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The international community has continued to respond to the resurgence in piracy with an array of strategies that involve tactical, social, political, and economic responses. However, one trend the international community has largely overlooked is the proliferation of juvenile piracy. There is little data on the use of child pirates, and those involved in counter-piracy efforts have not adequately considered the effects of juvenile piracy in addressing the piracy problem as a whole. As such, this article examines juvenile piracy through a socio-economic lens by exploring its root causes and consequences on operational and legal responses, which must be tailored to meet the unique challenges that child piracy poses. Further, this article draws parallels between child pirates, child soldiers, and youth gangs to better understand the factors leading to their recruitment. In addition to increasing awareness of youth involvement in piracy and bridging the informational gap in this area, this article provides recommendations for moving forward, which include shifting to a demand-side approach in tackling piracy; creating an international standard on the treatment of juvenile pirates; and cooperating with various stakeholders to devise new mechanisms to deal specifically with juvenile piracy.

CONTENTS

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I. INTRODUCTION

According to the Failed States Index Data 2011, created by the Fund for Peace Organization, six countries most affected by piratical activity fall within the top fifteen most fragile states. This list includes Somalia, Cote d'Ivoire, Guinea, Pakistan, Yemen and Nigeria.[1] Piracy is not the main factor as to why these countries are fragile; at the same time, not all fragile littoral states have marine piracy. However, this does demonstrate the importance of looking at the broader social, political, and economic environment that enables piracy. Understanding the human factors associated with piracy and its root causes is critical to the development of solutions to address piracy.

The Dalhousie Marine Piracy Project (DMPP) has undertaken such an integrated and interdisciplinary approach to addressing the problem of contemporary piracy and its impact on the shipping and coastal communities. In so doing, the DMPP comprehensively examined the four interdependent themes of Law and Governance, Socio-Economics, Operational Responses, and Information Management; assessed current literature on the topic of contemporary marine piracy; and, through analysis of that work, highlighted potential areas for policy development and implementation.

Piracy appears to develop where weak or non-existent government and enforcement capabilities, impoverished coastal communities, and shipping targets exist in relatively close proximity. Other elements such as organized criminality, youth unemployment, political conflict and even natural disasters may also contribute to the likelihood of piracy emerging as a major threat to shipping in a particular region. The DMPP, with the intention of identifying and evaluating the effectiveness of current and proposed responses to piracy, has examined the economic, political and social conditions that have led to contemporary outbreaks of piracy.

This article highlights an important and growing issue identified from the DMPP research. Of deep concern is the increasing evidence that piracy gangs are recruiting children and youth, and yet those who are responsible for addressing piracy have failed to recognize this problem and the complexities it introduces. For this particular problem, however, it is important to note that a systematic collection of data on this matter does not currently exist, thus it has been difficult to conduct a clear, evidenced-based assessment of the situation. As such, three key objectives of this article are to: (1) raise the awareness of those involved in either studying or addressing

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1. THE FUND FOR PEACE, THE FAILED STATES INDEX 2011, at 6 (2011), *available at* http://www.fundforpeace.org/global/library/cr-11-14-fs-failedstatesindex2011-1106p.pdf.

piracy of their failure to address the question of children and youth involvement; (2) provide a rationale for states who are capturing, releasing, reporting, and prosecuting those involved in piratical activity to collect and improve accessibility of disaggregated data on those committing piracy; and (3) provide possible alternatives to addressing marine piracy by focusing on the challenges posed by the involvement of children and youth. In addition, it should be noted that many who are involved in studying or addressing marine piracy have failed to pose questions regarding the involvement of children and youth. This means that closing the critical gap in the data collection, research, and responses to marine piracy has yet to be considered as a potential approach in the overall effort to halt or reduce marine piracy.

II. CHILDREN AND YOUTH PIRATES

The U.N. Convention on the Rights of the Child (UNCRC) provides in Article 1 that the term "child" means "every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier."[2] The UNCRC is one of the most universally accepted international conventions, with 140 signatories and 193 parties to the Convention.[3] This particular definition has implications for the age at which an individual can be charged for the offense of piracy and the procedures that must be followed in the handling of young offenders.

It is estimated that there are 2.2 billion people in the world below the age of eighteen years, and nearly two billion of these children live in the developing world.[4] These demographics have an impact on the involvement of children in criminal activity and armed conflict, as far too often the current balance of power in the world leads to the exploitation of the innocent and less powerful.[5]

The evidence that does exist with respect to the use of children and youth in piracy activity indicates that the socio-economic factors (poverty, armed violence, lack of educational or employment opportunities, orphans, displacement, and exposure to disease) that

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2. 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).

3. Status of the Convention on the Rights of the Child, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src= TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last updated Apr. 8, 2014).

4. *Children Living in Poverty*, UNICEF, http://www.unicef.org/sowc05/english/poverty.html (last visited Apr. 1, 2014).

