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State and Corporate Drivers of Global Dysnomie: Horrendous Crimes and the Law

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Introduction

The press is awash with accounts of serious cross-border crimes; the responsibility for which is attributed to dangerous and radical groups. This has included the Islamic State, "bad apples" working in banks, organized criminal groups, and rogue state actors. The responses to these kinds of problems have ranged from a tsunami of international conventions against terrorism, transnational crime and corruption, intensified intelligence operations, military interventions, and humanitarian projects.

As the current approaches do not seem to yield the desired results – as crime threats continue to grow – it is important to transcend discourses that individualize and externalize blame and examine structural sources of these risks in search of better, less costly, and more effective policies. Typically, crime control policies focus on supply rather than demand. For instance, policies focus on eliminating the production and exports of illegal drugs rather than trying to reduce the demand that gives rise to profitable illegal markets. In this analysis the approach is to look back and consider the role played by decisions, policies, and initiatives in the global North, by public and corporate actors. This is not merely an attempt at broadening accountability but a way to identify the extent to which neoliberal policies contribute to criminogenic processes.

In order to shed light on these criminogenic processes, this chapter employs the analytical framework of global anomie theory (GAT) and focuses on two case studies. The first one is maritime piracy off the coast of Somalia, where efforts have centered on improving the governance of the state, tackling the al Shabaab group, and assisting with famine and economic challenges. The second one is the theft of the Chagossian nation, a case of forced eviction of an entire people against a host of basic international legal principles. Despite the globalization of media and availability of information on this case, it is a story that the mainstream media has ignored for the most part.

Both case studies deal with what can be termed "horrendous crimes", a term to capture a set of behaviors broader than those officially defined as illegal or criminal. With this term we refer to practices that constitute a serious threat and cost to society but may be deemed lawful by certain legal standards. We understand the essence of crime as: "misconduct that entails avoidable and unnecessary harm to society, which is serious enough to warrant state intervention and similar to other kinds of acts criminalized in the countries concerned" (Passas, 1999, p. 401). By using this broader definition we do not distance ourselves from legal standards, but seek to avoid national laws that may be unhelpful for the defining of global phenomena because of their domestic particularities, biases, and political agendas (Friedrichs, 2007). These crimes include transnational and international crime, as well as state, corporate, and state-corporate crimes. The latter crimes often fall below the radar of conventional criminology, but are crucial to consider since they exacerbate economic inequality within and across nations (UN, 2002) and have broader criminogenic effects.

The chapter begins with an outline of the analytical framework, proceeds with the two case studies, and concludes with research and policy implications.
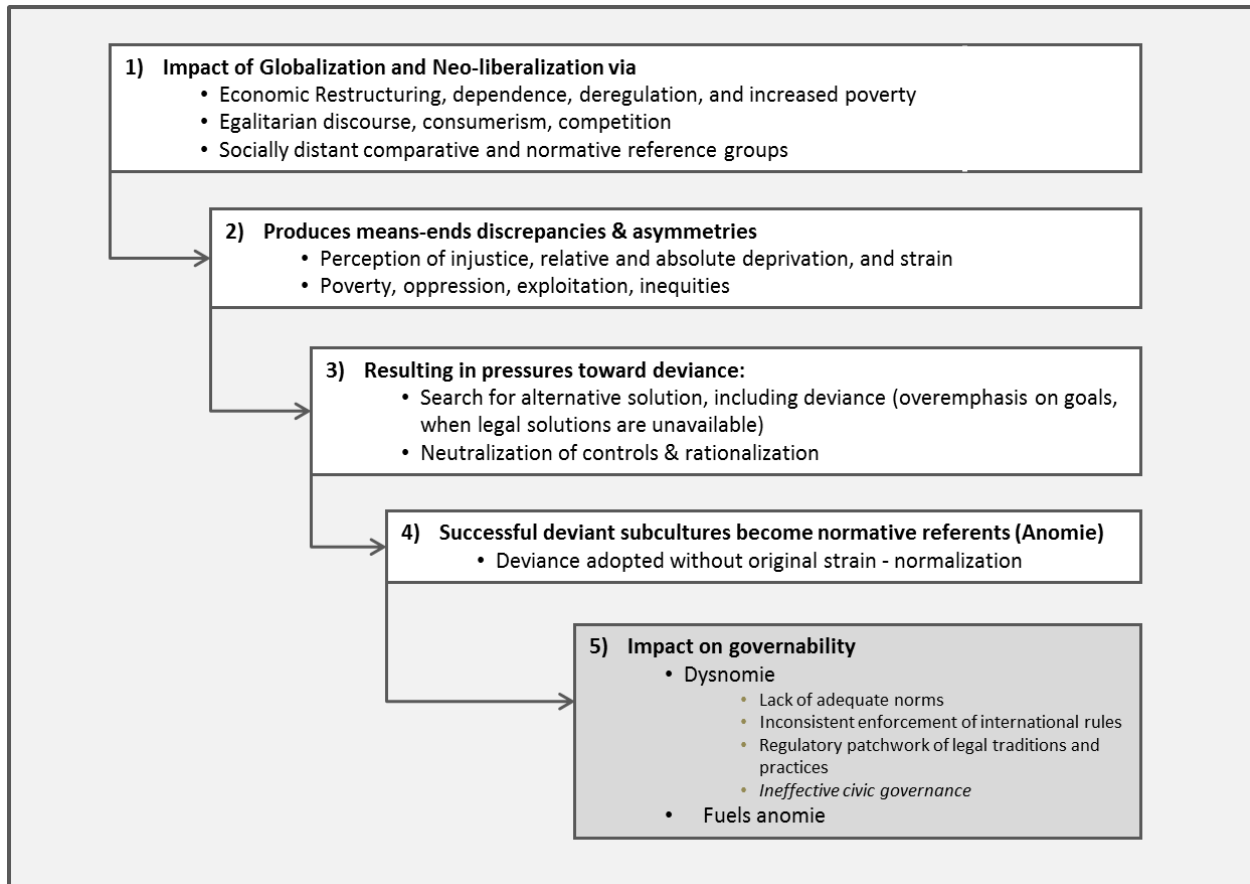
Analytical Framework

