

ON THE LEGAL ISSUES REGARDING THE PROSECUTION OF SEA PIRATES (INCLUDING HUMAN RIGHTS): A CASE OF HISTORY REPEATING ITSELF?

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I. PREFACE

An article appeared in the *New York Times* on January 28, 2012 entitled *Seized Pirates in High-Seas Legal Limbo, with no Formula for Trials*.¹ The author of the article noted, based on comments by the Rear Admiral Kaleem Shaukat (the Pakistani who commands Combined Task Force 151—the region’s multinational counter-piracy command),² that “without a legal system to match the navies’ tactical progress, piracy, and uncertainties about what to do with Somali prisoners on the high seas, would persist.”³ Rear Admiral Shaukat was further quoted as saying that “[i]f there is no effective legislation that makes sure these pirates are taken to a court of law and punished, if that does not occur, they will come back again and hijack other ships . . . [t]hat is still a weak area.”⁴

Despite everything that has been written on the subject, a lack of understanding on how and where to prosecute pirates persists.⁵ Eight days before the *New York Times* article, the U.N. Security Council issued the *Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region* (“Security Council Report”).⁶ When juxtaposed, the two titles—the *New York Times* article and the Security Council Report—seem to be totally inconsistent. This Article seeks to discuss whether there is a legal system in place to try sea pirates, and if so, whether it is working with the same efficiency as the navies that are currently patrolling and fighting piracy.

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1. C.J. Chivers, *Seized Pirates in High-Seas Legal Limbo, with no Formula for Trials*, N.Y. TIMES, Jan. 28, 2012, at A9.

2. *Id.*

3. *Id.*

4. *Id.*

5. See U.N. SCOR, 67th Sess., 6719th mtg. at 7, U.N. Doc. S/PV.6719 (Feb. 22, 2012) (explaining that there is no guarantee that convicted pirates, once released, will avoid engaging in piracy and that there is ambiguity in detention, transfer, and evidentiary proceedings for the prosecution of pirates).

6. U.N. Secretary-General, *Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region*, U.N. Doc. S/2012/50 (Jan. 20, 2012) [hereinafter U.N. Secretary-General Report, Jan. 2012].

To fully address these issues, it is necessary to analyze the problems with prosecution that existed during earlier periods. Many of the classical problems are the same today. Before the organized crime called “sea piracy” off the coast of Somalia existed, fewer acts of piracy were committed in the world,⁷ which were primarily associated with refugee problems and simple acts of robbery in port or near shore.⁸ Therefore, the following question remains: what prompted the Pakistani admiral to speak in such terms about the lack of a legal system in this area of piracy?

II. INTRODUCTION

In its “Piracy and Armed Robbery Against Ships” report for the year 2011,⁹ “[t]he International Maritime Bureau (IMB) Piracy Reporting Centre recorded 439 incidents of piracy and armed robbery, compared to 445 in 2010.”¹⁰ The report stated: “In 2011, 45 vessels were hijacked, 176 vessels boarded, 113 vessels fired upon, and 105 vessels reported attempted attacks. A total of 802 crew members were taken hostage, ten kidnapped and eight killed as a direct result of the incident.”¹¹ Somali pirates accounted for 237 of the 439 attacks in 2011: “Whilst the overall number of Somali incidents has increased from 219 in 2010 to 237 in 2011, the number of successful hijackings has decreased from 49 in 2010 to 28 in 2011.”¹²

Apparently, the successful reduction of ship seizures by Somali pirates stems from the diligence of the naval forces patrolling and responding to the attacks.¹³ For example, according to the IMB:

[I]n the last quarter of 2011 alone, the navies have disrupted at least 20 Pirate Action Groups (“PAGs”) before they [became] a threat to commercial fleets. The last quarter of 2010 saw 90 incidents and 19 vessels hijacked. In 2011, 31 vessels were attacked of which only four

7. Compare Barry Dubner, *Human Rights and Environmental Disaster—Two Problems That Defy the “Norms” of the International Law of Sea Piracy*, 23 SYRACUSE J. INT’L L. & COM. 1, 57 (1997) (displaying data from the 1994 Annual Piracy Report for geographic locations of piracy incidents with low totals in Somalia) with ICC International Maritime Bureau, *infra* note 9, at 24 (describing that Somali pirate attacks currently account for more than half of the total number of attacks worldwide).

8. See Dubner, *supra* note 7, at 60 (comparing data from the 1994 Annual Piracy Report based on types of attacks).

9. ICC International Maritime Bureau, *Piracy and Armed Robbery Against Ships: Report for the Period 1 January—31 December 2011* 24 (Jan. 24, 2012), available at <http://www.icc-ccs.org> (“The ICC International Maritime Bureau (IMB) is a [specialized] division of the International Chamber of Commerce (ICC). The IMB is a non-profit making [organization], established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice Outrage in the shipping industry at the alarming growth in incidents of piracy . . . prompted the creation of the IMB Piracy Reporting Centre (PRC) in October 1992 in Kuala Lumpur, Malaysia.”).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

successfully hijacked.¹⁴

Without the navies patrolling, there would be many more successful pirate hijackings.¹⁵

Regarding incidents occurring off the coast of Somalia in the Gulf of Aden during 2011, the IMB Piracy Reporting Centre received notifications of 237 incidents attributed to Somali pirates.¹⁶ The geographical area ranges from the southern part of the Red Sea to seventy-six degrees longitude and beyond in the east.¹⁷ According to the IMB, “[i]ncidents in the past have also been reported off the coast of the Oman in the Arabian Sea, in the north, extending southward to twenty-two degrees.”¹⁸ There were 470 seafarers taken hostage, ten kidnapped, three injured, and eight killed.¹⁹ The southeastern coast of Somalia, including the Arabian Sea, had 160 reported attacks, while the Gulf of Aden region had thirty-seven reported attacks.²⁰ In addition, there were thirty-nine attacks in the southern Red Sea along with a hijacking in the territorial waters of Oman.²¹ The IMB also reported that twenty-eight vessels were hijacked during the year.²² “As of 31 December 2011, suspected Somali pirates held 11 vessels for ransom with 193 crew members of different nationalities as hostages. In addition, these pirates are also holding 23 kidnapped crew members as hostage.”²³

In 2011, piracy attacks were reported on all types of vessels, including general cargos; bulk carriers; tankers; container carriers; roll-on/roll-off vessels; fishing vessels; sailing yachts; dhows; and tugboats.²⁴ The pirates continued to utilize assault rifles, rocket launchers, and small arms.²⁵ If it were not for the naval forces’ efforts and merchant vessels’ preventive measures—including the use of citadels and the employment of privately contracted armed security personnel—then these numbers would be much higher.²⁶

III. ON STRENGTHENING THE LEGAL RESPONSE TO PIRACY

This Section will address how the international community should battle Somali pirates. In December 2009, Professor Dubner was honored to participate in a Harvard Kennedy School group discussion on the subject of “Controlling

14. *Id.*

15. ICC International Maritime Bureau, *supra* note 9, at 24.

16. *Id.* at 20.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. ICC International Maritime Bureau, *supra* note 9, at 20.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 21-22.

26. *Id.* at 20.

Maritime Piracy.”²⁷ In attendance at the conference were twenty-five scholars, diplomats, lawyers, military officers, shipping industry officials, and other experts on the subjects of piracy and Somalia from nine different nations.²⁸ The three-day conference was given under the auspices of the World Peace Foundation and entitled the “Cambridge Coalition to Combat Piracy” (“Coalition”).²⁹ The Coalition “carefully considered measures of prevention as well as protection.”³⁰ The Coalition ultimately prepared a policy brief, which reviewed, *inter alia*, relevant legal concerns and issues.³¹ The Coalition made thirty-eight recommendations to reduce and eliminate Somalia maritime piracy.³²

The main suggestions concerned strengthening the legal response to sea piracy off the coast of Somalia and handling the captured pirates and confiscated ships.³³ By looking at the past recommendations of the Coalition, progress on prosecuting and strengthening the legal response to sea piracy can be measured. According to the *New York Times* article discussed earlier, little progress has been made.³⁴

One of the main problems the Coalition found in December 2009, which still exists today, concerns the catch-and-release policy of many naval forces.³⁵ The prevailing opinion among the Coalition was that this policy would not deter piracy.³⁶ In addition, many countries had not yet and would not update their own legal systems to face the current reality of piracy.³⁷ Notwithstanding the aforementioned obstacles, the international lawyers at the Coalition saw no international or domestic legal impediments to trying pirates locally in domestic or specially created tribunals.³⁸ A few did not wish to create a special international court for piracy,³⁹ saying that regional courts would save money and would be sufficient.⁴⁰

One of the Coalition’s suggestions was to create an extraterritorial court which utilized Somali law and was based in Somaliland, Djibouti, or elsewhere in the region, to handle all piracy cases.⁴¹ The idea was for the African Union or the

27. ROBERT I. ROTBERG, WORLD PEACE FOUNDATION, COMBATING MARITIME PIRACY: A POLICY BRIEF WITH RECOMMENDATIONS FOR ACTIONS 3 (Jan. 26, 2010), available at http://www.worldpeacefoundation.org/WPF_Piracy_PolicyBrief_11.pdf.

