

STOP GIVING PIRATES A LIFEBOAT TO ESCAPE FROM THEIR ATTACK: THE
PROBLEMS IN CONFLATING MARITIME TERRORISM AND PIRACY

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I. Introduction

Scholars and military researchers have recently explored the relationship between marine terrorism and piracy, and their findings are shocking. Crimes that threaten maritime security have increasingly become more prevalent and more dangerous over the years.¹ In regards to pirate attacks, between 2000 and 2006, there were nearly 2,500 actual or attempted attacks globally.² In 2012, pirates attacked 297 ships; in 2013, pirates attacked 264 ships, and in 2014, pirates attacked 245 ships.³ However, these numbers do not account for the 50 percent of attacks that go unreported each year because of fear, corruption, or other personal motivations.⁴

The most notable attack by Somalia pirates was on April 8, 2009, where four pirates in the Indian Ocean seized cargo ship MAERSK ALABAMA 240 nautical miles off the coast of Somalia.⁵ The pirates boarded the ship, captured Captain Philips, took him hostage, and beat him badly.⁶ Luckily, the United States Navy took control of the situation, saved Captain Phillips, and detained the one remaining pirate.⁷ This incident was the first successful pirate seizure of a ship registered under the American flag since the early 19th century.⁸ However, this incident led to a series of other maritime hijackings led by Somalians, who have “had more successful recent attacks than any other region on earth.”⁹

To make matters worse, the geographical region where most attacks occur changes frequently.¹⁰ Once a terrorist organization identifies that a geographical region has a higher

¹ MICHAEL D. GREENBURG ET AL., MARITIME TERRORISM: RISK AND LIABILITY 22 (RAND Corporation, 2006) (noting that the bombing of the Philippine SUPERFERRY 14 in 2004 was the fourth most serious international incident since September 11, 2001). *See also* Timothy Conley, *Pirates are Kidnapping More Seafarers Off West Africa*, INT. CHAMBER OF COMM.: NEWS AND SPEECHES (Oct. 14, 2020), <https://iccwbo.org/media-wall/news-speeches/imb-piracy-report-2020> (noting that in 2020 there was a 40% increase in the number of kidnappings reported in the Gulf of Guinea).

² Peter Chalk, THE MARITIME DIMENSION OF INTERNATIONAL SECURITY: TERRORISM, PIRACY, AND CHALLENGES FOR THE UNITED STATES ix (RAND Corporation, 2008).

³ *Number of Pirate Attacks Worldwide 2010-2020*, STATISTA RESEARCH DEPT. (Mar. 3, 2021), <https://www.statista.com/statistics/266292/number-of-pirate-attacks-worldwide-since-2006>.

⁴ Chalk, *supra* note 3, at 7.

⁵ Daniel Pines, *Maritime Piracy: Changes in U.S. Law Needed to Combat this Critical National Security Concern*, 36 SEATTLE U. L. REV. 69 (2012). *See also* Richard Norton-Taylor, *Maersk Alabama: Why U.S. Special Forces are Unlikely to Launch Raid*, GUARDIAN (Apr. 8, 2009), <https://www.theguardian.com/world/2009/apr/08/hijack-response-attack-maersk-alabama>.

⁶ *Id.*

⁷ *Id.*

⁸ Edmund Sanders & Julian E. Barnes, *U.S. Ship Captain Held by Somali Pirates*, LOS ANGELES TIMES (Apr. 9, 2009), <https://www.latimes.com/archives/la-xpm-2009-apr-09-fg-somali-pirates9-story.html>.

⁹ Thaine Lennox-Gentle, *Piracy, Sea Robbery, and Terrorism: Enforcing Laws to Deter Ransom Payments and Hijacking*, 37 UNIV. DENV. STURM TRANSP. L. J. 199, 200 (2010) (citations omitted).

