as “floating land” or “moving territory,” the pirate ship, conversely, is imagined as “ambulating ocean” or “moving sea,” conjuring the chaotic potential of the legal no-man’s land of the high seas. Taussig-Rubbo implies that the forms of cooperation and international collaboration that seek to counter the threat of piracy are themselves new vectors of a similar “oceanifying” dynamic.

The process of oceanification assumes these landscapes are a *tabula rasa* which can “ventriloquize” the jurisdictional sovereignty of other states, or the universal jurisdiction of humanity. The ambiguous status of the high seas under universal jurisdiction is passed onto the states that perform its regulation. The exercise of universal jurisdiction produces a tension that “either promises to curb sovereign abuses or threatens to conceal imperial meddling behind a judicial façade” (Taussig-Rubbo 2011, 51). In all of these modalities of risk assessment and

mitigation – collaborative naval projections of state power, insurantal sovereignties and indirect steering, postcolonial legal ventriloquism – we see the negotiation and contestation of the spiraling forces of catastrophization.

### *The GAP Method*

In the midst of all of these derivative sovereign experiments proliferating in the sovereign machine of governmentality, GAP served at least three primary functions in the Contact Group. In the language of catastrophization, their Piracy Report outlined the statistical cost of piracy to global economies and human suffering. It served a public facing role of legitimizing the threat of piracy through the supposed objectivity of number and it represented a call to action from the international community to mitigate the effects. In addition, the Piracy Report publicized a message that industry partners were keen to see mobilized. The phenomenon of piracy had many residual victims, but the primary target was international shipping companies and their crews, who bore the increasing prices of insurance premiums in High Risk Zones and potential capture and ransom. Before collaborating through the Contact Group, industry groups took the position that it was the responsibility of states to protect their ships and their maritime space. The Piracy Report gave legitimacy to the cost of piracy (even if shipping companies were passing this cost to consumers) and gave both GAP and their industry partners more opportunities to participate in the Working Groups of the Contact Group.

GAP maintained independent AHA meetings in parallel with the plenary session of the Contact Group and other major international forums. These meetings became the “core” and “backbone” of everything GAP did, according to one early contributor. The AHA meetings

always kept strict Chatham House rules, and even for an ad hoc, informal organizational form like the Contact Group, speaking freely and without pretense can solve a lot of seemingly intractable problems. The AHA meetings set up, again in the words of an early contributor, a “bridge” or “connector” function that slowly gained GAP legitimacy and trust. In these spaces, it was possible to massage some of the thorny international diplomatic issues that often stalled more public conversations, even in the Contact Group. GAP was able to bring the independent deployers into more backroom conversations, for example, or calibrate the relationship between small flag states and insurance companies. As more people shuffled in and out of government positions, the AHA was always a good place to introduce newcomers, which helped solidify the influence of GAP and some of their industry partners. One participant in the Contact Group called the AHA meetings the “unsung hero” of the Contact Group. The AHA meetings provided a robust multi-stakeholder network behind the scenes. Finally, as much as the backroom mattered, GAP also served a kind of archival and audit function for holistic reflections among all the moving pieces. As an independent and neutral voice, they were important sources of public facing information and lessons learned assessments.

Through these arrangements, John James and GAP developed a method of multi-stakeholder engagement through trial and error. Their version was more humble and subtle than the non-territorial sovereign interventions proposed by Hans Pothorst. The method was simple:

Information – Engagement – Issue Leadership – Governance

Learn the contours of a specific problem. Engage with the groups that it affects. Become an influential and legitimate voice with constructive ideas. Build Governance through mutually accountable networks of stakeholders.



But what is this theory of governance? The answer brings us back to the beginning of this chapter. The implicit theory of governance of HYPF and GAP is the catastrophic suspension and the mobilization of networks of “numerous local, partial little quasi-sovereigns constantly decid[ing] on exceptions” (Ophir 2010).

