



Emerging Challenges in Implementing the Rule of Law on the High Seas

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The Golden Age of Piracy, an era characterized by wanton maritime anarchy, endured circa 80 years, from the 1650s to the 1730s. Factors spawning the anarchy ranged from the low risk of intercepting and stealing increasingly valuable seaborne shipments of goods on the high seas to pursuing piracy as a lucrative alternative to a stagnating job market when the 11-year War of Spanish Succession expired. Notwithstanding its romantization in fictional period works, the Golden Age of Piracy essentially reduces to a series of opportunistic criminal enterprises. Beginning in the Caribbean and eastern Pacific, over time the criminal pandemic of piracy expanded to more distant targets in the Indian Ocean, the Red Sea and the coast of West Africa.

Underfunded colonial governments in developing states coupled with the inadequacy of European naval fleets to effectively patrol the world's high seas encouraged the proliferation. Nourishing the growth of piracy, infectious greed for quick profits generated by colonial imperialism spread quickly throughout Europe's government and business communities. Profit-making enterprises sponsored by these colonial governments included coerced unpaid labor for terms up to seven years, imposition of taxes on the peasantry, the forced conscription of indigenous peoples in developing countries for overseas export into slavery, and the exploitation and theft of natural resources.

The British Empire's 1700 Act for the More Effectual Suppression of Piracy (Piracy Act of 1698) authorized acts of piracy to be "examined, inquired of, tried, heard and determined, and adjudged in any place at sea, or upon the land, in any of his Majesty's islands, plantations, colonies, dominions, forts, or factories." It greatly facilitated the administration of justice by eliminating the requirement that all defendants charged with piracy acts be tried in England, thereby ensuring speedier trials for defendants. This led to a proliferation of English admiralty courts throughout the developing world, an important step forward for the rule of law. Prompt maritime justice and a collective effort by the European states to strengthen their naval forces eventually led to the demise of the Golden Age.

Our own era has seen the rise of more insidious accounts of piracy and a slew of other maritime crimes whose perpetrators often evade justice for want of appropriate enforcement mechanisms, of clearly defined jurisdiction, of applicable criminal statutes, and of states willing to commit the resources required to pursue and bring maritime criminals to justice. In 2014, according to a *New York Times* database, in three maritime regions – Southeast Asia, West Africa's Gulf of Guinea and the Indian Ocean -- in excess of 5,200 unfortunate seafarers came under attack from modern-day pirates and thieves with circa 10% taken and held as hostages. Today, fuel thieves conspire with maritime police and/or naval forces in the chaotic ports of teeming third-world mega-cities, triggering insurance claims. Traffickers in human payloads, capitalizing on civil wars, violent religious extremism, and economic mismanagement in myriad states, avoid airports and highways in favor of international waters to transport record numbers of desperate migrants, asylum seekers, and war-zone refugees in lucrative and competitive markets in the Black, Mediterranean, Timor, Coral and other seas. Some ram rival traffickers' vessels, or they disable or sink their own to trigger rescue operations or disperse the human evidence of their criminal enterprise. Increasingly aggressive competition for dwindling stocks in prime fishing regions, particularly in East Asia and Oceania, for export to lucrative markets in Europe and North America, routinely sparks violent encounters, even murder, between boat crews. To conserve costs, unscrupulous marketers prey on unwary victims of poverty in rural and urban areas, many from Cambodia and Myanmar. Enticing their human prey with offers of comparatively well-paying jobs working on fishing and seafood trawlers, dangling the lure of long-haul travel on the high seas as an incentive, these marketers offer loans to cover the costs of smugglers who convey them from their homes to designated ports in other countries. Rohingya Muslims are held captive in brutal jungle camps, their women subject to gang rape and other abuses. These undocumented workers are coerced into forced labor on unregistered fishing boats or in Thai-based seafood processing plants under abusive, violent and slave-like conditions that may continue for years. Access to courts and justice for the vast majority of these unfortunate victims remains a pipedream. For an introduction to this horrifying netherworld, see the series of well-researched and gripping articles published in 2015 in the *New York Times* and *The Guardian*.

Direct intervention by governments remains spotty, notwithstanding international conventions and pacts that prohibit forced labor. Where maritime law may apply, naval, coast guard and other law enforcement officials from many countries often are reluctant to board vessels in international waters; some accept bribes to avoid confrontations. When they do investigate, frequently they do so to clear their country's involvement, not to apprehend suspects. Some states have maritime criminal laws that have lapsed into obsolescence, leaving them without robust legal frameworks within which prosecutors and judges can adjudicate justice. Numerous governments, inadequately resourced to engage maritime criminal suspects, simply punt by urging shipping firms to employ private security forces, a solution that typically entails a cross-section of foreign mercenaries, ex-military, ex-police, ex-convicts, and poorly vetted, trained and paid amateur grunts. Frequently, actions taken by these private agents proceed in the absence of legal due-process requirements that leave suspects whose presumptive rights may have been co-opted without clear or affordable legal recourse.

In these and other respects, the rule of law on the high seas often resembles frontier justice as developing nations' law enforcement and justice institutions gradually evolve and criminal jurisprudence slowly coalesces. For reining in the anarchy of the high seas and establishing the rule of maritime law, considerable effort remains to be undertaken by the world's nation states, including how to apportion maritime and admiralty jurisdiction among a growing body of international and regional courts and defining their role vis-à-vis that of sovereign national court systems, a challenge of enormous proportions.

