

ESTABLISHMENT OF A SPECIAL ANTI-PIRACY TRIBUNAL: PROSPECTIVE AND REALITY

THE CHALLENGES ASSOCIATED WITH PROSECUTING SOMALI PIRATES IN A SPECIAL ANTI-PIRACY TRIBUNAL

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During the past several years, piracy off of the coast of Somalia increased, despite efforts of the international community to support piracy prosecutions in national and international courts. While some recent data indicates an improvement in the number of attacks, it may be too soon to tell the overall trend. In 2011, there were 286 piracy attacks,¹ which was higher than in each of the three previous years, which had ranged from

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1. U.N. Secretary-General, *Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region*, ¶ 7, U.N. Doc. S/2012/50 (Jan. 20, 2012) [hereinafter Jan. 2012 Report].

140–160 attacks.² In 2010–2011, Somali pirates reportedly caused more than \$25 billion in losses³ and pirates became one of the largest obstacles to the delivery of food aid to Somalia.⁴ Furthermore, piracy has threatened the livelihood of African states, such as the Seychelles, by increasing costs at ports, and affecting fishing and tourism.⁵ Along with the increase in attacks, the level of violence and mistreatment per attack has also risen in certain cases, as has the average length of detention of victims by the pirates.⁶ In Somalia, where most of the attacks are launched from, piracy continues to fuel the economy,⁷ and pirates benefit from a level of support from part of the population.⁸ In some coastal communities, an entire trade is developing around the logistics that support piracy and approximately twenty percent of the ransom monies are re-invested into the community,

2. See generally James Kraska, *Coalition Strategy and the Pirates of the Gulf of Aden and the Red Sea*, 28 COMP. STRATEGY 197, 197-216 (2009); Jim Michael, *Pirates' New Tactics Make Navies' Job Harder*, USATODAY.COM Jan. 7, 2011, available at http://usatoday30.usatoday.com/printedition/news/20110107/pirates07_st.art.htm (last visited Jan. 30, 2013).

3. See Roger L. Phillips, *Upcoming Event: Panel on Establishment of a Special Anti-Piracy Tribunal: Prospects and Reality*, PIRACY-LAW.COM Feb. 5, 2012, available at <http://piracy-law.com/2012/02/05/upcoming-event-panel-on-establishment-of-a-special-anti-piracy-tribunal-prospects-and-reality/> (last visited Jan. 30, 2013).

4. U.N. Secretary General, Letter dated 24 January 2011 from the Secretary-General addressed to the President of the Security Council (Somalia—Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia), U.N. Doc. S/2011/30, Jan. 25, 2011, at 14 [hereinafter Jack Lang Report].

5. Jack Lang Report, *supra* note 4, at 16; Victor Erofev, *Save the Seychelles From Pirates*, NYTIMES.COM Jan. 11, 2011, available at http://www.nytimes.com/2011/01/12/opinion/12iht-erofev12.html?_r=0 (last visited Jan. 30, 2013); see also Allan Jacob, *US Expresses Concern About Maritime*, KHALEEJTIMES.COM Feb. 15, 2011, available at http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=/data/middleeast/2011/February/middleeast_February515.xml§ion=middleeast (last visited Jan. 30, 2013) (quoting a U.S. counter-piracy official, Donna L. Hopkins, as stating, “[w]e are very concerned that pirate ransom money is actually undermining the development of sustainable legitimate economic activity such as fisheries and normal maritime trade.”).

6. See Jack Lang Report, *supra* note 4, at 17.

7. Jack Lang Report, *supra* note 4, at 17; see also Kathryn H. Floyd, *Somalia's Stability and Security Situation in Review*, INT'L CTR. FOR POLITICAL VIOLENCE AND TERRORISM RESEARCH (July 2010). In 2009, piracy raised as much as \$200 million, making it one of Somalia's most profitable businesses; Douglas A. McIntyre, *Somali Pirates Are Getting Rich: A Look at the Profit Margin*, TIME.COM Apr. 15, 2009, available at <http://www.time.com/time/business/article/0,8599,1891386,00.html> (last visited Jan. 31, 2013).

