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On The Legal Issues (Including Human Rights) Regarding the Prosecution of Sea Pirates; A Case of History Repeating Itself?

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On The Legal Issues (Including Human Rights) Regarding the Prosecution of Sea Pirates; A Case of History Repeating Itself?

By: Professor Barry Hart Dubner and Sara Fredrickson*

Preface

A newspaper headline appeared in the *New York Times* on January 28, 2012 entitled: “Seized Pirates in High-Seas Legal Limbo, With No Formula for Trials.”¹ The article proceeded to quote Rear Admiral Kaleem Shaukat, the Pakistani commanding Combined Task Force 151, the region’s multinational counter piracy command, who stated that “[…] without a legal system to match the navies’ tactical progress, piracy, and uncertainties about what to do with Somali prisoners on the high seas will persist[…].”² He went on to say “[…][i]f there is no effective legislation that makes sure these pirates are taken to a court of law and punished, if that does not occur, they will come back again and hijack other ships.”³ Continuing, “[…] [This] is still a weak area.”⁴ The irony of this statement is that despite everything that has been written on the subject, there still seems to be a lack of understanding on how and where to prosecute pirates.⁵

Eight days before the *Times* article, the UN Security Council issued its Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and other States in the Region.⁶ The two titles (i.e. the *Times* article and the Security Council Report), juxtaposed, seem to be totally

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² Id.
³ Id.
⁴ Id.
⁵ “There is no guarantee that convicted pirates, once release, will not once again join the ranks of pirate armies…Ambiguity remains in the in the important aspects of the relevant legal proceedings- detention, transfer, evidence collection- and thus in terms of prospects for the prosecution of pirates.” The agenda of the meeting was for various State members to discuss specialized anti-piracy courts in Somalia. U.N. SCOR, 67th Year, 6719th mtg. at 7, U.N. Doc. S/PV.6719 (Feb. 22, 2012).
inconsistent.\(^7\) So one has to ask the question that your authors are doing in this essay: is there a legal system in place to try sea pirates? If so, is it working with the same efficiency as the navies that are currently patrolling and fighting piracy?

In order to answer these questions and others (that arise therefrom), it is necessary to go back in time in order to see the problems with prosecution that existed during the “classical period” of sea piracy. One will see immediately that many of the problems are practically identical to those existing today. Earlier, before the organized crime called “sea piracy” off the coast of Somalia even existed, there were very few acts of piracy going on in the world. What acts there were, were mostly associated with refugee problems and simple acts of robbery in port or near shore, (which of course is “sea piracy”).\(^8\) So the question is: what has happened that the Pakistani Admiral should speak in such terms?\(^9\) Are we truly without a legal system?

**Introduction**

The International Maritime Bureau (IMB) Piracy Reporting Centre recorded 439 incidents of piracy and armed robbery in 2011 (“armed robbery” is an unfortunate definition of “sea piracy”\(^10\)) compared to 445 in 2010.\(^11\) Worldwide, in 2011, 45 vessels were hijacked, 176 vessels were boarded, 113 vessels were fired upon, and 155 vessels reported attempted attacks.\(^12\) There were a total of 802 crew members taken hostage, ten were kidnapped and eight were killed

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\(^7\) *Id.*, Chivers, *supra* note 1.


\(^9\) Chivers, *supra* note 1.


\(^12\) *Id.*
as a direct result of the incidents. Those are world-wide statistics. Somali pirates accounted for more than half of all attacks in 2011. While the overall number of Somali incidents has increased from 219 in 2010 to 237 in 2011, the number of successful hijackings has decreased from 49 vessels in 2010 to 28 in 2011.

Apparently, we owe the success of the reduction of seizures of ships by Somali pirates to the diligence of the naval forces patrolling and responding to the attacks. For example, according to the IMB, in the last quarter of 2011, the navies have disrupted at least twenty Pirate Action Groups (“PAGs”) before they became a threat to commercial fleets. The last quarter of 2010 saw 90 incidents of which 19 vessels were hijacked. In 2011, 31 vessels were attacked in which only four were hijacked successfully. Without the navies patrolling, there would be many more successful pirate hijackings.

Focusing on incidents occurring off of Somalia/Gulf of Aden between January and December 2011, the IMB Piracy Reporting Centre had received notification of 237 incidents attributed to Somali pirates. The geographical area ranges from the southern part of the Red Sea to 76 degrees longitude and beyond into the Indian Ocean. Incidents in the past have also been reported off the coast of the Oman/Arabian Sea, in the north, extending southward to 22 degrees. There were 470 seafarers taken hostage, ten kidnapped, three injured, and eight killed. The eastern south coast of Somalia including the Arabian Sea had 160 reported attacks, and there have been 37 attacks in the Gulf of Aden, 39 attacks in the southern Red Sea, and a hijacking in

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13 Id.  
14 Id.  
15 Id.  
16 Id.  
17 Id.  
18 Id. at 20.  
19 Id.
the territorial waters of Oman reported during this annual period. The IMB also reported 28 vessels had been hijacked during the same time frame. As of December 31, 2011, suspected Somali pirates held eleven vessels for ransom with 193 crew members of different nationalities as hostages. In addition, these pirates were also holding 23 kidnapped crew members as hostages.

In 2011, piracy attacks were reported on all types of vessels including: general cargos; bulk carriers; all types of tankers, container carrier, ro-ro (roll-on/roll-off) vessels, fishing vessels, sailing yachts, dhows, and tugboats among others. The weapons utilized by the pirates continued to be AK47s, rocket launchers, and small arms. If it was not for the effort of the naval forces and preventive measures used by the merchant vessels, including the use of citadels and the employment of privately contracted arms security personnel, these numbers would be much higher. The aforementioned statistics are telling. The question is: are these pirates that are captured being prosecuted? Do the piracy prosecutions deter the pirates? In order to answer these questions, we must first look at the background leading up to the current prosecutions.

A. On The Strengthening of the Legal Response to Piracy

How should the international community battle Somali pirates? Professor Dubner was honored to be requested to attend, and participate at, the Harvard Kennedy School, as part of a group discussing the subject of “Controlling Maritime Piracy,” during December of 2009. There were twenty-five scholars, diplomats, lawyers, military officers, shipping industry officials, and

20 Id.
21 Id.
22 Id.
23 Id.
24 Id. at 21.
other experts on the subject of piracy and Somalia from nine different nations. The three day conference was given under the auspices of the World Peace Foundation and entitled the Cambridge Coalition to Combat Piracy. The group carefully considered measures of prevention as well as protection. Professor Dubner spoke on one aspect of sea piracy and the group, in the end, prepared a Policy Brief, which reviewed, inter alia, relevant legal concerns and issues. It made 38 recommendations in order to reduce and eliminate Somalia-maritime piracy. The main issue concerning the strengthening of the legal response to sea piracy off of Somalia was what to do with the captured pirates and confiscated ships. By looking at the past recommendations of this group of participants (including your author), one can see if there has been any progress on the front for prosecuting and strengthening the legal response to sea piracy. According to the Times article and Ambassador Lang, there has been little progress.

One of the main problems in December 2009, which still exists today, concerns the catch-and-release policy adhered to by many of the Coalition’s naval forces. The thought that existed at Harvard was that this policy would not deter piracy. In addition, at that time, many countries had not yet (and would not) update their own legal systems in order to face the current reality of piracy. Notwithstanding the aforementioned problems, the international lawyers at the Cambridge Coalition saw no international or domestic legal impediments to trying pirates locally (or regionally) in domestic or specially-created tribunals. Some did not wish to create a special

26 Id. at 3.
27 Id.
28 Chivers, supra note 1,
29 U.N. Secretary-General, Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, U.N. Doc. S/2011/30 (Jan. 25, 2011) (This report was requested by the Secretary-General as a result of a debate held in the Security Council. Its purpose was to identify any additional steps that could be taken to assist States in the region, as well as other States, to prosecute and imprison persons who engage in piracy, and explore the willingness of States in the region to serve as potential hosts for any of the options for potential new judicial mechanisms. Ambassador Land was commissioned as Special Advisor to present the report.).
30 Rotberg, supra note 25 at 10.
31 Id.
international court for piracy. They said regional courts would save money and would be sufficient. At that time (December 2009), one of the suggestions was to create an extra-territorial court, which utilized Somalia law and was based in Somaliland, Djibouti, or elsewhere in the region, in order to handle all of the piracy cases. The idea behind it was to appoint and pay for judges either by the African Union or the United Nations (UN). The UN could authorize the creation of the court. In addition, a prison system would need to be established. Although the cost of the court and the prison system would be expensive, it would help to deter piracy and save funds in the long run. Also discussed were evidentiary problems that would occur in piracy cases. The UN would be encouraged to expand upon and update Resolution 1897 in order to make the existence of equipment capable of being used in committing acts of piracy, prima facie evidence of intent. Pirate ships and tools could be confiscated at sea (e.g. grappling hooks, ladders, and specialized equipment including large outboard motors, rocket-propelled grenade launchers, and machine guns).

Were any of these suggestions implemented? On the 26th of July 2010, a very important and crucial document was released by the United Nations at the request of the Security Council (in its Resolution 1918 (2000 UNCLOS) of April 27, 2010).

