

Effecting a Sea Change: Changing Tack To Heal the Wounds of African Piracy

by Covington Campbell

Modern attacks of maritime sea piracy occur more often in the waters off the Eastern and Western coasts of the continent of Africa than anywhere else in Earth's oceans. These incidents of maritime terrorism are committed by native Africans with limited options to exercise for subsistence. The steady environmental degradation, civil unrest, and unstable economies of their respective African countries are direct causes of the increase in occurrences of maritime terrorism and piracy in these waters. The communal balance between Earth and human beings has been disrupted in both Nigeria and Somalia, and as a result, incidents of piracy have reached a modern high. Current organized efforts to combat piracy are based on vessel defense and retaliation, not prophylaxis, restoration, and healing. Viewing the current situation from the crow's nest of an Earth jurisprudence perspective, opportunities to heal environmental wounds and restore balance do exist. A sea change is needed in the global community's approach to piracy if these attacks are to cease.

The International Maritime Organization (the IMO), acting under the aegis of the United Nations (UN) defines piracy as consisting of any of the following acts:

- (a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property onboard such ship or aircraft;
 - (ii) against a ship, aircraft, or persons in a place outside the jurisdiction of any state.
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act inciting or of intentionally facilitating an act described in subparagraph (a) or (b).¹

In the wake of this definition's formulation in 1982, the UN/IMO has formed numerous committees and initiatives to combat piracy in targeted areas of international waters.² UN/IMO efforts in Southeast Asia have proven successful, largely due to the efforts of the UN Convention on

¹ U.N. Convention on the Law of the Sea, Dec. 10, 1982, Art. 101, U.N. Doc. A/CONF. 62/121 (Dec. 10, 1982).

² UN IMO, <http://www.imo.org/> (last visited Mar. 31, 2008).

the Law of the Sea (UNCLOS), and the subsequent efforts of the IMO's Maritime Safety Committee (the MSC).³ The environmental, economic, cultural, and political situation in certain African countries (namely Somalia and Nigeria), however, has created a "perfect storm" for acts of maritime terrorism, making this area a contemporary cardinal zone of maritime terrorist activity.⁴

The current UN/IMO, and MSC actions and initiatives dealing with piracy in the waters of East and West Africa are falling short of the necessary means to accomplish the desired ends of safe seas and balance.⁵ Instead of focusing efforts on local sustainable fisheries, ecology, and environment, or grassroots political, educational, and civil initiatives, the UN/IMO has chosen to focus on increasing safety standards for ships and shipping vessels, as well as internationally-flagged vessels using international and territorial waters for various purposes, including recreation.⁶ This methodology is flawed because it does not address the imbalance between human, habitat, and the global community. The current human-made situations (environmental, economic, and sociopolitical) are the very anchor of pirate culture, and are direct causes of this modern resurgence of African piracy. Illegal fishing and environmental abuses in Nigeria and Somalia are responsible for a dramatic loss of revenue in the local fishing economies.⁷ This loss of revenue is directly equated with the disruption of the delicate Earth-human balance, and the subsequent loss of rights, and life.

In response to the IMO-sanctioned increase in international efforts to arm vessels in an attempt to combat maritime piracy, African pirates have been goaded into escalating their own

³ UN IMO, www.imo.org/safety/piracy_and_armed_robbery (last visited Apr. 10, 2008).

⁴ Inst. For Sec. Studies, Mar. Sec. Issues on the E. Coast of Afr., Conf. Rep. from the SAS *Drakensberg*, Mombasa Harbor, Nov. 26, 2007, available at <http://www.iss.co.za> and IMO Rep. on Acts of Piracy and Armed Robbery Against Ships, 4 Quarterly Rep., MSC.4/Circ. 114 (Jan. 28, 2008).

⁵ Khadija Yusuf, *Piracy Cases on the Rise*, The E. Afr. Standard, Jan. 17, 2008, <http://allafrica.com/stories/printable/200801171021.html>. (last visited Feb. 13, 2008).

⁶ Rosalie Balkin, *The Int'l. Mar. Org. and Mar. Sec.*, 30 Tul. Mar. L.J. 1, 3 (Winter/Summer 2006).

⁷ *Illegal Fishing: Nigeria Loses \$60M Annually*, The Tide Online, Nov. 15, 2005, <http://illegal-fishing.info> (last visited Feb. 13, 2008) and Abdulkadir Khalif, *How Illegal Fishing Feeds Somali Piracy*, The E. Afr., Nov. 15, 2005, <http://www.ecc-platform.org> (last visited Feb. 13, 2008).

efforts. As a result, attacks of piracy have increased.⁸ The unfortunate outcome is a more violent, desperate community of maritime terrorists with little to lose, and proportionately little to gain, yet very few alternative options for survival.

The application of principles of Earth jurisprudence is particularly necessary in this situation. The current environmental degradation, and its effect on the human condition in both Nigeria and Somalia, cries out for an inquiry into effective regulation and dispute settlement in matters relating to Earth-human relations.⁹ The interdisciplinary study and application of Earth jurisprudence is the calming sea-oil needed to smooth the storm-wracked seas of African piracy.

Earth Jurisprudence: The Calm to Quell the Storm

In his work, *Evening Thoughts*, the renowned Earth jurist Thomas Berry puts forth a set of proposals, expressed in terms of rights, that he suggests should be recognized in constitutions and courts of law.¹⁰ Berry theorizes that human beings are faced with legal issues, rooted in the contemplation of our own survival and well-being, as well as Earth's future, that can no longer be avoided.¹¹ He provides us with the initial vocabulary necessary to address these legal issues and reconceptualize the modern balance between human beings and Earth:

1. The natural world on planet Earth has rights that come with existence itself. These rights come from the same source from which humans receive their rights, from the universe that brought them into being.
2. Every component of the Earth community has three rights: the right to be, the right to habitat, and the right to fulfill its role in the ever-renewing processes of the Earth community.
3. In the nonliving world, rights are role-specific, in the living world rights are species-specific. All rights are limited. Rivers have river rights. Birds have bird rights. Insects have insect rights. Humans have human rights. Difference in rights is qualitative,

⁸ IMO *Rep. on Acts of Piracy & Armed Robbery Against Ships*, 4 Quarterly Rep., MSC.4/Circ. 114 (Jan. 28, 2008).