The core argument of global anomie theory (GAT) is that the most important part of cross-border crimes is the globalizing processes and neo-liberal practices weakening the normative order that leads to crime (Passas, 2000). Neoliberal globalization also exploits and victimizes vulnerable populations subjecting them to international, cross-border, and 'horrendous' crimes. The combination of globalization and neoliberalism produces opportunities for serious crimes and motivates people to take advantage of them, while at the same time weakening social controls leading to deviance amplification. This framework is consistent with other works that also associate globalization and neoliberalism with the production of crime (Sheptycki, 2005; Franko Aas, 2007) and transnational crimes in particular (Williams & Baudin-O'Hayon, 2002).

Anomie refers to a societal state where the guiding power of conventional/legal normative standards is weakened. In such an environment deviance and crime rates rise. To the extent that controls do not work, this becomes part of a vicious circle leading to the formation of deviant subcultures and the normalization of misconduct. This process can be set in motion and reinforced by structural disjunctions between culturally induced goals and available legitimate means, sudden social change, as well as other sources such as pathological governance or "dysnomie" and criminogenic asymmetries.

GAT seeks to identify the causes of both the initial emergence of misconduct as well as those that fuel it further and maintain or expand criminal patterns. The chronological processes leading to deviance and deviance amplification or normalization are outlined in Figure 1 (Twyman-Ghoshal, 2012).

Figure 1: Analytical Framework

1) **Impact of Globalization and Neo-liberalization via**
   - Economic Restructuring, dependence, deregulation, and increased poverty
   - Egalitarian discourse, consumerism, competition
   - Socially distant comparative and normative reference groups

2) **Produces means-ends discrepancies & asymmetries**
   - Perception of injustice, relative and absolute deprivation, and strain
   - Poverty, oppression, exploitation, inequities

3) **Resulting in pressures toward deviance:**
   - Search for alternative solution, including deviance (overemphasis on goals, when legal solutions are unavailable)
   - Neutralization of controls & rationalization

4) **Successful deviant subcultures become normative referents (Anomie)**
   - Deviance adopted without original strain - normalization

5) **Impact on governability**
   - Dysnomie
     - Lack of adequate norms
     - Inconsistent enforcement of international rules
     - Regulatory patchwork of legal traditions and practices
     - *Ineffective civic governance*
   - Fuels anomie

Firstly, the GAT considers the features and impact of globalization and neoliberalism. Globalization is a process of internationalization on an unprecedented scale (Held, 2000; Giddens, 2003), a growing interconnectedness of states and societies, which operates on multiple levels including economy, politics, culture, ideology, and environment (Steger, 2013).

Globalization occurs on both an objective material level and a subjective plane of human consciousness (Steger, 2013). Reference group and relative deprivation analysis shows how the

meaning and content of success goals and "needs" vary in different parts of the world and social structures (Passas, 1990).

The form of globalization that has been dominant over the past few decades is one fueled by neoliberal ideology (Steger, 2013), which advocates "free trade" between nations and dis-embedding the market from its social context. The role of the nation-state is to enable trade by minimizing state interference and allowing flows of information, money and objects. In effect, these policies have supported the development of a global economy not bounded by national borders, creating a global division of labor that is focused on mutual dependence and a single international market rather than subsistence and self sufficiency of individual countries. These policies also rely on consumerism and exponential capital accumulation, while espousing the goals of meritorious success and discourses of equal opportunities.

Market globalist ideas have been promoted by the International Monetary Fund (IMF) and the World Bank (WB) across the developing world, and have required dramatic political transformations that directly affected not only entire national economies but also state capacities to govern their territory. Neoliberal globalization stresses the importance of unfettered materialism and lofty aspirations. It prioritizes the accumulation of wealth over all other objectives (such as reducing poverty, increasing education, protecting local agriculture, the environment, etc.), and national strategies are realigned in order to accommodate this purpose, minimizing state interference to promote free (rather than fair) trade (Passas, 2000). These are key features of our contemporary global society, which provide the background conditions for the erosion of law and the dislocation of institutional order.

Diverse populations have been exposed and conditioned to capitalist values of material acquisition; alternative priorities; other forms of happiness; new freedoms; and social mobility. At the same time, the majorities of these populations have been subject to worker exploitation, inequities and injustices. Globalization has restructured the way in which we live, creating local transformations the content of which varies according to location and internal conditions (Sheptycki, 2005).

GAT suggests that these globalizing forces raise aspirations, expectations, and hopes to unrealistic levels. Increased mobility, media communications (such as the internet and television), military and aid interventions provide points of internal and external comparisons. Exposure to material and cultural differences render poverty, oppression, inequalities, and other problems less acceptable or explicable. As communities become increasing interconnected and part of a "global village," people become aware of existing power, financial, technological, cultural, and other asymmetries. This awareness raises perception of absolute but also relative deprivation.