28. *Id.*

29. *Id.*

30. *Id.* at 4.

31. *Id.*

32. *Id.* at 4.

33. ROTBERG, *supra* note 27, at 10.

34. Chivers, *supra* note 1, at A9.

35. ROTBERG, *supra* note 27, at 10.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 10-11.

40. *Id.* at 11.

41. ROTBERG, *supra* note 27, at 11.

United Nations to appoint and pay for judges.⁴² The United Nations could authorize such a court's creation.⁴³ In addition, the United Nations and the court would need to establish a prison system.⁴⁴ Even though the cost of the court and the prison system would be high, it would help deter piracy and save funds in the long run.⁴⁵

The Coalition also discussed evidentiary problems that occur in piracy cases⁴⁶: "The [United Nations] should be encouraged to expand upon and update Resolution 1897⁴⁷ to make the existence of equipment capable of being employed for purposes of piracy *prima facie* evidence of piratical intent."⁴⁸ Pirate ships and tools (e.g., grappling hooks, ladders, and specialized equipment including large outboard motors, rocket-propelled grenade launchers, and machine guns) could be confiscated at sea.⁴⁹

On January 20, 2012, the United Nations released a crucial report regarding anti-piracy courts in Somalia, pursuant to the request of the Security Council in Resolution 2015 (Oct. 2011).⁵⁰ The report points out that, "of the total of 286 reported piracy attacks in 2011, only 4 resulted in any of the 3 naval coalitions considering that there would be sufficient evidence to warrant transfer of persons in their custody to a regional State for prosecution."⁵¹

To determine whether or not there is a definite "catch-and-release" policy of the naval forces involved in that region, it is necessary to look at the incidents of piracy off the coast of Somalia and the number of prosecutions by the states.⁵²

The International Maritime Organization (IMO), in addition to the International Maritime Bureau and the Department of Peace Keeping Operations, supply relevant statistics.⁵³ According to the IMO, "there were 286 attacks against ships in the waters off the coast of Somalia, of which 31 were successful."⁵⁴ As of December 20, 2011, pirates held thirteen ships with a total of 265 hostages, compared to twenty-eight ships and 656 hostages as of December 31, 2010.⁵⁵

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. See G.A. Res. 1897, U.N. Doc. S/RES/1897 (Nov. 30, 2009) (reiterating that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation).

48. ROTBERG, *supra* note 27, at 11.

49. *Id.*

50. U.N. Secretary-General Report, Jan. 2012, *supra* note 6.

51. *Id.* ¶ 7.

52. *Id.*

53. *Id.* ¶ 8.

54. *Id.*

55. *Id.*

Moreover, “the number of attacks per month declined throughout 2011” from forty-five in January 2011 to fourteen in November 2011.⁵⁶ More interestingly, the attack success rate also sharply declined from 21% in late 2010 to 7% in November 2011.⁵⁷ The majority of successful hijackings in 2011 occurred in the western Indian Ocean.⁵⁸ According to the IMO:

The reduction in successful attacks was achieved through a combination of: (a) actions by naval forces; (b) the improved implementation of the IMO guidance and industry-developed best management practices for protection against Somalia-based piracy; and (c) the imprisonment of more than 1,000 suspects or convicted pirates and the fact that several hundred died or were lost at sea. The increase in privately contracted armed security personnel on ships may also have contributed to the reduction in successful attacks.⁵⁹

Accordingly, pirates now cover distances up to 1,750 nautical miles from the Somali coast, “covering a geographical area of roughly 2.8 million square miles.”⁶⁰ The total number of pirate attacks continues to be high despite their lower success-rate.⁶¹ Because of the spread of pirate activities, naval resources are running thin.⁶² One tactic that pirates employ is making “greater use of captured ships and dhows as so-called ‘mother ships,’” often utilizing the captured crews as human shields.⁶³ Violence against seafarers is a documented and rising concern.⁶⁴ “[T]he number of States prosecuting acts of piracy off the coast of Somalia has remained at 20, and the total number of prosecutions has increased from 1,011 to 1,063.”⁶⁵

The report provided a table, set forth below, which explains the breakdown of all global piracy prosecutions from 2006 to January 2012.⁶⁶

Table 1: Global Piracy Prosecutions 2006-2012

Country	Number Held	Notes
Belgium	1	1 convicted
Comoros	6	
France	15	5 Convicted
Germany	10	
India	119	
Japan	4	
Kenya	143	50 Convicted
Madagascar	12	

56. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 8.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* ¶ 9.

61. *Id.*

62. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 9.

63. *Id.* (citation omitted).

64. *Id.*

65. *Id.* ¶ 10.

66. *Id.*

Malaysia	7	
Maldives	37	Awaiting deportation in absence of a law under which to prosecute
Netherlands	29	10 convicted
Oman	22	All convicted
Republic of Korea	5	5 convicted, appeal pending before the Supreme Court
Seychelles	70	63 convicted
Somalia		
Puntland	290	Approximately 240 convicted
Somaliland	94	68 convicted (approximately 60 subsequently released)
South Central	18	Status of trial unclear
Spain	2	Both convicted
United Arab Emirates	10	
United Republic of Tanzania	12	6 convicted
United States of America	28	17 convicted
Yemen	129	123 convicted and 6 acquitted
Total	1,063	

Looking at the chart's figures, it becomes evident there are no statistics regarding the number of pirates caught and released by the naval command. In fact, the U.N. report stated in its conclusion that the number of piracy incidents in which the suspects have been apprehended and released, and the reason thereby, was not obtained from navies patrolling the areas.⁶⁷ Also, the number of convictions in Puntland was 240 out of 290 captured; in Somaliland, 94 captured with 68 convictions (of which 60 were subsequently released); and in South Central Somalia 18 were captured, but the status of their trials is unclear.⁶⁸

Regarding Somalia, the report states that "Somalia's legal system consists of a formal legal sector, Sharia Law and customary law, known as 'Xeer' . . ."⁶⁹ However, the report illustrates that the Penal Code and the Criminal Procedure

67. *Id.* ¶ 125. The U.N. Report concluded that in the future: "As a first step, an assessment, with the assistance of the naval coalitions and other States active in naval operations, could be useful to help to determine the number of piracy incidents in which suspects have been apprehended but released, and the reasons underlying the releases. This information may assist both the Security Council and the Contact Group in their consideration of the most effective measures to combat piracy off the coast of Somalia, and assist regional States and the United Nations to determine the likely demand for prosecution capacity in the region for the foreseeable future."

68. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 10.

69. *Id.* ¶ 12.

Code have not been revised since 1960, nor are they accessible in the Somali language.⁷⁰ At the date the report was issued, the Transitional Federal Government of Somalia was charged with enacting anti-piracy legislation by May 18, 2012,⁷¹ as its Penal Code and Criminal Procedure Code did not cover piracy.⁷² The low numbers and level of training available to legal professionals in each of Somalia's regions demonstrate that "increasing the capacity to conduct the prosecution of piracy cases is a major, long-term challenge"⁷³

On December 18, 2010, the Puntland Parliament amended Puntland Piracy Law No. 6, after heavy influence from legislation drafted by the Law Reform Group and the United Nations Office on Drugs and Crime.⁷⁴ The amended law, however, was not consistent with the way piracy was defined in the U.N. Convention on the Law of the Sea (1982) (UNCLOS).⁷⁵ In other words, Puntland's jurisdiction over piracy would include acts committed anywhere on the high seas (just as UNCLOS states in its articles), and would not require the act to have a nexus or connection to Puntland (e.g., the nationality of the ship attacked, or the perpetrators, or crew).⁷⁶

The problem is that Puntland faces challenges, such as "delays, lack of defense counsel, the lack of formal legal training of judges and other legal professionals, lack of secure and properly equipped courtrooms, and other infrastructure and resource issues."⁷⁷ Additionally, concerns about bribery are "being tackled through a code of conduct"⁷⁸ Puntland's security of prosecutors and judges is problematic.⁷⁹ Investigators face severe challenges such as "a low level of basic investigation skills and the lack of established operational procedures, infrastructure, transport, and search or forensic equipment."⁸⁰ A three-judge bench in the assize courts (courts of first instance) hears all piracy trials in Puntland.⁸¹ There is also an appellate procedure of sorts. In sum, fifty-three judges

70. *Id.*

71. *Id.* ¶ 12.

72. *Id.* ¶ 14.

73. *Id.* ¶ 13.

74. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 13.

75. *Id.*; U.N. Convention on the Law of the Sea, art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397, 436, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%201833/volume-1833-A-31363-English.pdf>. Article 101 states the following: "Piracy consists of any of the following acts: (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)."

76. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 14.

77. *Id.* ¶ 15.

78. *Id.*

79. *Id.* ¶ 16.

80. *Id.* ¶ 17.

