The Concept of *Hostis Humani Generis* in Cultural Translation: Somali Piracy, Discursive Containment, and the Creation of an Extralegal Space

**Introduction**

Within less than five years, Somali piracy has become the epitomization of contemporary piracy in the United States. Particularly during the years 2008 and 2009, spectacular raids have caused a visibility that the much more enduring and brutal maritime violence in other hotspots has never reached.

Obviously, efforts have been made to explain the great political and popular interest in Somali piracy. The discussion is dominated by three perspectives. First, the broad discussion of Somali piracy in U.S. media is due to the fact that international (including Western) vessels, companies, and sailors are victimized – rather than local fishermen, boat people, and the occasional tourist, as in Southeast Asia. Second, states promote the fight against Somali pirates; the massive military and judicial response to piracy is primarily a convenient proxy conflict for states to follow their own geostrategic interests in the region. Third, trade companies, particularly those in the energy business, have launched massive lobbying campaigns to emphasize the danger of Somali piracy and its potential union with terrorism in order to protect trade routes.

This paper goes one step back and explores why a Somali pirate, other than maritime aggressors in other hotspots, is so particularly thinkable and how this thinking affects actual forms of violence around the Horn of Africa. I will argue that pirate images that already prevail in the U.S. are particularly easy to relate to the Somali case, and that these images are evoked according to a very specific narrative logic. This narrative logic is my main interest here. Importantly, the narrative patterns of piracy do not only have consequences for the violent actors themselves, but for everyone in the political context.

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1 I thank Garnet Kindervater and Karin Loevy for offering criticisms and suggestions on earlier drafts of this paper.


within which they move. This analysis of this paper will therefore emphasize the spatial dimension of claims to legitimate violence against pirates, using the 1854 Greytown Affair as a central reference point.

By naming the maritime violence at the Horn of Africa piracy, a certain cultural understanding of the “nature” of these actors has been put forward, and certain implications of this nature have been accepted a priori. The implied pirate nature can be summarized in one term, which is also at the heart of this paper: hostis humani generis, the enemy of all humankind. The most influential definition of a pirate as hostis humani generis has been put forward by William Blackstone:

Lastly, the crime of piracy, or robbery and depredation upon the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke (3 Inst. 113) hostis humani generis. As, therefore, he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community hath a right by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature have been otherwise entitled to do, for any invasion of his person or personal property (Blackstone 71).

Even though a conventional crime (robbery) is mentioned in this definition, the pirate becomes hostis humani generis primarily by being an aggressive fragment of wilderness that attacks civilization at large, whereupon civilization – sovereign states, in the conventional sense – must destroy this enemy in an act of self-defense. This understanding of a pirate is not based on performance, meaning that particular forms of behavior are recognized as piratical. Indeed, definitions of piracy have virtually always lacked a coherent understanding of the specific acts piracy consists of. Instead, piracy has usually been defined by constellation – not the act itself is central, but the legal, political, and cultural implications of the act.

The implications concern both the actor him- or herself and the space he or she operates in. I will elaborate on the notion of space in the first section of this paper, and argue that the perception of Somalia as an ungovernable territory allows the legal treatment of Somalia as a space where pirates can, by definition, exist. In a second step, I will explicitly return to the discursive situation in the United States and ask how a pirate is recognized there; I will essentially argue that the pirate serves a cultural purpose, namely to represent a philosophical question as to the legitimacy of violence. This question is virtually always raised in the context of U.S. discussions of Somali pirates. The last part of this paper discusses the implications of this observation. Using the example of a text by Douglas Stewart on contemporary piracy, I will show how the constellations presupposed in the United States already set the stage for an extremely biased view of Somali actors, their political role, and their likely future.

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The concept of *hostis humani generis* underlies all of these thoughts; even though it is originally a legal concept, the constellations implied here have been used in all kinds of cultural contexts to make the notion of piracy accessible in narratives. The way we understand pirates is strongly and directly based on the *hostis humani generis* concept, and has inherited its very specific bias. In this paper’s discussion of the discursive logic of pirate attributions, the analysis of the *hostis humani generis* concept’s inherent bias is a key concern.

Somalia is Like the Sea: The Notion of Space in “Pure” Piracy

In Western legal discourse, the pirate is largely defined by the space in which he or she operates. Geographic space, in this context, is fundamentally structured along the symbolic parameters of legal convention. When I speak of space, I only mean spaces constituted by legal distinction. For example, one conventionally distinguishes between piracy, which takes place on the high seas, and armed robbery, which takes place in territorial waters. This distinction, which is reflected in international law, is primarily made to protect concerned states’ sovereignty over territorial waters from outside claims to universal jurisdiction over actors who operate there. It follows that legally, “proper” acts of piracy hardly exist according to this definition, because most attacks take place in territorial waters. This is a fact that has been criticized by a number of institutions and scholars concerned with maritime violence.

