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INTERNATIONAL LAW IN CRISIS: PIRACY OFF THE COAST OF SOMALIA

Milena Sterio *

The rise of piracy off the coast of Somalia over the last five years has been spectacular, amounting to a true crisis in international law. During the first six months of 2011, Somali pirates attacked 163 ships and took 361 sailors hostage. As of June 30, 2011, Somali pirates were holding 20 ships and 420 crew members, demanding millions of dollars in ransom for their release. Moreover, pirates have been attacking larger ships, such as oil tankers, and using more potent weapons, such as rocket-propelled grenades and automatic weapons. Pirates have also been attacking during monsoon season, an otherwise risky endeavor. According to the International Maritime Bureau Director, Pottengal Mukundan, “[i]n the last six months, Somali pirates attacked more vessels than ever before and they’re taking higher risks.” In sum, piracy has increased shipping expenses, costing an estimated \$10 billion per year in global trade.

What has sparked this international law crisis off the coast of Somalia? Moreover, what can the international community do in order to alleviate the crisis and prevent piracy from spreading to other regions of the world? What should be the way forward? This paper will briefly address these issues by focusing first on the rise of piracy off the coast of Somalia, before turning to an examination of international law on maritime piracy, and by finally suggesting some solutions for the future in the global fight against piracy.

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I. INTRODUCTION

The rise of piracy off the coast of Somalia over the last five years has been spectacular, amounting to a true crisis in international law. During the first six months of 2011, Somali pirates attacked 163 ships and took 361 sailors hostage.¹ As of June 30, 2011, Somali pirates were reported to have 20 ships and 420 crewmembers captive and were demanding millions of dollars in ransom for their release.² Moreover, pirates have been attacking larger ships, such as oil tankers, using more potent weapons, such as rocket-propelled grenades and automatic weapons. Pirates have also been attacking during monsoon season, an otherwise risky endeavor.³ According to the International Maritime Bureau Director, Pottengal Mukundan, “[i]n the last six months, Somali pirates attacked more vessels than ever before and they’re taking higher risks.”⁴ In sum, piracy has increased shipping expenses, costing an estimated £10 billion per year in global trade.⁵

What has sparked this international law crisis off the coast of Somalia? Moreover, what can the international community do in order to alleviate the crisis and prevent piracy from spreading to other regions of the world? What should be the way forward?

II. BACKGROUND: PROLIFERATION OF PIRACY IN SOMALIA IN THE 21ST CENTURY

Many signs point to Somalia being a failed state.⁶ The country has lacked a stable government since 1991 and has been plagued by civil war and violence, and famine has been rampant over the last few years.⁷ An

¹ *Pirate Attacks at Sea Getting Bigger and Bolder, Says IMB Report*, ICC COMMERCIAL CRIME SERVICES (July 14, 2011), <http://www.icc-ccs.org/news/450-pirate-attacks-at-sea-getting-bigger-and-bolder-says-imb-report>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Michael Nicholson, *Spirit of Adventure: Behind the Rise of the Somali Pirates*, TELEGRAPH (Feb. 2, 2011), <http://www.telegraph.co.uk/travel/travelnews/8298095/Spirit-of-Adventure-Behind-the-rise-of-the-Somali-pirates.html>.

⁶ See, e.g., Milena Sterio, *The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution*, 59 AM. U. L. REV. 1449, 1451 (2010).

⁷ *Id.*; see also *Death Toll Rises as Violence Rocks Somali Capital*, CNN (Mar. 11, 2011), http://articles.cnn.com/2010-03-11/world/somalia.fighting_1_somali-captial-queda-rebels?_s=PM:WORLD; see also James Kraska & Brian Wilson, *Fighting Pirates: The Pen and the Sword*, 25 WORLD POL'Y J. 41, 46 (2008) (describing the Somali state as an “empty shell”); see also Jason Straziuso, *US: 29,000 Somali Children Under 5 Dead in Famine*, MSNBC (Aug. 5, 2011), http://www.msnbc.msn.com/id/44021514/ns/world_news-africa/t/us-somali-children-under-dead-famine/ (noting that over 29,000 Somali children have died because of drought and famine).