### *A Minimum Threshold of Deterrence*

After the hijacking of the *Aris 13* on my first day in the office, the GAP team became a public voice for trying to understand the significance. Their message, adopting the threat triangle, was that pirate groups still have the capabilities and intention to hijack and ransom, but the calculus of opportunity had changed. The details of the cases spelled this out. Maritime insurance companies developed best management practices, such as citadels, anti-piracy training for crew, and recommended routes and speeds. But fewer and fewer ships were following the protocols, like the *Aris 13* and the shortcut through the Socotra Gap. The NATO naval coalition terminated their mission in the Western Indian Ocean in late 2016, in part to devote more resources to the migration crisis in the Mediterranean. The NATO coalition was also considering ending their mandate. This increased the role of “independent deployers,” like China and India, but left unclear the future of naval patrols in the region. The ratio of ships using private security had decreased, and the *OS 35* showed these teams were not always able to prevent a hijacking. Finally, the maritime security sector had developed in Puntland through legal reforms, the creation of Puntland Maritime Police Force, and the construction of courts and prisons, but they were still vastly underresourced and the collisions between pirate groups and maritime authorities created tensions between clan-based communities in Somalia. This was not a sign of a

significant resurgence in piracy; it was a problem of vigilance and adherence in the midst of devolving counter-piracy initiatives.

Over the next months, GAP contemplated what a minimum threshold of deterrence would mean in the context of Somali piracy. The Contact Group had adopted a successful strategy to suppress piracy, but the threat would never leave. The counter-piracy community needed to carefully calibrate how much of the architecture should remain, and how much of the rest could be restaged if necessary. The problem of a minimum threshold of deterrence was also borne out in the cost of piracy that the team had calculated for the Piracy Report.

In 2011, GAP estimated the cost of piracy at \$7-12 billion. By 2017, the number decreased annually after successes of the Contact Group, and had plateaued at around \$1.5 billion for the previous three years. This, they argued, was a signal of a necessary minimum. The question then became which parts of the architecture should be permanent, how sustainable they were, and how willing were the stakeholders that these reforms most affected to enact GAPs framework.

Implicit in this construction is the catastrophic suspension of a greater piracy. The discursive trends in the catastrophization of the pirate suggest that the threat will never end because the capability and intent will remain in place. But, in order to prevent a return to the peaks of 2010-2011, the international community cannot abandon the forms of ocean governance that were created over the last decade.

This sense of the catastrophic suspension, I contend, is the implicit theory of governance for GAP and HYPF. The goal of creating multi-stakeholder networks of governance to meet the global challenge of a wicked problem is about calibrating an architecture that allows for a certain amount of risk, but channels it through a flexible institutional form that will not allow the

eruption of a catastrophe. The organization adopts language in the idiom of negative peace, to prevent violence and eliminate the root causes of war. The successful catastrophic suspension is, perhaps, adequate to the task, especially if the kinds of problems they choose to tackle, like piracy, are not only global and wicked, but also perpetual.

### *Derivative Sovereignties as State Resources*

In conclusion, I want to briefly explore the relationship between derivative sovereignties and the state. So far in this analysis, derivative sovereignties have shown up in a variety of contexts – HYPF and GAP, the sovereign machine of governmentality, the oceanification and ventriloquism of the regional prosecution model – and in all of these situations the implication has been that the state form is in abeyance in one way or another. But, of course, the state form is transforming and evolving in these experimental spaces as well. In the case of the Contact Group, the benefit to the state becomes clear. The derivative formations were still tethered to the purpose and vision of the United States and its partners in a way that suggests a multi-stakeholder solution is also a pragmatic decision from them. Historically, the best way to meet piracy is violent appropriation. The US war with the Barbary states and the English rooting out of Golden Age privateer-pirates make this point well. In this case, however, the experiment of counter-piracy successfully suppressed through an efficient and flexible apparatus that delegated some of the work of governance to other groups. The phenomenon of Somali piracy was always going to end, somehow, within some short time horizon, I think it is fair to say. It is worth considering what some alternative formations might have looked like or how the kinds of

collaborative relationships, even if asymmetric, that developed here might proliferate into new constellations.