Culturally, the fact that pirates are defined via the high seas translates into an image of an almost virtual aggressor, a roamer of the sea without any national or cultural ties. The pirate is an Other who stands outside of all nations and cultures; the pirate is a “wild fragment of nature” (Rediker 146) a part of a wilderness that, by definition, lies radically outside of “every human community” (Blackstone 376). As mentioned above, the wilderness itself is understood as a space in that it stands outside of all legal spaces. Being a representative of this wilderness, the *hostis humani generis* not only addresses the limits of civilization in theory; by virtue of his or her existence, he or she indicates where this ungovernable space beyond civilization exists in the real world.

The definition of civilization underlying this perception is resoundingly clear. The binary opposition between the pirate and civilization is, in the case of an actual trial, manifested by an actor who represents piracy and a state which represents civilization. Following the legal opinion of seventeenth-century author Matthew Tindal, one state may generally act on behalf of all states because the notion of transgression inherent to the concept of *hostis*

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6 The most notable institutional critic is the International Maritime Bureau (IMB), which uses a definition of piracy that marks piracy as violence against a ship regardless of its location.
humani generis implies, above all, a dangerous abandonment of statehood (25). Statehood itself stands for the notion of civilized order. Consequently, the concept of hostis humani generis imagines the pirate as an entity lacking a home base within a state, but defines the pirate as a fragment of the sea, i.e. the ungovernable wilderness. The wilderness is a space which both removes the pirate from state influence and allows the application of universal jurisdiction over the pirate. The bias of such definitions is obvious, as they exclude other political formations than states from the definition of civilization, but these understandings have been at the core of Western legal and political pirate understandings since the seventeenth and eighteenth centuries. They have also spurred on a very specific political use of the concept of hostis humani generis that is relevant for the case of Somali pirates. The central aspect here is the moment when the status of a certain space starts to allow universal jurisdiction over the pirate.

Universal jurisdiction means that every state is allowed to fight and to try the pirate even if the common legal reference points to determine jurisdiction are not given because, as both Tindal and Blackstone have argued, the use of force against a pirate is by definition self-defense against an act of aggression from outside. This aspect of the definition legitimates unchecked violence against actors constructed as pirates. This dimension has increasingly become the focus of attention for scholars in the context of the “War on Terror.” For instance, Daniel Heller-Roazen has expressed concern that the concept of hostis humani generis may be used to systematically create the absolute subjection of persons. By utilizing the legal implications of hostis humani generis, the exception to the law can be framed and permanently secured as an integral part of the legal system; the exception can be incorporated into the legal structure of a state. “One might consider the contemporary pirate,” writes Heller-Roazen, “as an ‘ambulating ocean,’ or ‘moving sea,’ in fact perhaps on national terrain, but viewed, nonetheless, from a legal perspective as if he crossed a no man’s land.” In what he calls an inversion of the “classic relation” between the high seas and the pirate (179), Heller-Roazen postulates that the body may determine the legal space, not the other way around.

Despite his intriguing argument supporting these remarks, I disagree with Heller-Roazen’s conclusion. An inversion does take place, but it does not mean that the pirate becomes a one-man legal realm. Rather, the inversion, I suggest, is this: the empty space no longer marks the body as piratical,

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7 These are the perpetrator’s nationality, the victim’s nationality, and national territory. In the context of regular courts, the year 1705 marks the first time that piracy is tried as a universal offense, which does not require the usual national attachments to make a particular court a legitimate place to try an offense. In 1705, the Englishman Thomas Green was charged with piracy by the High Courth of Admiralty of Scotland, although neither he was of Scottish nationality, nor were his alleged victims or the territories where the attacks supposedly took place.

but the piratical bodies mark a space as empty – and thus open to unchecked intervention. This space in this definition is not geographical, but a political kind of space that is defined as open to legitimate outside violence.

For instance, when the inhabitants of Greytown\(^9\) were attacked as hostes humani generis by the U.S. government in 1854, President Pierce defended his actions by arguing that the space of this particular town in Nicaragua was “a piratical resort of outlaws.”\(^10\) A statement about the town was necessary to justify exceptional acts of violence abroad. The people of Greytown were hostes humani generis not because they all had this status individually, but because this particular city had been marked as a space that bred enemies of all humankind. Had Pierce’s actions been legitimated by Congress, the fact that Greytown had been marked as a space open to violent subjection would have caused a general precedent against the space called “city.” All cities would then have been potentially vulnerable to such treatment, because a city would have become a legitimate site of the violent struggle between civilization (U.S. government) and violent fragments of wilderness (inhabitants) in a space of wilderness (city). By using the concept of hostes humani generis in this context, the city would have been a space of wilderness by definition. The hostis humani generis, in short, threatens to mark a particular kind of territory as open to violent expansion – not only one particular geographic territory, but all territories that are politically organized in the same way. This, not the fate of an individual, is the actual problem about the notion.

I have discussed this point at such length because the case of Somalia is special both in terms of general political spatiality and the use made of this space by the actors constructed as “pirates.” On the map, Somalia is a state with a discernible territory, population, and clear borders. At the same time, it has been the prime example of a failed state for more than twenty years. The paralysis of local government structures resulting from this situation was used to establish a stable power base for actors engaged in the abduction of foreign ships and crews. Because ships and hostages sometimes spend months in Somali ports before a ransom is paid, the land is as central

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\(^9\) Greytown is the English name for the town of San Juan del Norte in Nicaragua. As the incident I will discuss here is known as the “Greytown Affair,” I will use the English name here.

