JUVENILE PIRATES AT HIGH SEAS: IS UNIVERSAL JURISDICTION THE ANSWER?

Abstract

Piracy has been treated as a romanticized subject in literature with mythical stories and legends being written about the pirates and their deeds. The growth of piracy coincided with the discovery of the New World and the consequent race among the great powers to plunder the riches of the new world. The concept of ‘Universal Jurisdiction’ was a creation of the need of the European nations to explore and trade with the nations around the world and the lack of sufficient naval power with individual states to ensure security of the vessels and seafarers at high seas. The pirates captured vessels and the persons aboard which were taken as slaves if not freed by paying ransom. This lead to the emergence of the concept of pirates being recognised as ‘enemies of mankind’ and thus the need of ‘universal jurisdiction’ to prosecute such pirates since it was not within the capacity of any one state to secure the conviction of piracy on its ships and nationals. While the concept of ‘Universal Jurisdiction’ is rooted in history but it begs the question, that where children are involved in piracy operations, do they too have to be prosecuted under a regime which was created with a different purpose in mind and was therefore necessarily harsh or they are to be treated under a different regime which aims at their rehabilitation.

Introduction

Juvenile piracy has emerged relatively recently in the past few years and has attained increased significance since piracy has been associated with a crime of a grievous nature and the increasing use of persons below the age of eighteen years has caught the attention of the scholars and experts of international law. The use of children in the commission of crimes of international nature brings into view several treaties that impinge upon the question of prosecution of crime committed by the children. The Convention on the Rights of the Child entered into force in the year 1990 and it makes provisions for ensuring a healthy, dignified growth of the child. Scholarly work on regards children who are being used to commit crimes more as victims rather than perpetrators. In addition with regard to children, the question of responsibility of the

3 Amnesty International, Child Soldiers: Criminals Or Victims?, available at https://www.amnesty.org/en/documents/ior50/002/2000/en/ (last accessed on 11 February, 2018,) p. 4. Though the report talks about the participation of children in hostilities and regards them as victims when they are forced into taking part in hostilities, yet the same situation also prevails in the case of child pirates and according to Radhika Coomaraswamy, the former Special
prosecuting state as well as that of the international community also comes into view as to what should be the role of the state when such children are apprehended. This question has to be examined in the context of universal jurisdiction for unless a clear cut identification is provided for examination of the rights of children and the method and means of enforcement of such rights by an international tribunal it would be difficult to enforce such rights of children. Piracy under the ‘universal jurisdiction’ regime consisted of prosecution of the pirates by the apprehending states and as such there wasn’t much responsibility imposed on such states beyond that of fair trial and ensuring the guarantee of human rights of convicts. This however changes when the states are dealing with children, for additional responsibilities come to be imposed upon such States as has been agreed upon the Child Rights Convention. The combined effect of the responsibility of the nations under the child rights convention and other international treaties is that they have to give preference to rehabilitation of juvenile offenders instead of conviction. However rehabilitation is best carried out in the state of nationality of such children and which is difficult to achieve in the present global context of sovereignty of nations as it would require that such states agree to interventionist inspection of global bodies or the prosecuting state. Compounding the problem is the fact that the children generally belong to failed states and hence even regular monitoring would unlikely solve the problem unless the causes of failure of such states are attended to. The article tries to address this question by looking at the interlinkage between the policies of universal jurisdiction and rehabilitation of child pirates.

Section 1 - Piracy and the Concept of Universal Jurisdiction

Piracy has been an scourge of the sea faring nations for long ever since the emergence of use of high seas for trade. However piracy in its historic connotations, meant criminals who used boats and other water navigable vessels to carry out
depredations on the coast rather than on high seas. Following the coastal depredation which were for private gains of criminals the ambit of piracy extended to warfare that was carried out by hostiles and pirates were treated as such - that is enemies. The concept of piracy thus encompassed criminals as well as warring hostiles.

