SAKARYA UNIVERSITY
OF APPLIED SCIENCES

The Development of Piracy in the Horn of Africa

Çağlar AKAR[1*] iD

[1] Kocaeli University Labor Economics and Industrial Relations, e-mail: akar.c1983@gmail.com

ÖZ

Bu çalışma, Afrika Boynuzu'ndaki korsanlığın nasıl geliştiğine ve Somali'deki mevcut korsanlık sorununa karşı ne tür stratejiler uygulanması gerektiğine ışık tutmayı amaçlamaktadır. Afrika Boynuzu'ndaki korsanlık sorunu, "Korsanlık Döngüsü Teorisi" (Lucas, 2013) üzerinden analiz edilmiştir. Bu çalışmada, korsanlık-kalkınma seviyesi ilişkisi ve korsanlık-terörizm bağlantıları eleştirel olarak incelenmiştir. Afrika Boynuzu'ndaki korsanlık sorununun; sadece bir deniz sorunu olmadığı, aynı zamanda karadaki ekonomik ve sosyal yapıyla ilişkili bir problem olduğu sonucuna ulaşılmıştır. Korsanlık sorunuyla mücadele; devletin kurumsal yapısının geliştirilmesi, ekonomik kalkınma ve güvenliğin artırılmasıyla sağlanabilir. Aynı zamanda korsanlık sorunu, denizde ve karada hukukun üstünlüğünü temin edebilecek, kapsamlı bir küresel hukuksal yaklaşımı gerektirmektedir.

Anahtar Kelimeler: Korsanlık, Somali, Korsanlık Döngüsü Teorisi, Afrika Boynuzu

ABSTRACT

This study aims to shed light on how piracy in the Horn of Africa has developed and what kind of strategies should be implemented against the current piracy problem in Somalia. The piracy problem in the Horn of Africa has been analyzed through the "Piracy Cycle Theory" (Lucas, 2013). In this study, the piracy-development level relationship and piracy-terrorism links were critically examined. It has been concluded that the problem of piracy in the Horn of Africa is not only a sea problem but also a problem related to the economic and social structure on land. Tackling the problem of piracy; the development of the state's institutional structure can be achieved by increasing economic development and security. At the same time, the problem of piracy requires a comprehensive global legal approach that can ensure the rule of law at sea and on land.

Keywords: Piracy, Somalia, Piracy Cycle Theory, Horn of Africa

1   Introduction

What makes piracy in the Horn of Africa distinct from other piracy hotspots is the frequency and nature of the attacks. According to World Bank 'since January 2005, pirates from Somalia have carried out 1,068 attacks." Of these, 218 resulted in successful hijackings with the abduction of at least 3,741 crewmembers of 125 different nationalities, and the payment of US $315 million–US $385 million in ransoms. Between 82 and 97 non-Somali seafarers are believed to have died in attacks, detention, or rescue operations' (World Bank, 2013). This is reflected in many other arguments which cite the

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* Corresponding Author: akar.c1983@gmail.com

disturbing rate at which the Somali pirate groups have perfected their operations. According to Menefee and Mejia, 'the increasing number of incidents off the coast of Somalia is alarming and disturbing'. Initially, because the main purpose of piracy is ransom, the piracy instances in Somalia were relatively less violent. But according to the International Maritime Bureau's annual report for 2011, Somali pirates have become increasingly aggressive and violent towards their captives (Menefee & Mejia, 2012).

Since the fall of the central government in Somalia in 1991, pirate groups have set up operations off the coast of Somalia. The lack of a functioning government in Somalia has also contributed to the rise of piracy. Especially the political uncertainty in recent years and continuation of Al-Shabab terrorist activities in the region has contributed to instability of Somalia (Council on Foreign Relations, 2022). The instability is one of the most important factors that prepares ground for piracy of the coast. Lucas, explains the evolution of piracy with 'Pirate Cycle Theory'. According to 'Pirate Cycle Theory', piracy develops in three distinct phases (Lucas, 2013). In the first phase, the occupants of minor coastal areas participate in small-scale acts of piracy against the most defenseless merchant ships. Piracy is the result of poverty and a lack of employment opportunities during the first phase of its expansion campaigns. According to Lucas, many scholars call this phase as 'subsistence piracy'. In the second phase, resulting from the profit of the initial stage, the pirates became more professionalized and organized, and they created larger groups with developed capabilities to carry out coordinated attacks on even the largest merchant ships. In this phase, more proficient organized criminal groups can swallow up subsistence pirate groups or put them out of business (Lucas, 2013).