Economic inequalities have been widening both within and across countries in the last three decades (UN, 2013). Social problems and social dysfunction ranging from mental illness, obesity, drug abuse to violence and imprisonment are aggravated by unequal societies (Wilkinson & Pickett, 2009). This extreme economic asymmetry has resulted in 85 persons owning as much wealth as the bottom 3.5 billion people (Oxfam, 2014). Moreover, neoliberalism's minimal interference in the market means reduction or abolition of welfare state arrangements through waves of privatization and deregulation. The fostering of needs and desires that are subsequently blocked or left unfulfilled for those at the bottom create strains

towards deviance and anomie as people are left without support or safety nets. For those at the top, inconsistent regulation and law enforcement allows selective impunity.

Further, when goals are internalized without a legal pathway towards attaining them, the result is systematic frustration, stress and disappointment. Individual adaptations are diverse (Merton, 1938), but the most relevant ones for our purposes are "innovation" and "rebellion". The former means the adoption of alternative means to achieve goals even if these are illegal. The latter involves the substitution of both goals and legitimate opportunity structures by radically different ones. Crime may become a solution to these structural problems and contradictions, while internalized controls are neutralized (Sykes and Matza, 1957).

Further, GAT points to the potential normalization and amplification of illegal adaptations. If structurally created problems are solved by crime that goes unpunished, these solutions may evolve into deviant subcultures through processes of interaction. Where social controls cannot sanction and curb these behaviors, they may become normative for others. Weak and ineffective social control thus leads to anomie, the "withdrawal of allegiance from conventional norms and a weakening of these norms' guiding power on behavior" (Passas, 2000, p.20), which means deviance occurs without strain. These processes thus are conducive to aggravated instability and lower confidence in official institutions.

GAT's fifth phase considers the impact of neoliberal globalization, normative deviance, failures of the international system, and ineffective civic governance on governability. Good governance is as a buffer between globalizing forces and their effects on society (Hastings, 2009; Munck, 2005; Giddens, 2003). Deficient governance is linked to organized crime, drug trafficking, money laundering, corruption (Williams and Baudin O'Hayon, 2002) and piracy

(Young, 2007; Murphy, 2009; Sakhuja, 2010). So, "good" governance is key to crime prevention (Waller and Sansfacon, 2000; UN Habitat, 2007) and crime rate reductions (Neumayer, 2003). The problem however is that at the time good governance is needed, "global dysnomie" makes matters worse.

The concept of "global dysnomie" (Passas, 2000) refers to challenged governability or pathological governance as a consequence of a

- Lack of adequate international standards
- The existence of multiple diverse and at times contradictory legal provisions; and
- Inconsistent enforcement of existing international norms, which result from
    - Lack of cooperation
    - Extra-territorial application of domestic standards or
    - Ad hoc and discriminatory applications of the law

An added contributing factor to dysnomie is national-level civic governance failures (Twyman-Ghoshal 2012; 2014). Civic governance is defined as regulatory authority dispersed across society, including formal and informal institutions to set limits and provide incentives by including civil society in the social control mechanisms. It is the process of fostering a strong civic culture, where decisions are made and implemented across society, rather than a purely top-down approach; it is about collaboration of political parties with non-economic institutions and civil society (Giddens, 2003).

Civic and international community failures contribute to dysnomie, a patchwork of diverse and conflicting legal traditions and practices where international laws are applied inconsistently reflecting national agendas rather than universal principles.

Somali Maritime Piracy

Maritime piracy is frequently in the news as vessels are captured and held in Somali territorial waters for ransom. Piracy off the coast of Somalia begun around the time the government of Siad Barre was ousted in 1991 and has remained an international concern.

In order to fully understand the current situation in Somalia we need to look at its recent history that explains much of the country's insecurity, weak infrastructure, and repeated foreign interventions. From arbitrary colonial divisions (British, Italian, and French) to repeated radical social restructuring after gaining independence in 1960, Somalia has been a country in transition for a long time.

Under the rule of Siad Barre, the country went from scientific socialism (through an allegiance with the Soviet Union) through an unsuccessful war with Ethiopia, to a free market economy (through an allegiance with the United States). Mismanagement and militarization generated the need for foreign aid and the experience of new lending policies under IMF and WB structural adjustment programs. Loans came with strict austerity programs, huge reductions in public spending, tax reforms, liberalization, privatization and deregulation (De Waal, 1993; Chossudovsky, 2003; Mubarak, 1996). Government expenditure on health and education was cut, the public sector shrank, and civil servants' pay reduced to $3 per month (Chossudovsky, 2003; Lewis, 2002). In addition, many mechanisms developed to cope with droughts were removed (UNEP, 2005; Marchal et al., 2000). Somali life was radically restructured, from a socialist safety network to shrining public spending to a new economic system with a minimalist welfare structure.

After the ousting of Siad Barre in 1991, the country descended into a violent and long civil war. The lack of a central government served to intensify neo-liberal globalization: rather

than disconnecting Somalia from the rest of the world, it accelerated growth of the commercial economy in Somalia, surpassing pre-1991 figures (Powell et al., 2008; Marchal et al., 2000; Mubarak, 1996). Out of eighteen development indicators, fourteen showed improvement under anarchy (Leeson, 2007). However, this growth was distributed unequally, making the poor poorer (De Waal, 1993).

Somalis were gradually exposed to new referents through access to information via the internet, a larger number of newspapers (Freedom House, 2005), and the growing Somali Diaspora. One of the largest per capita Diaspora networks in the world (Hammond, 2007), it created a reference group, which was geographically distant but emotionally close and trusted. The significant remittance flows from labor importing countries to Somalia support livelihoods and even survival of extended family members at home. This access to the world served to magnify asymmetries and means-ends discrepancies as injustices were revealed.