\(^10\) In the Greytown Affair, the U.S. military “flattened Greytown with gunfire” because the town would not relent in a conflict with the U.S. minister to Nicaragua, Solon Borland. Borland had ordered the death of a local captain after a boat collision which the Nicaraguan inhabitants of the town refused to accept as lawful. The U.S. government’s violent response was read as an act of war in the national press, and President Franklin Pierce was strongly criticized for violations of the constitution (mainly because he had passed over Congress in ordering a violent attack). “In a message to Congress in December 1854,” writes Kenneth B. Moss, “Pierce argued that this action could not fall in the category of war because Greytown was not an organized society but a piratical resort of outlaws.” Because citizens were thus defined as pirates (and because a federal circuit suit supported this opinion), Pierce considered unchecked violence against them as lawful. Cf. Kenneth B. Moss, Undeclared War and the Future of U.S. Foreign Policy (Washington, D.C.: Woodrow Wilson Center Press, 2008): 58f.
to the business as the sea. In this, Somalia differs sharply from other piracy hotspots, where pirates cannot claim domination over entire towns and regions. I will argue that in effect, this twofold special situation of a failed state and stable pirate ports implies an understanding of Somalia not only as wilderness, but even, quite literally, as a sea.

Through its “failure” as a state, Somalia has become thinkable as a non-state, and therefore a wilderness. Numerous attempts after the dictatorship of Siad Barre to reintegrate Somalia into the “civilized” realm of central statehood have failed. Attempts to interfere in Somalia diplomatically or militarily, to install functioning state governments from outside, even to establish successful foreign business all have failed. To paraphrase Cornelius van Bynkershoek, it seems that Somalia just “cannot be possessed.”

As in the case of the Greytown Affair, the state status of Somalia allows a geographical statement regarding the limits of a hostis humani generis status. But there is yet another interesting aspect to it, namely in regard to the role of the Transitional Federal Government (TFG). This faction is internationally acknowledged as the national government of Somalia, but de facto does not govern more than a minimal portion of Somalia. The TFG serves as the fiction of a national government in order to keep the state-based international system universal; for instance, it rubber-stamps treaties when international law requires that a national government approves of foreign intervention in the region.

The legal role of this fictional national government is a very interesting one. I will only mention one case in point here, namely the TFG’s role in Security Council Resolution 1816 (2008). According to point seven of this resolution, other states may treat the territorial waters of Somalia as if they were the high seas when the TFG allows them to do so. Several states have made such agreements with the TFG, among them the United States, and the legal force of the Security Council Resolutions that allow such practices has been prolonged regularly.

The legal space of the high seas is defined by the structural impossibility to exercise government control. An understanding of territorial waters is immediately derived from such an understanding: Territorial waters are spaces that a government has an exclusive legal claim to, even though it cannot actually be expected to govern there. If the TFG is a national government even though it effectively controls only a few streets, the whole rest of Somalia is by implication a space that can be understood as the territorial waters of these few streets – nominally possessed yet ungovernable. If some of these regions are in the hands of pirates, this twofold maritime implication strongly underlines the characterization of Somalia as a wilderness.

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Constructions such as these are not possible in other hotspots of maritime violence such as Southeast Asia or Nigeria. In my view, the treatment of Somalia as a quasi-sea strongly contributes to an explanation why maritime aggressors in Somalia, rather than those in the Malacca Straits, Nigeria or elsewhere, have so quickly and successfully turned into the epizomization of modern piracy. Because Somalia can be constructed as a quasi-sea, Somali pirates satisfy the central aspects of a hostis humani generis: first, the subject-ion to universal jurisdiction wherever they attack, and second, the direct association with a space of wilderness that is quite universally accepted as such ("failed state"). In this sense, they are indeed the only existing "proper" pirates today.

Legitimate Violence and Pirates as Discursive Representatives

I have argued before that the legal construction of universal jurisdiction is directly linked to cultural notions of the wilderness. I will now go a step further in my argument, and focus on the discursive role of pirates in the United States that is derived from such a construction. When legal constellations are transformed into culturally accessible narratives, it is an oversimplification to define civilization as states, and wilderness as the mere absence of statehood. The violence between actors associated with civilization and wilderness, respectively, is narrated with an emphasis on "civilizational" legitimacy; it is the construction of legitimacy which effects the construction of hostes humani generis as actors.

In order to discuss such legitimacy constructions, the present section relies on Foucault’s understanding of the connection between power and legitimacy as put forward in the volume of Society Must Be Defended. According to Foucault, historians of the seventeenth century introduce a new way of assessing history. History is no longer “the State talking about itself” (Foucault 142) a universally valid, organic narrative punctuated by war and told in order to support the “truth” of the current sovereign’s legitimate claim over his or her reign. Instead, the notion of truth in history is disconnected from any universally valid claim of the sovereign; it is rather linked to the idea of a state of war, a struggle of perspectives and ideas. Precisely by virtue of being partisan, those perspectives are able to provide truth, while the different truths about one and the same event can differ dramatically. Winning a struggle for power and asserting a particular version of truth now belong together as equivalent objectives in a struggle. At the same time, the challenge of power is now always accompanied by alternative versions of truth. The basic tool to create such a struggle is to imagine history not as a succession of princes, but as a struggle between races.

