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Juvenile Pirates: "Lost Boys" or Violent Criminals?

Milena Sterio

JUVENILE PIRATES: "LOST BOYS" OR VIOLENT CRIMINALS?

Milena Sterio[*]

Piracy off the coast of Somalia has flourished over the past decade, and has both caused a global crisis in maritime shipping and destabilized regional security in East Africa. In addition, piracy attacks have spread more recently to the coast of West Africa, and in particular, the Gulf of Guinea. Thus, piracy is an ongoing global issue that should continue to occupy many maritime nations in the near future, and one that should command continuous scholarly attention. This article will examine the issue of juvenile piracy, with a specific focus on the treatment of juvenile piracy suspects by both the capturing as well as prosecuting nation. After describing the pirates' modus operandi and their employment of juveniles, this article argues that states are obligated to treat juveniles with dignity and in a manner that is conducive to their rehabilitation. It further reviews several recent national prosecutions involving alleged juvenile pirates in order to ascertain how different nations have addressed age determinations and treatment of juveniles. This article concludes that juvenile piracy suspects must be treated distinctly and recommends the following guidelines that arresting and prosecuting nations should follow to fulfill their international legal obligations: each suspect's age must be determined pursuant to medical and scientific procedures; any incarceration of juvenile suspects should occur in appropriate juvenile detention facilities; each juvenile's young age should play an important sentencing factor; and each juvenile's post-conviction incarceration should provide not only a correctional, but also an educational and rehabilitative opportunity.

* Associate Professor, Cleveland-Marshall College of Law. I would like to thank the organizers of the Frederick C. Cox International Law Center at Case Western Reserve University School of Law 2013 symposium entitled *End Game! An International Conference on Combating Maritime Piracy* for the opportunity to present remarks reflected in this article. In particular, I would like to thank co-panelists Mark Drumbl and Shelly Whitman whose commentary during the symposium has helped develop the arguments presented in this article.

CONTENTS

CONTENTS 280
I. INTRODUCTION 280
II. SOMALI PIRACY: USING JUVENILES TO PERFORM PIRATICAL ACTS .. 282
III. INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL CRIMINAL LAW PROVISIONS ON THE TREATMENT OF JUVENILE SUSPECTS 284
IV. RECENT NATIONAL PROSECUTIONS OF JUVENILE PIRATES 290
V. RECOMMENDATIONS: THE APPROPRIATE TREATMENT OF JUVENILE PIRACY SUSPECTS 298
A. States Should Use Medical and Forensic Tests to Determine the Suspected Pirates' Ages 298
B. If Forensic and Medical Tests Are Inconclusive as to a Suspected Pirate's Age, That Defendant Should Be Treated as a Juvenile 299
C. If the Apprehending or Prosecuting State Determines That a Suspected Pirate Is a Juvenile, That State Should Ensure That the Suspect Is Treated in Accordance with International Human Rights Law Standards on the Treatment of Juveniles 299
D. A Suspect Apprehended Onboard a Pirate Vessel with Juvenile Pirates Should Be Sentenced More Harshly 300
VI. CONCLUSION 301

I. INTRODUCTION

Piracy off the coast of Somalia has flourished over the past decade.[1] The International Maritime Bureau (IMB) reported that 439 piracy attacks occurred worldwide in 2011, 237 of which took place off the coast of Somalia.[2] In 2010, the IMB reported a similar figure of 445 attacks, and in 2009, a total of 406 piracy attacks took place. Over the past several years, the number of crewmembers taken hostage significantly increased—from 188 in 2006 to 1,181 in 2010.[3] While the number of piracy attacks off the coast of Somalia has decreased since 2011, most commentators have attributed the decline

1. Milena Sterio, *The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution*, 59 AM. U. L. REV. 1449, 1450–51 (2010), *available at* http://www.aulawreview.org/pdfs/59/59-5/sterio.pdf (describing the conditions that have led to a resurgence in piracy off the Coast of Somalia).

2. *Piracy Attacks in East and West Africa Dominate World Report*, ICC COMMERCIAL CRIME SERVS. (Jan. 19, 2012), http://www.icc-ccs.org/news/711-piracy-attacks-in-east-and-west-africa-dominate-world-report.

3. DAVID F. MARLEY, MODERN PIRACY 174 (2011) (citing IMB statistics); *Hostage-Taking at Sea Rises to Record Levels, Says IMB*, ICC COMMERCIAL CRIME SERVS. (Jan. 17, 2011), http://www.icc-ccs.org/news/312-hostage-taking-at-sea-rises-to-record-levels-says-imb.

to the large presence of patrolling vessels in the Indian Ocean and to the frequent use of private armed guards onboard merchant vessels.[4] Most agree, however, that piracy incidents could become more frequent once again if patrolling vessels and private armed guards departed these piracy-infested waters. According to IMB Director Pottengal Mukundan:

> Although the number of acts of piracy reported in Somalia has significantly decreased, there can be no room for complacency. The drop in reported attacks is due to proactive naval actions against suspect Pirate Action Groups, the employment of privately contracted armed security personnel and the preventive measures used by the merchant vessels (as per latest Best Management Practices recommendations). The attacks will rise to past levels if the naval presence is reduced or vessels relax their vigilance.[5]

Thus, piracy is an ongoing global issue that should continue to occupy many maritime nations in the near future, and one that should command continuous scholarly attention. This article will examine the issue of juvenile piracy, with a specific focus on the treatment of juvenile piracy suspects by both the capturing as well as the prosecuting nation. In Part II, this article will briefly describe the pirates' modus operandi, as well as the employment of juvenile pirates onboard pirate vessels. Part III will analyze international human rights law and international criminal law provisions on the issue of juveniles who have been incarcerated, have entered the criminal process, or have become a part of an armed conflict. This part will conclude that international law, as a general matter, obligates states to treat juveniles with dignity, taking into account their young age and the necessity for their rehabilitation. Part IV will analyze several recent national prosecutions involving juvenile suspects of piracy, in order to ascertain how different nations have dealt with both determining the correct age of a piracy suspect as well as appropriately treating a suspect of juvenile age. Part V will then issue a set of recommendations to any states involved in capturing or prosecuting juvenile piracy suspects. This article will conclude that prosecuting all pirates, adult or juvenile, is tremendously important in the global fight against piracy. However, all juvenile piracy suspects need to be treated distinctly. To accomplish this, suspects' ages must be ascertained pursuant to medical and scientific procedures, their

4. *See IMB Advises Continued Vigilance as Maritime Piracy Attacks Decline*, ICC COMMERCIAL CRIME SERVS. (Apr. 15, 2013), http://www.icc-ccs.org/news/841-imb-advises-continued-vigilance-as-maritime-piracy-attacks-decline.