The structural and cultural transformations fueled means-ends discrepancies and asymmetries. Notably, in the aftermath of 9/11, al Barakaat, the most successful Somali remittance company and business model that combined security and telecommunications was destroyed by US-led sanctions on the baseless assumption that it had lent support to al Qaeda and bin Laden (Passas, 2005). Although the ensuing crisis was diminished by the concerted efforts of the donor community, it did cause a 'trust deficit' between regulators and remittance companies (Cockayne & Shetret, 2012).

Media and policy attention on Somalia has focused on famine, maritime piracy, and terrorism as critical challenges. However, apart from these problems, it is important to note that

interventions from outside the country have produced and worsened crises for Somalis causing additional obstacles, which help explain the emergence of piracy.

The lack of central government since 1991 resulted in the absence of any law enforcement mechanisms and made the country vulnerable to exploitation. Somalia was victimized by two sets of foreign predatory activities particularly from countries in Europe and Asia: large scale illegal, unreported, unregulated fishing and toxic waste dumping off the coast of Somalia. Both have been reported by NGOs but have not been covered in mainstream media (FAO, 2005; High Sea Task Force, 2006; UNEP, 2005; Greenpeace, 2010; TED, 1998). These predatory activities had a significant impact on the population, depriving it of resources and exacerbating the 'trust deficit' with the international community.

These foreign activities provided motives for those living in coastal regions to engage in piracy to protect their livelihoods. That these were no mere rationalizations was confirmed in the wake of the 2004 December tsunami, when toxic waste barrels washed up on Puntland beaches (UNEP, 2005). This boosted public tolerance for piracy, which was seen as necessary to protect coastal waters from further foreign encroachment. Puntland is where the majority of seized vessels have been moored awaiting ransoms in the spike in piracy in the 2000s (Thompkins, 2009). Interviewed pirates explained that they were merely unemployed fishermen who felt compelled to take action to protect Somali waters, because of the absence of a central authority (Twyman-Ghoshal, 2012).

With ransom payments coming in, piracy was perceived as a successful solution to a problem: it enabled individuals to make money and feel that justice was served for damages caused by foreigners. The years of successful pirating had a normative effect not only on those

who organized larger piracy operations, but also on others in Somali society. Pirates became normative referents; the behavior became part of accepted social conduct not only for those facing hardships due to exploitation (folk living off the ocean), but also for others who did not experience strain. Young men who grew up in an environment of conflicting traditions and practices, lacked educational and legitimate employment opportunities, and saw piracy as a promising career choice as pioneer pirates of the 1990s became role models.

Such deviant subcultures weakened the guiding power of conventional norms and undermined the rule of law. Under Islam, piracy was considered *haram*, a forbidden act. This established norm was no longer binding and piracy become tolerable or even acceptable. The growth of subcultures beyond those who initially experienced strain and the lack of social control mechanisms contributed to a dysnomic environment.

Another critical source of dysnomie were failures of the international system. At an international level maritime piracy is governed by the UN Convention on the Law of the Sea 1982 (UNCLOS). The convention limits piracy to acts of violence, detention or any act of depredation for private ends occurring outside the jurisdiction of any single State, in a ship-to-ship (or aircraft) conflict (article 101). Yet, most piracies occur in territorial waters, therefore outside the scope of this Convention. Territorial waters fall under the jurisdiction of nation-states, but not all of them have piracy laws. Countries that have criminalized piracy have diverse and incongruent laws reflecting national priorities.

This is illustrated by the way coalition forces have dealt with captured Somali pirates. UNCLOS requires that countries take action against pirates (article 100) but it does not specify the mechanism or procedures for seizure, arrest, indictment, or punishment of pirates or handling

of their property. This is left to the jurisdiction of the seizing state (article 105). The nation-states

which are part of the international coalition to curb Somali piracy have dealt with captured

pirates in different ways, ranging from not engaging with pirate skiffs at all, giving pirates food

and supplies and letting them go, firing warning shots at suspicious vessels, killing pirates,

sinking pirate boats, confiscating equipment and setting pirates out to sea without provisions (in

effect sending them to a slow death), capturing and processing pirates through a foreign criminal

justice system (most coalition countries do not want to bring Somali pirates to their own

jurisdictions for trial in fear of creating discontent at home), and bombing the coast to destroy

boats and equipment of alleged pirates (Twyman-Ghoshal, 2014).

In 1988 the Convention for the Suppression of Unlawful Acts against the Safety of

Maritime Navigation (SUA) was passed with the aim of filling the gaps left by the UNCLOS

definition of piracy. The SUA does not have a two-ship requirement, does not distinguish

between territorial waters and the high seas, and is not concerned with the motivation of

perpetrators. SUA does not use the term piracy, but applies to acts of violence that are

intentional 'within a ship' which endanger the safe navigation of a vessel (article 3). In 2008,

Security Council Resolution 1846 confirmed that piracy and armed robbery against ships qualify

as unlawful acts under SUA. Although SUA has a number of advantages over UNCLOS it is

nevertheless considered a defective remedy (Tuerk, 2009). For an unlawful act to qualify under

SUA it must 'endanger the safety of maritime navigation'. SUA therefore fails to address

offenses such as theft and armed robbery, which remain the most common forms of

contemporary piracy globally (Twyman-Ghoshal & Pierce, 2014). Another key problem is that

both SUA and the 2005 SUA Protocol only apply to state parties. Despite having 161 parties and

being in force since 1992, SUA has only been used in one case to date. Notably, the two

countries responsible for the largest share of piracies in the 2001 to 2010 period, Indonesia and Somalia are not state parties to SUA (Twyman-Ghoshal & Pierce, 2014).