This document set forth options for creating special domestic chambers. These chambers would have international components, regional and/or international tribunals and corresponding imprisonment arrangements, taking into account: the work of the Contact Group

33 Rotberg, supra note 25 at 11.
34 Id.
35 Id.
36 See Dubner and Henn, supra note 10 at 12 (The Secretary-General, Report of the Secretary General on Possible Options to Further the Aim of Prosecuting and Imprisoning Person Responsible for Acts of Piracy and Armed Robbery at Sea off the Coast of Somalia, delivered to the Security Council and the General Assembly, UN. Doc. S/2010/394 (July 26, 2010)).
37 See Dubner and Henn, supra note 10 at 13.
on Piracy off the Coast of Somalia, (CGPCS); the existing crisis in establishing international tribunals and mixed tribunals; and, the time and resources necessary to achieve and sustain substantive results. The Report sets forth seven options all of which contain advantages and disadvantages.\(^3\)

Having read this report, Professor Dubner recommended, at the time, that the United Nations flag a vessel, thus creating a court/system. The vessel would go out on circuit, wherever needed, and prosecute pirates. The suggestion was that it would be a short term solution pending the findings of the United Nations.

On January 20, 2012, a Report of the Secretary-General, on Specialized Anti-Piracy Courts in Somalia and other States in the Region was issued.\(^3\) It was submitted pursuant to Paragraph 16 of Security Council Resolution 2015(2011) of October 24, 2011\(^4\) in which the Council decided to continue its consideration, as a matter of urgency, of the establishment of specialized anti-piracy courts in Somalia and other States in the region requesting substantial international participation as well as support.\(^4\) It was noted that in paragraph 17 of Resolution 2015 (2011), that the Council emphasized the importance for such courts to have jurisdiction, not

\(^3\) Id. at 13 n.64.

Option 1: The enhancement of United Nations assistance to build capacity of regional States to prosecute and imprison persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia;

Option 2: The establishment of a Somali court sitting in the territory of a third State in the region, either with or without United Nations participation;

Option 3: The establishment of a special chamber within the national jurisdiction of a State or States in the region, without United Nations participation;

Option 4: The establishment of a special chamber within the national jurisdiction of a State or States in the region, with United Nations participation;

Option 5: The establishment of a regional tribunal on the basis of a multilateral agreement among regional States, with the United Nations participation;

Option 6: The establishment of an international tribunal on the basis of an agreement between a State in the region and the United Nations;

Option 7: The establishment of an international tribunal by the Security Council resolution under Chapter VII of the Charter of the United Nations.


only over suspects captured at sea, but also over anyone who incites or intentionally facilitates
piracy operations, including key figures of criminal networks involved in piracy who illicitly
plan, organize, facilitate or finance, and profit from such attacks.\textsuperscript{42} By use of the term
“specialized anti-piracy court,” as utilized in the Report, it was understood to refer “[…] to a
court operating under national law, with international assistance and with the focus on the
prosecution of piracy offensives […].” This court would conduct cases according to international
standards of “fairness” (whatever these are).\textsuperscript{43}

In order to have specialized anti-piracy courts in States in the region, one needs to take
into account the anticipated number of piracy suspects likely to be apprehended at sea and
transferred to those States for prosecution. Looking at 2011 as an example, “the three naval
coalitions engaged in anti-piracy operations off the coast of Somalia have made only three
requests to regional States for the transfer of piracy suspects during 2011. Only one incident was
reported in which the suspects were released in circumstances where there may have been
sufficient evidence to pursue prosecution.\textsuperscript{44} In 2011, Kenya received one request to transfer 24
piracy suspects and the Seychelles received two requests for the transfer total of 18 piracy
suspects.\textsuperscript{45} The report points out, “In other words, of the total 386 reported piracy attacks in
2011, only four resulted in any of the three naval coalitions considering that there would be
sufficient evidence to warrant transfer of persons in their custody to a regional State for
prosecution.”\textsuperscript{46}

\textsuperscript{42} Id. at ¶ 1, n.1.
\textsuperscript{43} Id. at ¶ 4, n.4.
\textsuperscript{44} Id. at ¶ 6.
\textsuperscript{45} Id.
\textsuperscript{46} Id. at ¶ 7.
In order to determine whether or not there is a definite “catch-and-release” policy of the naval forces involved in that region, it is necessary to look at the incidents of piracy off the coast of Somalia and the number of prosecutions by the States.\textsuperscript{47}

The International Maritime Organization (IMO), in addition to the International Maritime Bureau (IMB), also supplies statistics (along with the Department of Peace Keeping Operations). According to the IMO, there were 286 attacks against ships in the waters off the coast of Somalia, of which 31 were successful.\textsuperscript{48} As of December 20, 2011, 13 ships were held by pirates with a total of 265 hostages. This compares with 28 ships and 656 hostages held by pirates on December 31, 2010. The number of attacks per month declined through 2011 from 45 in January 2011 to 14 in the month of November 2011. More interestingly, the success rate of the attacks has also steadily declined from twenty-one percent at the end of 2010 to seven percent in November, 2011. The majority of the attacks leading to vessels actually being hijacked in 2011 took place in the western Indian Ocean.\textsuperscript{49} According to the IMO, “the reduction in successful attacks was achieved through a combination of: (a) actions by naval forces; (b) the improved implementation of the IMO guidance and industry-develop best management practices for protection against Somalia-based piracy; and (c) the imprisonment of more than 1,000 suspects or convicted pirates and the fact that several hundred died or were lost at sea. The increase in privately contracted armed security personnel on ships may have contributed to the reduction in successful attacks.”\textsuperscript{50} Accordingly, pirates now operate in the high seas at distances up to 1750 nautical miles from the coast of Somalia, covering a geographical area of roughly 2.8 million

\textsuperscript{47} Id. at ¶ 8.
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
square miles.\textsuperscript{51} The total number of pirate attacks continues to be high even though their success rate is less. Because of the spread of pirate activities the naval resources are running thin. One tactic that the pirates now employ is making greater use of captured ships and dhows, as so-called “mother ships,” often using the captured crews as human shields. Violence against seafarers continues to be reported and is a growing concern.\textsuperscript{52} The number of States prosecuting acts of piracy off the coast of Somalia has remained at twenty, and the total number of prosecutions taking place has increased from 1,011 to 1,063.\textsuperscript{53}

The Report provided a table, set forth below, which explains the breakdown of all the global piracy prosecutions from 2006 to January 2012.\textsuperscript{54}

<table>
<thead>
<tr>
<th>Country</th>
<th>Number Held</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1</td>
<td>1 convicted</td>
</tr>
<tr>
<td>Comoros</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>15</td>
<td>5 Convicted</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td>143</td>
<td>50 Convicted</td>
</tr>
<tr>
<td>Madagascar</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Malaysia</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Maldives</td>
<td>37</td>
<td>Awaiting deportation in absence of a</td>
</tr>
</tbody>
</table>

\textsuperscript{51} Id. at ¶ 9.
\textsuperscript{52} Id.
\textsuperscript{53} Id. at ¶ 10.
\textsuperscript{54} Id.
<table>
<thead>
<tr>
<th>Country</th>
<th>Number</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>29</td>
<td>10 convicted</td>
</tr>
<tr>
<td>Oman</td>
<td>22</td>
<td>All convicted</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>5</td>
<td>5 convicted, appeal pending before the Supreme Court</td>
</tr>
<tr>
<td>Seychelles</td>
<td>70</td>
<td>63 convicted</td>
</tr>
<tr>
<td>Somalia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>“Puntland”</td>
<td>290</td>
<td>Approximately 240 convicted</td>
</tr>
<tr>
<td>“Somaliland”</td>
<td>94</td>
<td>68 convicted (approximately 60 subsequently released)</td>
</tr>
<tr>
<td>South Central</td>
<td>18</td>
<td>Status of trial unclear</td>
</tr>
<tr>
<td>Spain</td>
<td>2</td>
<td>Both convicted</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>United Republic of Tanzania</td>
<td>12</td>
<td>6 convicted</td>
</tr>
<tr>
<td>United States of America</td>
<td>28</td>
<td>17 convicted</td>
</tr>
<tr>
<td>Yemen</td>
<td>129</td>
<td>123 convicted and 6 acquitted</td>
</tr>
<tr>
<td>Total</td>
<td>1,063</td>
<td></td>
</tr>
</tbody>
</table>

Looking at the figures on the chart, it is rather obvious there are no statistics regarding the number of pirates who are caught and released by the naval command. In fact, the UN report stated in its conclusion that the number of piracy incidents in which the suspects have been apprehended and released, and the reason thereby, has not been obtained from the navies.
patrolling the areas. The number of convictions in “Puntland” is 240 out of 290 captured; in Somaliland, 94 (of which 60 were subsequently released); and in south central Somalia which totaled 18, (but the status of their trial is unclear).