5. *See* Shelly Whitman, *The Responsibility to Protect and Child Soldiers*, *in* THE ROUTLEDGE HANDBOOK ON THE RESPONSIBILITY TO PROTECT 152, 154 (W. Andy Knight & Frazer Egerton eds., 2012).

make children vulnerable and thus prone to use by armed groups exists in each of the major areas in which piracy currently is reported. Additionally, in many of the regions where piracy exists, children are being used by terrorist groups, criminal gangs, and state and non-state armed groups (e.g. Somalia, Nigeria, Haiti).[6] Therefore, the use of children and youth by pirates could be viewed as a natural extension of these armed groups.

A major reason for this use can also be attributed to factors that would impact the use of children in piracy, such as poverty, high youth unemployment, and weak state structures that lead to a lack of social programming. It may be argued that the current demographics showing children constituting at least 50 percent of the population,[7] in addition to the average life expectancy rates that may impact the average age of the workforce and easy access to small arms and light weapons, also play key roles in child-pirate recruitment. In addition, children often come from families that have partaken in piracy, such as in Somalia, and are therefore exposed at a young age to the business.

Following the Paris Principles definition of a child soldier, the Roméo Dallaire Child Soldiers Initiative defines a pirate as any person below eighteen years of age who is or who has been recruited or used by a pirate gang in any capacity, including but not limited to children—boys and/or girls—used as gunmen in boarding parties, hostage guards, negotiators, ship captains, messengers, spies or for sexual purposes. This definition does not only refer to a child who is taking, or has taken, a direct part in kinetic criminal operations.[8]

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6. *See generally* U.N. Human Rights Council, 19th sess., Annual Report of the Special Representative of the Secretary-General on Violence Against Children, U.N. Doc. A/HRC/19/64 (Jan. 13, 2012), *available at* http://srsg.violenceagainstchildren.org/sites/default/files/documents/do cs/A-HRC-19-64_EN_2.pdf (discussing major areas in which the U.N. can combat both violence against children and the involvement of children in violence).

7. *See, e.g.*, *Somalia: Statistics*, UNICEF, http://www.unicef.org/ infobycountry/somalia_statistics.html (last visited Jan. 27, 2014) (stating that the population of Somalia under 18 is approximately 4,896,000 out of a total population of approximately 9,557,000, or approximately 51.2% of the population); *Nigeria: Statistics*, UNICEF, http://www.unicef.org/infobycountry/nigeria_statistics.html (last visited Jan. 27, 2014) (stating that the population of Nigeria under 18 is approximately 79,931,000 out of a total population of approximately 162,471,000, or approximately 49.2% of the population); *Haiti: Statistics*, UNICEF, http://www.unicef.org/infobycountry/haiti_ statistics.html (last visited Jan. 27, 2014) (stating that the population of Haiti under 18 is approximately 4,271,000 out of a total population of approximately 10,124,000, or approximately 42.2% of the population).

8. UNICEF, *The Paris Principles: The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* ¶ 2.1

The media first gave significant attention to the use of children in piracy as a result of the MV *Maersk Alabama* attack in the Gulf of Aden in April 2009.[9] Following this incident, the Indian Navy discovered that 25 out of 61 pirates arrested were under the age of fifteen years old, four of whom were estimated to be just eleven years old.[10] Based on 2011 media reports, the DMPP's research showed that child pirates on trial comprise the following numbers:

Country of Trial	Numbers of Pirates on Trial	Number of Pirates on Trial Under 18 Years Old
France	6	1
India	61	38
Germany	10	3
Malaysia	7	3 – 15-year-olds 2 – 18-year-olds
USA	3*	3

*Regarding one yacht hijacking, one pirate on trial is fifteen years old; with respect to the MV *Maersk Alabama*, four pirates are on trial, including one sixteen-year-old that was shot and one between seventeen to nineteen years old that has been sentenced to thirty-four years in prison.[11]

(Feb. 2007), *available at* http://www.child-soldiers.org/childsoldiers/ Paris_Principles_March_2007.pdf.

9. *See, e.g.*, Clarissa Pinkola Estés, *Somali "Pirate" Wanted US Protection: He's 16 Years Old*, THE MODERATE VOICE (Apr. 12, 2009), http://themoderatevoice.com/28756/somali-pirate-wanted-us-protection-hes-16-years-old/.

10. Rajat Pandit, *25 of 61 Pirates Arrested by Navy at Sea Are Children Below 15 Yrs*, TIMES OF INDIA (Mar. 17, 2011), http://timesofindia.indiatimes.com/india/25-of-61-pirates-arrested-by-Navy-at-sea-are-children-below-15-yrs/articleshow/7723224.cms.