8. See 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, at 27 [hereinafter June 15 Report].

minimizing local interest in accountability.⁹ This has created mixed incentives for the Somali government, both nationally and locally in taking steps to prevent piracy and hold individuals accountable.

As one of many steps taken to address this piracy phenomenon, the United Nations (U.N.) Secretary General appointed Jack Lang (Lang), the former Minister of Culture and Education in France, as Special Advisor on legal issues related to piracy and asked him to identify steps which could improve piracy prosecutions.¹⁰ Lang completed his report in January, 2011.¹¹ His recommended “first step” as part of an overall “emergency plan” was the establishment of specialized piracy tribunals in Somalia and Tanzania.¹² He argued that these specialized piracy tribunals would be consistent with the “‘Somalization’ of solutions.”¹³ This article will describe the development of the Lang Proposal over the past year; further the article will address whether this Somalization is viable or whether a variation on his theme is warranted.

I. JACK LANG’S PROPOSAL: TWO SPECIALIZED SOMALI COURTS AND ONE EXTRATERRITORIAL COURT

To address the growing piracy threat and respond to the Secretary General’s request, Lang proposed the creation of two specialized Somali piracy courts: One in Puntland and one in Somaliland.¹⁴ These courts would be standalone courts, solely handling piracy cases.¹⁵ Additionally, Lang proposed the creation of an extraterritorial Somali piracy court to be temporarily located in Arusha, Tanzania.¹⁶ This court would also only handle piracy cases and use Somali law, rather than Tanzanian or international law.¹⁷ Lang further proposed that as a cost saving measure, this court could be co-located in the facilities of the International Criminal

9. *Lack of Effective Somali Government Root of Piracy Problem, Experts Say*, VOANEWS.com, Nov. 2, 2009, available at <http://www.voanews.com/content/a-13-2009-04-16-voa47-68733422/409931.html> (last visited Jan. 31, 2013) [hereinafter *Lack of Effective Somali Gov’t*].

10. U.N. Secretary-General, Letter dated 25 August 2010 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2010/451 (Aug. 25, 2010).

11. See Jack Lang Report, *supra* note 4, at 1.

12. *Id.* at 28, 38–39.

13. *Id.* at 28.

14. *Id.* at 38.

15. See *id.* at 38–39.

16. Jack Lang Report, *supra* note 4, at 38–39.

17. *Id.*

Tribunal for Rwanda.¹⁸ Once the security situation in Mogadishu improves, the court would move there.¹⁹

To help strengthen their ability to handle the piracy cases, these three courts would each operate in the Somali language and use Somali judges,²⁰ who would hopefully have access to and training from international judges and lawyers. The courts in Puntland and Arusha would have universal jurisdiction over the crime of piracy under a new counter-piracy law, which would require new legislation and training on how to implement these new laws.²¹ With an improved privacy law, the Somaliland court would continue to focus only on piracy acts committed by the people of Somaliland or acts committed in its territorial waters.²² The Somaliland court currently prosecutes acts of pirates for crimes other than piracy.²³ Ensuring passage of these new laws would be an essential step in furthering Lang's proposal.

Lang estimated that the cost of the tribunal for three years would be approximately \$25 million.²⁴ Funding sources included several nations, U.N. agencies, such as the U.N. Office of Drugs and Crime (UNODC), and "states that have contributed to the trust fund created by the Contact Group on Piracy off the Coast of Somalia in January 2010."²⁵ In June 2011, approximately \$908,567 had been received; however, since then, fundraising efforts have brought in millions more.²⁶ Nevertheless, continued fundraising efforts are still necessary.

UNODC has already taken the lead on assisting third world countries, such as Kenya and the Seychelles, to strengthen their ability to prosecute

18. *Id.* This court is only using the ICTR facilities as a cost-saving measure while the ICTR is in the wind-down process and the jurisdiction for the ICTR does not cover the crime of piracy.

19. *Id.* at 38–39.

20. *Id.* at 40.