¹⁰ Natalya A. Knyazeva & Alexander I. Korobeev, *Maritime Terrorism and Piracy: The Threat to Maritime Security*, 6 MEDITERRANEAN J. SOC. SCIENCES 226, 229 (2015).

frequency of attacks, they make certain safety modifications to their ships.¹¹ At which time, the terrorist authorities switch their attacks to another location to go undetected.¹² For example, in the 2000s, most cases were reported as being off the coast of East Africa.¹³ However, since 2013, most attacks have been reported as being off the coast of Southeast Asia.¹⁴

The increase in pirate attacks is well established.¹⁵ However, there is little known about how terrorist groups use pirates, and scholars often speculate about the connection.¹⁶ The general understanding is that terrorist organizations commit acts of terror to “influence political behavior” through the threat or use of violence.¹⁷ For example, Al-Qaeda took credit for the September 11, 2001 attack and the 2013 Boston Marathon Bombings.¹⁸ In regards to the September 11 attack, Osama bin Laden stated in his “Letter to America” that the attack was in response to Western support of injustice against Muslim populations in several countries. These unjust situations include: the attacks against Muslims in Somalia, Russian atrocities against Muslims in Chechnya, the Indian oppression against Muslims in Kashmir, the Jewish aggression against Muslims in Lebanon, the presence of US troops in Saudi Arabia, US support of Israel, and sanctions against Iraq.¹⁹ However, maritime terrorism differs from domestic terrorism because there is no widely accepted goal for terrorists’ acts.²⁰

In Part One, this Comment will address the legal definitions of maritime terrorism and piracy. Then, Part Two will distinguish the legal and factual differences between maritime terrorism and piracy. Next, Part Three will address how the similarities between maritime terrorism and piracy have led policymakers to conflate the two crimes. Finally, Part Four will identify a series of problems caused by the lack of differentiation between maritime terrorism and piracy and will propose remedies to ensure that pirates and terrorists are held accountable for their actions.

II. Proposed Definitions of Maritime Crimes

The definitions of maritime terrorism and piracy give insight into the differences between the two maritime crimes.²¹ However, there is no widely accepted definition of maritime terrorism,

¹¹ *Id.* at 226.

¹² *See id.*

¹³ *See id.*

¹⁴ *Id.*

¹⁵ Knyazeva & Korobeev, *supra* note 11, at 226.

¹⁶ *See generally* Lennox-Gentle, *supra* note 10 (explanatory parenthetical).

¹⁷ *See* ABRAHAM H. MILLER, TERRORISM AND HOSTAGE NEGOTIATIONS: WESTVIEW SPECIAL STUDIES IN NATIONAL AND INTERNATIONAL TERRORISM 82 (1980).

¹⁸ *See* Peter L. Bergen, *September 11 Attacks*, ENCYCLOPEDIA BRITANNICA (Sep.10, 2020), <https://www.britannica.com/event/September-11-attacks>; Michael Ray, *Boston Marathon Bombing of 2013*, ENCYCLOPEDIA BRITANNICA (Apr. 8, 2020), <https://www.britannica.com/event/Boston-Marathon-bombing-of-2013>.

¹⁹ *Full Text: bin Laden’s ‘Letter to America’*, THE GUARDIAN (Nov. 22, 2002), <https://www.theguardian.com/world/2002/nov/24/theobserver>.

²⁰ *See* Douglas R. Burgess Jr., *Hostis Humani Generi: Piracy, Terrorism and a New International Law*, 13 U. MIAMI INT’L & COMP. L. REV. 293, 320 (2006) [hereinafter Burgess I].

²¹ *See* Kylie McKenzie Morrell, *The Murky Waters of Piracy and Maritime Terrorism: An Analysis of the Blurred Lines Between Two Crimes* 7 (June 27, 2019) (Master Thesis, University

and is a subsection of terrorism.²² Therefore, this Comment proposes a definition of terrorism to help limit which acts of terror fall within the meaning of maritime terrorism.²³

A. The Definition of Terrorism

While the United Nations General Assembly officially condemned terrorism in 1985, there is no widely accepted definition for terrorism.²⁴ Numerous conventions have presented a definition of terrorism; however, none of the definitions have been universally accepted.²⁵ Scholar Kyle Morrell argues that the controversy over the definition of terrorism stems from the policy behind terrorism, where “one man’s terrorist is another man’s freedom fighter.”²⁶

In 1930, the Third Conference for the Unification of Criminal Law defined terrorism as “[t]he intentional use of means capable of producing a common danger...[including] crimes against life, liberty or physical integrity of persons or directed against private or state property with the purpose of expressing or executing political or social ideas.”²⁷ More recently, in 2011, the *ad hoc* tribunal, the Special Court for Lebanon, provided what it argues to be a widely accepted customary definition of terrorism.²⁸ The Tribunal’s definition consists of:²⁹

of Amsterdam). *See also* Lutz Feldt, Dr. Peter Roell & Ralph D. Thiele, *Maritime Security-Perspectives for a Comprehensive Approach*, THE INSTITUTE FOR STRATEGIC, POLITICAL, SECURITY AND ECONOMIC CONSULTANCY, Apr. 2013, at 2.