11. See the following newspaper articles for sources for numbers of child pirates: *id.*; *3 Teenage Boys Among 7 Somalis Facing Death in Malaysia Piracy Case*, CNN (Feb. 11, 2011, 10:41 AM), http://news.blogs.cnn.com/2011/02/11/3-teenage-boys-face-death-in-malaysia-piracy-case/; Mark Schenkel, *Dutch Court Looks at 'Child Pirate' Case*, VORIGE.NRC (May 20, 2010), http://vorige.nrc.nl/ international/article2548321.ece; Allan Hall, *Ten 'Somali Pirates Who Hijacked Naval Ship' Go on Trial in Germany*, DAILY MAIL (Nov. 22, 2010), http://www.dailymail.co.uk/news/article-1332009/Ten-Somali-pirates-hijacked-naval-ship-trial-Germany.html; *Italy to Try Accused Somali Pirates*, UPI (Feb. 20, 2012), http://www.upi.com/Top_News/ World-News/2012/02/20/Italy-to-try-accused-Somali-pirates/UPI-49821329782555/; *France Tries Somali Men Accused of Piracy*, EURO NEWS (Nov. 15, 2011), http://www.euronews.com/2011/11/15/france-

On marine piracy, the former U.N. Special Representative of the Secretary-General on Children and Armed Conflict, Ms. Radhika Coomaraswamy, commented that a jailed pirate in Puntland had told her that former pirates who had become wealthy increasingly relied on child recruits to seize ships for ransom.[12] Many of the people in charge of piracy operations are not out on the seas themselves but on shore in their homes in Somalia or Kenya. The people they actually send out to "do the dangerous stuff are young children and youth, between the ages of 15, 16 and 17," says Coomaraswamy.[13] She also stated that if an international criminal tribunal is convened to deal with the perpetrators of acts of piracy, no child should be tried in the same court as adults.[14] Instead, child pirates should be rehabilitated and integrated back into their communities.[15]

Armed groups and criminal gangs view children as desirable in part due to their lack of accountability under legal proceedings depending on the national laws in question. It is therefore imperative to ensure that the leaders and organizers of armed groups and criminal activity are held responsible for the use of children. As Ishmael Beah, former child soldier from Sierra Leone and International Advocate for Children's Rights, stated, "No child has ever started an armed conflict."[16] Much like child soldiers in armed conflict, children used in piracy are not the organizers of the activity and addressing an end to the crime requires addressing the business model at its core.[17]

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tries-somali-men-accused-of-piracy/; Estés, *supra* note 9. *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.

12. *The Other Victims of Piracy – Kids*, MAR. ACCIDENT (Nov. 9, 2010), http://maritimeaccident.org/2010/11/the-other-victims-of-piracy-kids/.

13. *Id.*

14. *Id.*

15. *Id.*

16. Kirsten Johnson et al., *From Youth Affected by War to Advocates of Peace, Round Table Discussions with Former Child Combatants from Sudan, Sierra Leone and Cambodia*, 16 J. INT'L PEACEKEEPING 152, 156 (2012).

17. *See* L. FANNING, M. SLOAN, S. WHITMAN, H. WILLIAMSON & S. DOUGLAS, EXPLORING AN INTEGRATED APPROACH TO THE SUPPRESSION AND PREVENTION OF MARINE PIRACY 12–18 (MARINE AFFAIRS PROGRAM TECHNICAL REPORT #4) (2012), *available at* http://www.dal.ca/faculty/science/marine-affairs-program/research/research-news/map-technical-series-reports.html (summarizing the main findings from the socio-economic module, which include looking at the root causes of piracy and the conditions which lead to child recruitment).

The DMPP's research at this point has confirmed parallels between the recruitment of child soldiers and child pirates. In both cases, armed groups use children and youth for the same reasons: they are vulnerable and easily manipulated; fearless and do not understand the long-term consequences of their actions; cheap; plentiful in many developing countries; small sized, which may be advantageous; and easily indoctrinated.

The case study of the Liberation Tigers of Tamil Eelam ("LTTE") in Sri Lanka highlights many of the key parallels between child soldiers and child pirates in that children were equally vulnerable to recruitment in both capacities. Over the course of the thirty-year conflict in Sri Lanka, the LTTE repeatedly "recruited and used children, some as young as nine, as soldiers."[18] According to Sri Lankan government estimates, at least 60 percent of LTTE fighters were below the age of eighteen, although a study of actual LTTE casualties would suggest that some "40% of the [group's] fighting force consisted of children aged between nine and 18."[19] These underage soldiers were frequently made to fight at the war's front lines and were often used as suicide bombers.

As part of its military strategy, the LTTE maintained "the most comprehensive naval networks among the [U.S.-designated] foreign terrorist organizations."[20] This branch of operations, called the Sea Tigers, launched a multitude of attacks upon international cargo ships, including several—such as the Greek-registered freighter *Stillus Limassul*—that were carrying weapons to be used by the Sri Lankan military.[21]

Like its army, the LTTE's naval branch actively recruited and deployed child soldiers. Indeed, there is evidence that during periods of LTTE-sponsored disarmament of child soldiers, underage members of the Sea Tigers were surreptitiously retained, as they had frequently received resource-intensive training that made them particularly strong military assets.[22] It was also common for "[v]ery young Tamils

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18. *Sri Lanka: Call for a UN Human Rights Monitoring Mission and Investigation of All Child Recruitment*, RELIEFWEB (Dec. 13, 2006), http://m.rwlabs.org/report/221370/sri-lanka/sri-lanka-call-for-a-un-human-rights-monitoring-mission-and-investigation-of-all-child-recruitment (last visited Apr. 8, 2014).