21. Jack Lang Report, *supra* note 4, at 39.

22. *Id.* In Somaliland, the local government is only willing to take on piracy cases affecting its citizens or on its territory or in its territorial waters.

23. See June 15 Report, *supra* note 8, at 5.

24. Jack Lang Report, *supra* note 4, at 44.

25. *Id.* at 45. The trust fund created by the Contact Group on Piracy off the Coast of Somalia was known as "The Trust Fund Supporting the Initiatives of States Countering Piracy off the Coast of Somalia." *Id.* at 27. This estimate does not include the cost of bringing international judges into Somalia and Tanzania to provide mentoring and capacity-building assistance. See *id.* at 43–45.

26. June 15 Report, *supra* note 8, at 11; See also U.N. Secretary-General, *Report of the Secretary-General Pursuant to Security Council Resolution 1950 (2010)*, U.N. Doc. S/2011/662, Oct. 25, 2011, at 6 (However, pledges to the Trust Fund had been higher, indicating that about \$8.3 million had been received as of October 4, 2011.).

piracy cases.²⁷ Much of Lang's proposal appears to leverage this existing assistance. To increase detention capacity near the newly proposed, specialized anti-piracy courts in Somalia, Lang's proposal also included the construction of new prisons in Puntland and Somaliland.²⁸ The prisons would receive corrections training from UNODC and would be subject to local human rights monitoring.²⁹ Additionally, the Proposal established a reintegration program by which former pirates would be provided the opportunity to secure lawful employment upon release from any sentence served.³⁰

On April 11, 2011, the U.N. Security Council endorsed the recommendation in Resolution 1976 by deciding "to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court."³¹ The Security Council challenged the Secretary General to report on ways to accomplish this, including international participation, support and assistance for the courts. Over the next two months, Lang and a U.N. team examined the various aspects of his proposal and assisted in preparation of the follow-up report, which was issued on June 15, 2011.

II. MODALITIES FOR THE ESTABLISHMENT OF SPECIALIZED SOMALI-ANTI-PIRACY COURTS

In the June 15 report, the Secretary-General asserted that the guiding principle of Lang's report was "*strengthening the rule of law in Somalia*."³² In discussing the modalities necessary to operate these new specialized piracy courts, the June 15 report acknowledged the requirement for a new Constitutional and legislative framework.³³ Specifically, it raised concern over the consistency between the proposed new piracy laws as applied domestically and extraterritorially, the 1960 Constitution for the Somali Republic, and the 2004 Transitional Federal Charter for the Somali

27. See United Nations Office on Drugs and Crime, Counter Piracy Programme, November 2009, available at www.unodc.org/document/easternafrika/piracy/UNODC_Counter_Piracy_Programme.pdf (last visited Feb. 3, 2013).

28. Jack Lang Report, *supra* note 4, at 37.

29. *Id.*

30. *Id.*

31. S.C. Res. 1976, at 5, U.N. Doc. S/RES/1976 (Apr. 11, 2011).

32. June 15 Report, *supra* note 8, at 1 (emphasis added).

33. *Id.* at 4.

Republic.³⁴ To amend the 2004 Transitional Federal Charter, the June 15 report noted that one-third of the Transitional Federal Parliament would have to make a motion to pass the amendment and two-thirds of its members would have to support it.³⁵ This could be very difficult to accomplish in the current Somali political environment.³⁶

The Lang Proposal made some recommendations that were already consistent with ongoing training in Somalia. For instance, the U.N. Development Program (UNDP) and UNODC had already been providing assistance for piracy prosecutions in Somaliland and Puntland.³⁷ They did so by using the *existing* court system and *existing* law in cooperation with the Transitional Federal Government and regional authorities in Somalia.³⁸ These efforts have contributed to a number of piracy prosecutions which are already underway in Somalia.³⁹ The piracy prosecutions taking place in Puntland are based on a definition of “piracy” law that differs from the U.N. Convention on the “Law of the Sea” definition.⁴⁰ On the other hand, prosecutions taking place elsewhere in Somalia are generally for crimes other than piracy, such as illegal possession of weapons.⁴¹ As such, the new piracy laws created to strengthen prosecutions within Somalia are critical.

