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Inspection and Seizure of “Armed and Equipped” Somali Pirates: Lessons from the British and American Anti-Slavery Squadrons (1808-1860)

*John I. Winn, J.D., LL.M **

What a glorious and advantageous trade this is. It is the hinge on which all the trade of this globe moves.¹ (James Houston, eighteenth-century British slave merchant)

When pirates are observed in boats with guns, ladders and even hostages, it beggars belief that they cannot be prosecuted, assuming that states have the necessary laws in place and the will to do so.² (Richard Ottaway, Chairman, Foreign Affairs Committee-House of Commons)

I. INTRODUCTION

Unlike the romanticized pirates of the seventeenth and eighteenth centuries, modern era Somali-based pirates represent a continuing threat to cargo, passenger, and deep-water fishing vessels in and around the Indian Ocean. Estimates of per capita economic losses associated with these pirates range from \$5 to \$12 billion dollars per year.³ These associated costs include, increased (i.e., inefficient) cruising speeds, re-

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1. JAMES HOUSTOUN, MD, *SOME NEW AND ACCURATE OBSERVATIONS OF GEOGRAPHICAL, NATURAL AND HISTORICAL. CONTAINING A TRUE AND IMPARTIAL ACCOUNT OF THE SITUATION, PRODUCT, AND NATURAL HISTORY OF THE COAST OF GUINEA, SO FAR AS RELATES TO THE IMPROVEMENT OF THAT TRADE, FOR THE ADVANTAGE OF GREAT BRITAIN IN GENERAL, AND THE ROYAL AFRICA COMPANY IN PARTICULAR* 44 (London, J. Peele 1725).

2. FOREIGN AFFAIRS COMMITTEE, *PIRACY OFF THE COAST OF SOMALIA*, H.C. at ¶ 81 (U.K.) [hereinafter *PIRACY*], available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/1318/131802.htm>

3. One Earth Future Foundation, *The Economic Costs of Somali Piracy 2011* (2012) (working paper), available at http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf. The overall losses when piracy in other regions is accounted for have been estimated to be \$12 billion to \$25 billion per year. Daniel Pines, *Maritime Piracy: Changes in U.S. Law Needed to Combat This Critical National Security Concern*, 36 SEATTLE U. L. REV. 69, 82 (2012).

routing of shipping lanes, security equipment, insurance, and ransoms for kidnapped crew-members. While criminal prosecutions, armed security, and shipboard counter-piracy technologies are important factors in reducing the risk and efficacy of piratical attacks,⁴ the primary factor underpinning improved conditions off the Somali coast is an overwhelming multi-national armada involving up to fifty vessels from twenty-five countries. This effort is extravagantly expensive and almost certainly unsustainable over the long term. Furthermore, even as various flotillas patrol the Somali coast, a ‘round-hole-square-peg’ legal infrastructure limits criminal prosecution of pirates to those relatively few pirates caught aboard seized vessels, who take or murder hostages, or are foolhardy enough to fire upon interdicting warships.⁵ A more practical solution, may be found in the historical precedent of the nineteenth century British and, to a lesser extent, American, anti-slavery naval squadrons. Much as active naval interdiction, inspection, and seizure of individual slave-ships effectively put an end to the Atlantic slave-trade by approximately 1850,⁶ putting an end to Somali piracy today may be as simple as stopping Somali Pirates one boat at a time.

Although several hundred Indian Ocean pirates have been tried and imprisoned in recent years, pirate crews are equally likely to be fed and watered by intervening warships and set back afloat following legal consultations.⁷ According to the Congressional Research Service, approximately 90% of pirates interdicted at sea are released without further action.⁸ Pirates have also been reported to be using larger (hijacked) merchant vessels as support vessels (i.e. “mother-ships”) and more seaworthy pursuit craft while ranging even further out to sea and westward toward the coast of India.⁹

Because criminal prosecutions are not currently feasible in Somalia, pirate trials in foreign prosecutorial states involve significant resource

4. See generally UK MARITIME TRADE OPERATIONS (UKMTO), BEST MANAGEMENT PRACTICES FOR PROTECTION AGAINST SOMALIA BASED PIRACY, BMP-4 (2011), available at http://www.mschoa.org/docs/public-documents/bmp4-low-res_sept_5_2011.pdf.

