

2012

# Maritime Piracy and the Construction of Global Governance

Michael Struett, *North Carolina State University at Raleigh*

Jon D. Carlson, *University of California, Merced*

Mark Nance, *North Carolina State University at Raleigh*

## **Maritime Piracy and the Construction of Global Governance**

A proposed edited volume by:

Dr. Jon D. Carlson  
SSHA – Dept 120  
University of California  
5200 N. Lake Rd.  
Merced, CA 95343-5120  
Ph: (209) 228-4159  
[jcarlson3@ucmerced.edu](mailto:jcarlson3@ucmerced.edu)

Dr. Mark T. Nance  
Dept of Political Science  
North Carolina State Univ.  
Campus Box 8102  
Raleigh, NC 27695  
Ph: (919) 515-3729  
[mark\\_nance@ncsu.edu](mailto:mark_nance@ncsu.edu)

Dr. Michael J. Struett  
Dept of Political Science  
North Carolina State Univ.  
Campus Box 8102  
Raleigh, NC 27695  
Ph: (919) 515-5034  
[mjstruett@ncsu.edu](mailto:mjstruett@ncsu.edu)

### **I. Project Overview**

Piratical attacks have become more frequent, violent, costly and increasingly threaten to undermine order in the international system. Much attention has focused on Somalia, but piracy is a problem worldwide. Recent coordination efforts among states in South East Asia appear to have helped in the area, but elsewhere piracy has expanded.

Interestingly, international law has long recognized piracy as a crime and provided tools for universal suppression, yet piracy persists. Consequently, modern maritime piracy poses many challenges for global governance. International law evolves slowly in a rapidly changing world. International organizations define problems and construct the identities and interests of actors, but they, too, are slow to react to shifting social realities. While sovereignty is little more than a legal fiction in weak states like Somalia or along the extensive coastlines of Southeast Asia, it remains an important obstacle to cooperation at sea. Do existing global governance structures provide responsible states and non-state actors with the right tools to restore order on the oceans? Do current state reactions to maritime piracy reflect existing international norms, or is normative change underway?

The purpose of the volume is to use maritime piracy as a means to expose the incongruities in our understanding of global governance. The authors use broadly constructivist approaches to understand international actors' responses to the challenges created by maritime piracy. They recognize the many layers of obligations and authorities that arise from UNCLOS, the International Maritime Organization, international human rights law, security regimes, anti-terrorism treaties, and freedom of the seas doctrine. Complementing this are analyses of legal questions linked to the prosecution and punishment of pirates, which open up questions of jurisdiction and national sovereignty.

This approach has a number of analytical advantages. For example, the contributors question a number of myths and misconceptions around piracy, including that pirates are the “enemies of all mankind,” that piracy is only a Somalia problem, that pirates are terrorists, and even that the category of “pirates” is an uncontested reality. At the same time, this approach to piracy exposes some shaky foundations for IR theorists: how do we conceive of sovereignty and legitimacy when they are delinked from the territorial aspect of the modern nation-state? What happens to prospects for cooperation when we get to the nitty-gritty questions of practice related to paying for trials, imprisoning and maintaining captured pirates, bearing the burden of policing sea-lanes, or even determining what constitutes a pirate? Does anyone have a monopoly on the legitimate use of force at sea, and how is that legitimacy constructed? The chapters of the book uncover and analyze the various ways that international law and organizations channel actors’ understandings of maritime piracy and their efforts to respond to it.

## **II. Summary and Significance of the Proposed Book:**

The phenomenon of “piracy” serves as a means of opening up questions surrounding sovereignty, transnational governance, and enforcement of international law. Because piracy occurs in a space beyond the territorial nation-state, it exposes a host of issues related to the behavior of actors “on the ground” in international governance, and for international relations as a field. Without a territorially-bound sovereign authority, who decides what is right and wrong – and perhaps more importantly, why? Prospects for international cooperation are abundant, but which authorities get to enforce contending versions of law or appropriate behavior?