The current UNDP and UNODC plans for assistance are designed to strengthen Somaliland and Puntland’s ability to prosecute twenty more cases per year, with an average of ten pirates per case.⁴² These existing UNDP and UNODC programs have also initiated construction of new secure courthouses in both regions; however, they will still require additional new equipment from donors, enhanced measures for court security, and judicial training in criminal law and piracy.⁴³ Given the current level of training and education within the Somali court system, future efforts to ensure international participation and expertise will be essential. While international judges and prosecutors could travel to Somalia to conduct training, any effort that involves their participation in

34. *Id.*

35. *Id.*

36. *Id.*

37. June 15 Report, *supra* note 8, at 2.

38. *Id.* at 3 (emphasis added).

39. *Id.* at 4.

40. *Id.* at 4–5.

41. *Id.* at 5.

42. June 15 Report, *supra* note 8, at 3. This would allow for prosecution of nearly 200 pirates more.

43. *Id.* at 5–6, 8.

the court process would require a new legislative basis.⁴⁴ In addition to the courts, the UNODC is already working to strengthen the capacity and standards within existing prison system facilities while concurrently developing two new prisons over the next two years.⁴⁵ Each new prison is designed to hold 500 additional persons and comply with international standards.⁴⁶

Since it is more likely foreign judges and prosecutors who would come to Tanzania rather than Somalia, the extraterritorial Somali court located in Arusha, Tanzania, is envisioned to further strengthen the rule of law in Somalia by encouraging regional and international assistance to come to the region.⁴⁷ The June 15 report further noted that the establishment of a *new* extraterritorial Somali court would require a new Constitutional and legislative framework (similar to creating a specialized *new* piracy court within Somalia), and would require similar analysis regarding consistency with the 1960 Somali Constitution and Transitional Federal Charter.⁴⁸ Alternatively, locating an *existing* Somali federal court outside of Somalia would only require adoption of a Somali Constitution and the parliament's establishment of a judiciary.⁴⁹ While both measures require additional legal authorities, the latter may be easier to accomplish since it uses existing courts in Somalia rather than newly-created specialized ones.

III. STRENGTHENING THE RULE OF LAW IN SOMALIA THROUGH ESTABLISHING ANTI-PIRACY COURTS: IS THIS A VIABLE GOAL?

The Lang proposal and the existing UNDP and UNODC programs are all designed to strengthen the ability of the Somali courts to handle piracy cases and contribute to the broader and important goal of strengthening the rule of law in Somalia. To assess the likelihood of achieving this goal, it is important to look at the preferences of the Somali government and the state of the existing court system in Somalia.

To begin narrowly with the Lang proposal for specialized anti-piracy courts within Somalia, the TFG and regional authorities have expressed

44. *Id.* at 6.

45. *Id.* at 8.

46. *Id.* at 8. This prison program may actually be the very program that Jack Lang proposes in his initial report, leveraging on the efforts already underway by the UNODC.

47. June 15 Report, *supra* note 8, at 12.

48. *Id.* at 13 (emphasis added).

49. *Id.* (emphasis added).

support for piracy courts within Somalia.⁵⁰ However, they stated a strong preference for strengthening the *existing* Somali court structures rather than establishing *new* standalone Somali anti-piracy courts.⁵¹ Specifically, the Somaliland Minister for Foreign Affairs stated that Somaliland would only agree to prosecute cases in *existing* Somali courts rather than specialized anti-piracy courts.⁵² This statement appeared to support efforts to strengthen and increase the existing UNDP and UNODC programs rather than the Lang proposal.