average Somali person earns \$600 per year.⁸ In this cowboy climate of violence and poverty, piracy has thrived—perhaps unexpectedly. Pirates operate out of coastal Somali towns, where they are able to dock their own skiffs freely, and where they haul back their hijacked property and hostages.⁹ Coastal towns in Somalia benefit economically from the proceeds of piracy and thus have no incentive to participate in anti-piracy operations.¹⁰ The Somali government has no effective control of the various coastal regions where pirates operate, and is unable to respond with any effective law enforcement or military operation against pirates.¹¹ Reports indicate that piracy is supported by powerful Somali warlords, who exercise control over their respective regions of influence, and who routinely finance pirate attacks and reap the benefits thereof in case of a successful hijacking and ransom payment.¹² Until recently, international patrol ships sailing through the Indian Ocean have had no authority to enter the Somali territorial waters in pursuit of pirates, and no authority to penetrate the Somali land.¹³ Thus, until recently, pirates operated with impunity within Somalia, and unless they were captured in the Indian Ocean, were able to complete their hijacking operation and, in many instances, earn multi-million dollar ransoms. It was not until 2008 that the U.N.'s involvement with anti-piracy efforts ended the Somali pirates' ability to operate with almost no repercussions.

⁸ Sterio, *supra* note 6, at 1451.

⁹ *Id.*

¹⁰ See Mohamed Ahmed, *Somali Sea Gang Lures Investors at Pirate Lair*, REUTERS (Dec. 1, 2009), <http://www.reuters.com/article/2009/12/01/us-somalia-piracy-investors-idUSTRE5B01Z920091201> (explaining that pirates have set up “maritime companies” in coastal villages, which have become the main profitable economic activity in the area).

¹¹ See, e.g., Kraska & Wilson, *supra* note 7, at 45–46; Eugene Kontorovich, *International Legal Responses to Piracy off the Coast of Somalia*, ASIL INSIGHTS (Feb. 6, 2009), <http://www.asil.org/insights090206.cfm>.

¹² See Ahmed, *supra* note 10 (describing pirate exchanges, where local Somalis can invest in the piracy industry by contributing money or weapons to pirates and the investor then receives a share of ransom money in the case of a successful pirate attack); see also *The Spoils of Piracy*, NEPTUNE MAR. SECURITY (May 8, 2011), <http://neptunemaritimensecurity.posterous.com/the-spoils-of-piracy> (noting that among people benefiting from the proceeds of piracy are government officials).

¹³ Under international law, littoral states' territorial waters, which stretch out 12 nautical miles, are a sovereign part of the littoral state, and no other state has the authority to penetrate the littoral state's territorial sea. See, e.g., United Nations Convention on the Law of the Sea, arts. 2, 3, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]. Article 2 of UNCLOS states that “the sovereignty of a coastal state extends . . . to an adjacent belt of sea, described as the territorial sea.” Article 3 of UNCLOS limits the breadth of coastal states' territorial seas to 12 nautical miles.

The pirate modus operandi has been relatively simple. Pirates congregate on a mothership and from there launch attacks using tiny skiffs.¹⁴ Armed with AK-47s, rocket-propelled grenades (and in some instances, primitive weapons such as knives and small guns), pirates hijack victim vessels and sail them back to Somali ports.¹⁵ Pirates often demand millions of dollars for the release of their victims from shipping companies and even the victims' home states.¹⁶

Pirates and their warlords have prospered significantly in recent years.¹⁷ A single successful pirate attack can yield thousands of dollars to an individual pirate.¹⁸ Compared to the meager yearly income that average Somalis earn, it is understandable why piracy attracts so many young Somali men. Latest reports on piracy indicate that pirates are driven primarily by financial gain, and that pirates and warlords that often finance their operations have been prospering noticeably.¹⁹

In light of the significant security and financial concerns caused by Somali piracy, the international community became involved in major anti-piracy operations starting in 2008. However, combating piracy continues to pose several difficult issues for international law and international institutions.

III. INTERNATIONAL LAW AND PIRACY

The above-described Somali piracy crisis has sparked a response by the international community. Faced with economic harm and the security threat posed by Somali pirates over the last decade, major maritime nations have begun anti-piracy operations on several fronts. Some of these operations have required modifications to the traditional rules of international law rules, in order to enable piracy-fighting nations to catch and prosecute pirates effectively.