This new revolution- and struggle-based approach to historical “fact” goes hand in hand with the rise of new regimes of state power as the prime locus of civilization. A struggle between sub-state normative perspectives becomes central to the construction of history. All of these sub-state groups
attempt to hegemonize their values and views; what makes this struggle special is that the groups do not simply refrain from violence against each other, but also acknowledge the legitimacy of the state’s monopoly of force as a common ground. They have implicitly agreed that the only way to hegemonize their own perspective is to capture legitimate state violence for their cause. In order to capture legitimate state violence, however, these groups have to make credible that their own perspective is representative of the nation. Foucault argues that in order to represent the nation, and to defend itself against other, revolutionary truth regimes, the regulatory state makes a strong and consistent claim to represent “the norm.” In the same vein, challenges to the regulatory state within and without are constructed as deviance from the norm. Foucault’s famous inversion of Clausewitz is to be understood in this vein (ibid. 15). Scholars like Robert Cover and Donald Pease have made arguments that confirm this situation of normative struggle as central for the legal and cultural realms in the United States.

However, in order to be able to use a version of truth strategically against, say, a political opponent, certain common discursive reference points between the opposing parties as well as the nation state as a whole must exist. There must be a network of implicit agreements, and a common language, to restrict the normative struggle to a struggle for inter-state hegemony, and to prevent all-out violence between different normative perspectives. Foucault offers the “homogenous field” as a way to establish such discursive common ground:

If different subjects are to be able to speak, to occupy different tactical positions, and if they are to be able to find themselves in mutually adversarial positions, there has to be a tight field, there has to be a very tightly woven network to regularize historical knowledge. As the field of knowledge becomes more regular, it becomes increasingly possible for the subjects who speak within it to be divided along strict lines of confrontation, and it becomes increasingly possible to make the contending discourses function as different tactical units within overall strategies. […] The tactical reversibility of the discourse is, in other words, directly proportional to the homogeneity of the field in which it is formed. It is the regularity of the epistemological field, the homogeneity of the discourse's mode of formation, that allows it to be used in struggles that are extradiscursive (Foucault 208).

Foucault introduces the barbarian as an outside force that can serve as a reference point in such a homogenous field. The barbarian is a primitive warrior who stands outside of civilization, a conquerer whose excessive freedom “is based solely upon the freedom others have lost” (ibid. 196). Like the enemy of all humankind, the barbarian is an aggressive Other who cannot be ignored or reasoned with. The barbarian in his discursive function “has to be bad

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and wicked, even if we have to admit that he does have certain qualities. He has to be full of arrogance and has to be inhuman” (ibid.). Foucault’s homogenous field restricts itself to certain selected, widely shared statements about the nature of the barbarian, and keeps these generally accepted statements on his nature open to conflicting interpretation. For example, the homogenous aspect of a discourse may be that the barbarian “lives only for war … the sword being his right, and he exercises it without remorse.”\textsuperscript{15} Then the disputed aspect may be whether living by the sword is a good or a bad thing in a certain situation, whether we should see the barbarian as a model or a scarecrow. One could, for instance, imagine that a state must decide whether it goes to war: a group of doves within that state may proclaim that its hawkish opponents are barbarians, and therefore have no legitimate place at all in a civilized nation. The opposing hawks may reversely proclaim that all members of the nation are barbarians at heart as soon as they want to do away with the frivolous fuss put up by the peace-promoting doves, and actually want to get something done.

In such an imagined conversation, the barbarian stands for a strategy of force outside of a framework of standardized conflict procedures. The struggle of these two imagined groups is fundamentally a struggle about this question. Like the legendary quarrel between Agamemnon and Achill,\textsuperscript{16} the barbarian’s conflict with civilization as interpreted within a homogenous field is able to stand for a fundamental philosophical question; the barbarian is a discursive representative of this question. The concept of discursive representative stands to organize a notion of the barbarian which can be used to personify a particular fundamental question, in this case: is it legitimate to say that the end justifies the means to achieve change that is for the good of society – or might the observance of the correct means be more important to uphold society as something worthy of protection? Within a discursive tradition, such a question may be fairly stably attached to a given representative, and successful attempts to harmonize representations of the barbarian and the underlying question attached to him or her are celebrated as particularly good and enduring images.

The pirate as a \textit{hostis humani generis} is a discursive representative as well. The question attached to his or her is epitomized by the story of an encounter between Alexander the Great and a pirate:

For it was a witty and a truthful rejoinder which was given by a captured pirate to Alexander the Great. The king asked the fellow, ‘What is your idea, in infesting the sea?’ And the pirate answered, with uninhibited insolence, ‘The same as

\textsuperscript{15} Bonneville quoted in ibid. 196.