#### 4. The End of Global Anti-Piracy (GAP): Piratical Drifts

In January 2017, three months before I began my research with the Global Anti-Piracy (GAP) program and the Hundred Year Peace Foundation (HYPF), seventeen African and Middle Eastern countries met in Jeddah, Saudi Arabia to sign an important amendment to the Djibouti Code of Conduct. The Jeddah Amendment signaled a sea change in the orientation of the counter-piracy conversation in the Horn of Africa. Under the Djibouti Code of Conduct (2009), twenty regional countries signaled their intention to cooperate in the repression of piracy and armed robbery against ships in the Western Indian Ocean. The Jeddah Amendment (2017) significantly broadened the mandate beyond piracy. Under the Jeddah Amendment, which eighteen countries adopted (see Figure 5), nations pledged to repress transnational crime in the maritime domain, maritime terrorism, illegal, unregulated and unreported (IUU) fishing, and other illegal activities at sea. In the Jeddah Amendment, transnational organized crime referred to trafficking in arms, drugs, and people, in addition to smuggling wildlife, oil, and the illegal dumping of toxic waste. The Jeddah Amendment paired this focus on security at sea with development. The signatories were committed to expanding the “blue economy,” including shipping, seafaring, fisheries, tourism, and sustainable development of the maritime sector.

The broadening of this mandate is a logically coherent evolution of efforts to secure the seas in a more holistic manner, but attention to transnational criminal networks and the blue economy change the collaborative ties that bound together the counter-piracy stakeholders through a narrow mandate. In this chapter, I trace how this broader mandate reflects the drift of the figure of the pirate in counter-piracy discourse from fisherman to foot soldier to the financier. I then switch focus to HYPF, where GAP is decommissioned but the maritime focus lives on in a new program that adopts the indices of maritime governance articulated in the Jeddah

Amendment. These developments highlight the structural similarity between imagined financier-pirates and John Rackham, the founder of HYPF, through the power of derivative sovereignties and financial logics.

- 7 -

محضر الاجتماع ، جدة في 12 كانون الثاني/يناير 2017  
 RECORD OF THE MEETING, JEDDAH 12 JANUARY 2017  
 COMPTE RENDU DE LA RÉUNION, FAIT À DJEDDA LE 12 JANVIER 2017

COMOROS COMORES جزر القمر 	DJIBOUTI DJIBOUTI جيبوتي 	EGYPT EGYPTÉ مصر 
ERITREA ÉRYTHÉE إرتريا 	ETHIOPIA ÉTHIOPIE إثيوبيا 	FRANCE FRANCE فرنسا 
JORDAN JORDANIE الأردن 	KENYA KENYA كينيا 	MADAGASCAR MADAGASCAR مدغشقر 
MALDIVES MALDIVES ملديف 	MAURITIUS ÎLE MAURICE موريشيوس 	MOZAMBIQUE MOZAMBIQUE موزمبيق 
OMAN OMAN عمان 	SAUDI ARABIA ARABIE SAOUDITE المملكة العربية السعودية 	SEYCHELLES SEYCHELLES سيشل 
SOMALIA SOMALIE الصومال 	SOUTH AFRICA AFRIQUE DU SUD جنوب أفريقيا 	SUDAN SOUDAN السودان 
UNITED ARAB EMIRATES ÉMIRATS ARABES UNIS. الإمارات العربية المتحدة 	UNITED REPUBLIC OF TANZANIA RÉPUBLIQUE-UNIE DE TANZANIE دولة تنزانيا الاتحادية 	YEMEN YEMEN اليمن 

Figure 5. Signatories to the Jeddah Amendment to the Djibouti Code of Conduct (Jeddah 2017).

### *Piratical Drift and the Pirate Slot*

Writing in the early nineties, Michel-Rolph Trouillot (1991, 2003) famously argued that the self-reflexive and linguistic turn in anthropology in the 1980s (Clifford and Marcus 1986) had not gone far enough to confront the foundational orientation that structured the discipline and continued to haunt it. Anthropology had not come to grips with the “savage slot” and their complicity in producing the non-Western Other as the “alter ego the West constructed for itself” (Trouillot 2003, 18). He maintained that the discipline needed to interrogate the “geography of imagination of the west” and the “savage slot,” in their own work and the work of others, with the same tenacity that postmodernists were bringing to the questions of the individual anthropologist as writer and fieldworker or the ethnography as text (Trouillot 2003, 8).