It wasn’t however till the emergence of modern shipping and trade between nations that maritime piracy reinvented itself as acts of depredations carried out on high seas against vessels and persons that were on commercial and trade missions with the aim of private gains or with the aim of affecting the economy of the flag state. The depredations that were carried out besides plundering also took slaves which led to branding the pirates as “the enemies of God and Man”. The origin of piracy though was in the form of plundering for gains eventually took the form of holding hostages for ransom and the European nations routinely paid ransom to secure the release of their captives. Karaska graphically elaborates it in his book the cases where Americans were forced to pay ransom time and again to the Barbary kingdoms for the release of captured vessels and crew. They also paid tribute for ensuring the safe passage to their vessels. The annual payments to the Barbary kingdoms kept on increasing and with each payment the national humiliation of the Americans. This led the American to create the navy that was successful in controlling the use of piracy by the Barbary kingdoms and with the humiliation of the Barbary kingdoms the problem of piracy and annual tributes to the kingdoms stopped. On the European side how piracy continued for much long after. While the USA encountered the scourge of the piracy in the form of depredation of the Barbary kingdoms, the European nations were faced with piracy differently though they too faced the pirates attacks of the Barbary kingdoms. The Spaniards and the Portuguese were the first of the people who set out to discover the new world. Christopher Columbus under the auspices of the Spanish Crown discovered America whereas the Portuguese were also trying to discover sea routes to other countries. The discovery of America led Spain to conclude the Treaty of Tordesillas with Portugal and they divided the oceans between

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7 Ibid.
8 Id. at 7.
9 Id. at 21.
10 See Karaska, chapter 1, *Supra note 6*
11 The Treaty of Tordesillas was concluded on June 7, 1494 between Spain and Portugal and it divided the lands discovered and yet not discovered between the two nations during the expeditions on high seas. The other European nations did not accept the treaty. *available at* [https://www.britannica.com/event/Treaty-of-Tordesillas](https://www.britannica.com/event/Treaty-of-Tordesillas) (last accessed 11 February, 2018).
themselves. In pursuance with this treaty, Vasco de Gama, a Portuguese started east and is credited with the discovery of the sea route to India. His voyage linked the Western countries and the Oriental countries. The discovery of the vast amount of riches in the New World attracted the other nations of Europe who also wanted a part in the riches and this led to attacks on the ships that were carrying the riches home to Spain. In particular the Dutch, French and the English were not willing to recognize the suzerainty of Spain or Portugal over the New World and this led to engaging privateers who attacked the vessels that were on their way back. The English adopted a system of issuing letters of reprisals or letters of marque to seafarers to authorise their actions against the Spanish ships carrying specie from the New World. While these letters removed the status of privateers of such seafarers yet the Spanish treated such captured attackers as pirates and sentenced them as per their laws on piracy. The Great powers rivalries particularly between France and the English spilled into the area of piracy with alliances formed that targeted the shipping of the opposing alliances. The great power rivalries lead to the gradual emergence of independent pirates who didn't owe allegiance to any state and became a menace to all shipping. The English thereafter defined the act of piracy as a crime where piracy could be carried on by the citizens or the subjects of the nation whereas the acts if carried out by nationals of other nations constituted warfare. Later on the piracy came to be understood as depredations carried out by private vessels for private gains and thereby did not involve the aegis of a foreign state. Where a foreign state gets involved the attacks become a part of an international conflict. In the case of plunder by a private ship on high seas or on beach, there is absence of state involvement and therefore it was understood that pirates target all ships and beaches for profit without any consideration for the nationality of such ships.

Piracy and the high seas trade lead to the development of the Law of Oceans. The major empires of the world developed around the sea and the necessity to regulate the large sea was the reason behind the treaties between different nations. Karasks opines that the precursor to the "Treaty of Westphalia" was the development of Ocean Law. The development of oceanic travel around the world and the conquests of travellers on the different lands surrounding such oceans led to the dispute over ownership of the waters and the regions around them. Portugal and Spain - the two seafaring nations that started seafaring - divided the waters and the lands between

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12 See Karaska Supra note 6.
13 The Treaty of Westphalia established the 'modern bedrock of international law of today' which is the sovereign equality of all nations.
14 Supra note 6 at p. 3
themselves. The further emergence of powers in the European continent led to a
challenge to the suzerainty of the twin powers which indirectly resulted in the framing
of the laws of war and peace by Hugo Grotius in his book “de jure belli ac pacis”\textsuperscript{15} and
laws relating to seas “Mare Liberum”\textsuperscript{16}. The rise of other powers namely Great Britain,
France and the Dutch challenged the suzerainty of the two powers on the seas. The
concept of the ‘freedom of seas’ that came into existence during the period continued
through the centuries and right through the superpower rivalries during the cold war
when the United Nations Convention on the Law of Sea was negotiated to include the
freedom of transition through the territorial seas also. While there is freedom of
movement through the territorial sea of the coastal state the jurisdiction over acts in
the territorial sea lies with the coastal state and therefore the incidents that occur
within international waters are known as piracy while those in the territorial waters are
known as armed robberies.