A constructivist approach to studying maritime piracy improves our understanding of how the language and institutions that are used to define and address the problem of maritime piracy shape the capacity of states and other actors to cope with the challenges that violence at sea presents. It broadens our understanding of the complex and sometimes countervailing motivations of all the actors involved, from international organizations and states down to the pirates themselves. Ultimately this volume provides an improved theoretical understanding of the response of the international community to maritime piracy.

For legal scholars, refinement of structures and processes related to persecution and prosecution of piracy is warranted, as is revision of piracy as a property crime or economic opportunity rather than violent behavior. This also then has implications for scholars of regulatory regimes, who rely on legal frameworks for enforcement of rules and agreements, as well as scholars studying state-building and state capacity, especially if we view pirates as primarily economically-motivated actors. Accordingly, this volume contributes to recent research on the role of non-state actors, security studies, international law, and international governance.

### *Existing Literature*

Recent literature and publications on the topic are available through the site maintained by one of our contributors, Christian Bueger, at [www.piracy-studies.org](http://www.piracy-studies.org). A few other recent book publications that reflect the appeal of the work of our contributors include Gould (2010), Heinze (2010), Steele (2008), Heinze and Steele (2009), Lang (2008), and Struett (2008). On the issue of maritime piracy specifically, one of our contributors edited a volume six years ago that offers policy analyses of the maritime piracy issue in the Malacca straits through about the 2004 time period (Ong-Webb, 2006). One similar book is Lehr (2007), but this volume is now somewhat dated, and does not address many of the constructivist IR theory questions that will be raised in the present volume, as it takes a more traditional securities studies approach to the topic. Another security-oriented, maritime terrorist approach is seen in Murphy (2009), yet it only represents a counterpoint to our volume. Additional forthcoming work (Haywood 2011) illustrates the interest and marketability of piracy as an issue area, and the likelihood that this will continue to be an area of research interest for a range of scholars.

These works complement more classic texts on piracy and international law (Rubin 1988) and piracy in IR (Thomson 1996). There is a new book, not yet available, (Kraska 2011) that deals with similar subjects but does not appear to emphasize an international relations theoretical approach to the problem, and focuses more explicitly on current policy responses to maritime piracy. Reflecting the broader appeal of the topic, even 'general' books on IR include chapters on maritime piracy, often presented as a problem for conceptual frameworks, international governance, or how states deal with non-state actors (*cf.*, Benton 2009, Lowenheim 2006, Lang 2008). Yet books that explicitly address piracy through a constructivist approach are largely absent.

### *Potential Audience/Market*

The potential audience is reasonably broad. Very few books use International Relations categories to analyze maritime piracy. As educators, the editors and contributors have attempted to address the topic in an accessible manner, with the explicit goal of making the volume usable as a complementary resource in upper division undergraduate and graduate courses such as International Organizations, International Relations, International Law, International Political Economy, or International Security. Given the nature of the topic, the volume also has ready appeal to research libraries and general college libraries. And the international breadth of the contributors indicates appeal for worldwide sales and potential for international adoption.

In short, we see this book as contributing to an emerging research agenda, and therefore innovative. This proposed volume adds value and complements a variety of existing research agendas. The book could be used in a variety of upper-level undergraduate and

graduate courses, and possibly even in courses on international criminal law. We also think the book will serve as an important foundation for future research addressing state responses to international piracy. Finally, as the core elements of the volume come out of a grant-funded workshop at the 2011 International Studies Association Annual Meeting, we are guaranteed a thematic roundtable or panel at the 2012 meeting, which will be built around the forthcoming volume. Ideally, this would help with marketing and exposure.

### **III. Contributors and Proposed Chapters:**

- Foreword  
Nick Onuf, Florida International University

#### *Section 1 - Introduction*

- Introduction (Struett, Nance, Carlson) with History/Background section, brief on Constructivism, and Actors list
- "Sovereignty sans Territory: Piracy, International Norms and Challenges to Governance"  
Jon D. Carlson, University of California, Merced