5. *Id.*

incarceration should only take place within appropriate juvenile detention facilities, their young age should play an important sentencing factor, and their post-conviction incarceration should provide not only a correctional, but also an educational and rehabilitative opportunity.

II. SOMALI PIRACY: USING JUVENILES TO PERFORM PIRATICAL ACTS

Somali pirates launch attacks using small boats or "skiffs," which can surprise a target vessel sailing through the Indian Ocean. Pirates may at times quickly overpower the target vessel's crew, as pirates typically possess powerful weapons such as AK-47's and rocket-propelled grenades whereas merchant vessel crews typically travel unarmed.[6] After a successful piracy attack, pirates will haul the captured vessel and its crew to the Somali shore, from where they will begin negotiations for a hefty ransom.[7] Within Somalia, piracy has thrived due to lawlessness throughout the country's territory and a poor economic situation. Somalia has been a failed state since 1991, and pirates have operated off its coast with a high degree of impunity.[8] Most law enforcement operations geared to combat piracy have been led and organized by powerful maritime nations, as well as by regional and international organizations, but not Somali forces.[9] Within Somalia, pirates have faced very few repercussions. In addition, piracy in Somalia is fueled by a poor economic situation. An average Somali person earns as little as $600 per year.[10] Piracy is thus a crime of opportunity for young Somali men: a successful vessel seizure, which had until recently been viewed as not particularly risky, can yield each pirate thousands of dollars.[11]

6. *See, e.g.*, *Suspected Pirates Rescued in Gulf of Aden*, CNN (Dec. 5, 2008), http://www.cnn.com/2008/WORLD/africa/12/04/yemen.pirates/index.html.

7. *See* Eugene Kontorovich, *International Legal Responses to Piracy off the Coast of Somalia*, 13 INSIGHTS (Am. Soc'y of Int'l Law, Washington, D.C.), Feb. 6, 2009, http://www.asil.org/insights090206.cfm.

8. Milena Sterio, *Piracy off the Coast of Somalia: The Argument for Pirate Prosecutions in the National Courts of Kenya, The Seychelles, and Mauritius*, 4 AMSTERDAM L.F. 104, 106 (2012).

9. *See* J. Ashley Roach, *Countering Piracy off Somalia: International Law and International Institutions*, 104 AM J. INT'L L. 397, 409 (noting that the International Maritime Organization, the United Nations Office on Drugs and Crime, the Security Council, NATO, the European Union, and the Contact Group on Piracy off the Coast of Somalia "have played major roles so far in efforts to suppress piracy off the coast of Somalia").

10. Kontorovich, *supra* note 7.

11. *Id.* (noting that each pirate earns $150,000 with a single vessel seizure).

Piracy attacks are financed and organized by "businessmen" who often reside abroad, in places such as Dubai or London.[12] In order to execute an attack, piracy organizers will often recruit young men and boys, prone to participating in a criminal enterprise for lack of better job or schooling options. Sadly, pirates as young as twelve have been detained and prosecuted in places such as New York, Germany, Spain, India, Italy, Malaysia, and the Seychelles.[13] In many instances, juvenile pirates play the same role as adult pirates on a pirate vessel: they may engage in violent acts such as shooting, manhandling captured victims, helping to operate the vessel, or providing other types of assistance on board. In many piracy prosecutions, all suspected pirates detained onboard a single pirate vessel will be prosecuted together, under a joint criminal enterprise-type legal theory, which allows prosecutors to charge all suspects involved in a single piracy incident with the same crime.[14] Prosecutors thus do not have to distinguish between the different roles played by different piracy actors on board a skiff; instead, they can charge everybody with the crime of piracy. For juvenile pirates, this essentially means that they will be charged with the crime of piracy, even though their role in the attack may have been minor. Convicting all those involved in a violent crime, such as piracy, of the most serious crime (piracy) is advantageous, as it provides prosecutors with powerful legal tools in

12. *See Piracy Still a Thriving Business in Somalia, Backed by International Financiers*, WORLD TRIBUNE (Apr. 22, 2012), http://www.worldtribune.com/2012/04/22/piracy-still-a-thrivng-business-in-somalia-backed-by-international-financiers/ (noting that Somali pirates were likely financed by "international figures").

13. *See, e.g.*, Lauren Hahn, Comment, *Juvenile Justice and Piracy: Prosecutions of Juvenile Pirates in the United States*, GEO. MASON L. REV. 241, 241–42 (2012).

14. For example, in the Seychelles, where many pirates have been prosecuted pursuant to transfer agreements between apprehending nations and the government of the Seychelles, all pirates who are caught onboard a single pirate vessel are typically prosecuted together under a joint criminal enterprise theory of "common intention." For a discussion of piracy prosecutions in the Seychelles, *see* Sterio, *supra* note 8, at 115–16. Similarly, all pirates caught together on a pirate vessel are being prosecuted together in Mauritius, another nation that has signed transfer agreements with capturing nations. *See, e.g.*, Sulakshna Beekarry, *Legal, Political and Strategic Initiatives of Mauritius, with Special Focus on Collaboration Between Developed and Developing Countries*, *in* MARITIME SECURITY AND PIRACY: GLOBAL ISSUES, CHALLENGES AND SOLUTIONS 1, 1–6 (Bimal N. Patel & Hitesh Thakkar eds., 2012); *Statement by EU HR Ashton on EU-Mauritius Transfer Agreement of Suspected Pirates*, EU-UN (July 16, 2011), http://www.eu-un.europa.eu/articles/en/article_11230_en.htm (describing the EU-Mauritius Transfer Agreement, which allows pirates captured by EU Naval Forces to be transferred to Mauritius for prosecution).

the global fight against piracy; however, such an approach poses problems in terms of handling juvenile suspects appropriately. Most countries' domestic criminal systems distinguish between adult and juvenile criminal suspects, and most countries treat juveniles differently. Thus, juvenile piracy suspects should be separated from their adult partners-in-crime and should be prosecuted and detained separately.[15] The section below will examine international treaties that impose such a duty on all member states.