Section II - International Law and Piracy

The seas and the oceans occupy more than 70% of the Earth surface\textsuperscript{17} and
oceanic shipping accounts for a nearly 90% of global trade between nations\textsuperscript{18}. The
threat of piracy is therefore an important consideration for the shipping industry.
The laws of seas have developed around facilitating commercial shipping on high seas
well as exploitation of oceanic wealth in mind. Piracy involves stealing, holding for
ransom, seizing cargo and ships and is categorised as ‘Hostis humani generis’ meaning
‘the enemy of mankind’

Piracy by law of nations, in its jurisdictional aspects, is sui generis. Though statutes
may provide for its punishment, it is an offence against the law of nations; and as the
scene of the pirate’s operations is the high seas, which it is not the right or duty of any
nation to police, he is denied the protection of the flag which he may carry, and is
treated as an outlaw, as the enemy of all mankind – hostis humani generis - whom any
nation may in the interest of all capture and punish\textsuperscript{19}.

\textsuperscript{15} The main idea of the book ‘De jure belli ac pacis’ is that the affairs of the people and states is
governed by natural law.
\textsuperscript{16} The treatise ‘Mare Liberum’ was a development of the idea of natural law and posited that the
high seas were free territory and no one has the right to lay claim on the high seas unless the
nation is able to control the territory being so claimed.
\textsuperscript{17} National Geographic, Oceans, available at \url{https://www.nationalgeographic.com/environment/
habitats/ocean/} (last accessed February 11, 2018).
\textsuperscript{18} Nearly 90% of the global trade moves through seas. International Maritime Organization,
\textsuperscript{19} Permanent Court of International Justice, The Case of S.S. Lotus, France vs. Turkey Judgement,
File E. c., Docket XI, Judgment No. 9, 7 September 1927, Para 249, available at \url{http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm} (last accessed February 12,
2018).
Maritime piracy has been defined and described in a fashion as to be punishable by all States. The genealogy of crime of piracy can be traced back to the gravity attached to the crimes against property. This was particularly so in the case of piracy at sea since the state of an empire depended upon the goods traded at sea. Under certain events, which were defined as acts constituting piracy, the courts could impose death penalty. The presence of death penalty in certain jurisdictions and the condemnation of the crime as being against all mankind gave to the crime a certain gravity which was lacking with other international crimes. By virtue of the doctrine of ‘Universal Jurisdiction’, every state has the authority to prosecute the crime of piracy, but the domestic law of the state has to proscribe piracy to bring it within the ambit of universal jurisdiction and punish the crime of piracy. Without a corresponding law proscribing piracy in the penal statutes of a state, the presence of universal jurisdiction is rendered meaningless.

An analysis of the American and British Jurisprudence would be instructive in regard to piracy. The legal framework on piracy revolves around two questions - the first whether the act of depredation were conducted under the authority of a sovereign such as where letters of marque or reprisals were issued and second who were the perpetrators of the crime and against whom the crime was carried out. With regard to the first question, the position of the American courts have shifted over the years. Starting with treating piracy as a crime which could only be committed by private individuals who were not operating under an authorisation, the legal provisions shifted to treating piracy as a crime committed for the purpose of gains rendering it immaterial whether it was on an authorization or it was a private act. With regard to the nationality

20 Crime of Piracy was not always a crime of taking away property illegally. The Act of destruction of the ship too constituted piracy.
21 The nations had developed naval forces to dominate the seas and trading with nations around the world was very profitable on which the health of the empire depended. Acts of depredations on merchant vessels at sea, thus weakened the empire.
22 The acts of piracy was not merely the robbery on ships on high seas but also various other associated acts that went along with it like voluntary delivery of goods, ordnance etc; incapacitating a warship from carrying out its operations against pirates; assisting the pirates were all classified as piracy and were to be sentenced with death penalty under several English statutes. Supra note 6 at 107
23 The Crimes of Genocide or even war crimes are not clothed with the gravity that piracy gets under international law though the pirates have taken hostages and killed them but their primary aim has largely been profits made out of piracy which is akin to any other robbery with the only difference that it is being committed on high seas. Looking from this point of view and discounting the historical evolution of the crime of piracy, it appears that piracy has been given far more importance compared to crimes that are graver such as migrant smuggling, genocide etc.
24 Supra note 6 at 109
of the persons involved in piracy, where such persons were not American citizens, the
court ruled that they lacked the authority to prosecute such crimes.25