The third phase of piracy is accomplished when pirates can be seen as 'having acquired the states of an autonomous state and held 'in a position to make a commonly helpful alliance with another state against its foes' (Lucas, 2013). According to Lucas, piracy in Somalia has developed to the second stage in 'Pirate Cycle Theory', but could not achieve stage three. It is unrealistic to expect contemporary pirate organizations to achieve the status of independent states (2013). This essay will review how piracy has evolved in the Horn of Africa and how Lucas's (2013) 'Pirate Cycle Theory' is a very effective tool to investigate the development of piracy.

2   Literature Review

2.1 Initial Phase of Piracy Cycle

According to Sloggett, piracy in Somalia 'does have its roots in the enduring problems of the internal politics of Somalia, and because of the associated tribal and kinship-based conflicts, the major cause of the people turning to piracy appears to be the reducing potential for earning an income from fishing' (Sloggett, 2014). Although Lucas (2013), Sloggett (2013) and many other scholars in the field associate the main motivator of piracy with poverty, according to Murphy citing poverty as the main reason for piracy is simplistic. Murphy points out that 'in most eras and in most places, piracy has been dominated by organized gangs that have treated it as a business' (Murphy, 2007). From Murphy (2007)'s point of view, seven major factors enable piracy to flourish: legal and jurisdictional weakness, favorable geography, conflict and disorder, under-funded law enforcement/inadequate security, permissive political environments, cultural acceptability; and the promise of reward.

In the case of Somalia, because of the authority gap since the fall of the central government in 1991, it is unrealistic to expect that the legal system is working properly. In addition to system failure in Somalia, there was a big gap in the international legal system against cases like Somalia piracy. According to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 article 101 (a), the definition of 'maritime piracy' only includes crimes on the high seas, not in the territorial waters of the states. This

definition is very problematic, because, initially most of the piracy incidents were in the territorial waters of Somalia. According to Klein, 'foreign warships or government vessels have no policing powers within the territorial sea or internal waters of another state, absent the coastal state's consent' (Klein, 2011). The term 'high seas', in UNCLOS, prohibited the international community from interfering in piracy networks in the first phase of 'Somali pirate cycle'. In order to tackle the problem, 'the Security Council has authorized states to enter the territorial sea of Somalia in pursuit of pirates, but the Security Council resolutions were predicated on the consent of the transitional government of Somalia' (Klein, 2011).

When piracy is evaluated in the context of 'pirate cycle theory', first phase of piracy in the Horn of Africa was regional, less professionalized, and especially in territorial waters that do not even fit into the UNCLOS definition of "piracy". This crime fits into the definition of 'armed robbery at sea' because the crime incidents mostly happened in the territorial waters of Somalia. "Armed robbery at the sea" is defined as "any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a state's internal waters, archipelagic waters, and territorial sea" in International Maritime Organisation Resolution A.1025 (26) (International Maritime Organization, 2009). It can also be assessed that in the first phase from 1991 to 2008, piracy in the Horn of Africa found no opposition from the international community because of the lack of legal consensus over the process. Campanelli points out that states have demonstrated to this point that they were not willing to interfere with criminal ships of a different nationality, and did not have any enthusiasm for catching pirates and bringing them to justice. However, this might require a mechanism and the "universal right to establish jurisdictional" to work against the aim of guaranteeing that pirates do not get away from prosecution (Campanelli, 2012). Murph's (2013) legal and jurisdictional weakness factor certainly existed in the region, both from the international community and the government of Somalia.

According to Murphy, 'piracy is only sustainable in places that offer a combination of rewarding hunting grounds, moderate levels of risk, and proximate safe havens' (Murphy, 2007). Similarly, Coutroubis and Kiourktsoglou point out that for "piracy to occur, there must be available targets-sea traffic in the area where potential pirates might operate" (Kiourktsoglou & Coutroubis, 2012). In this context, the Gulf of Aden is one of the most lucrative places for piracy in the world, because of its close proximity to the main merchant shipping route. The state of insecurity in the Gulf of Aden, particularly off the coast of Somalia, and the difficulties in enforcing the law have had an adverse effect on the sea lines of communication and strengthened pirate activity. Because of the existence of safe havens in the lack of legitimate authority, the density of maritime traffic in the Gulf of Aden and Indian Ocean, and the lack of legal background for international community to interfere in territorial waters of the state until the Resolution of the United Nations in 2008, Somalia provided a favorable geographic area for piracy.