III. International Human Rights Law and International Criminal Law Provisions on the Treatment of Juvenile Suspects

Major human rights treaties recognize that juvenile suspects need to be treated distinctly within any criminal investigation or prosecution. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) provides that "[a]ccused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."[16] Article 14 of the same treaty stipulates that any procedures should take account of the defendant's age and the desirability of promoting his or her rehabilitation.[17] A specialized human rights treaty, the Convention on the Rights of the Child, applies to anybody below the age of eighteen.[18] Article 37 of this Convention provides that children who break the law should not be treated cruelly, should not be put in prison with adults, should have the right to contact their families, and should not be sentenced to

15. For a general discussion of the treatment of suspected juvenile pirates, see Hahn, *supra* note 13 (describing piracy trials involving juveniles in the United States, Spain, Germany, India, Italy, the Seychelles, and Malaysia).

16. International Covenant on Civil and Political Rights art. 10(b), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

17. *Id.* art. 14(3)(g)(4), at 177.

18. Convention on the Rights of the Child art. 1, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 44 (entered into force Sept. 2, 1990) [hereinafter Child Rights Convention]. All countries of the world, except for the United States and Somalia, have ratified this convention. Richard J. Wilson, Omar Khadr: Domestic and International Litigation Strategies for a Child in Armed Conflict 15 (Jan. 9, 2012) (draft paper for Santa Clara University School of Law Symposium, February 2012), *available at* http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1001&context=humanitarian.

death or life imprisonment.[19] Article 40 of the same Convention further provides that governments are required to set a minimum age below which children cannot be held criminally responsible, and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.[20]

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19. Child Rights Convention, *supra* note 18, art. 37, 1577 U.N.T.S. at 55–56. Article 37 provides:

    States Parties shall ensure that:

    (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

    (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

    (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

    (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

20. *Id.* art. 40(3)–(4), at 56–57. These sections state:

    3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

    (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

    (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

In addition to the above-mentioned human rights treaties, other international law documents reference the need to treat juvenile suspects differently from adult suspects. Article 4 of U.N. Standard Minimum Rules of the Administration of Juvenile Justice (Beijing Rules) specifies that "[i]n those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."[21] Finally, an important norm of international humanitarian law dealing with children involved in armed conflict pertains to the treatment of juveniles. Although Somali pirates operate outside the paradigm of any armed conflict, the parallel between the use of child soldiers and child pirates is sufficiently strong to justify a reference to international legal norms pertaining to the former. Article 77 of Additional Protocol I to the Geneva Conventions specifies that "[i]f arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults."[22] Thus, international human rights law, while failing to provide for a specific minimum age of criminal responsibility, clearly establishes the need for member states to differentiate their treatment of juvenile versus adult criminal suspects, as well as the necessity to erect special protections of minors within any state's criminal system.

Statutes of several international criminal tribunals also address the issue of the treatment of juvenile suspects. The Rome Statute of the International Criminal Court specifies that nobody under the age of eighteen may be criminally responsible within this tribunal.[23] The only permanent international criminal court thus sets the age of criminal responsibility at eighteen. It should be noted, however, that statutes of two other notable international tribunals, the International Criminal Tribunal for the Former Yugoslavia and the International

> 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

21. U.N. Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, Annex ¶ 4.1, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).

22. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 77(4), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

23. Rome Statute of the International Criminal Court art. 26, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter ICC Statute].

Criminal Tribunal for Rwanda are silent on the issue of minimal age for criminal responsibility.[24]

The statutes of other ad hoc tribunals include provisions on minimal age for criminal liability. The statute of the Special Court for Sierra Leone stipulates that the tribunal will not have jurisdiction over anybody under the age of fifteen.[25] In addition, the statute provides that defendants between the ages of fifteen and eighteen can be prosecuted, but such young defendants have to be treated with dignity, taking into account their young age and "the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child."[26] In addition, the statute provides that in any case where the defendant is a juvenile, the court shall order "care guidance and supervision orders, community service orders, counseling, foster care, correctional, educational and vocational training programmes, approved schools and, as appropriate, any programmes of disarmament, demobilization and reintegration or programmes of child protection agencies."[27] Despite the possibility of prosecuting minor defendants, the Special Court Prosecutor has announced that he would not prosecute children, signaling perhaps that the court considers the most appropriate age for criminal responsibility within this tribunal's jurisdiction to be eighteen.[28]

The Statute of the Extraordinary Chambers of Courts in Cambodia does not provide for a minimal age of criminal responsibility, but it does incorporate the above-mentioned Article 14 of the ICCPR, which obligates this tribunal to take into account the defendant's age and to provide for the possibility of his or her

24. *See* Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. Doc. S/RES/827 (May 25, 1993), *amended by* S.C. Res. 1877, U.N. Doc. S/RES/1877 (July 7, 2009), *available at* http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf; *see* Statute of the International Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994), *available at* http://www.unictr.org/Portals/0/English/Legal/Statute/2010.pdf.

25. Statute of the Special Court for Sierra Leone art. 7(1), S.C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2000), *available at* http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJeEw%3D&.

26. *Id.*

27. *Id.* art. 7(2).

28. Press Release, Special Court for Sierra Leone, Special Court Prosecutor Says He Will Not Prosecute Children (Nov. 2, 2002), *available at* http://www.sc-sl.org/LinkClick.aspx?fileticket=XRwCUe%2baVhw%3d&tabid=196.

rehabilitation.[29] Within the East Timor tribunals, the U.N. Transitional Administration in East Timor established rules providing that a minor under the age of twelve is incapable of committing a crime, and that minors between the ages of twelve and sixteen may be prosecuted only under regulations of juvenile justice.[30]

In light of the above, it may be argued that international criminal law, like international human rights law, illustrates a level of consensus that individuals below the age of eighteen need to be treated differently from those above the age of adulthood, and that international criminal prosecutions may not provide for the best solution in terms of addressing situations where juveniles commit international crimes.

Finally, in addition to rules about the treatment and possible prosecution of juvenile suspects, international law provides norms criminalizing the conduct of those who choose to employ minors in armed conflicts. As argued above, although Somali piracy thrives outside an armed conflict, norms pertaining to the treatment of child soldiers in armed conflict are relevant to any discussion of the treatment of child pirates because the latter function in a lawless environment, similar to that of an armed conflict. Additionally, child pirates often exhibit the same characteristics as child soldiers in that both: typically experience hardship and poverty; are often separated from family members; may lack appropriate educational opportunities; and may lack the presence of mind to make informed decisions about their participation in criminal endeavors. While international court decisions on the use of child soldiers will not constitute binding precedent for any court prosecuting juvenile pirates, such decisions can nonetheless provide useful and informative guidance about the imposition of criminal responsibility on those who employ children in order to commit crimes.