Starting with Somalia, according to the Report “[…] Somalia’s legal system consists of a formal legal sector, “Sharia” Law, and customary law; known as “Xeer […].” The only problem is that the Report points out that the Penal Code and the Criminal Procedure Code have not been updated since 1960 and are not available in the Somali language. At the date of the Report, the Transitional Federal Government of Somalia was charged with enacting anti-piracy legislation by May 18, 2012. The low numbers and level of training available to legal professionals in each of the regions of Somalia demonstrate that “[…] increasing the capacity to conduct the prosecution of piracy cases is a major, long-term challenge […].” Its Penal Code and Criminal Procedure Code do not cover piracy. On December 18, 2010 the Puntland Piracy Law No. 6 passed by the Puntland Parliament based on legislation drafted by the Law Reform Group with the assistance of the United Nations Office on Drugs and Crime (UNODC), was amended in terms that were not consistent with the definition of piracy set out in the UN Convention on the Law of the Sea (1982) (“UNCLOS”). In other words, the jurisdiction

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

56 Id. at ¶ 10.

57 Id. at ¶ 12.

58 Id.

59 Id.

60 Id. at ¶ 13.

61 Id. at ¶ 14.

Puntland has over piracy offenses would extend to acts committed anywhere on the high seas (just as the UNCLOS states in its articles) and does not require a connection or nexus to Puntland (e.g. the nationality of ship attacked, the perpetrators, or crew). The problem is that Puntland faces challenges, such as delayed proceedings, lack of defense counsel, lack of formal legal training of judges and other legal professionals, lack of secure and properly equipped courtrooms, and other infrastructure and resource issues. Also “[…] there have been concerns about bribery, and this is being tackled through a code of conduct […].” The security situation in Puntland for prosecutors and judicial personalities are a major concern. Investigations face severe challenges including a low level of basic investigation skills and the lack of established operational procedures, infrastructures, transport, research, and forensic equipment. Piracy trials in Puntland are heard in assize Courts, which are the courts of first instance and comprised of a bench of three judges. There is an appellate procedure of sorts. In sum, there are a total 53 judges sitting in 17 assize courts, four appeal courts, and the Supreme Court. As far as transferring of suspects, evidence, and prisoners, Puntland does not have any agreements with

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

   (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

   (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

64 Id. at ¶ 15.
65 Id.
66 Id. at ¶ 16.
67 Id. at ¶ 17.
68 Id. at ¶ 20.
69 Id.
nal states or organizations to transfer sea piracy suspects for trial in its courts. That is quite understandable since very few of the naval States patrolling the area are satisfied that the actual trials in Puntland are capable of meeting human rights provisions.\(^70\)

On the other hand, Somaliland has a hybrid common and civil law system.\(^71\) Piracy offenses are not covered explicitly in either the Penal Code or the Code of Criminal Procedure. They have received assistance from the UNODC and the United Nations Development Programme (UNDP) in drafting specific piracy laws.\(^72\)

What about the possibility of setting up an extra-territorial Somali anti-piracy court as suggested in the report of Ambassador Jack Lang (Special Advisor to the Secretary-General on the Issues Related to Piracy Off the Coast of Somalia) wherein the Somali anti-piracy court would physically be located in a third State in the region? One of the suggestions made by Ambassador Lang was that the International Criminal Tribunal Rwanda in Arusha, United Republic of Tanzania, serves as such a court.\(^73\) In Ambassador Lang’s report (dated June 15, 2011) modalities were identified for the establishment of effective functioning of such a court; considerations of the use of the Somalia authorities and of potential host States were taken into account.\(^74\) The interesting point is that after consultations conducted by the Offices of Legal Affairs and by the UNDP were held, Somalia authorities indicated during such consultations that they did not favor establishment of a Somali court outside of territorial Somalia, preferring any assistance for new courts to be implemented within Somalia.\(^75\) It was argued that the tribunal and

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70 Id. at ¶ 24.
71 Id. at ¶ 25.
72 Id. On March 21, 2012, the Law on Combating Piracy was passed by both houses and signed into law by the President of Somaliland. The Law on Combating Piracy, Law No. 52/2012 available at http://www.somalilandlaw.com/Somaliland_Piracy_Law_2012_Eng180311A.pdf.
75 U.N. Secretary-General Report Jan. 2012, supra note 6, ¶ 38.
staff would be at a security risk if they were located in Arusha. It also “[…] remains difficult to comment authoritatively on the Special Adviser’s estimated annual costs for an extraterritorial Somali court. The need for stand-alone premises, associated security costs, and the salaries and other expenses of international experts, including from the Somalia diaspora, may impact those estimates […].”

In connection with whether to have regional or international courts for prosecuting pirates, there were differing views at the Harvard meeting held in December 2009. Most of them wanted to continue with the regional courts because they would be more efficient and less costly. Others, like Professors Erick Franckx and Barry Dubner (your author), thought the international court was the way to go. Professor Barry Dubner has suggested over the years that, in the short run, it would be best to have a ship sanctioned by the UN, flying a UN flag, going out on circuit to prosecute pirates, and dropping them off at various prison facilities which are being established and which already exist in Somalia, Yemen, and Djibouti, as well as other countries in the region. The pirate suspects could be dropped off at a floating docking platform where they could be held or transferred while awaiting prosecution. In fact, in the Times article from Jan 28, 2012, the US Navy was considering converting an amphibious transport, a docking ship, to serve as a floating base for military operations for humanitarian assistance, with deployment expected in the summer of 2012 in the waters of the Middle East. It seems that the expense would be minimal compared to the total expense the international community is currently incurring due to the various organized crime acts classified as “piracy.”

Before proceeding with the current state of affairs regarding piracy, prosecutions and collection of evidence, and the problems connected thereto, let us now turn to the similarities

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76 Id.
77 Rotberg, supra note 25.
78 Chivers, supra note 1.
between the acts of piracy and prosecution thereof during the “classical” piracy period (i.e., middle 1600’s-early 1700’s).

B. Classical Piracy: We Can Learn From History!

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

One major difference between classical piracy and the current situation off the coast of Somalia is that in the past, pirates were subsidized by men of means who were not charged with any crimes. (Sound familiar?) As the reader may be aware, during the present atmosphere, calls have been made to include the backers and other collaborators as “pirates” so that they can be charged as such. 79

One of the first items of interest that is quite startling is the cost of prosecutions and imprisonment. It has been estimated that the total cost of prosecution and imprisonments for 2011 was $16.4 million dollars. 80 The total cost of Somali piracy altogether has reached between $6.6 and $6.9 billion. 81 In all of the studies that your authors have read on piracy, there has been

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79 See Amber Ramsey, Justice, 49 CIVIL-MILITARY FUSION CENTRE ANTI-PIRACY REVIEW 3 (Dec. 6, 2011), available at https://www.cimicweb.org/Documents/CFC%20Anti-Piracy%20Review/CFC_Anti-PiracyReview%202006%20December.pdf (“…since Shibin acted as a negotiator within Somalia, defense attorneys are attempting to have the charges overturned, arguing that his actions do not constitute the legal definition of piracy. Nevertheless, according to the prosecution, “[t]he facilitation prong of the piracy definition is not tied to the high seas, and thus Shibin’s involvement, even if limited to Somalia and its territorial seas, falls within the High Seas Convention definition of piracy.”’’); See United Nations Convention on the Law of the Sea, supra note 62, for definition of “piracy.”
81 Id. at 8. “Piracy impacts multiple stakeholders, none more so than the seafarers attacked, held hostage, or killed. This report specifically analyzes the economic impact of Somali piracy. It estimates that the total cost of piracy in 2011 was between $6.6 and $6.9 billion.”
no estimate of what the total cost of piracy was during the “classical” period of piracy (There have been economic studies done by a university economist Peter T. Leeson).82

It has been said and argued that the piracy occurring in the world today is backed by organized crime especially off the coast of Somalia and further into the Indian Ocean. In fact, in one of your author’s past referenced articles, statistics were given in order to show how money is laundered today.83 Nevertheless, during the early classical period of piracy pirates were known as “privateers” because they were both state-sponsored and backed by men of considerable means. Even though piracy and privateering were interchangeable, the sole difference between the two was that “[…] privateering was conducted under a state-authorized license granted by a prize court, a special type of maritime court for ships in times of war […].”84 While piracy was not government sanctioned, let us use Captain Kidd as an example of just how sinister “privateering” was at the time.

In the mid-1690’s, “[…] Eastern Seas were alive with pirate vessels[…].”85 Such pirates as Thomas Tew and Henry Every were rather active at that point.86 The number of pirate acts was so high and they were so effective, the East India Company started to deteriorate as the

86 Id.
blame was laid at the feet of the Company’s English managers. At that point in time, England’s war with France meant that there were very few ships to chase pirates, and this is when Captain Kidd came on the scene. In 1695, he went to London with the sloop Anteqoa, and he met a gentleman by the name of Colonel Robert Livingston, a prominent New Yorker. Livingston devised a scheme and presented it to Captain Kidd for ending Red Sea piracy and making a profit in the bargain. Apparently, Livingston’s idea was to dispatch a specially-built privateer ship under a qualified privateer captain with the backing of the syndicate of influential men who would recoup their investment from the profits made from captured pirate booty. While, ostensibly, it was supposed to commit a worthy act of international policing, privateering, in fact, was a tool to simply make a financial killing of astronomical proportions. Why, “[…] the real target was not so much the pirates but the prodigious plunder presumed to be in their ships.” In any event, Kidd had been a former privateer in the King’s service and supposedly a fighting sailor who knew the ways of pirates. To make a long story short, he did get backing from the Governor of New York, Lord Bellomont, who put Kidd in touch with four of England’s most powerful men who were friends of the King (i.e., Sir John Somers, Lord Keeper of the Great Seal, and subsequently Lord Chancellor; the Duke of Shrewsbury, Secretary of State; Sir Edward Russell, First Lord of the Admiralty, later Lord Orford; and the Earl of Romney, Master General of Ordnance). These men agreed to put money into this venture provided they were silent.