¹⁴ Todd Pitman, *Ending Somali Piracy: Few Options for US Forces*, ASSOCIATED PRESS (Apr. 14, 2009), http://seattletimes.nwsourc.com/html/nationworld/2009052659_appiracyfewoptions.html.

¹⁵ *Suspected Pirates Rescued in Gulf of Aden*, CNN (Dec. 4, 2008), http://articles.cnn.com/2008-12-04/world/yemen.pirates_1_pirate-attack-international-maritime-bureau-danish-navy?_s=PM:WORLD.

¹⁶ See Caroline Copley, *Somali Piracy Becoming "Criminal Enterprise,"* REUTERS (Feb. 16, 2011), <http://af.reuters.com/article/somaliaNews/idAFLDE71F27E20110216> (stating that pirates are now demanding between \$4.5 million to \$5 million in ransom per ship).

¹⁷ See, e.g., Sterio, *supra* note 6, at 1451 (reporting that an individual pirate can receive up to \$150,000 for a single seized ship); see also Ahmed, *supra* note 10 (citing a single pirate investor who earned \$75,000 in 38 days).

¹⁸ Kontorovich, *supra* note 11 (describing how in Somalia, the per capita GDP is \$600 compared to pirates earning \$150,000 in a single seizure).

¹⁹ Copley, *supra* note 16.

First, major maritime nations created several patrolling fleets, which routinely sail through the Gulf of Aden and which have succeeded in warding off numerous attempted pirate attacks.²⁰ International law in its traditional incarnation created a hurdle for the patrolling nations. Under the international rule of the law of the seas, every nation has the right to capture pirates on the high seas.²¹ The high seas are defined as the body of water stretching beyond the twelve-nautical mile territorial sea of littoral states.²² Patrolling nations, under international law, do not have the right to enter any nation's territorial sea.²³ Thus, if Somali pirates hijacked a victim vessel on the high seas but then quickly retreated into Somali territorial waters, patrolling nations were powerless to chase and stop them. Geography immensely helped pirates and undermined anti-piracy operations. In fact, the Gulf of Aden, where most pirate attacks took place in the beginning of the Somali piracy surge, is a narrow body of water, enabling pirates to speedily reach Somali territorial waters after a successful attack.²⁴

In order to remedy this problem, the U.N. Security Council passed several resolutions, beginning in 2008, which authorized patrolling nations to enter Somali territorial waters, to chase pirates after the original piracy encounter, and to even enter Somali land.²⁵ These Security Council resolutions modified existing international law rules with respect to Somalia and have contributed tremendously toward the success of anti-piracy operations.²⁶

²⁰ Sterio, *supra* note 6, at 1479.

²¹ UNCLOS, *supra* note 13, art. 105 (“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship . . . and arrest the persons and seize the property on board.”).

²² *See id.* art. 3.

²³ *See id.* art 2.

²⁴ *See* Kontorovich, *supra* note 11.

²⁵ S.C. Res. 1851, ¶ 6, U.N. Doc. S/RES/1851 (Dec. 16, 2008) (allowing for one year, states and regional organizations cooperating to end piracy off the coast of Somalia, the ability to undertake all necessary measures that are appropriate in Somalia to suppress piracy) [hereinafter Resolution 1851]; S.C. Res. 1846, ¶ 10(a), U.N. Doc. S/RES/1846 (Dec. 2, 2008) (authorizing states to enter Somali territorial waters for the purpose of repressing acts of piracy) [hereinafter Resolution 1846]; S.C. Res. 1844, U.N. Doc. S/RES/1844 (Nov. 20, 2008) (creating requirements for U.N. member states to stop the transfer of money that they suspect will be involved in Somali piracy acts) [hereinafter Resolution 1844]; S.C. Res. 1838, ¶¶ 2, 3, U.N. Doc S/RES/1838 (Oct. 7, 2008) (calling on U.N. member states to assist in the fight against piracy on the high seas off the coast of Somalia) [hereinafter Resolution 1838]; S.C. Res. 1816, ¶ 7, U.N. Doc. S/RES/1816 (June 2, 2008) (authorizing states to enter Somali territorial waters for the purpose of repressing acts of piracy) [hereinafter Resolution 1816].