According to Murphy, "piracy-and criminality at sea generally-can thrive when coastal regions are troubled by war or civil disturbance, or their aftermath, as the absence of law-enforcing authorities and desperate circumstances draw people towards criminality" (2007: 15). In this context, Somalia has been devastated by civil war and clan-based conflicts for the last two decades. In addition to these situations, the warlords controlled some regions and fought with each other. There is the added problem of the terrorist threat, particularly from Al-Shabab in Somalia. For these reasons, and many others, it is unrealistic to expect effective law-enforcement agencies and government institutions to be in the country. In fact, after the fall of the Siad Barre regime, the international community tried on numerous occasions to restore peace and establish order in the country. In 1992, for example, the United Nations initiated a peace enforcement operation codenamed 'Operation Restore Hope' in Somalia. For so long,

Somalia has been left to its own destiny by the international community. Discussing the situation in Somalia, Thomson points out that "international terrorist and criminal groups have also come to use Somalia as a safe haven from state power. "Similarly, it is no coincidence that piracy has become one of Somalia's most productive industries. Having had its fingers burnt by the failed humanitarian intervention in 1994, the international community is now coming to realize that there is also a similar price to pay for non-intervention with respect to Somalia" (Thompson, 2010).

According to Murphy (2007), lack of funding and inadequate police, navy, and coast guard training allow pirates to operate. When the Gulf of Aden and the Indian Ocean's size are considered, it can be easily understood how costly the efforts to counter piracy are in that region. In a country such as Somalia, where poverty is common and government institutions do not exist, effective law-enforcement and sustainability in counter-piracy efforts are difficult to achieve without international support. In Somalia, a permissive political environment and under-funded law enforcement factors existed in the initial stages of the "Piracy Cycle for Somalia".

It is very often emphasized that the pirates operating in Somalia were fishermen in the coastal area of Somalia. Because of foreign fishing companies operating in the region illegally, the local fishermen had no chance to survive and were forced to become involved in piracy in the first phase of the "piracy cycle for Somalia". Contrarily, Coutrubis and Kiourktsoglou point out that in Somalia "there are indications that the stocks are still large enough to supply local fishers and allow for export" (Kiourktsoglou & Coutrubis, 2012). According to World Bank, because of the piracy threat, most of the foreign fishing boats moved to the safer areas on the west side of the Indian Ocean, but those few still operating off the coast of Somalia should have enjoyed a productivity boost as it was claimed by Somali pirates. The absence of such a boost clearly shows that the low level of fish in the region was not the main issue (World Bank, 2013).

Even if the "illegal fishing is the main factor for piracy" perspective is accepted as true, it does not give an explanation as to why the pirates have not only attacked the trawlers but also cargo ships operating in coastal areas of Somalia. According to Lucas (2013), even though piracy began in order to regain control of fishing resources and punish illegal foreign fishing companies, on other levels of their operations, it provided a lucrative business opportunity for pirates. In accordance with this assessment, Wilson points out that "it became impossible to distinguish between vessels that were seized for fishing illegally and vessels that were simply seized" (Wilson, 2009). Tutu points out that the fishermen had an obligation to oppose illegal fishing and toxic waste dumping, because there was no government authority to protect their rights. For example, when the Islamic Courts Union ruled Somalia for 6 months, piracy disappeared from Somalia. After they were removed from power, piracy in Somalia increased again (Osei-Tutu, 2011). According to Harper, although Somalia's fish reserves have been harmed greatly by foreign fishing companies, illegal foreign fishing has become the standard excuse used by Somali pirates, even though it does not provide justification for piracy (Harper, 2012). Even authorities in Somalia have supported this excuse, and in 2011, parliament refused to pass a bill that would make piracy illegal, and even some members of Somali Parliament defended pirates because of the perception that the pirates are heroes for keeping Somali waters safe from foreign fishing trawlers (Harper, 2012).