²² Morrell, *supra* note 22, at 14; Feldt et al., *supra* note 22, at 6.

²³ *See supra* note 23.

²⁴ Morrell, *supra* note 22, at 15.

²⁵ *See generally* Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation art. 4, March, 10, 1988, U.N.T.S. 1678 (SUA) [hereinafter referred to as SUA]; UN G.A. Res. 21931, *International Convention against the Taking of Hostages*, (November 17, 1979), <https://www.refworld.org/docid/3ae6b3ad4.html>; Restatement (Third) Foreign Relations Law § 1 (1987) (noting that though there “has been wide condemnation of terrorism,” international agreements to define and punish it have not yet been widely ratified because of inability to agree on its definition).

²⁶ Morrell, *supra* note 22, at 15.

²⁷ Ben Saul, *Attempts to Define “Terrorism” In International Law*, 52 NETH. INT’L. L. REV. 57, 59 (2005).

²⁸ Saiful Karim, *The Rise and Fall of the International Law of Maritime Terrorism: The Ghost of Piracy is Still Hunting!*, 26 N.Z. UNIV. L. REV. 82, 86 (2014); Morrell, *supra* note 22. *See also* Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging STL Appeals Chamber STL-11-01/I, Order of Feb. 16 2011); Ben Saul, *Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism*, 24 LJIL 677, 696 (2011).

²⁹ Morrell, *supra* note 22, at 16; Karim, *supra* note 29 at 6.

[T]hree key elements: (i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element.

However, the Special Court for Lebanon's definition has not been accepted "by the international community or by any other international court."³⁰

The United States government in 1993 noted that "the international community has repeatedly failed in its efforts to reach consensus on a generic definition of terrorism."³¹ Further, Secretary-General Kofi Annan asserted that the lack of definition detracts from "the moral authority of the United Nations and its strength in condemning" terrorists.³²

Although there is not a universally accepted definition of terrorism, the combination of the proposed definitions hints at a definition of terrorism.³³ The 1999 Convention on Terrorist Financing arguably provides the most accurate definition, asserting that terrorism is used to "intimidate a population, or to compel a government or international organization."³⁴ Scholar Bruce Hoffman argues that terrorism is "ineluctably political in aims and motives."³⁵ As I will address later in this comment, the political aims element is critical in distinguishing maritime terrorism from piracy.³⁶

B. The Definition of Maritime Terrorism

Until the 1990s, maritime terrorism was not an international matter of concern.³⁷ Courts would prosecute acts of terrorism under the theory of piracy.³⁸ Therefore, there is a lack of legislation, guidance, and definitional understanding of what acts constitute maritime terrorism.³⁹

³⁰ Morrell, *supra* note 22, at 16; *see also* Feldt, *supra* note 22.

³¹ Measures to Eliminate Int'l Terrorism, Rep. of the S.G. on Its Forty-Eighth Session, U.N. Doc. A/48/267/Add. 1 (1993).

³² Douglas R. Burgess Jr., *The Dread Pirate Bin Laden: How thinking of terrorists as pirated can help win the war on terror*, INTERSECTION OF L. AND LIFE, (Aug. 2005), https://www.legalaffairs.org/issues/July-August-2005/feature_burgess_julaug05.msp [hereinafter Burgess II].

³³ Morrell, *supra* note 22, at 17.

³⁴ International Convention for the Suppression of Financing of Terrorism art. 2, Dec. 9, 1999, 2178 U.N.T.S. 197.

³⁵ Morrell, *supra* note 22, at 17 (*quoting* Bruce Hoffman, *Inside Terrorism* (COLUM. UNIV. PRESS 2006)).

³⁶ *Id.*; Karim, *supra* note 29, at 10.

³⁷ Nong Hong, Adolf KY Ng, *The International Legal Instruments in Addressing Piracy and Maritime Terrorism: A Critical Review*, 27 RSCH. IN TRANSP. ECON. 51, 55.