In the recent *Lubanga* case, the International Criminal Court (ICC) convicted the defendant and sentenced him to fourteen years of imprisonment. Of the multiple charges the defendant faced, one of them included the war crime of enlisting child soldiers under the age

29. Law on the Establishment of the Extraordinary Chambers, with Inclusion of Amendments as Promulgated on 27 October 2004 (NS/RKM/1004/006), art. 33 new, *available at* http://www.uni-marburg.de/icwc/dateien/lawestablishmentkrt.pdf ("The Extraordinary Chambers of the trial court shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights.").

30. U.N. Transitional Administration in East Timor Reg. No. 2000/30, ¶ 45.1, U.N. Doc. UNTAET/REG/2000/30 (Sept. 25, 2000).

of fifteen.[31] The Rome Statute of the International Criminal Court specifies that enlisting children under the age of fifteen is a war crime.[32] Similarly, the Special Court for Sierra Leone has found that enlisting child soldiers under the age of fifteen was a crime under international customary law.[33] Additionally, Article 77(2) of Additional Protocol I to the Geneva Convention stipulates that children under age fifteen should not participate in hostilities.[34] This prohibition is repeated in Article 38 of the Convention on the Rights of the Child.[35] Finally, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict establishes the age of recruitment and participation of children in armed conflict at eighteen.[36]

In sum, international human rights law and international criminal law contain two general norms that are corollary to each other. The first norm provides that juvenile suspects should be treated distinctly any time they enter the criminal process and are subject to imprisonment and prosecution. The purpose of the first norm is to ensure that juvenile suspects receive less harsh treatment, because of their age and vulnerability. The second norm provides that those who employ juveniles in criminal endeavors should be treated more severely, as they preyed on minors and exploited their weakened mental state in order to persuade them to commit international

31. Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Judgment, ¶ 1 (Mar. 14, 2012), *available at* http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx.

32. ICC Statute, *supra* note 23, art. 8(2)(e)(vii), 2187 U.N.T.S. at 97.

33. Jon Silverman, *Taylor Verdict: Implications for International Justice*, BBC (Apr. 26, 2012), http://www.bbc.com/news/world-africa-17854039 (reporting that the Special Court for Sierra Leone handed down in 2007 the first ever international conviction for the war crime consisting of the use of child soldiers, paving the way for the ICC and the *Lubanga* case, where the ICC also found that the use of child soldiers was a war crime). For a general discussion of the Special Court for Sierra Leone "child soldier" cases, see Valerie Oosterveld, *The Special Court for Sierra Leone, Child Soldiers and Forced Marriage: Providing Clarity or Confusion?*, 45 CAN. Y.B. INT'L L. 131 (2007).

34. Additional Protocol I, *supra* note 22, art. 77(2), 1125 U.N.T.S. at 39 ("The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.").

35. Child Rights Convention, *supra* note 18, art. 38, 1577 U.N.T.S. at 56.

36. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict art. 1, May 25, 2000, 2173 U.N.T.S. 222 (entered into force Feb. 12, 2002).

crimes. When translated to piracy prosecutions, these two norms, in tandem, dictate that juvenile piracy suspects should be treated with a special kind of dignity, and that those who employ juvenile pirates should be dealt harsher sentences. Ultimately, it will be up to each prosecuting state to determine how to apply these international norms to their own criminal processes.

IV. RECENT NATIONAL PROSECUTIONS OF JUVENILE PIRATES

Recent national prosecutions of juvenile piracy suspects illustrate the different nations' approaches to handling this delicate issue. In the Seychelles, prosecutors have not challenged the defense's juvenile status claims, and in two different cases, Seychellois judges simply agreed to treat piracy suspects as juveniles. Several nations (Germany, Spain, and India) have used medical and forensic tests to determine the suspect's age after the piracy suspect alleged to be under eighteen. Two nations, Italy and Malaysia, have announced that they would treat several piracy suspects as juveniles, but it is unknown how these nations reached such determinations of age. One nation, the United States, rejected a defendant's juvenile status claim after interviews with the defendant and his family members, but without ordering forensic tests. In light of international legal provisions discussed above, and as Part V below will discuss, Germany, Spain, and India's approach of ordering forensic examinations to determine a suspected pirate's age is preferable to the United States' approach of determining a suspect's age without the use of medical procedures. However, in instances where the suspect appears to be a juvenile and where the prosecution does not contest the defendant's age, it may be appropriate for the prosecuting judge to accept the defendant's claim of juvenile status (as in the Seychelles). Finally, any time that the suspect's age is contested, it is appropriate for the prosecuting nation to treat the suspect as a juvenile, as in Italy and Malaysia.

The Seychelles, an Indian Ocean island nation, which has recently prosecuted dozens of Somali pirates pursuant to various transfer agreements with large maritime nations, recently encountered two cases involving juveniles. In *Republic v. Liban Mohamed Dahir & Twelve Others*, Justice Duncan Gaswaga of the Seychelles Supreme Court sentenced three juvenile pirates aged fourteen, sixteen and seventeen to two and a half years in prison.[37] In the same case, Justice Gaswaga determined that a twelve-year-old defendant could not be prosecuted in the Seychelles because of his young age; this juvenile was released back into the custody of his relatives in Somalia without

37. Republic v. Liban Mohamed Dahir & Twelve Others, Sentence, Crim. Side No. 7 of 2012 [16] (Supreme Ct. Sey. 2012).

facing any criminal penalty.[38] Adult defendants convicted of piracy in the same case were sentenced to thirty years—a lengthy sentence that reflected the harsh treatment imposed by Justice Gaswaga on those who employ juvenile pirates.[39] In the words of Justice Gaswaga, "[t]he seriousness of the offence of the adult accused person is aggravated by the recruitment of juveniles whom they ought to have taken care of and guide instead of encouraging them to get involved in criminal activities."[40] In another case, *Republic v. Mohamed Abdi Jama & Six Others*, Justice Gaswaga sentenced all adult piracy suspects to seven years in prison and sentenced one juvenile pirate to two years, presumably taking into consideration his young age.[41] In both the *Liban* and *Jama* cases, prosecutors chose not to challenge the defenses' assertion that various defendants were below the age of eighteen, and in both cases Justice Gaswaga accepted arguments to treat such defendants as juveniles.[42] The defendants' age was thus not disputed in these cases, and medical or forensic testing to ascertain the defendants' ages was unnecessary.