As for the establishment of an extraterritorial Somali anti-piracy court to be located in Arusha, Tanzania, the June 15 Report indicated strong opposition from the Somali government.⁵³ The U.N. consulted with the relevant authorities in Somalia, including TFG's Deputy Prime Minister and Minister for Foreign Affairs and its Deputy Prime Minister and Minister of Development, Puntland's Minister of Maritime Transport, Ports and Counter-Piracy and its Director-General for Counter-Piracy, and the region Galmadug's Minister of Justice and of Fisheries.⁵⁴ All of the consultations revealed adamant opposition to a Somali court operating outside of Somalia and preferred the option of placing the court somewhere within Somalia.⁵⁵ Although the Somaliland Minister for Foreign Affairs did not officially oppose the extraterritorial court, he did state that he did not think it was "a good idea."⁵⁶

Given the current strong Somali federal and regional government opposition to both an extraterritorial Somali court and specialized anti-piracy courts within Somalia, it seems unlikely that the Lang proposals for specialized anti-piracy courts can prevail in Somalia as a "first step" in this overall "emergency plan." That said, there may well be an appetite for morphing this proposal into an enhanced UNDP and UNODC-style capacity building plan for Somalia, leveraging the existing court structures.

Accordingly, at this time it is worth exploring how to best strengthen capacity in the existing Somalia justice system, taking a look at its courts and prosecutions. The current Somali justice system is comprised of a

50. Margaret Besheer, *Somalia Wants Piracy Courts on its Territory*, VOICE OF AMERICA, June 20, 2011, available at <http://www.voanews.com/English/news/Africa/Somalia-Wants-Piracy-Courts-on-its-Territory-124298529.html> (last visited Feb. 3, 2013).

51. June 15 Report, *supra* note 8, at 14–15 (emphasis added).

52. *Id.* at 15. (emphasis added).

53. *Id.* at 14.

54. *Id.* at 14–15.

55. *Id.*

56. June 15 Report, *supra* note 8, at 14–15.

national court system, with both district and regional courts,⁵⁷ traditional tribal law and shari'a, all of which function somewhat intermittently.⁵⁸ Given that the current UNDP and UNODC capacity building efforts are focused on the national court system, this should be the focus of continued efforts on prosecutions. However, a relatively recent piracy law failed in Parliament due to the concern that it conflicted with shari'a law.⁵⁹ Furthermore, in March of 2009, the Somali TFG indicated that shari'a would be the nation's official judicial system.⁶⁰ The interplay between the regular court system and the influence of shari'a law is a theme that will need to be watched as these efforts move forward. Additionally, there are some concerns as to whether the Somali government will be politically or legally able to enact the new piracy laws needed to strengthen domestic piracy prosecutions.

In addition to the need for new piracy laws, the existing court system has significant challenges. The courts and prisons are vastly underfunded and poorly equipped.⁶¹ Lang's report noted that only about 5% of the near 200 judges in Somaliland and Puntland had legal training.⁶² Additionally, the UNDP assessed that less than 10% of the total judges and prosecutors in Somalia had any formal legal training.⁶³ Given the magnitude of the capacity building effort needed in Somalia, effective fundraising and a significant amount of time will be needed to enact the new piracy laws and develop a strong international judge and prosecutor training and mentorship program.⁶⁴

Next, it is important to determine whether investments in Somalia's justice system will actually result in more successful prosecutions, convictions and detention of pirates, or if the government has incentives to avoid addressing the problem. There is skepticism regarding whether the current Somali government can be the willing and effective partner needed

57. *Id.* at 31. The "assize" section where piracy cases are heard fit in the regional courts.

58. Jack Lang Report, *supra* note 4, at 34.

59. Betwa Sharma, *UN Adviser: Piracy Tribunals Needed ASAP*, HUFFINGTON POST, Jan. 25, 2011, available at <http://www.aolnews.com/2011/01/25/un-adviser-piracy-tribunals-needed-asap/> (last visited Feb. 3, 2013).

60. *History of Somalia*, WIKIPEDIA.ORG, available at http://en.wikipedia.org/wiki/History_of_Somalia (last visited Feb. 3, 2013).