Sovereignty historically has had its basis directly linked to notions of territoriality. Consequently, issues of governance removed from this strict relationship to territory (*e.g.*, beyond the boundaries of a nation-state) pose challenges when it comes to punishment or adjudication of the behavior of non-state actors in these extra-territorial arenas. Where do claims of sovereignty reside, and who can enforce contending versions of law or appropriate behavior? How does transnational political authority emerge, and how can it be brought to bear against non-state actors that may not recognize its legitimacy? Accordingly, the examination of non-state actors that transgress against behavioral norms is a fitting way of exploring these questions. The phenomenon of "maritime piracy" serves as a means of opening up questions surrounding sovereignty, transnational governance, and enforcement of international law. Specifically, this chapter argues that the attempted linkage of Somali piracy to transnational terrorist networks is likely to enable the shifting of international norms regarding how maritime piracy is conceptualized and dealt with. Piracy already challenges modern norms against non-state violence in the international system, yet this new permutation is likely to allow international governmental actors greater leeway in violating territorial sovereignty in pursuit of individuals or non-state groups. Just as militarized manhunts have historically allowed for extra-judicial pursuit across borders, modern piracy is likely to erode the sanctity of sovereignty norms in lieu of cooperative security norms in the modern era. Altogether, the nested issues of piracy, legal jurisdiction and sovereign responsibility beyond the territorial boundaries of the nation-state expose incongruities in our contemporary understanding of global governance.

## Section 2 – Construction of International Law

- “Constructing Universal Jurisdiction over Pirates”
  - Harry Gould, Florida International University

The idea that pirates are the enemies of all humankind (*hostes humani generis*) has been fundamental in the articulation of universal jurisdiction over them. The analogy between pirates and other international criminals has been based upon the similar assertion that slavers, war criminals, perpetrators of genocide, etc. are likewise *hostes humani generis*. Part of this story is the common understanding that international society has since the days of Republican Rome considered pirates the enemies of all humanity, allowed for the exercise of universal jurisdiction over pirates, and sanctioned any party's use of force against pirates. We have told ourselves this since the 16<sup>th</sup> century, but we have been consistently mistaken. However, it does not matter that we were mistaken. It has been our repeated assertions that pirates are *hostes humani generis* and the actions taken based upon those claims that have made them the subjects of universal jurisdiction, and that has given normative force to analogizing other crimes with piracy.

- “Maritime Piracy and the Impunity Gap: Insufficient National Laws or Lack of Political Will?”
  - Yvonne Dutton, Univ. of San Diego School of Law

While the international community is employing coordinated naval fleets to patrol pirate-infested waters—captured pirates are not prosecuted with any regularity. One reason cited for this culture of impunity is the lack of sufficient domestic legislation to facilitate the prosecution of suspected pirates. But, what exactly is lacking: legislation or the political will to prosecute pirates?

This chapter will examine the anti-piracy laws (or lack thereof) in a number of nations in an effort to answer these questions. To the extent that some nations have criminalized piracy under their domestic laws, I analyze those laws to determine whether they are sufficient to allow for a successful prosecution of today's pirates given the nature of their acts or where they commit those acts. Although piracy prosecutions are costly and burdensome, piracy is a threat to the international community, and bringing pirates to justice is a duty and burden that must be shared by the international community as a whole. The relatively simple act of passing domestic legislation that criminalizes the acts associated with modern piracy is a necessary first step to ensuring that the goal of bringing pirates to justice can be achieved.

- “A “Global War on Piracy”? International Law and the Use of Force against Sea Pirates”
  - Eric Heinze, University of Oklahoma

In 2008, the United Nations Security Council passed a series of resolutions that authorized states to take “any means necessary” to combat piracy and armed robbery at sea in the area off the coast of Somalia. Such language, commonly understood to be an authorization for the use of military force, raises the question of whether, or under what circumstances, the international law of armed conflict can or should apply to the international effort to suppress piracy, as well as how the potential implication of this body of law might affect how states choose to address the problem of piracy in the Gulf of Aden area. Put another way, do these resolutions and subsequent state practice suggest that the global effort to combat piracy is legally tantamount to a “global war on piracy,” akin to the “global war on terror”? This chapter argues that despite the authorizations of force adopted by the UN Security Council, the law of armed conflict does not currently apply to the global effort to suppress piracy, is not intended by states to apply, and would only do so under a very limited set of empirical circumstances. The chapter proceeds in three parts: Part I summarizes the evolution of the law of piracy from the classic law of nations to the contemporary regime centered on the United Nations Convention on the Law of the Sea (UNCLOS), wherein I observe that the use of military force against pirates has effectively been outlawed under the current regime. Part II examines whether the Security Council resolutions that purport to authorize the use of force against pirates were intended by the Council to implicate the law of armed conflict, as well as whether this body of law would *prima facie* apply to the anti-piracy activities off the coast of Somalia. Part III examines whether recent anti-piracy operations by states off the coast of Somalia rise to the level of armed conflict and suggests that it would not be in states’ interests to escalate counter-piracy operations to this level.

