



## COMMENTARY:

CHILDREN,  
ACCOUNTABILITY  
AND JUSTICE:  
ADVANCING RESTORATIVE  
JUSTICE FOR CHILD SOLDIERS  
AND CHILD PIRATES

*By Brigadier-General (Ret'd) Ken Watkin, QC*

Jacqueline Salomé's timely article arguing that the international community should apply a restorative justice approach when dealing child pirates, in the same way their child "soldier" counterparts are treated, sheds a bright light on an area that has largely remained hidden in the shadows. In doing so she presents cogent arguments questioning why the predominate use of retributive justice for dealing with such criminal activity should be privileged over the restorative approach applied to child soldiers that looks to the best interest of the child. As is outlined, the restorative justice approach fosters healing, social reintegration, and serves as a prevention mechanism for re-entry into conflict. It is difficult to argue against these outcomes, and it is not clear why the trial and punishment means applied to adults appears to remain the favoured approach. Notwithstanding the acknowledgement that some children are not faultless and passive victims, it is evident from the article, and especially in respect of its assessment of the "conceptions of childhood", that the linking of "children" with a purely "retribution" approach seems out of place in the 21st Century. It immediately forces the reader to ask why this has occurred, and what needs to be changed to avoid such a narrow limited view of how child pirates should be treated.

Canadian Forces Photo/Corporal Rick Ayer



The article provides an excellent overview of the advantages of restorative justice, and contrasts it with a compelling critique of the retributive justice model in the context of child soldiers. Examples are provided from case studies of Sierra Leone and Uganda where restorative justice approaches were successfully introduced regarding former child soldiers. What is particularly noteworthy is the reliance on traditional community based solutions. The case studies identify efforts to hold the child to account for his or her actions, but also provide reparation, as well as foster reintegration and acceptance in the local community. This approach can be contrasted with later reference to child pirates being treated as criminals on par with "terrorists" in various, largely foreign, jurisdictions where the average sentence awarded to Somali pirates is 14 years imprisonment. Sentences such as these are indicated to be identical to those rendered for some of the most serious crimes in the world.

The importance of dealing with children involved in piracy in a restorative manner should be immediately obvious. The question remains why nations with well-established justice systems do not appear to be selecting that approach for child pirates. This is a particularly important issue given the provisions of the Convention of the Rights of the Child emphasizing the importance of juvenile justice systems and alternative proceedings (Sterio, 2016). The reason for the lack of a restorative justice approach for child pirates is suggested by Ms. Salomé to be linked to the West's attitude of viewing such activity through the lens of "terrorism". It is here where the brightest light is shone on the problem, and importantly where additional inquiry and exposure needs to occur.

It is not just that pirates perpetrate menacing acts of violence, but they are seen as attacks specifically directed against the West. The victims of these crimes are international commercial interests and the unfortunate, often multinational, crews manning the ships. As Ms. Salomé notes "children implicated in international crime outside the centers of global politics benefit more greatly than those who target interests or populations within these centers." Here the article highlights a challenge that is not unique to child pirates. There is a requirement for a more nuanced assessment of the threats present in the contemporary security environment. All violence is not "terrorism". Indeed, as the American academic and international judge, Richard Baxter, noted in 1974 "[w]e have cause to regret that a legal concept of 'terrorism' was ever inflicted upon us." (Baxter, 2013, p. 211). His words continue to resonate in the 21st Century. Child piracy exists not only in the gray zone between victims and perpetrators as Ms. Salomé accurately identifies, but is also associated with the ill-defined threat category



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<sup>1</sup>Convention on the Rights of the Child, 1577 UNTS 3 (1989), art. 40.

of terrorism. For example, “terrorism” includes the most horrific acts of the Salafi jihadist movement. In reality, piracy is a crime. It is neither warfare, nor terrorism. The involvement of children in piracy is fundamentally a symptom of poor, or non-existent governance.

However, it is foreignness of the pirates that potentially differentiates the restorative justice case studies of Uganda and Sierra Leone from the treatment of the children largely captured by Western naval forces. Retributive justice cannot provide an adequate answer, or fundamentally add to the security of those plying the sea lanes. General deterrence is an important aspect of retributive justice. However, trial in a foreign country is unlikely to have much of an effect on the remaining pirates operating from Somalia, or on the west coast of Africa. States trying child pirates are facing complicated moral and legal challenges since a national restorative justice approach is also unlikely, in the short term, to facilitate the return of the pirates to the territory from which they came. As Shelly Whitman has noted with respect to anti-piracy forces, their “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” (Whitman, 2014, p. 233). It also does not address the root causes of child involvement (Whitman, 2014). The same could be said of any restorative justice approach focused on a return to Somalia. However, child pirates need to be treated as what they are: “children”. This means in the same restorative manner that international law expects any country to apply to its own youth. The question is whether this is likely to happen without greater scrutiny, such as is presented in this article, or by the attention of human rights groups being focused on the treatment of these children. Although piracy appears to be going through a period of decline the potential for an increase remains (Business Wire, 2016). The need to ensure that a restorative justice approach is prioritized for child pirates presently in custody, and for those who inevitably will be dealt with in the future, remains an important human rights issue.

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