61. June 15 Report, *supra* note 8, at 3, 8.

62. Jack Lang Report, *supra* note 4, at 38.

63. June 15 Report, *supra* note 8, at 5.

64. See Douglas Guilfoyle, *Piracy Off the Coast of Somalia, International Cooperation in the Prosecution of Somali Pirates*, July 21, 2011, available at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmfaff/writev/1318/m06.htm> (last visited Feb. 20, 2013) (written evidence provided by Dr. Guilfoyle to the UK Parliament).

for this effort,⁶⁵ and there has been indication that donors have been reluctant to fund a government that has not been fully accountable.⁶⁶

The Somali government indicated back in 2009 that it knew who the pirate leaders were, with Somali Prime Minister Sharmarke stating “[t]here is a lot of money flowing in . . . we are following very closely how money is distributed here.”⁶⁷ He indicated a need for more resources and the help of the international community to locate and prosecute the pirates.⁶⁸ Some U.N. sources indicated in the June 15 report that the key leaders of these pirate organizations, including their locations in Somalia, are already well known; further, the key leaders have political connections.⁶⁹ While it is clear that international assistance will be essential in strengthening the ability of the Somali courts to handle piracy cases, there is still concern over whether Somalia’s political figures will actually carry through with the prosecutions and detentions of pirates.

IV. HOW DO REGIONAL PARTNERS AND INTERNATIONAL DONORS VIEW THIS PLAN?

To prepare for the June 15 report, the U.N. team met with the Minister for Foreign Affairs and International Cooperation of the United Republic of Tanzania, who expressed Tanzania’s support for hosting an extraterritorial Somali court on its territory.⁷⁰ He indicated the need for additional security measures, a Navy ship to defend the coast, and perhaps a few additional facilities around the country to house suspected or convicted pirates.⁷¹ He also sent a letter indicating that the Arusha court should have a mandate to prosecute individuals who provide logistical support, intelligence, and financing for piracy; that the judges should include international and

65. *Lack of Effective Somali Gov’t*, *supra* note 9; See also Peter Spiegel, *Gates Says Somalia Government is Key to Problem*, THE WALL STREET JOURNAL, Apr. 14, 2009, available at <http://online.wsj.com/article/SB123967368677815883.html> (last visited Feb. 3, 2013).

66. Khalil Senosi, *AP: Somali government knows details on pirates*, USA TODAY, Apr. 16, 2009, http://www.usatoday.com/news/world/2009-04-16-somalia-pirates_N.htm (last visited Feb. 3, 2013).

67. *Id.*

68. *Id.*

69. June 15 Report, *supra* note 8, at 18. Current estimates indicate there are approximately 10–20 financiers, 50 main pirate leaders, approximately 300 leaders of attack groups and another 2,500 pirate foot soldiers. *Id.* at 27; See also Louis Charbonneau, *UN cites reports of govt links to Somalia pirates*, REUTERS, Mar. 18, 2009, available at <http://www.reuters.com/article/2009/03/18/idUSN18379298> (last visited Feb. 3, 2013).

70. June 15 Report, *supra* note 8, at 15.

71. *Id.*

Tanzanian judges as well as Somali for the best experience and diversity; and that the UN should have a clear funding mechanism and funding for the court⁷² (presumably having concerns over the proposed “voluntary funding” mechanism).⁷³ Accordingly, if the Somalis and other regional states decide to move forward and if adequate funding is achieved, Tanzania will willingly contribute to this effort.

Among the other regional states handling piracy cases, the Seychelles indicated its desire to continue with its own national prosecutions of pirates, focusing on leaders and financiers.⁷⁴ Additionally, Mauritius supported an extraterritorial court, so long as it was hosted in another state in the region such as Tanzania.⁷⁵ No country has appeared to arm wrestle Tanzania for the opportunity to host an extraterritorial Somali court on its territory. Nevertheless, it is likely that countries will continue their own national prosecutions, hopefully with continued assistance from UNODC and others to strengthen their capacity.

International donor nations, who were necessary to fund and support the specialized piracy courts, had split views on the matter. The French and Russian governments fully endorsed the Lang Report.⁷⁶ However, the U.S. supported a continuation of the current UNODC court and capacity building programs within Somalia, arguing that this is the most effective way “to meet the Lang report’s goal of a ‘Somalitzation’ of the anti-piracy effort.”⁷⁷ The U.S. did not support the extraterritorial Somali piracy court due to the opposition within Somalia itself described above and the heavy lift that would be required to establish such a court.⁷⁸ However, the U.S.