⁹ Herman F. Greene, *What Is Earth Jurisprudence?*, Center for Earth Jurisprudence (2006), available at <http://www.earthjuris.org/viewpointdocuments/whatisej.htm>. Mr. Greene gives a good description of the emerging field of Earth jurisprudence.

¹⁰ Thomas Berry, *Evening Thoughts*, 109 (Sierra Club Books 2006).

¹¹ *Id.* at 110.

not quantitative. The right of an insect would be of no value to a tree or a fish.

4. Human rights do not cancel out the rights of other modes of being to exist in their natural state. Human property rights are not absolute. Property rights are simply a special relationship between a particular human owner and a particular piece of property, so that both might fulfill their roles in the great community of existence.
5. Since species exist only in the form of individuals, rights refer to individuals and to those natural groupings of individuals into flocks, herds, and packs, not simply in a general way to species.
6. These rights as presented here are based on the intrinsic relations that the various components of Earth have with each other. The planet Earth is a single community whose members are bound together with interdependent relationships. No living being nourishes itself. Each component of the Earth community is immediately or mediately dependent on every other member of the community for the nourishment and assistance it needs for its own survival. This mutual nourishment, which includes predator-prey relationships, is integral with the role that each component of the Earth has within the comprehensive community of existence.¹²

These six proposals hold within their simple, expressive words and respective concepts the power to solve the myriad problems and dire situations that currently plague our global community. Their application is limited, however, by a modern refusal to adapt or change with the signs of the times, which are indicative of a global community *in extremis*. Cormac Cullinan eloquently diagnoses the “purely human-centered” point of reference in modern human legal systems and concepts of jurisprudence as something that must be jettisoned if we are to embrace and benefit from the application of Earth Jurisprudence.¹³ He further posits that if we are to understand the implications of the Great Jurisprudence¹⁴, we must undergo a “Copernican” shift in our thinking and evaluation of our role as communal members of the universe system.¹⁵ This titanic change in our thinking, a

¹²*Id.* at 110-11.

¹³ Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice*, 89 (Green Books 2003) (2002) [hereinafter *Wild Law*].

¹⁴ Mr. Cullinan refers to the Great Jurisprudence as the ‘primary characteristics of the universe;’ the laws or principles that govern how the universe functions, unified in the sense that they all have the same source: the Great Jurisprudence. Earth Jurisprudence must be embedded within, and be an extension of the Great Jurisprudence. *Wild Law*, *supra* note 13, at 84 & 90.

¹⁵ *Id.* at 89.

dramatic reformation of our anthropocentric worldview, may be likened to Copernicus' then-controversial revelation that the universe is heliocentric. Copernicus' revolutionary conceptualization of the universe was in direct conflict with the long-held Ptolemaic theory that the universe was a closed, geocentric space.¹⁶ Mr. Cullinan emphasizes that despite being regarded as revolutionary (if not heretical) for its time, and the fact that in the sixteenth century, espousal of the heliocentric theory merited excommunication, imprisonment, or worse, the heliocentric model of the universe is now commonly accepted as accurate.¹⁷ This Copernican change in thinking evolved over a period of four hundred five (405) years, gradually gaining acceptance, until its culmination in the presentation of the first photos of Earth from the perspective of space on October 24, 1946.¹⁸ Concrete proof of our heliocentric solar system was reinforced by the descriptive orbit-Earth communications of the prodigious April 12, 1961 mission of Yuri Gagarin, the first human to orbit Earth.¹⁹ Incontrovertible proof of the function of Earth as a member of a communion of subjects may be found in the first picture of Earth taken from another planet: on May 8, 2003, a camera aboard NASA's Mars Global Surveyor (MGS) spacecraft, orbiting the red planet, photographed Earth, the moon, and Jupiter.²⁰ Four hundred sixty (460) years after Copernicus' lifetime, his heliocentric theory of the universe is dispositively proved via photographic evidence, and the human perception of Earth has forever been altered.

Once again, humans are faced with the need to revise and renew our relationship with Earth. The severe environmental degradation which has catalyzed desperate acts of maritime piracy in

¹⁶ Sheila Rabin, *Nicolaus Copernicus*, Stan. Encyclopedia of Philosophy, Apr. 18, 2005, <http://plato.stanford.edu/entries/copernicus/> (last visited Apr. 22, 2008).

¹⁷ Cormac Cullinan, Env'l. Lawyer, Author, & Featured Speaker, Framing An Earth Jurisprudence For A Planet In Peril Symposium: Do Humans Have Standing to Deny Tree Rights? (Feb. 29, 2008).

¹⁸ Tony Reichhardt, *The First Photo From Space*, Air & Space Magazine, Nov. 1, 2006, <http://www.airspacemag.com/space-exploration/16045732.html> (last visited Apr. 23, 2008).

¹⁹ NASA, Yuri Gagarin, http://starchild.gsfc.nasa.gov/docs/StarChild/whos_who_level2/gagarin.html (last visited Apr. 23, 2008).

²⁰ *First Picture of Earth From Mars*, National Geographic News, May 22, 2003, http://news.nationalgeographic.com/news/2003/05/0522_030522_earthmars.html (last visited Apr. 23, 2008).

Somali and Nigerian waters is reverberating significantly in our global climate, atmosphere, and community. A powerful disconnection between Earth and humans has resulted after years of objectification, exploitation, and environmental abuse of the natural world by humans. Balance must be restored. The dire situation in East and West African waters is an exemplary forum in which the emerging field of Earth jurisprudence may be explored as a means of restoring balance. A sea change is needed to begin the healing that a sustainable future necessitates, and the cessation of modern sea piracy depends upon the restoration of balance and respective rights.²¹

Plotting A Course: How Principles of Earth Jurisprudence May Be Applied

The violent piracy in this area of the international community, and the environmental and cultural degradation of the local lands, peoples, and waters, are directly related. The underlying problem at the root of this situation is a fundamental imbalance of rights. These rights cannot be fully understood or respected until Earth and the members of the universe community are properly understood as imbued with being, and thus recognized as having the rights associated with existence.²²

Through the lens of Thomas Berry's framework of rights, the degrading environmental, cultural, and social situations in Nigeria and Somalia, which led these people to piracy, are readily identifiable, and (theoretically) remediable. Recasting Earth in a new light, as a being of our community, vested with all the associated rights of a human being, requires that precedence be given to the survival, health, and prosperity of the whole Community over the interests of any individual or human society.²³ Imbuing fish with fish rights, and the native Nigerians and Somalis with a right to establish a relationship with their fish, their water, and their habitat as a means of

²¹ A *sea change* is defined as "a striking change, as in appearance, often for the better; any major transformation or alteration; a transformation brought about by the sea," Modern Language Assoc. Dictionary (2007), available at <http://dictionary.reference.com/seachange> (last visited Apr. 10, 2008).