87 Id.
88 Id. at 105.
89 Id.
90 Id.
91 Id.
92 Id.
93 Id.
94 Id.
partners and that their names were never to be disclosed. Even the King, it has been said, promised to put up £3,000 but never did so.\textsuperscript{95}

Turning to the present, much has been written about the stock market started by pirates in the last couple of years.\textsuperscript{96} However, during the classical period of piracy, Bellomont and Kidd had signed the articles of agreement wherein Bellomont was responsible for funding (4/5 or 6,000£ of the cost) (this sum would be coming from four anonymous Nobelmen backers) and Livingston and Kidd together, put up 1/5.

“[…][a]s was customary, the first 10 per cent of any booty would go to the Crown. The remaining 90 per cent would be split three ways-- 60 per cent for Bellomont’s backers, 15 per cent for Kidd and Livingston and only 25 per cent for the crew--not the usual 60 per cent of a privateering agreement [...].\textsuperscript{97}

Kidd was given two special commissions in order to overlay this private venture with an official veneer. One was a letter of marque, which empowered Kidd to capture any ships or goods belonging to Britain’s enemy, France. The other was a commission from the King, issued under the Great Seal of the Crown of England, empowering Kidd to seize pirates, in particular, four named pirates including Tew, and their ships and “Merchandizes, Money, Goods and Wares…” and so on and so forth.\textsuperscript{98} For many reasons, this whole adventure ended up in a debacle and Captain Kidd was later hung.\textsuperscript{99}

The point is that the classical period of piracy, and the organized crimes that are being called piracy today, are very similar. There were silent backers in the classical period and there are silent backers today (as well as a stock market for investors). Of course, the money flowing

\textsuperscript{95} \textit{Id.}
\textsuperscript{96} Dubner and Raturi, \textit{supra} note 32, 20 (citing Financial Action Task Force, \textit{supra} note 83, 17) (Today, piracy investor schemes are set up similar to conventional organized crime. There are two types of shares for each venture: shares in which individuals receive a percentage of the ransom, usually reserved for investors, pirate leaders, and the successful pirate crew; and shares which entitle an individual to a fixed fee for singular tasks such as armed guards, interpreters, and middlemen.)
\textsuperscript{97} \textit{BOTTING, supra} 85 at 105.
\textsuperscript{98} \textit{Id.} at 106.
\textsuperscript{99} \textit{Id.} at 107.
today is far in excess of what it was at that time but there was then, and is today, many people other than the actual pirates who are involved in backing these ventures because they can be quite profitable. ¹⁰⁰

However, one of the main problems today is that although we already have the piracy articles contained first in the 1958 Geneva Convention and now, in the 1982 United Nations Convention on the Law of the Sea (UNCLOS); even though these articles are interpreted as giving universal jurisdiction; and even though we have the gap-filler Suppression of Unlawful Acts (SUA) treaty, we still have the situation where many of the pirates are actually released after being caught. ¹⁰¹ The existence of the problem of catch-and-release is due to the fact that many States simply do not want to try the pirates for various reasons (e.g., they did not want the pirates taking asylum after their sentence; they are worried about being called racist). Also, there has been an absence of the necessary domestic legislation in these various countries meaning pirates are not being prosecuted. Instead, a regional system is being set up, at a very expensive cost, in order to try the pirates. But before going on with problems of prosecution in 2012, let us first see if there is any difference between what is going on now in 2012 and what went on during the classical period of piracy. Let us use England as an example.

England had to struggle with this problem of trying pirates and creating legal regimes to do so which is rather similar to the circumstances in 2012.¹⁰² Looking back at the classical period, as far as European piracy was concerned, the pirates were tried under civil law in

¹⁰⁰ Id.
¹⁰² Bento, supra 84, 403.
admiralty courts between the years between 1340 and 1536 in England. The startling thing one observes at first is the analogy that can be made between the evidentiary problems facing piracy tribunals today and the problems that occurred in the classical period. The problems are practically the same. For example, in the pre-1536 law, there had to be either a confession or two eye witnesses in order to convict somebody of piracy. Neither of the two eye-witnesses could be accomplices in the acts of piracy. The fact that you could not have eye witnesses who were possible accomplices, ruled out any possibility that the authorities could strike a deal with the pirates in exchange for providing evidence against the accused.

This led to the Offenses at Sea Act which England enacted in 1536. Pirates would be tried under common law. Common law allowed accomplice testimony. The authorities therefore could extract evidence from a wider pool of witnesses which, in turn, facilitated the prosecution of pirates. So, with the expansion of the British Empire, one of the analogies that can be made to evidentiary problems of today was that the pirates could not be prosecuted in the colonies but had to be extradited to England. This resulted in delays and increased costs due to extradition. This, in turn, led to the colonies attempting to try pirates. Further, the High Court of Admiralty could overturn the decisions of the colonies.

Just as there is today a problem with the transporting of pirates for trial, in 1684, the trials in the colonies came to a halt when the English government decided that the colonies did not have jurisdiction to try piracy cases. The 1536 statute (Offensives at Sea Act) obligated

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104 *Id.*
105 Bento, *supra* 84, at 403.
106 *Id.*
107 *Id.*
108 *Id.*
colonial officials to ship pirates and witnesses to England to attend trial. Today, there is a problem with the testimony of military, as well as other witnesses, due to the long distances involved in bringing these pirates to regional courts. That is a very similar problem. As far as catch-and-release of pirates today, although the colonial governments were interested in prosecuting the pirates, they did not want to pay for the trials. So they found it more convenient to capture the pirates and subsequently release them. This policy problem apparently intensified in the late 17th and early 18th centuries when a new wave of pirates took to the sea. During the 1690-1700’s, the “Red Sea Men” (“[...]so named because they did most of their prowling in the Red Sea[...]) caused the East India Company considerable trouble. The East India Company lobbied the English government to do something about the pirate problem. Due to the war of the Spanish Succession (approximately 1701-1714) the pirate problem was solved by turning these energies to legitimate maritime marauding in the form of “privateering” (as discussed above). Comparing this to today’s problems regarding Somali pirates, the pirates in 1714 did not have any outlet for their desire to steal at sea. The war was over. Today, the Somali pirates have claimed (at least early on) that they took to hijacking vessels because their fisheries were being overrun by the Europeans and others. They had no choice--so they stated. Apparently, according to Leeson, the Caribbean piracy situation was greatly intensified after the War of the Spanish Succession ended in 1714. The problem was intensified because the

110 Id. Quoting a later law “[I]t hath been found by Experience, that Persons committing Piracies, Robberies and Felonies on the Seas, in or near the East and West Indies, and in Places very remote, cannot be brought to condign Punishment without great Trouble and Charges in sending them into England to be tried within the Realm, as the said Statute directs, insomuch that many idle and profligate Persons have been thereby encouraged to turn Pirates, and betake themselves to that sort of wicked Life, trusting that they shall not, or at least cannot easily, be questioned for such their Piracies and Robberies, by reason of the great Trouble and Expence that will necessarily fall upon such as shall attempt to apprehend and prosecute them for the same . . . .”
111 Id.
112 Id.
113 Id.
114 Id. at 1222.
colonies refused to send pirates back to England for trial. Again, this is very similar to what has been happening during the past few years off the coast of Somalia and elsewhere. Instead of having colonies, there are nations who do not want to try pirates, so the pirates are being released.

Just as domestic laws on piracy are needed today, the English Parliament introduced “An Act For the More Effectual Suppression of Piracy” which permitted the establishment of vice-admiralty courts in the colonies and authorized these courts to try pirates.\textsuperscript{115} This fact coupled with the other ever expanding geographic reach of the Royal Navy, greatly enhanced the British Empire’s ability to catch and prosecute pirates across the harbors.\textsuperscript{116} Nevertheless, they were faced with very similar evidentiary problems.

In the 1700’s, the Act of the More Effectual Suppression of Piracy was in force. The pirate was still tried by jury under a common law procedure if he was tried in England, but not if he was tried in one of the colonies.\textsuperscript{117} The Act provided that

“[…]
the legal arrangements provided the best of both worlds: the Act permitted the eye witness testimony needed to convict pirates, per common law procedure, but, per civil law procedure, dispense with the pesky jurors who were less reliably antipirate -- and, thus less likely to convict captured sea scoundrels -- and replaced them with more reliable antipirate colonial officials who were more likely to convict pirates […].”\textsuperscript{118}

Other benefits of the Act included the treating of pirate sympathizers as accessories to piracy and punishing them in the same manner as the pirates would be punished -- by death and property forfeiture which was “[…] how the Act treated the actual pirates[…].”\textsuperscript{119} The Act encouraged merchants to defend themselves by offering a reward for resisting pirate

\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at 1223.
aggression. So, we have a situation where the organizers were considered accessories and merchants (or any person(s)) receive rewards for resisting pirate aggression or initiating aggression against pirates. Compared to today, many countries do not have domestic laws on piracy, so they certainly do not have laws regarding the backing/organizers behind the dastardly deeds; and ship riders, of course, get paid for protecting ships and crews against pirates.

