

# Washington University Global Studies Law Review

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VOLUME 15

NUMBER 2

2016

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## THE HUMAN RIGHTS OF SEA PIRATES: WILL THE EUROPEAN COURT OF HUMAN RIGHTS DECISIONS GET MORE KILLED?

BARRY HART DUBNER\*  
BRIAN OTERO\*\*

### I. INTRODUCTION

The tide of piracy off the coast of Somalia has ebbed according to recent statistics.<sup>1</sup> Perhaps it is just in time. Three decisions involving pirates, who were found to be deprived of their human rights by the European Court of Human Rights (ECHR), Mauritius and a Danish law, are rather troubling in at least two different ways: (1) These decisions set pirates free after they were brought to justice; and (2), which is more problematic, pirates may now be subject to summary execution because of frustrated governments and innocent seafarers. This Article will explore these three recent decisions and then put them into context with (a) what has been happening historically with sea piracy off the coast of Somalia (an 1,800-mile coastline);<sup>2</sup> and (b) the reason for the current decline in the

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\* Barry Hart Dubner, Professor of Law, Barry University, Andreas School of Law, Orlando, Florida; J.D., New York Law School; LL.M., University of Miami, School of Law; LL.M., New York University School of Law; J.S.D., New York University School of Law.

\*\* Brian Otero, Lead Article Editor, Barry Law Review, 2014–2015; J.D. (2016), Barry University Dwayne O. Andreas School of Law; B.A. Political Science (2013), Barry University.

1. ICC INT'L MAR. BUREAU, PIRACY AND ARMED ROBBERY AGAINST SHIPS—2014 ANNUAL REPORT 29 (Jan. 2015), available at <http://www.hellenicshippingnews.com/wp-content/uploads/2015/01/2014-Annual-IMB-Piracy-Report-ABRIDGED.pdf> [hereinafter PIRACY AND ARMED ROBBERY AGAINST SHIPS]. The figures represented in the IMB report show “a continued and welcome decrease in reported attacks for the fourth consecutive year.” *Id.* Your authors would like to thank the IMB for their statistics, which have been most helpful and utilized throughout this Article.

2. Robert I. Rotberg, *Combating Maritime Piracy: A Policy Brief with Recommendations for Action*, in WORLD PEACE FOUNDATION (2010), available at [http://www.peacepalacelibrary.nl/ebooks/files/WPF\\_PolicyBriefno11RotbergMaritimePiracy.pdf](http://www.peacepalacelibrary.nl/ebooks/files/WPF_PolicyBriefno11RotbergMaritimePiracy.pdf) [hereinafter *Combating Maritime Piracy*].

number of acts of piracy off the coast of Somalia. A recommendation will be made concerning the trying of pirates aboard a United Nations (UN) sanctioned vessel. The question is whether any country will want to go through the time and expense of bringing these pirates back to their homelands for justice. A further question is whether more pirates will be killed as a result of these decisions.

The ECHR recently decided the cases of *Ali Samatar and Others v. France*<sup>3</sup> and *Hassan and Others v. France*.<sup>4</sup> The ECHR held unanimously, in two separate instances, that nine Somali nationals (pirates) who hijacked French registered vessels off the 1800 mile coast of Somalia; and who were later arrested, held by the French army, transferred to France, taken into police custody, and subsequently tried as pirates under French law; should be released and given compensation in thousands of Euros.<sup>5</sup> Looking at the facts of *Ali Samatar and Others v. France*, the pirates were prosecuted in France for acts of piracy resulting from an attack on a cruise ship flying a French flag.<sup>6</sup> A dozen men armed with assault rifles and rocket launchers intercepted the cruise ship.<sup>7</sup> These men seized the cruise ship, took its crew of thirty (including twenty French nationals), and headed to the Somali coast.<sup>8</sup> As a reaction to these acts of piracy, the French government persuaded the Somali Transitional Federal Government (TFG) to authorize the French to enter into Somali territorial waters in order to take all necessary measures—including appropriate use of force.<sup>9</sup> The French hostages were released on April 11, 2008, seven days after the initial hijacking.<sup>10</sup>

Once the pirates were detained, the Somali authorities apparently gave their permission to fly the prisoners to France.<sup>11</sup> The prisoners were

3. *Ali Samatar and Others v. France*, (Judgment), App. No. 17110/10 and 17301/10, Eru. 2014 Eur. Ct. H.R., available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148290#{"itemid":\["001-148290"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-148290#{).

4. *Hassan and Others v. France*, (Judgment), App. No. 46695/10 and 54588/10, Eru.2014 Eur. Ct. H.R. available at [http://hudoc.echr.coe.int/eng#{"fulltext":\["hassanandothersv.france"\],"languageisocode":\["FRE"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-148289"\]}](http://hudoc.echr.coe.int/eng#{).

5. Press Release, Registrar of the European Court of Human Rights, Suspects of Piracy Against French Vessels, Apprehended in Somalia by the French Authorities, Should Have Been Brought Before a Legal Authority as Soon as They Arrived in France, Apr. 12, 2014 (on file with author) [hereinafter *Suspects of Piracy Against French Vessels*].

6. *Ali Samatar and Others*, *supra* note 3.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

transported on a military aircraft that departed on April 15 at 3 p.m. and landed in France at around 5:15 p.m. on April 16.<sup>12</sup> Once the prisoners landed, they were taken into police custody on April 16.<sup>13</sup> On the morning of April 18, they were taken before an investigating judge and placed under judicial investigation.<sup>14</sup> Going into further detail, the investigation division of the Paris Court of Appeals discussed the events leading to their arrest in Somali territory and their detention; and held, in a judgment dated April 6, 2009, that the proceedings were lawful.<sup>15</sup> After exhausting their appeals in the French courts, the applicants appealed to the ECHR, which held unanimously that there was a violation of Article 5 § 3 of the European Convention of Human Rights.<sup>16</sup>

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12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Suspects of Piracy Against French Vessels, *supra* note 5. Article 5 of the European Convention on Human Rights (ECHR) states:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953), *available at* [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [hereinafter Convention for the Protection of Human Rights].

Regarding the companion French case of *Hassan and Others*, there were three Somali nationals, whose years of birth were given apparently to show that they were of age.<sup>17</sup> They were prosecuted in France for acts of piracy committed in 2008.<sup>18</sup> On September 2, 2008, the three pirates intercepted *Carré d'As*, a French yacht.<sup>19</sup> The three pirates obliged the crew and a French couple to change course in order to join their other vessels.<sup>20</sup> Once they joined the other vessels, about ten pirates boarded the yacht, which reached the coast of Somalia that evening.<sup>21</sup> The couple were robbed of their possessions and then held hostage for two million dollars.<sup>22</sup> On September 5, a French naval frigate arrived on the scene with a team of commandos.<sup>23</sup>

Abiding by United Nations Security Council Resolution 1816,<sup>24</sup> the French naval frigate carried out its attack on September 16.<sup>25</sup> Once the operation to free the hostages commenced and the pirates were arrested, the pirates were in Somali territorial water.<sup>26</sup> After their arrest, the pirates were placed under military guard on the French naval frigate.<sup>27</sup> They were held on board until September 22, 2008.<sup>28</sup> After the Somali authorities agreed on September 21 to the transfer of the six Somali suspects, the applicants were then taken to a Djibouti military base pending their transfer to France on September 21.<sup>29</sup> They were put on a military plane on September 23, 2008 and arrived in France on the same day at around 4 p.m.<sup>30</sup> The crux of the human rights problem, as far as the ECHR was concerned, was that they were held in police custody until September 25 at 2:30 p.m. Later on September 25, one of the suspected pirates was brought

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17. *Hassan and Others*, *supra* note 4.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. S.C. Res. 1816, para. 20-22, U.N. Doc. S/Res/1816 (June 2, 2008). On June 2, 2008, the United Nations Security Council adopted Resolution (1816), which authorized (for a six-month period) States, that wished to cooperate with the Somali TFG in the fight against piracy and armed robbery off of the coast of Somalia, to enter Somali's territorial waters and use all available means to repel acts of piracy and armed robbery. *Id.* In fact, the resolution was interpreted to allow affected governments to go on land and use Somali's territorial waters as well. Suspects of Piracy Against French Vessels, *supra* note 5.

25. *Hassan and Others*, *supra* note 4.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

before an investigating judge in the afternoon at 5:54 pm.<sup>31</sup> The other two suspects were brought before an investigating judge at 7:30 p.m. and 8:09 p.m. the same day.<sup>32</sup>

An examining judge placed them under judicial investigation and remanded them back into custody.<sup>33</sup> The French court specifically held that their arrest and detention, pending placement in police custody, had not breached Article 5 of the European Convention on Human Rights. That court reached its decision due to the “wholly exceptional circumstances” of the case in temporal and geographic terms.<sup>34</sup> The appellate court, the Court of Cassation, dismissed the applications on appeal.<sup>35</sup> The prisoners ultimately filed complaints with the ECHR.<sup>36</sup> The ECHR held unanimously, that there had been:

a violation of Article 5 ¶ 1 (a right to liberty and security) of the European Convention of Human Rights in the case of *Hassan and Others* because the French system applicable at the relevant time had not sufficiently guaranteed the applicants’ rights to their liberty . . . a violation of Article 5 ¶ 3 (right to liberty and security) in both cases, as the applicants had been taken into custody for forty-eight hours on their arrivals and in France instead of being brought “promptly” before a legal authority when they have already been deprived of their liberty for four days and some twenty hours (*Ali Samatar and Others*) and six days and sixteen hours (*Hassan and Others*).<sup>37</sup>

The court, in its opinion, reiterated that the purpose of Article 5 ¶ 3 is to facilitate the detection of any ill treatment and to minimize any unjustified interference with individual liberty. This is done in order to protect individuals by means of an automatic initial review within a strict time frame that leaves little flexibility in interpretation.<sup>38</sup> The court cited precedential cases that delineated the Article 5 ¶ 3 promptness requirement; those cases allowed for a period of two to three days between

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31. *Id.* Only three of the six suspected pirates brought suit before the ECHR. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* §§ 23–24.