5. *UK Foreign Affairs: Analysis of Pirate “Catch and Release” off the Coast of Somalia*, GCAPTAIN MARITIME NEWS SERVICE (Jan. 26, 2012), <http://gcaptain.com/foreign-affairs-analysis-pirate/>

6. 1850 marks the date that Brazil (which had refused to enforce the terms of its 1826 Treaty with Britain) agreed to allow British vessels to inspect its merchant vessels. Slave “smuggling” in smaller ships and in mixed cargo continued until approximately 1866. See generally KENNETH MORGAN, *SLAVERY AND THE BRITISH EMPIRE: FROM AFRICA TO AMERICA* (2008).

7. FOREIGN AFFAIRS COMMITTEE, *PIRACY*, *supra* note 2.

8. CONG. RESEARCH SERV., R40528, *PIRACY OFF THE HORN OF AFRICA* 27 (2011).

9. *Somali Pirates Expand their Operations to West Coast of India*, THE TIMES OF INDIA, (Nov. 1, 2012), http://articles.timesofindia.indiatimes.com/2012-11-01/us/34857195_1_somali-pirates-somali-piracy-pirate-attacks.

commitments, including prison building,¹⁰ transportation,¹¹ witness travel, and evidence collection. In April 2012, the British Foreign Office advised the Royal Navy to avoid detaining pirates of certain nationalities in view of the possibility that pirates may actually invoke claims for asylum under British law if their states of nationality use torture or allow execution as judicial punishment.¹² Even if convicted outside of Somalia, pirates returned for incarceration in Somalia are typically freed (or allowed to “escape”) after paying nominal bribes.¹³ In view of these and other considerations, coalition warships typically merely “observe” suspected pirate vessels while avoiding active interdiction unless pirates initiate aggressive action against other vessels.¹⁴

In January 2011, the United Nations Secretary General noted “with concern that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates.”¹⁵ Currently, neither the International Criminal Court (ICC) nor the International Tribunal for the Law of the Sea (ITLOS)¹⁶ sustain criminal jurisdiction over piracy or piracy-related offenses. Although Article 3(1) of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)¹⁷ partially fills this jurisdictional gap in ITLOS by invoking a universal obligation to either punish or extradite persons who commit

10. A Working Group on Legal Issues (WG2) under the International Contact Group on Piracy off the Coast of Somalia (CGPCS) was tasked with increasing regional prosecutions and increasing post-sentencing prison capacity in Puntland and Somaliland. CGPCS was formed under U.N. Security Council Resolution 1681 (Dec. 16, 2009) and involves 60 states and organizations under the leadership of Denmark. Most prosecutions have taken place in Madagascar, Seychelles, and Kenya. See James Thuo Gathii, *Kenya's Piracy Prosecutions*, 104 AM. J. INT'L. L. 416 (2010).

11. Captain David Reindorp (RN) provided the following testimony to the Foreign Affairs Committee of the House of Commons: “You could be doing this 1,800 miles out into the Indian Ocean; it would take you five or six days to get a pirate back if you had to steam him back, and you may not want to send your one and only helicopter off to do that, because that might be better used looking out for and trying to deter and interdict pirate operations.” PIRACY, *supra* note 2, at 29.

12. Marie Woolf, *Pirates Can Claim UK Asylum*, THE SUNDAY TIMES (UK) (Apr. 13, 2008), <http://www.timesonline.co.uk/tol/news/uk/article3736239.ece>.

13. U.N. Secretary-General, *Report of the Secretary-General on the Modalities for the Establishment of Specialized Somali Anti-Piracy Courts*, U.N. Doc. S/2011/360 (June 15, 2011). According to the report, more than sixty pirates were released from prison in Somaliland after bribe payments in 2011.