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

Today, Somali pirates would argue that their fishing grounds and vessels were taken from them, and therefore they had to turn to piracy in order to earn a living. In the classical period of piracy, most pirates were hung. To avoid this terminal punishment, pirates at trial would argue

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120 Id.
121 Id. at 1224.
122 Id. at n.15.
123 Id. at 1224-25.
that they were compelled to serve under the threat of death or bodily harm. They proved that they were pressed into service generally in two ways, “[…] first, conscripts, real and pretend, asked their captured fellow sailors, who the pirates released, to advertise their impressment in popular London or New England newspapers. If authorities ever captured the pirates the “conscripts” sailed with, “conscripts” could use the newspaper ads verifying their forced status as evidence in their defense.” Pirates would also offer bribes to their superiors in order to have them testify that they were forced into the acts of piracy. These “ads of force” proved to be quite “[…] a marvelous invention for conscripted sailors […]”

Today, there are many problems with regard to prosecuting pirates in domestic courts. The first problem is the cost of trying pirates. Returning to the study done entitled “The Economic Cost of Somali Piracy 2011,” it was pointed out that according to their statistics, over the past few years, there have been 1,089 pirate suspects who have been arrested for piracy and either have been tried or are awaiting trial in 20 countries, up from 10 countries in 2010.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>TOTAL SUSPECTS</th>
<th>TRIALS IN 2011</th>
<th>REGION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1</td>
<td>Unknown</td>
<td>Europe &amp; Japan</td>
</tr>
<tr>
<td>Comoros</td>
<td>6</td>
<td>Unknown</td>
<td>Africa</td>
</tr>
<tr>
<td>France</td>
<td>15</td>
<td>6</td>
<td>Europe &amp; Japan</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
<td>10</td>
<td>Europe &amp; Japan</td>
</tr>
</tbody>
</table>

Table 2: Pirates Suspects and Trials

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124 *Id.* at 1225.
125 *Id.* at 1226.
126 *Id.* at 1227.
127 One Earth Future, *supra* 80, at 23.
128 *Id.*
<table>
<thead>
<tr>
<th>Country</th>
<th>Trials</th>
<th>Trials Released</th>
<th>Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>146</td>
<td>146</td>
<td>Asia</td>
</tr>
<tr>
<td>Japan</td>
<td>4</td>
<td>Unknown</td>
<td>Europe &amp; Japan</td>
</tr>
<tr>
<td>Kenya</td>
<td>143</td>
<td>6</td>
<td>Africa</td>
</tr>
<tr>
<td>Korea</td>
<td>5</td>
<td>5</td>
<td>Asia</td>
</tr>
<tr>
<td>Madagascar</td>
<td>12</td>
<td>Unknown</td>
<td>Africa</td>
</tr>
<tr>
<td>Malaysia</td>
<td>7</td>
<td>Unknown</td>
<td>Asia</td>
</tr>
<tr>
<td>Maldives</td>
<td>37</td>
<td>0</td>
<td>Africa</td>
</tr>
<tr>
<td>Netherlands</td>
<td>29</td>
<td>10</td>
<td>Europe &amp; Japan</td>
</tr>
<tr>
<td>Oman</td>
<td>12</td>
<td>13</td>
<td>Africa</td>
</tr>
<tr>
<td>Seychelles</td>
<td>64</td>
<td>20</td>
<td>Africa</td>
</tr>
<tr>
<td>Somalia &amp; Puntland</td>
<td>308</td>
<td>Unknown</td>
<td>Africa</td>
</tr>
<tr>
<td>Somaliland</td>
<td>100</td>
<td>6</td>
<td>Africa</td>
</tr>
<tr>
<td>Spain</td>
<td>13</td>
<td>2</td>
<td>Europe &amp; Japan</td>
</tr>
<tr>
<td>Tanzania</td>
<td>19</td>
<td>6</td>
<td>Africa</td>
</tr>
<tr>
<td>UAE</td>
<td>10</td>
<td>Unknown</td>
<td>Africa</td>
</tr>
<tr>
<td>USA</td>
<td>28</td>
<td>20</td>
<td>North America</td>
</tr>
<tr>
<td>Yemen</td>
<td>120</td>
<td>Unknown</td>
<td>Africa</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,089</strong></td>
<td><strong>104</strong></td>
<td></td>
</tr>
</tbody>
</table>

At first glance the aforementioned chart would seem impressive in terms of numbers of trials that have occurred in various countries around the globe. However, according to Jack Lang, UN Secretary-General’s Special Advisor on Legal Issues Relating to Piracy off the Coast of Somalia, “[...] more than 90% of pirates captured by States patrolling the seas will be released
without being prosecuted […].”

Around one-third of the pirates captured between 2008 and 2010 were prosecuted. However, that rate was lower than the ten percent figure at the beginning of 2011. At that time, Lang proposed the development of a specialized Extraterritorial Somali court system that was to be based in Arusha, Tanzania. The cost of this court was estimated to be around $2.73 million in 2011 and $2.33 million for each following year. They needed assistance in funding the courts and facilities in Somaliland and Puntland from the UNDP and UNODC. The cost would be around $24.4 million over three years.

Today, in addition to the poor record of trying pirates, there are limited resources. Also, one of the problems which we are concerned with today is the welfare of the convicted pirate as well as the seamen held hostage. You can categorize this as human rights concerns, but whatever you wish to call it, according to the report, the length of detention for convicted pirates ranges anywhere from between three years (in Oman) to 439 years (Spain). Other countries such as Oman and the United States have sentenced pirates to life imprisonment. This year South Korea sentenced one convicted pirate to death for the attempted murder of one of their ship’s captains.

The estimated cost of prosecutions in 2011 was taken into account and accordingly, the economic costs reported included “[…] both the average cost of pirate trials which occurred in 2011, as well as the cost of imprisonment for suspected Somali pirates in the same year, for four regions: Africa, Asia, Europe and Japan, and North America […]” Costs are covered by funding of the UNODC Counter Piracy Programme as well as other international funding.
According to the study, no pirates have completed their detention periods. They have over 882 suspects who are accounted for in the course of imprisonment (i.e., 1,089 total suspects when adding the 207 held in Kenya and the Seychelles).

Table 3: PIRACY PROSECUTIONS IN 2011

<table>
<thead>
<tr>
<th></th>
<th># of Trials 1-10</th>
<th># of Trials 11-20</th>
<th># of Trials 20-100</th>
<th># of Trials &gt;100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>1</td>
<td>15</td>
<td>29</td>
<td>146</td>
</tr>
<tr>
<td>Comoros</td>
<td>6</td>
<td>Madagascar</td>
<td>12</td>
<td>Seychelles</td>
</tr>
</tbody>
</table>

|                | 64               | Kenya             |
| Comoros        |                  |                   |
|                |                  |                   |
| Germany        | 10               | Maldives          | 15                 | Somaliland       |
|                |                  |                   | 100                | Somalia & Puntland |
| Japan          | 4                | Oman              | 12                 | USA              |
|                |                  |                   | 28                 | Yemen            |
| Korea          | 5                | Spain             | 13                 |
| Malaysia       | 7                | Tanzania          | 19                 |
| UAE            | 10               |                   |

COST OF TRIAL AND IMPRISONMENT:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>$461,470</td>
<td></td>
</tr>
<tr>
<td>Asia</td>
<td>$1,226,848</td>
<td>$16.4 Million</td>
</tr>
<tr>
<td>Europe/Japan</td>
<td>$5,343,420</td>
<td></td>
</tr>
<tr>
<td>N. America</td>
<td>$9,397,892</td>
<td></td>
</tr>
</tbody>
</table>

\[136 \text{Id. at 24.} \]
\[137 \text{Id.} \]
\[138 \text{Id.} \]
COST OF PIRACY PROSECUTIONS\textsuperscript{139}:

<table>
<thead>
<tr>
<th>Region</th>
<th>Pirates Imprisoned</th>
<th>Average Imprisonment Cost (per year)</th>
<th>Total Imprisonment Costs per Year</th>
<th>Pirate Trials</th>
<th>Average Trial Cost (each)</th>
<th>Total Trial Cost</th>
<th>Total Regional Cost in 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>624</td>
<td>$730</td>
<td>$455,520</td>
<td>25</td>
<td>$238</td>
<td>$5,950</td>
<td>$461,470</td>
</tr>
<tr>
<td>Asia</td>
<td>158</td>
<td>$338.15</td>
<td>$53,427.70</td>
<td>151</td>
<td>$7,771</td>
<td>$1,173,421</td>
<td>$1,226,849</td>
</tr>
<tr>
<td>Europe &amp; Japan</td>
<td>72</td>
<td>$48,187</td>
<td>$3,469,464</td>
<td>28</td>
<td>$66,927</td>
<td>$1,873,956</td>
<td>$5,343,420</td>
</tr>
<tr>
<td>North America</td>
<td>28</td>
<td>$28,284</td>
<td>$791.52</td>
<td>28</td>
<td>$307,355</td>
<td>$8,605,940</td>
<td>$9,397,892</td>
</tr>
<tr>
<td>TOTAL</td>
<td>882</td>
<td></td>
<td>232</td>
<td></td>
<td></td>
<td></td>
<td>$16,429,631</td>
</tr>
</tbody>
</table>

Based upon the calculations set forth in Table 3, one can see that the cost of piracy prosecutions and imprisonment in 2011 was around $16.43 million\textsuperscript{140}. This shows the extent of the resources needed for each prosecution.