**UNCLOS and Piracy**

The present law on piracy has evolved from the various negotiations that went
on over the period of years on codification of law determining piracy. The UNCLOS26
agreement provides provisions as well as principles on piracy. Primarily it identifies
that piracy could be conducted only beyond the territorial waters of the coastal state
and it should be for the purpose of private gratification. Where there is an involvement
of a state, the crime ceases to be that of piracy. Further there is a necessity of two
ships for an act of piracy - illegal robbery on a ship or mutiny doesn’t amounts to an
act of piracy and would not be amenable to the force of universal jurisdiction. Lastly
the principle that it propounds is that only public vessels are authorized to interdict a
pirate vessel. Private vessels lack the right to interdict.27 The primary duty imposed by
the UNCLOS agreement is that the States should render maximum cooperation to
repress piracy on the high seas or any place outside the jurisdiction of the state.28 This
necessarily calls for the enactment of domestic legislation that proscribes piracy.29
This is an important requirement which if not fulfilled would render the presence of
noted that the domestic law of a number of states are deficient in provisions that are
relevant for prosecuting or criminalizing acts of piracy. Similarly the United Nations
General Assembly called for “states to take appropriate steps under their national law
to facilitate the apprehension and prosecution of those who are alleged to have
committed acts of piracy.”31 Section 101 of the UNCLOS defines acts of piracy. The
requirement that characterizes the acts of piracy, as is evident from the above discussion,
and is listed out in the article, are that the acts should be voluntary, carried out by a
crew or passengers of private ship or aircraft against, persons or property on board of
other ship or aircraft and the acts should be conducted in high seas or beyond the
territorial jurisdiction of a state. The section further proscribes the acts of inciting of

25 Supra note 6 at 111.
27 Supra note 6 at 127.
28 Article 100 of UNCLOS, Supra note 26.
29 Supra note 6 at 128.
31 Resolution adopted by the General Assembly on 4th December 2009: 64/71 Oceans and the
facilitating acts of piracy\textsuperscript{32}. While depredation carried out by government ships and government aircrafts are excluded from the definition of piracy but where such a ship does not remains under government control such as in case of mutiny on a warship where the control of the ship passes into the hands of mutineers the ship and the crew of the ship are become amenable to the jurisdiction for prosecuting the crime of piracy\textsuperscript{33}. While the law provides that pirates are to be arrested under the rubric of international law that outlaws acts of piracy, it also provides for law related to the ships engaged in pirate acts. Ships are registered under the laws of flag state, that is, they claim nationality of a state, and therefore once they are accused of piracy, it amounts of exercising changing the laws that are applicable on the ship. The doctrine of ‘Universal Jurisdiction’ provides for acquisition of jurisdiction but it doesn’t provides for loss of nationality. In the case of ships a similar rule prevails where the nationality of the ship can be lost only when the domestic law of the flag state provides for it\textsuperscript{34}. Article 105 of the UNCLOS provides for the seizure of the pirate ship or aircraft only when it is not within the domestic jurisdiction of a state. By virtue of Section 107 of UNCLOS, only government ships can engage in anti-piracy operations. Ships on the governmental duties are cloaked in the gown of sovereign immunity\textsuperscript{35} and are therefore immune from being seized by the ships of other nations on the charges of piracy. Further only government ships have the authority to interdict and seize ships suspected of piracy\textsuperscript{36}. Article 111 of the UNCLOS\textsuperscript{37} provides for provisions of hot pursuit on high seas. When hot pursuit is undertaken by the coastal state the jurisdiction of the coastal state extends to the act that is prohibited for that part of the sea that is under the territorial jurisdiction of the state concerned and has been carried out in the territorial sea of the coastal state\textsuperscript{38}.

Section III - Involvement of Children in Piracy

The involvement of children in piracy has presented a conundrum before the international community as using children in acts of piracy often complicates the

\textsuperscript{32} Article 101(c) provides ‘[piracy is ] any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).’

\textsuperscript{33} Article 102 of UNCLOS, Supra note 26.