19. CHARU LATA HOGG, CHILD RECRUITMENT IN SOUTH ASIAN CONFLICTS: A COMPARATIVE ANALYSIS OF SRI LANKA, NEPAL, AND BANGLADESH 9 (2006).

20. Sanjeewa Karunaratne, *LTTE's Era of Sea Piracy Has Ended*, ASIAN TRIBUNE (Apr. 21, 2009), http://www.asiantribune.com/?q=node/16950.

21. *Id.*

22. *See* HOGG, *supra* note 19, at 8–9 (noting how Tamil schools were militarized and children were given extensive military training); Child

(some as young as 13) [to be] pressed into service to fill the [naval] ranks as the long running insurgency depleted LTTE manpower."[23]

It should be noted that while many children are abducted and forcibly recruited, others join "voluntarily." However, the "voluntary" enlistment must be understood in terms of the limited choices and circumstances that may exist in the context of a particular country. Many children are vulnerable to abduction or recruitment into armed groups due to the following reasons: extreme poverty; displacement; separation from their families; limited social and educational opportunities; and exposure to armed conflict.

In Somalia, which demonstrates the highest involvement of child and youth pirates, it appears as if most young people are joining on a "voluntary" basis. Joining a pirate group will potentially improve one's socio-economic status and position in society, and young and wealthy pirates are challenging the authority of both elders and Islamic teachings.[24] Similarly, in Southeast Asia, attacks are carried out by low-ranking members of the syndicate or by recruits from the area. The latter are typically composed of either "unemployed or desperate fishers," who have the nautical skills needed to navigate and participate in the attacks,[25] or by urban youth on "stand by."[26] This reality for youth is further entrenched in the idea that pirates are viewed as "champions, . . . fighters for justice, . . . and . . . men to be admired."[27]

Soldiers Int'l, *Child Soldiers Global Report 2008 – Sri Lanka* (May 20, 2008), http://www.refworld.org/docid/486cb131c.html (reporting that despite promises to release all soldiers under the age of eighteen from its ranks, the LTTE continued to recruit and retain child soldiers).

23. Paul A. Povlock, *A Guerrilla War at Sea: The Sri Lankan Civil War*, SMALL WARS J. 20 (Sept. 9, 2011), http://smallwarsjournal.com/jrnl/art/a-guerilla-war-at-sea-the-sri-lankan-civil-war.

24. *See* Rudolph Atallah, Pirate Financing: Understanding and Combating a Complex System 3 (Apr. 18–19, 2011) (on file with UAE Counter-Piracy Summit), *available at* http://www.uaecounterpiracy summit.com/briefing_papers/Atallah,%20Pirate%20Financing%20Under standing%20and%20Combating%20a%20Complex%20System.pdf.

25. CAROLIN LISS, OCEANS OF CRIME: MARITIME PIRACY AND TRANSNATIONAL SECURITY IN SOUTHEAST ASIA AND BANGLADESH 113 (2011).

26. Eric Frécon, Combating the "Pirate Hydra": Addressing Root Causes in the Strait of Malacca 2 (Apr. 18–19, 2011) (on file with UAE Counter-Piracy Summit), *available at* http://uaeoceansecurity.com/briefing_papers/Frecon%20Combatting%20the%20Pirate%20Hydra%20Addressing%20Root%20Causes.pdf.

27. Carolin Liss, *Maritime Piracy in Southeast Asia*, S.E. ASIAN AFF. 52, 61 (2003).

In Nigeria, young unemployed men, in particular, are frequently enticed into the organized pirate gangs operating in the Delta region by "promised riches, fancy cars, luxury consumer goods and weapons,"[28] such that these gangs are increasingly composed of younger members. It has also become recognized in Nigeria that social mobility and the struggle for survival now necessitate the use of violence as "[s]ociety gradually stopped recognising merit and force became a plausible avenue to the top of the social and economic strata with drug trafficking, smuggling and other perceived negative moneymaking ventures like armed robbery and pen-robbery, [which were] attractive ways of getting rich quickly."[29]

In Latin America there is less direct evidence of the use of youth in piracy operations. However, the coupling of crime with high levels of unemployment in the region is undisputed, suggesting fertile conditions for child recruitment. There is also anecdotal evidence to suggest the use of children by criminal gangs has been prevalent in Colombia, Brazil, Haiti, Honduras, El Salvador, and Guatemala.[30]

III. "WORST FORM OF CHILD LABOUR"

A specific problem exists where underage, or possibly underage, piracy suspects are detained or arrested at sea by warships involved in anti-piracy activities. Most of the states involved in anti-piracy patrols are parties to the International Labour Organization (ILO) Conventions on the Worst Forms of Child Labour.[31] State Parties to the Convention have agreed to prevent injuries and protect children from the worst forms of child labour. As noted in Article 3(c), the term "worst forms of child labour" includes, "the use, procuring or offering of a child for illicit activities."[32] While the provision specifically mentions the use of children for drug trafficking, it is not restricted to that activity alone. Under the ILO Convention and the Recommendation Concerning the Prohibition and Immediate Action

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28. Donna Nincic, *Maritime Piracy in Africa: The Humanitarian Dimension,* 18 AFR. SECURITY REV. 2, 7 (2009).