81. *Id.* ¶ 20.

are distributed amongst seventeen assize courts, four appeal courts, and the Supreme Court.⁸² As far as transferring of suspects, evidence, and prisoners, Puntland lacks agreements with naval states or organizations that would ensure the transfer of sea piracy suspects for trial in its courts.⁸³ It is understandable that these agreements have not been entered into since very few of the naval states patrolling the area are satisfied that Puntland's trials are capable of meeting the human rights standards included in such agreements.⁸⁴

On the other hand, Somaliland's court system is a hybrid between common and civil law systems.⁸⁵ Neither the Penal Code nor the Code of Criminal Procedure explicitly covers piracy offenses.⁸⁶ The United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP) have assisted the Somali government in drafting piracy laws, particularly, the Law on Combatting Piracy, which was passed by both houses and signed into law by the president of Somaliland.⁸⁷

Special Adviser to the Secretary-General on the Issues related to Piracy off the Coast of Somalia, Jack Lang, advocated for the establishment of an extraterritorial Somali anti-piracy court wherein the Somali anti-piracy court would be physically located in a third state in the region.⁸⁸ Special Adviser Lang's report (dated June 15, 2011) also mentions the possibility of setting up an extraterritorial Somali anti-piracy court, wherein the Somali anti-piracy court would be located in a third state in the region. Special Adviser Lang suggested that the International Criminal Tribunal Rwanda in Arusha, United Republic of Tanzania, serve as such a court.⁸⁹ In Special Adviser Lang's report, modalities were identified for the establishment and effective functioning of such a court; considerations of the use of the Somalia authorities and of potential host states were taken into account.⁹⁰ Interestingly, during deliberations held by the Office of Legal Affairs and the UNDP over the issue, Somali authorities voiced disapproval at the option of establishing a Somali court outside of Somalia, as opposed to within Somali territorial boundaries.⁹¹ It was argued that the tribunal and staff

82. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 20.

83. *Id.* ¶ 24.

84. *Id.*

85. *Id.* ¶ 25.

86. *Id.*

87. *Id.*; The Law on Combatting Piracy, Law No. 52/2012, http://www.somalilandlaw.com/Somaliland_Piracy_Law_2012_Eng180311A.pdf.

88. U.N. Secretary-General, *Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia*, U.N. Doc. S/2011/30, ¶ 119 (Jan. 25, 2011) [hereinafter U.N. Secretary-General Report, Jan. 2011].

89. *Id.* ¶ 122.

90. U.N. Secretary-General, *Report of the Secretary-General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts*, ¶ 49, U.N. Doc. S/2011/360 (June 15, 2011).

91. U.N. Secretary-General Report, Jan. 2012, *supra* note 6, ¶ 38.

would be at a security risk if they were located in Arusha.⁹² It also “remains difficult to comment authoritatively on the Special Adviser’s estimated annual costs for an extraterritorial Somali court. The need for stand-alone premises, associated security costs, and the salaries and other expenses of international experts, including from the Somalia diaspora, may impact those estimates.”⁹³

In connection with whether to use regional or international courts for prosecuting pirates, there were differing views at the Coalition meeting in December 2009.⁹⁴ Most wished to continue with the regional courts because they would be more efficient and less costly. Others, including Professor Dubner, thought that international courts would be appropriate. Professor Dubner has suggested over the years that, in the short run, it would be best to have a ship sanctioned by the United Nations, flying a U.N. flag, going out on a circuit to prosecute pirates, and dropping them off at various prison facilities which are being established and already exist in Somalia, Yemen, and Djibouti, as well as other countries in the region.⁹⁵ The pirate suspects could be dropped off at a floating docking platform where they could be held or transferred while awaiting prosecution.⁹⁶ In fact, according to the *New York Times* article discussed earlier, the U.S. Navy was considering converting an amphibious transport, a docking ship, to serve as a floating base for military operations for humanitarian assistance, with deployment expected in the summer of 2012 in the waters of the Middle East.⁹⁷ The expense of this type of humanitarian assistance would be minimal compared to the expense the international community currently incurs due to the various organized crime acts classified as “piracy.”

Before proceeding with the current state of affairs regarding piracy, prosecutions, collection of evidence, and the problems connected thereto, it is necessary to discuss the similarities between the acts of piracy and prosecution thereof during the “classical” piracy period (i.e., middle 1600s-early 1700s).

A. Classical Piracy: We Can Learn From History!

There are analogies between the weak judicial systems currently used for prosecuting pirates and the evidentiary problems and prosecutions that occurred in earlier times. The first and most important is the current situation off the coast of Somalia, which can be observed by reviewing statistics available in reports.

One major difference between classical piracy and the current situation off the coast of Somalia is that in the past, pirates were not subsidized by men of means as they are today.⁹⁸ As the reader may be aware, during the present atmosphere, calls have been made to include these financial backers and other collaborators as

92. *Id.* ¶ 38.

93. *Id.*

94. ROTBERG, *supra* note 27, at 11.

95. *Id.* at 11–12.

96. *Id.*

97. Chivers, *supra* note **Error! Bookmark not defined.**

98. Barry Hart Dubner and Ritvik Raturi, *On the Economics of International Sea Piracy – A Case of History Repeating Itself*, 20 MICH. ST. INT’L L. REV. 3, 10 (April 2012).

“pirates” so that they can be charged as such.⁹⁹

One of the first items of interest is the cost of prosecutions and imprisonment. It has been estimated that the total cost of prosecution and imprisonments for 2011 was \$16.4 million.¹⁰⁰ The total cost of Somali piracy altogether has reached between \$6.6 and \$6.9 billion.¹⁰¹ Most available studies on piracy do not estimate the total cost of piracy during the “classical” period of piracy.¹⁰²

It has been argued that the piracy occurring in the world today is backed by organized crime, especially off the coast of Somalia and further into the Indian Ocean.¹⁰³ In fact, in one of Professor Dubner’s previously referenced articles, statistics were used to show how money is laundered today.¹⁰⁴ Nevertheless, during the early classical period of piracy, pirates were known as “privateers” because they were both state-sponsored and backed by men of considerable means.¹⁰⁵ Even though piracy and privateering were interchangeable, the sole difference between the two was that “privateering was conducted under a state-authorized license granted by a prize court, a special type of maritime court for ships in times of war.”¹⁰⁶ While piracy was not government sanctioned, Captain Kidd serves as an example of just how sinister “privateering” was at the time.

99. Amber Ramsey, *Justice*, in 49 CIVIL-MILITARY FUSION CENTRE ANTI-PIRACY REVIEW 1, 2–3 (Dec. 6, 2011), available at https://www.cimicweb.org/Documents/CFC%20Anti-Piracy%20Review/CFC_Anti-PiracyReview%2006%20December.pdf (stating that prosecutors, in accordance with the U.N. Convention on the Law of the Sea, are seeking to hold accountable individuals for their efforts to facilitate piracy from beyond the high seas). See United Nations Convention on the Law of the Sea, *supra* note 75 (defining piracy).

100. One Earth Future Foundation, *The Economic Cost of Somali Piracy 2011*, 22 (2011), available at http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf.

101. *Id.* at 39.

102. There have, however, been economic studies performed by Professor Peter T. Leeson. See Peter T. Leeson, *An-arrgh-chy: The Law and Economics of Pirate Organization*, 115 J. POL. ECON. 1049 (2007) (discussing the economics behind piracy during the 1600s and 1700s); Peter T. Leeson, *The Invisible Hook: The Law and Economics of Pirate Tolerance* 4 N.Y.U. J.L. & LIBERTY 139 (2009); Peter T. Leeson, *The Calculus of Piratical Consent: The Myth of the Myth of Social Contract*, 139 PUBLIC CHOICE 443 (2009); Peter T. Leeson, *Better Off Stateless: Somalia Before and After Government Collapse*, 35 J. OF COMP. ECON. 689 (2007); Peter T. Leeson, *Rationality, Pirates, and The Law: A Retrospective*, 59 AM. U. L. REV. 1219 (2009–2010).

103. *Awash with money - organized crime and its financial links to Somali piracy*, UNITED NATIONS OFFICE ON DRUGS AND CRIME [UNODC] (May 25, 2011), <http://www.unodc.org/unodc/en/frontpage/2011/May/awash-with-money---organized-crime-and-its-financial-links-to-somali-piracy.html>.

104. Dubner & Raturi, *supra* note 98, at 13 (citing Financial Action Task Force Report, *Organized Maritime Piracy and Related Kidnapping for Ransom* (July 2011)), available at <http://www.fatf.gafi.org/media/fatf/documents/reports/organised%20maritime%20piracy%20and%20related%20kidnapping%20for%20ransom.pdf>.

105. Lucas Bento, *Toward an International Law of Piracy Sui Generis: How the Dual Nature of Maritime Piracy Law Enables Piracy to Flourish*, 29 BERKELEY J. INT’L L. 399, 402 (2011).