\textsuperscript{34} Article 104 of UNCLOS, Supra note 26.

\textsuperscript{35} Articles 95, 96 and 236 of UNCLOS, Supra note 26.

\textsuperscript{36} Articles 110 (1)(a) and (5) of UNCLOS, Supra note 26.

\textsuperscript{37} Article 111 of UNCLOS, Supra note 26.

\textsuperscript{38} The Right of Hot Pursuit would thus begin in the territorial waters when there is reason to believe that the ship in question violated the law of the coastal state, in contiguous waters it would begin when there is violation of the custom laws of the state, while the offences against which hot pursuit would be in the EEZ would be against the fisheries related offences.
question of the treatment of the captured pirates. The increase in the cases of piracy and the involvement of children in such enterprises led the scholarship to seek out other ways to hit at the roots of the such crimes such as adopting ‘The Theory of Command Responsibility’ and ‘The Theory of Joint Criminal Enterprise’. The first theory in the context of warfare holds the commanders responsible for the war crimes as they are the figures that direct the crimes committed by the subordinates. The extrapolation of this doctrine to the acts of piracy was in part due to the use of children in the acts of piracy as it is difficult to focus responsibility on them for their acts since they are protected under the Child Right Convention. The second doctrine that was under discussion was the doctrine of ‘The Joint Theory of Criminal Enterprise’ that fixed liability on those agencies that financed, assisted or those who were suppliers of weapons and crafts or such other figures that were indirectly involved in the commission of the crime knowing fully well that the material sought is for the conduct of the crime.

The involvement of children in piracy arises from the fact that they are easily available because of the prevailing socio-economic conditions in their countries where lack of employment opportunities forces them to seek avenues that provides them with some sort of employment. In addition because of the prevailing laws in the states and international conventions that requires to provide protection to children, the recruiters prefer to have as it is more likely that children apprehended involved in pirate activities would be provided with a favourable treatment and released early even if convicted whereas an adult would find himself incarcerated. The additional reason for the children to be involved in piracy is that the families of such individuals have been involved in piracy dealings and the children became involved due to their elders. The vulnerability of children and the fact that they can be easily indoctrinated and manipulated to commit acts makes them ideal to be used for being employed as soldiers and pirates.

The use of children in piracy operations present the problem which is of their treatment when they are apprehended by the anti piracy forces. The international regime of the ILO to which most of the states are parties requires them to protect children

40 An example can be the Convention on the Rights of the Child. Supra note 1
41 Shelly L. Whitman, Children and Marine Piracy, 46 Case Western Reserve Journal of International Law, 1&2 (2013). The author has explored the reasons for the involvement of children in piracy.
42 Ibid
from the worst form of child labour. The worst form of child labour under Section 3(c) of the convention provides that the worst form of child labour includes activities which involve ‘the use, procuring or offering of a child for illicit activities’. The duties under the child rights convention does not end with providing protection to the children but extend to rehabilitating them and attempting to reintegrate them into the social milieu. According to this interpretation, the act of letting a child free when apprehended is not an option for the child then goes straight back from the very criminal enterprise from which he has been rescued. This then provides a disincentive for the states to apprehend child pirates as that would impose upon them a responsibility to rehabilitate them which would be more than likely in their own state for securing a rehabilitation source in their parent state would involve a large number of logistical and legal complications. The anti-piracy forces would also have to prosecute the arrested child pirates under the national laws. This then presents the question as to what is the overlap between the need to prosecute the child pirates and the quest to rehabilitate them since if prosecution is not secured, the incidence of piracy goes up and a quest to rehabilitate child pirates makes the act of piracy lucrative for the pirates.

Section IV - International Law and Child Soldiers

For understanding the question as to how ‘international law’ should work in the case of ‘juvenile pirates’ we have to look at how ‘international law’ works in the case of ‘child soldiers’. For the prosecution of war criminals, international criminal tribunals have been established namely the ICTY (International Criminal Tribunal for Former Yugoslavia), ICTR (International Criminal Tribunal for Rwanda) Special Court of Sierra Leone (SCSL) and the International Criminal Court (ICC) with some having