If we look through the lens of society, it is obvious that piracy has become so lucrative. Millions of dollars were paid for ransom, and some portion of this money has been spent inside Somalia. This process has also attracted more locals as well as criminal networks to get involved in piracy. Residents of piracy-prone villages also benefited from piracy. Whenever a pirate comes to a town or a village, he will spend more money than the locals. According to the Yikona, the ground militias that provide

security for kidnapped ships, cooks provide catering services for crews, pirates, and local business entrepreneurs. The local community also provides "khat" (stimulant commonly used in Somalia) and many other services, including alcohol and prostitution (Yikona, 2013). If we consider the existing poverty and the lucrativeness of the piracy business, it can be concluded that piracy has been accepted by society with the promise of reward for the people involved in it. But cultural acceptance is something different. Other arguments, including that of Coutroubis and Kiourktsoglou, point out that piracy traditions do not exist in Somali society and it cannot be concluded that piracy is culturally acceptable (Kiourktsoglou & Coutroubis, 2012). Coutroubis and Kiourktsoglou also oppose the idea that links culture and piracy, because while the dynamics of piracy shift dramatically in frequency, the culture does not. It can be assessed that society is aware that piracy is a criminal act, but the situation in Somalia makes this criminal act an acceptable form of business unless other sources of income are available.

Even though Murphy (2007) did not involve poverty as one of the motivations behind piracy, there are many scholars mentioning poverty as the main reason for piracy. Similarly, Wilson associates piracy with poverty and the lack of government in the country. Because of the unbearable economic situation in Somalia in 2008, he asserts that piracy reached its peak at the same time frame (Wilson, 2009). For Tutu, in Somalia, the average yearly income is about US $650. On the other hand, one pirate attack can make about US $10,000 or more for a normal pirate. The economic factor became the real issue for the locals that were involved in piracy in Somalia (Osei-Tutu, 2011). While Coutroubis and Kiourktsoglou agree with this claim to some degree, they point out that this claim is not enough to explain conclusively the trait of Somali piracy. They point out that 'piracy is not a Somali problem; only some regions host pirate ports, while widespread poverty is common in the whole of Somalia' (Kiourktsoglou & Coutroubis, 2012). In this context, Tutu claims that young men in Somalia have no chance to find economic opportunities in the lawless nation without government authority. At the same time, piracy provides young men a chance to survive, but at the same time undermines Somali government efforts to establish law and order in the country (Osei-Tutu, 2011).

According to Lucas, while economic and geographical factors offer partial answers to piracy, they do not provide a full explanation of why piracy dramatically increased in Somalia. He supports the idea that political instability is the main reason for this rise (Lucas, 2013). The decline of piracy when the Islamic Courts Union (ICU) took control in Somalia can be shown as evidence for this claim. According to Lucas, because piracy is contrary to Islamic law, ICU fought against piracy, and piracy was eliminated in Somalia for 6 months until they were removed from power. ICU returned one of the ships kidnapped by pirates to the owner of the ship 'Vessham1', but because the ship belonged to a Somali businessman who is known to be a financier of ICU, this incident cannot be accepted as purely motivated by Islamic rule (Lucas, 2013). Regardless of the motivations and nature of the government, it can be assessed that political stability and order on the land has also contributed to the piracy problem on the sea for a limited period of time in Somalia. According to Campanelli, if the pirates are purely economically motivated criminals, the state building and increasing state capacity should be the priority in Somalia, and the international community should assist the process by bringing those who commit the piracy act to justice (Campanelli, 2012).

2.2 Second Phase of Piracy Cycle:

The reality that pirates obtained millions of dollars from ransom was recognised by the international media, fishermen in the region, militias, clan-elders, warlords and criminal investors. The piracy resulted in a kind of Somali 'gold rush' or 'feeding frenzy' as it was depicted by Lehr (Lehr, 2009). As a result, investors both from Somalia and outside rushed into the piracy business, because it was very lucrative.

The number of pirate attacks increased from two attacks in a month to several attacks per week (Lehr, 2009). Because of this reputation, piracy financiers found no hardship in finding a new work force for piracy operations: poverty was very common in coastal areas, there were examples of relative richness resulting from piracy, and a lack of government authority while fishermen were struggling for a living. However, it should be noted that pirate financiers were neither desperate nor fishermen (Yikona, 2013).