106. *Id.*

In the mid-1690s, “Eastern Seas were alive with pirate vessels.”¹⁰⁷ Pirates such as Thomas Tew and Henry Every were actively exploring the seas during that period.¹⁰⁸ The number of pirate acts was so high and so effective, that the East India Company began to deteriorate.¹⁰⁹ England’s war with France at that time meant that there were few ships to chase pirates; Captain Kidd took advantage of this and began his piracy efforts. In 1695, he went to London and met Colonel Robert Livingston, a prominent New Yorker.¹¹⁰ Livingston presented Captain Kidd a plan to end Red Sea piracy and to make a profit at the same time.¹¹¹ The idea was to build a privateer ship and to dispatch it with a privateer captain, backed by wealthy, influential men who would profit from the captured pirate booty and thereby recoup their investment.¹¹² While, ostensibly, it was aimed at international policing of privateering, it was instead a tool to simply make an enormous profit.¹¹³ In fact, “the real target was not so much the pirates but the prodigious plunder presumed to be in their ships.”¹¹⁴ In any event, Kidd had been a former privateer in the King’s service and supposedly “a fighting sailor who knew the ways of pirates.”¹¹⁵ Kidd and Livingston received backing from the Governor of New York, Lord Bellomont, who put Livingston in touch with four of England’s most powerful men who were friends of the King.¹¹⁶ These men agreed to put money into this venture provided they were silent partners and that their names were never to be disclosed.¹¹⁷ Even the King, it has been said, promised to put up £3,000 but never did so.¹¹⁸

Turning to the present, much has been written about the stock market started by pirates in the last few years.¹¹⁹ However, during the classical period of piracy, Bellomont and Kidd signed articles of agreement wherein Bellomont was responsible for funding four-fifths or £6,000 of the cost—this sum would be coming from four anonymous noblemen backers—and Livingston and Kidd

107. DOUGLAS BOTTING, *THE PIRATES* 103 (1978).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. BOTTING, *supra* note 107, at 105.

114. *Id.*

115. *Id.*

116. *Id.* (i.e. Sir John Somers, Lord Keeper of the Great Seal, and subsequently Lord Chancellor; the Duke of Shrewsbury, Secretary of State; Sir Edward Russell, First Lord of the Admiralty, later Lord Orford; and the Earl of Romney, Master General of Ordnance).

117. *Id.*

118. *Id.*

119. Dubner & Raturi, *supra* note 98, at 20 (citing Financial Action Task Force Report, *supra* note 104, at 17). Today, piracy investor schemes are set up similar to conventional organized crime. There are two types of shares for each venture: shares in which individuals receive a percentage of the ransom, usually reserved for investors, pirate leaders, and the successful pirate crew, and shares which entitle an individual to a fixed fee for singular tasks such as armed guards, interpreters, and middlemen.

together, put up one-fifth.¹²⁰

As was customary, the first 10% of any booty would go to the Crown. The remaining 90% would be split three ways—60% for Bellomont's backers, 15% for Kidd and Livingston and only 25% for the crew—not the usual 60% of a privateering agreement.¹²¹

Kidd was given two special commissions to overlay this private venture with an official veneer:

One was a letter of marque, which empowered Kidd to capture any ships or goods belonging to Britain's enemy, France. The other was a commission from the King, issued under the Great Seal of the Crown of England, empowering Kidd to seize pirates, in particular, four named pirates including Tew, and their ships and "Merchandizes, Money, Goods and Wares."¹²²

For many reasons, this adventure wound up a debacle and Captain Kidd was later hanged.¹²³

The point is that the classical period of piracy and the organized crimes being called piracy today are very similar. There were silent backers in the classical period and there are silent backers today (as well as a stock market for investors). Of course, the money flowing today greatly exceeds what it was then, but there have always been many people other than the actual pirates involved in backing these ventures because of the profitability.¹²⁴

Today, many pirates are released after being caught in spite of the fact that the piracy articles, contained first in the 1958 Geneva Convention and now in the 1982 UNCLOS, are interpreted as giving universal jurisdiction, and the gap-filler Suppression of Unlawful Acts (SUA) was enacted.¹²⁵ The existence of the problem of catch-and-release is due to the fact that many states simply do not want to try the pirates for various reasons (e.g., they did not want the pirates taking asylum after their sentence, or perhaps they are concerned about being called racist). Also, there has been an absence of the necessary domestic legislation in these various countries, meaning pirates are not being prosecuted. Instead, a regional system is being set up, at a very expensive cost to try the pirates. But before continuing with problems of prosecution in 2012, it is helpful to compare what is going on now in 2012 and what went on during the classical period of piracy. England serves as a good example.

120. BOTTING, *supra* note 107, at 105.

121. *Id.*

122. *Id.* at 106.

123. *Id.* at 127.

124. *See id.* at 105 (discussing various individuals in addition to Kidd involved in the venture and their potential payouts).

125. *See generally* Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82; United Nations Convention on the Law of the Sea, *supra* note 75; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 U.N.T.S. 221, 27 I.L.M. 668.

England struggled with the problem of trying pirates and creating the necessary legal regimes in circumstances similar to today.¹²⁶ Looking back at the classical period, as far as European piracy was concerned, pirates were tried under civil law in admiralty courts between 1340 and 1536 in England.¹²⁷ One startling observation is the analogy that can be drawn between the evidentiary problems facing piracy tribunals today and the problems that occurred in the classical period. The problems are practically identical. For example, in the pre-1536 law, a conviction of piracy required either a confession or two eyewitnesses.¹²⁸ Neither of the two eyewitnesses could be accomplices in the act of piracy.¹²⁹ Not allowing the testimony of eyewitnesses who were possible accomplices ruled out any possibility that the authorities could strike a deal with the pirates in exchange for providing evidence against the accused.¹³⁰

This led to the Offenses at Sea Act, which England enacted in 1536.¹³¹ This Act allowed England to try pirates under common law, which permitted accomplice testimony.¹³² The authorities therefore could extract evidence from a wider pool of witnesses, which in turn, facilitated the prosecution of pirates.¹³³ With the expansion of the British Empire, one of the analogies that can be made to today's evidentiary problems was that the pirates could not be prosecuted in the colonies but had to be extradited to England.¹³⁴ This resulted in delays and increased costs due to extradition, which led to the colonies attempting to try pirates.¹³⁵ Further, the High Court of Admiralty could overturn the colonies' decisions.¹³⁶

Just as today there is a problem with transporting pirates for trial, in 1684, the trials in the colonies came to a halt when the English government decided that the colonies did not have jurisdiction to try piracy cases.¹³⁷ The Offenses at Sea Act obligated colonial officials to ship pirates and witnesses to England to attend trial.¹³⁸ Today, there is a similar problem with military testimony, as well as other

126. Bento, *supra* note 105, at 403.

127. Peter T. Leeson, *Rationality, Pirates, and The Law: A Retrospective*, 59 AM. U. L. REV. 1219, 1220 (2009–2010).

128. *Id.*

129. *Id.*

130. Bento, *supra* note 105, at 403.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Leeson, *supra* note 127, at 1221.

137. *Id.*

138. *Id.* (quoting a later law: “[I]t hath been found by Experience, that Persons committing Piracies, Robberies and Felonies on the Seas, in or near the *East and West Indies*, and in Places very remote, cannot be brought to condign Punishment without great Trouble and Charges in sending them into *England* to be tried within the Realm, as the said Statute directs, insomuch that many idle and profligate Persons have been thereby encouraged to turn Pirates, and betake themselves to that sort of wicked Life, trusting that they shall not, or at least cannot easily, be questioned for such their Piracies and Robberies, by reason of the great Trouble and Expence that

witnesses, due to the long distances involved in bringing these pirates to regional courts.

Regarding the catch-and-release of pirates, although colonial governments were interested in prosecuting the pirates, they did not want to pay for their trials.¹³⁹ They found it more convenient to capture the pirates and subsequently release them. This policy problem apparently intensified in the late 17th and early 18th centuries as a new wave of pirates took to the sea.¹⁴⁰ During the 1690s to 1700s, “the ‘Red Sea Men’ so-named because they did most of their prowling in the Red Sea, caused the East India Company considerable trouble.”¹⁴¹ The East India Company lobbied the English government to do something about the pirate problem.¹⁴² Due to the war of the Spanish Succession (approximately 1701–1714), the pirate problem was solved by turning these energies to legitimate maritime marauding in the form of “privateering.”¹⁴³

Comparing this to today’s problems regarding Somali pirates, pirates in 1714 had no outlet for their desire to steal at sea.¹⁴⁴ The war was over. Today, the Somali pirates have claimed—at least early on—that they took to hijacking vessels because their fisheries were being overrun by Europeans and others.¹⁴⁵ Hence, they had no viable alternative.¹⁴⁶ Apparently, the Caribbean piracy situation was greatly intensified after the War of the Spanish Succession ended in 1714.¹⁴⁷ The problem intensified because the colonies refused to send pirates back to England for trial. Again, this is very similar to what has occurred in the past few years off the coast of Somalia and elsewhere. Today, there are nations that do not want to try pirates, so the pirates are released.