43 Supra note 5
44 The United Nations Convention on the Rights of Child (CRC) which has a near universal adoption and acceptance provides for certain rights to Children and the signatory states are required to comply with the requirements of the convention. The CRC provides that child means a human being who has not attained the age of 18 years except where the domestic law of a state provides for a different age of majority.
47 The Special Court of Sierra Leone has the jurisdiction to prosecute minors above the age of 15 years (Article 4c) but its chief prosecutors has stated that he would not prosecute children. (See IRIN, ‘Sierra Leone: Special Court will not indict Children’ at ; Public Affairs Office, ‘Special Court Prosecutor Says He Will Not Prosecute Children’ available at http://www.scsl.org/LinkClick.aspx?fileticket=XRWuCd%2baUvAh%3d&tabid=196). Statute of the Special Court for Sierra Leone, 2178 UNTS 138, 145; 97 AJIL 295; UN Doc. S/2002/246, appendix II
48 The Rome Statute provides under Article 26 that the court shall have no jurisdiction on person below 18 years of age. Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90
the powers to prosecute child soldiers. In the context of our examination it is important to mention that until now the International Criminal Tribunals have balked at the option of prosecuting child soldiers and therefore the liability for such prosecution have fallen on the Domestic Tribunals. The absence of ‘Universal Jurisdiction’ in the case of prosecution for war crimes needs to be highlighted since war crimes are serious offences and the perpetrators are brought to the book in international tribunals, presumably because the tribunals in the states concerned are either non-functional or are inefficient in bringing the perpetrators of war crimes to justice. While there may be reasons why international tribunals are required for prosecution of individuals for war crimes such as the necessity of will to prosecute for an act which hasn’t affected a third state directly, however it still begs the question why the same could not be the case with prosecution for acts of piracy. An International Tribunal could very well take cognizance of cases on the motion of a state and provide for international responsibility for persons and the state from where such persons operate.

The International criminal tribunals have also undertaken and executed their responsibility of rehabilitation of children involved in wars crimes so as to be in the best interests of the child concerned in accordance with the provisions of the ‘Convention on Child Rights’ and the ‘Beijing Rules’. The ‘International Criminal Tribunal of Yugoslavia’ in the Erdomevic case, sentenced the person to merely 5 years of imprisonment on the grounds that the concerned individual should be provided with a chance of rehabilitation and reintegration into the community. The tribunal stated that he “should be given a second chance to start his life afresh upon release, whilst still young enough to do so”. Another case involves the punishment of Omar Khadr. The trial and prosecution has been criticised on the grounds that child soldiers should be seen as victims of those recruiting them rather than as criminals who have

49 The ICC cannot prosecute anyone under the age of 18 years. ICTR and ICTY are silent on the age of the offenders that can be prosecuted and SCSL cannot prosecute a person under the age of 15 years.
50 None of the international criminal tribunals - ICTY, ICTR, ICC or SCSL have prosecuted or convicted a child soldier.
53 Ibid.
54 Omar Khadr's case was not prosecuted by an International Tribunal but it generated a huge amount of publicity.
the necessary intention to commit the crimes they are accused of\textsuperscript{55}. Similar has been the case of the Rwandan genocide where several children were arrested\textsuperscript{56} though they were tried under Gacaca proceedings\textsuperscript{57}. With regard to prosecution of children for war crime the line of argument provides that, prosecuting and convicting child soldiers would not serve any purpose unless their recruiters are identified and punished\textsuperscript{58}.

Thus from the foregoing discussion it is evident that international law doesn’t frowns upon the prosecution of children involved in serious humanitarian crimes but correspondingly it imposes a responsibility that the rehabilitation of such children should be the most important consideration\textsuperscript{59} under the provisions of ‘Convention on the Rights of the Child’ to which a large number of states are signatories.

**Conclusion**

The concept of ‘Hostis humani generis’ on the one hand and ‘the duty to rehabilitate the children accused of the crime’ on the other hand, presents a conundrum for the nation states for the offence has been classified as grave enough to required universal jurisdiction while the humanitarian normative order today requires the case of children involved in crimes to be considered sympathetically. The emergence of the crime of piracy and the response that has been provided to it has a historical context which is in conflict with the present laws and legal framework that works for the protection of children - the emphasis on one leads to the weakening of the other. If the duty to rehabilitate is emphasized in anti-piracy operations, it leads to the weakening of the laws that are related to anti-piracy operations whereas if the anti-piracy stand is emphasized it leads to the weakening of the laws that provides for the protection of

