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# Guilty until proven guilty?: An examination of the anti-piracy response at the interactional level

Victoria Ellen Collins

*School of Justice Studies, 467 Stratton Building, College of Justice and Safety, 521 Lancaster Avenue, Eastern Kentucky University, Richmond, KY 40475, United States*

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## Abstract

The focus of literature on the policy responses to the Somali pirate has thus far examined controls put in place at the international, regional, and national levels. There has however, been little research examining how these international level policies have manifested themselves at the interactional level, namely through the prosecution of individuals charged with the crime of piracy. Here, informed by elements of critical race theory and the politics of identity, I analyze the trial transcripts of the prosecution of five Somali nationals in the US. I pay particular attention to the reality of these anti-piracy policies as they play out in a US courtroom where they not only reify larger processes of global stratification, but also deny the defendant's access to justice by characterizing them as black, Muslim, youth with possible connections to terrorism.

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## 1. Introduction

The international response to piracy in Somalia has led to a multifaceted response involving over 50 different international, regional, corporate, and national actors who are actively engaged in fighting piracy in Somali coastal waters ([Oceans Beyond Piracy, 2011](#); [Van Ginkel and Landman, 2012](#)). Although there has been considerable attention paid to international,

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*E-mail address:* [Victoria.collins@eku.edu](mailto:Victoria.collins@eku.edu)

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cooperative, and regional efforts to combat piracy, the focus has very much centered on the international policy response to the threat of piracy (i.e. the initiation of naval patrols in the Gulf of Aden) (Bahadur, 2011; Chalk, 2008; Eichstaedt, 2010; Elliott, 2007; Gibson, 2009; Hong and Ng, 2010; Kraska and Wilson, 2009a,b; Lehr, 2007; Mak, 2007; Roach, 2004; Rothe and Collins, 2011, in press; Ulrichsen, 2011). There has been significantly less criminological attention paid to the detention and prosecution processes that occur following the apprehension of individuals accused of piracy, and when these issues are addressed they tend to be done so in two different ways. First, it is discussed as it relates to the structural, legal and practical inefficiencies of the Somali criminal justice system (Clark, 2009; Davenport, 2012; Dubner and Greene, 2010; Dutton, 2010), and secondly, as it relates to the problems that result when states refuse to prosecute individuals they apprehend for acts of piracy (Bont, 2010; Chalk, 2012; Fink and Galvin, 2009; Gardner, 2012; Guilfoyle, 2012; Kontorovich, 2009). This lack of criminological attention is surprising considering the increasing number of individuals who have been detained and prosecuted for acts of piracy both in Somalia, and by jurisdictions all over the world.

In October 2011, the UN Secretary General reported that there were 1011 suspected pirates being prosecuted for piracy or awaiting trial in 20 different states. These states include Belgium, Comoros, France, Germany, India, Japan, Kenya, Madagascar, Malaysia, Maldives, the Netherlands, Oman, the Seychelles, Somalia, the Republic of Korea, Spain, the United Arab Emirates, the United Republic of Tanzania, the US, and Yemen (United Nations Security Council, 2011a). Although international law, along with the sanctioning of the United Nations Security Council (UNSC) has allowed many members states to pursue their own prosecutions, there still remain considerable inconsistencies in state's responses to prosecuting the Somali pirate. For example, prosecutions against Somali pirates have been brought by the Netherlands, the US and France (BBC News, 2011a,b; CNN, 2010), but with huge variability in the resulting sentences. In France the convicted pirates received between four and eight years (BBC News, 2011b), in the Netherlands the five men received five years (CNN, 2010), and in the US five individuals were sentenced to life in prison (BBC News, 2011a). Additionally, Kenya, Mauritius, and the Seychelles, through cooperative agreements with other states, have accepted accused pirates for prosecution (Oceans Beyond Piracy, 2011). Interestingly, there has been a lack of criminological attention paid to the piracy trials themselves, especially as it relates to how the anti-piracy policies have been created and implemented at the international level, have been enforced at the interactional level in domestic courts.

Drawing on trial transcripts from the prosecution of five Somali nationals in the US for piracy, I examine the reality of these anti-piracy policies as they are enacted at trial. In this particular case, five Somali born, young men were prosecuted for an attempted pirate attack on an US warship, the *USS Nicholas* (United States v. Hasan et al., 2011). US military forces captured the men following a failed attack in international waters, detained them on the *USS Nicholas* and in cooperation with the FBI, transported them to face prosecution in the Norfolk, Virginia.

Utilizing both content and discourse analysis, the court transcripts were analyzed paying particular attention to the politics of language, race, and religion as it relates to the prosecution of foreign nationals in a Western justice system, to determine how broad policies authorized at the international level play out at the interactional level and act to replicate broader global political inequalities. This case was selected, as despite there being considerable media and political coverage of the legal actions taken by different member states of the United Nations, there has been little interest in the micro level analysis of these prosecutions – no direct

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