This argument has become popular again in the context of calls to decolonize the discipline and the university. Bonilla (2017), for example, has called for a similar interrogation of sovereignty as a foundational myth of Western thought that needs to be “unsettled.” As I explored in Chapter 2, piracy has served a similar function to the savage in the Western imaginary – a “Janus-faced” projection that casts the order and unity of the Westphalian state against the alterities and barbarisms of the stateless other on the high seas (Trouillot 1991, 23).

Heller-Roazen (2009) describes how the legal history of piracy is vital for contextualizing current debates about the nature, form, and processes of exclusion that confront current architects of international law and empire. He traces the trajectory of the “piratical paradigm,” which links the pirate as the paradigmatic *hostis humani generis* (“enemy of humankind”) to new figures that assumed this “pirate slot”: slavers, airplane hijackers, and those who commit war crimes, genocide, and terrorism. The pirate slot, then, as a legal technology that allows extraterritorial jurisdiction and links its figures through the idiom of heinousness, had bypassed the actual

maritime pirate by the time the Somali pirate appeared. Closing the gap between universal jurisdictional allowances and regional postcolonial legal regimes became a central concern in the debates about the legal reforms necessary to answer the problem of contemporary piracy. But the discursive figuration of the Somali pirate has drifted in other nonlegal directions in the discourse of the Somali pirate. In this narrower context, the pirate slot has been filled by three figures: the fisherman, the foot soldier, and the financier. By tracing the evolution of the pirate slot, anxieties about financial capitalism and derivative sovereignties become clear.

The first term – the fisherman – indexes the foundational grievance of local Somalis who felt compelled to protect undefended territorial waters and tenuous coastal livelihoods from illegal fishing fleets and toxic waste dumping in the context of state failure. From the perspective of counter-piracy experts and scholars, this legitimate grievance quickly evolved into a model of unexpectedly successful criminal profiteering that took advantage of the ambiguous jurisdictional space of the high seas in the geostrategic chokepoint of the Gulf of Aden and the Western Indian Ocean. Samatar, Lindberg, and Mahayni (2010) describe the evolution of piracy in Somalia from the late 1980s until today as successive and sometimes overlapping phases of “defensive, political, resource, and ransom piracy.” These distinctions stress the moral ambiguity and asymmetry of power embedded in the relativized accusation of piracy, as it variously casts the pirate as groups of Somalis fighting at sea during the civil war that followed the fall of the Barre regime in 1991; foreign fleets who engaged in illegal, unregulated, and unreported (IUU) fishing and toxic waste dumping; and eventually, the ransom pirates who dominated the waters between 2007-12.

This counter-narrative, positioning Somalis as fishermen and foreign fleets as pirates, has continuously been mobilized in court proceedings and through local appeals for increased



international efforts to address the abuse of territorial waters. We can see in the Jeddah Amendment, for example, the recognition of IUU fishing and toxic waste dumping. However, as counter-piracy initiatives emerged to combat the threat of ransom piracy by securitizing the high seas, the polysemic potential of “piracy” congealed around the icon of the Somali pirate.

The second term – the foot soldier – indexes the sense of threat and emergency posed by Kalashnikov-wielding Somalis in skiffs hijacking merchant vessels on the high seas and negotiating multimillion-dollar ransom payments. In this imaginary, piracy is constructed as a point-by-point encounter at sea between large merchant ships and small speedboats with armed Somalis. Though counter-piracy organizations have always maintained that piracy is a problem that must be addressed on land and sea, counter-piracy initiatives during this period focused on suppression at sea, as I traced in Chapter 3. As the counter-piracy mechanisms began to work, the rates of successful hijackings and attacks dramatically fell after 2012. It is at this point, when the threat at sea had become greatly diminished, that counter-piracy organizations shifted their attention to the third term – the financier. This is evident, for example, in the project published as “Pirate Trails: Tracking the Illicit Financial Flows From Pirate Activities Off the Horn of Africa” by the World Bank in 2013 (World Bank 2013). Simultaneously, the young men in skiffs, many by now disappeared at sea or in prison, were divested of the crisis and threat associated with the pirate encounter at sea and constructed as foot soldiers, a pool of marginalized youth steered by more powerful and elusive figures – the kingpins and financiers.