Other international conventions on transnational crime such as UN Convention against Transnational Organized Crime 2000, the UN Convention for the Suppression of the Financing of Terrorism 1999, and the UN Convention against Corruption 2003 could be used to prosecute all forms of organized piracy (Passas & Twyman-Ghoshal, 2012). However, only states parties to these conventions can use them, if they have the will to do so.

International cooperation is imperative when dealing with global crimes. UNCLOS, still the key international piracy legislation, is silent on cooperation in territorial waters and the form of cooperation in the *high seas* (article 100).

Despite the volume of global crimes and 'horrendous' harms they cause, modern nation-states lack political will to face up to the needs of a globalized society and insist on protecting their sovereignty. This is a critical impediment to global norm making mechanisms. For piracy, the problem is rooted in conflicting national interests; coastal nations (which have resource and boundary claims) conflict with maritime nations (which are concerned with trade issues).

The tension between sovereignty and global norm-making mechanisms was clear when Somali piracy escalated in the mid-late 2000s. Under UNCLOS, hot pursuit is limited to the high seas and ships cannot enter the territorial waters of a nation-state (article 111(3)). Faced with the limited application of UNCLOS, the UN Security Council adopted Resolution 1816 in 2008 which allowed international coalition vessels to sail into the territorial waters of Somalia and to "use all necessary means to repress acts of piracy and armed robbery". In 2012, this was extended to include the Somali coast, allowing the first European Union aerial offensive that

destroyed speed boats, fuel depots, and arms stores allegedly belonging to pirate gangs in Handulle (Puntland). The Security Council was explicit that infringing on Somali sovereignty was an extraordinary measure, which applies only to the current situation in Somalia and should not be considered as establishing customary international law.

This conflict is also visible in the inconsistent enforcement of international rules in Somalia where international laws on toxic waste dumping or IUU fishing have not been enforced. Coalition forces have only focused on activities that affect international trade, i.e. maritime piracy and terrorism. The inaction against IUU fishing may be because the countries from which the IUU fishing fleets originate are the same ones contributing assets to counter piracy efforts (Hughes, 2011).

The non-universal respect of sovereignty was demonstrated by the acts of the United States and Ethiopia against the Islamic Court Union (ICU). During its 6 months in power, the ICU achieved an unprecedented level of security in Muqdisho (Pendergast & Thomas-Jensen, 2007) and over much of southern and central Somalia. Basic services were restored, road blocks were removed, rubbish was disposed of, the airport and seaports were opened and rehabilitated, government buildings were reestablished, and courts were in session (Barnes & Hassan, 2007). During this time, the number of piracy attacks off the coast of Somalia dropped dramatically. Unhappy with the high levels of insecurity and corruption, Somalis gave support to the ICU, which was the first government since 1991 that showed success in uniting the country.

In 2006 Muqdisho experienced a wave of assassinations and disappearances, particularly amongst ICU members. These covert operations were reportedly orchestrated by the United States, which was weary of an Islamist government in Somalia. The US funded Muqdisho

warlords to disrupt ICU (Barnes & Hassan, 2007; Pendergast & Thomas-Jensen, 2007). Finally, supported by the US and Security Council Resolution 1725, an Ethiopian military intervention drove ICU out of Muqdisho in the worst level of violence experienced by the city since 1991. In January 2007, the US carried out targeted air strikes against Al Shabaab, a radical wing that emerged out of ICU in the aftermath (ICG, 2007). These US and Ethiopian military interventions infringed Somali national sovereignty, in another instance of inconsistent application of international rules.

The rise and fall of the ICU had a two prong impact on piracy. First, the prosecution of piracy by the ICU in Galmudug displaced many pirates north to Puntland. Second, the international interventions drove ICU from power removing the one effective Somali counter piracy strategy.

The international community approach towards smaller state formations that developed in Somalia after the 1991 civil war was also inadequate. Regional self-governance efforts in Somaliland, Puntland, and Galmudug have remained unrecognized and unsupported. A weak but functioning self-governing state was able to develop in Puntland, which has the necessary infrastructure and stability for commerce to flourish but was too weak to create effective norms and control mechanisms. As subcultures developed, controlling piracy became challenging, especially due to a lack of financial resources, international recognition, and support.

To police the coast, Puntland authorities came up with a commercial solution; they hired foreign security companies to provide coastguard duties. To finance themselves, the companies were allowed to issue fishing licenses to foreign ships unilaterally and without interference from Puntland authorities. The outsourcing of coast guard duties to foreign corporations that operated

with no Puntland oversight failed and further undermined the trust of Puntlanders, who were already weary of foreigners in their coastal waters.

Neighboring Somaliland adopted a different approach: it used a domestically supervised coast guard staffed and operated by locals. Although small, this coastguard enjoyed popular support and was effective in counter piracy (Hansen, 2009). This modest homegrown coast guard was effective. The Puntland – Somaliland comparison highlights the need for civic governance that allows citizens and groups to articulate their interests, mediate differences, and exercise legal rights and obligations. The inclusion of civil society was essential for the legitimacy of Somaliland's governing force and was therefore an effective social control mechanism. It suggests that the quality of governance can facilitate or stymie crimes.

The blockage of homegrown anti-piracy efforts and the insistence on an externally imposed central government without broad civic support are yet another illustration of actions adding to dysnomie at the very time Somalis require good governance to deal with the deviance amplification and anomic processes caused by neoliberal globalization.

Forced Eviction of Chagossians

The second case study looks at the forced eviction of the Chagossians. Between 1967 and 1974, away from the eye of the media and the international community, the entire population of Diego Garcia was forcibly evicted from their homes and displaced to Mauritius and Seychelles.