14. Press Release, U.S. Navy, *Coalition Maritime Forces Deter Pirate Attack off Yemen* (Dec. 15, 2004), available at <http://www.globalsecurity.org/military/library/news/2004/12/mil-041215-nns03.htm>.

15. Letter from Ban Ki-moon, U.N. Secretary-General, to President of the Security Council, S.C. Res. 1918, U.N. Doc. S/RES/1918 (Apr. 27, 2010).

16. The International Tribunal for the Law of the Sea (ITLOS) was established by the United Nations Convention on the Law of the Sea (UNCLOS) (1982).

17. 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].

piratical offenses (while avoiding the use of the word “piracy”), SUA suffers from similar jurisdictional limitations. Once a lawful boarding has taken place (with the permission of the vessel’s flag state), Article 6 of SUA does not provide for any independent or prescriptive criminal jurisdiction.¹⁸ SUA likewise denies the capturing state the right to prosecute offenders without permission of the flag state.¹⁹ Prosecuting suspected pirate-mariners who are merely found in boats armed and equipped for piratical attacks is problematic at best under both international law and the domestic laws of prosecutorial states including the United States.

In *United States v. Said*,²⁰ Judge Raymond Jackson of the Eastern District Court of Virginia ordered the dismissal of piracy charges against six Somali nationals accused of attacking a Navy vessel in April 2010. The decision to dismiss was based upon a finding that because there was no actual “robbery at sea” as required under the 1820 Supreme Court decision in *United States v. Smith*, there could be no “piracy.”²¹ Citing extensively from nineteenth-century jurisprudence, the court in *Said* noted that “piracy” must be carefully distinguished from “mere piratical undertakings,” which are not criminally punishable.²² Abdiwali Abdiqadir Muse, the sole surviving hijacker of the *MV Maersk Alabama* in 2009, pled guilty to various federal charges in the Southern District of New York, but prosecutors allowed the piracy charge to be dropped, possibly in light of concerns with legal definitional aspects of “piracy.”²³

Legal difficulties notwithstanding, the greater question for concerned states remains the fundamental, long-term efficacy of prosecuting mere pirate underlings. Warlord financiers certainly have no difficulty replacing these pirate foot soldiers in an impoverished failed state such as Somalia. Jennifer Cooke, Africa Program Director for the Center for

18. For a summary of the discussion of the International Law Discussion Group at Chatham House, see *Ship-Boarding: An Effective Measure Against Terrorism and WMD Proliferation?*, CHATHAM HOUSE (Nov. 24, 2005), <http://www.chathamhouse.org/publications/papers/view/108131>.

19. SUA Convention, art. 10 ¶1.

20. *United States v. Said*, 757 F. Supp. 2d 554 (E.D. Va. 2010), *vacated* 680 F.3d 374 (4th Cir. 2012). The six defendants were charged for opening fire on the USS Ashland from a small boat in April 2010. *Id.* at 556. The Ashland returned fire, sank the skiff and killed one of the occupants. *Id.* at 557. *But see* *United States v. Dire*, 680 F.3d 446 (4th Cir. 2012). In the *Dire* opinion, the Fourth Circuit refused to accept the “static” definition of piracy from *Said* and held that 18 U.S.C. § 1651 incorporated a definition of piracy that “changes with advancements in the law of nations.” *Dire*, 680 F.3d at 469.

21. *Said*, 757 F. Supp. 2d at 558–61 (citing *United States v. Smith*, 18 U.S. 153 (1820); *The Ambrose Light*, 25 F. 408, 415 (S.D.N.Y. 1885)).

22. *Id.* at 560–61.

23. Ray Rivera & Benjamin Weiser, *Somali Man Pleads Guilty in 2009 Hijacking of Cargo Ship*, N.Y. TIMES, May 18, 2010, at A21, available at http://www.nytimes.com/2010/05/19/nyregion/19pirate.html?_r=0.