\textsuperscript{16} Joachim Latacz argues that this quarrel which dominates the \textit{Iliad} addresses the question: Who can claim the spoils of war, the one who has the greatest claim by virtue of lineage and high birth, or the one who is supreme in battle? This question is so central because it addresses the more fundamental and enduring question: Who should be allowed to claim leadership, the noblest or the best? Joachim Latacz, “Die Ilias: Inhalt und Aufbau,” \textit{Homer. Der Mythos von Troja in Dichtung und Kunst}, eds. Joachim Latacz et al. (München: Hirmer, 2008): 117.
yours, in infesting the earth! But because I do it with a tiny craft, I’m called a pirate: because you have a mighty navy, you’re called an emperor (Saint Augustine 139).\textsuperscript{17}

This story, which is often cited in the context of Somali piracy as well, addresses the fundamental problem of piracy definitions: namely that the performance of wild actors (the pirate) need not differ from the performance of civilized actors (the emperor). The provocative potential of the story results from the fact that it is stripped of all narratives of legitimacy that usually accompany the clash of pirate and state. By virtue of their striking absence, the story is able to draw attention to the centrality of these narratives in the creation of the pirate as a natural foe.

If we assume that legitimacy is central to all such piracy definitions, the \textit{hostis humani generis} may be the discursive representative of a question as to the legitimacy of organized violence. The question of the pirate as \textit{hostis humani generis} can be summarized as: \textit{Who can rightfully grant legitimacy to violence?} A successful \textit{hostis humani generis} narrative is always directly connected to challenging questions of legitimate violence.

Second, a successful \textit{hostis humani generis} narrative always features ambivalent actions of “the pirate” because the primary function of a \textit{hostis humani generis} representative is to personify a question. This characteristic ambivalence is epitomized by the two most common characterizations of pirates in Western culture: (1) deviant monster/hardened criminal, or (2) rebellious underdog who acts against a fundamentally unjust system/poor person who can only choose between crime and extinction.

The two contrasting characterizations are typically evoked in discourses on \textit{hostes humani generis}. They represent a negative vs. a positive reading of the pirate that may mirror a commentator’s stand on piracy in debates; later in this paper, I will discuss an example of such perspectives in detail. In the genre of pirate fiction, one can even find these two contrasting readings of piracy in one and the same narrative, when a “good” pirate and a “bad” pirate are at conflict. What is important is that these readings do not actually contradict each other. A deviant monster may very well be capable of social criticism; a criminal may very well be poor, and the other way around. Indeed, most characterizations of pirates implicitly allow that all four features may be satisfied by one and the same actor. Depending on whether a pirate figure is condemned or celebrated, one or the other reading is emphasized.

However, it has to be said that most characterizations of contemporary piracy lean to a strong condemnation of the pirate. In the context of Somali piracy, the large majority of U.S. commentators has condemned Somali pi-

\textsuperscript{17} This book, \textit{De Civitate Dei Contra Paganos}, was written in the fifth century, and, very generally put, discusses relationships and conflicts between the political and the spiritual realms in Christian philosophy. The greater context of the story is an argument that is deeply concerned with conflicting claims of legitimacy.
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rates’ attacks while only a small minority saw some legitimacy in their actions.\(^\text{18}\) And even in the cases that acknowledge a certain legitimacy of the pirate’s actions, restoring the claim to superior legitimacy of “the king over the pirate” is viewed as a key concern.\(^\text{20}\)

This tendency to condemn the pirate, and to favor the emperor who represents civilization, is an inbuilt characteristic of *hostis humani generis* narratives. The construction of a pirate as *hostis humani generis* leaves little alternative than to legitimize the emperor explicitly or implicitly. As the history of legal application shows, groups of *hostes humani generis* are not conceptualized as communities including families, division of work and binding traditions. Rather, *hostis humani generis* communities are imagined to be all-male brigades. The enemy of all humankind is not imagined to consider any common good because his or her group is not stable enough for this kind of thinking. Instead, *hostes humani generis* organize in fight-based communities that attack not for a collective reason, but simply because all members happen to have the same reason to attack. A group of *hostes humani generis* does not think strategically in terms of self-reproduction, but tactically in terms of individual betterment of all members within a context other than the group itself. As soon as the objective of individual betterment is no longer met by the group, the group disassembles, and the members recontextualize themselves.\(^\text{21}\) This is, in short, how these groups are conventionally imagined.

This obvious difficulty to keep such an inherently fragile group together implies two things. First, the enemy of all humankind is necessarily an aggressor in permanent war with the world – just as Blackstone would have it – because the only way to keep up a group like this is to keep up the common objectives of the members. Since those objectives are exclusively met by aggression against others, aggression has to be acted out permanently, and with recurring experiences of success. Second, enemies of all humankind do not reproduce, they recruit. The constant flow of new recruits is neces-

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\(^\text{20}\) For instance in this typical statement: “Somali in power justify piracy, and rationalize support for piratical activities, because of illegal foreign fishing and alleged toxic dumping. Whether or not those claims are correct, they are believed locally and a prominent narrative of victimhood is widely accepted. Integral to the campaign to combat Somali piracy, therefore, is to create an ad hoc international/Somali body under the UN Security Council to ascertain the truth and falsity of toxic dumping allegations and to investigate reports of illegal fishing.” Robert I. Rotberg, *World Peace Foundation, Policy Brief # 11*, January 2010: 5.