- “The limit(ation)s of International Society? The English School, Somali Pirates and the burdens of Interpretation”
  - Brent J. Steele, University of Kansas

The chapter investigates how well one particular IR perspective – the so-called ‘English School’ or international society approach may prove to be in understanding the rather recent development of Somali piracy. Rather than cover a broad range of perspectives, the paper immediately utilizes insights from this perspective, which, while still somewhat hamstrung by its state-centric history, nevertheless provides several unique constitutive insights towards the Somali pirates, especially: (a) Great power, and international cooperation against the pirates and (b) the interaction between the Somali pirates and the ICU as members of a possible emerging ‘world society’, on the one hand, and the state-based ‘international society’ actors on the other. The work of Martin Wight and Hedley Bull remind scholars that there is room for non-state actors, even the Somali pirates, in an ‘international society’ approach – and the emerging literature dealing with the interactions and tensions between International and World Society seems to hold some promise in elucidating the three ‘constitutive’ processes noted above. Yet the chapter concludes by suggesting that the only way to understand the *reaction* of

‘international society’ to Somali piracy is to engage the latter’s ‘parasitic effects’ not upon the state-system itself, but rather the global economic environment within which states play a via-media, and even secondary, role. Further, state-centric perspectives tend to overlook the historical contexts of ‘postcolonial spaces’ which make them resistant to the nation-state model. Thus two further perspectives – one drawn from Gramscian IR; another from postcolonial theory - hold just as much promise in grappling with the global dynamics at play in the case of Somali piracy.

### *Section 3 – Global Governance and Maritime Piracy*

- “Maritime Piracy and Regime Complexes: Defining the Problem and Shaping Actor Responses”
  - Michael J. Struett and Mark T. Nance, North Carolina State University

There is a “regime complex,” or web of regimes, that addresses maritime piracy, and while some states have taken modest steps to deter and punish pirates, in general states are not taking aggressive action against piracy, and policy coordination between states has been limited. What explains this lack of coordination on this burgeoning global crisis, despite a pre-existing, applicable governance tools?

We argue that states’ low level of anti-piracy policy coordination is due in large part to gaps in the anti-piracy regime complex. We hypothesize that the overlapping regime covering piracy is itself a major barrier to effective cooperation because it does not comprise a coherent, comprehensive, and focused anti-piracy regime. Most of the institutions that comprise the regime complex focus primarily on other international problems, making piracy an afterthought. State preferences in creating and maintaining the relevant regimes are driven by issues unrelated to piracy. We contend that this lack of cooperation exists *because* of the regime complex that surrounds maritime piracy, even though each of the regime elements is intended to *promote* cooperation. Using a constructivist perspective, we emphasize how different elemental regimes within the complex shape actors’ understandings of piracy, and thus their interests in it, in conflicting ways. Ultimately that process hampers coordination. As a result, minimal and ineffective cooperation among key actors (commercial shipping interests, naval powers, coastal states, flag states, state criminal justice agencies, mariners, cargo owners, insurers, and pirates) is the prevalent status quo.