29. Yomi Oruwari & Opuene Owei, *Youth in Urban Violence in Nigeria: A Case Study of Urban Gangs from Port Harcourt* 4 (Univ. of Calif., Berkeley Inst. of Int'l Studies, Working Paper No. 14, 2006).

30. *See* Edward Fox, *Why Children Are Low-Risk Labor for Latin America's Drug Gangs*, INSIGHT CRIME (May 15, 2012), http://www.insightcrime.org/news-analysis/why-children-are-low-risk-labor-for-latin-americas-drug-gangs; UNICEF, CHILD ALERT: HAITI 3 (2006), *available at* http://www.unicef.org/childalert/haiti/content/Child%20Alert%20Haiti%20(En).pdf.

31. *See* Int'l Lab. Org. Worst Forms of Child Labour Convention, June 1, 1999, No. 182.

32. *Id.* art. 3(c).

for the Elimination of the Worst Forms of Child Labour, the obligation is broader, parties are required to prevent the engagement of children in, or remove them from, the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration.[33] Further, there are measures which address the educational, physical, and psychological needs of children as well.[34]

International advocates for the rights of children strongly argue that the combination of these legal requirements mean that when anti-piracy forces apprehend suspected pirates under the age of eighteen, the forces are legally obliged to put the youths in a safe and suitable location and not return them to their adult criminal gangs.[35] This would help eliminate the "catch and release" of juvenile pirates by making it a legally problematic practice, as children are returned to their adult piracy gangs in contravention of international law. Arresting and detaining a suspected child pirate, however, would require the arresting forces to apply the legal provisions of their national laws concerning the treatment of young or juvenile offenders.[36]

However, releasing a group of suspected pirates, which include those believed to be under eighteen years old, would be returning the juveniles to a worst form of child labour. It would be the equivalent of releasing a group of underage "drug mules" back to the drug cartel that employed them in the first place. In practical terms, once a child pirate is in the custody of anti-piracy forces, it may be extremely difficult to discharge obligations with respect to the rights of the child, the forces being unwilling to criminally prosecute the children and unable to release them into a potentially criminal situation.

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33. *See id.* arts. 1, 7; Int'l Lab. Org. [ILO], Worst Forms of Child Labour Recommendation, No. 190, ¶ 2(b) (June 17, 1999).

34. ILO, *supra* note 33, ¶ 2(b).

35. *See, e.g.*, Danielle Fritz, Note, *Child Pirates from Somalia: A Call for the International Community to Support the Further Development of Juvenile Justice Systems in Puntland and Somaliland*, 44 CASE W. RES. J. INT'L L. 891, 901 & n.60 (2012) (stating that in order to comply with international obligations, captured juvenile pirates should be kept separately from the adult pirates).

36. *See* Special Advisor to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, Annex Report to the Letter dated Jan. 24, 2011 from the Secretary-General to the President of the Security Council, ¶ 14, U.N. Doc. S/2011/30 (Jan. 25, 2011) (by Jack Lang) (noting that more than 90 percent of apprehended pirates are released without prosecution, making "the risk-reward ratio for the pirates negligible" and thereby encouraging piracy).

IV. CRIMINAL EMPLOYMENT OF CHILDREN

With half the populations of countries in the Horn of Africa being under the age of eighteen, a large number of pirates caught are juveniles.[37] Their situation is extremely similar to that of child soldiers. Both are readily available, financially desperate, under or uneducated with little expectation of employment, and are continuously exposed to the violence and degradation found in failed and failing states.[38]

The enticement of apparent wealth that piracy can bring, coupled with more aggressive forms of coercion, has resulted in a serious increase in the number of juvenile members of pirate crews. Traditionally, international programs, which target the criminalization of youth, have focused on street gangs and the drug trade, which are by far the most prevalent employer. The 1990 U.N. General Assembly Resolution on the Instrumental Use of Children in Criminal Activities focused on the threat to the well-being of children and called for measures to eliminate the criminal employment of children by adults.[39]

Traditionally, the problem of the criminal employment of children was viewed as a national one. While it can be found in many places around the world, it has been addressed within a national perspective since it involves criminal activities taking place within an individual country, and the problems of one country would not necessarily affect its neighbours or even more distant states. However, piracy is different given its far-reaching effects on members of the shipping industry and global trade. In this case, the use of child pirates has become a global area of concern, and since child piracy may be viewed as an international problem, it may be addressed by an international solution.

It has been emphasized that the nature of child piracy brings the problem to the attention of those involved in the elimination of child exploitation.[40] Further, child pirates operate in international waterways and are being picked up and detained by foreign naval

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37. *See Child Pirates: Raising Awareness About a Serious Issue*, RCI (Mar. 20, 2013), http://www.rcinet.ca/english/daily/interviews-2012/14-23_2013-03-20-child-pirates-raising-awareness-about-a-serious-issue/ (finding that juveniles comprise nearly a third of pirates).