Just as domestic laws on piracy are needed today, the English Parliament introduced An Act for the More Effectual Suppression of Piracy (the “Act”), which permitted the establishment of vice-admiralty courts in the colonies and authorized these courts to try pirates.¹⁴⁸ This fact coupled with the other ever-expanding

will necessarily fall upon such as shall attempt to apprehend and prosecute them for the same”).

139. *Id.*

140. *Id.*

141. *Id.*

142. Leeson, *supra* note 127, at 1221.

143. *Id.*

144. *Id.* at 1222.

145. See Barry Hart Dubner and Joseph P. Henn, *On Selecting A Judicial System(s) To Try Sea Pirates—An Interesting/Necessary Exercise But Is It Enough to Deter The Attacks/Hijackings?*, 42 J. MAR. L. & COM. 569, 582 (2011) (stating as a claim that the fishing industry has been taken away from the Somali fishermen by European and Asian fishing vessels that fish in the area and fire upon them).

146. See generally, *id.* (describing the taking of fisheries—a vital source of Somalians’ food—as contributing to the lack of a much needed increase in the standard of living for Somali people).

147. Leeson, *supra* note 127, at 1222.

148. *Id.*

geographic reach of the Royal Navy, greatly enhanced the British Empire's ability to catch and prosecute pirates across the harbors.¹⁴⁹ Nevertheless, they were faced with very similar evidentiary problems.

In the 1700s, the Act was in force. The pirate was still tried by jury under a common law procedure if tried in England, but not if he was tried in one of the colonies.¹⁵⁰ The Act provided that:

[T]he legal arrangements it established provided the best of both worlds: the Act permitted the eyewitness testimony needed to convict pirates, per common law procedure, but, per civil law procedure, dispense with the pesky jurors who were less reliably antipirate—and, thus less likely to convict captured sea scoundrels—and replaced them with more reliable antipirate colonial officials who were more likely to convict pirates.¹⁵¹

The Act's other benefits included treating pirate sympathizers as accessories to piracy and punishing them in the same manner as pirates would be punished—by death and property forfeiture.¹⁵² The Act encouraged merchants to defend themselves by offering a reward for resisting pirate aggression.¹⁵³ The organizers were considered accessories, and merchants (or other people) received rewards for resisting pirate aggression or initiating aggression against pirates. This is in contrast to the present, when many countries do not have domestic laws on piracy, so they certainly do not have laws regarding the backers or organizers behind the dastardly deeds, and ship riders, of course, get paid for protecting ships and crews against pirates.

The other items added to this Act over time included holding persons who traded with pirates.¹⁵⁴ Today, of course, we do not have such laws in effect as of yet, and so the pirates who are supplied by backers, usually bear the brunt of the prosecutions. The Act, in fact, added the wage forfeiture and six months imprisonment provisions for armed merchants who did not try to defend themselves against pirate aggression.¹⁵⁵ This was rather a harsh penalty and it certainly is not permitted today. Nevertheless, it was effective in those years. The English Parliament, in the years since the passage of the initial Act, had made it exceedingly difficult for anybody to deal with pirates. Therefore, it is not at all surprising that the acts of piracy were reduced. According to figures given, “whereas only thirty-one percent of all pirates hanged between 1704 and 1726 were hanged in the fifteen years spanning 1704–1718, sixty-nine percent were hanged in the mere seven years spanning 1719–1726 with the vast majorities occurring in the years spanning 1721–1726.”¹⁵⁶

149. *See id.* at 1219 (“An enhanced British naval presence was partly responsible for bringing pirates to their end.”).

150. *Id.* at 1222.

151. *Id.*

152. *Id.* at 1223.

153. Leeson, *supra* note 127, at 1223.

154. *Id.* at 1224.

155. *Id.*

156. *Id.* at 1225.

Today, Somali pirates would argue that their fishing grounds and vessels were taken from them, and therefore they had to turn to piracy in order to earn a living.¹⁵⁷ In the classical period of piracy, most pirates were hanged.¹⁵⁸ To avoid this terminal punishment, pirates at trial would argue that they were compelled to serve under the threat of death or bodily harm.¹⁵⁹ They proved that they were pressed into service generally in two ways:

First, conscripts, real and pretend, asked their captured fellow sailors, who the pirates released, to advertise their impressment in popular London or New England newspapers. If authorities ever captured the pirates the “conscripts” sailed with, “conscripts” could use the newspaper ads verifying their forced status as evidence in their defense.¹⁶⁰

Pirates would also offer bribes to their superiors to have them testify that they were forced into the acts of piracy. These “ads of force” proved to be “a marvelous invention for conscripted sailors.”¹⁶¹ Today, there are many problems with regard to prosecuting pirates in domestic courts. The first problem is the cost of trying pirates. Returning to the study done entitled “The Economic Cost of Somali Piracy 2011,” it was pointed out that according to their statistics, over the past few years, there have been 1,089 pirate suspects who have been arrested for piracy and either have been tried or are awaiting trial in twenty countries, up from ten countries in 2010.¹⁶²

Table 2: Pirates, Suspects, and Trials¹⁶³

COUNTRY	TOTAL SUSPECTS	TRIALS IN 2011	REGION
Belgium	1	Unknown	Europe & Japan
Comoros	6	Unknown	Africa
France	15	6	Europe & Japan
Germany	10	10	Europe & Japan
India	146	146	Asia
Japan	4	Unknown	Europe & Japan
Kenya	143	6	Africa
Korea	5	5	Asia
Madagascar	12	Unknown	Africa
Malaysia	7	Unknown	Asia

157. See Dubner & Henn, *supra* note 145, at 582 (stating it is claimed that the fishing industry has been taken away from the Somali fishermen by European and Asian fishing vessels that fish in the area and fire upon them).

158. Leeson, *supra* note 127, at 1225.

159. *Id.*

160. *Id.* at 1226.

161. *Id.* at 1227.

162. One Earth Future, *supra* note 100, at 23.

163. *Id.*

Maldives	37	0	Africa
Netherlands	29	10	Europe & Japan
Oman	12	13	Africa
Seychelles	64	20	Africa
Somalia & Puntland	308	Unknown	Africa
Somaliland	100	6	Africa
Spain	13	2	Europe & Japan
Tanzania	19	6	Africa
UAE	10	Unknown	Africa
USA	28	20	North America
Yemen	120	Unknown	Africa
TOTAL	1,089	104	

At first glance, the aforementioned chart would seem impressive in terms of numbers of trials that have occurred in various countries around the globe. However, according to U.N. Special Adviser Lang, “more than 90 per cent of pirates captured by States patrolling the seas will be released without being prosecuted.”¹⁶⁴ Around one-third of the pirates captured between 2008 and 2010 were prosecuted.¹⁶⁵ However, that rate was lower than the 10% figure at the beginning of 2011.¹⁶⁶ At that time, Special Adviser Lang proposed the development of a specialized extraterritorial Somali court system that was to be based in Arusha, Tanzania.¹⁶⁷ The cost of the court was estimated to be around \$2.73 million in 2011 and \$2.33 million per year after 2011.¹⁶⁸ Over three years, it was estimated that the funding from UNDP and UNODC would cost approximately \$24.4 million, which included the cost of assistance and funding for courts and facilities in Puntland and Somaliland.¹⁶⁹

Today, in addition to the poor record of trying pirates, there are limited resources.¹⁷⁰ The welfare of the convicted pirate as well as the seamen held hostage is also a current problem.¹⁷¹ Some may categorize this as a human rights concern, but regardless of its category, “the length of detention for convicted pirates ranges from anywhere between three years (in Oman) to 439 years (in Spain).”¹⁷² Other countries such as Oman and the United States have sentenced pirates to life imprisonment.¹⁷³ This year, a pirate was sentenced to death in South

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. One Earth Future, *supra* note 100, at 23.

169. *Id.*

170. *See id.* (describing the cost of prosecuting piracy as over \$16 million).

171. *See id.*

172. *Id.*

173. *Id.*

Korea for the attempted murder of a ship captain.¹⁷⁴

The estimated cost of prosecutions in 2011 was taken into account and accordingly, the economic costs reported included “both the average cost of pirate trials which occurred in 2011, as well as the cost of imprisonment for suspected Somali pirates in the same year, for four regions: Africa, Asia, Europe and Japan, and North America.”¹⁷⁵ Costs are funded by the UNODC Counter Piracy Programme and other international funding mechanisms.¹⁷⁶ According to the study, no pirates have completed their detention periods.¹⁷⁷ There are over 882 suspects accounted for in the course of imprisonment as calculated by “1,089 total suspects less 207 held in Kenya and the Seychelles.”¹⁷⁸

Table 3: Piracy Prosecutions in 2011¹⁷⁹

# of Trials 1-10	# of Trials 11-20	# of Trials 20-100	# of Trials >100
Belgium 1	France 15	Netherlands 29	India 146
Comoros 6	Madagascar 12	Seychelles 64	Kenya 143
Germany 10	Maldives 15	Somaliland 100	Somalia & Puntland 308
Japan 4	Oman 12	USA 28	Yemen 120
Korea 5	Spain 13		
Malaysia 7	Tanzania 19		
UAE 10			

Table 4: Cost of Piracy Prosecutions¹⁸⁰

Region	Pirates Imprisoned	Total Imprisonment Cost/Year	Pirate Trials	Total Trial Cost	Total Regional Cost in 2011
Africa	624	\$455,520	25	\$5,950	\$461,470
Asia	158	\$53,427.70	151	\$1,173,421	\$1,226,849
Europe & Japan	72	\$3,469,464	28	\$1,873,956	\$5,343,420

174. One Earth Future, *supra* note 100, at 23.

175. *Id.*

176. *Id.* at 24.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

North America	28	\$791,952	28	\$8,605,940	\$9,397,892
TOTAL	882		232		\$16,429,631

Based on Table 4, it is apparent that the cost of piracy prosecutions and imprisonment in 2011 was approximately \$16.43 million.¹⁸¹ This shows the extent of the resources needed for each prosecution.