³⁸ *Id.*

³⁹ *Id.*

The first international discussion about maritime terrorism took place in 1985 in light of the ACHILLE LAURO incident.⁴⁰ The ACHILLE LAURO incident involved four men acting on behalf of the Palestine Liberation Front who hijacked and seized control of the Italian-flagged cruise ship.⁴¹ The hijackers posed as tourists to gain passage onto the cruise liner and, once assailed, took the passengers and crew hostage.⁴² The Palestine Liberation Front demanded Israel to release 50 Palestinian prisoners.⁴³ When Israel did not comply, the hijackers killed a United States citizen in response.⁴⁴ The United States claimed the incident as piracy; however, Israel deemed it an act of terror.⁴⁵ The two States fought over jurisdiction to try the case.⁴⁶ Ultimately, the feud led to the creation of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA).⁴⁷ However, the SUA has not issued a definition for maritime terrorism.⁴⁸

While not an internationally accepted definition of maritime terrorism, Christopher C Joyner, Professor of Government and Foreign Service at Georgetown University, defines maritime terrorism as “the systematic use or threat to use acts of violence against international shipping and maritime services by an individual or group to induce fear and intimidation in a civilian population in order to achieve political ambitions or objectives.”⁴⁹ Further, the Council for Security Cooperation in the Asian Pacific (CSCAP) defined maritime terrorism as “the undertaking of terrorist acts and activities within the maritime environment, using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities.”⁵⁰

While none of the presented definitions of maritime terrorism has taken effect, the definitions generally agree that an act of maritime terrorism is “politically, religiously, or ideologically motivated” and is not mere acts of robbery.⁵¹ However, as addressed later in this comment, scholars argue that maritime terrorist attacks “should” fall within the meaning of maritime piracy because of the ambiguity.⁵²

C. The Definition of Maritime Piracy

⁴⁰ Morrell, *supra* note 22, at 18.

⁴¹ Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. K. INT’L L. 269 (1988).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See generally Morrell, *supra* note 22, at 19.

⁴⁶ *Id.*

⁴⁷ SUA, *supra* note 26 at 222; Currun Singh and Arjun Singh Bedi, *War on Piracy: The Conflation of Somali Piracy with Terrorism in Discourse, Tactic, and Law*, 47 SECURITY DIALOGUE 440, 445 (2016).

⁴⁸ Singh & Singh, *supra* note 48, at 446.

⁴⁹ Christopher C Joyner, *Suppression of Terrorism on the High Seas: The 1988 IMO Convention on the Safety of Maritime Navigation*, 19 ISR. Y.B. HUM. RTS. 341, 348 (1989).

⁵⁰ Morrell, *supra* note 22.

⁵¹ *Id.*

⁵² Karim, *supra* note 29; Michael Bahar, *Attaining Optimal Deterrence at Sea: A Legal and Strategic Theory for Naval Anti-Piracy Operations*, 40 VAND. J. TRANSNAT’L L. 1, 27-37 (2007).

Maritime piracy is not a new concept.⁵³ Since 75 BCE, pirates have boarded the ships of wealthy men, captured them, and demanded a ransom for their safe return.⁵⁴ Throughout the centuries, private individuals used pirates for several reasons, even being used by nations to bleed the others' resources or to invoke war.⁵⁵ Thankfully, most leading world powers signed the Declaration of Paris in 1856 to abolish piracy in all forms.⁵⁶

Even after an influx of terrorist attacks in the 1960s, the United Nations Convention on the Law of the Sea (UNCLOS) failed to frame the language in a manner that would distinguish between maritime terrorism and piracy.⁵⁷ Instead, UNCLOS' language almost identically mirrors the ambiguous language found in the 1958 Geneva Convention on the High Seas.⁵⁸ While the United States and other notable States have not ratified the UNCLOS, they have ratified the Geneva Convention and thus, acknowledge the Articles on UNCLOS as customary practice.⁵⁹ As such, UNCLOS remains the leading international source of piracy.⁶⁰

UNCLOS defines piracy as:⁶¹

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the 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 on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

⁵³ See World Ocean Review, *Maritime highways of global trade*, 171-175 (Jan Lehmköster & Tim Schröder et al. eds., 2010).

⁵⁴ Lennox-Gentle, *supra* note 10 (citing Jim Whiting, *The life and times of Julius Caesar* 8 (Mitchell Lane 2005)).

⁵⁵ Burgess I, *supra* note 21.

⁵⁶ Charles H. Stockton, *The Declaration of Paris*, 14 (3) Am. J. Int'l L. 356, 356-68 (Jul. 1920); Lawrence Azubuike, *International Law Regime against Piracy*, 15 ANN. SURV. INT'L & COMP. L. 43, 46 (2009).