²² The unity of the universe is rooted in Plato's *Timaeus* (Greek Τιμαιος), proposing that the idea of a world-soul, an *animus mundi* (a soul of Earth), gives a living unity to the entire universe. Thomas Berry, *The Great Work*, 29 (Bell Tower 1999) [hereinafter *The Great Work*].

²³ *Wild Law*, *supra* note 13, at 112.

survival creates a different aspect of rights and lawful access than the traditional law of property rights. Berry's ten principles assist us in our understanding of Earth and the universe as a vast network of interrelationships that is also a process that is constantly changing.²⁴ Within this network, all beings have three rights: the right to be, the right to habitat, and the right to fulfill their roles in the ever-renewing process of the Earth Community.²⁵ The Nigerians and Somalis have lost these rights, as have their respective waters and fish populations. Not unlike the doldrums of a calm, windless sea, holding an impatient sailing vessel captive and drifting, a great change in pressure, temperature, and condition must take place to carry the initiative of Earth jurisprudence forward with full sails. A sea change is needed in the global community's approach to ending the scourge of sea piracy. First, however, is a need to understand the causes and modern condition of these desperate actions.

The Current Situation: East and West Africa

The UN African Charter for Human Rights in Africa states that all Africans have a fundamental right to live in a healthy environment, favorable to their development.²⁶ Despite the fact that this established right does not immediately embrace the important recognition of Earth as having rights, nor does it hint at any relationship between Earth and humanity, it is significant in that it recognizes the right to a healthy environment, and the balance between Earth's condition and the human condition. The correlation is apparent. The bulwarks of a rights-based system are integral to the building of an Earth jurisprudence approach to remedying the problem of African piracy. A lack of local and international regulation, as well as international corporate negligence, however, has resulted in the violation of this fundamental African right to a healthy environment.

²⁴ *Id.* at 113.

²⁵ Thomas Berry, *The Origin, Differentiation, and Role of Rights* (2001), reprinted in *Wild Law*, *supra* note 13, at 115 [hereinafter *Berry's Ten Rights*].

²⁶ *Afr. (BANJUL) Charter On Human and Peoples' Rights*, art. 24, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986, and Ebeku, Kaniye S.A., *Right to a Satisfactory Env't and the Afr. Comm'n, The Recent Dev.*, 3 Afr. Hum. Rts. L.J. 149, 150 (2003).

Many Africans have been denied their right to farm and fish productively. Additionally, West African fisheries are historically unregulated, which has led to catastrophic overfishing and increased risks of the destruction of an important regional market and means of survival.

International pressure has led to moratoriums on West African fisheries.²⁷ As a result, poachers and pirates have emerged in an effort to reclaim their waters.²⁸ Furthermore, a lack of a comprehensive, need-based strategy to target African pirate activity has resulted in the escalation of attacks, both in their frequency and propensity for violence. The UN/IMO focuses primarily on increasing safety standards on vessels to combat and repel pirate attacks.²⁹ This approach has fallen short of the goal, because it does not address the causes of the problem, but rather the effects. Attacks have grown more frequent, and worse.³⁰ It is obvious that the current international law must be reformed to combat maritime piracy, and a deeper understanding of what compels piracy is integral to this reformation.³¹

The IMO and the associated Maritime Safety Committee (the MSC) has, since July 31, 1995, compiled and issued monthly reports of all incidents of piracy and armed robbery against ships reported to the IMO.³² However, numerous attacks go unreported. The Fourth Quarterly Report (the Report), issued January 28, 2008, reflects reported incidents of piracy and armed robbery against ships.³³ The Report specifies fourteen incidents of piracy in East African waters,

²⁷ Andre Standing, *The Crisis of Marine Plunder in Afr.*, Institute for Sec. Studies, Oct. 2, 2007, <http://www.issafrica.org/index> (last visited Apr. 2, 2008), and The Tide Online et al., *supra* note 7 at 2.

²⁸ *A Review of Dev. in Ocean and Coastal Law*, 9 *Ocean & Coastal L.J.* 139, 158 (2003).

²⁹ Balkin, *The Int'l. Mar. Org. and Mar. Sec.*, 30 *Tul. Mar. L.J.* 1, 3 (Winter/Summer 2006).

³⁰ ICC Commercial Crime Servs., *Global Piracy Decreasing But Hotspots Remain Deadly*, Oct. 31, 2006, <http://www.icc-ccs.org/main/news> (last visited Apr. 8, 2008).

³¹ Ethan C. Stiles, *Reforming Current Int'l Law to Combat Sea Piracy*, 27 *Suffolk Transnat'l L. Rev.* 299, 301 (2004).

³² "Armed robbery against ships" is defined in the draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships (resolution A.922(22), Annex, paragraph 2.2) as follows: "Armed robbery against ships means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of "piracy," directed against a ship or against persons or property on board such ship, within a State's jurisdiction over such offenses."