\(^\text{21}\) For example, the tendency of pirate crews to disassemble is recognized as a central feature of the most prototypical pirates in the Western world, namely the third-generation Golden Age pirates who operated in the Atlantic region between 1716 and 1726. An illustrative graph of these complex and unstable relations between different pirate crews can be found in Marcus Rediker, *Villains of All Nations. Atlantic Pirates in the Golden Age* (London: Verso, 2004): 80.
sary to maintain the existence of such groups. Quarrels and better individual prospects, as well as battle and death, easily cause membership numbers to decrease. Since new members with the same objective do not come from the group itself, they have to come from somewhere else. This twofold dependence on a world around the hostis humani generis group, via a flow of prey and recruits, explains why these groups are imagined to be inherently small and marginal: they are essentially constructed as parasites.

The double strategy of constant aggression and constant recruitment makes the hostis humani generis group vulnerable to changes in the world around it. If a great number of members are lured away from the group, if the numbers of recruits dry up, or if the group meets decided and successful resistance, the group is likely to falter. This is why the hostis humani generis’ existence is constructed as temporary and his eventual defeat as inevitable. His or her only – retrospective – contribution to the culture he or she has attacked, then, is either to serve as the spearhead of national expansion, or to provide an exotic, primitive image of those who once tried in vain to challenge the ways of the world, which are equivalent with the ways of a nation state-based system.

If knowledge about an enemy of humankind is thus standardized, and if the primary agreement is achieved that a particular actor is indeed a hostis humani generis, this strongly limits possible interpretations of that actor’s motivation, actions, and general position. If an actor is conceptualized as a hostis humani generis, it is implicitly agreed that 1) the actor in question is small, marginal and unstably organized, 2) the actor is parasitical and capitalizes on given structures around him or her instead of offering a substantial alternative to these structures, 3) the actor is illegitimate and has a criminal leaning, and 4) the actor is likely to be defeated sooner or later. Indeed, in most cultural U.S. reproductions of pirates, pirates do not prevail; even when they are the triumphant heroes, they are constructed as the last of their kind who always sense their own dawning destruction. The popular images of pirates as the colorful outcasts on their last stand against a technocratic world order are a case in point here.

Pirate Constructions as Discursive Containment

The concrete political usefulness of such narratives and the creation of homogenous fields now becomes visible. The hostis humani generis is not only constructed as a mortal enemy; rather, he or she is an illegitimate enemy that cannot by definition be legitimate or prevalent. Constructing a political actor as a pirate thus has much deeper implications than declaring this actor an enemy. Recall, for instance, the long and tedious history of growing legal respect for the Barbary states in Europe. This is an example of a discursive change in which an actor is grudgingly allowed to be interpreted in a different vein than that of the illegitimate aggressor who is doomed to fail. But it took centuries to change this perspective; in fact, the tradition of constructing
Barbary corsairs as *hostes humani generis* has never completely disappeared.\(^\text{22}\)

If an actor is to become thinkable as an achiever of serious and lasting political effects, he or she must not be conceptualized as a *hostis humani generis*.

The reading of Somali actors as pirates substantially limits their political reach. Constructing them as pirates precisely does not imply that they are legitimate actors at eye level, or that one should pick up their actions as a model for political change, or that their appearance could be considered the beginning of a new era. Instead, piratical violence is constructed as nothing more than a gesture of provocative subversion. It is quite secondary how this provocative subversion is spelled out specifically: if enemies of all humankind are considered reminiscent of Plato’s *Commonwealth*, if they are constructed as the most radical democrats or the most devout believers, if they are talked up as the avengers of the Third World who set an example against exploitation, or as colorful individualists who challenge a technocratic world order – in all of these cases, the actions of a *hostis humani generis* are in fact reduced to strictly symbolic and essentially impotent gestures.

In contrast, consider how easy it is to argue against an actor constructed as a *hostis humani generis* within the logic of the *hostis humani generis* concept, and to promote actual political action on the basis of this underlying constellation. A randomly chosen example from 2002, which is before contemporary maritime piracy becomes an acknowledged political issue, can demonstrate this point:

Common sense tells us that most raids covered in this book are acts of piracy, even if there may be some quirky legal discussion about it in some cases. Since that glorified epoch when Blackbeard, Mary Read, and Anne Bony [sic] hoisted the skull and crossbone over their sailing ships, the word ‘pirate’ has a romantic connotation. In Las Vegas, tourists may marvel at a staged pirate attack every day […] The audience’s sympathy is always with the pirate – they are the underdogs rebelling against authority.