36. *Id.*

37. Suspects of Piracy Against French Vessels, *supra* note 5. Article 5 of the ECHR, *supra* note 16.

38. *Id.*

a defendant's arrest and initial court appearance.<sup>39</sup> The Article was not designed to give the authorities the opportunity to intensify investigations for the purpose of bringing formal charges against the suspects.<sup>40</sup>

The ECHR awarded damages in both cases. The ECHR awarded €5,000 in the case of *Hassan and Others* as non-pecuniary damage and €7,272.46 to Abdulhai Guelleh Ahmed for costs and expenses.<sup>41</sup> In *Ali Samatar and Others* the ECHR gave €2,000 to each of the applicants as non-pecuniary damages and for costs and expenses.<sup>42</sup> The ECHR also gave an award of €9,000 to Abdurahman Ali Samatar, together with €6,000 jointly to Ismael Ali Samatar *et al* and €3,000 to Abdulqader Guled Said.<sup>43</sup>

Much of the criticism of the ECHR decision concerns the fact that the ECHR apparently added insult to injury by awarding thousands of Euros to the pirates after they had received a two-million-Euro ransom in order to release the hostages.<sup>44</sup> However, at least two of the defendants were found not guilty by the French court but only after having been held in custody for four years with the others arrested.<sup>45</sup> These innocent men were taken into custody after leaving the port in some vehicle, but they were never proven to have been aboard the cruise ship on which the acts of piracy were perpetrated.<sup>46</sup>

In *Police v Mohamed Ali Abdeoukader and Others*,<sup>47</sup> a case decided prior to *Hassan* in December 2014, the twelve accused pirates were charged with “acts of piracy on the high seas” in breach of certain sections of the Piracy and Maritime Violence Act of 2011 of Mauritius.<sup>48</sup> The twelve men who were accused of piracy were found on “the high seas around 240 nautical Miles off the Somali Coast . . .” after allegedly “willfully and unlawfully commit[ing] an act of piracy . . . an illegal act

39. *Hassan and Others*, *supra* note 4. See also *Medvedyev and Others v. France* (No. 3394/03, ECHR, Mar. 3, 2010), available at <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-97979&filename=001-97979.pdf>; *Vassis and Others v. France* (No. 62736/09, June 6, 2013), available at <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-122306&filename=001-122306.pdf&TID=ihgdqbxnfi>.

40. *Id.* See *Medvedyev and Others*, *supra* note 39; *Vassis and Others*, *supra* note 39.

41. Suspects of Piracy Against French Vessels, *supra* note 5.

42. *Id.*

43. *Id.*

44. See generally *Somali Pirates Win Compensation After Errors in Procedure*, HANDY SHOPPING GUIDE, Dec. 5, 2014, [http://handyshippingguide.com/shipping-news/somali-pirates-win-compensation-after-errors-in-procedure\\_6016](http://handyshippingguide.com/shipping-news/somali-pirates-win-compensation-after-errors-in-procedure_6016) [hereinafter *Somali Pirates Win Compensation*].

45. *Id.*

46. *Id.*

47. *Police v. Mohamed Ali Abdeoukader* (no. 850/2013, § 1, 2014).

48. *Id.*

of violence” against a certain ship that was proceeding from Oman to Kenya.<sup>49</sup>

The Intermediate Court of Mauritius stated that the “rights guaranteed to the people of Mauritius under the European Convention were rights which, on independence, have existed and shall continue to exist” within terms of Section 3.<sup>50</sup> Under Mauritius law, the application of rights granted by the European Convention is a significant interpretive issue because “while Mauritius is no longer a party of the European Convention or bound by its terms, the Strasbourg jurisprudence gives persuasive guidance on the content of the rights, which the people have enjoyed and should continue to enjoy. . . .”<sup>51</sup> The court invoked Article 5(1) of the Constitution of Mauritius, which reads as follows:

(1) No person shall be deprived of his personal liberty save as may be authorised by law – . . . (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence . . . .<sup>52</sup>

According to the court, the corresponding provision under the ECHR is Article 5, namely:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and

49. *Id.*; see also United Nations Convention on the Law of the Sea, *opened for signature*, Dec. 10, 1982, 1833 U.N.T.S. 397, available at [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

50. *Mohamed Ali Abdeoukader*, *supra* note 47, § 125. Article 3 of the Mauritius Constitution reads:

It is hereby recognized and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms—(a) the right of the individual to life, liberty, security of the person and the protection of the law; (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation, and the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Constitution of Mauritius, Mar. 12, 1968, art. 3.

51. *Mohamed Ali Abdeoukader*, *supra* note 47, § 125. Strasbourg jurisprudence refers to the European Convention of Human Rights (ECHR) jurisprudence. David Campbell, *Human Rights and the Critique of the Common Law Human Rights and the End of Empire*, 26 *Cardozo L. Rev.* 791, 795 n.18 (2005). This is due to the fact that the institutions established under the ECHR were based in Strasbourg. *Id.*

52. *Mohamed Ali Abdeoukader*, *supra* note 47, § 127.

in accordance with a procedure prescribed by law: . . . (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so . . . .<sup>53</sup>

The important point derived from Article 5 is that it protects individuals not only by requiring that the state comply with the substantive and procedural rules of the laws concerned, “but it also requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness . . . .”<sup>54</sup>

The Intermediate Court of Mauritius also looked at present laws of Mauritius under which “the twelve accused were detained and . . . found no provisions regarding contact with a lawyer or family.”<sup>55</sup> “[I]n short, these twelve persons were kept completely incommunicado during their several days on board [the ship], based on domestic French laws mentioned by the commander. Thus it is unclear whether the detention was, in fact, non-arbitrary.”<sup>56</sup>

The court then turned to review Article V Section 3 of the European Convention on Human Rights (as part of the framework of guarantees).<sup>57</sup> The article is concerned with two separate matters.<sup>58</sup> First the article looks to “the early stages following an arrest, when an individual is taken into the power of the authorities,” and second to the “period pending any trial before a criminal court, during which the suspect may be detained or released with or without conditions.”<sup>59</sup>

The Intermediate Court of Mauritius also looked at the “promptness” of the appearance of the arrested individual.<sup>60</sup> Promptness is important to “allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty . . . .”<sup>61</sup> The exception to the notion of “promptness” that is required under Article 5 ¶ 3 of the

53. *Id.* § 128. Article 5 of the ECHR, *supra* note 16.

54. *Mohamed Ali Abdeoukader*, *supra* note 47, § 129.

55. *Id.* § 132.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* § 133.

60. *Mohamed Ali Abdeoukader*, *supra* note 47, § 133.

61. *Id.* It will be recalled, that in *Hassan v. France* the French police did not follow their own procedures and did not bring the prisoners involved within forty-eight hours according to French law. See *Hassan and Others*, *supra* note 4.

Convention is limited to “wholly exceptional circumstances” that would justify a delay in a court’s applying its own procedural rules.<sup>62</sup> In the case *sub judice*, the French had refused to try the twelve persons, so there was no question of bringing them back to France for trial.<sup>63</sup> There was no proof of the sea conditions’ being rough, which would have given a reason to prevent the swift navigation by a French vessel to the nearest port or harbor.<sup>64</sup> The ECHR stated that the twelve accused parties could have been brought to land within a shorter amount of time if they were taken to Kenya, Seychelles, or Mauritius.<sup>65</sup> In concluding, the court held that the prosecution failed to prove beyond a reasonable doubt that the twelve defendants were guilty of the elements of “high seas,” “illegal acts of violence,” and withholding of information “for private ends.”<sup>66</sup>

In summary, the Court’s reasoning for releasing the twelve pirates due to human rights violations was because of the State’s failure to prosecute the pirates promptly. Article 5 of the ECHR requires that when an arrested person is detained, that person must be promptly placed under judicial control, in order to prevent ill treatment of the person arrested.<sup>67</sup> In this case, the French took too long to allow the accused to appear in court, and there were no “wholly exceptional circumstances” to justify the delay.<sup>68</sup>

Before proceeding any further with human rights issues with regard to the treatment of captured pirates and the applicable laws, it is important to get a perspective on what has happened with regard to the number of incidents of piracy and prosecutions, in the past as well as the current state of affairs. The reader will observe a sharp decline in the number of piracy incidents off of the coast of Somalia.<sup>69</sup>

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62. *Mohamed Ali Abdeoukader*, *supra* note 47, § 133.

63. *Id.* § 135.

64. *Id.*

65. *Id.*

66. *Mohamed Ali Abdeoukader*, *supra* note 47, § 140. According to UNCLOS, 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 air-craft; (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).

United Nations Convention on the Law of the Sea, *supra* note 49, at 60–61.

67. *Mohamed Ali Abdeoukader*, *supra* note 47, § 133.

68. *Id.* § 136. See Appendix I for a list of violations by Article and State in 2014.