³³ *Reports On Acts of Piracy and Armed Robbery Against Ships*, 4th Quarterly Report, MSC.4/Circ. 114 (Jan. 28, 2008) [*hereinafter Jan. 28 Report*].

and twenty in West African waters, occurring between October 1 and December 31, 2007.³⁴ This number constitutes almost half of the entire number of attacks reported globally in this time period. During this period, sixty-nine attacks were reported overall, with eleven alleged attempted attacks. In addition, one crew member was killed, about forty-seven crew members were held hostage, approximately eighty-eight crew members were assaulted or injured, three vessels were hijacked, and the fate of one crewmember is currently unknown. “In several of the incidents reported, the crew were violently assaulted [and] attacked by individuals or groups of two to ten persons carrying guns or knives.”³⁵

The West African attacks constituted a majority of the attacks reported in this quarter by numerous international reporters. Nine of the twenty West African attacks took place in territorial, nearshore waters, and eight took place in port areas.³⁶ Half of the reported twenty attacks took place while the vessel was stationary, either at anchor or in berth, and six took place while the vessel was underway.³⁷ The pirates in these West African waters seem to favor working in small groups of one to four persons, as ten of the reported attacks involved such numbers, while only four of the attacks involved pirate groups of five to ten persons.³⁸ Guns and knives were the weapons of choice, and the cargo area was the predominantly favored area of the ship to be raided, with the ship’s storeroom accounting for five raids, and the master and/or crew accommodation accounting for two of the twenty attacks in West African waters.³⁹

³⁴ *Jan. 28 Report, supra* note 33.

³⁵ *Id.* at 2.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

The East African attacks were evenly distributed between international and territorial⁴⁰ waters, as well as port areas. Similarly, the East African attacks were somewhat evenly split between vessels steaming (under power), at anchor or in berth, or of unspecified status at the time of attack.⁴¹ The size of the attacking groups is not specified, but it bears to mention that no specific weapons or violence against the crews was stated. In the East African attacks, two resulted in successful hijackings of the vessels, and seven resulted in respective raids on the accommodations of master/crew, cargo area, and store rooms, with one attack unspecified as to area of the ship raided.⁴²

The fact that the African coastal attacks constitute almost half the global attacks reported for this quarter is significant because it symbolizes the creation of a piracy “hotspot.” Incidents of piracy increased globally by 10 percent in 2007. This represents the first time the number has increased drastically in a five-year period.⁴³ Internationally, 263 ship attack incidents were reported in 2007, compared to 239 reported in 2006. A total of eighteen vessels were successfully hijacked in 2007, as compared to fourteen in 2006. Two hundred ninety-two crew members were taken hostage worldwide in 2007, as opposed to 188 in 2006. Currently, of the piracy victims in 2007, data shows that sixty-three were kidnapped and ransomed, five were killed in the attacks, and three are still unaccounted for.⁴⁴ IMB director Captain Pottengal Mukundan commented on the current numbers, stating that “a majority of these incidents have occurred off the Somali coastline,” and that the unrest in Nigeria and Somalia give us the greatest cause for concern.⁴⁵ Nigeria and Somalia

⁴⁰ Nations subscribing to the Law of the Sea observe a territorial limit of twelve nautical miles from shore. International waters begin at the end of the territorial limit, and extend to the next territorial limit of neighboring nations. A nautical mile converts to exactly 1.150779 statute mile, or 1.15 miles. Random House Unabridged Dictionary, Dictionary.com, 2006, <http://dictionary.reference.com/browse/nautical%20mile> (last visited Apr. 10, 2008).

⁴¹ *Jan. 28 Report*, *supra* note 33, at 4.

⁴² *Id.*

⁴³ Int’l. Chamber of Commerce, Int’l. Mar. Bureau, *2007 Annual Report*, <http://www.icc-ccs.org/imb/overview.php>.

⁴⁴ *Id.*

⁴⁵ Khadija Yusuf, *The E. Afr. Standard*, *Piracy Cases on the Rise*, Jan. 17, 2008, <http://allafrica.com/stories/printable/200801171021.html> (last visited Apr. 10, 2008).

account for forty-two and thirty-one of the 2007 figures, respectively. This number is dramatically increasing when it is compared to the twelve Nigerian attacks and the ten Somali attacks occurring in 2006.⁴⁶

It must be noted that as recently as April 4, 2008, a band of Somali pirates hijacked the French-flagged luxury yacht *Le Ponant*, on its return voyage from the Seychelles, as it negotiated the Gulf of Aden.⁴⁷ The vessel was, as of April 10, 2008, still under pirate control, and its thirty crew onboard were being ransomed. Shortly after beginning negotiations, the French navy successfully reclaimed the vessel and rescued the crew. Pursuing the fleeing pirates over land by air and firing upon them repeatedly, the French military captured six of the ten pirates, and they are currently awaiting extradition to France for trial.⁴⁸

B. Anatomy of a Modern Pirate Attack

The pirates active in territorial and international waterways today differ greatly from society's romanticized notion of the swashbuckling pirate of film and literary fame. Pleasure and recreational vessels in the United States and abroad often lightheartedly fly the skull and crossbones from the rigging, with no idea of the relevance of the pirate flag to modern shipping and navigation, in relation to the global community. The pirates of today are not, as Joseph Conrad called them, "those colorful vagabonds of the sea," anymore than they are the romantic tars from the pen of Robert Louis Stevenson, singing "yo, ho, ho, and a bottle of rum." They are desperate, well-armed killers, thieves and kidnapers.⁴⁹ The pirates of today are mariners who terrorize the seas with guns and grenades.⁵⁰ Modern high-seas piracy costs the world about \$15 billion per year.⁵¹ According to

⁴⁶ *Id.*

⁴⁷ Assoc. Press, *Pirates Seize French Yacht*, *cnn.com*, Apr. 4, 2008, <http://www.cnn.com/2008/WORLD/africa/04/04/cruiseship.pirates.ap/index.html> (last visited Apr. 13, 2008).

⁴⁸ *Id.*

⁴⁹ Robert Malone, *Dangerous Waters*, *Forbes*, July 25, 2006, http://www.forbes.com/2006/07/24/pirates-on-the-seas-ex_rm_0725pirates.html (last visited Apr. 2, 2008).

⁵⁰ Stefan Lovgren, *Modern Pirates Terrorize the Seas With Guns and Grenades*, *nationalgeographic.com*, July 6, 2006, <http://news.nationalgeographic.com/news/2006/07/060706-modern-pirates.html> (last visited Apr. 4, 2008).