According to Yikona, piracy in Somalia has undergone an evolution from subsistence pirate groups to a transnational network with a flow of funds both from and into Somalia, a large operational capability and financial support abroad, and proceeds canalised elsewhere (Yikona, 2013). Even though it is thought by many scholars that the piracy in Somalia is solely for economic reasons, and killing captives is relatively rare when it is compared to other piracy hotspots in the world, the changing tactics of piracy are making this claim doubtful. The pirates began using mother ships in order to increase their area of influence. The mother ships are generally fishing boats illegally operating in the Horn of Africa that were confiscated by pirates. This change in tactics increased the range of piracy dramatically, according to Yikona; "attacks attributed to Somali pirates extend far from land, deep into the western Indian Ocean." In 2007, the farthest attack took place 800 km from Somalia, and extended to 1410 km in 2008, 2030 km in 2009, and 3655 km in 2010' (Yikona, 2013).

Because the owner of the fishing ship usually sails with the crew and the sailing by itself is illegal, kidnapping usually goes unnoticed by the international community and the safety of the crew is unknown even though the captives held for ransom are relatively safer. In the new era, opportunistic pirates had evolved into professional organizations using mother ships to increase their capability, using land infrastructures, and having sufficient funds and ties with the authorities on land and even with the terrorist organization, 'Al-Shabab'. Today, the borderline between organised crime and terrorism has also become blurred; the cooperation between pirates and terrorists is very likely.

According to Yikona, apart from piracy, how the ransom money is used is also a very big problem for Somalia, including human trafficking, migrant smuggling, and investing in militias and military capacities on land (Yikona, 2013). The lack of anti-money laundering and combating the financing of terrorism standards in countries affected by illicit money flows netted by piracy ransoms makes these countries vulnerable to criminal kingpins' influence. The criminal kingpins can access resources and get involved in the decision-making mechanisms of these countries easily (Yikona, 2013). According to the same report, there are instances where pirate leaders used ransom money to fuel the 'khat' trade, enhancing their militia capabilities, fueling clan competition and supporting Al-Shabab activities at the same time in Somalia. For that reason, pirate financiers became not only criminal business investors in piracy at sea but also powerful actors who influenced the decision-making system of the Government of Somalia on land (Yikona, 2013).

According to Lehr (2009), because piracy is a criminal business for piracy financiers, the hostages are in fact 'commodity'. It is reasonable to sell the crew members and ships back to the owners, but if another buyer pays more, like Al-Shabab, the pirates can sometimes sell them to terrorists. Incidents very similar to this claim have already happened in post invasion Iraq and North Africa. Tribesmen in North Africa sold western tourists to Al-Qaeda in the Maghreb, and very similarly, hostages were sold to Al-Zarqawi's group in Iraq (Lehr, 2009). Lehr also points out another aspect of piracy related to terrorism. According to him, Al-Shabab already tried to politicise piracy by declaring pirates as 'mujahideen because they are at war with the Christian countries "defending" the coast against Allah's enemies' (Lehr, 2009). For Kassilly et. al., prosecuting pirates as terrorists is a better solution to the piracy problem. They point out that piracy and terrorism can be associated because piracy uses terror as

a method against foreign vessels. According to them, there are many examples in history where governments used piracy as a political tool and pirates also waged war against the world that they view as unfair. And in a legal context, 'the legal definitions of piracy and terrorism have evolved and have come to resemble one another' (Kassilly, Onkware, Ntabo, Onyango, & Odhiambo, 2011). Contrary to Kassilly et. al, Lehr points out that even though introducing piracy as a terrorist act would draw much attention by Western countries to the problem, striking pirates as terrorists would force pirates into the arms of already existing terrorist organizations such as Al-Shabab, and this quick fix solution would create a worse problem on the ground than piracy (Lehr, 2009).

Piracy in Somalia can be described as a transnational organized criminal network that has ties with local authorities through clan-based relations, criminals, terrorists, and international criminal investors. According to Yikona, the evolution of piracy can be divided into three periods: from 1991 to 2008 can be described as amateur subsistence piracy, 2008-2010 as competition in the piracy business; and 2010-today as an organised crime network operating in different countries. Today, Somali pirates are working as groups organised along clan affiliations, and they are armed with AK-47s, rocket-propelled grenades (RPGs), and sophisticated tracking devices. They hijack all kinds of ships, including fishing ships. For valuable ships, they use crew members and cargo for ransom, and for fishing ships, they use them as mother ships for future piracy activities. 'Somali piracy has evolved into a transnational model-from small scale, locally executed and funded operations into a transnational network with flows of funds, operatives, and resources coming from abroad and proceeds flowing elsewhere' (Yikona, 2013).