²⁶ These resolutions specify that they are not supposed to modify existing customary rules in general, but rather, only apply to Somalia and only give broader use of force rights to the patrolling nations operating in the Gulf of Aden. Thus, no general modification of interna-

Second, major maritime nations faced hurdles caused by international law's narrow definition of piracy. The infamous United Nations Convention on the Law of the Sea ("UNCLOS") defined piracy as a violent attack taking place on the high seas, involving two vessels (the victim vessel and the aggressor vessel) and "committed for private ends."²⁷ This definition has been widely accepted as representing customary law.²⁸ Unfortunately, its approach and definition of piracy is narrow. First, piracy must occur on the high seas. If Somali pirates hijack a vessel in the Somali territorial sea, this act would not qualify as piracy under UNCLOS.²⁹ Thus, although patrolling nations may have the right to enter Somali territorial waters for the purpose of preventing pirate attacks, if attacks take place in such waters, they would not even amount to piracy under international law. Second, a pirate attack must involve two vessels: a victim and an aggressor vessel. This could be problematic for situations in which pirates attempt to board the victim vessel in its last port of entry and then hijack it on the high seas.³⁰ In such a case, although the hijacking strongly resembles piracy, it would not qualify as such under traditional international law. Third, the act of piracy must be committed for private aims. Should pirates be linked to a political cause or should they operate on behalf of a state entity, their acts would not qualify as piracy under international law.³¹ The latter two limita-

tional law rules can be implied from these Security Council resolutions. See Sterio, *supra* note 6, at 1474. (listing five reasons why the U.N. resolutions are limited in scope).

²⁷ UNCLOS, *supra* note 13, art. 101.

Piracy consists of any of the following acts:

- (a) any illegal act of violence, 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.

Id.

²⁸ See, e.g., Jon D. Peppetti, *Building the Global Maritime Security Network: A Multinational Legal Structure to Combat Transnational Threats*, 55 NAVAL L. REV. 73, 91–92 (2008).

²⁹ *Id.* at 92–93.

³⁰ Sterio, *supra* note 6, at 1468.

³¹ Many scholars believe that the "private aims" requirement in UNCLOS disqualifies acts committed for political, religious, ideological, or ethnic reasons from the definition of piracy. See, e.g., Peppetti, *supra* note 28, at 92 (describing the "private ends" restriction as too limiting for modern terrorism motivations); see also Lawrence Azubuike, *International Law Regime Against Piracy*, 15 ANN. SURV. INT'L & COMP. L. 43, 52 (2009) (describing general views that piracy does not include acts of violence committed on religious or ethnic grounds or for political reasons); but see Michael Bahar, *Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations*, 40 VAND. J. TRANSNAT'L L. 1, 27–28 (2007) (arguing that terrorist acts can qualify as piracy if the terrorists are not commissioned by a specific state).

tions on the definition of piracy have not been particularly problematic in the Somali context, as most pirate attacks have involved an aggressor “skiff,” and because pirates seem to be driven by pure financial gain.³² However, should their modus operandi or their motivation change, the UNCLOS definition could pose hurdles in the anti-piracy operations by excluding numerous violent acts from this treaty’s coverage.

In order to broaden the scope of anti-piracy operations, maritime nations have been forced to resort to other sources of international law. Nations that are members of the Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention” or “SUA”) have been relying on this treaty’s more expansive coverage of maritime violence.³³ Under SUA, piracy is not defined as such, but rather, it is viewed as one of many different possible acts of maritime violence which are prohibited by this convention.³⁴ Such acts of prohibited maritime violence can take place anywhere, as long as the victim vessel is in some form of international transit.³⁵ Moreover, such prohibited acts can involve only one vessel, and they can be committed for any aim, including political and state-sponsored violence. In fact, “[t]he SUA Convention illustrates the modern-day approach to piracy and the need to broaden its definition to encompass maritime aggression and terrorism, as opposed to confining its definition to the out-dated scope of sea robbery.”³⁶ The Security Council has repeatedly called for member states of this convention to fully implement it and to rely on it extensively when fighting Somali piracy.³⁷ Second, piracy-fighting nations could in the future rely on other anti-terrorist conventions, such as the International Convention Against the Taking of Hostages, the International Convention for the Suppression of the Financing of Terrorism, and the United Nations Convention Against Transnational Organized

³² See *supra* note 14 and accompanying text.