Mr. Michael McDaniel, a leading expert on maritime law and an admiralty and maritime attorney, "this is a false figure, as only about 10% of piracy is reported. If cargo crime is added in with piracy, the figure is around \$50 billion per year, and growing worldwide."⁵² As we will see, the costs of modern piracy are not isolated financial losses, but major social and environmental harms in their ostensible impacts. Losses in the shipping industry trickle down to the increasing costs of food and supplies on the global market. Furthermore, the environmental costs of piracy can be devastating.

Along with the generally held misconceptions of pirates is a lack of knowledge of how their attacks are conducted. There are three identifiable types of pirate attacks.⁵³ The first is the desperate individual, trying to eke out a meager existence by robbing seafarers and merchant mariners. The second "type is a more sophisticated, [semi-]organized crime group;" the third type of pirate is the quasi-military pirate, who acts in a semi-military manner.⁵⁴ Examples of the second and third types of pirates are most often seen in Somali and Nigerian attacks.

1. Boarding

The "most common type of attack [consists of] pirates [boarding a] merchant vessel" while at anchor, underway (in transit, on the open sea or out of a harbor), or in a port. These simplistic "raids on merchant crews are [known] to yield an average [of] \$20,000 [USD per] haul."⁵⁵ Merchant ships and vessels in international transit often carry large amounts of cash in the ship's

⁵¹ *Id.*

⁵² Lovgren, *supra* note 51.

⁵³ Michael Countryman, *The Serious Problem of Modern High Seas Piracy: Presentation at Port of Chicago*, Nov. 2005, http://www.cargolaw.com/presentations_pirates.html#environment_disaster (last visited Apr. 10, 2008) [hereinafter *Countryman*].

⁵⁴ *Id.* at 4.

⁵⁵ *Id.* at 18.

safe. This money is designated for payroll, customs fees, and port charges.⁵⁶

[The master captain of the] freighter M/V Bonsella, whose vessel was attacked by [twenty-six] Somali pirates off the northeastern tip of Somalia [in 2005 recounted], "I told them we didn't have any money, but the general of the Somali coastguard cocked his pistol and pointed it [at] my head, saying, 'Captain, no ship travels without money. Do you really want to lose your life just as I am about to set your ship free?'"⁵⁷

This harrowing attack was culminated in the vessel being stripped of her entire cargo, cash, foodstuffs, and medical stores.⁵⁸ The Somali pirates here boarded the vessel under the premise of a quasi-military "inspection," which quickly turned to a five-day hijacking at gunpoint.

Attacks such as this 2005 incident continue. As recently as November 21, 2007, a small band of five "robber pirates," armed with knives, boarded the drifting Norwegian tanker *Champion Polar*, fifteen nautical miles⁵⁹ off the coast of Lagos, Nigeria.⁶⁰ According to the MSC report, the pirates were spotted by the anti-pirate duty crew onboard, who in turn informed the duty officer. The alarm was raised, and the crew was mustered. Despite these efforts, the pirates escaped with the ship's stores.⁶¹

A similar attack occurred in the West African waters of a Lagos anchorage on November 24, 2007. A Liberian container ship, *Paris*, was anchored in the afternoon when four armed robbers in a small wooden boat boarded the ship from the stern (the aft portion of the vessel). The robber pirates stole the ship's stores and escaped in their own small vessel.⁶²

2. Organized Robbery

⁵⁶ *Id.* at 15.

⁵⁷ *Id.*

⁵⁸ Countryman, *supra* note 53, at 15.

⁵⁹ A nautical mile converts to exactly 1.150779 statute miles, or 1.15 miles. Dictionary.com, *supra* note 21.

⁶⁰ IMO report, MSC. 4/Circ. 112 (Jan. 11, 2008).

⁶¹ *Id.*

⁶² *Id.*

The second type of pirate attack, the organized attack, often incorporates sophisticated, technologically-advanced methods of global-positioning system (“GPS”) and radar tracking.⁶³ These organized pirates have access to computerized cargo manifests and bills of lading, obtained illegally in advance by hacking into shipping databases, and used while onboard “during machine gun-enforced ‘shopping sprees.’”⁶⁴ The profits from these pre-planned, organized attacks can range into the millions per vessel, thus providing the attacking pirates with the means necessary to purchase the newest technologies and tracking devices.⁶⁵

One such attack of organized pirates took place on the Bonny River, in the Niger Delta, Nigeria, on November 4th, 2007.⁶⁶ In this attack, eight pirates, armed with guns, boarded the vessel *Seamark* (flagged in the Grenadines). They had approached in a speedboat, and boarded the vessel while it was underway (in transit). They shot one crewmember, and wounded another, ransacked the vessel, stealing predetermined property, and escaped. One crewmember was killed, and the vessel’s entire store of property and equipment were stolen.⁶⁷

The quasi-military pirates may also fall into the organized sector of maritime terrorists. The tanker *Athlos*, from the Marshall Islands, was attacked on November 28, 2007, in Lagos Roads, Nigeria.⁶⁸ Twelve armed pirates dressed in military fatigues approached the vessel at anchor. Nine boarded the vessel and ordered the master to disembark into their own pirate vessel. He refused and fled toward his locked, secure accommodation onboard. They shot at him, but he was uninjured. While searching the vessel, and looting freely, the pirates took the three crewmen, including the galley cook, hostage. The three were released after ninety minutes in exchange for cash and cartons

⁶³ Countryman, *supra* note 53.

⁶⁴ *Id.* at 16.

⁶⁵ Countryman, *supra* note 53, at 16.

⁶⁶ IMO Report, *supra* note 60, at 2.