As stated in the past few articles by Professor Dubner, the solution, at least in the short term, would be to create a UN flagship which could try pirates. The ship would go around on circuit and could drop off pirates at various locations for imprisonment after trial. The idea of a floating base to drop off pirates comes from the Times article from January 28, 2012, wherein there was talk that the Navy was making an amphibious transport and docking ship to serve as a floating base for military operations and humanitarian assistance expected for the summer of 2012 in waters of the Middle East\textsuperscript{141}.

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

One of the major problems with piracy is the treatment of suspected pirates once they are captured. The European Convention on Human Rights concerns include inter alia, the right to a

\begin{itemize}
\item[$139$] Id.
\item[$140$] Id.
\item[$141$] Chivers, supra note 1.
\end{itemize}
fair trial, the prohibition of torture and inhumane or degrading treatment, the non-application of the death penalty, and respecting the rights of detainees. There is well established case law in the European Court of Human Rights to this effect.\textsuperscript{142} As far as the prosecution of pirates is concerned, the current international framework has been called insufficient with regard to providing a clear definition of acts of piracy and with not requiring States to criminalize acts of piracy.\textsuperscript{143} UNCLOS did not require States to cooperate in the fight against piracy although it does contain a provision allowing the flag States to seize a pirate ship, or a ship taken by pirates, and prosecute those pirates.\textsuperscript{144} The Suppression of Unlawful Acts Convention (SUA) and its 2005 protocol are not directed at acts of piracy per se.\textsuperscript{145} The SUA convention and its protocol were introduced to cover such situations as that which occurred on the Achille Lauro. That is, terrorists came on board while the ship was docked, not from a private vessel (as required by UNCLOS definition). This terrorist act would not be covered by UNCLOS because there was no private ship versus another ship but rather terrorists coming on board the ship in harbor.\textsuperscript{146}

The difficulty of putting pirates on trial away from their homes concerns numerous topics.\textsuperscript{147} First, the pirates do not carry legal documents, therefore the arresting authorities do not know whether the pirates are minors or not.\textsuperscript{148} There is a problem of the translation or simultaneous translation of the Somali language at legal proceedings being held in whatever court they are being held in (e.g., United States).\textsuperscript{149} Naval officer witnesses often have to travel long distances from their ships or their home country to a foreign country, in order to testify.

\textsuperscript{143}Id.
\textsuperscript{144}Id.; see also United Nations Convention on the Law of the Sea, \textit{supra} note 62.
\textsuperscript{145}Plachta, \textit{supra} note 142.
\textsuperscript{146}Id.
\textsuperscript{147}Paul Hallwood and Thomas J. Miceli, \textit{The Law and Economics of International Cooperation Against Maritime Piracy}, U. CONN. DEP’T ECON. WORKING PAPER SERIES 7 (June 2011).
\textsuperscript{148}Id.
\textsuperscript{149}Id.

30
They are restricted to giving evidence deemed to be sensitive militarily.150 Fingerprinting is difficult (guns found on the pirate vessel or confiscated by the pirates and later captured by the naval powers, cannot be identified because the guns found on the ship, although containing fingerprints, are not in any database).151 Interviewing is another problem as well as the interrogation of suspects and the use of voluntary statements. For example, were the pirates advised of their rights or not?152

Against this background, the Security Council Resolution 1950 (2010) requested a report from the Secretary General concerning the implementation of that resolution and the situation with respect to piracy and armed robbery at sea off the coast of Somalia.153 The Report updated the Report of October 27, 2010 (S/2010/5566).154 Some of the problems just mentioned were discussed in the Report.

The Security Council issued a press release on October 24, 2011 (SC/10419) in which it unanimously announced its adoption of Resolution 2015 (2011).155 Some of the information therein contained the legal issues concerning the prosecution of suspected pirates as well as human rights and other concerns.156 After commenting on the Secretary-General’s Report on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts (S/2011/360), the 2011 report indicated that if sufficient international assistance is forthcoming (so that piracy trials conducted by the courts in Somaliland and Puntland) those local courts were expected to

150 Id.
151 Id.
152 Id. at 8.
154 Id.
156 Id.
reach international standards in about three years.\textsuperscript{157} Thereafter, there appeared the Secretary-Generals Special Advisor on Legal Issues Relating to Piracy off the Coast of Somalia in case report (Jack Lang) transmitted to the Security Council on January 25, 2011 (S/2011/30).\textsuperscript{158} The Security Council first set forth information on the number of suspected pirates that have been prosecuted or awaiting prosecution in twenty states\textsuperscript{159}; however, as the Times article stated, there were a large number of suspected pirates that were still not being prosecuted for a variety of legal, practical, and political reasons, including, for example, the successful evasion of naval forces, insufficiency of evidence to prosecute, and the failure to identify jurisdictions that are able and willing to prosecute.\textsuperscript{160} As a guide to the seafarers and owners of vessels regarding post-incidents, evidence, preservation, and collection, a new enforcement chapter in the fourth edition of the Best Management Practices directives was created for their use.\textsuperscript{161} The Report pointed out that the UNDP was providing assistance and capacity building to the police of Somalia.\textsuperscript{162} However, despite all of this, the UNODC received reports that 60 convicted pirates were released from prison in “Somaliland” following the payments of bribe support to prison officials.\textsuperscript{163} This is a rather significant statistic since the international community is spending a lot of money on setting up a capacity for Somalia to prosecute pirates. It would seem that if the government is so corrupt there, it does not make any sense to have the trials held. However, the Somalis insist that

\textsuperscript{157} S.C. Res. 2015, supra note 40, 2.
\textsuperscript{158} Report of the Special Adviser to the Secretary-General Jan. 2011, supra note 29; See Dubner and Henn, supra note 10 and Dubner and Raturi, supra note 32.
\textsuperscript{159} Report of the Special Adviser to the Secretary-General Jan. 2011, supra note 29, at 12; see also One Earth Future, supra 80, at 23.
\textsuperscript{160} Chivers, supra note 1.
\textsuperscript{161} Report of the Secretary-General Oct. 2011, supra note 153, ¶ 59.
\textsuperscript{162} Id. at ¶ 62. (“A total of 96 officers of the Criminal Investigation Department in “Puntland” and “Somaliland” were trained during the reporting period…a total of 32 judges and prosecutors graduated through UNDP-accredited training programmes…”)
\textsuperscript{163} Id. at ¶ 69.
they do not want an extra-judicial court located outside of Somalia; rather, they want a specialized court in Somalia.

Some of the concerns regarding prosecutions concern the protection of children. Apparently, there were ten cases of recruitment of children that they know of into groups that operate off the “Puntland” coast that were documented.164 There were cases concerning children escaping from Al-Shabaab and joining pirate groups in “Puntland.”165 In 2011, the UN received fourteen verified cases of child rights violations of which two cases were reported from “Puntland” and twelve cases from the south central zone. Nine of the current cases were of rape and five of illegal abduction.166

Concerning human rights, the increasing trend in the use of violence by pirates against their captives, including severe physical and psychological abuse, have been observed and reported.167 The report went on to state,

“[…] while prosecutions of acts of piracy continue to be conducted in several States, the strengthening of the rule of law in Somalia, while respecting the country’s territorial integrity and sovereignty, is central to bringing about justice. Human rights considerations continue to be important in guiding actions of States in all phases of counter-piracy operations, including the apprehension, the detention, the prosecution and the transfer of suspected pirates, and equally and in the imprisonment of convicted pirates […]”.168

Other abuses have been reported. For example, there have been reports in the Somalia Report (dated Nov. 18, 2011) of human traffickers and pirates working together.169 The crews of various ships have been used to create an exchange for pirates according to a Somali report dated Dec 9, 2011.170 The pirates have also kept hostages for exchange, even after ransom monies have been paid. Once crews have been released, the CGPCS (Contact Group on Piracy off the Coast

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164 Id. at ¶ 71.
165 Id.
166 Id.
167 Id. at ¶ 72.
168 Id.
169 Michael Logan, 26 SOMALIA REPORT 1 (Nov. 18, 2011).
170 Robert Young Pelton, 29 SOMALIA REPORT 1 (Dec. 9, 2011).
of Somalia) stressed in their ninth plenary meeting of July 14, 2011, that owners and flag States have been taking responsibility for providing assistance to the crews and vessels upon their release from pirates.\textsuperscript{171} It was pointed out that this type of assistance should include a provision of adequate fuel, technical assistance, and security teams in order to insure safe passage for the released crew during the vessels possible transit to safety.\textsuperscript{172} However, according to a Piracy News Update (Nov. 30, 2011), although the total number of pirate attacks has gone down twenty percent this year the 15 vessels and 311 seamen still remained captive to Somali pirates at the time of publication.\textsuperscript{173}