Forget this romantic illusion; reality is merciless. While you are reading these lines, heavily armed pirates assault someone somewhere on the high seas. People are intimidated, abused, taken hostage, murdered on the spot, or cold-bloodedly thrown overboard. Modern pirates do not deserve any sympathy, even though many come from a more than modest background. It would be wrong to belittle their crimes out of pity, because they all too often act out of brutal calculation and greed, sometimes out of sheer bloodlust.\(^\text{23}\)


In this passage, the author Douglas Stewart\textsuperscript{24} relates to the two most widespread positive readings of the \textit{hostis humani generis}, namely the image of a rebellious underdog and that of a poor man without any alternative. In Stewart’s argument, both of these readings are bluntly dismissed as “wrong.” By evoking pop culture interpretations of piracy, Stewart discounts the first reading of the rebellious underdog as the naïve illusion of a romantic against which he contrasts the “merciless reality” of his own reading. He tactically grants that this reality is merciless to the pirate, too, thus leading over to the second positive reading; yet the reading of the pirate as a poor man without an alternative is portrayed as equally naïve and sentimental. What is more, this more political reading is immediately accused of viciously downplaying the traumatic experience of people who fell victim to bloodthirsty, money-grubbing sociopaths. In this passage, the two main positive readings of the pirate in Western culture are countered by evoking strong binary oppositions: reality v. fiction (rebel), and individual guilt v. structural conditions (poor man).

The concept of the \textit{hostis humani generis} presupposes an emphasis on individual guilt. It would be difficult to use the \textit{hostis humani generis} narrative without presupposing some notion of individual responsibility for one’s own actions; neither the idea of piracy as a crime, nor the concept of unstable all-male brigades could be sustained otherwise. The pirate was not driven to his or her deed, but chose to do it. It implicitly follows that whatever the punishment, the pirate knew it was dawning upon him or her, so it is deserved.\textsuperscript{25} Within the logic of a \textit{hostis humani generis} narrative, individual guilt in a pirate is taken as self-evident, as ‘common sense’, even as a ‘reality’.

Stewart’s \textit{hostis humani generis} narrative assumes a binary structure with clear lines of enmity. The poles of individual guilt and reality are directly linked to one other, in the sense of: ‘It is a reality that an individual guilt of

\textsuperscript{24} Douglas Stewart is a lawyer and a writer of fiction as well as non-fiction with close ties to the ICC International Maritime Bureau.

\textsuperscript{25} See the fictional statement of the pirate Mary Read: “She answer’d, that as to hanging, she thought it no great Hardship, for, were it not that, every cowardly Fellow would turn Pyrate, and so infest the Seas, that Men of Courage must starve: [and] that the Trade, in a little Time, would not be worth following.” Daniel Defoe, \textit{A General History of the Pyrates}, ed. Manuel Schonhorn (Mineola, NY: Dover, 1999): 158f. In this typical statement, it is assumed that the pirate not only knows the consequences of her actions, but even approves of them as a necessary framework of her trade.
pirates exists.’ What seems like a banal statement in itself is able to unfold great force in this context. The enemy of all humankind opposes civilization; the representatives of that civilization and the pirate are mortal enemies that wage permanent war. It makes narrative sense to presuppose that whatever characterizes the one may not characterize the other. So if individual guilt is directly connected to reality within a binary structure, someone like Stewart is easily, almost in passing, able to suggest that structural conditions for piracy and fiction are directly linked as well. Stewart can afford to waive a reason for his dismissal of structural conditions as a potential cause of a rise in piracy by drawing on the ‘reality’ of the legal notion of individual guilt. The real strength of his argument is not argumentative, but the deliberate use of underlying narrative presuppositions. These narrative assumptions are based on strong binary oppositions; the arguments’ task is only to connect those narrative to notions of political ‘reality’.

As soon as a link between his narrative and reality is successfully achieved, any counter-argument to martial claims like Stewart’s is substantially weakened from the start. Assume a counter-argument, for instance, that grants the reality of individual guilt, but disagrees with the narrative implications evoked here. There is a great likeliness that such disagreement turns into a refined variation of the argument itself. For example, the following sentence is such a failed disagreement:

I do not deny that acts of violence are committed by pirates, and that they individually bear responsibility for it, but the structural reasons for their deeds must be considered the most important factor for explaining pirates’ actions.

Failed disagreement does not seriously challenge the core narrative evoked by Stewart, namely that pirates are essentially evil actors. It simply highlights an aspect of the debate that Stewart does not even deny; it is a mere change in emphasis. An indication of a certain relatedness in spirit is that the failed disagreement can easily adopt the term ‘pirate’ that Stewart uses as a characterization of maritime actors. The most obvious sign of a more substantial contrary claim is that it tends not to use the word ‘pirate’ as the characterization of the respective actors. For instance:

The emphasis on the individual guilt of attackers falsely and viciously diverts the gaze from the structural conditions that actually drive the world’s poor to acts of piracy.