Other nations where juvenile pirates have been recently prosecuted include Spain, Germany, India, Italy, and Malaysia. Authorities in Spain, Germany, and India have used forensic testing to determine the piracy suspects' ages; in these countries, results of such forensic testing have subsequently led authorities to prosecute suspects as adults or as juveniles. In Italy and Malaysia, authorities have reached age-related determinations regarding piracy suspects, but no public information has been available as to how those determinations were reached. In both Italy and Malaysia, however, such age determinations have also led authorities to prosecute suspects either as adults or as juveniles. As a general matter, in most national prosecutions, piracy suspects who are prosecuted as adults face harsher sentences, whereas pirates prosecuted as juveniles face more lenient sentences; thus, the methodology used for determining the age of suspected pirates has significant consequences.

38. *Id.* at [15].

39. *Id.* at [18].

40. *Id.* at [19].

41. Republic v. Mohamed Abdi Jama & Six Others, Sentence, Crim. Side No. 53 of 2011 [6] (Supreme Ct. Sey. 2012).

42. Republic v. Liban Mohamed Dahir & Twelve Others, Judgment, Crim. Side No. 7 of 2012 [11], [13], [41] (Supreme Ct. Sey. 2012) (noting its decision in the *Jama* case and finding that in light of no prosecutorial challenge to the age issue and the lack of other evidence proving age, the court must accept that certain defendants were juveniles and could not be legally convicted); *Jama* at [6].

In Spain, a defendant named Abdu Willy was prosecuted under the charge of piracy in 2011.[43] Early in the case, the defendant claimed juvenile status. The judge ordered that the defendant be placed under detention in a juvenile facility operated by the Spanish juvenile justice system.[44] The judge then ordered a series of medical and forensic tests on the defendant, upon which he concluded that the defendant was over the age of eighteen.[45] The judge based this determination primarily on the defendant's height and weight, as well as X-rays of his clavicle bone and left hand, which all indicated that he was most likely not a juvenile.[46] The Spanish court thus used forensic procedures to ascertain a piracy suspect's age. Defendant Willy was sentenced to 439 years in prison.[47] The suspect was sentenced to a particularly lengthy sentence after the court rejected his juvenile status claim and proceeded to treat the suspect as an adult.

German prosecutors faced the problem of juvenile piracy in the first German piracy trial in 2010, when several accused pirates claimed alleged to be juveniles.[48] One of the defendants claimed to be only thirteen.[49] After initially finding that only one of the defendants was a juvenile, German authorities conducted a series of forensic tests and ultimately found in 2012 that three of the defendants were of juvenile status.[50] These defendants were prosecuted under the German juvenile justice system, each facing the maximum penalty of ten years in prison, unlike the adult suspects who faced harsher penalties.[51]

43. *Spain Jails 2 Somali Pirates for 439 Years*, MANILA BULL. (May 6, 2011), http://www.mb.com.ph/articles/317038/spain-jails-2-somali-pirates-439-years.

44. *See Spain to Free Young Somali Pirate Suspect*, REUTERS (Oct. 20, 2009), http://af.reuters.com/article/topNews/idAFJOE59J0K620091020; *see also 1,022 Years Sentence for 6 Somali Pirates*, VESSEL FINDER (Sept. 13, 2013), http://www.vesselfinder.com/news/1456-1022-years-Sentence-for-6-Somali-pirates.

45. Hahn, *supra* note 13, at 257–58; *see* also S.A.N., May 3, 2011 (No. 10/2011, p. 19–21) (Spain) [hereinafter Willy Sentencing Memorandum].

46. Willy Sentencing Memorandum, *supra* note 45, at 19–20.

47. *Spain Jails 2 Somali Pirates*, *supra* note 43.

48. *See* Francis Curta, *First Piracy Trial in 400 Years Opens in Germany*, GOOGLE NEWS (Nov. 22, 2010), http://www.google.com/hostednews/afp/article/ALeqM5hN-h7Iv9JheJC3yMnb6YGJH33r1g?docId=CNG.40ccdba1d2b38c4e26b3b463d9579d0d.7f1.

49. *Id.*

50. *See* Alice Baghdjian, *German Prosecutor Urges Jail in Somali Piracy Trial*, REUTERS (Jan. 25, 2012), http://www.reuters.com/article/2012/01/25/germany-pirates-idAFL5E8CP3HR20120125.

51. *Id.* Note however that some commentators have lamented the difficulty, expenses, and inconclusiveness of the lengthy medical testing procedures

Ultimately, the trial concluded in 2012, and the Hamburg court found all ten suspects guilty.[52] However, presumably because the defendants' ages remained unverifiable, the court handed down mild sentences. The three youngest defendants were given two-year sentences, while the other seven were given sentences of six to seven years.[53] The German authorities, similar to the Spanish authorities, used medical procedures to determine the piracy suspects' ages. Unfortunately, it appears that these procedures were less successful in Germany and led to inconclusive results, causing the Hamburg court to deliver mild sentences to all suspects involved.

Like Spain and Germany, India has been using forensic tests to determine piracy suspects' ages. In a recent case, Indian authorities subjected nineteen suspects to forensic tests; out of the nineteen suspects, Indian authorities determined that nine were juvenile,[54] each of which would be prosecuted in the juvenile justice system.[55]

In Italy and Malaysia, prosecuting authorities also treated several defendants as juveniles.[56] However, no public information has been made available as to how and why these authorities reached the specific juvenile age determinations. It is possible that the defendants' physical appearance led the Italian and Malaysian courts to treat these defendants as juveniles. It is also possible that these courts engaged in some form of medical and forensic testing, or that they simply decided to accept the juvenile status claims in any situation where the defendants dispute their age. In light of international law

involved in order to ascertain the suspected pirate's true age. *See, e.g.*, Beate Lakotta, *An Expensive Farce: Germany's Somali Pirate Trial Is Pointless*, SPIEGEL (Sept. 12, 2012), http://www.spiegel.de/international/germany/german-trial-of-somali-pirates-turns-into-pointless-and-expensive-farce-a-855252.html ("This week marks the 100th day of the Somali piracy trial in Hamburg . . . . Four judges, four lay judges, two prosecutors, 10 other court employees, 20 defense attorneys and three Somali language interpreters—along with numerous expert witnesses on subjects including conditions in war-torn Somalia, the estimation of age through carpal bone analysis, bullet holes and the Urdu language—have jointly managed to bring to light no more than what was known from the start—after all, the 10 defendants were caught red-handed by Dutch marines who stormed the ship.").