On the brighter side (if that is possible), it has been reported that the risk-to-reward ratio for pirates is “[…] increasingly close to collapse due to longer times between hijack and release and thus higher costs for the pirates, the costs of running vessels out to sea only to find it is getting harder to capture merchant vessels, and pressure from the Puntland authorities on the pirates on land. The consequences of these factors are likely to be worse treatment of captives as the pirates attempt to speed up negotiations, and a further focus on grabbing land-based hostages, such as the Danish and the US aid workers […].”\textsuperscript{174}

In addition, looking at Security Council Resolution 1976 (2011), it indicated Somalia’s rights with respect to offshore natural resources, including fisheries, in accordance with

\textsuperscript{171}\textsc{Contact Group on Piracy Off the Coast of Somalia, Communiqué: Ninth Plenary Session of the Contact Group on Piracy off the Coast of Somalia New York, 14 July 2011, available at http://www.thecgpcs.org/plenary.do?action=plenarySub&seq=18. (“Pursuant to UN Security Council Resolution 1851, the Contact Group on Piracy off the Coast of Somalia (CGPCS) was established on January 14, 2009 to facilitate the discussion and coordination of actions among states and organizations to suppress piracy off the coast of Somalia. This international forum has brought together more than 60 countries and international organizations all working towards the prevention of piracy off the Somali coast.”)}

\textsuperscript{172}\textit{Id.} at ¶ 5.


(“Although the total number of pirate attacks is down 20% this year, crewmembers work in constant fear of attacks, and 15 vessels and 311 seamen remain captive to Somali pirates as of last week.”)

international law (recalling the importance of preventing illegal fishing and illegal dumping, including toxic substances) and specifically the need to investigate the allegations of such illegal fishing and dumping, and noting with apprehension in this respect, the report of the Secretary-General on the protection of Somali natural resources and water\(^\text{175}\); so, at least the United Nations is trying to address the problem of illegal fishing and toxic dumping of waste off the coast of Somalia. The question is whether the lip service, in the form of this resolution will turn into actual concrete results for Somalia.

The CGPCS noted, at their eleventh plenary meeting, that piracy can only be eliminated by combining the counter-piracy activities, with wider efforts to stabilize Somalia such as promoting good governance and rule of law, strengthening the institutions of the Transitional Federal Government of Somalia (TFG), and fostering socio-economic development into a comprehensive, multi-faceted approach.\(^\text{176}\) However, it also reiterated the importance of bringing suspected pirates to trial, including high-level suspects, and detaining those convicted, in Somalia as well as other nations in the region, wherever possible.\(^\text{177}\) It expressed that increasing prosecutions and imprisonment is a high priority to work as a deterrent.\(^\text{178}\) The efforts of the international community, including the global maritime industry, are still needed to facilitate the process which includes updating existing legislation to accommodate remote witness testimony where necessary and other additional mechanisms ensuring the more effective prosecution of pirates.\(^\text{179}\)


\(^{177}\) Id.

\(^{178}\) Id.

\(^{179}\) Id.
The European Union is also growing increasingly concerned with the continuing impact of piracy and armed robbery at sea off the coast of Somalia on international maritime security and on the economic activities and security of countries in the region.180 As part of a comprehensive approach, the EU launched European Naval Force Somalia - Operation ATALANTA (EU NAVFOR - ATALANTA) within the framework of the European Common Security and Defence Policy (CSDP) in 2008.181 The Union recently decided to prolong Atalanta by two more years, until December 2014.182 With this, the Union also decided to extend the Force's area of operations to include Somali coastal territory as well as its territorial and internal waters. This will enable Atalanta to work directly with the Somali Transitional Federal Government to support their fight against piracy from the coastal area.183

The EU made good on its promise to extend operations to coastal territory when it “took the fight to the pirates’ home base for the first time…destroying several of their signature fiberglass skiffs.”184 Lt. Cmdr. Jacqueline Sherriff, a spokeswoman for the European Union’s antipiracy force stated “What we want to do is make life more difficult for these guys.”185 Before the EU made its announcement in March, Forces were only allowed to pursue pirates at sea. However, the mandate is explicit that the European Forces are not supposed to step ashore. Because the attack was done via helicopter, and no “boots [went] ashore,” the attack was deemed

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181 Id.
182 Id.
183 Id. The decision was followed by a statement made by an EU High Representative, Ms. Catherine Ashton “Fighting piracy and its root causes is a priority of our action in the Horn of Africa. Operation Atalanta has made a significant contribution to this effort, in coordination with our international partners. Today’s important decision extends Atalanta’s mandate for two more years and allows it to take more robust action on the Somali coast. Despite pressure on defense budgets, EU member states thereby demonstrate their renewed commitment to this successful operation.”
185 Id.
a success.\textsuperscript{186} Somali officials commended the raid, saying they had given the Europeans approval to take whatever measures necessary to stamp out the pirates.\textsuperscript{187} Hopefully these more aggressive measures being taken to combat piracy before it happens will have an ever greater effect on the reduction of acts of piracy near Somalia.

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

As mentioned earlier, Rear Admiral Shaukat, the Pakistani commanding Combined Task Force 151, stated that, “without a legal system to match the navies’ tactical progress, piracy, and uncertainties about what to do with Somali prisoners on the high seas would persist.”\textsuperscript{188} He believed that there was no effective legislation that makes certain that these pirates are taken to a court of law and punished and so history will continue repeating itself until this is done.\textsuperscript{189}

In January 2011, Ambassador Jack Lang presented his report on piracy off the coast of Somalia to the UN Security Council\textsuperscript{190}, which called for the ‘Somaliazation’ of the counter piracy process, whereby Somalia would be responsible for ensuring effective prosecutions.\textsuperscript{191} Mr. Lang called for: supplementing Somali piracy law; building two prisons in Somaliland and Puntland; establishing a Somali extraterritorial jurisdiction court in Arusha, in Tanzania, later to be transferred to Mogadishu, the capital of Somalia; and establishing two additional special courts—one in Puntland and one in Somaliland.\textsuperscript{192}

Mr. Lang’s proposals were welcomed for the most part, but the specific recommendation of an extra-territorial Somali court received a varied response in Security Council meetings, as

\textsuperscript{186} \textit{Id.} \\
\textsuperscript{187} \textit{Id.} \\
\textsuperscript{188} Chivers, \textit{supra} note 1. \\
\textsuperscript{189} \textit{Id.} \\
\textsuperscript{190} U.N. Secretary-General Report Jan. 2011, \textit{supra} note 29. \\
\textsuperscript{191} FOREIGN AFFAIRS COMMITTEE, PIRACY OFF THE COAST OF SOMALIA, 2010-12, H.C. 1318-I, \textsect 88 (U.K.), \textit{available at} http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/1318.pdf. \\
\textsuperscript{192} \textit{Id.}
demonstrated below.193 Russia, France, and Portugal have spoken strongly in favor of it while the United States and the United Kingdom have strongly opposed it, questioning whether a court in Tanzania would be practicable in such a short time frame.194

On Wednesday, February 22, 2012 at the 6719th meeting of the Security Council, a discussion was held among the council members regarding the Report of the Secretary-General on Specialized Anti-Piracy Courts in Somali and other States in the Region.195 The comments by Ms. Patricia O’Brien (Under-Secretary-General (USG) of Legal Affairs and Legal Counsel of the United Nations) are extremely interesting in that they seem to be in conflict, in thought, with the work of the Ambassador Jack Lang. After recognizing that 265 hostages were being held at the end of 2011, Ms. O’Brien was concerned with the levels of violence and the expanding geographical scope of the attacks.196 In order to assure the readers that the UN was accomplishing certain important goals she said that “[…] it is important to recognize that a great deal is already being done to ensure the prosecution of piracy suspects. A total of 20 States worldwide have been prosecuting, or have prosecuted, a total of 1,063 piracy suspects since 2006. Of that total, more than 900 of the suspects have been prosecuted in 11 States in the region […].”197 She also noted of the eleven States in the geographic region, only five were prosecuting piracy suspects with the assistance of the United Nations or were seriously considering doing so; thanking Somalia, Seychelles, Kenya, Mauritius, and Tanzania.198 She stated that Resolution 2015 (2011) concerns the effort to establish specialized anti-piracy courts

193 Id. at ¶ 89.
194 Id.
195 Security Council 6719th Meeting, supra note 5; See U.N. Secretary-General Report Jan. 2012, supra note 6; Dubner and Henn, supra note 10; Dubner and Raturi, supra note 32.
196 Id.
197 Security Council 6719th Meeting, supra note 5, at 2.
198 Id. at 3
and the necessary international assistance that would be provided in connection therewith.\textsuperscript{199} These courts were established by the regional States themselves-their own domestic courts. She glosses over the fact that the request does not concern the range of other options “[…] for special domestic chambers, possibly with international components, a regional tribunal or an international tribunal […]”\textsuperscript{200} These options were the subject of the Security Council’s first request to the Secretary-General in Resolution 1918 (2010) and were dealt with in the Secretary-General’s Report dated July 26, 2010 (S/2010/394).\textsuperscript{201} The Special Advisor, Mr. Jack Lang, had mentioned the possibility of a Somali specialized anti-piracy court sitting extraterritorially in the territory of another State in the region (subject of the Secretary-General’s second report dated June 15, 2011).\textsuperscript{202} However, Ms. O’Brien pointed out the “specialized anti-piracy courts” in the Security Council’s request were not favored by the five States concerned.\textsuperscript{203} They were not in favor of establishing new special courts with jurisdiction exclusive to piracy offenses.\textsuperscript{204} Why? Because they believed it would constrain scarce prosecution and traditional resources to piracy cases in the absence of any certainty that they would be consistently and fully occupied.\textsuperscript{205} So, Ms. O’Brien stated that the term “specialized anti-piracy court” is used in the report to refer to a court operating under national law, with international assistance, with a focus on the prosecution of piracy cases.\textsuperscript{206} This of course has nothing to do with what special Advisor Jack Lang stated in his report.