38. *See* Whitman, *supra* note 5, at 154 (listing some of the basic reasons armed groups use children).

39. Instrumental Use of Children in Criminal Activities, G.A. Res. 45/115, U.N. Doc. A/RES/45/115 (Dec. 14, 1990).

40. *See* Whitman, *supra* note 5, at 161 ("Protecting children from being used by armed groups has many immediate and long-term benefits on a global scale.").

forces. This makes them not only the responsibility of the detaining forces but also more accessible to programs designed to remove them from criminality.

There is also a strong belief among those working with child soldiers that a child or juvenile pirate faces exactly the same life-threatening dangers, exploitation by adults, and other abuses as does a child soldier.[41] If there is no real quantifiable difference between a child soldier and the child pirate, then there is a case for making the employment of children in piracy a crime for which the International Criminal Court (ICC) should have jurisdiction.[42] This argument has a number of attractive features, the main one being that it would place organizers and backers of piracy in an extremely dangerous legal position, as they would be subject to international arrest warrants and extraditions to face the ICC.[43]

International anti-piracy advocates have long expressed concern over the lack of mechanisms that can be used to institute legal action against kingpins or organizers of maritime piracy,[44] especially in a situation as in the Horn of Africa, where a large percentage of pirates are under the age of eighteen. Making the employment of juvenile pirates an "international" crime could significantly deter those who stand behind pirate enterprises. Treating major piracy leaders who employ child pirates the same as the warlords who employ child soldiers, issuing international arrest warrants, and holding high-profile criminal trials would make the employment of child pirates an

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41. *See, e.g.*, *SOMALIA: Children Facing the Worst, Says UN,* IRIN NEWS (Nov. 4, 2010), http://www.irinnews.org/report/90977/somalia-children-facing-the-worst-says-un (commenting on the vulnerability of children in Somalia, and how both child pirates and child soldiers face similar threats, fears, and exploitation).

42. *See* Duncan Gaswaga, *Article: Does the International Criminal Court Have Jurisdiction over the Recruitment and Use of Child Pirates and the Interference with the Delivery of Humanitarian Aid by Somali Pirates?*, 19 ILSA J. INT'L & COMP. L. 277, 304 (2013) (concluding that in light of the *Lubanga* case, pirate financiers who recruit children are equally liable under the ICC as those who conscript child soldiers).

43. *See* Yvonne M. Dutton, *Bringing Pirates to Justice: A Case for Including Piracy Within the Jurisdiction of the International Criminal Court*, 11 CHI. J. INT'L L. 197, 241 (arguing for ICC jurisdiction over piracy crimes because it would help close the "impunity gap" and likely deter some pirates).

44. *See Somali Pirate Kingpins Enjoy "Impunity" – U.N. Experts*, REUTERS (July 17, 2012), http://uk.reuters.com/article/2012/07/17/uk-somalia-un-piracy-idUKBRE86G0ZF20120717 (reporting how most piracy leaders escape prosecution because "the international community is investing enormous resources to pursue and punish those at the bottom of the piracy pyramid . . . while virtually guaranteeing impunity for those at the top of the piracy pyramid who bear the greatest responsibility and profit the most").

extremely risky activity. Unlike the number of pirates, the total number of key piracy organizers and kingpins is likely to be fairly small. While states are generally not in favour of establishing another expensive tribunal to deal with piracy per se,[45] the use of some existing mechanisms to prosecute the organizers and backers may be an attractive option. Prosecuting piracy leaders for the criminal employment of children may be a more politically acceptable justification than the participation in "transnational organized crime."

V. VULNERABILITY OF CHILDREN – WARTIME VS. PEACETIME

One of the least studied aspects of the use of children and youth in marine piracy and child soldiering is the extent to which vulnerable children are merely shifted from different contexts of exploitation, depending upon whether the state is in wartime or peacetime. For example, we currently know that levels of piracy attacks have reduced greatly over 2013. However, at the same time, Al-Shabaab has recently gained enormous ground on land in Somalia.[46] It is the DMPP's analysis that as conflict on land intensifies, levels of marine piracy decline. Al-Shabaab is notorious for its use and abuse of children, and there is potential supporting evidence that trafficked or abused children are directed into whichever criminal or insurgent activity is most lucrative at the time.[47] Hence, the skills acquired by children as child soldiers or as child pirates are transferrable across criminal activities and armed conflict contexts. It therefore is essential that we find mechanisms and solutions to interrupt the cycle of recruitment and use. As piracy increases on the West Coast of

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45. *See* Sandra L. Hodgkinson, *Establishment of a Special Anti-Piracy Tribunal: Prospective and Reality, the Challenges Associated with Prosecuting Somali Pirates in a Special Anti-Piracy Tribunal*, 19 ILSA J. INT'L & COMP. L. 305, 317 (2013) (finding that states have tired of funding specialized tribunals, and this is one of the reasons the international community is wary of creating a specialized anti-piracy court).