Initial investments from often-unknown financiers allowed groups like the Central Region Coast Guard, mentioned in Chapter 1, to scale their operations, expanding the size of their teams and the scope of their operations. In some cases, pirate groups also set up stock

exchanges and joint ventures in their communities to spread the risk and reward.<sup>9</sup> The profits were significant. For a few tens of thousands of dollars in investment, these financiers often received 50% or more of multi-million dollar ransoms. As counter-piracy initiatives greatly reduced the success of the kidnap and ransom model, counter-piracy organizations began to focus on these figures.

It is also at this point that the counter-piracy mandates begin to broaden and the discourse turns toward the transnational organized criminal networks that operate at sea, as the Jeddah Amendment enshrines. The imagination is clearly one of ocean space as a corridor of transnational crime, and the invisible financiers who profited from piracy are also the ones responsible for human trafficking, arms and drug smuggling, etc. The financier is pitched as an arbitrageur who can mobilize a flexible network of labor, the foot soldiers, into whatever domain is most profitable or advantageous.

Danny Hoffman (2011), in the Deleuzian language of war machines, describes how civilian defense forces in Sierra Leone and Liberia in the 1990s – a war machine - organically and temporarily mobilized to defend their communities only to eventually coalesce into an organized militia – the state - defending the Sierra Leonean state against its own army. For Hoffman, war machines depend on the idea of the “barracks.” Updating Agamben’s (1988) notion of the camp as the *nomos* (organizing principle) of *modernity*, Hoffman identifies the logic of the barracks as the *nomos* of West African *postmodernity*: “a spatial and sociopolitical configuration the purpose of which is to rapidly assemble male bodies for efficient deployment in the overlapping service of security and profit” (xii). For Hoffman’s interlocutors, daily life is a constant deployment to the changing war fronts, the diamond mine, the rubber plant, the city

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<sup>9</sup> One analyst has suggested that the massive influx of dollars into coastal communities after a ransom payment may have contributed to community resentment of piracy because of inflationary effects and thereby contributed to its decline (personal interview).

center – all of which are increasingly connected and interchangeable. Movement replaces identification as the locus of production and political participation. Violence is an industry for which these men labor, and thereby create themselves, their world, and their futures.

Hoffman’s idea of the barracks echoes my attention to the derivative morphology and sovereignties of counter-piracy in the Horn of Africa.

The seas (as corridor) are the ungoverned space that provides cover for illicit and illegal activity. In general, as the oceans become a bigger and bigger topic of conversation in the international community, beyond the narrow mandates of piracy, the distinction between territory and corridor creates tension between the visions of African states (who want territory through development) and the international community (who wants security of corridors, seams, and logistical infrastructure). This replays some of the formative debates from the historical conceptualization of the freedom of the seas, discussed in Chapter 2, between territorial waters, free seas, and the zones of sovereign exception that emanate in the pathways of discovery (Benton 2010). As Heller-Roazen (2009) notes more generally, the pirate is no longer explicitly linked to the high seas: the “pirate may no longer be defined by the region in which he moves, the region of piracy may be *derived* from the presence of the pirate” (2009, 179, emphasis added). The pirate, historically defined against the legal geography of the high seas as in UNCLOS (1982), is no longer bound, echoing the despatializing potentials of the derivative. The illusion of Westphalian unity and territory is disrupted. The sense of dissolution and anarchy connected with the sea nonetheless follows the pirate wherever he appears. In the language of Taussig-Rubbo’s sense of “oceanification,” the “moving sea” and “ambulating ocean” represented by the pirate produces a reverse movement where the “sovereignty of land is no longer counterpoised to the sovereignty-free high seas; rather, like the sea, land becomes an

‘open’ space” (2011, 57). This open space is dominated by the purview of the arbitrating financier-pirate, who flexibly moves from legal enterprises to illicit and illegal ones on land or sea, with respect only for the mobilization of capital and labor for profit. The territories, and their presumed sovereignties, are undone. Implicit to my argument is the idea that the pirate takes the shape of the figures that create the most anxiety for those trying to capture them. In the counter-piracy world of the Horn of Africa, the pirate moves into finance.