On a side note, the British House of Common’s Foreign Affairs Committee recently released a Report in which it stated that the British Foreign & Commonwealth Office has

\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Id. at 4.
\textsuperscript{204} Id.
\textsuperscript{205} Id.
\textsuperscript{206} Id.
opposed the establishment of a Somali specialized anti-piracy court, stating that “The costs of bringing [an extra-territorial] court up to standard and using it on an ongoing basis would be huge.” The Office estimated that costs would be around $100 million a year. The Prime Minister argued strongly against the establishment of such a court giving several reasons: first, the money would be much better spent in the region where a great value could be seen for a tenth of the cost of setting up a court outside of the region; secondly, it is illegal under the Somali constitution to have courts to try Somalis outside Somalia; and thirdly, Mohamed Omaar, who is the TFG (Transitional Federal Government of Somalia) Foreign Minister, made it very clear that this was an absolute red line as far as the TFG was concerned. A follow-up report by the UN Office of Legal Affairs noted,

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

The Report also noted doubts as to whether the proposed use of the facilities of the International Criminal Tribunal for Rwanda in Arusha would be workable considering the high number of suspects involved. There were also concerns that delays would occur while rules of evidence and procedure were established, and that an international court would not deliver capacity building benefits for the justice systems of the regional states. The International Tribunal would not solve the issue of where convicted pirates should serve their sentences; it simply shifts the problem from national authorities to the Tribunal.
Foreign Affairs Committee concluded that the U.K. Government was right to oppose the establishment of an extra-territorial Somali court as proposed by Jack Lang which would try Somali pirates in a third country.\(^{213}\) The Committee instead recommended that the Government support specialized anti-piracy courts which would be established within regional states under ordinary national law.\(^{214}\)

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

“[…] therefore, if international assistance were maximized, up to 1,250 piracy suspects could be prosecuted each year in accordance with international standards. That increase in capacity could be achieved within two years in Puntland and Somaliland, with an additional year of mentoring and monitoring, and within one year in each of the other jurisdictions, although the assistance should be maintained beyond one year in order to sustain the results […].”\(^{215}\)

The total cost of such assistance for prosecutions, set out in the prior Report over a three year period in Puntland and Somaliland, will be a little more than $7 million dollars; and over a two year period, in the four remaining regional States, around $9.5 million dollars.\(^{216}\)

“[…] the potential is therefore for more suspects to be prosecuted per year in those five regional States than the total number of piracy suspects prosecuted globally since 2006, and at a cost that is modest, I suggest, compared to that of any of the existing international or hybrid tribunals […].”\(^{217}\)

Ms. O’Brien goes on to state that this maximum caseload capacity is not necessarily a recommended target because: (a) the projected maximum capacities for each are based on the best estimates of UNDP and UNODC and are not necessarily guaranteed; and (b) the report outlines a possible discrepancy between a maximum achievable caseload capacity and the actual demand for prosecutions being generated by the captured piracy suspects at sea by naval forces

\(^{213}\) Id. at ¶ 92.  
\(^{214}\) Id.  
\(^{215}\) Security Council 6719th Meeting, supra note 5, at 4.  
\(^{216}\) Id.  
\(^{217}\) Id.
off the coast of Somalia. As evidence of this, Ms. O’Brien points out that “[…] the three naval coalitions engaged in anti-piracy operations off the coast of Somalia made only three requests to regional States – Kenya and Seychelles – for the transfer of piracy suspects in 2011, involving a total of 42 suspects […].” The transfer of all but one of these suspects was accepted.

Ms O’Brien did not know the reasons why there were such a low number of requests to transfer to regional States. Special Advisor to the Secretary-General, Jack Lang, reported on January 2011, that around ninety percent of those apprehended at sea were released. He went on to say that if such a large number of suspects were being released at sea, that would deplete the effectiveness of the international community in its prosecution efforts to combat piracy. With all due respect, this policy has been in place for years and still nobody claims to know why it continues!

The next topic of interest that was raised by Ms. O’Brien was the fact that Seychelles was going to open a Regional Anti-Piracy Prosecution and Intelligence Coordination Centre. Supposedly, the Centre is going to develop the regional expertise to track piracy finances and develop cases for the prosecution of those that plan, organize, and finance piracy attacks. She considers this to be a most important development because these backers were the emphasis of the Security Council Resolution 2015 (2011); i.e., the need to prosecute not only the suspects captured at sea but also the key figures of the criminal network that organize and prosecute piracy attacks.

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218 Id.
219 Id.
220 Id.
221 Id.
222 Id.
223 Id. at 5.
224 Id.
225 Id.
Professor Dubner served as a Special Consultant for the UNFAO in 1978. In that capacity, he was sent to the Seychelles in order to, among other things, assist in the establishment of a 200 mile exclusive economic zone. He observed that there were approximately 90 islands that constitute the Republic of the Seychelles (nobody seemed to know how many “at that time”); that the island archipelago was located 1,000 miles east of Kenya in the Indian Ocean; and the main island of Mahi is only seven miles long and relies on tourism, together with marginal fishing by the local indigenous population. How a centre could be created that would track international financing on the Seychelles is beyond your authors!\textsuperscript{226}

It would seem to your authors that if “consistency” and “uniformity” is the main object of having specialized courts in the local regional States, it is believed that one court would serve this purpose, not five or whatever number is ultimately established in the region. In addition, while citing lower costs, it just seems that the total costs for prosecuting pirates has skyrocketed to the point where, even using the new math, trying a pirate gets very, very expensive in regional courts. This is because, inter alia, of the expense involved in setting up trials and training personnel. “Regionalism” is a desired result; however, only if the local people take the prosecutions seriously and if the pirates are not released as soon as they are found guilty, assuming they are found guilty. We believe that Professor Lang had it correct to begin with and that the urgency for “expediency” in developing regional courts, a long term solution, is something that is going to cause problems in the near future.

\textbf{E. Conclusion}

\textsuperscript{226} See Dubner and Raturi, \textit{supra} note 32, at 25, “…piracy today is a transnational crime, and the entity, i.e. Somalia, operates without rules, regulations or a functioning government. Because of this, “Somalis do not need to launder the money they make from piracy because their unique financial system operates on trust and honor, bypassing banks and other financial institutions” …. …” (citing Mary Harper, \textit{Chasing the Somali Money Piracy Trail} (BBC News 2009), \textit{available at} http://news.bbc.co.uk/2/hi/africa/8061535.stm).
In order to answer the question posed in the beginning of this essay (whether we are really without a legal system to prosecute sea pirates), we think it is safe to say that the international community is doing all that it can at the present time in order to set up and prosecute pirates in regional courts, due to the geographic necessity of expediting the bringing of witnesses and evidence into these courts and also because of the relative cheapness of prosecuting pirates in these regional areas.

There is a lot of work to be done. Your authors would prefer seeing a ship, traveling on circuit, trying pirates as a short term solution. The ship would fly a UN flag and would be sanctioned by the UN to handle such trials. After trial, the prisoners would be dropped off at one of many sites that are being built in the region. The long term solution, of course, is to increase the living standards and to stop the civil unrest in Somalia. The rights of the poor seafarers held hostage have been largely ignored by the international community, and they continue to suffer because of the hostage situation that they find themselves in. There seems to be little hope of resolving any of the situations concerning Somali piracy until the problems in Somalia are on their way to being resolved. The Somalis, understandably, are upset about the lack of assistance in restoring and protecting their fishing grounds and blocking toxic waste from being dumped. Somalia is known in the international community as quite a corrupt society, but generalizing on that basis is seemingly unfair. However, it does raise the question, with release of prisoners in Somalia due to bribery, what is the point of having a court set up in that country at this time? Why spend millions of dollars on a problem that could probably be rectified with far less money by simply improving the standard of living for Somali people? Why is it costing so much to accomplish so little? It seems that a new cottage industry has been created just as has occurred in the drug enforcement area in the United States. We shall see whether or not the legislation is
enacted in Somalia to prosecute the pirates successfully. We shall see if Somalia will have
enough trained personnel to try pirates successfully. In the meantime, at least the number of acts
of piracy and captured vessels has dropped in the past year. This is a hopeful sign.