³³ See J. Ashley Roach, *Countering Piracy off Somalia: International Law and International Institutions*, 104 AM. J. INT’L L. 397, 406 (2010) (discussing how agreements like the SUA Convention “provide additional means of inflicting consequences on Somali pirates . . . by addressing certain gaps in the law of piracy”); see generally Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA Convention].

³⁴ See SUA Convention, *supra* note 33, art. 3 (defining the “offense” as a number of different acts that could be terrorism or piracy, and not limiting the offense to the customary definition of piracy).

³⁵ *Id.* art. 3.

³⁶ Sterio, *supra* note 6, at 1462.

³⁷ See, e.g., Resolution 1846, *supra* note 25, ¶ 15 (urging States parties to the SUA convention to fully implement their obligations against Somali pirates); see also Resolution 1851, *supra* note 25, at preamble (reiterating that the SUA Convention provides that parties establish procedures for prosecuting pirates); see also S.C. Res. 1950, ¶ 19, U.N. Doc. S/RES/1950 (Nov. 23, 2010).

Crime.³⁸ These options may become indispensable when dealing with the third hurdle caused by traditional international law: the non-matching jurisdictional rules for the capture and prosecution of pirates.

Under UNCLOS, any nation has the right to capture pirates on the high seas.³⁹ The capturing nation also has the right, under this convention, to prosecute pirates.⁴⁰ However, UNCLOS does not specifically condone the right for capturing nations to transfer pirates to third states for prosecution purposes. Many scholars have written on this issue: some have concluded that UNCLOS precludes pirate transfers to third states for prosecution, while some have argued that nothing in UNCLOS specifically prohibits such transfers, and that such transfers ought to be permitted in order to broaden the scope of anti-piracy measures.⁴¹ This point is particularly important because while many nations have been willing to capture pirates, most are not willing to prosecute them in their domestic courts. Piracy prosecutions are generally viewed as politically and logistically challenging and costly, and most nations have been unwilling to spend time and money on such burdensome investigative and prosecutorial efforts.⁴² Some pirates have been tried in domestic courts of the capturing nation, but most of those prosecutions occurred after pirates directly threatened the national interests of the prosecuting state by attempting to attack one of its vessels or to hijack one of its nationals.⁴³ Instances of Somali pirates' prosecutions based on true universal jurisdiction have been extremely rare.⁴⁴ Thus, capturing states have been facing a difficult issue: what to do with captured pirates in in-

³⁸ International Convention Against the Taking of Hostages, Dec. 17, 1979, 1316 U.N.T.S. 205; International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 39 I.L.M. 270; United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209.

³⁹ UNCLOS, *supra* note 13, art. 105.

⁴⁰ *Id.* ("The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property . . .").

⁴¹ For the view that UNCLOS prohibits the transfer of pirates by the capturing state to third states for prosecution purposes, compare Kontorovich, *supra* note 11 (UNCLOS prohibits the transfer of pirates by the capturing state to a third state for prosecution purposes), with Azubuike, *supra* note 31, at 54–55 (UNCLOS does not specifically prohibit transfer of pirates to third states because the jurisdiction of the capturing state is merely permissive and pirates are subject to universal jurisdiction) and Roach, *supra* note 33, at 404 (arguing that UNCLOS does not specifically prohibit the transfer of pirates to third states for prosecution).

⁴² See Kontorovich, *supra* note 11 ("[I]n practice, the nations patrolling the Gulf of Aden have chosen not to prosecute pirates because of the anticipated difficulty and expense.").

⁴³ See generally Eugene Kontorovich & Steven Art, *An Empirical Examination of Universal Jurisdiction for Piracy*, 104 AM. J. INT'L L. 436, 436 (2010) (examining different countries' exercise of jurisdiction over Somali pirates).