69. STATISTA, <http://www.statista.com/statistics/250867/number-of-actual-and-attempted-piracy-attacks-in-somalia/> (last visited May 21, 2015). The statistic represents the total number of actual and

## II. A BRIEF HISTORY OF PIRACY OFF THE COAST OF SOMALIA AND ITS RELATION TO THE PROTECTION OF HUMAN RIGHTS

Piracy is defined in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and Armed Robbery is defined by Resolution A.1025 (26) of the International Maritime Organization's (IMO) twenty-sixth assembly session.<sup>70</sup> Article 101 of UNCLOS defines Piracy as:

- (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 air-craft; (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).<sup>71</sup>

According to the International Maritime Bureau (IMB), "trends" show that there were a total of 245 incidents of armed robbery and piracy reported to the IMB Piracy Reporting Center (PRC) for the year 2014.<sup>72</sup> This was a decline in the number piracy attacks for the fourth consecutive year.<sup>73</sup> The 2014 incidents were broken down as "183 vessels boarded, 28 attempted attacks, 21 hijackings, and 13 vessels fired upon. Some 442 crewmembers have been taken hostage, thirteen injured, nine kidnapped from their vessels, and four killed."<sup>74</sup> Nearly all these figures come from Southeast Asia and Indonesia: six vessels hijacked in the South China Sea; forty-one in West Africa, mostly off of Nigeria; and numerous piracy incidents at other locations. The IMB was concerned enough about human right issues to think it necessary to include a page on human rights and piracy.<sup>75</sup>

The IMB pointed out the obvious fact that acts of piracy occur far enough away from the reach of law enforcement agencies as to make it

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attempted piracy attacks in Somalian territorial waters from 2008 to 2014. The statistics your authors are about to show indicate a decline in piracy.

70. United Nations Convention on the Law of the Sea, *supra* note 49, at 60–61.

71. *Id.*

72. *Piracy and Armed Robbery Against Ships*, *supra* note 1, at 29.

73. *Id.*

74. *Id.*

75. *Id.*

impossible for those agencies to respond as the crime unfolds.<sup>76</sup> It is impossible to get prompt forensic examination because there are no resources available.<sup>77</sup> Law enforcement agencies can take statements, but it is almost impossible to preserve the rest of the evidence.<sup>78</sup> In addition, it is difficult to obtain eyewitnesses who will be available to testify because they have sailed away on their vessels or were hijacked, only to spend many long months or years in captivity under appalling conditions.<sup>79</sup> Finally, according to the IMB, suspected pirates are released only to return to Somalia to reequip and resume their pirate activities.<sup>80</sup> The IMB believes that the ECHR decisions on human rights violations will only lead to further human right violations.<sup>81</sup> However, this time the violations will be committed against innocent people aboard vessels, rather than the pirates.<sup>82</sup>

The problem with these three decisions is not the fact that the court ruled the way it did so much as the fact as it may discourage European Navies from taking future actions against pirates along international sea routes.<sup>83</sup> This article will later observe that the armed guards aboard ships

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76. *Id.* at 31. For examples of cases demonstrating the law enforcements' inability to respond as the crime of piracy unfolds see *Ali Samatar and Others*, *supra* note 3; *Hassan and Others*, *supra* note 4. In the *Ali Samatar and Others* case, the cruise ship was boarded, seized, and made it into the territorial waters of Somalia before the French navy was able to intercept the pirates. *Ali Samatar and Others*, *supra* note 3. In the *Hassan and Others* case, the yacht and its occupants were captured on September 2 and the French navy did not arrive to the scene till September 5. *Hassan and Others*, *supra* note 4.

77. *Piracy and Armed Robbery Against Ships*, *supra* note 1, at 31.

78. *Id.*

79. *Id.* On March 1, 2015 New York Times wrote that pirates finally freed four fishermen that were held captive in Somalia for nearly five years longer than any other hostages seized off the Somali coast. Mohammed Ibrahim, *Pirates Free 4 Fishermen In Somalia*, N.Y. TIMES, Mar. 1, 2015, at A8. The United Nations got involved in procuring their release. *Id.* The Thais that were released were among twenty-four members of a Taiwanese flagged fishing vessel that was seized April 2010. *Id.* Fourteen sailors, all from Myanmar, were released a year later and six others died of various illnesses, according to a statement released by the United Nations Office on Drugs and Crime (UNODC). *Id.* The pirates had used a vessel as a mother ship, which was captured in 2011. *Id.* This happened to be the longest captivity endured by any hostages of Somali pirates. *Id.* However, Somali pirates are still holding twenty-six hostages who were abducted from another fishing vessel in March 2012. *Id.*

80. *Piracy and Armed Robbery Against Ships*, *supra* note 1, at 31.

81. *Id.*

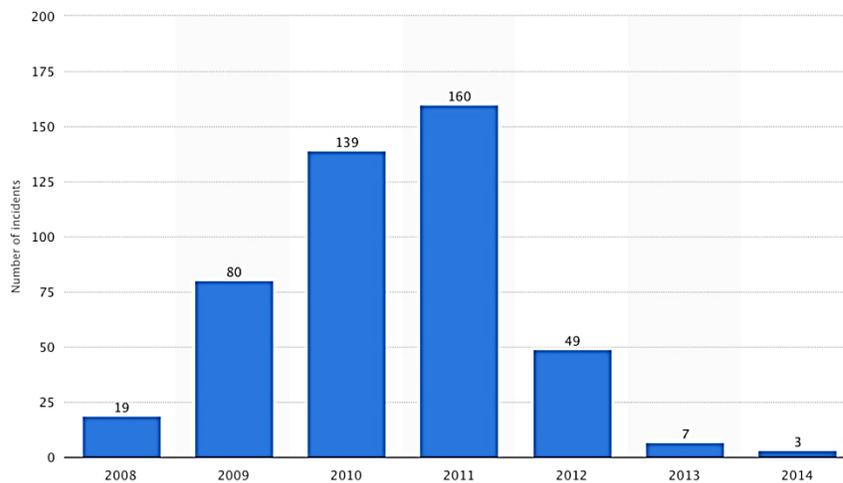
82. *Id.*

83. *Id.* In May of 2010, ten suspected Somali pirates were captured and then released in an inflatable boat without navigational equipment. *Russian Navy 'Sent Somali Pirates to their Death'*, THE WEEK, May 12, 2010, available at <http://www.theweek.co.uk/politics/14701/russian-navy-'sent-somali-pirates-their-death'>. These ten suspected pirates are thought to have died because contact with the boat's radio beacon was lost within the hour after setting them adrift. *Id.* Colonel Alexei Kuznetsov released the pirates due to the "imperfections in international law" and using the reasoning of "Why should we feed some pirates?" *Id.*

might execute the pirates preemptively, rather than arresting and holding them for trial.

The following diagram depicts the actual attempted piracy attacks originating from Somalia between the years 2008 and 2014.

TABLE 1: NUMBER OF ACTUAL AND ATTEMPTED PIRACY ATTACKS IN SOMALIA FROM 2008 TO 2014<sup>84</sup>



It can be seen from the diagram that the number of actual and attempted pirate attacks off the coast of Somalia increased and are now finally on a downward trend. In this regard, there was a think-tank at the Harvard Kennedy Center, to which this author was invited, in December 2009.<sup>85</sup> There were twenty-five persons in attendance at the think-tank.<sup>86</sup> The idea was to have presentations on what to do about the steep rise in piracy off of the Somali coastline.<sup>87</sup> Those present included experts on piracy, a few academics, retired and active admirals and naval captains, a representative from the Joint Chiefs of Staff, a representative from

84. STATISTA, *supra* note 69. The statistic represents the total number of actual and attempted piracy attacks in Somalian territorial waters from 2008 to 2014.

85. *Combating Maritime Piracy*, *supra* note 2, at 3. The findings and conclusion of that discussion were edited and assembled by our host, Professor Robert I. Robert. The findings and conclusions appear at STATISTA, *supra* note 69.

86. *Id.*

87. *Id.*

Swedish intelligence, Mrs. Hillary Clinton's assistant at the U.S. State Department, former ambassadors to Somalia, a security company (C.E.O.), and persons on the ground in Somalia.<sup>88</sup>

At that time in December 2009, as can be seen from Table 1, the number of pirate attacks off the coast of Somalia had jumped from nineteen in 2008 to eighty in 2009.<sup>89</sup> The idea behind the think tank was to create and recommend ideas regarding matters such as providing security for ships and their crews, assisting the government of Somalia, and strengthening the legal response.<sup>90</sup> One question that was asked was "what to do with captured pirates and confiscated ships" because there were a "variety of national legal approaches" to the piracy problem at that time, and there were "diverse views amongst nations on international law regarding" whether universal jurisdiction gave each State the necessary precedent to try pirates.<sup>91</sup> It was pointed out at this meeting that some of the States at the time were weary of imprisoning and trying pirates for various reasons.<sup>92</sup> For example, it would look ill for countries that were predominantly European to try persons of color for piracy.

There was also the problem of where to transport the captured pirates. At the time, Kenya was trying certain pirates, and there was a prison in Mombasa that held 119 pirates, ten of whom had been convicted.<sup>93</sup> Other nations were just catching and releasing pirates because they did not have any domestic municipal laws on the subject of piracy and did not wish to get involved with pirates' serving time in prison and then asking for asylum after their sentences.<sup>94</sup>

It was pointed out at the think-tank sessions that there was no domestic or international legal impediment "to trying pirates locally or regionally, in existing or specially created tribunals."<sup>95</sup> Almost everyone present at the meeting agreed "that there were ample legal resources for the trial [of pirates]" and "there was no excuse . . . not to prosecute [them]."<sup>96</sup> So the group of experts recommended: First, the possible creation of an "extra-territorial court," which would use Somali law and possibly be based in "Somaliland, in Djibouti, or elsewhere in the region, to handle all pirate

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88. *Id.*

89. STATISTA, *supra* note 69.

90. *Combating Maritime Piracy*, *supra* note 2, at 4.