The Chagos Archipelago is a chain of small islands with three main islands: Diego Garcia, Peros Banhos, and Salomon. The islands were settled permanently when they were under French rule in 1783, although visitors from Malaysia, Portugal, and the Middle East date back to

1743. The island became a British colony in 1814. Chagossians today are made up of African, Indian and Malagasy origins.

In 1965, after talks with the United States about developing a military facility on Diego Garcia, the UK separated the Chagos islands from colonial Mauritius and created a freestanding colony known as the British Indian Ocean Territory (BIOT) (Vine, 2004). In exchange for relinquishing the Chagos Islands to form a new British colony, Mauritius was granted independence, provided a GBP 3 million grant, and given an undertaking that the archipelago would be returned to Mauritius when it was redundant as a defense installation (Lunn, 2012).

This deal occurred despite two UN General Assembly Declarations. Declaration 1514 (1960) aimed at preventing colonial powers from disrupting the national unity and territorial integrity of a country, in an effort to maintain their presence and sovereignty. When BIOT was announced, the UN General Assembly passed Resolution 2066 (1965) directing the UK to "take no action which would dismember the territory of Mauritius and violate its territorial integrity."

In 1966 in an Exchange of Notes rather than a treaty, the UK and the US agreed to make Diego Garcia available for US military use (Allen, 2008). The secret agreement was concealed from the US Congress, the British Parliament and the UN. The only consideration requested by the UK was a reduction of GBP 5 million towards a research and development surcharge for the purchase of a Polaris missile (Brack, 1971 as cited in Vine, 2004). The agreement included a requirement by the US that all inhabitants of the island be removed before US took possession (Bancoult 1, 2001). The UN Charter's decolonialization rules mandated the protection of permanent inhabitants. So, a "fiction" was created that the island had no permanent inhabitants

(Chagos Islanders, 2012; August Aust, 1970, as cited in Vine, 2009), which was repeated by both the British and the Americans (Vine, 2009).

In 1967, BIOT Ordinance No. 1 mandated a compulsory acquisition of land in the Chagos Archipelago from private owners (Vine, 2009). From 1968 islanders who had left for medical or tourist purposes, were not permitted to return. Imports to the island were reduced through supply ship visiting restrictions, medical and educational staff that left due to deteriorating conditions were not replaced (Vine, 2004). After the 1971 Immigration Ordinance that mandated the exile of the entire population, an estimated 1000 to 2000 Chagossians were transported to Mauritius and Seychelles (Vine, 2009; The Chagos Islanders, 2012). Although violence was not used (The Chagos Islanders, 2012), all pet dogs were exterminated in the last days of the mass eviction (Vine, 2009). With only minimal personal belongings, Chaggosians disembarked in the ports and left to create a new life without any resettlement support (Vine, 2009). The same year, construction of the US base begun, which included demolishing houses of the islanders (The Chagos Islanders, 2012).

Forced eviction is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (General Comment No. 7, ICESCR, 1997). There are numerous international conventions that make forced eviction unlawful. These include the Universal Declaration of Human Rights 1948, the International Covenant on Economic, Social and Cultural Rights 1966 (article 11, paragraph 1), and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination 1965, all of which were in place at the time of the forced eviction of BIOT. More conventions have been introduced since stipulating that forced evictions constitute a violation of

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basic human rights; the Convention on the Elimination of All Forms of Discrimination against Women 1979, the Convention on the Rights of the Child 1989 (article 27, paragraph 3), and the Rome Statute of the International Criminal Court 2002. Article 7 of the Rome Statute makes deportation or forcible transfer of a population, which is a "wide-spread or systematic attack directed against any civilian population" a crime against humanity.

The Chagossians suffered two major harms. First, they were deprived individually and collectively of their possession and homeland. Second, the forced relocation was not supported with any efforts or financial assistance for resettlement. Most Chagossians ended up in dilapidated shacks or slums, impoverished, with high rates of unemployment (Vine, 2004; Lunn, 2012).

In the context of post-War decolonialization and decline of British power, the US stepped in (Bezboruah, 1977) and pursued a more discreet form of dominance and exploitation (Chomsky, 2002). To ensure its economic control over various territories the US would use "periodic displays of military might … within the rules of an economic system most favorable to the United States" (Vine, 2004, p.128). Diego Garcia was one of the US strategic security interests. The islands were a prime location to control critical sea lines of communication – essential for international trade. It served growing US corporate interests in the region and America's dependence on oil (Bowman & Lefebvre, 1985; Sick, 1983; Larus, 1985).

At the same time, the creation of the UN and new international norms led to broad social change. Earlier standards of exploitation by colonial powers were no longer accepted. The commercial needs of established European and US interests had to be pursued in different ways. In this period of [legitimate] means- [state] ends discrepancies, the search for alternative avenues

to achieve economic dominance resulted in a new form of imperialism. In this case, the illegitimate means used by powerful state actors included re-colonizing a territory (from Mauritius to BIOT) and dislocating an indigenous population in pursuit of their security and economic objectives. This arrangement violated the new normative order. The circumvention was deliberate as indicated by the signing of an Exchange of Notes rather than a US-UK treaty (Allen, 2008) and by a 'fibbing policy' that repeatedly assured the US Congress and UK Parliament that the island had no permanent residents (Winchester, 2001).

Depopulation of Diego Garcia was demanded largely to ensure that no emerging independent state could place restrictions on the use of the military base (Bezboruah, 1977). The UK was a willing accomplice, guaranteeing the removal of the Chagossians from Diego Garcia and neighboring islands (Vine, 2004). In addition to their eviction, Chagossians have been banned from visiting Chagos (Bancoult v. Mcnamara, 2002).