- “Piracy Securitizing and Desecuritizing: Analyzing Counter-Piracy Management in the Malacca Straits”
- Graham Gerard Ong-Webb, Kings College, London

This chapter argues that the apparent ‘success’ in suppressing maritime piracy along the Malacca Straits, which has been attributed to regional counter-piracy measures led by the



littoral states of Singapore, Malaysia and Indonesia—stands to relax the very collective action that may have turned the tide against this threat in the first place. This chapter utilizes the dual-conceptual idea of ‘securitization’ and ‘desecuritization’ established by the Copenhagen School of Security Studies (led by Barry Buzan, Ole Wæver, and Jaap de Wilde) to analyze developments in counter-piracy management in the Malacca Straits. According to them securitization, as an analytical tool, can help us understand “who securitizes, on what issues (threats), for whom (referent object), why, with what results, and not least, under what conditions.” Desecuritization, which is more akin to a behavioral phenomenon, can be defined as a process involving “the shifting of issues out of the emergency mode and into the normal bargaining processes of the political sphere.”

In particular, there is an underlying tension between Singapore, and Indonesia and Malaysia. In a nutshell, Singapore successfully securitized maritime piracy as an international security threat by 2005, which in turn, catalyzed the establishment of the current aerial and maritime patrols. This perceived success may be vital in bolstering the deterrence function of current countermeasures, and also sustaining market confidence in the Strait as a dependable route for commercial shipping. Indonesia and Malaysia may have already embarked on the process of desecuritizing piracy in the face of declining figures. The waning attention of the media has also not helped. Overall, there is clearly an ongoing tension between securitizing and desecuritizing actors, and in the face of limited resources, competing threats to national and regional security, and fluid political will, current arrangements remain uncertain and tenuous.

- “Explaining Institutional Variation among Anti-Piracy Regimes: A Global Governance Approach”
  - Terence Lee and Kevin McGahan, National University of Singapore

Despite the diversity and complexity of the actors involved, what explains how various states and non-state actors were able to overcome certain collective-action problems to create and develop an anti-piracy regime targeting waters around the Horn of Africa? We posit that the creation and development of the anti-piracy regime around the Horn of Africa is especially perplexing for dominant rationalist approaches in international relations, which traditionally stress material and national interests of states in international security cooperation. By critically engaging global governance and constructivist approaches, this paper suggests that states and non-state actors instrumentally framed an apparent security threat – at least initially – in terms of normative and international humanitarian concerns, which resonated and offered meaning to powerful actors, such as the US and its allies. Thus, although this study highlights global governance and the various roles of non-state actors, especially in framing issues and cognitive priors, we show that powerful states remain crucial for overcoming collective-action problems as well as implementing and enforcing regimes over time.

- “Governing Piracy: Macrosecuritization, Governance, and Maritime Space”
  - Christian Bueger and Jan Stockbruegger, University of Duisburg-Essen, Germany

Within less than a decade piracy has been turned from a marginal economic problem into a global security problem. A surprising array of international actors addresses piracy and coordinates their activities. In this contribution we interrogate this astonishing story of international cooperation. We argue that what we can observe here is a global security governance arrangement under construction. We conduct a praxiographic analysis of the current counter-piracy governance arrangement. A praxiographic analysis takes as the main unit of analysis practice, that is, collective patterns of action which entail speech and doings. Based on this evidence we carry out what can be called an “informed speculation” about the future of the arrangement. Based on the notion of macrosecuritization we develop three different forms of expectations (or scenarios) of what characterizes the piracy governance arrangement: 1) an interest based “alliance” or “coalition of the willing”; 2) as a forming “security community” of cosmopolitan or regional scale; or as a 3) hybrid “global security assemblage”.

*Conclusion – TBD* We are planning to solicit a concluding chapter from either a major constructivist scholar in IR, or someone with well recognized expertise in the field of maritime piracy. We are open to editorial advice on which approach would be most useful.

#### **IV. Timeline for Submission:**

As the main proposed chapters are either completed conference papers or in the process of revision, moving forward with this manuscript should not present many significant delays. Revised Chapters would be due to the editors, and shared with other contributors to maximize integration of the volume on July 1<sup>st</sup>. Contributors’ chapters would be due to the editors by Sept. 15, 2011. At the outside, we intend to have all the components of the book completed and ready for publisher review and final editorial evaluation by **November 1, 2011**. Presumably, this would make the book available to be marketed for publication in 2012.

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