If piracy is considered as a transnational organised criminal network, the flow of ransom money is one of the most important aspects of the crime. In the business model for piracy, ransom is distributed among three different groups: the pirate action group who capture the ships, pirate financiers who invest in piracy businesses; and the local community which provides services to the pirates. The money distributed to the pirate action group is spent on 'khat', alcohol, and expensive cars, and the amount of the money constitutes only about 0.01–0.025 percent of an average ransom payment, which changes between US $30,000 and US $75,000 (Yikona, 2013). The pirates' financiers get the most of the ransom, from 30 percent to 75 percent depending on initial negotiations. The local community also gets their share in accordance with the services they provide for pirates and hostages.

Somalia's piracy activity depends intensely on coastal infrastructure to direct ransom arrangements. Piracy business requires coastal support including services, armed protection for pirates returning from pirate attacks and for cargo, ships and hostages and access to markets for stolen goods (World Bank, 2013). There are three types of investment for piracy financiers: low level pirates pool money for small scale pirate attacks, financiers cooperate and invest cooperatively; and individual financiers can invest individually in piracy. When the ransom money is received, this money can be reinvested in future piracy attacks or can be diverted into both legitimate and illegitimate activities. Through the years, ransom negotiations got more complicated and involved more people, such as lawyers, service providers, and experts for counterfeit money, and even consultants to assess the value of the cargo and ship (Yikona, 2013).

In order to launder ransom money, financiers get involved in legitimate business sectors like real estate and 'khat' trade. According to Harper, ransom money invested in the real estate sector caused a property boom in Gorawe in the Puntland region of Somalia (Harper, 2012). Contrary to this claim, Yikona points out that there is no evidence that piracy has affected real estate prices and it is mentioned in the same report that the ransom money is used for smuggling of weapons and drugs, the transport sector, agricultural or livestock activities, import and export, hotel and restaurant business, and in factories.

Because of the porous borders of Somalia, some of the ransom money is transferred to other countries like Djibouti, Kenya, and the United Arab Emirates through cash smuggling and money transfer (Yikona, 2013).

3   Conclusions

Piracy in the Horn of Africa has always been regarded as a maritime issue. The international community has deployed a huge number of navy warships into the region and spent billions of dollars in an effort to suppress Somali piracy. Although piracy off the Horn of Africa decreased in 2012, naval vessels from around the globe continue to patrol the Gulf of Aden and the western Indian Ocean' (Lucas, 2013). In fact, piracy is a land problem rather than a sea one. Suppression is not a long-lasting solution. Unless the root causes on land are not eliminated, it can resurge easily when the Navy presence is absent and when the money spent on counter-piracy efforts is considered, this suppression tactic is unsustainable. According to the World Bank, capacity building and shore-based counter-piracy programs only make up 1.5% of global spending on Somali piracy. In 2013, the total global cost of counter-piracy operations for Somalia was $3.2 billion, and this means that the international community spent $139.1 million for each piracy attack. If this money was devoted to capacity building for Somalia, it could have lasting effects on peace, order, and stability in the country. According to Madsen et.al., 'port development, port security, and a modest coast guard to secure local seas could be all that's needed to eliminate piracy'. Such targeted development can likely be accomplished at a cost far lower than the billions of dollars still being spent every year in the Indian Ocean' (Madsen, et. al., 2013).

When the terrorism argument is considered, it can be assessed that terrorism and organised crime can have links or cooperation in many instances, but treating every crime that has links with terrorism as a terrorist act can be a dangerous approach that can create many more terrorism threats. In this context, what is reasonable in counter-piracy in the Horn of Africa is treating piracy as an organised crime. Implementing a stricter monitoring process for money flow and establishing an international legal framework for counter-piracy would be a better solution while trying to eliminate instability in Somalia.

4   Declarations

4.1   Competing Interests

There is no conflict of interest in this study.

4.2   Author Contribution

Çağlar AKAR: All contributions within the scope of the research belong to the corresponding author

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