91. *Id.* at 10.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 11.

96. *Combating Maritime Piracy*, *supra* note 2, at 11.

cases.”<sup>97</sup> The African Union (AU) or the UN would have to authorize the court and the procedures.<sup>98</sup> There would also have to be a prison system established, which would be rather expensive but necessary.<sup>99</sup>

The second point made at the conference was to use “Kenya as a court of first jurisdiction for piracy cases,” although there was a “backlog of cases, procedural shortcomings, legal questions, and the short-handedness of the Kenyan prosecutorial and judicial staffs.”<sup>100</sup> The other possibility was using Tanzania, the Seychelles, Mauritius, and other countries that would volunteer to have pirates tried in their own court system.<sup>101</sup> It was suggested that UN Resolution 1897 be expanded to make the “existence of equipment capable of being [used] for purpose of piracy *prima facie* evidence of piratical intent.”<sup>102</sup> This of course was due to the fact that we were concerned about pirates’ receiving a fair trial. We were also concerned with finding a proper way to preserve evidence. Evidence such as mother ships and other pirate vessels, grappling hooks and ladders, other types of specialized equipment, rocket-propelled grenade launchers, and machine guns could all be confiscated at sea.<sup>103</sup> But they could also be dropped overboard before capture, making the possible evidence disappear into the sea. In order to expand upon UN Resolution 1897, an agreement would be necessary among the “UN Security Council and countries around the Red Sea, Gulf of Aden, the Arabian Sea, and the Indian Ocean.”<sup>104</sup> This agreement would “harmonize[] their rules regarding bringing weapons aboard merchant vessels into port.”<sup>105</sup>

Finally, there was a suggestion that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation<sup>106</sup> (SUA) be expanded, as well as the Djibouti Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden.<sup>107</sup> It was thought that if these updates took place, then there would be a

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Combating Maritime Piracy*, *supra* note 2, at 11. See Appendix III for UN Resolution 1897.

103. *Id.*

104. *Id.*

105. *Id.* Today, most of these weapons are left on floating platforms; supposedly there are thirty-three of them operational in the world today.

106. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1678 U.N.T.S. 201, 27 I.L.M. 668, Mar. 10, 1988, available at <http://www.un.org/en/sc/ctc/docs/conventions/Conv8.pdf>.

107. *Combating Maritime Piracy*, *supra* note 2, at 11.

strengthening of “international legal codes concerning and permitting the prosecution of pirates and pirate financiers.”<sup>108</sup>

At the time of the Harvard meeting in December 2009 and for a while after, it was obvious that there were practical limitations on prosecution, including a lack of trained lawyers and judges as well as adequate prisons. Where could pirates be prosecuted? Where could pirates be prosecuted given the limited amount of time and resources available to carry out actual capture and trial?

The lack of judicial trial capacity and lack of prison capacity created legal issues that would contribute to human rights violations. This is due to the fact that the treatment of captured pirates was considered a very minor issue on the international scale compared to the number of problems they had been causing and the number of people they had been injuring by their acts.<sup>109</sup> There were conventional considerations concerning human rights other than UNCLOS.

The European Convention on Human Rights (the Convention) applies to people within the effective control of any state that is a member of the ECHR, which consists of all the member states of the Council of Europe (currently forty-seven).<sup>110</sup> Other relevant treaties include the UN Convention Against Torture and the International Covenant on Civil and Political Rights.<sup>111</sup> Issues that come up, as seen by the cases already mentioned, include “the length of time [prisoners] can be detained, humane treatment, right to a fair trial, and prison conditions.”<sup>112</sup> The

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108. *Id.*

109. Arabella Thorp, *Preventing and Prosecuting Piracy at Sea: Legal Issues*, HOUSE OF COMMON LIBRARIES, Feb. 28, 2012, available at <http://www.parliament.uk/briefing-papers/SN06237> [hereinafter *Preventing and Prosecuting Pirates at Sea*].

110. *Id. Questions & Answers*, EUROPEAN COURT OF HUMAN RIGHTS, [http://www.echr.coe.int/Documents/Questions\\_Answers\\_ENG.pdf](http://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf) (last visited Aug. 8, 2015). See also European Convention on Human Rights, art. 1, June 2010, available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

111. *Preventing and Prosecuting Pirates at Sea*, *supra* note 109, at 16. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988). The desire of the United Nations General Assembly had when it adopted this treaty was “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.” *Id.* International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, Art. 7, 999 U.N.T.S. 171. Article 7 of the International Covenant on Civil and Political Rights “torture or to cruel, inhuman or degrading treatment or punishment.” *Id.* art. 7.

112. *Preventing and Prosecuting Pirates at Sea*, *supra* note 109, at 17. See Appendix I. The chart sets forth violations by Article and by State for the year 2014.

potential human rights issues for holding pirates at sea can be complex and nuanced:

For those states which are parties to the European Convention on Human Rights, there is no legal problem with their public vessels holding pirates on board for the purpose of taking them to a proper jurisdiction for arrest and prosecution. There may, however, be a problem in relation to the holding of pirates on their own vessels, and not allowing them to go, for the purpose of disruption of piracy, rather than of detention for prosecution.<sup>113</sup>

The ECHR held in the cases of *Rigopoulos* and *Medveyev* that under Article 5(3) of the ECHR, “long periods of detention are not compatible . . .”<sup>114</sup> The ECHR called for a “legal framework for detention at sea.”<sup>115</sup> Countries such as Germany, Kenya, Russia, and Spain “have constitutional limits of one or two days from capture to appearance before a judge.”<sup>116</sup> In addition, pirates that are captured should be treated under international human rights standards.<sup>117</sup> Capturing countries should make certain that trials and prisons in the countries in which they transfer suspected pirates meet these standards; otherwise, the capturing country could breach its own human rights obligations.<sup>118</sup> An example of these difficulties was highlighted in a Danish case:

The Danish Navy ship *Absalon* on 17 September 2008 captured 10 pirates in the waters off Somalia. After six days’ detention and the confi[s]cation of their weapons, ladders, and other implements used to board ships, the Danish government decided to free the pirates by putting them ashore on a Somali beach. The Danish authorities had come to the conclusion that the pirates risked torture and the death penalty if [they] surrendered to (whatever) Somali authorities. This was unacceptable, as Danish law prohibits the extradition of criminals when they may face the death penalty. Moreover, they were not ready to try them in Denmark as it would be difficult (in light of the possible abuses they would risk) to deport them back to Somalia after their sentences were served. It is clear that human rights considerations, or perhaps reasons of expediency presented as

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113. *Preventing and Prosecuting Pirates at Sea*, *supra* note 109, at 17.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

human rights concerns, prevailed over considerations concerning the fight against piracy.<sup>119</sup>

In the end, a Danish judge threw out the case against pirates for lack of promptness. More important, the question has been raised at different times as to whether the “right” persons are being prosecuted for piracy. The pirates who have been prosecuted, for the most part, were “the ‘foot soldiers’ rather than their superiors.”<sup>120</sup> In Somalia, there were very few persons actually on top of the food chain with regard to sea pirates.<sup>121</sup> “Naval forces estimate that there are about 50 main pirate leaders, around 300 leaders of pirate attack groups, and around 2,500 ‘foot soldiers.’ It is believed that financing is provided by around 10 to 20 individuals.”<sup>122</sup> The Security Council Committee Monitoring Group on the Somalia weapons embargo “has identified not only the key leaders of pirate militias and networks, but also their location and political connections.”<sup>123</sup> Many of them were reportedly in Somalia.<sup>124</sup>

The United Nations Office on Drugs and Crime (UNODC) created a “piracy prosecution model.”<sup>125</sup> According to the UNODC, the regional prosecution model has been “an innovative criminal justice response to piracy.”<sup>126</sup> The UNODC program provided several suggestions to regional prosecuting States:

Legislative implementation and reform; facilitating the signing of transfer agreements between prosecuting States and naval forces, as well as re-transfer agreements for sentenced prisoners; building, renovating, and upgrading police, prison, and court facilities; enhancing law enforcement and correctional services at the strategic level; monitoring and enhancing detention facilities; the provision of welfare support and interpretation services to piracy suspects detained on remand; the placement of in-house police, prosecution and prison mentors into national agencies; provision of vehicles and specialist equipment to law enforcement bodies; and wide-ranging

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119. Tullio Treves, *Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia*, 20 EUR. J. INT’L L. 399, 408–09 (2009).

120. *Preventing and Prosecuting Pirates at Sea*, *supra* note 109, at 18.

121. *Id.*

122. Report of the Secretary-General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts, U.N. SEC. COUNCIL, June 21, 2011, at Annex I.

123. *Preventing and Prosecuting Pirates at Sea*, *supra* note 109, at 18.

124. *Id.*

125. *Maritime Crime Programme—Indian Ocean*, UNODC, <http://www.unodc.org/unodc/en/piracy/indian-ocean-division.html> (last visited May 21, 2015).

126. *Id.*

training initiatives for lawyers, Judges, Police, Coast Guards and Prison officials.<sup>127</sup>

In addition, the Maritime Crime Programme (MPC) provides “[t]ranscription services for trials; [f]unding for defense lawyers representing suspected pirates; [c]ourtroom translation [and] interpretation services; [c]osts associate[ed] with flying foreign civilian witnesses (e.g. seafarers) to the prosecuting [state] to testify in person; [and] [e]quipment for video-teleconferencing of foreign witnesses unable to testify in person.”<sup>128</sup>

The UNODC set forth a list of piracy prosecution statistics.