Strategic and International Studies noted that “unless you get some solution on land, or cooperation from local authorities, this will just remain a problem that you can tamp down only occasionally.”²⁴ Given Somalia’s three thousand kilometer coastline, any serious suppression effort must involve stopping and actually *seizing* pirate vessels large and small (including mother-ships) found at sea armed and equipped for piracy. Boat and ship seizures would have to be conducted regardless of whether or not the crew members found aboard are detained for criminal charges or merely set back on the shore.

Toward these ends, a highly successful nineteenth-century model for multinational maritime criminal interdiction is instructive. From 1808 through 1860, the Royal Navy’s West African Counter-Slavery Squadron,²⁵ also known as the “Preventative Squadron,” working under various complex treaty regimes, stopped, boarded, inspected, and seized merchant slave ships. As a result of active interdictions, forfeitures, and generous cash bounties for liberated slaves, trans-Atlantic maritime slavery was rendered commercially impracticable well before the mid-nineteenth century. Active suppression efforts also included blockading slave ports and estuaries²⁶ as well as occasional riverine forays against slave holding facilities (i.e. “barracoons”).²⁷ Between the risks of interception at sea, confiscation, or even capital punishment on land, dedicated slave ships essentially disappeared from Atlantic waters. It is estimated that between 1820 and 1860, fewer than 10,000 African slaves were imported (smuggled) into the United States, and most of these were transported from Haiti or other Caribbean ports.²⁸ An examination of the historical measures taken to suppress maritime slave trading may provide solutions to the piracy issues of today. This Article recommends a similar policy of active interdiction and seizure.

24. Gordon Lubold, *USS Nicholas Captures Somali Pirates. What to do with Them?* THE CHRISTIAN SCIENCE MONITOR, Apr. 1, 2010, at 6, available at <http://www.csmonitor.com/USA/Military/2010/0401/USS-Nicholas-captures-Somali-pirates.-What-to-do-with-them>.

25. See generally CHRISTOPHER LLOYD, *THE NAVY AND THE SLAVE TRADE* (1968).

26. See W.E.B. DU BOIS, *THE SUPPRESSION OF THE AFRICAN SLAVE-TRADE TO THE UNITED STATES OF AMERICA 1638-1870* (Penn. State Univ. Electronic Classics Series, 1896), available at <http://www2.hn.psu.edu/faculty/jmanis/webdubois/dubois-suppressions-slave-trade6x9.pdf>.

27. In 1840, then Commander Joseph Denman R.N. (later Admiral Denman) undertook an expedition up the Gallinas River (present day Sierra Leone) to liberate slaves awaiting transportation. Unfortunately, the Spanish owners brought suit in admiralty against Denman. Although found not liable many years later, the Queen’s Advocate issued an opinion the next year advising against further blockades or landings under international law. See Jenny S. Martinez, *Slave Trade on Trial: Lessons of a Great Human Rights Law Success*, BOSTON REV., Sept.-Oct. 2007.

28. The best known case involved the ship *La Amistad* in *United States v. Libellants and Claimants of the Schooner Amistad (The Amistad)*, 40 U.S. 518 (1841).

II. THE SUPPRESSION OF MARITIME SLAVE TRADING (1808–1860)

During the Napoleonic Wars (1803–1815), British warships lawfully boarded and inspected suspected slave vessels in order to determine whether they were belligerents or lawful prizes of war.²⁹ After 1815, applicable international law did not permit the Royal Navy to stop foreign-flagged ships, even those suspected of piracy.³⁰ Nevertheless, under the Treaties of Paris, Kiel, and Ghent in 1814, as well as the Congress of Vienna (1815) and in separate treaties with Portugal and Spain in 1817, slave inspections continued with certain limitations.³¹ In 1824, British domestic law defined slaving as piracy, subject to the penalty of death.³² Early enforcement efforts, especially with Spanish, Portuguese, Brazilian, and American vessels, were complicated by treaty terms and restrictions that limited seizures to those vessels carrying slaves. As could be expected, slave ships under duress would throw captured slaves overboard to drown in order to avoid arrest and forfeitures. In reaction, subsequently negotiated treaty amendments between prosecuting states added “equipment clauses” allowing warship seizures of vessels with hatch gratings, shackles, excessive water kegs, and large quantities of foodstuffs such as millet or rice.³³ Relying upon overwhelming maritime dominance, as well as economic subsidies and trade concessions, Britain engaged in unending diplomatic efforts throughout the nineteenth century to ban the slave trade and allow inspections and seizures of flagged vessels from Europe or the Americas that were suspected of transporting slaves.