52. *Verdict in Somali Hijacking Case: Court Rules in Germany's First Modern-Day Piracy Trial*, SPIEGEL (Oct. 19, 2012), http://www.spiegel.de/international/germany/hamburg-court-hands-down-somali-pirate-sentences-a-862350.html.

53. *Id.*

54. Mateen Hafeez, *Tests on Pirates to Determine Age*, TIMES OF INDIA (June 21, 2011), http://articles.timesofindia.indiatimes.com/2011-06-21/mumbai/29682867_1_somali-pirates-taloja-jail-indian-navy.

55. *Id.*

56. Hahn, *supra* note 13, at 261.

on the treatment of juveniles, the latter approach—of accepting the juvenile status claim any time the defendants' age is disputed—is preferable to the approach of jurisdictions like the United States, where courts may reject a juvenile status claim without ordering medical testing and where the defendant's age may remain a controversial issue throughout the proceedings.

In a recent Italian piracy case, authorities determined that four out of nine accused suspects of a piracy attack were juvenile, and that their cases would be handled by the Italian *Tribunale dei Minori*, a specialized juvenile justice jurisdiction.[57] The four juvenile suspects were each subsequently sentenced to eight years in prison.[58] The adult suspects were tried separately, convicted, and sentenced to harsher prison terms ranging between sixteen and nineteen years.[59]

Malaysian authorities prosecuted several juvenile piracy suspects in connection with the hijacking of a merchant ship in the Gulf of Aden.[60] Malaysian prosecutors confirmed that the juveniles will not face the severest penalty of execution due to their young age.[61] However, all juvenile suspects in this case were prosecuted together with the adult suspects in a single criminal case.[62] Thus, unlike their German, Italian, and Indian counterparts, Malaysian authorities did not prosecute juvenile suspects in a distinct juvenile justice jurisdiction. Ultimately, all suspects, adult and juvenile, pled guilty in order to avoid the death penalty or life imprisonment.[63] A Malaysian court sentenced the three juvenile piracy defendants to a lesser sentence of eight years, while imposing a longer sentence of ten years on the adult suspects, presumably handing down the lesser sentence to juveniles on account of their age.[64]

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57. *See* Brandon Gatto, *Italy Court Orders Trial for Accused Somali Pirates*, JURIST (Feb. 21, 2012), http://jurist.org/paperchase/2012/02/italy-court-orders-trial-for-accused-somali-pirates.php.

58. Enzo Mangini, *Landmark Somali Pirate Trial Climaxes*, THE ITALIAN INSIDER (July 3, 2012), http://www.italianinsider.it/?q=node/1084.

59. Matteo Crippa, *UPDATE: Convictions in First Italy Piracy Trial*, COMMUNIS HOSTIS OMNIUM (Dec. 2, 2012), http://piracy-law.com/2012/12/02/ convictions-in-first-italy-piracy-tria/.

60. *See* Andrea Bottorff, *Malaysia Court Charges Suspected Somali Pirates*, JURIST (Feb. 11, 2011), http://jurist.org/paperchase/2011/02/malaysia-court-charges-suspected-somali-pirates.php.

61. *Id.*

62. J.T. Quigley, *Pirates Plead Guilty in Malaysian Navy Shooting*, THE DIPLOMAT (Sept. 3, 2013), http://thediplomat.com/asean-beat/2013/09/03/pirates-plead-guilty-in-malaysian-navy-shooting/.

63. *See id.*

64. *Id.*

All of the above-discussed national prosecutions of juvenile suspects illustrate instances where the defendants' ages were either ascertained through forensic procedures, or where the defendants' ages were not contentious during the proceedings. The United States' case discussed below represents the opposite situation, where the court chose not to use forensics to determine the defendant's age, and where the defendant's age remained a controversial issue.

In 2009, the United States prosecuted Abduwali Abdiqadir Muse, a Somali pirate who had been caught during the unsuccessful piracy attack on the U.S. flagged vessel *Maersk Alabama*.[65] Muse was indicted under a host of charges, including the most serious piracy charge, as well as several other hostage-taking and hijacking charges.[66] Muse accepted a plea deal whereby he pled guilty to the lesser charges, while the most serious piracy charge was dismissed.[67] Subsequently, Muse was sentenced to nearly thirty-four years in prison.[68] During the proceedings, however, Muse's age became a serious issue. Shortly after his arrival to the United States, Muse's defense attorneys claimed that he was a juvenile, a claim that was vehemently denied by the prosecutors.[69] In order to determine Muse's age, the court held a hearing.[70] The defense did not call Muse to the stand, but instead presented the testimony of his father, who claimed that Muse was sixteen at the time of the attack.[71] However, Muse's father's testimony was conflicting in that he also stated that Muse was his fourth oldest child and that he was born in 1990—a birth date which would have made Muse nineteen at the time of the attack.[72] The prosecution offered the testimony of a detective who

65. *See* Indictment at 1, United States v. Muse, No. 1:09-cr-00512 (S.D.N.Y. Jan. 12, 2010), ECF No. 17.

66. *Id.*

67. Judgment in a Criminal Case at 1, United States v. Muse, No. 1:09-cr-00512 (S.D.N.Y. Feb. 25, 2011), ECF No. 31; *see also* Chris Dolmetsch & Bob Van Voris, *Somali Pirate Muse Gets 34-Year Prison Sentence for Indian Ocean Hijacking*, BLOOMBERG (Feb. 16, 2011), http://www.bloomberg.com/news/2011-02-16/somali-pirate-muse-gets-34-year-prison-sentence-for-indian-ocean-hijacking.html.

68. Judgment in a Criminal Case, *supra* note 67, at 1; *see also* Dolmetsch & Voris, *supra* note 67.

69. *See* Benjamin Weiser, *Leniency of Sentence for Somali Hijacker Is at Issue*, N.Y. TIMES (Feb. 13, 2011), http://www.nytimes.com/2011/02/14/nyregion/14pirate.html (reporting the debate over Muse's age).

70. *See* Transcript of Age Hearing at 36–37, United States v. Muse, No. 1:09-cr-00512 (S.D.N.Y. June 16, 2009), ECF No. 10.

71. *Id.* at 39–40.