TABLE 2: PIRACY PROSECUTION STATISTICS AT OCTOBER 2014<sup>129</sup>

SOMALI PIRACY PRISONERS—KENYA			
Status	Detained By	Number of Prisoners (Sentence)	Total
On Remand	Denmark	4	4 On remand
Convicted	Denmark	24	160 Tried
	EUNAVFOR (Spain)	4 (7 years)	143 Convicted
	EUNAVFOR (Germany)	9 (5 years)	101 Remaining in Kenya
	United States	7 (4 years)	<u>42 Post-sentence repatriations</u>
	United States	9 (5 years)	10 in 2011
	EUNAVFOR (Sweden)	7 (7 years)	7 to Puntland in November 2013
	EUNAVFOR (Germany)	7 (20 years)	7 to Puntland in January 2014
	EUNAVFOR (France)	11 (5 years)*	7 + 11 to Puntland in February 2014
	United States	10 (8 years) Sentence complete	
	United Kingdom	8 (10 years)	
	EUNAVFOR (Germany)	7 (5 years) Sentence complete	
	EUNAVFOR (Spain)	7 (5 years)	
	EUNAVFOR (France)	11 (20 years)	
	United Kingdom	6 (5 years)	
	EUNAVFOR (Spain)	7 (4.5 years) Sentence complete	
	EUNAVFOR (Italy)	9 (7 years)	
	Acquitted	United States	17
			17 Repatriated in December 2010

127. *Id.*

128. *Id.*

129. *Id.*

## SOMALI PIRACY PRISONERS—SEYCHELLES

Status	Detained By	Number of Prisoners (Sentence)	Total
On Remand	EUNAVFOR (France)	5	14 On remand
	Denmark	9	
Convicted	Denmark	4 (3 x 24 years, 1 x 16 years)	133 Tried
	Denmark	4 (3 x 21 years, 1 x 14 years)	129 Convicted
	Netherlands	6 (5 x 24 years, 1 x 12 years)	22 Remaining in Seychelles
	Netherlands	11 (6 x 16 yrs, 3 x 5 yrs, 1 x 4 yrs, 1 x 1.5 yrs)	
	EUNAVFOR (France)	11 (6 years)	<u>96 Prisoner transfers</u>
	EUNAVFOR (Spain)	11 (10 years)	17 to Somaliland Mar 12
	EUNAVFOR (Netherlands)	9 (7 x 6 years), <u>2 x juvenile acquitted</u>	12 to Somaliland Dec 12
	Seychelles Coastguard	11 (10 years)	5 to Puntland Dec 12
		10 (20 years)	25 to Puntland Mar 13
		6 (24 years)	8 to Puntland May 13
		5 (18 years)	11 to Puntland Oct 13
		9 (8 x 22 years, <u>1 x juvenile acquitted</u> )	18 to Puntland March 14
	United Kingdom	7 (6 x 7 years, 1 x 2 years)	<u>11 Post-sentence repatriations</u>
United Kingdom	14 (3 x 2.5 years, 8 x 12 years, 1 x pleaded guilty 10 years, 1 x juvenile time served, <u>1 x juvenile acquitted</u> )	1 to Puntland Aug 12	
		5 to Puntland Oct 13	
		3 to Puntland May 14	
United States	15 (13 x 18 years, 2 x 4 years)	2 to Puntland Oct 14	
Acquitted	United Kingdom	1	4 Acquitted
	Seychelles Coastguard	1	4 Repatriations after acquittal
	EUNAVFOR (Netherlands)	2	1 to Puntland Aug 12
			1 to Puntland May 14
		2 to Puntland Sept 14	

## SOMALI PIRACY PRISONERS—MAURITIUS

Status	Detained By	Number of Prisoners (Sentence)	Total
On Remand	EUNAVFOR (France)	12	12 On remand

These statistics will give the reader an idea of the number of prosecutions that have been undertaken in an attempt to deter acts of piracy. The goal is also to make certain that once the pirates serve their sentences, they are rehabilitated and sent back to Somalia. However, these prosecutions do not come free. The most important problem regarding human rights, as far as your authors are concerned, involves minimizing the burden of prosecuting pirates (i.e. so that ship owners and navy personnel do not become frustrated by illegal impediments and take the law into their own hands by covertly shooting and dumping the pirates at sea).

### III. ON THE RELATIONSHIP BETWEEN THE ECONOMIC COURSE OF MARITIME (SOMALIA) PIRACY AND MINIMIZING THE BURDEN OF PROSECUTING PIRATES

The following chart gives a breakdown of the overall cost of maritime piracy.

TABLE 3: THE ECONOMIC COST OF MARITIME (SOMALIA) PIRACY<sup>130</sup>

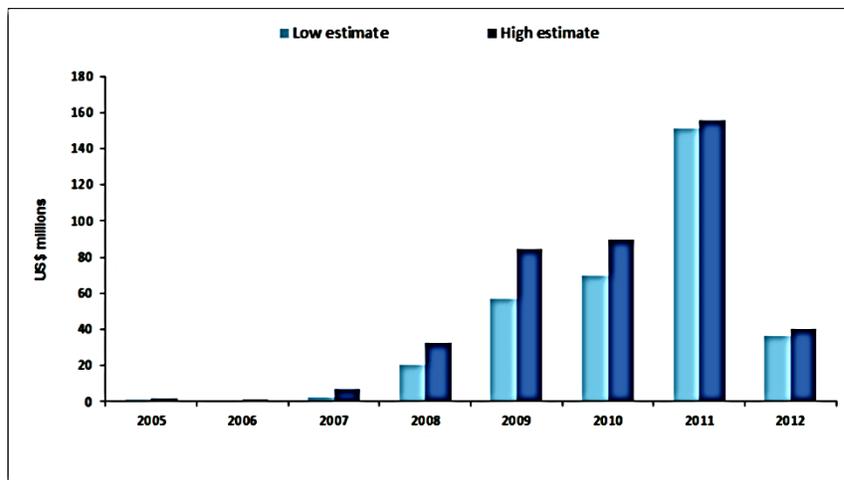
Cost Factor	2010	2011	2012
Ransom	\$176 million	\$160 million	\$31.75 million
Insurance	\$460 million - \$3.2 billion	\$635 million	\$550.7 million
Re-routing Ships	\$2.4 - \$3 billion	\$486 million - \$681 million	\$290.5 million
Security Equipment and Guard	\$363 million - \$2.5 billion	\$1.064 - \$1.16 billion	\$1.65 - \$2.06
Naval Forces and Military Operations	\$2 billion	\$1.27 billion	\$1.09 billion
Prosecutions and Imprisonment	\$31 million	\$16.4 million	\$14.89 million
Counter Piracy Organizations	\$19.5 million	\$21.30	\$24.08 million
Cost to Regional Economies	\$1.25 billion	N/A	N/A
Labour	N/A	\$195 million	\$471.6 million
Increased Speed	N/A	\$2.71 billion	\$1.53 billion
<b>Total Estimated Cost</b>	<b>\$7 - \$12 billion</b>	<b>\$6.6 - \$6.9 billion</b>	<b>\$5.7 - \$6.1 billion</b>

As can be seen above, as of 2013, the World Bank estimated the economic cost of piracy off the coast of Somalia at \$18 billion, with a margin of error of roughly US \$6 billion. This is acting as a “hidden tax on

130. Maritime Piracy, *Part I: An Overview of Trends, Cost, and Trade-Related Implications*, UNITED NATIONS, 14 (2014). Gather the information from One Earth Future (OEF) (2013).

world trade, [and] reflects [] increased trade cost; it does not account for losses to tourism and fisheries, which are addressed separately.”<sup>131</sup> Turning to the cost of ransoms and their economic impact, Table 4 sets forth the evolution of ransoms collected by pirates.<sup>132</sup>

TABLE 4: EVOLUTION OF RANSOMS: ANNUAL AMOUNTS COLLECTED BY SOMALI-BASED PIRATES IN RANSOMS FOR VESSELS AND/OR CREWS KIDNAPPED BETWEEN 2005 AND 2012<sup>133</sup>



The ransom value is actually much higher, however, “as in addition to the ransomed amounts, there remain other associated costs, which are not accounted for, including the cost of ransom value negotiations and the

131. *Id.* at 14. Oceans Beyond Piracy published their 2014 report with the updated statistics regarding the cost of prosecutions and imprisonment of pirates. This chart represents the updated information:

Region	Pirate Trials	Average Cost per Trial	Total Trial Cost	Pirates Imprisoned	Cost per Year of Imprisonment	Total Imprisonment Cost	Total Regional Cost in 2014
Africa <sup>90</sup>	1	\$228	\$228	609	\$730	\$444,570	\$444,798
Asia	1	\$7,314	\$7,314	120	\$376	\$45,120	\$52,434
Europe and Japan	1	\$633,800	\$633,800	86	\$47,794	\$4,110,284	\$4,744,084
North America	1	\$307,355	\$307,355	26	\$28,284	\$735,384	\$1,042,739
<b>Total</b>	<b>4</b>	-----	<b>\$949,000</b>	<b>841</b>	-----	<b>\$5,335,000</b>	<b>\$6,284,000</b>

OCEANS BEYOND PIRACY, THE STATE OF MARITIME PIRACY REPORT 2014 21 (One Earth Future Foundation 2014).