72. *Id.* at 16.

73. *Id.* at 25. The ICTR has operated in Tanzania under an “assessed” UN funding mechanism, meaning that the UN member states pay for a portion of the court’s operation as a percentage as their regular UN dues. The more recently established African court, the Special Court for Sierra Leone, operated under a “voluntary” contributions basis, requiring its leadership to spend a significant portion of its time and effort raising money. The June 15 report indicates that for UN-selected judges or prosecutors, Member States could determine that funding for the international component be met using UN assessed contributions, rather than voluntary contributions.

74. *Id.* at 16.

75. June 15 Report, *supra* note 8, at 16.

76. See Maritime Piracy, *Adoption of UNSCR 1918 by the United Nations Security Council*, FRANCE DIPLOMATIE, April 28, 2010, available at <http://www.diplomatie.gouv.fr/en/global-issues/defence-security/organized-criminality/maritime-piracy/article/piracy-adoption-of-uns-cr-1918-by> (last visited Feb. 7, 2013).

77. David Dunn, Ambassador and U.S. Alternate Representative for Special Political Affairs to the United Nations, Remarks at a Security Council Meeting on Somalia (June 21, 2011), available at <http://usun.state.gov/briefing/statements/2011/166707.htm> (last visited Feb. 7, 2013).

78. *Id.*

would support a dedicated piracy chamber or court in a third country in the region such as in Seychelles or Tanzania, which could apply its own national laws to prosecute pirates captured by the international naval forces.⁷⁹ Thus far, the efforts of Seychelles, Kenya, Mauritius, and even Tanzania to prosecute piracy cases or prepare to do so have been significant.⁸⁰ A recent U.N. Security Council resolution co-sponsored by India urging establishment of “specialized anti-piracy courts in the region” also had unanimous support.⁸¹

V. WHO TO PROSECUTE?

While not addressed in the original Lang report, the June 15 report raised the question of whether the extraterritorial court would prosecute low-level “foot soldier” pirates or focus instead on high-level financiers/plotters of piracy attacks.⁸² The report argued for the latter as a “strategically effective and cost-effective means of supplementing current prosecution efforts.”⁸³ The unanimous U.N. Security Council Resolution 2015 also supported this idea, calling for prosecution of individuals who “illicitly finance, plan, organize, facilitate, or profit from pirate attacks.”⁸⁴ Given the limited capacity of the current Somali system and other national systems prosecuting pirates, it makes sense to focus significant effort on the higher-ups, while continuing current efforts to stabilize Somalia. Given the Somali opposition, the future of an extraterritorial court in Arusha, Tanzania seems unlikely. The domestic Somali courts and other countries willing to prosecute piracy cases should ensure adequate laws are in place to support focused prosecutions on these higher-level individuals.

VI. PIRACY ELSEWHERE: DOES THIS EFFORT HELP THE BROADER FIGHT AGAINST PIRACY?

Given the current attention to creation of specialized anti-piracy courts in and around Somalia, it is worth asking what effect, if any, these courts

79. *Id.*

80. Jan. 2012 Report, *supra* note 1, at ¶ 2.

81. S.C. Res. 2015, at 4, U.N. Doc. S/RES/2015 (Oct. 24, 2011) [hereinafter UNSCR 2015]. See also *UN Security Council Adopts India-co-Sponsored Resolution on Piracy*, THE ECONOMIC TIMES, Oct. 25, 2011, available at http://articles.economictimes.indiatimes.com/2011-10-25/news/30320119_1_anti-piracy-piracy-operations-resolution (last visited Feb. 7, 2013).

82. June 15 Report, *supra* note 8, at 26.

83. *Id.*

84. UNSCR 2015, *supra* note 81; UN Security Council Adopts India-co-Sponsored Resolution on Piracy, *supra* note 81.

will have on piracy occurring in other parts of the world such as the South China Sea and West Africa? This is particularly important when assessing the costs, in light of limited amounts of donor funding, that may be available to fund similar efforts elsewhere. Will this investment help to deter pirate activity in other regions?