Both complementing and paralleling British anti-slavery legislation, prior to the nineteenth century, the U. S. government had used its authority under the Commerce Clause³⁴ to enact domestic legislation banning maritime slave trade aboard American ships. The Slave Trade Act of 1794³⁵ prohibited the outfitting of American-flagged vessels for transporting slaves. The Act Prohibiting Importation of Slaves of 1807³⁶

29. See Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights*, 117 *YALE L. J.* 550 (2008).

30. *Le Louis*, (1817) 165 Eng. Rep. 1464; see also Tara Helfman, *The Court of Vice Admiralty at Sierra Leone and the Abolition of the West African Slave Trade*, 115 *YALE L. J.* 1122, 1151 (2006).

31. HANNIS TAYLOR, *A TREATISE ON INTERNATIONAL PUBLIC LAW* 236 (1901).

32. Slave Trade Act, 1824, 5 Geo. 4, c. 113 (Eng.).

33. OFFICE OF LORD HIGH ADMIRAL, *GENERAL INSTRUCTIONS FOR COMMANDERS OF HER MAJESTY'S SHIPS AND VESSELS EMPLOYED IN THE SUPPRESSION OF THE SLAVE TRADE* (1844).

34. U.S. CONST. art. I, §8, cl. 3.

35. Slave Trade Act of 1794, 1 Stat. 348.

36. The Act Prohibiting Importation of Slaves of 1807, 2 Stat. 426 (1807), signed into law by President Thomas Jefferson on March 2, 1807, did not take effect until January 1, 1808 (the first date authorized under Article I, Section 9 of the United States Constitution).

banned all further importation of slaves into the continental United States, and the 1820 Supplement to the Piracy Act of 1819 defined slavery as “piracy.”³⁷ The Supplement further authorized the President to employ the U.S. Navy to “to seize all vessels navigated under our flag engaged in that trade.”³⁸ Under U.S. law, foreign ships found with slaves in American waters could be seized as lawful prizes, and even domestic vessels transporting slaves from one American port to another were required to register “negro or mullato” passengers with port authorities.³⁹ Not only were slave traders “pirates,” they were subject to being hanged as pirates.⁴⁰ Well before the Webster-Ashburton Treaty of 1842⁴¹ between Britain and the United States, maritime slaving was not merely unlawful commerce, but a fully developed *jus cogens* principle of international law.⁴²

As “pirate ships,” suspected slave vessels could lawfully be stopped and inspected in international waters by warships from any nation under “the customs and usages of civilized nations.”⁴³ Obviously, without the lawful authority to actually board and inspect suspected slave ships, naval containment efforts of the African coast, by either Great Britain or the United States, would have been fruitless.

III. CURRENT LIMITATIONS TO SEIZURES OF PIRATE VESSELS

Longstanding customary international law and the United Nations Convention on the Law of the Sea (UNCLOS)⁴⁴ protect the principles of freedom of navigation and innocent passage. Except by special convention, or in time of war, interference by military vessels with commercial vessels engaged in lawful pursuits violates the sovereignty of the flag

37. An Act to Continue in Force: An Act to Protect the Commerce of the United States and Punish the Crime of Piracy, Pub. L. No. 16-13, 3 Stat. 600 (1820).

38. *Id.*

39. Slave Trade Act of 1794, 1 Stat. 348.

40. The only known case of the death penalty being imposed upon an American slave-ship master occurred in February, 1862, when Captain Nathaniel Gordon was executed in New York City. President Lincoln denied Gordon’s request for clemency (most likely) because, in order to reduce the risks of on-board revolts, Gordon’s cargo was composed overwhelmingly of women and children. See HOWARD JONES, *MUTINY ON THE AMISTAD: THE SAGA OF A SLAVE REVOLT AND ITS IMPACT ON AMERICAN ABOLITION, LAW, AND DIPLOMACY* (1997).