The forced eviction of the Chagossians from their homeland is a state crime defined as "acts/actions or inaction/omissions committed by government agencies or caused by public policies whose victims suffer harm as a result of social, political, and economic injustice, racial, sexual, and cultural discrimination and abuse of political and/or economic crime" (Barak, 2011, p.36). Colonialism is replete with examples of oppression or repression by powerful States over large populations. The UK and US acts in the Chagos archipelago is misconduct similar to conventional offenses that appear regularly in local media. The difference with the Diego Garcia crimes is that they are downplayed, ignored, or denied by powerful state actors. For years, the British Foreign Office and High Commission discounted the living conditions and poverty of the Chagossians, arguing that the responsibility lies with the Mauritian government.

The forced eviction was rationalized initially only by those involved directly but later by governments as a whole, in the name of defense and economic needs. Between the mid-1960s to 1974, three British prime ministers and thirteen cabinet ministers had personal knowledge of the facts but none raised an objection (Martin & Pilger, 2004). After a petition by the UK government, the Law Lords ruled in 2008 that due to the current state of uncertainty (i.e., the post 9/11 climate) the security concerns of the UK and its ally, the US, are of paramount importance (Lunn, 2012).

The compensation paid to the Chagossians served as another official excuse. In the 1970s UKP 650,000 was paid to the government of Mauritius to assist in resettlement (Lunn, 2012) and in the 1980s in settlement of a lawsuit UKP 4 million was paid to the Mauritius government as a full and final settlement of any Chagossian claims and also included a renunciation to return to Chagos (Chagos Islanders, 2012). In that same case the Mauritius government added GBP 1 million worth of land for the Chagossians. The first payment only trickled down to the migrants in small amounts five to ten years after the forced eviction (Vine, 2004). The second payment was distributed to 1344 Chagossians in Mauritius who received GBP 2,976 each. No payments were made to Chagossians in Seychelles.

Another rationalization has been that Chagossians are integrated in Mauritius and Seychelles and any repatriation would involve further harm to the group (Martin & Pilger, 2004). It was also argued that the islands cannot sustain the return of Chagossians due to environmental problems. This was based on a feasibility of resettlement study commissioned by the UK government, which found that the eviction of Chagossians was unlawful and that they had the right of abode in the Island, except for Diego Garcia (Bancoult 1, 2001). The findings of the preliminary report in 2000 suggested that there were no obvious reasons why Peros Banhos and

Salomon Islands could not be resettled. However the second part of the report released in 2002 suggested that it would be precarious and expensive. Thus, new Orders were issued in 2004 prohibiting the repatriation of the islanders (Allen, 2008).

Yet, another study commissioned by the UK Chagossian Support Association and funded by the Joseph Rowntree Reform Trust, found that resettlement is possible and would require an initial investment of GBP 25 million over the first five years, a sum that is spent yearly on other British Overseas Territories, including St. Helena, Monserrat and the Falkland Islands (Allen, 2008). Today it is estimated that between 3000 and 5000 US troops and civilians live on Diego Garcia (Vine, 2009), where the US navy has described the living conditions as "outstanding" (Pilger, 2004).

One final excuse was that some Chagossians signed a document to renounce their right to ever return to their homeland after the Bacoult 1 settlement. The legality of this has been disputed by Chagossians, who claim that they were not informed of the nature of the document that they were unable to read and put their thumbprint on (Vine, 2009).

These acts violate international and national law; they undermine the credibility and legitimacy of the UN and national bodies such as Congress and Parliament that prove unable and unwilling to deal with these crimes. There was no compelling pressure leading to the theft of the Chagossian nation. There was no security threat from the islanders. Rather, the Diego Garcia military base was part of a US strategy for global economic access without colonies (Vine, 2004; Smith, 2003), and later served bombing raids in Iraq and Afghanistan (Jones, 2011).

The Chagossian experience is not unique. Indigenous populations have been evicted in Greenland, Puerto Rico, Marshall Islands, and Japan. The commission of such state crimes is a

manifestation of and contributing factor to global dysnomie, where the enforcement of international laws becomes optional and discriminatory. This undercuts the legitimacy of the international system and creates precedent used by leaders of other countries too. It normalizes state crime and brings about trends towards anomie, as the guiding force of international norms is diminished.

Decolonialization, new human rights and former colonies' sovereignty clashed with the interests of [neo-]colonial powers, leading to failures and inconsistencies in the application of international standards and the selective application of national laws. These conflicts of interest continue to hamper justice and fair law enforcement as illustrated by recent cases lodged by Chagossians in the UK, US, and the European Court of Human Rights. All three attempts for an equitable outcome to the crimes of the past have been blocked.

In the US, Olivier Bancoult brought a case against former employees of the Department of State and Department of Defense for forced relocation, racial discrimination, torture, and cruel, inhuman and degrading treatment (Bancoult v. Mcnamara, 2002). The US District Court of Columbia dismissed the motion on procedural grounds, stating that federal officers and employees have immunity for any negligent or wrongful acts or omissions while acting within the scope of their employment (under the Westfall Act). In addition the court stated that the cause brought was outside its subject matter jurisdiction and falls under the political question doctrine (Bancoult v. Mcnamara ,2002).

In the United Kingdom, initially Olivier Bancoult had a success in the Court of Appeals, stating that the Order in Council preventing the Islanders from returning was unlawful and an abuse of power. The government petitioned the Law Lords, who in 2008 overruled the decision,

stating "the government was entitled to legislate for a colony in the security interest of the United Kingdom" (Lunn, 2012, p.7). This despite article 73 of the UN Charter that obliges a colonial governments like the UK to obey its "sacred trust" to protect the human rights of its people, which includes indigenous people of its colonies who are considered British citizens. Instead, the 2008 decision reinstated the 2004 Orders in Council banning the islanders' return.