⁴⁴ *Id.* at 445 (concluding that prosecution rates for pirates under universal jurisdiction were at only 1.47% from 1998–2009).

stances where the capturing state is unwilling to prosecute them in its own courts, and where international law may prohibit a transfer to a third state.⁴⁵ Some NATO countries have routinely released captured pirates, resulting in a catch-and-release attitude which has only exacerbated the piracy problem in Somalia.⁴⁶ Russia, for example, has even resorted to drastic measures: after a Russian ship captured Somali pirates, they were released on a tiny boat in the middle of the Indian Ocean, with no food, water, or navigation devices.⁴⁷ The fate of these pirates remains unknown, but even Russian authorities have acknowledged that these Somalis probably died.⁴⁸ This attitude is far from desirable, but nonetheless illustrates the frustration that some piracy-fighting nations have experienced when dealing with captured pirates.

Possible solutions to this issue include promoting a broader interpretation of UNCLOS and customary law, arguing that international law does not specifically prohibit capturing states from transferring pirates to third states for prosecution, or reliance on other conventions, such as SUA and other anti-terrorism treaties, which do not limit capturing states to prosecution in their own courts. Most piracy-fighting nations have preferred to transfer pirates to third states for prosecution purposes, and have creatively circumvented the restraints of international law by relying on broader definitions of piracy described above.

IV. THE WAY FORWARD?

Many piracy-fighting nations have preferred to use regional partners in their efforts, such as Kenya, the Seychelles and Mauritius. Additionally, these nations have transferred captured pirates to the national courts of the regional partner states.⁴⁹ In Kenya, a specialized piracy court was created in Mombasa where numerous pirates have faced prosecution.⁵⁰ Similar options are being explored in the Seychelles and in Mauritius, which are

⁴⁵ See, e.g., Kontorovich, *supra* note 11 (noting that states which are signatories to certain human rights treaties, such as the European Convention for Human Rights and the International Covenant for Civil and Political Rights, may also have a non-refoulement obligation not to send pirates to a third state if there is a risk that they will be mistreated or abused there).

⁴⁶ *Id.* (“The dominant approach has been to avoid capturing pirates in the first place, or, if captured, releasing the pirates without charging them with a crime.”).

⁴⁷ *Freed Somali Pirates ‘Probably Died’ – Russian Source*, BBC NEWS (May 5, 2010), <http://news.bbc.co.uk/2/hi/8675978.stm>.

⁴⁸ *Id.*

⁴⁹ See, e.g., James Thuo Gathii, *Kenya’s Piracy Prosecutions*, 104 AM. J. INT’L L. 416, 416–17 (2010) (noting that Kenya has concluded agreements on the prosecution of suspected pirates with the United Kingdom, the United States, the European Union, and Denmark).

⁵⁰ *Id.* at 417.

Indian Ocean island-nations potentially affected by the Somali piracy crisis.⁵¹ Some scholars have advocated the creation of an ad-hoc international piracy tribunal to prosecute all captured pirates.⁵²

The U.N. has been involved in the piracy crisis as well, and it will likely continue to play an important role in the future. As mentioned above, the U.N. Security Council has passed several resolutions addressing piracy in Somalia.⁵³ Lately, the U.N. has been specifically concerned with determining the best prosecution venue for captured pirates. Toward this end, the U.N. summoned Jack Lang, a French politician, to study the issue and produce a report, which was published in January 2011.⁵⁴ The Jack Lang report recommended the creation of a Somali extra-territorial court.⁵⁵ In other words, the report advocated for a Somali national prosecution of Somali pirates, while recognizing the difficulty of establishing a functioning tribunal in war-torn Somalia.⁵⁶ Thus, the report recommended that the tribunal be established in the neighboring country of Tanzania.⁵⁷ This tribunal would apply Somali law and function as a purely national jurisdiction, but its headquarters would be located outside of Somalia for obvious security reasons.⁵⁸ While this solution appeared attractive initially, it has faced resistance from Somalia, and without Somali support for the establishment of a Somali court, it seems that this option will not receive much support in the future.⁵⁹ It is thus possible that piracy-fighting nations will turn more intent-