72. *Id.* at 42.

interviewed Muse on his flight from Djibouti to the United States.[73] According to this detective's testimony, Muse laughed about his age, apologized about lying about his age, and then stated that he was between eighteen and nineteen years of age.[74] The detective also stated that Muse did not have a birth certificate or any other age-identifying documentation.[75] Based on the testimony, the district court determined that the defendant was not a juvenile and that he would be tried as an adult.[76]

During Muse's plea bargaining, his age remained an unresolved issue.[77] As part of his plea bargain, Muse's defense agreed to drop all age-related claims in any subsequent proceedings.[78] However, during Muse's sentencing, his defense presented additional age-related evidence, purporting to establish that he was indeed a juvenile at the time of the *Maersk Alabama* attack.[79] The defense introduced affidavits by Muse's mother and brother, both claiming that Muse was under the age of eighteen at the time of the attacks.[80] Additionally, the defense introduced Muse's recorded statement, which he provided immediately upon his arrest by the United States' authorities, in which he claimed to be sixteen.[81] The defense argued that none of this evidence had been previously introduced out of fear that it would violate Muse's plea "deal," whereby he had agreed not to pursue any age-related claims.[82] In addition, Muse's defense introduced evidence demonstrating the lack of birth certificates in Somalia, thus substantiating Muse's and his family members' claim that no birth certificate was available.[83] The defense also pointed out that Muse's dental records indicated that he was likely between the ages of seventeen and twenty-one immediately following his arrest.

73. *Id.* at 29–37.

74. *Id.* at 29–30.

75. *Id.* at 33.

76. *Id.* at 46–48.

77. *See* Weiser, *supra* note 69 (reporting that, even after Muse's age hearing, the age dispute amongst the two parties continued into the sentencing phase of the case).

78. Government's Memorandum in Connection with the Sentencing of Abduwali Abdukhadir Muse at 9–10, United States v. Muse, No. 1:09-cr-00512 (S.D.N.Y. Feb. 09, 2011), ECF No. 29.

79. Sentencing Sub-mission of Abduwali Abdukhadir Muse, United States v. Muse, No. 1:09-cr-00512 (S.D.N.Y. Feb. 2, 2011), ECF No. 28, at 22–25.

80. *Id.* at Ex. F (Affirmation of Adar Abdirahman Hassan) ¶¶ 1–4.

81. *Id.* at 22 n.10.

82. *Id.*

83. *Id.* at 23.

Further, the defense referenced evidence that African youth's teeth tend to develop more rapidly than teeth of their western peers, which implies that dental records can misleadingly estimate older ages for African youths.[84] The district court however chose not to acknowledge this type of evidence, instead deciding to treat Muse as an adult for the purposes of sentencing.[85] As stated above, Muse received a harsh sentence of nearly thirty-four years of imprisonment.[86] Arguably, had the judge found that Muse had been a juvenile, or had the judge at least taken Muse's possible young age into account at the time of sentencing, the sentence might have been lighter.

The *Muse* case illustrates the approach of an American court, which chose not to order medical or forensic examinations in order to determine the defendant's age, relying instead on witness testimony and other types of testimonial or documentary evidence. The American approach differs from the approach of the German, Spanish, and Indian authorities, which all ordered medical examinations in order to determine the defendant's potential status as a juvenile. The American case also differs from the Seychellois, Italian, and Malaysian cases, in which the piracy suspects' ages were not a contested issue, and all three countries' prosecuting authorities and judges agreed to treat suspects as juveniles. It is not publicly known how the Italian and the Malaysian authorities reached their respective age determinations, but it is possible that these authorities also used forensic testing to reach such determinations. Thus, *Muse* remains the only case where the defendant's age remained a contested and controversial issue.

International law discussed above does not specify how state authorities are supposed to make an age-related determination. However, it is clear that international law imposes a duty on states to treat juveniles with dignity and distinctly from any adult suspects. Therefore, in order to comply with this duty, a state can only properly extend juvenile treatment to any suspect if state authorities develop a process to determine a suspect's age. The section below will argue that ordering medical and forensic examinations fully satisfies states' duties under international law regarding the treatment of juvenile suspects, but that the United States' approach may fall short of satisfying such duties and obligations. The next section also offers

84. *Id.* at 23–24.

85. *See Pirate Who 'Wanted to Kill Americans' Gets 33 Years for Hijacking U.S. Ship*, MSNBC (Feb. 16, 2011), http://www.msnbc.msn.com/id/41615693/ns/us_news-crime_and_courts/t/pirate-who-wanted-kill-americans-gets-years-hijacking-us-ship/#.Tmuf5-vgK8U (reporting that the judge in the Muse case rejected Muse's plea for leniency and stated that the imposed sentence was necessary to punish someone who "appeared to relish [his] most depraved acts").

86. *See supra* note 68 and accompanying text.

specific recommendations to future state authorities dealing with claims of juvenile status by suspected pirates.

V. RECOMMENDATIONS: THE APPROPRIATE TREATMENT OF JUVENILE PIRACY SUSPECTS

The following recommendations apply to all pirate apprehending and prosecuting states, in light of the above-discussed international human rights and international criminal law provisions on the treatment of juvenile suspects. If states follow these recommendations, they will be in compliance with their international legal duties.

A. States Should Use Medical and Forensic Tests to Determine the Suspected Pirates' Ages

Once any state authorities apprehend and detain suspected pirates, they should first conduct interviews with the detained suspects. As part of the initial interview, state authorities should inquire into the suspects' ages. If a suspect claims that he is under the age of eighteen, state authorities should separate him from the rest of the suspects and detain him separately for the remainder of the suspects' stay onboard the detaining country's vessel. Once the suspect is transferred to the authorities of the apprehending state or a third state for prosecution purposes, the prosecuting state should order that the suspect remain separated from the other adult suspects, and should initially detain the suspect in its juvenile detention facilities. As early as possible, the prosecuting nation should conduct a hearing to determine the suspect's age. For the purposes of the hearing, the competent judge should order that medical and forensic examinations be performed on the defendant. These examinations may include height and weight determinations, bone X-rays, dental examinations, as well as any other medical procedures that may be relevant for the purposes of determining a person's age. The competent judge should make an appropriate age determination, in light of the results of all the above-mentioned medical and forensic examinations.