⁵⁷ United Nations Convention on the Law of the Sea 1833 U.N.T.S. 3 (opened for signature 10 December 1982, entered into force 16 November 1994), art 101 [hereinafter referred to as UNCLOS]. See Committee of Experts for the Progressive Codification of International Law, *Codification of International Law: Part IV: Piracy*, 26 AM. J. INT'L L. SUPP. 739 (1932).

⁵⁸ See Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. 11, <http://www.un.org/law/ilc/texts/hseas.htm> (last visited Nov. 4, 2002) [hereinafter referred to as 1958 Geneva Convention]. Articles 100 to 107 of UNCLOS mirror Articles 14 to 22 of the Geneva Convention on the High Seas of 1958.

⁵⁹ Morrell, *supra* note 22. See Theodor Meron, *The Time Has Come for the United States to Ratify the Geneva Protocol I*, 88 Vol. 4 AM. J. INT'L L. 62-69 (Oct. 1994).

⁶⁰ See UNCLOS, *supra* note 58. Mazyar Ahmad, *Maritime piracy operations: Some legal issues*, 4:3 J. INT'L MAR. SAFETY, ENV'T AFF., & SHIPPING 62-69 (2020).

⁶¹ UNCLOS art. 101, *supra* note 58.

- (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 of inciting or of intentionally facilitating an act described in subparagraph

UNCLOS limits piracy to acts on the high sea, which are those acts executed beyond twelve nautical miles from a state's baseline.⁶² Based on UNCLOS's language, piracy is narrowly defined, requiring that the offense involve two ships, be for "private ends," and take place on the high sea.⁶³

III. The Distinct Differences Between Maritime Terrorism and Piracy

A. Private Gain

The critical distinction between maritime terrorism and piracy is the underlying motive.⁶⁴ Scholars have attempted to separate the motive underlying maritime terrorism and piracy, asserting that "terrorism has ulterior motives, while piracy relie[s] only on personal gain as motivation."⁶⁵ However, both the 1958 High Seas Convention (HSC) and UNCLOS have yet to define "private ends,"⁶⁶ which leaves room for scholars to argue that acts of maritime terrorism can qualify as acts of maritime piracy.⁶⁷

The controversy centers around the meaning of private ends, where some scholars define private ends as "private and public" while others define private ends as "private and political."⁶⁸ Some scholars read UNCLOS narrowly to include "only those acts that are commercially motivated and carried out for private gain rather than for a cause,"⁶⁹ and thus private versus political.⁷⁰ For example, the ILC rapporteur to the General Assembly in 1995 stated:

⁶² *Id.* art. 3; CSCAP, Council for Security Cooperation in the Asia - Pacific Memorandum 5, [http://www.cscap.org/uploads/docs/Memorandums/CSCAP Memorandum No 5 - Cooperation for Law and Order at Sea.pdf](http://www.cscap.org/uploads/docs/Memorandums/CSCAP_Memorandum_No_5_-_Cooperation_for_Law_and_Order_at_Sea.pdf).

⁶³ *Id.* art. 101; CSCAP, *supra* note 63.

⁶⁴ *See* Morrell, *supra* note 22

⁶⁵ *Id.*; Adam J. Young and Mark J Valencia, *Conflation of Piracy and Terrorism in Southeast Asia: Rectitude and Utility*, 25 CONTEMPORARY SOUTHEAST ASIA 274-275 (2003); (*stating* "Terrorism is distinct from piracy in a straightforward manner. Piracy is a crime motivated by greed, and thus predicated on financial gain. Maritime terrorism is motivated by political goals beyond the immediate act of attacking or hijacking a maritime target."). [hereinafter Young I].

⁶⁶ *See generally* UNCLOS, *supra* note 58; Convention on the High Seas (adopted 29 April 1958, entered into force 30 September 1962) 450 U.N.T.S. 103 (HSC).

⁶⁷ *See generally* Karim, *supra* note 29; Douglas Guilfoyle, *Piracy off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts*, 57 ICLQ 690 (2008) [hereinafter Guilfoyle II]; Gerald P McGinley, *Achille Lauro Affair – Implications for International Law*, 52 TENN. L. REV. 691 (1984–1985).

⁶⁸ Karim, *supra* note 29.