41. See Wilbur Devereux Jones, *The Influence of Slavery on the Webster-Ashburton Negotiations*, 22 J. S. HIST. 48 (1956).

42. *United States v. La Jeune Eugenie*, 26 F. Cas. 832, (C.C.D. Mass. 1822). See generally GERHARD VON GLAHN, *THE LAW AMONG NATIONS* 287-289, (5th Ed. 1981).

43. See *The Paquete Habana*, 175 U.S. 677 (1900).

44. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter UNCLOS]. Although the United States is not a state party to UNCLOS, the United States is bound by customary international law, including specifically navigational provisions of the treaty which merely reflect or restate customary (and binding) international law.

state of the vessel in question.⁴⁵ While UNCLOS provides for the right of states to suppress (and prosecute) piracy occurring in international waters,⁴⁶ any interference by warships on the high seas must be exercised with scrupulous regard to the rights of other sovereign states and their citizens thereon. Articles 105 (and 107) of UNCLOS authorize naval vessels to seize pirate vessels and make arrests on the high seas (or outside the flag nation's jurisdiction), but only if another (merchant) ship has been "taken by piracy" or is "under the control of pirates."⁴⁷ Article 110(2), authorizes the boarding of ships and inspections of papers and cargo, but no provision of Article 110 actually authorizes seizure or capture of suspected pirate vessels even when armed and equipped for no other viable purpose except piracy.⁴⁸

The United Nations Security Council has already determined on several occasions that Somali piracy is "a threat to international peace and security" under Chapter VII, Article 42 of the UN Charter.⁴⁹ Article 42 specifically provides for "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."⁵⁰ Security Council Resolution 1816⁵¹ authorized designated state parties to engage in hot pursuit as well as to enter and patrol Somali territorial waters "in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law."⁵² Security Council Resolution 1851 authorized "all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery

45. Reports of International Arbitral Awards, *Owners of the Jessie, the Thomas F. Bayard, and the Pescawha (Great Britain) v. United States* (Dec. 2, 1921), available at http://untreaty.un.org/cod/riaa/cases/vol_VI/57-60_Jessie.pdf.

46. UNCLOS, *supra* note 43, art. 105.

47. *Id.* at n.58.

48. See generally DOUGLAS GUILFOYLE, TREATY JURISDICTION OVER PIRATES: A COMPILATION OF LEGAL TEXTS WITH INTRODUCTORY NOTES (2009), available at http://www.academia.edu/195470/Treaty_Jurisdiction_over_Pirates_A_Compilation_of_Legal_Texts_with_Introductory_Notes.

49. *Action with Respect to Threats to Peace, Breaches of Peace, and Acts of Aggression*, U.N. Charter, Ch. VII.

50. *Id.* art. 42 (emphasis added).

51. *Security Council Condemns Acts of Piracy, Armed Robbery Off Somalia Coast, Authorizes for Six Months 'All Necessary Means' to Repress Such Acts*, S.C. Res. 1816, U.N. Doc. S/RES/1816 (June 2, 2008); see also Matthew C. Houghton, *Walking the Plank: How United Nations Security Council Resolution 1816, While Progressive, Fails to Provide a Comprehensive Solution to Somali Piracy*, 16 TULSA J. COMP. & INT'L L. 253 (2009).

52. S.C. Res. 1816, *supra* note 51, at 3.

at sea.”⁵³ On these principles, Security Council authorization could easily expand current authority to encompass the right of designated state parties (i.e., those already engaged in counter-piracy operations) to “inspect and *seize*” vessels found “armed, equipped and prepared” for piratical attacks on the high seas (or even within Somali waters, with the consent of that government). Appropriately staffed and qualified independent juridical tribunals could protect due process rights by determining whether seized vessels should be forfeited or destroyed or whether and when compensation is paid to innocent parties. Furthermore, as Security Council Resolutions are normally limited in time, place, and manner of implementation, there would be no concomitant need to modify existing treaties or seek clarification between conflicting definitions of “piracy” under various treaties or customary international law.