Once a suspect is transferred to the prosecuting state, in some cases the prosecution may choose not to contest the defendant's juvenile status claim. It may be appropriate for the competent judge to accept the defendant's claimed age if the judge determines that the defendant reasonably appears to be a juvenile.[87] In all cases where the

87. Arguably, this is what happened in the Seychelles' prosecutions described above. *See supra* Part IV, notes 39 and 42 and accompanying text. This is also what may have happened in the Italian and Malaysian prosecutions, where those countries' authorities decided to treat several piracy suspects as juveniles, but where no public information is available as to how those age-related determinations were reached. *See supra* Part IV.

judge cannot make such a determination based purely on the defendant's physical appearance, the judge should order the above-described forensic testing and examination procedures.

B. If Forensic and Medical Tests Are Inconclusive as to a Suspected Pirate's Age, That Defendant Should Be Treated as a Juvenile

If the competent judge orders forensic and medical testing for a specific defendant, and if such testing yields inconclusive results, the defendant should be treated as a juvenile. In other words, any time the defendant's age is contested, the presumption should be in favor of juvenile status, unless the state's authorities can offer a significant amount of additional evidence proving that the defendant is over the age of eighteen. Any time that medical and forensic evidence yields inconclusive results, the burden should be on the state authorities to disprove a defendant's juvenile status.[88] As a matter of policy, a presumption in favor of juvenile status mitigates the risk that the prosecuting state will violate its international obligations to treat suspect juveniles with dignity and distinction.

C. If the Apprehending or Prosecuting State Determines That a Suspected Pirate Is a Juvenile, That State Should Ensure That the Suspect Is Treated in Accordance with International Human Rights Law Standards on the Treatment of Juveniles

Should the judge find that the suspect is a juvenile, the case against that person should proceed in accordance with the prosecuting nation's juvenile justice provisions. Most states that are signatories to the ICCPR and the Convention on the Rights of the Child will have domestic laws implementing these treaties. Most of these domestic laws will have provisions stipulating separate detention facilities for juveniles, rehabilitation and re-education opportunities post-conviction, as well as leniency in the sentencing phase. As discussed earlier, juveniles are, pursuant to most states' juvenile justice penal systems, typically given more lenient sentences, which take into consideration the person's young age at the time the

88. German authorities adopted this approach when faced with a juvenile status claim: the Hamburg court proceeded to treat several defendants as juveniles, despite the inconclusiveness of forensic evidence, and once it became apparent that all defendants' ages were contested, the court handed down mild sentences to everybody, presumably because of the potential that all defendants were juveniles. *See supra* Part IV. American authorities adopted the opposite approach in the Muse case: although the defendant's age was contested throughout the proceedings, the court rejected the defendant's juvenile status claim and sentenced him as an adult. The court thus adopted a presumption against juvenile status. *See supra* Part IV.

relevant crime was committed. In fact, pursuant to human rights law, as contained in the above-mentioned treaties, juveniles may not face the death penalty or imprisonment without the possibility of parole. After a juvenile is sentenced, he should serve his sentence at an appropriate detention facility, where only juveniles are housed, and where he will be afforded adequate rehabilitation opportunities, including schooling, vocational training, and job preparedness. A state that willingly chooses to prosecute a suspected juvenile pirate has a duty, under international human rights law, to provide a convicted juvenile pirate with these opportunities.

Juvenile pirates should not be simply released, however. The catch-and-release policy, which has resulted in the unjustified liberation of many suspected pirates, should not apply to juvenile suspects either. A released juvenile will return to Somalia, after which he will most likely re-engage in piracy. Many juveniles do not have extended families in Somalia or have been separated or displaced from their families; thus, they will easily fall prey to another piracy scheme organized by a Dubai or London-based financier. It is thus critical that apprehended juvenile piracy suspects be transferred to an appropriate prosecution venue, where each criminal case can be handled by well-trained juvenile justice authorities. A juvenile pirate should face responsibility and should have to face his accusers, but his age should serve as a guiding factor in his treatment and incarceration.

D. A Suspect Apprehended Onboard a Pirate Vessel with Juvenile Pirates Should Be Sentenced More Harshly

A corollary to any state's obligation to treat juveniles with a particular type of dignity is the necessity for states to treat those who employ juvenile criminals more harshly. Pirates who work onboard vessels with other juvenile pirates should be dealt harsher sentences because any sentencing judge should take into consideration the fact that a suspect was engaged in a criminal enterprise with a minor. International criminal law, as discussed above, stipulates that enlisting children in an armed conflict is a war crime.[89] The ICC and the Special Court for Sierra Leone have already convicted individual suspects of war crimes for having enlisted children.[90] Because piracy typically occurs outside the armed conflict paradigm, enlisting pirates cannot be viewed as a war crime. However, the parallel between child soldiers and juvenile pirates is sufficiently strong to warrant harsher treatment and sentencing of those who employ juvenile pirates within any nation's domestic penal system. In one of the Seychelles' case mentioned above, Justice Gaswaga engaged in this type of reasoning

89. *See supra* Part III.

90. *See supra* Part III.

when he chose to sentence adult pirates, caught alongside juvenile pirates, to lengthy thirty-year sentences, and when he chose to impose lenient punishments on the juveniles.[91] Other domestic tribunals should follow Justice Gaswaga's example and treat the employment of juvenile pirates as a sentencing factor when imposing sentences on adult pirates. The deterrent effect of any future harsh sentences pronounced against those who choose to engage in piratical acts with minors onboard may play a significant role in the future organization of piracy schemes in Somalia and elsewhere.

VI. CONCLUSION

Juvenile pirates are neither "lost boys" nor hardened criminals. They should face criminal responsibility for their reprehensible actions, pursuant to states' international law obligations on the treatment of juvenile suspects. As argued in this article, apprehending and prosecuting nations should ensure that any alleged juvenile suspect is treated distinctly from the adult pirates. In order to ensure that juvenile suspects can be treated distinctly, all prosecuting nations should order forensic examinations in order to ascertain the suspect's age in the most appropriate manner. If forensic tests return inconclusive results, the suspect should be treated as a juvenile, unless prosecuting authorities have additional evidence that would disprove this presumption. In a minority of cases where the juvenile suspect appears to be under the age of eighteen, the prosecuting nation's authorities may agree to accord the suspect such claimed juvenile status. If prosecuting state authorities determine that a suspect is a juvenile, he should be prosecuted within an appropriate juvenile justice jurisdiction. Any juvenile pirates' ultimate sentences should take into consideration their young age, but should also ensure that they spend their post-conviction detention in appropriate facilities, where they will be provided with educational and rehabilitative opportunities. States that follow these recommendations will have satisfied their duties under international human rights law.

91. *See supra* note 39 and accompanying text.


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