132. *Id.*

133. *Id.* at 16.

means used to deliver the ransom money.”<sup>134</sup> As this value has increased, “so [has] the duration of negotiations and of captivity. Up from 55 days in 2009, seafarers are now being held hostage for an average duration of three to four months.”<sup>135</sup>

Even with the increased cost, pirates are considered and treated as criminals rather than combatants.<sup>136</sup> Since pirates are not enemy combatants, the U.S. Navy and others are restricted on what they can and cannot do with regard to attacking and capturing pirates.<sup>137</sup> For example, despite the fact that naval forces patrolling the Somali coast have an expanded legal mandate, they are not allowed to launch attacks on suspected pirates’ vessels until the pirates attempt to board another vessel.<sup>138</sup> Thus, the navy’s actions are largely defensive.<sup>139</sup> “Navies are also not allowed to pursue pirates to shore for fear of incurring civilian casualties”,<sup>140</sup> however, in the case of Somalia, foreign naval forces have been given the authority to enter territorial waters.<sup>141</sup>

It is difficult for navies to proceed because they are not accustomed to attacking pirates, but rather other warships.<sup>142</sup> In other words, human rights concerns and safeguards impede their normal operations. Naval personnel are not trained to follow rules for pirates regarding apprehension procedures and evidence collection.<sup>143</sup> They are uncertain of what “constitutes evidence of a piratical act or an attempt of the act . . . .”<sup>144</sup> The boarding of a fishing vessel by skiffs (vessels pirates use) or the possession of an AK-47 may present problems for navies as far as gathering evidence is concerned.<sup>145</sup> Under Article 110 of the UNCLOS, warships are permitted to board merchant ships suspected of being

134. *Id.*

135. *Id.*

136. Debrah Osiro, *Somali Pirates Have Rights Too: Judicial Consequences and Human Rights Concerns*, INSTITUTE FOR SECURITY STUDIES, at 7 (2011), available at <https://www.issafrika.org/uploads/Paper224SomaliPirates.pdf> [hereinafter *Somali Pirates Have Rights Too*].

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. S.C. Res. 1816, U.N. Doc. S/Res/1816 (June 2, 2008). This resolution allows States cooperating with TFG in the fight against piracy and armed robbery off of the coast of Somalia to enter into the territorial waters of Somalia or the purpose of repressing acts of piracy and armed robbery at sea. *Id.*

142. See *Somali Pirates Have Rights Too*, *supra* note 136, at 7.

143. *Id.*

144. *Id.*

145. *Id.*

piratical in nature or transporting slaves.<sup>146</sup> However, fishing skiffs, used by the Somalis, are not exactly what the navy personnel are accustomed to dealing with.<sup>147</sup> This has, in a few instances, lead to an attempt to go back to the “good old days.”<sup>148</sup> It becomes costly to have the burden of proving a piratical act, especially when human rights concerns are taken into account during trials. The trials, by definition, are not summary proceedings.

“Equipment articles widen the scope of criminal liability by creating *prima facie* evidence that a vessel is a pirate ship.”<sup>149</sup> This would mean that a crew could be found guilty of piracy if they are aware of the presence of certain specified equipment on board their ship (e.g. weapons, ladders, and grappling hooks, etc.).<sup>150</sup> However, the weapons would be

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146. See United Nations Convention on the Law of the Sea, art. 110, Dec. 10, 1982 [hereinafter UNCLOS]. This article of the UNCLOS states that

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
- (b) the ship is engaged in the slave trade;
- (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
- (d) the ship is without nationality; or
- (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply *mutatis mutandis* to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.

*Id.*

147. *Somali Pirates Have Rights Too*, *supra* note 136, at 7.

148. *Id.*

149. *Id.* Equipment articles are regulations that construct a “judicial presumption of guilt on piracy charges for the crews of civilian vessels possessing certain specified equipment within a certain defined area of the high seas plagued by pirate attacks.” Eugene Kontorovich, *Equipment Articles for the Prosecution of Maritime Piracy*, Discussion Paper for One Earth Future Foundation, May 2010, <http://www.oneearthfuture.org/> (last visited Aug. 28, 2015). The same approach is being used against drug traffickers. *Somali Pirates Have Rights Too*, *supra* note 136, at 7.

150. *Id.*

thrown overboard at the first indication that a patrol ship is approaching them for boarding.<sup>151</sup>

Over the years abuses have taken place, which is a known concern.<sup>152</sup> For example, the sinking of an alleged pirate vessel by the Indian Navy vessel *Tabar*, resulted in the death of fourteen people.<sup>153</sup> At the time the *Tabar* officials claimed self-defense; that they were dealing with “a ‘pirate mothership’ in ‘description and intent’”; but that the “the . . . ‘pirates’ were actually crew members [who] had been taken hostage when their Thai fishing boat . . . was hijacked.”<sup>154</sup>

Another country that has run into human rights issues regarding pirates is Russia. As a party to European Convention on the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights, Russia “has an obligation to safeguard the lives of pirates in its custody and accord them due . . . process before sanctioning.”<sup>155</sup> There have been fishermen in Yemen who have “complain[ed] of increasing[ly] aggressive harassment by the [Russian] naval armada, including illegal searches and seizures.”<sup>156</sup> Those Yemeni fishermen consider the Russian “naval forces to be as dangerous as the pirates themselves.”<sup>157</sup> The Russians were accused of throwing certain pirates overboard by forcing them to leave the Russian ship where they were being held and placed on a raft on the open seas, which, of course, was a death sentence.<sup>158</sup>

The numbers of suspected pirate casualties are difficult to ascertain, primarily because if a number exists, that statistic has not been released to the public.<sup>159</sup> “Considering the cost and difficulty of prosecuting Somali pirates, a country can put pressure on the prosecution to encourage the suspects to plead guilty so as to avoid a trial which they would likely lose if due process were followed or, once on trial, for the court to deliver a guilty verdict so as to avoid or postpone determining repatriation issues.”<sup>160</sup> “The governments are therefore only offering human rights guarantees selectively, as opposed to protecting the inherent rights of Somali pirates.”<sup>161</sup>

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151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

Pirates are under the protection guaranteed by the Convention as soon as they are under the effective control of a state naval vessel.<sup>162</sup> So the states must secure for pirates within their jurisdictions the rights and freedoms defined in that convention.<sup>163</sup> For the captured pirates, the Convention provides:

[W]hether the act occurred in Somali waters or on the high seas, can thus assert human rights protection/violations under Articles 2 (right to life); 3 (prohibition of torture and other forms of inhumane and degrading treatment); 5 (right to liberty and security—relating to detention); 6 (right to a fair trial); and 7 (due judicial process before punishment).<sup>164</sup>

Once an alleged pirate is captured, he is “within the ‘effective control’ of an ECHR contracting party if he is detained by a European navy.”<sup>165</sup> The ECHR, in *Hassan and Others* and *Medvedyev and Others v. France* cases, “clarified that the ‘holding’ of pirates by the navies is in contravention of Article 5 as it deprives them of their liberty.”<sup>166</sup>

However, it is uncertain if ECHR jurisdiction applies if the pirates are on board a skiff that is under a naval vessel’s control, with some [S]tates like Russia assuming that ECHR jurisdiction therefore does not apply. They question how such can apply if ‘control’ was never intended for the purpose of arrest but for eventual freedom.<sup>167</sup>

“The length of time it takes to bring the suspects to trial is an impediment” because of the distance travelled from Somalia to France, for example. The court came to the conclusion that the naval forces’ failure to allow the prisoners the opportunity to contact their “lawyers and relatives was a breach of human rights.”<sup>168</sup> The navy was also unsuccessful in informing “judicial authorities of their actions, thereby violating the French laws.”<sup>169</sup>

Article 3 of the ECHR demands an absolute duty to “refrain from subjecting a person to inhumane treatment and [to] protect a person from

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162. *Somali Pirates Have Rights Too*, *supra* note 136, at 7–8.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Somali Pirates Have Rights Too*, *supra* note 136, at 8.

inhumane treatment.”<sup>170</sup> Western states have obligations under the doctrine of non-refoulement.<sup>171</sup> The non-refoulement principle “prohibits the expulsion, extradition, deportation, return or otherwise removal of any person in any manner whatsoever to a country or territory where the person would face a real risk of persecution or serious harm.”<sup>172</sup>

In an article, Professor Dubner recently discussed the hiring of Private Security Companies (PSC) and the use of armed guards for their vessels.<sup>173</sup> Private armed security guards (PASGs) cannot “board vessels and detain[] suspect pirates . . .” but they have been used as an effective deterrent—“no ship with PASGs on board has been hijacked.”<sup>174</sup> However, there are various human rights issues that arise when using PASGs at sea:

When can they use force, and to what extent? Who gives the order to use force? How can they transport their weapons legally? There are also practical questions such as whether using PASGs would escalate levels of violence, whether they would make non-guarded ships more vulnerable, and whether PSCs should be regulated and accredited.<sup>175</sup>

Professor Dubner’s article went on to state that as of 2012 these PASGs have been extremely effective to the point that the amount of piracy off the coast of Somalia has dropped to practically nothing.<sup>176</sup>

As far as the issue of bringing firearms and other weapons into ports, PASGs use floating armories off various countries so that they can go on board these armories, pick up whatever arms they need, and proceed to the ship they are protecting.<sup>177</sup> When PASGs get off the ship, they are again leaving the arms on the flotilla and starting the process over again.<sup>178</sup> This

170. *Id.* Article 3 of the ECHR states that: “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” European Convention on Human Rights, art. 3, June 2010, available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

171. *Somali Pirates Have Rights Too*, *supra* note 136, at 8.