As articulated by Professor Dubner, the solution, at least in the short term, would be to create a U.N. flagship that could try pirates.¹⁸² Under this proposal, ships would travel, dropping off pirates at various locations for their imprisonment after trial.¹⁸³ The idea of a floating base to drop off pirates has been previously proposed and suggests that the Navy had been making an amphibious transport and docking ship to serve as a floating base for military operations and humanitarian assistance expected for the summer of 2012 in Middle East waters.¹⁸⁴

B. Problems Regarding Trying Pirates Away From Their General Geographic Homes

One major problem with piracy is the treatment of suspected pirates once they are captured. The European Convention on Human Rights concerns the right to a fair trial, the prohibition of torture and inhumane or degrading treatment, the non-application of the death penalty, and respect for the rights of detainees.¹⁸⁵ The current international framework with regard to the prosecution of pirates is insufficient in that it does not provide a clear definition of acts of piracy and does not require states to criminalize acts of piracy.¹⁸⁶ UNCLOS did not require states to cooperate in the fight against piracy, although it did contain a provision allowing the flag states to seize a pirate ship, or a ship taken by pirates, and prosecute those pirates.¹⁸⁷ The Suppression of Unlawful Acts Convention (SUA) and its 2005 protocol were not directed at acts of piracy,¹⁸⁸ however, they were introduced to cover situations such as what occurred on the *Achille Lauro*.¹⁸⁹ That is, terrorists came on board while the ship was docked, not from a private vessel (as required by UNCLOS definition). This terrorist act would not be covered by UNCLOS because there was no private ship versus another ship but rather terrorists coming on board

181. *Id.*

182. *See* Barry Dubner, *supra* note 7.

183. *See id.*

184. *See* Chivers, *supra* note 1.

185. European Convention on Human Rights arts. 3, 5, 6, Protocol No. 6 art.s 1, 2, June 1, 2010, C.E.T.S. 194, *available at* http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf.

186. *Id.*

187. *Id.*; *see also* U.N. Convention on the Law of the Sea, *supra* note 75.

188. Michael Plachta, *Fighting Maritime Piracy: Council of Europe Contribution*, 28 No. 2 INT'L ENFORCEMENT L. REP. 61 (2012).

189. Mitchell Bard, *Terror Aboard the Achille Lauro*, JEWISH VIRTUAL LIBRARY, (2012) <http://www.jewishvirtuallibrary.org/jsourc/Terrorism/achille.html>.

the ship in harbor.¹⁹⁰

The difficulty of putting pirates on trial away from their homes raises numerous issues.¹⁹¹ First, because pirates do not carry legal documents, the arresting authorities cannot determine by evidentiary proof whether the pirates are minors.¹⁹² Second, a problem exists in translation or simultaneous translation of the legal proceedings from the language in which they are held into the Somali language.¹⁹³ Third, naval officer witnesses often have to travel long distances from their ships or their home country to a foreign country to testify, and are restricted from giving militarily sensitive evidence.¹⁹⁴ Fourth, identifying individuals is difficult because fingerprints collected from confiscated weaponry of the pirates cannot be matched to any database.¹⁹⁵ Finally, interviewing is another problem since it is unclear whether information gathered was via interrogation without proper legal procedure or through voluntary statements.¹⁹⁶

Against this background, the Security Council requested a report from the Secretary General regarding the implementation of Resolution 1950 (2010) and a status update of piracy and armed robbery at sea off the coast of Somalia.¹⁹⁷ The report detailed many of the aforementioned problems. Furthermore, the Security Council issued a press release unanimously adopting Resolution 2015 (2011),¹⁹⁸ which addressed legal issues concerning prosecution of suspected pirates and human rights.¹⁹⁹ The 2011 report indicated that if sufficient international assistance were received, then local courts in Somaliland and Puntland conducting piracy trials would reach international standards in about three years.²⁰⁰ In the report on legal issues regarding piracy off the coast of Somalia, the Security Council detailed the number of suspected pirates who have been prosecuted or are awaiting prosecution in twenty states,²⁰¹ however, as has been reported elsewhere, a large

190. See U.N. Convention on the Law of the Sea, *supra* note 75 (defining piracy to include acts committed by individuals on a private ship or aircraft against another ship, aircraft, or individuals).

191. Paul Hallwood & Thomas J. Miceli, *The Law and Economics of International Cooperation Against Maritime Piracy*, U. CONN. DEP'T ECON. WORKING PAPER SERIES 7 (June 2011).

192. *Id.* (noting that age is important in some countries, like Germany where you must be fourteen-years old to stand trial).

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 8.

197. U.N. Secretary-General, *Report of the Secretary-General Pursuant to Security Council Resolution 1950 (2010)*, U.N. Doc. S/2011/662, ¶ 1 (Oct. 25, 2011).

198. Press Release, Security Council, Security Council Renews Call for Study of Setting Up Courts to Deal with Perpetrators of Piracy off Coast of Somalia, U.N. Press Release SC/10419 (Oct. 24, 2011).

199. See U.N. Doc. S/2011/662, *supra* note 197, ¶ 57–58.

200. S.C. Res. 2015, ¶ 2, U.N. Doc. S/RES/2015 (Oct. 24, 2011).

201. U.N. Doc. S/2011/662, *supra* note 197, ¶ 20; see also One Earth Future, *supra* note 100, at 23 (containing a chart depicting total suspects and corresponding trials by country and

number of suspected pirates still have not been prosecuted for a variety of legal, practical, and political reasons, including: successful evasion of naval forces; insufficiency of evidence to prosecute; and failure to identify jurisdictions that are able and willing to prosecute.²⁰²

As a guide to the seafarers and owners of vessels, the fourth edition of the Best Management Practices directives was created to instruct on post-incident evidence preservation and collection.²⁰³ The report showed that the UNDP was providing assistance and capacity building to Somalia's police.²⁰⁴ However, despite all this aid, the UNODC received reports that after prison officials received bribery payments, sixty convicted pirates were released from prison in Somaliland.²⁰⁵ This is significant since the international community exhausts tremendous resources on preparing Somalia to prosecute pirates. Because of its corruption, a legal remedy may not be warranted in Somali tribunals even though locals resist extra-judicial courts and push for a specialized system within Somalia.²⁰⁶

Prosecution of children poses additional concerns. There have been ten documented cases of child recruitment into groups that operate off the Puntland coast.²⁰⁷ There have also been instances of children escaping from Al-Shabaab and joining pirate groups in Puntland.²⁰⁸ In 2011, fourteen cases of child rights violations were documented: two reported from Puntland and twelve from the South Central Zone. Furthermore, nine of the fourteen cases were for rape and five for illegal abduction.²⁰⁹

Concerning human rights, increasing amounts of violence by pirates against their captives, including severe physical and psychological abuse, have been observed and reported.²¹⁰ The report went on to state that:

While prosecutions of acts of piracy continue to be conducted in several States, the strengthening of the rule of law in Somalia, while respecting the country's territorial integrity and sovereignty, is central to bringing about justice. Human rights considerations continue to be important in guiding the actions of States in all phases of counter-piracy operations, including the apprehension, the detention, the prosecution and the transfer of suspected pirates, and equally in the imprisonment of

region).

202. See Chivers, *supra* note 1.

203. U.N. Secretary-General, *Report of the Secretary-General on the Protection of Somali Natural Resources and Waters*, ¶ 59, U.N. Doc. S/2011/662 (Oct. 25, 2011) [hereinafter U.N. Secretary General Somali Report].

204. *Id.* ¶ 62. ("A total of 96 officers of the Criminal Investigation Department in 'Puntland' and 'Somaliland' were trained during the reporting period [A] total of 32 judges and prosecutors graduated through UNDP-accredited training programmes").

205. *Id.* ¶ 69.

206. See *id.* ¶ 70.

207. *Id.* ¶ 71.