There does not appear to be empirical evidence or significant commentary on this issue. It does seem likely that any effort to prosecute pirates will contribute to a greater understanding of the crime itself and successful tactics for prosecution of piracy. The current focused effort to prosecute piracy on land, in the territorial seas of Somalia, and on the high seas off of the coast of Somalia strengthens the principle that there will be accountability for acts of piracy wherever they may occur. Further, these pirates will not be able to seek refuge in destabilized areas. The increased number of nations adopting piracy laws and exercising jurisdiction over piracy cases in this region should encourage similar global efforts in other regions affected by piracy.

Nonetheless, the current level of “tribunal fatigue”⁸⁵ over the *ad hoc* war crimes tribunals is a reminder that donors do tire of funding specialized justice mechanisms and efforts. Since dedicated funding and specialized piracy training may have collateral benefits for the local rule of law in Somalia, it further strengthens the case to increase piracy prosecutions in the regular court system. It is difficult to imagine a country more in need of precious rule of law assistance and funding than Somalia, particularly if you believe that the Somali government can be a willing partner in these endeavors.

VII. CONCLUSION

A stable, economically viable Somalia remains one of the most effective ways to discourage low-level pirates from engaging in this illicit activity. Broader international efforts from the U.N. and elsewhere remain committed to this stabilization plan. However, effective efforts to prosecute pirates for these crimes have been underway in the region and have resulted in more than 1000 pirates being held in twenty countries.⁸⁶ This is commendable, and a great step towards strengthening the principle of accountability for acts of piracy wherever they may occur.

The Lang proposal for specialized anti-piracy tribunals may not have been implemented in its entirety, but it stimulated both debate and action on

85. See Guilfoyle, *supra* note 64, at 98.

86. June 15 Report, *supra* note 8, at 27–28; *Somalia for Anti-Piracy Court Inside Country*, DAWN.COM, June 22, 2011, available at <http://www.dawn.com/2011/06/22/somalia-for-anti-piracy-court-inside-country.html> (last visited Feb. 7, 2013).

the very pressing issue of piracy off of the coast of Somalia. However, since November 21, 2012, the U.N. Security Council has pressed for continued consideration of the establishment of specialized anti-piracy courts.⁸⁷ Yet, this term has taken on a new definition of a “court operating under national law, with international assistance and with a focus on the prosecution of piracy offenses.”⁸⁸ Given the opposition to Lang’s proposal for specialized anti-piracy courts by the Somali federal and regional government, Lang’s proposal should be morphed into the current efforts to strengthen the capacity of the existing Somalia court system, which this new definition would support. This can be done through mainstreaming piracy in the regular courts, perhaps by creating specialized panels within these courts which are specially trained to handle piracy cases. Existing UNDP and UNODC efforts should be the continuing basis for taking this assistance forward as amplified in the Lang report. The notion of hosting an extraterritorial Somali court in Tanzania or another country should be abandoned due to opposition by the Somali government and the challenges associated with getting it done. Third world country prosecutions should continue with international assistance as they do in countries such as the Seychelles, Mauritius, and Kenya, and consideration of establishing a regional court that could operate under national legislation should remain a viable and attractive alternative. Incredible progress for these courts has occurred in the past several years, which include the establishment of a regional prosecution center in the Seychelles.⁸⁹ The U.N. strongly supports all of these efforts.⁹⁰ While the challenges associated with prosecuting piracy cases in the region are significant, this “modified” Lang Plan—a plan without specialized courts or an extraterritorial Somali court—offers the best hope for success.

87. Press Release, Security Council, Unremitting Piracy off Somalia’s Coast Prompts Security Council to Renew ‘Authorizations’ for International Action for Another Year; Resolution Calls for Deployment of Naval Vessels, Arms, Military Aircraft, Presses Somalia to Adopt Counter-Piracy Laws, Declare Exclusive Economic Zone, U.N. Doc. SC/10824 (Nov. 21, 2013).

88. Jan. 2012 Report, *supra* note 1, at ¶ 3.

89. *Id.*

90. *See Id.*