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\textsuperscript{56} Chen Reis, “Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict” 28 Colum HRL Rev 629 (1997)

\textsuperscript{57} Mark Drumbl, *Atrocity, Punishment, and International Law* 85 (Cambridge University Press, New York, 2007)

\textsuperscript{58} Matthew Happold, “Child Soldiers, Victims or Perpetrators?” 29 U La Verne L Rev 56 (2008) at 72

\textsuperscript{59} Customary International Law reflects a general practice perceived as having the force of law. Because the CRC has been ratified by almost every nation, it is clear that it is perceived by states as having the force of law. Moreover, domestic and international tribunals have looked at the CRC for guidance and to support their decisions, thereby reflecting general practice. See *Roper v. Simmons* (2005) 535 US 551; also see *Sabin v Germany* (2003) ECHR, 30943/96, 36 EHRR 43; *Sommerfeld v Germany* (2003) ECHR, 31871/96; Reports of the Inter-American Court of Human Rights (Art 64(1) of the American Convention on Human Rights) (2002), Advisory Opinion OC-17/02, Inter-Am Ct HR (Ser A) No 17 online:
the children. The conundrum has thus led to states making attempts to prevent piracy at sea, rather than acting to apprehend pirates or using alternative means to deter financing and conduct of piracy operations by members back onshore.

However the moot question still remains - to prosecute which is mandated by the customary law principle of ‘Universal Jurisdiction’ or rehabilitate which is required by the conventions? Universal Jurisdiction requires prosecution to take place according to the national laws of the apprehending nations rather than under an international framework whereas the duty to rehabilitate in general requires that the accused child be sent back to the community to which he belongs and which would require that the parent state of the child agrees to accepting the judicial determination of another state which directly counters the theory of sovereignty. If however the parent state fails to accept the convicted child the responsibility of the rehabilitation of the child falls upon the apprehending state and the states naturally would want to avoid such a responsibility. In the case of warfare where children are involved and an international peacekeeping force is charged with maintaining peace, the jurisdiction on the criminal responsibility lies upon an international criminal tribunal or the domestic court while the individual responsibility of the apprehending state, if it is a third state which is contributing the forces, is extinguished. Thus the presence of an international tribunal permits the rehabilitation of child soldiers which appears difficult in case of child pirates.

It thus appears that the presence of universal jurisdiction is preventing the states from carrying out their duties under the child rights convention of rehabilitating the child pirates. It is therefore necessary that the concept of universal Jurisdiction needs to be revisited so that the duty that has been imposed upon by the child rights convention can be executed by the states. The establishment of an International Court or Tribunal with powers to prosecute individuals accused of piracy and direct rehabilitation of the child pirates in the country of their nationality would go a long way in fulfilling the pledges that nations have taken under the child rights convention. This could also serve as a template for providing justice to children that may be found involved in other crimes of international nature.

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on the high sea or any other place outside the jurisdiction of the coastal state that pirates can be arrested by any of the state. But Article
106 verifies such a seizure only can be taken place on the basis of adequate grounds of suspicion. In the Western Indian Ocean and
Arabian Sea came into force from January 29 of 2009, it was signed by nine countries of the region. By looking at the Law of the Sea
rules on piracy and its inadequacy to cope with the issue that pirates on the high seas, applies also to seizures and arrests in the
territorial sea of Somalia. under the Security Council resolutions referred to above. Seizing powers in other words those states those
who are fighting against pirates have greater powers over the captured pirates Universal jurisdiction enables a person to be tried before
a national court even when there is no link to the State. Under this principle, jurisdiction is exercised on the basis that the crime
committed is so serious and of universal concern that each State has an interest to prosecute. In other words, these crimes are
punishable by any State. Universal jurisdiction is a developing concept in international law and its scope, method of application and
extent of application is controversial. Universal jurisdiction was exercised in: the Eichmann Case where Israel used universal jurisdiction
as a The high seas are not lawless. Well, not completely. According to international law, a maritime country extends outward some
distance from its shoreline. During the 20th century several attempts to develop an international law of the sea have been made
under the aegis of the United Nations. This may seem pretty straightforward, but vessels in the sea are often on the move, which
creates jurisdictional headaches for investigators and government officials. For example, which country’s laws apply when a person
from Country X commits a murder aboard a cruise ship owned by Country Y in international waters, but between the time of the crime
and its discovery the ship enters the territorial waters of Country Z?