⁶⁷ *Id.*

⁶⁸ *Id.* at 3.

of cigarettes. The vessel was looted of its cargo and stores, and the next day, the master received a ship-to-shore phone call threatening an additional pirate attack at the next port of call.⁶⁹

3. The Phantom Ship

The third type of pirate attack is called the “phantom ship” method.⁷⁰ This is the most sophisticated method of attack and seizure, and it requires a high level of organization. “Pirates take literally everything [onboard the victim] vessel,” including the vessel herself.⁷¹ Pirate networks offer various methods of selecting and acquiring vessels, including organized targeting and capture, as well as the hiring of a mercenary group to seize a vessel and dispose of a crew.⁷² Currently, the cost of hiring an organized piratical band to seize a vessel is estimated to be \$350,000.⁷³ Once seized, the vessel is repainted, renamed, and re-registered and flagged through temporary registration offices operating in numerous ports of call.⁷⁴ These quasi-legal offices go so far as to advertise their services, in the form of “temporary free registration,” in American newspapers, thus encouraging formerly innocuous maritime ne’er do wells to become full-fledged pirates.⁷⁵ Once registered, the phantom vessel seeks a shipper or shipping agent with tight deadlines for delivery of cargo, thus facilitating a need for immediate vessel cargo space to charter. In the maritime industry, victims of phantom ship pirates are often shippers or shipping agents saddled with letters of credit with looming expiration dates.⁷⁶ The renamed vessel is offered as the carrier, the cargo is loaded, “an authentic-looking bill of lading to the proper destination port” is issued to the shipper, and the vessel disembarks under the command of pirates posing as legitimate master

⁶⁹ *Id.*

⁷⁰ Countryman, *supra* note 53, at 16.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 17.

⁷⁶ *Id.*

and crew.⁷⁷ The phantom ship is diverted to a different port, other than that listed on the bill of lading, the cargo is sold “(either to an existing partner or an innocent buyer),” and the vessel is again repainted, renamed, and reflagged with temporary registration.⁷⁸ Currently, accurate figures associated with this phantom ship practice are somewhat unavailable, but it is estimated that the practice costs shippers \$200 million or more per year.⁷⁹

The Ancillary Effects of Modern Pirate Attacks

Not only do modern pirate attacks cause millions, if not billions of dollars of loss to the maritime shipping industry each year, but these attacks pose serious threats to the world community as a whole.⁸⁰ A majority of the world’s shipping vessels carry fuel and natural gas supplies across the oceans.⁸¹ The worst environmental disaster in modern maritime history, the March 24, 1989 grounding of the *Exxon Valdez* on Bligh Reef, in Prince William Sound, Alaska, spilled eleven million gallons of crude oil across 1300 miles of coastline.⁸² This event was catastrophic to the surrounding areas immediately affected by the spill, and despite a concerted, consistent effort to clean up the damaged environment, pockets of crude oil deposits still remain, and the effect has been felt on fisheries and marine life worldwide.⁸³ Imagine a spill, the magnitude of which far surpasses the tragic consequences of the *Exxon Valdez* incident. On January 16, 1999, the very large crude carrier (commonly referred to as a “VLCC”) *M/T Chaumont* was attacked and hijacked by pirates while she was underway in the narrowest leg of the Strait of Malacca.⁸⁴ The vessel

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 17.

⁸⁰ *Id.*

⁸¹ UN IMO, *supra* note 2.

⁸² NOAA Nat’l. Marine Fisheries Services, March 13, 2008, <http://www.fakr.noaa.gov/oil/default.htm> (last visited Apr. 10, 2008).

⁸³ *Id.*

⁸⁴ The Strait of Malacca, linking the Indian and Pacific Oceans is the shortest sea route between the Middle East and growing Asian markets. Energy Information Administration, Office of Official Energy Statistics From the U.S. Gov.,

[carried] millions of gallons of oil, [and she] steamed at full speed for over [seventy] minutes with no one on the bridge” directing her progress while the hijacking pirates completed their seizure of the vessel.⁸⁵ Fortuitously, “an environmental disaster of epic proportions was avoided.” It shocks the conscience, however, when one considers the ostensibly disastrous effects of the possible scenario: what would happen if a hijacked vessel carrying crude oil, or the more volatile liquefied natural gas, was compromised on the high seas or in a major port?⁸⁶ The world community should be compelled to envision the catastrophic effects of such a spill or explosion, because modern day piracy removes vessels in shipping from the hands of qualified masters and crews. These pirated vessels are then placed in the hands of marine terrorists and thieves whose propensity to do harm extends far beyond the injury they inflict on the crew, but also to the financial interests of the cargo and vessel owners, and the global maritime economy. An increase in pirate attacks directly correlates to an exponentially increased opportunity for ecumenical environmental disaster.⁸⁷

Beyond the ostensible threat of environmental disaster are the aggregate effects piracy has on the shipping industry, the lives of seafarers, the safety of navigation worldwide, the security of coastal states, and the right of innocent passage in international waters and areas under the sovereignty of coastal states.⁸⁸ This is a very real problem with dire consequences, both actual and ostensible, and it requires a global strategy to avert international disaster.

A. The Water

In 1999, a Dutch tanker was witnessed dumping nuclear waste illegally in Somali territorial

March 13, 2008, http://www.eia.doe.gov/cabs/World_Oil_Transit_Chokepoints/Malacca.html (last visited Apr. 10, 2008).

⁸⁵ Countryman, *supra* note 53, at 19.

⁸⁶ *Id.*

⁸⁷ *Id.* at 16.

⁸⁸ Dr. Henri Fouche, *The Manifestation and Challenges to Combating Piracy on the E. Coast of Afr.*, Nov. 25, 2007.

waters.⁸⁹ Reports of dead marine animals washing up on the coasts of Somalia, with a large concentration between Mogadishu and the central Somali region of Galguduud, prompted a statement from Ali Jeleh, an official of Dr. Husayn Bod (Chairman of the Somali Consultative Council).⁹⁰ Mr. Jeleh stated that the fish and animals died “as a result of nuclear waste which had been dumped in Somalia’s territorial waters by a foreign country.”⁹¹ This public exposition of the link between the death of Somalia’s marine life and the toxic waste dumping in their territorial waters led the General-Secretary of the UN to state:

Action could be taken by the international community to assist Somalia to recover its sovereignty in certain limited fields, for example the protection of offshore natural resources. Efforts could also be made to limit the introduction of illegal arms and weapons into the country.⁹²

This quote from the UN Secretary General illustrates a serious disconnect between the UN and the situation in Somalia. Even in 1999, in the wake of this avoidable ecological crime, the approach is one based on regulation and control, not balance and restoration.