IV. CONCLUSION

Unless multi-national naval forces, acting under United Nations mandates, are allowed to inspect and seize (or scuttle⁵⁴) pirate vessels armed, equipped, and prepared for piracy (i.e., modern-era ‘equipment clauses’⁵⁵) piratical activities in the Indian Ocean will never be fully, or at least effectively, suppressed. While criminalization and prosecution of pirates (regionally and domestically)⁵⁶—especially of those who have engaged in violence—should remain an important international concern, putting every Somali pirate in jail is unrealistic as well as impractical. On the other hand, seized vessels, especially larger sea-going mother-ships, are difficult and expensive for pirates to replace. Like the slave ship seizures of the nineteenth century, without their Zodiac boats and mother-ships, Somali pirates would be forced to revert to traditional fishing or simply stay on shore. By taking a diplomatic lead in this field, the United States could facilitate an effective multi-national regime under United Nations auspices capable of clearing the Indian Ocean of pirates and sea robbers.

53. *Security Council Authorizes States to Use Land-Based Operations in Somalia as Part of the Fight Against Piracy off the Coast, Unanimously Adoption 1851*, S.C. Res. 1851, U.N. Doc. S/RES/1851 (Dec. 16, 2008).

54. Even before the end of the Napoleonic Wars, the Royal Navy was ordered to destroy ships after valuation and condemnation by Prize Courts because they were most often repurchased, refitted and returned to sea for slaving. See TOM HENDERSON WELLS, *THE SLAVE SHIP WANDERER* (1967).

55. See generally Leslie Bethel, *The Mixed Commissions for the Suppression of the Transatlantic Slave Trade in the Nineteenth Century*, 7 JOUR. AFR. HIST. 79 (1966).

56. Kevin H. Govern, *National Solutions to an International Scourge: Prosecuting Piracy Domestically as a Viable Alternative to International Tribunals*, 19 U. MIAMI INT’L & COMP. L. REV. 1 (2011).

America's extensive intelligence capabilities and technologies such as unmanned reconnaissance aircraft could leverage this force at greatly reduced costs. Cooperative ships-boarding efforts could be modeled upon current boarding and inspection programs such as the (counter-drug) Joint Interagency Task Force in Central and South America,⁵⁷ the (counter WMD) Proliferation Security Initiative (PSI)⁵⁸ and 1995 UN Fish Stocks Agreement.⁵⁹ Similar anti-piracy arrangements with partners in Asia might also lead to positive results in that region, especially if criminal jurisdiction issues could be resolved. Piracy like that practiced off the coast of Somalia is not a modern problem, but modern navies empowered with carefully limited authority to interdict and seize easily identifiable pirate vessels could effectively protect maritime commerce from this scourge.

57. Evan Munsing & Christopher J. Lamb, *Joint Interagency Task Force-South: The Best Known, Least Understood Interagency Success*, INST. FOR NAT'L STRATEGIC STUD. (2011), available at http://www.ndu.edu/inss/docuploaded/Strat%20Perspectives%20%20_%20Lamb-Munsing.pdf.

58. Initiated in 2003, the PSI involves 98 nations around the world (including Russia); see also Fabio Spadi, *Bolstering the Proliferation Security Initiative at Sea: A Comparative Analysis of Ship-boarding as a Bilateral and Multilateral Implementing Mechanism*, 75 NORDIC JOUR. INT. L. 249 (2006).

59. *Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, G.A. Res. 50/24, U.N. GAOR, 50th Sess., Supp. No. 49, U.N. Doc. A/50/49 (Vol. I) (Dec. 22, 1995); see also DOUGLAS GUILFOYLE, SHIPPING INTERDICTION AND THE LAW OF THE SEA 103 (2009).