208. *Id.*

209. U.N. Secretary General Somali Report, *supra* note 203, ¶ 72.

210. *Id.*

convicted pirates.²¹¹

Other abuses have been reported as well. There have been reports of human traffickers and pirates working together.²¹² Moreover, according to a Somali report, crews of captured ships have been held ransom in exchange for millions by Somali pirates.²¹³ Pirates have also kept hostages even after ransom has been paid. The Contact Group on Piracy off the Coast of Somalia (CGPCS) has stressed the importance to owners and flag states of providing assistance to crews and vessels upon their release from pirates.²¹⁴ This assistance might include provisions of adequate fuel, technical assistance, and security teams to ensure safe passage of the released crew.²¹⁵ However, recent reports confirm that although the total number of pirate attacks has decreased by 20% this year, 15 vessels and 311 seamen still remained captive by Somali pirates.²¹⁶

While challenges remain, pirates have found it increasingly difficult to continue operations because of soaring costs of housing hostages; better security of target vessels; and increased pressure from Puntland authorities. Though a positive step in the fight against piracy, pirates have responded with deteriorating treatment for captives as leverage for shortening negotiation time intervals for ransom payments and capturing land-based hostages.²¹⁷

In several respects, the United Nations has attempted to restore Somalia's rights to its natural offshore resources—fisheries—by investigating accounts of illegal fishing and toxic dumping of waste.²¹⁸ The question remains whether these attempts will result in tangible results for Somalia.

The CGPCS has observed that “piracy can only be eliminated by combining the counter-piracy activities with wider efforts to stabilize Somalia”²¹⁹ These

211. *Id.*

212. Michael Logan, 26 SOMALIA REPORT 1 (Nov. 18, 2011).

213. Robert Young Pelton, 29 SOMALIA REPORT 1 (Dec. 9, 2011).

214. CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA, *Ninth Plenary Session of the Contact Group on Piracy off the Coast of Somalia*, ¶ 5, July 14, 2011, available at <http://www.thecgpcs.org/plenary.do?action=plenarySub&seq=18> (“Pursuant to UN Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. This international forum has brought together more than 60 countries and international organizations all working towards the prevention of piracy off the Somali coast.”).

215. *Id.*

216. Katrina Kerr, *UN and IMO Renew Call for Action in War on Piracy* (Nov. 25, 2011), available at <http://maritimesecurity.asia/free-2/piracy-2/un-and-imo-renew-call-for-action-in-war-on-piracy/>.

217. Michael Logan, *Weekly Piracy Report: Estimated Ransom Payments Approach \$130 Million*, 25 SOMALIA REPORT 1 (Nov. 11, 2011).

218. S.C. Res. 1976, 1, U.N. Doc. S/RES/1976 (Apr. 11, 2011); U.N. Secretary General Somali Report, *supra* note 203.

219. CONTACT GROUP ON PIRACY OFF THE COAST OF SOMALIA, *Communiqué: Eleventh Plenary Session of the Contact Group on Piracy off the Coast of Somalia New York*, ¶ 2, Mar. 29, 2012, available at <http://www.thecgpcs.org/plenary.do?action=plenarySub&seq=20>.

efforts include “promoting good governance and rule of law, strengthening the institutions of the Transitional Federal Government of Somalia (TFG), and fostering socio-economic development into a comprehensive, multi-faceted approach”²²⁰ Apart from stabilization efforts, it is also important to bring suspected pirates to trial and detain those convicted in Somalia and its neighboring regional partners.²²¹ Deterrence may be effectuated by increasing prosecutions and imprisonment terms.²²² Cooperation by the international community, and specifically the global maritime industry, is still needed to update existing legislation to ensure the more effective prosecution of pirates.²²³

The European Union is also growing increasingly concerned with the continuing impact of piracy and armed robbery at sea off the coast of Somalia on international maritime security and on the economic activities and security of countries in the region.²²⁴ As part of a comprehensive approach, the European Union launched the European Naval Force Somalia Operation ATALANTA (ATALANTA) within the framework of the European Common Security and Defence Policy (CSDP) in 2008,²²⁵ and recently decided to extend ATALANTA by two years until December 2014.²²⁶ The European Union extended the European Naval Force’s area of operations to include Somali coastal territory as well as its territorial and internal waters.²²⁷ This will “enable Operation Atalanta to work directly with the Transitional Federal Government and other Somali entities to support their fight against piracy from the coastal area.”²²⁸

The European Union kept its promise to extend operations to coastal territory when it “took the fight to the pirates’ home base for the first time . . . destroying several of their signature fiberglass skiffs”²²⁹ Lieutenant Commander Jacqueline Sherriff, a spokeswoman for the European Union’s anti-piracy force

220. *Id.*

221. *Id.* ¶ 5(e).

222. *Id.*

223. *Id.*

224. See generally *The EU Fight Against Piracy in the Horn of Africa*, European Union External Action (Jun. 2012), http://www.eeas.europa.eu/piracy/index_en.htm (describing the increasing threat of piracy in the Western Indian Ocean, as well as the impact and actions being taken by the EU).

225. Press Release, Council of the European Union, Council Extends E.U. Counter-Piracy Operation Atalanta (Mar. 23, 2012), available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129216.pdf.

226. *Id.*

227. *Id.*

228. *Id.* The decision was followed by a statement made by an E.U. High Representative, Ms. Catherine Ashton: “Fighting piracy and its root causes is a priority of our action in the Horn of Africa. Operation Atalanta has made a significant contribution to this effort, in coordination with our international partners. Today’s important decision extends Atalanta’s mandate for two more years and allows it to take more robust action on the Somali coast. Despite pressure on defense budgets, EU member states thereby demonstrate their renewed commitment to this successful operation.” *Id.*

229. Jeffrey Gettleman, *Toughening Its Stand, European Union Sends Forces to Strike Somali Pirate Base*, N.Y. TIMES, May 15, 2012, at A4.

echoed these efforts in stating that the goal of their operations was to “make life more difficult for these guys.”²³⁰ Pursuant to the mandate that E.U. forces were only allowed to pursue pirates at sea and that they were not supposed to step ashore, the attack was conducted via helicopter and deemed a success since no “boots [went] ashore.”²³¹ Somali officials commended the raid, saying they had authorized European power “to take whatever measures necessary to stamp out the pirates.”²³² Hopefully these more aggressive, preemptive measures will have an even greater effect on the reduction of piracy acts near Somalia.

C. The Creation of the Emperor’s New Clothes Syndrome

As mentioned earlier, Rear Admiral Shaukat estimated that without effective legislation to ensure pirates would be tried and punished, the pattern of piracy would continue.²³³ In January 2011, Special Adviser Lang presented his report on piracy off the coast of Somalia to the U.N. Security Council.²³⁴ The report called for “Somaliaization” of counter-piracy action, such that Somalia must ensure effective prosecutions.²³⁵ Special Adviser Lang called for supplementing Somali piracy law; building two prisons in Somaliland and Puntland; establishing a Somali extraterritorial jurisdiction court in Arusha, Tanzania—later to be transferred to Mogadishu, the capital of Somalia; and establishing two additional special courts—one in Puntland and one in Somaliland.²³⁶

U.N. Special Adviser Lang’s proposals were welcomed for the most part, but the specific recommendation of an extraterritorial Somali court received a varied response in Security Council meetings.²³⁷ Russia, France, and Portugal have spoken strongly in favor of it while the United States and the United Kingdom have strongly opposed it, “questioning whether a court in Tanzania would be practicable in such a short time frame.”²³⁸

On February 22, 2012, at the 6719th meeting of the Security Council, the council members discussed the Report of the Secretary-General on Specialized Anti-Piracy Courts in Somali and Other States in the Region.²³⁹ The comments by U.N. Under-Secretary-General of Legal Affairs and Legal Counsel, Patricia O’Brien, seem to be in conflict with the work of Special Adviser Lang. After recognizing that 265 hostages were being held at the end of 2011, Under-

230. *Id.*

231. *Id.*

232. *Id.*

233. Chivers, *supra* note 1.

234. U.N. Secretary-General Report, Jan. 2011, *supra* note 88.

235. HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, PIRACY OFF THE COAST OF SOMALIA, 2010-12, H.C. 1318-I, ¶ 88 (U.K.), available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf>.

236. *Id.*

237. *Id.* ¶ 89.

238. *Id.*

239. Security Council 6719th mtg., *supra* note 5.

Secretary-General O'Brien was concerned with the levels of violence and the expanding geographical scope of the attacks.²⁴⁰ In order to reassure the readers that the United Nations was accomplishing certain important goals, she said:

[I]t is important to recognize that a great deal is already being done to ensure the prosecution of piracy suspects. A total of 20 States worldwide have been prosecuting, or have prosecuted, a total of 1,063 piracy suspects since 2006. Of that total, more than 900 of the suspects have been prosecuted in 11 States in the region.²⁴¹

She also noted of the eleven states in the geographic region, only five were prosecuting piracy suspects with the assistance of the United Nations or were seriously considering doing so.²⁴²

Under-Secretary-General O'Brien stated that Resolution 2015 (2011) concerns the effort to establish specialized anti-piracy courts and the necessary international assistance that would be provided in connection therewith.²⁴³ These courts were "established by the regional States themselves—their own domestic courts."²⁴⁴ She glossed over the fact that the request "does not concern the range of other options for special domestic chambers, possibly with international components, a regional tribunal or an international tribunal."²⁴⁵ These options were "the subject of the Security Council's first request to the Secretary-General in Resolution 1918 (2010) and were dealt with in the Secretary-General's Report dated [July 26, 2010]."²⁴⁶ In the Secretary-General's second report dated June 15, 2011, Special Adviser Lang mentioned the possibility of a Somali specialized anti-piracy court sitting extraterritorially in the territory of another state in the region.²⁴⁷ However, Under-Secretary-General O'Brien pointed out the "specialized anti-piracy courts" in the Security Council's request were not favored by the five states concerned.²⁴⁸ They believed that establishing new special courts with jurisdiction exclusive to piracy offenses would "constrain scarce prosecution and judicial resources to piracy cases in the absence of any certainty that they would be consistently and fully occupied."²⁴⁹ Under-Secretary-General O'Brien stated the term "'specialized anti-piracy court' is used in the report to refer to a court operating under national law, with international assistance, with a focus on the prosecution of piracy cases."²⁵⁰ This has nothing to do with what Special Adviser Lang stated in his report.