⁵¹ *International Cooperation with Seychelles Crucial Against Maritime Piracy, INTERPOL Chief Tells Country's Authorities*, INTERPOL (June 20, 2011), <http://www.interpol.int/Public/ICPO/PressReleases/PR2011/PR052.asp> (describing anti-piracy efforts in the Seychelles); *Mauritius to Host Second Regional Ministerial Conference on Piracy*, REPUBLIC OF MAURITIUS (Aug. 31, 2010), http://www.gov.mu/portal/site/Mainhomepage/menuitem.a42b24128104d9845dabddd154508a0c/?content_id=f6dd3f5f7e6ca210VgnVCM1000000a04a8c0RCRD (describing anti-piracy efforts in Mauritius).

⁵² See Milena Sterio, *Fighting Piracy in Somalia (and Elsewhere): Why More is Needed*, 33 *FORDHAM INT'L L. J.* 372, 395–96 (2010); see also Peppetti, *supra* note 28, at 148 (suggesting that the semi-internationalized tribunals be vested with universal jurisdiction to try piracy cases).

⁵³ See *supra* note 25 and accompanying text.

⁵⁴ Special Adviser to the Secretary-General on Legal Issues Related to piracy off the Coast of Somalia, *Rep. of the Special Adviser to the Secretary-General*, U.N. Doc. S/2011/30 (Jan. 25, 2011) [hereinafter Jack Lang Report].

⁵⁵ *Id.* ¶ 122.

⁵⁶ *Id.* ¶¶ 104–08 (recommending the creation of an extra-territorial Somali court as well as supplementing Somali law by including the offense of piracy).

⁵⁷ *Id.* ¶ 122.

⁵⁸ *Id.* (promoting three main advantages of the extra-territorial court, including strengthening the rule of law in Somalia, garnering international support for the rule of law Somalia, and promoting existing tribunals).

⁵⁹ *UN Outlines Judicial Options to Fight Piracy off Somalia*, SCOOP.COM (June 22, 2011), <http://www.scoop.co.nz/stories/WO1106/S00508/un-outlines-judicial-options-to-fight-piracy>

ly toward identifying stable regional partners, in addition to Kenya, which could handle large-scale piracy prosecutions.

Moreover, the U.N. established the Contact Group on Piracy off the Coast of Somalia (the “Contact Group”), a group of state representatives of various specialties which meets several times per year and which has been working on promoting solutions for the Somali piracy crisis.⁶⁰ It is possible that the Contact Group will in the future work more closely with shipping industry representatives toward identifying the best anti-piracy measures.⁶¹ The optimal solution may be to proliferate patrols in the Indian Ocean, to encourage all patrolling nations to capture pirates whenever possible, and to prosecute all captured pirates in the national courts of identified regional partners. Regional partners could, in turn, receive monetary assistance from major maritime states and the shipping industry itself.

V. CONCLUSION

Clearly, piracy in Somalia is here to stay. Instead of hoping that piracy will disappear on its own, the global community should focus on finding the most adequate solutions to lower the number of pirate attacks. The discussion above highlights some of the legal and practical steps that have already been undertaken. Such steps include increased maritime patrols in the Indian Ocean, routine arrests of apprehended pirates, and a concerted effort among patrolling nations to find the most adequate tribunal to prosecute such pirates. If all of these steps are routinely exercised by piracy-fighting countries, piracy incidents will most likely be reduced in number, frequency and scope. Moreover, serious anti-piracy efforts in Somalia may be effective in preventing the proliferation of piracy in other regions in Africa or elsewhere. Major maritime nations should ensure that pirates do not become *hostis humani generi* in the 21st century.

-off-somalia.htm (noting that the Somali Transitional Government does not support the establishment of a Somali court outside of Somalia, and that it prefers the establishment of any piracy court within Somalia).

⁶⁰ Office of the Spokesman, U.S. Dep’t of State, *Contact Group on Piracy off the Coast of Somalia Meets in New York*, U.S. DEP’T STATE (Nov. 9, 2010), <http://www.state.gov/r/pa/prs/ps/2010/11/150695.htm>.

⁶¹ *Id.* (identifying the Contact Group achievements working with the shipping industry to develop measures which merchant ships can undertake to deter or delay pirate attacks).