172. *Id.*

173. Barry Hart Dubner & Claudia Pastorius, *On the Effectiveness of Private Security Guards on Board Merchant Ships Off the Coast of Somalia-Where Is the Piracy? What Are the Legal Ramifications?*, 39 N.C. J. INT’L L. & COM. REG. 1029, 1053 (2014) [hereinafter *On the Effectiveness of Private Security Guards*].

174. Thorp, *supra* note 110.

175. *Id.*

176. *On the Effectiveness of Private Security Guards*, *supra* note 173, at 1053.

177. Sarah Kent & Cassie Werber, *How Floating Armories Help Guard Cargo Ships From Pirates on High Seas*, WALL ST. J., Feb. 3, 2015, available at <http://www.wsj.com/articles/how-floating-armories-help-guard-cargo-ships-from-pirates-on-high-seas-1422934573>.

178. *Id.*

is not to say that it is the only reason that the level of piracy has dropped, but it certainly is coincidental.

The Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP), which is a coordinating body with twenty government members, started compiling incident reports and found that there was a 22 percent jump in armed robbery and pirate ships in Asia. This accounted for three-quarters of global maritime piracy in the year 2014.<sup>179</sup> The idea of putting armed guards aboard ships passing through the Malacca Strait and nearby waters is a bad one because it would increase the dangers to sailors and increase the level of violence used by the perpetrators.<sup>180</sup> When it was decided to use regional patrols instead of armed guards aboard the ships ReCAAP had the statistics for the drop in piracy off of Somalia, but apparently those statistics did not ring true to them. Historically the owners of vessels had serious concerns about crewmen killing each other if arms were placed on board.

The seafarers' support group, the Maritime Piracy Humanitarian Response Programme (MPHRP), has criticized the ECHR's decision in *Hassan and Others*.<sup>181</sup> Roy Paul, the program director for the MPHRP, said:

This decision would be unbelievable if it wasn't made by the European Court of Human Rights. The claim that this constituted a 'violation of their rights to freedom and security' is an insult to the seafarers and yachtsmen they attacked as surely this is the true violation of the seafarers' rights to freedom and security. These pirates, in my opinion, gave up any of their rights when they set sail to attack innocent seafarers who were simply doing their essential work.<sup>182</sup>

It is important to remember that there is a difference between pirates, who are considered non-enemy combatants, and terrorists, who are considered enemy combatants. Each is treated differently along the procedural avenue before trial. A U.S. naval friend of Professor Dubner (hereinafter "X") said that his "overall concern is clearly that this ruling is a great recruiting tool. Not only do you get paid to be a pirate, but now, go ahead and get

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179. Keith Wallis, *Asia Maritime Piracy Attacks Rise to 75 Percent of Global Total*, REUTERS, Jan. 14, 2015, available at <http://www.reuters.com/article/2015/01/14/us-asia-piracy-idUSKBN0KN10O20150114>.

180. *Id.*

181. *Compensating Pirates Worries IMB*, THE MARITIME HUB, Dec. 30, 2014, available at <https://icc-ccs.org/news/1039-imb-concerned-over-decision-to-compensate-pirates>.

182. *Id.*

captured, as you'll earn 10 years worth of annual salary just for being held for two days in prison."<sup>183</sup> The opinion of the seafarers' union representative, as well as the author's naval friend, is the main concern of those who believe that the pirates should have little or no rights as criminals.

#### IV. A MODEST SUGGESTION FOR OBTAINING A SPEEDIER TRIAL WITHOUT SO MUCH WEAR AND TEAR ON NAVAL PERSONNEL AND PIRATES

In 2010, Professor Dubner had a suggestion regarding the most efficient way to try pirates; namely, a UN sanction ship that would go out on circuit to try pirates.<sup>184</sup> Currently, with the millions of dollars being poured into Somalia and elsewhere in order to create a judicial system and proper human jails by the UNODC, there is no reason why this idea could not be used to supplement the regional piracy trials in Kenya, Seychelles, Mauritius, and elsewhere in the region. In fact, X has told your author that he had seen "a couple of coalition ships heading to join the counter-piracy mission. The ships are modular and were specifically configured for counter-piracy, to include a special brig just for pirates."<sup>185</sup> As he said:

The setup was very cool to see, a space dedicated to both the guards and the pirates. It allowed the cells to be unlocked remotely to give access to shower/heads, as well as eating areas, while the guards could observe from the other side of a partition. It also had built in tear gas and gun ports for any resistance.<sup>186</sup>

He believed that "these ships were designed to sail back with their prisoners, or at least to hold them for extended periods."<sup>187</sup>

The suggestion was also made that there be an agreed upon level of sentencing to choose between.<sup>188</sup> X suggests that designating or assigning a ship to be the mobile magistrate for maritime piracy rulings would

183. E-mail from Anonymous to Barry Heart Dubner (Jan. 9, 2015, 12:22 EST) (on file with author).

184. See Barry H. Dubner & 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, 589 (2011).

185. E-mail from Anonymous to Barry Heart Dubner (Jan. 12, 2015, 22:25 EST) (on file with author).

186. *Id.*

187. *Id.*

188. E-mail from Anonymous to Barry Heart Dubner (Jan. 14, 2015, 10:06 EST) (on file with author).

probably be well received and efficient.<sup>189</sup> The ship could be a modified version of one of the ones that he linked to us or a smaller ship made to have a brig, courtroom, and then residences for the staff.<sup>190</sup> There would need to be security escorts for a yacht, while a modified warship would be less vulnerable or identifiable.<sup>191</sup> There would be an EU or NATO magistrate that would eliminate the lack of standardization (uniformity) and jurisdiction (international waters) concerns.<sup>192</sup> In this regard each State could drop off their prisoners at the ship. They would be tried in the court on the ship. If the pirates are found guilty, the court would then arrange to have them sent for jailing, fines, or released.<sup>193</sup> A considered sentence might be handed down because the pirate leaders are drawing from people who make \$100 US per year and, therefore, it would be difficult to dissuade them from committing piracy.<sup>194</sup> On the other hand, punishing the bottom of the food chain is not curing the problem. They may prefer to get three meals a day in prison and then seek asylum. This, however, is a separate issue.

There is an excellent study by Professor Eugene Kontorovich entitled: *The Penalties for Piracy*. He stated that the paper he prepared was “the first global empirical study of the penalties for piracy.”<sup>195</sup> He found, in part, that the “longest and shortest sentences for similar acts of piracy by Somalis spans the entire spectrum of possible jail times, from 4.5 or 5 years in Kenya, the Netherlands, and Yemen, to life in the U.S. and U.A.E.”<sup>196</sup> He also found that the mean sentence worldwide was sixteen years, “slightly less on a per-defendant basis.”<sup>197</sup> He recommended, in part:

In a world of sentencing disparities, the choice of forums made by a capturing nation entails a decision about penalties. Thus suspected pirates could be transferred “up” the severity gradient. This suggests that one previously unappreciated advantage of a dedicated international piracy tribunal or chamber would be the elimination of

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189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. E-mail from Anonymous to Barry Heart Dubner (Jan. 14, 2015, 10:06 EST) (on file with author).

195. Eugene Kontorovich, *The Penalties for Piracy: An Empirical Study of National Prosecution for International Crime*, NW. PUB. L. RESEARCH PAPER NO. 12-16, at 1 (July 10, 2012).

196. *Id.* at 9.

197. *Id.*

sentencing disparities. The creation of such a court was recommended by the Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia (S/2011/30).<sup>198</sup>

He stated, the same thing your author did years ago, that the data presented in his study “may lend support to the creation of ‘specialized anti-piracy courts,’ as recommended in the Report of the Secretary-General on specialized anti-piracy courts in Somalia and other states in the region (S/2012/50), which advocates enlisting regional states as prosecution centers.”<sup>199</sup>

As the reader has observed there are many statistics available as far as the number of pirates, their sentences, and other related information. However, the UNODC received reports that prison officials in Somalia have been receiving bribery payments, and because of those payments

198. *Id.* at 15.

199. *Id.* Professor Kontorovich also has two appendices, which include sentences by region and severity of crime. These are set forth as follows:

Sentences by Region:

	<b>Min. Sentence</b>	<b>Max. Sentence</b>	<b>Mean</b>
Global	4.5	60	18.85
Europe	5	30	9.75
United States	30	60	29.00
Regional	4.5	60	23.88

Severity of Crime:

<b>Level of violence</b>	<b>Min. Sentence</b>	<b>Max. Sentence</b>	<b>Mean</b>
Attempt	5	20	7.13
Shots fired	4.5	60	8.59
Detention	5.5	34	21.88
Assault/injury	5	24	29.50
Death	13	60	34.33

<b>Hours Aboard</b>	<b>Min. Sentence</b>	<b>Max. Sentence</b>	<b>Mean</b>
0	5	20	5.38
1-100	12	60	21.25
101-200	7	60	26.60
Over 200	5	30	34.33

*Id.* at 17–18.

sixty convicted pirates were released from prison in Somaliland.<sup>200</sup> The UNODC, since that time, poured a lot of money into Somalia in order to create and establish Somalia tribunals, which would serve as a specialized system of extra-judicial courts.<sup>201</sup>

There has always been concern about the “treatment of suspected pirates once they are captured.”<sup>202</sup> As indicated earlier in the *Hassan and other* case, the ECHR concerns the right to a fair trial; the prohibition of torture and inhuman or degrading treatment; the non-application of the death penalty; and respect of the right of the detainees.<sup>203</sup> The prosecution of children also produces concerns.<sup>204</sup> One of the main concerns just a few years ago was that the current international framework at the time did not provide a clear definition of acts of piracy and did not require states to criminalize acts of piracy.<sup>205</sup> That problem has been readily solved by the creation of extra-territorial courts placed throughout Seychelles, Kenya, and Mauritius. Each of those states, as well as the European states, have created piracy statutes, which did not exist on their books, so that the pirates could be brought to any of those countries, in the geographic region around Somalia, and receive a trial.