Native Somalis fully understand the relationship between their environment and global corporate negligence, and their failure to thrive as a country, and as a community. They witness and live with the daily reality of the degradation of their habitat. In a country torn by civil war and social collapse, their voices go unheard by the world community:

Every month proportionately a number of indigenous people die or suffer from the effects of such dumping around coastal communities. For instance, at Eel-dher district of Galguduud region, in the center of Somalia in April 1992 put out dark blue long barrels in which oily-liquid was filled. When samples taken from them were investigated, it was identified that such were deadly nuclear waste. Similar incidents happened at Adale district in 1996. In 1998, mass mix fish species

⁸⁹ <http://www.somaliawatch.org/archive/990829501.htm>. May 19, 2007 (last visited Apr. 10, 2008).

⁹⁰ Somalia Watch, *supra* note 100.

⁹¹ *Id.*

⁹² *Report of the Secretary-General of the UN on the Situation in Somalia*, Aug. 16, 1999.

were washed away along the coastline from Mogadishu to Warsheekh which are 45 km (28 miles) apart and all these are consequences of the hazardous waste imports into Somali waters. All over the world, countries' policies deal with these events however it is unfortunate that Somalia with the longest coastline over all Africa does not have a basic strategy to deal with these matters.⁹³

A shift toward rights to health, existence, and habitat is integral to the restoration of balance in African waters.

B. The Fishing Culture

The Nigerian fishing industry is largely constituted of small industrial fleets of fish and shrimp trawlers, and a large fleet of artisanal canoes (15 foot wooden *houris*) used locally for coastal fishing. The industrial fleets trawl for finfish (mainly croakers, grunts, soles and catfish) and shrimp, and are relatively well-organized. The artisanal canoe fleets fish coastal waters using mainly gill nets, cast nets, hooks, beach seines and traps. They target small pelagics (sea-going) fish, which they land in large quantities. From their set nets they land demersal (bottom-dwelling) species such as croakers, catfish and shynose, and they also target shrimp in the estuaries. Local demand is high and the entire catch is consumed locally with the fish harvest (including fish from inland sources) accounting for 20-25% of the population's animal protein consumption.⁹⁴

The industry is in a steadily declining state as coastal fisheries are over-fished, catches are declining, environmental degradation is affecting productivity, and technical innovations are lacking.⁹⁵ An absence of monitoring and surveillance has led to losses of approximately \$60 million annually through illegal fishing in Nigeria's waters. Over the past three decades, the amount

⁹³ Musse Gabobe Hassan & Mahamud Hassan Tako, *Illegal Fishing & Dumping Hazardous Wastes Threaten the Dev. of Somali Fisheries & the Marine Env'ts.*, Tropical Aquaculture & Fisheries Conference, Terengganu. Malaysia (Sept. 7-9, 1999), <http://www.geocities.com/gabobe/illegalfishing.html> (last visited Apr. 24, 2008).

⁹⁴ Illegal Fishing Worldwide, http://www.illegal-fishing.info/sub_approach.php?approach_id=17&subApproach_id=80, Mar. 31, 2006 (last visited Apr. 10, 2008).

⁹⁵ *Id.*

of fish in West African waters has declined by up to fifty (50) percent.⁹⁶

Both Nigeria and Somalia depend upon local fisheries to feed their coastal populations. The rights of the fish to swim freely are being infringed upon by foreign flagged vessels fishing illegally. These fish are being assailed by the more modern long-lines, dragnets, and purse-seines of modern fishing vessels. Their populations are being decimated by unsustainable harvesting methods. The artisanal *houris* traditionally used by both the Nigerians and Somalis inflict much less damage on the fish population as a whole. Furthermore, the African right to habitat, determined by their existence, is trampled upon by these foreign vessels fishing in these waters.

Changing Tack: Realigning the Modern Approach to Resolving Piracy Issues

The IMO's efforts to combat piracy do not strike at the underlying issues which lead native Somalis and Nigerians into a life of maritime terrorism. Consistent environmental degradation has left coastal Africans with few other choices for survival. Despite the IMO's efforts, incidents of piracy are increasing, and becoming more violent.⁹⁷ A change of direction, commonly referred to as "tacking" in maritime terms, is urgently needed.

In order to remedy the current situation, a restorative justice approach would be most appropriate. When contrasted with the French government's extradition and criminal trial of the captured Somali pirates in early April, the restorative approach would do more than just deter future pirate attacks until the situation deteriorates further, and Somali pirates are again willing to risk capture. Restorative justice is a theory that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that incorporate all who

⁹⁶ Daniel Pauly, University of British Columbia Dept. of Fisheries Research (July 18, 2007), <http://gristmill.grist.org/story/2007/7/18/91022/5023> (last visited Apr. 24, 2008).

⁹⁷ ICC, *supra* note 14.

are involved.⁹⁸ Restorative programs are characterized by four key values:

1. Encounter, which creates opportunities for victims, offenders, and community members who wish to be involved to meet, discuss the crime, and its aftermath.
2. Amends, in which offenders are expected to take steps to repair the harm that they have caused.
3. Reintegration, which seeks to restore victims and offenders to their whole state, as contributing members of society.
4. Inclusion, which provides opportunities for parties with an interest in a specific crime to participate in its resolution.⁹⁹

At this point, the Earth community's evolution as a global union linked by its espousal to fundamentals of Earth Jurisprudence is in the early stages, and it is somewhat unrealistic to expect all interested parties to encounter one another, make amends, and consider reintegration and inclusion. A full-fledged, global embracing of indigenous methods of communal living and existence would be required for that, and it is not realistic, nor is it immediately helpful to the African issues discussed herein. An adaptation of the methods of restorative justice, however, often applied in small communities, and on a case-by-case basis to certain crimes, can be effective if applied to the global community. It simply requires a creative restructuring of the current judicial processes used to make international victims whole. Since Nigeria and Somalia are effectively working in an international judicial vacuum of sorts, and the IMO's efforts are not currently effective, novel approaches to the situation may be considered, because there is little to lose.

The encounter aspect of restorative justice brings together all stakeholders, giving each interested and/or affected party an opportunity to be heard. The UN tries to function as such a forum, but the large scale of our contemporary global community makes restorative justice-style encounters difficult, especially without the inclusion of an adversarial process. My proposal is the creation of Nigerian and African tribal boards, arranged along the coastal regions of their respective countries. These boards, upon notification of such crimes as illegal fishing or maritime pollution,

⁹⁸ Centre for Justice and Reconciliation, *Introduction to Restorative Justice*, Nov. 17, 2007, <http://www.restorativejustice.org/intro> (last visited Apr. 24, 2008).