The European Court of Human Rights (ECHR) case was also decided on a procedural matter. The decision was that the Convention for the Protection of Human Rights and Fundamental Freedoms did not apply to BIOT. Although the UK had made a declaration that Mauritius was a territory to which the Convention applies, at the time that the UK ratified the right to individual petition (in 1966), the Chagos islands were no longer part of Mauritius. No such declaration has been made for BIOT. In effect, the applicability of human rights law was deemed to be dependent on the notification by a colonial power, thereby suggesting that a colonial power decides which colonies have human rights and which do not.

So, even though several laws deem a group's forced eviction illegal, the rules were not enforced when cases came before national or international courts. The notion that a federal court (as in the US case) will not question a foreign policy decision of the executive branch, illustrates a major handicap to the prosecution of state crime. Both the UK and the ECHR have interpreted the respective laws within the confines of state sovereignty and existing power relations, rather than in the spirit of universal human rights.

In 2010 the UK established a Marine Protection Area (MPA) around BIOT, with the exception of Diego Garcia. The conservation area prohibits commercial fishing and includes a no-take marine reserve. The decision was made without consultation with the Chagossians

(Lunn, 2012). A Wikileak cable shows that that one of the main reasons for the MPAs around BIOT was to bar any future Chagossian resettlement on the islands (Jones, 2011). Currently Mauritius is pursuing a case through the Permanent Court of Arbitration against the UK challenging its power to establish an MPA around the Chagos archipelago (The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland).

Finally, the internal dynamics, particularly in the UK, reveal contradictory views between the courts, the executive, and special interest groups (mainly Chagossian and human rights groups), when dealing with the BIOT. National-level civic governance was powerless and ineffective in preventing and repairing the harms caused by state crimes. The case shows that civic society is helpless in the face of government misconduct and unable to remedy an old crime – clearly some countries require a democratization of democracy (Giddens, 2003). The UK government had the duty to protect the rights of all its citizens, including Chagossians, but this was trumped by perceived needs of a colonial power that abused its control over a former colony.

Conclusion and Implications

At the theoretical level, this chapter found the GAT framework helpful in two cases of serious transnational misconduct. GAT suggests that globalization and neo-liberalism are conducive to processes leading to anomie, dysnomie, and serious crime. This occurs because of discrepancies in economy, politics, culture and law that are multiplied, made more palpable and criminogenic. It also occurs because of deliberative state violations of and lack of enforcement of domestic and international laws. The process of globalization provides opportunities and motivations for deviance by and against nation-states as it simultaneously contributes to breaking down state apparatuses for controlling and preventing crime. Governability is negatively impacted by

neoliberal policies that fuel wealth and power inequalities, undercut normative standards and control mechanisms, and shrink welfare safety nets. These processes produce problems and pressures for individuals and groups, the solutions to which are more likely to be deviant. Deviance is neutralized and, when successful and allowed to continue unabated, becomes normative for others in society, even to those that do not endure the same pressures. As deviance becomes normalized, governability is further undermined and weakened. Large populations become vulnerable to both crime and exploitation by powerful government and corporate actors.

These two case studies in neoliberalism and the globalization of crime have illustrated the ways by which domestic, national, or sovereign pathologies of dysnomie have their external negative sources of responsibility as well. Piracy, smuggling, terrorism and continuing dysnomie in Somalia are intimately connected with governmental and private actors from many countries. Illegal and unrecorded overfishing by foreign fleets, unconscionable dumping of toxic waste, military covert and overt operations by the US and Ethiopia, ill-conceived Western counter-terrorism measures, outsourcing of government functions to private companies, foreign aid interventions that ignored and disrupted local control efforts and civic governance, unsanctioned crimes committed against Somalis are all part of the picture.

In sum, neoliberal globalization processes are conducive to massive victimization of innocent parties not only in Somalia and its Diaspora but also the entire ethnic group of Chagossians. Powerful states dispossessed them, declared their land as 'unpopulated', deprived them of human rights, silenced their voices and frustrated their efforts for reparation and justice for decades in national and international courts. When the ECHR refers to "the callous and shameful treatment" of Chagossians, it confirms that they were "expelled from their homes" on the islands and recognizes "the hardships which immediately flowed from that" (Chagos

Islanders v The United Kingdom, 2012, p.24) before declaring itself unable to repair the harms, the effects of a stomach-turning dysnomie are evident.

The cases have indicated that the governance challenge at hand includes the capture or manipulation of international organizations and the biased, inconsistent and wanting application of international and national standards. Together with the resulting impunity of perpetrators of horrendous crimes and de facto rewards for gross misconduct, all this weakens the legitimacy of global institutions and norms. Global dysnomie, however, though not inevitable seems to be growing beyond control. Scholars and policy analysts should focus on debunking neoliberal globalism as a means of international consensus building, and assist in the development of homegrown initiatives and good civic governance.

The case studies expose double standards and inexcusable abuse of power hidden for too long from publicity. Investigative and critical journalism is thus necessary. It is unacceptable that media globalization allows the Diego Garcia theft and the wanting foreign interventions in Somalia either to be kept out of the news or covered superficially with partial truths and out of context.

The awareness raising task is also a top priority for scholars who can establish the facts, generate original data, and produce empirical analysis of the externalities of neoliberal globalization. Evidence-based debates on these issues should hopefully promote genuine political will for change, bring about more informed law making and enforcement, increase the effectiveness of humanitarian aid, facilitate the promotion of local and better governance, increase security and boost economic growth. Scholars have a role in finding a better and more

sustainable way of connecting the local with the global in the framework of international norms more consistently and fairly applied.

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