Many serious human rights issues arise when prosecuting pirates outside of their home countries.<sup>206</sup> First, because pirates do not carry legal documents the arresting authorities cannot determine by evidentiary proof whether they are minors or not.<sup>207</sup> The second problem regards the obtaining of the translations or simultaneous translations of legal proceedings from the language in which they are held into the Somali language.<sup>208</sup> Third, when naval officers are witnesses, they often have to travel long distances from their ships or their home country to a foreign country to testify and are usually restricted from giving militarily sensitive evidence.<sup>209</sup> Fourth, identifying individuals is difficult because fingerprints collected from confiscated weaponry of the pirates cannot be matched to

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200. Barry H. Dubner & Sara Fredrickson, *On the Legal Issues Regarding the Prosecution of Sea Pirates (Including Human Rights): A Case of History Repeating Itself?*, 26 TEMP. INT'L & COMP. L.J. 233, 254 (2012).

201. *Id.*

202. *Id.* at 252.

203. Eur. Convention on Human Rights § 1 arts. 3, 5, 6; Protocol No. 6 arts. 1, 2 (June 1, 2010), available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

204. *See id.*

205. *See generally id.*

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

207. *Id.*

208. *Id.*

209. *Id.*

any database.<sup>210</sup> Finally, interviews are also problematic because it can be unclear whether the information gathered was via interrogation without proper legal procedure or through voluntary statements.<sup>211</sup>

The fourth edition of the Best Management Practices directives was created to instruct on post-incident evidence preservation and collection.<sup>212</sup> “Consistency” and “uniformity” were the main objects of having specialized courts in the local regional Station.

The total cost of prosecuting pirates has been set forth in this article. It is exorbitant. Much of the cost is spent on expenses in setting up trials and training personnel. “Regionalism” is an excellent idea for both cost and human rights reasons. It is much cheaper to try pirates in the local area of Kenya, Somalia, Tanzania, and Mauritius than it is to fly them back to Europe.

#### V. CONCLUSION

Nations that bring pirates back to their homelands run the risk of not following their procedures, which leads the ECHR to release them. The pirates face the risk of death because states may not be willing to go through the expense of bringing them back to their jurisdiction only to have them go free due to human rights violations, as pirates are not treated as enemy combatants.

As was shown earlier, as of 2013, the World Bank estimated the economic cost of piracy off the coast of Somalia at \$18 billion. This cost is acting as a “hidden tax on world trade” and this does not even take into account losses to the tourism and fishery industries.<sup>213</sup>

Even with the use of regional courts, your authors suggest the supplemental use of a U.N. flagged vessel; going out on circuit and hosting trials. This would avoid, for example, the procedural violations of due process, timeliness, and other rights violations. The holdings of the ECHR, the Mauritius court, and Danish court demonstrated the need for “promptness” of the trials for the pirates. However, this necessary requirement is difficult to achieve because of, *inter alia*, distances, timing, witness’ availability, and evidence. It is suggested that regional court trials

210. *Id.*

211. *Id.* at 8.

212. See 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].

213. *Maritime Piracy, Part I: An Overview of Trends, Cost, and Trade-Related Implications*, UNCTAD 14 (2014), available at [http://unctad.org/en/PublicationsLibrary/dtl1b2013d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dtl1b2013d1_en.pdf).

and, where necessary, trials on a U.N. flagged vessel going out on circuit, would help avoid violations of due process that lead to human rights abuses of alleged pirates.

While the UNODC is busy attempting to build up the infrastructure of Somalia, the other violations of human rights concern “pirate” fishing and the dumping of toxic waste by foreign companies off of the 1800-mile coast. These issues must be addressed as well.

Your authors’ fear is that, rather than bringing pirates back to France or elsewhere for trial, various authorities will not think it is worth their while to bother with the situation. This is because they will be disturbed by the fact that these pirates are getting thousands of Euros in compensation after receiving millions of Euros worth of ransom money. All of this while seafarers are rotting away waiting to be ransomed. The truth of the matter is, each civilized country has a system set up to protect the due process of their citizens, including murderers, rapists, etc. We would hate to think what would happen if these procedures were not followed. The human rights of human beings have to be considered.



APPENDIX II  
RESOLUTIONS OF THE UNITED NATIONS SECURITY COUNCIL AND  
GENERAL ASSEMBLY<sup>215</sup>

<b>Resolutions of United Nations Security Council</b>	
<b>East Africa</b>	
2125 (2013) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	18 November 2013
2077 (2012) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	21 November 2012
2020 (2011) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	22 November 2011
2015 (2011) [on acts of piracy and armed robbery at sea off the coast of Somalia]	24 October 2011
1976 (2011) [on acts of piracy and armed robbery at sea off the coast of Somalia]	11 April 2011
1950 (2010) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	23 November 2010
1918 (2010) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	27 April 2010
1897 (2009) [on acts of piracy and armed robbery against vessels in the waters off the coast of Somalia]	30 November 2009
1851 (2008) [on the fight against piracy and armed robbery at sea off the coast of Somalia]	16 December 2008
1846 (2008) [on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia]	2 December 2008
1844 (2008) [on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia]	20 November 2008
1838 (2008) [on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia]	7 October 2008
1816 (2008) [on acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia]	2 June 2008
<b>West Africa</b>	
2039 (2012) [on acts of piracy and armed robbery at sea off the coast of the States of the Gulf of Guinea]	29 February 2012
2018 (2011) [on acts of piracy and armed robbery at sea off the coast of the States of the Gulf of Guinea]	31 October 2011

215. *Maritime Piracy Part II: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy*, UNCTAD 64 (2014), available at [http://unctad.org/en/PublicationsLibrary/dtlfb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dtlfb2013d3_en.pdf).

<b>Resolutions of the United Nations General Assembly</b>	
Resolution 67/78, oceans and the law of the sea	18 April 2013
Resolution 66/231, oceans and the law of the sea	24 December 2011
Resolution 65/37B, oceans and the law of the sea	5 May 2011
Resolution 65/37A, oceans and the law of the sea	7 December 2010
Resolution 64/71, oceans and the law of the sea	4 December 2009
Resolution 63/111, oceans and the law of the sea	5 December 2008

APPENDIX III  
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS 1897<sup>216</sup>

Acting under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia;

2. *Notes* again its concern regarding the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia (S/2008/769, page 55) that escalating ransom payments and the lack of enforcement of the arms embargo established by resolution 733 (1992) are fuelling the growth of piracy off the coast of Somalia, and calls upon all States to fully cooperate with the Monitoring Group on Somalia;

3. *Renews* its call upon States and regional organizations that have the capacity to do so, to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;

4. *Commends* the work of the CGPCS to facilitate coordination in order to deter acts of piracy and armed robbery at sea off the coast of Somalia, in cooperation with the IMO, flag States, and the TFG and urges States and international organizations to continue to support these efforts;

5. *Acknowledges* Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines, and stresses the importance of coordination in this regard through the CGPCS;

6. *Invites* all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution

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216. S.C. Res. 1897, at 3-5, U.N. Doc. S/RES/1897 (Nov. 30, 2009).

for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective implementation of the SUA Convention;

7. *Encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, notes the primary role of the TFG in the fight against piracy and armed robbery at sea, and decides that for a period of twelve months from the date of this resolution to renew the authorizations as set out in paragraph 10 of Resolution 1846 (2008) and paragraph 6 of Resolution 1851 (2008) granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General;

8. *Affirms* that the authorizations renewed in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and affirms further that such authorizations have been renewed only following the receipt of the 2 and 6 November 2009 letters conveying the consent of the TFG;

9. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 7 above or to supplies of technical assistance to Somalia solely for the purposes set out in paragraphs 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

10. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorizations in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;

11. *Calls* on Member States to assist Somalia, at the request of the TFG and with notification to the Secretary-General, to strengthen capacity in Somalia, including regional authorities, to bring to justice those who are using Somali territory to plan, facilitate, or undertake criminal acts of piracy and armed robbery at sea, and stresses that any measures

undertaken pursuant to this paragraph shall be consistent with applicable international human rights law;

12. *Calls* upon all States, and in particular flag, port, and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, to ensure that all pirates handed over to judicial authorities are subject to a judicial process, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under this resolution;

13. *Commends* in this context the decision by the CGPCS to establish an International Trust Fund to support its initiatives and encourages donors to contribute to it;

14. *Urges* States parties to the Convention and the SUA Convention to fully implement their relevant obligations under these Conventions and customary international law and cooperate with the UNODC, IMO, and other States and other international organizations to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;

15. *Welcomes* the revisions by the IMO to its recommendations and guidance on preventing and suppressing piracy and armed robbery against ships, and urges States, in collaboration with the shipping and insurance industries, and the IMO, to continue to develop and implement avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in the waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;

16. *Requests* States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authorizations provided in paragraph 7 above and further requests all States contributing through the CGPCS to the fight against piracy off the coast of Somalia, including Somalia and other States in the region, to report by the same deadline on their efforts to establish jurisdiction and cooperation in the investigation and prosecution of piracy;

17. *Requests* the Secretary-General to report to the Security Council within 11 months of the adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery at sea off the coast of Somalia;

18. *Requests* the Secretary General of the IMO to brief the Security Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

19. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authorizations provided in paragraph 7 above for additional periods upon the request of the TFG;

20. *Decides* to remain seized of the matter.