⁶⁹ Yvonne M. Dutton, *Maritime Piracy and the Impunity Gap: Insufficient National Laws or a Lack of Political Will*, 86 TUL. L. REV. 1111 (2012) (*citing* Joseph M. Isanga, *Countering Persistent Contemporary Sea Piracy. Expanding Jurisdictional Regimes*, 59 AM. U. L. REV. 1267, 1283-84 (2010)).

⁷⁰ Karim, *supra* note 29; Guilfoyle II, *supra* note 68.

Although States at times have claimed the right to treat as pirates unrecognized insurgents against a foreign government who have pretended to exercise belligerent rights on the sea against neutral commerce, or privateers whose commissions violated the announced policy of the captor, and although there is authority for subjecting some cases of these types to the common jurisdiction of all States, it seems best to confine the common jurisdiction to offenders acting for private ends only.⁷¹

Under this understanding of “private ends,” the ACHILLE LAURO incident would not fall under the definition of piracy because the Palestinian hijackers were not acting for mere personal gain. Instead, the hijackers acted on behalf of the Palestine Liberation Front.⁷²

Conversely, some scholars believe that “private ends” should be defined broadly to include attacks made on behalf of a terrorist organization because the act lacks public sanction.⁷³ Douglas Guilfoyle, Professor of International and Security Law, believes that the distinction should be private and public, explaining “private ends” as:

The words “for private ends” simply denote that the violence involved is not public and were originally included to acknowledge the historic exception for civil-war insurgencies who attacked only the vessels of the government they sought to overthrow. All acts of violence lacking State sanction are acts undertaken “for private ends. . . if there is no authorization from a public authority, government or insurgent, the incident may be treated as piracy.”⁷⁴

The United States Court of Appeals for the Ninth Circuit adopted this interpretation, holding that “[t]he context here is provided by the rich history of piracy law, which defines acts taken for private ends as those not taken on behalf of a state.”⁷⁵ Further, the Belgian Court of Cassation has openly expressed its support for the idea that “private ends” includes violence on the high seas derived from “personal motivation, such as hatred, the desire for vengeance, or the wish to take justice into one’s own hands.”⁷⁶ If this understanding were internationally adopted, attacks conducted by a terrorist group could meet the “private ends” requirement if the motive behind the act was hatred or vengeance.⁷⁷ Thus, under this understanding, the ACHILLE LAURO incident would satisfy the “private ends” requirement of piracy because the hijackers were not

⁷¹ Justin S.C. Mellor, *Missing the Boat: The Legal and Practical Problems of the Prevention of Maritime Terrorism*, 18 AM. U. INT’L L. REV. 341 341-97 (2002) (quoting *Summary Records of the 290th Meeting* [1955], 1 Y.B. INT’L L. COMM’N 37, 41, U.N. Doc. No. A/CN.4/SR.290).

⁷² Halberstam, *supra* note 42.

⁷³ See, e.g., Bahar, *supra* note 53.

⁷⁴ Guilfoyle II, *supra* note 68; Halberstam, *supra* note 42.

⁷⁵ *Inst. of Cetacean Res. v. Sea Shepherd Conservation Soc.*, 725 F.3d 940, 943-44 (9th Cir. 2013).

⁷⁶ Karim, *supra* note 29, at 9 (citing *Castle John and Nederlandse Stichting Sirius v. NV Marjlo and NV Parfin* (1986) 77 INT’L L. R. 537 at 539 (Belgian Ct. of Cassation, 1986)).

⁷⁷ *Id.* See also Ahmad, *supra* note 61; Halberstam, *supra* note 42; Bahar, *supra* note 53.

acting on behalf of Palestine itself.⁷⁸ Instead, the hijackers acted with a vengeance and a goal to ‘take matters into their own hands’ by demanding the release of 50 Palestinian prisoners.⁷⁹

B. Two Ship Requirement under Piracy

UNCLOS’ requirement that two ships be involved for an incident to qualify as piracy poses issues.⁸⁰ Because the definition of piracy requires that two ships be present, an attack where the crew or passengers seize control of the ship would not qualify.⁸¹ Therefore, while the ACHILLE LAURO may qualify as piracy on “private ends,” only one ship was involved in that hijacking, and thus would fail to qualify as maritime piracy under the UNCLOS definition.⁸² Scholars believe that UNCLOS provided a two-ship requirement “to exclude criminal acts by one passenger or crew member against another.”⁸³ Conversely, some scholars argue that the definition of piracy does not require the involvement of two ships.⁸⁴ Judge Jesus, writing extra-judicially, opinions:

[that] one cannot read what is not written in the Article, for LOSC, Article 101 clearly requires the involvement of two ships. Therefore, if the intention of those commentaries is to make acts involving only one ship also fall under the piracy definition, then the provision in LOSC, Article 101(a)(i) should be amended to say so.⁸⁵

C. Jurisdiction

While crimes of piracy have universal jurisdiction, crimes of maritime terrorism fall under the jurisdiction of the SUA Convention.