46. *See* U.N. Security-General, Letter dated October 18, 2013 from the Secretary-General addressed to the President of the Security Council, ¶ 2, S/2013/620 (Oct. 18, 2013) ("[Council] welcomes, once again, the significant progress made in Somalia, both on the political and security fronts. Council, at the same time, *expresses deep concern* at the serious threat that Al Shabaab continues to pose in Somalia and in the region.").

47. *See* HUMAN RIGHTS WATCH, NO PLACE FOR CHILDREN: CHILD RECRUITMENT, FORCED MARRIAGE, AND ATTACKS ON SCHOOLS IN SOMALIA (2012), *available at* http://www.hrw.org/sites/default/files/reports/somalia0212ForUpload_0.pdf ("[A]l-Shabaab forces took children to their training camps throughout 2010 and 2011. . . . From the camps they were sent to the front lines or forced to act as porters, spies, and suicide bombers.").

Africa,[48] we should be mindful of the extent to which children have been used in armed conflict in several West African nations and how their potential transition to piracy may be a critical factor to addressing and preventing marine piracy on that coast.

VI. Implications of Youth Involvement in Piracy

The age of the pirates is an important factor to consider with respect to the operational and legal responses to contemporary piracy. It can be difficult to ascertain the exact age of the pirates, much like in armed conflicts where children are used as soldiers. Often the harsh living conditions, malnutrition, and disease affect the physical appearances of the individuals concerned. However, just as the U.N.'s efforts toward demobilisation, disarmament and rehabilitation efforts for children have attempted to produce guidelines and objective measures to assess an individual's age,[49] those who are attempting to address child piracy could develop similar measures.

The U.N.-endorsed classification of a child as anyone under the age of eighteen therefore poses a legal problem for those who capture pirates, whether at sea or on land, particularly if a catch and release policy is being followed. Defenders of the catch and release policy could argue that it is difficult to prove an individual's age, but this would certainly be hard to support in the case of pirates as young as eleven years old, as was the situation when the Indian Navy captured sixty-one pirates in March 2011.[50] Twenty-five of those captured were suspected to be under fifteen years old, and four of them were judged to be around eleven years old.[51] Returning "children" to a boat with other pirates is in contravention of the responsibility to protect them from economic and social exploitation. It also returns them to a criminal activity, which is one of the activities defined as a worse form of child labour. However, it must be understood that adults use children.

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48. *See African Coastal Piracy in 2013 – The Beginning of the End or the End of the Beginning?*, ISS AFR. (Jan. 28, 2013), http://www.issafrica.org/iss-today/african-coastal-piracy-in-2013-the-beginning-of-the-end-or-the-end-of-the-beginning.

49. *See* U.N. HIGH COMM'R FOR REFUGEES, FIELD HANDBOOK FOR THE IMPLEMENTATION OF UNHCR BID GUIDELINES 71 (2011), *available at* http://www.unhcr.org/50f6d27f9.pdf (providing guidelines to assess a person's age that include, among others, the physical appearance of the child; psychological maturity; a balance of physical, developmental, psychological, environmental and cultural factors; and a child's statements).

50. Pandit, *supra* note 10.

51. *Id.*

Apprehending the youth and children who are employed by adult pirate gangs does not adequately address this situation, which must be resolved on land. Children are plentiful in each of the piracy-affected areas and are often viewed as expendable. From an operational response perspective, there is therefore a need to detain the children in conditions that ensure compliance with the Convention on the Rights of the Child while simultaneously using the strongest legal instruments available to pursue those who place children at risk.

Additionally, much like the armies around the world who face child soldiers on the frontline, navies who face children used in marine piracy are confronted with ethical and tactical dilemmas. On the one hand, a child pirate is still very much a child—someone who is vulnerable, impressionable, frequently irrational, and worthy of protection. On the other hand, the child is a pirate, and to deny this fact may be both detrimental to the safety of the security sector actors and not in line with the child's own experience.[52] Balancing these competing identities of a child pirate presents further challenges concerning the use of force:

> A moral dilemma presents when adult security sector actors must make critical decisions about engaging child soldiers in combat. Studies have shown that the more personal this dilemma is, the more likely it will be the emotional and not the cognitive portion of the brain that is activated. Put differently, if a security sector actor has not been properly trained to engage a child soldier [or child pirate] in battle – or if he or she is unfamiliar with the relevant [Rules of Engagement] – he or she will act with emotion and may put all concerned parties in grave danger.[53]

Rules of Engagement (ROEs) provide security sector actors with guidance on the use of force, reducing hesitation on the battlefield and increasing the likelihood of context-appropriate responses, which may involve lethal force in some cases. The clear delineation of this possibility in ROEs may help alleviate the self-doubt and psychological hardship that adult soldiers or naval officers often experience after confrontations with children. Unfortunately, most ROEs do not currently make any particular recommendations concerning the proper conduct of security sector actors vis-à-vis child soldiers.[54] As such, it is crucial that security sector actors worldwide lobby for the creation of such operational guidance. Effective pre-deployment training should include role-playing exercises for

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52.   THE ROMÉO DALLAIRE CHILD SOLDIERS INITIATIVE, CHILD SOLDIERS: A HANDBOOK FOR SECURITY SECTOR ACTORS 47 (2012).