The British House of Commons Foreign Affairs Committee ("Foreign Affairs

240. *Id.* at 2.

241. *Id.* at 3.

242. *Id.* (identifying the five prosecuting States as: Somalia; Seychelles; Kenya; Mauritius; and Tanzania).

243. *Id.*

244. *Id.*

245. Security Council 6719th mtg., *supra* note 5, at 3.

246. *Id.*

247. *Id.*

248. *Id.* at 3-4.

249. *Id.* at 4.

250. *Id.*

Committee”) recently released a report stating the British Foreign & Commonwealth Office opposes the establishment of a Somali specialized anti-piracy court.²⁵¹ The Office estimated that costs would be around \$100 million a year.²⁵² The Prime Minister argued strongly against the establishment of such a court providing several reasons: first, the money would be much better spent in the region where a great value could be seen for a tenth of the cost of setting up a court outside of the region; second, “it is illegal under the Somali constitution to have courts try Somalis outside Somalia”; and third, Mohamed Omaar, who is the TFG Foreign Minister, made it very clear that “this was an absolute red line as far as the TFG [was concerned].”²⁵³ A follow-up report by the U.N. Office of Legal Affairs noted:

[S]everal significant complications in establishing an extra-territorial Somali court: it could require changes to the Somali constitution; it would require an adequate Somali piracy law and a sufficient number of Somali judges (neither of which exist at present); it would also require a treaty to be concluded with Tanzania²⁵⁴

The report also “noted doubts as to whether the proposed use of the facilities of the International Criminal Tribunal for Rwanda in Arusha would be viable given the greater number of suspects involved.”²⁵⁵ There were also concerns that “delays would occur while rules of evidence and procedure were established, and that an international court would not deliver capacity building benefits for regional states’ justice systems.”²⁵⁶ The International Tribunal “would not solve the issue of where convicted pirates would serve their sentences,” but “it would simply shift the problem from national authorities to the tribunal.”²⁵⁷

The Foreign Affairs Committee concluded that the U.K. Government was right to oppose Special Adviser Lang’s proposed establishment of an extraterritorial Somali court which would try Somali pirates in a third country.²⁵⁸ The Foreign Affairs Committee instead recommended that the government support “[specialized] anti-piracy courts established within regional states under ordinary national law.”²⁵⁹

Returning to the comments of Under-Secretary-General O’Brien in the Security Council report conclusion, according to her, regional jurisdictions collectively could achieve a total of around 125 piracy prosecutions per year, with up to ten suspects in each case:

251. HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, *supra* note 235, ¶ 89 (stating that “[t]he costs of bring [an extra-territorial] court up to standard and using it on an ongoing basis would be huge . . .”).

252. *Id.*

253. *Id.*

254. *Id.* ¶ 90.

255. *Id.*

256. *Id.*

257. HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, *supra* note 235, ¶ 90.

258. *Id.* ¶ 92.

259. *Id.*

Therefore, if international assistance were maximized, up to 1,250 piracy suspects could be prosecuted each year in accordance with international standards. That increase in capacity could be achieved within two years in Puntland and Somaliland, with an additional year of mentoring and monitoring, and within one year in each of the other jurisdictions, although the assistance should be maintained beyond one year in order to sustain the results.²⁶⁰

The “cost of the assistance for prosecutions set out in the report over a three-year period in Puntland and Somaliland would total a little more than \$7 million, and over a two-year period in the four remaining regional States around \$9.5 million.”²⁶¹ “The potential is therefore for more suspects to be prosecuted per year in those five regional States than the total number of piracy suspects prosecuted globally since 2006, and at a cost that is modest . . . compared to that of any of the existing international or hybrid tribunals.”²⁶²

Under-Secretary-General O’Brien also states that this maximum caseload capacity is not necessarily a recommended target because: (1) the “projected maximum capacities for each are based on the best estimates of UNDP and UNODC” and are not necessarily guaranteed, and (2) the “report outlines a possible discrepancy between the maximum achievable caseload capacity and the actual demand for prosecutions being generated by the capture of piracy suspects at sea by naval forces off the coast of Somalia.”²⁶³ As evidence of this, Under-Secretary-General O’Brien points out that “[t]he three naval coalitions engaged in anti-piracy operations off the coast of Somalia made only three requests to regional states—Kenya and Seychelles—for the transfer of piracy suspects in 2011, involving a total of 42 suspects.”²⁶⁴ The transfer of all but one of these suspects was accepted.²⁶⁵

Under-Secretary-General O’Brien did not know why there were such a low number of requests to transfer to regional states.²⁶⁶ Special Adviser Lang reported that approximately 90% of those who were apprehended at sea were subsequently released. He also states if such a large number of suspects were being released at sea, then that would deplete the effectiveness of the international community in its prosecution efforts to combat piracy.²⁶⁷

The next topic of interest raised by Under-Secretary-General O’Brien was that Seychelles was going to open a Regional Anti-Piracy Prosecution and Intelligence Coordination Centre.²⁶⁸ Supposedly, the Centre is going to “develop the regional expertise to track piracy finances and develop cases for the prosecution of those

260. Security Council 6719th mtg., *supra* note 5, at 4.

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. Security Council 6719th mtg., *supra* note 5, at 4.

267. *Id.*

268. *Id.* at 5.

who plan, organize, and finance piracy attacks.”²⁶⁹ She considers this to be a crucial development because these backers were the focus of Resolution 2015 (2011), involving the need to prosecute not only the suspects captured at sea but also the key figures of the criminal network that organize and prosecute piracy attacks.²⁷⁰

Professor Dubner served as a Special Consultant for the U.N. FAO in 1978. In that capacity, he was sent to the Seychelles to assist in the establishment of a 200-mile exclusive economic zone. He observed that there were approximately ninety islands that constitute the Republic of the Seychelles; that the island archipelago was located 1,000 miles east of Kenya in the Indian Ocean; and that the main island of Mahi is only seven miles long and relies on tourism, together with marginal fishing by the local indigenous population.

It would seem that if “consistency” and “uniformity” were the main object of having specialized courts in the local regional states, then one court would serve this purpose. In addition, it seems that the total costs for prosecuting pirates has skyrocketed to the point where trying a pirate is exorbitant in regional courts. This is partially due to the expense involved in setting up trials and training personnel. “Regionalism” is a desired result only if the local people take the prosecutions seriously and if the pirates are not released as soon as they are found guilty, assuming they are found guilty. Special Adviser Lang was correct and the urgency for “expediency” in developing regional courts, a long-term solution, is something that is going to cause problems in the near future.

IV. CONCLUSION

Due to the geographic necessity of expediting the bringing of witnesses and evidence into these courts and the relative cheapness of prosecuting pirates in these regional areas, the international community is doing all that it can at the present time to set up and prosecute pirates in regional courts.

There is much work to be done. The preferred short-term solution is the U.N. flagship discussed above. The ship would fly a U.N. flag and would be sanctioned by the United Nations to handle such trials. After trial, the prisoners would be dispatched to one of many sites that are being built in the region. The long-term solution, of course, is to increase the living standards and to stop the civil unrest in Somalia. The international community has largely ignored the rights of the poor seafarers held hostage, and they continue to suffer because of the hostage situation they find themselves in. There seems to be little hope of resolving any of the situations concerning Somali piracy until the problems in Somalia are on their way to being resolved. The Somalis, understandably, are upset about the lack of assistance in restoring and protecting their fishing grounds and blocking toxic waste from being dumped. Somalia is known in the international community as a corrupt society, but generalizing on that basis is unnecessarily unfair.

269. *Id.*

270. *Id.*

However, it does raise numerous questions. With the release of prisoners in Somalia due to bribery, what is the point of having a court set up in that country at this time? Why spend millions of dollars on a problem that could probably be rectified with far less money by simply improving the standard of living for Somali people? Why is it costing so much to accomplish so little? It remains to be seen whether or not the legislation is enacted in Somalia to prosecute the pirates successfully, and whether Somalia will have enough trained personnel to try pirates successfully. In the meantime, one hopeful sign is the recent decrease in the number of piracy acts and captured vessels.