The real problem identified here is poverty, not piracy, so ‘the poor’ rather than ‘the pirates’ are identified as actors. This sentence mirrors Stewart’s method; it evokes a strong binary opposition between individual guilt and structural conditions, and makes a bold claim to reality while dismissing contrary claims as morally unsound. Yet this disagreement has two weaknesses. First, even though it makes a claim to reality, it fails to expose Stewart’s claim as untrue. It does not disqualify the opponent’s claim as a legitimate political opinion and establishes itself as an advocate of ‘reality’ in the way Stewart does. Second, whereas Stewart does not need to spell out what he consid-
ers the necessary political steps – namely, military intervention in order to eradicate pirates once and for all – the disagreeing claim is unable to evoke an alternative narrative that makes the claim politically self-explanatory.

‘The poor’ per se are not linked to any narrative that provides convincing discursive access to those actors that Stewart conveniently calls ‘pirates’. The ‘violent poor’ in Western narratives are either portrayed as revolutionary masses or lonely social climbers. A narrative to frame forms of poverty-driven violence that lie between the extremes of mass movement and individual action – such as those of alleged pirate communities – cannot be presupposed. The second disagreement therefore tends to be dependent on argument alone, whereas Stewart can rely both on argument and narrative.

In summary, the binary structure of the *hostis humani generis* narrative, its constant reference to a supreme access to legal and political ‘reality’, and the ambiguity of the enemy of all humankind itself help restrict the discourse to a realm where disagreement can be channeled and contained. As soon as the *hostis humani generis* is accepted as the dominant discursive representative of a particular political phenomenon, two things can be achieved. First, the easily established link between specific political actors and a narrative based on the individual guilt of obstinate aggressors allows a forceful plea for clear-cut, aggressive political consequences. By linking these aggressive pleas to the notion of reality, supreme legitimacy for a political program is claimed and oftentimes achieved.

Second, the inherent ambiguity of the *hostis humani generis* narrative seems to invite for dissent at first sight, but the biased binary structure of the narrative only allows a particular kind of dissent: namely the kind which can be integrated as an agreement in principle, ridiculed as naïve, defeated as purposeless, dismissed as unrealistic, or ignored as a minority opinion. As soon as the concept of *hostis humani generis* is accepted as the prime description of an actor, this actor becomes a discursive weapon to defend the legitimacy of a supreme power claim.

**Conclusion**

What does all of this say about ‘the Somali pirates,’ and their wide acceptance as the modern epitomization of piracy? The least surprising result is, obviously, that one should be careful not to miss important developments around the Horn of Africa, or important features of maritime actors, simply because these features and developments do not match Western understandings of pirates as *hostes humani generis*. However, it has also become clear that this discourse is not only problematic because it produces terminology which leads to misunderstanding; its political implications, in fact, run deeper. Constructing one’s opponent as a pirate is a claim to legitimacy which is all the more powerful in its apparent ambiguity. Representatives of this view
are often able to deliver a clear and accessible message without any noteworthy resort to argument, while alternative views outside of the homogenous field are difficult to argue from the start.

Once specific political actors are characterized as *hostis humani generis*, the treatment of these actors even affects the political space they operate in, or are set in relation to. In other words, the legal features of the high seas can be transferred if an alleged *hostis humani generis* is identified at land. Such a sea-like space can be a city like Greytown, or a state like Somalia. It is not only the bodies of individual ‘enemies of all humankind,’ but this entire political space that can be subjected to unchecked violence.

The *hostis humani generis* characterization of an actor is difficult to avert once it is established. Both Barbary corsairs and Somali pirates, for instance, do not really satisfy the description; in the Barbary case, it was even acknowledged at some point that the description was flawed. Nevertheless, both groups are stubbornly called pirates down to the present day. The narrative construction remains very powerful, not least because it is based on the construction of a civilization-wilderness divide that is very accessible in Western cultures.

Yet the concept, powerful as it is, is unable to unfold this power in some cases. If an attack is justified by the concept as in the case of Greytown, it can at least be stripped of its spatial consequences. The reference to a superior legal framework has proven successful in the case of Greytown; to declare the attack an unconstitutional act of war has prevented a precedent of the city as a space of wilderness. Importantly, it was a discourse in the United States themselves which discouraged this use of the concept.

In Somalia, the incontrovertible sovereignty of states could have achieved what the constitution had achieved in the Greytown Affair. However, an aversion of the *hostis humani generis* characterization of the territory has been outflanked in the case of Somalia. Even though the United States again attacks ‘a piratical resort of outlaws,’ and use *hostis humani generis* narratives for the sake of political legitimization, the use of the concept is carefully avoided whereas it was successfully blocked in the case of Greytown – in the general legal frameworks of political action. The TFG as the nominal government of Somalia legitimates the treatment of potentially all Somali as subjects to universal jurisdiction; legally, that is as if Nicaragua had officially allowed the U.S. to seek violent retribution against the people of Greytown. Powerful legal objections that are immediately culturally accessible falter in such a case.

As the sovereignty of Somalia is successfully outmaneuvered, the only culturally thinkable approaches that remain to address the very real violence in the Gulf of Aden and the Indian Ocean are based on the concept of *hostis humani generis* – a concept which in effect promotes unchecked foreign violence, and which is able to absorb years of substantial criticism as an agreement in principle.
Works Cited