53.   *Id.*

54.   *Id.* at 30.

security sector actors, so as to allow them to rehearse their responses according to ROEs.

Navies and private security companies engaged in anti-piracy operations need to start planning and thinking about the implications of children in marine piracy as it pertains to their mission and tactics.

VII. CONCLUSION

A. Supply and Demand

What can the international efforts to halt piracy learn from the international efforts to halt drug trafficking? Thomas B. Fowler's analysis argues that "focusing on the financial aspects of the illegal drug business, rather than the supply side, will be more likely to have desirable long-term effects."[55] This involves reducing the number of drug users, so the demand for the drugs is reduced, coupled with interrupting the money flows.[56]

Efforts to halt human trafficking have also focused on the questions of demand. The demand for cheap goods, services, labor, and sex opens opportunities for the exploitation of vulnerable populations on which human trafficking thrives.[57] While socio-economic factors such as levels of poverty, unemployment, lack of opportunity, social upheaval, and political instability do not cause trafficking, they do facilitate traffickers' ability to recruit victims.[58] Human trafficking, much like drug trafficking, is driven by profits—if no one purchased goods produced by slavery, forced labour, or sex trafficking, then it is possible that these goods would not exist. If we can thus extrapolate from both of these efforts the need to address the problem from the demand side as opposed to the supply side of the equation, then how does this apply to maritime piracy? First, we need to review the business model of piracy.

Conventional approaches to deter piracy have focused on the supply side of the business model. This has involved decreasing the number of ships vulnerable to attack by increasing enforcement, detaining pirates, and providing greater protection to vessels passing through these attack-prone regions. However, piracy in each of these regions has adapted to the interventions by migrating or expanding the range of pirates' operations and by reinvesting the profits from attacks in technology and equipment. If we combine the inevitable

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55.   Thomas B. Fowler, *The International Narcotics Trade: Can It Be Stopped by Interdiction?*, 18 J. POL'Y MODELING 233, 263 (1996).

56.   *Id.* at 264.

57.   U.S. Dep't. of State, Trafficking in Persons Report 19 (2011), *available at* http://www.state.gov/documents/organization/164452.pdf.

58.   *Id.*

limitations of resources and manpower invested by national and international stakeholders, these supply-side-oriented approaches have, to date, achieved limited success.

The inelasticity in the demand for piracy has undermined these operational and security-centric interventions. This demand, set by the populations' reliance on piracy as a source of income and revenue, has stabilized piracy in the presence of any deterrence efforts and ensured its continuation. The populations referred to include: financiers, sponsors, organized crime elements, corrupt state officials reluctant to give up on this lucrative endeavour, and small-scale recruits and communities that now depend on the economic opportunities that piracy provides. The key is that any efforts to stop piracy have not accounted for the fact that the individuals involved in piracy will continue to assume higher risks as the benefits are deemed to outweigh the risks incurred. The insurance industry has played into this cycle by offering increasingly higher ransom payouts in exchange for captured vessels and crew members.[59] Given the low risk of attack compared to the potential gains, these brokers have had few incentives to stop what has become an ever-profitable business.

It can, therefore, be surmised that based on our understanding of efforts to halt drug trafficking, human trafficking, and maritime piracy, that we need to focus primarily on the demand for piracy.

B. *Children and Youth*

The presence of children under eighteen years of age in pirate gangs poses a legal, social, and operational problem to those attempting to address piracy globally. Although preventing or discouraging children from becoming pirates requires a socio-economic solution, the planning and implementation of operational and legal responses should also be taken into account. Practices such as "catch and release" fail in this regard, as they place children back into criminal environments and do not address the root causes of the child involvement in the first place. More importantly, the catch and release policy potentially contravenes international conventions, with which most, if not all, the countries practising this policy have a legal responsibility to comply.

Further examination regarding the tactical elements with respect to the use of child soldiers and of children in marine piracy must be fully explored. This requires the concerted efforts to collect data with respect to the use of children in piracy globally. Additionally, there is

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59. S. Whitman & C. Saurez, Dalhousie Marine Piracy Project: The Root Causes and True Costs of Marine Piracy (Marine Affairs Program Technical Report #1) 106 (2012), *available* at http://www.dal.ca/content/dam/dalhousie/images/faculty/science/marine-affairs-program/Technical_series/MAP%20Technical%20Report%20%231.pdf.

a need for a recognized international standard with respect to the suspected juvenile pirates. This may require the creation of addendums to current international child protection and marine laws to specifically address the unique challenges juvenile piracy poses.

Lastly, we must be willing to work with governments, communities, legal bodies, human rights organisations, and children's rights organisations in an effort to develop prevention and rehabilitation programs for children with respect to marine piracy. We need to think outside of the current mechanisms that are used to address marine piracy and be willing to create new relationships, laws, and approaches.