⁹⁹ *Id.*

would extend an open invitation to the offenders to meet publicly with the board and the communities they represent. The widespread, immediate, and transnational nature of modern global communication would make this invitation available for immediate dissemination. Basically, if the world community is to unite in a common mission to restore our health as a global network of individuals, a willingness to participate in any such encounter would have to be hinged on public involvement. In the same manner that the international sanctions and embargo were placed on South Africa during apartheid, the global community might do well to base their willingness to trade, assist, aid, or communicate with another country or people based on their engagement in restorative justice processes. For example, if the Dutch government refused to meet with the Somali maritime tribunal board, hypothetically sitting in Mogadishu, subsequent to the 1991 toxic waste dumping incident, the rest of the world community might refuse to assist the Dutch in any additional manner. Participation in the encounter aspect of the restorative justice process would thus be conditioned upon the involvement of the global community. Contemporary advances in global communication make this procedurally possible.

In respect to the amends aspect of the restorative justice process, novel methods in which to compensate victims may be found in preexisting legal modes of remedy. In 1969, the California Department of Fish and Game won a federal lawsuit asserting a maritime lien *in rem* against a foreign-flagged vessel for discharging oil into the waters of Long Beach, California.¹⁰⁰ The pollution killed thousands of marine mammals and fish in the surrounding waters. In permitting the Department of Fish and Game to maintain its cause of action against the discharging vessel *in rem*, the district court allowed for a suit for damages for a maritime tort.

The IMO, in conjunction with the sitting tribunal directors of the maritime boards could similarly organize and execute local maritime courts of law that deal with maritime torts such as

¹⁰⁰ *State of Cal. By and Through Dept. of Fish and Game v. S.S. Bournemouth*, 307 F. Supp. 922 (D.C. Cal. 1969).

pollution and illegal fishing. The immediate benefit would be the provision for countries such as Somalia with a forum and venue in which they might present their maritime tort claims. Giving victims of criminal maritime pollution a full and fair opportunity to be heard would provide a means by which states such as Somalia could attain the damages necessary to remedy the imbalances that these torts cause their natural ecosystems and economies. *Arguendo*, a country with a history of civil unrest, such as Somalia, would benefit greatly from the ability to seek a remedy in a localized, yet international, court of maritime jurisdiction. In the absence of a unified political and civil leadership, the court might provide a venue in which local fisherman and community leaders may voice their causes of action. The provision of an *in rem* lien against the vessel would further serve as incentive for countries identified by the flag on the vessel (such as China, whose fishing vessels often illegally venture into Nigerian waters seeking blue fin tuna) to participate in the encounter process. Without satisfaction of the lien, the vessel may not continue on its way, and it must remain in port until the matter is resolved. The maritime lien is a preexisting aspect of accepted jurisprudence, therefore easing its adaptation to the restorative justice process. With respect to restorative justice elements of reintegration and inclusion, the function of the maritime lien would assist, as it provides an immediate remedy for incidents such as illegal fishing or pollution. The property interest in the vessel is granted to the injured party, until the owner reintegrates the victim, and makes him or her whole. Primarily, the remedy would be monetary in nature, but the deterrent effects of such a restorative justice approach would definitely be powerful in the world community.

At the Helm: My Relationship and Involvement With Modern Sea Piracy

I have been sailing, and on, or in the water, since I was a young child. My mother fostered in me a love of water, and the sense of peace it brings. I have always lived on or near the coast, and as a professional racing sailor and U.S. Coast Guard 100 ton master captain, I have made my living

and supported myself through maritime and aquatic endeavors. I have been awed at the slow, graceful beauty of an algae-covered sea turtle swimming slowly by. I know what it feels like to try to hold my breath for just one more second, thirty feet underwater, while trying to coax a spiny lobster into a small net. I have felt the frightening tug of a barrel-chested bull shark on my fin, as I tried to race back to the boat with a freshly-speared grouper. I have stood at the helm of my boat in a storm, and found myself praying quietly, and singing *Amazing Grace*, in hopes that both vessel and crew emerge from the squall safely. I am fortunate to have a relationship with the water. The seas and rivers of the Earth are the veins of the human body.¹⁰¹ Through the study of and reflection upon Earth jurisprudence this semester, I have been given a vocabulary to both realize and express the importance of my relationship with the natural world, and its riparian beauty. I am exceedingly blessed, I realize, to have grown up sailing in safe coastal waters. Despite having sailed in other countries, I have avoided serious danger from human threats, such as modern piracy. Recently, I looked at the surrounding coastline, while racing two hundred miles with my little family team of husband and parrot, and felt very fortunate to be able to appreciate the beauty of the natural world. Thomas Berry is strikingly accurate in his eloquence: humans have not only a need for but a right of access to the natural world, not only to supply our physical needs but also to provide “the wonder needed by human intelligence, the beauty needed by human imagination, and the intimacy needed by human emotions.”¹⁰² In light of the dire situation in their respective countries, do Somalis and Nigerians have a chance to celebrate and wonder at the beauty of their homelands? Without food or fish for survival, does the human body have any energy left to wonder at the natural world? Does the imagination function and feed on the beauty of one’s surroundings when the mind is clouded with anger and fear because one’s right to nature as a means of supplying sustenance for physical

¹⁰¹ Hildegard Von Bingen, *De Operatione Dei*, Jane Bobko, *Vision: The Life and Music of Hildegard Von Bingen*, 27 (Penguin Books, 1995).

¹⁰² *Berry’s Ten Rights*, *supra* note 25.

needs is threatened?

At Voyage End

The steady environmental degradation of the respective waters and lands of Nigeria and Somalia has led to an increase in African piracy. A sea change is needed if a restoration of balance between rights and existence is to be effected. The involvement of the global community is needed, and methods of restorative justice may be implicated to create an international community, devoted to change and healing. Currently, our global community is on the cusp of a titanic reorganization of values, rights, and approaches to remedy. At this time, our Great Work is creating a balance between our modern notion of an anthropocentric universe, and our role as members of the universe as a communion of subjects bound together as a comprehensive community of existence.