As counter-piracy organizations have developed mechanisms to catastrophize (Chapter 3) and then disempower dominant images of the Somali pirate (the fisherman and the pirate-foot soldier), new figures have assumed the pirate slot. This trajectory toward the pirate-financier frames the problem space as ever more dynamic, hidden, and complex. This, in turn, demands concomitant complexity and permanence from counter-piracy organizations, who must negotiate their short- and long- term futures amid institutional constraints and the fragmentation of interests among their partners and stakeholders in the vortex of derivative sovereign formations. Sometimes they do not survive.

### *The Decommissioning of GAP*

The Global Anti-Piracy (GAP) program, the flagship program of HYPF, was officially decommissioned in 2018. From its origins in the non-territorial sovereign experiments of Hans Pothorst, John James built GAP to be an influential player in the Contact Group and the counter-piracy conversation in the Western Indian Ocean. GAP started their focus in this region, but they expanded to include West African piracy in the Gulf of Guinea, Southeast Asian piracy, and South American piracy, which were all included in their annual Piracy Reports. The

configuration of national interests and postcolonial relationships in these other regions differed greatly from the case of Somali piracy, where the failed state provided the cover for forms of international interventions that would probably not work in other regions. In fact, the conditions of West Africa and Southeast Asia, the hotspots of piracy after the steep decline in the Somali phenomenon, are much more similar to each other than either is to the Horn of Africa.

During the eight years that GAP existed, HYPF continued to grow. At the time of writing, they currently have eight implementation programs, including a research division. The original focus on piracy in the Horn of Africa led to more engagements in East Africa. GAP spawned two additional programs. The organization took seriously the defensive rhetorics suggested by the pirates themselves. One program addressed economic empowerment to great success, providing small and medium sized loans to Somalis, who were unbanked and without access to credit outside hawala networks. Another program tackled the question of illegal, unreported, and unregulated (IUU) fishing. At the time of my research, HYPF had a growing research division and a communications team in addition to more clearly defined management roles. There were nearly one hundred people working for the organization when I volunteered there, and there were plans to develop more programs and keep growing.

The Jeddah Amendment to the Djibouti Code of Conduct broadened the mandate of piracy to transnational crime on the seas and the development of blue economies in the Horn of Africa region. The Maritime Governance Index (MAGI) project took up this framing and replaced GAP as the maritime-focused program at HYPF. MAGI modeled itself on the Failed States Index, using qualitative assessments and quantitative modeling to measure and map nine indicators for maritime governance calibrated by national jurisdiction. The indicators closely

align with the agenda of the Jeddah Amendment: international collaboration, rule of law, enforcement, coastal welfare, blue economy, fisheries, piracy, illicit trade, and mixed migration.

MAGI developed in mid 2017 as a partnership between HYPF's research division and GAP. The goal was to evolve the maritime focus at HYPF to reflect the changing discourse about ocean governance. The project is continually expanding, but it started with an appraisal of Somali maritime governance, and then spread to sub-Saharan Africa. They are seeking more stakeholders in Asia and South America now, with the plan to expand the index to all of the world's oceans. MAGI became a standalone program in 2018.

The death of GAP was protracted. By the time I left my first research visit in August 2017, John James, the Director, and Cornelius Jol, the Associate Director had both stepped down. They remained involved in an advisory capacity. There was a search for a new Director, but it was also abandoned. By the time the program ended, seven of the nine employees had moved on. Some probably would have left anyway, for law school or to move abroad, but others were forced out. The two that stayed moved laterally, one transitioned to the MAGI team, and one took a Measurement and Evaluation position. The latter position is illustrative of one of the most important changes in the organization in recent years.

The forms of internal measurement and evaluation have increased in the last two years. Many of the programs often feel more pressure to justify their missions internally than they do to external stakeholders. Several people conveyed stories of the early years of HYPF, when John Rackham would hold Wednesday meetings with the Directors of all the programs. These were tense and competitive, and often the week revolved around preparing for and then debriefing from the midweek performance. Rackham had consciously stepped back in the year before I arrived. There was a move to professionalize and institutionalize HYPF, to move from a "startup

culture” to an “established think and do tank,” as one person put it. This process is ongoing, but much of the management team has transitioned out in 2019.

The move to increase measurement and evaluation and to formalize the relationship of implementation groups to the orientation of ending organized political violence at HYPF has been spearheaded a new group, the program development incubator. This group surveyed the methods, successes, and failures of GAP, as the flagship program, and developed more generalized practical and conceptual tools for the other programs to adapt to their needs. This incubator has also been a proponent of increasing the forms of conscious self-reflection on theories of change and method in the implementation programs, which has in turn produced more measurement and evaluation exercises, though they vary widely in form. The response from the implementation programs during my time seem mixed – some appreciated more explicit reflection on the methods and purposes of multi-stakeholder interventions, especially as the pragmatic concerns of negotiating these relationships can override the big picture sometimes, but others found these processes unnecessary internal justifications that led nowhere and did little to change their work.

### *The Mirror Function of Piracy*

It is striking to compare the organizational philosophy of HYPF, on one hand, and the pirate-financiers constructed in the broadening counter-piracy discourse, on the other. John Rackham started HYPF after predicting the Financial Crisis, adopting the elimination of war as his mission, endorsing the idea of the non-territorial sovereign organization, and moving into counter-piracy work in the Western Indian Ocean. Over eight years, GAP, under the leadership

of John James, became influential players in the Contact Group and piracy was successfully suppressed. It was not solved, but perhaps that was never the point. It remains a wicked problem. It was also never guaranteed that these programs would last forever. Rackham set up the implementation programs as iterative experiments, as derivatives of peace. The original idea of moving toward a World Piracy Council would have ceded the non-territorial sovereign Council to the stakeholders, and GAP would have ceased to exist after 5-10 years. In this way, Rackham and the programs were imagining themselves as institutional arbitrageurs. That is, innovators who closed the gaps between peace and governance and, after an efficient dispute resolution mechanism was in place, moved on. The gap was closed.

The shuttering of the flagship program changed the way some people at the organization thought about their jobs. There are tensions between employees at HYPF, who have limited opportunities to work in international peace and governance in the American mountain west, and Rackham, who thinks like the financier at the top of hierarchies of flexible labor. Which projects are marginally profitable? The challenge for Rackham is translating the value of money he is familiar with into a calculus of value in the idiom of peace and governance.

The discourse associated with the broader mandate of maritime governance in the Horn of Africa produced the new pirate, the financier. John Rackham grounded his foundation in the mission of eliminating organized political violence at a global scale and in the end, he came face to face with himself, and the financial and derivative logics that are taking up residence in all sorts of diverse and flexible formations in and adjacent to governance.

HYPF has been set up in exactly the same way that pirate-financiers position themselves above hierarchies of flexible labor. HYPF, a meta-learning hub, is the barracks (Hoffman 2011), flexibly assigning programs and people to overlapping tasks. The purview and the likelihood of



violence is certainly different than the networks of foot soldiers in the African postcolony, but the morphological form is very similar. The logic of piracy assumes that any interaction with a pirate, who by definition is incapable of acting in faith (a kind of trickster figure), will necessarily render the other piratical as well. “In speaking to a pirate, in dealing with a pirate, no matter one’s acts, no matter one’s word, and no matter one’s faith, one cannot fail to don a mask,” says Heller-Roazen, “one becomes a pirate oneself” (2009, 21). The piratical drift of the broadening counter-piracy discourse shows that the new piracy is the derivative sovereignty and financial logic of the financier.

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