1. Universal Jurisdiction

Universal jurisdiction is defined as “a legal principle allowing a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality

⁷⁸ See Tullio Treves, *Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia*, 20(2) E.J.I.L. 399, 401 (2009).

⁷⁹ Gregory V. Gooding, *Fighting Terrorism in 1980’s: The Interception of the Achille Lauro Hijackers*, 12 Yale J. Int’l L. 158, 164 (1987).

⁸⁰ See Samuel Pyeatt Menefee, *The New Jamaica Discipline: Problems with Piracy, Maritime Terrorism and the 1982 Convention on the Law of the Sea*, 6 CONN. J. INT’L L. 127, 141-47 (1990) (commenting on the “private ends” controversy and the “one ship/two ship” controversy stemming from the definition of piracy in UNCLOS).

⁸¹ See UNCLOS art. 101, *supra* note 58; Treves, *supra* note 79, at 403.

⁸² Karim, *supra* note 29, at 9. However, despite their being only one vessel, the United States classified this incident as piracy. Additionally, the hijackers were charged with taking hostages, conspiracy and piracy on the high seas, although it is unclear whether the initial seizure was on the high seas.

⁸³ Bahar, *supra* note 53, at 38.

⁸⁴ Bahar, *supra* note 53; see also Samuel Menefee, *Anti-Piracy law in the Year of the Ocean: Problems and Opportunity*, 5 ILSA J. INT’L & COMP. L. 309, 312-13 (1999) (arguing that a close reading of the 1982 UNCLOS does not impose a “two ship requirement”).

⁸⁵ Jose Luis Jesus, *Protection of Foreign Ships Against Piracy and Terrorism at Sea: Legal Aspects*, (2003) 18 INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW 363.

of the perpetrator or the victim.”⁸⁶ Further, universal jurisdiction in regards to acts of piracy extends only to acts “occurring outside the territorial jurisdiction of any state ‘against a ship, aircraft, persons or property in a *place outside the jurisdiction of any State*’” (emphasis added).⁸⁷ Therefore, acts of piracy must occur on the high seas to receive universal jurisdiction.⁸⁸

The Harvard Drafters⁸⁹ believed that the laws governing the jurisdiction of pirates were “not to unify throughout the various municipal laws of piracy, nor to provide uniform measures for punishing pirates, but to define this extraordinary basis of state jurisdiction.”⁹⁰ While Article 105 of UNCLOS affords the seizing ship state immense power,⁹¹ much of this power goes unused and is thus inefficient in preventing pirates.⁹² Because no “international administrator of justice for private individuals exists,”⁹³ maritime piracy is not a “crime under the law of nations, but only as a special basis for state jurisdiction.”⁹⁴ Unlike crimes against humanity, UNCLOS does not demand a state to exercise universal jurisdiction.⁹⁵ For example, the Genocide Convention explicitly defines genocide as a crime against international law where States must hold the

⁸⁶ Kenneth C Randall, *Universal Jurisdiction under International Law*, (1987) 66 TEX. L. R. 785, 785-788 (1988).

⁸⁷ Morrell, *supra* note 22, at 25 (quoting UNCLOS art 101 (a)(ii)).

⁸⁸ *Id.* UNCLOS art. 5; *see also supra* note 58.

⁸⁹ Joseph W Bingham (reporter), *Harvard Research in International Law: Draft Convention on Piracy* (1932) 26 AJIL SUPPLEMENT 739 (emphasis in original). The Harvard Draft Convention on piracy is the foundation of UNCLOS which has then acted as a model for the Territorial Sea Convention of 1958 and Maritime Law Convention of 1982. *Id.*

⁹⁰ Harvard Research in International Law, *Draft Convention on Piracy, with Comment*, AMERICAN JOURNAL OF INTERNATIONAL LAW SUPPLEMENT 26, 739 (1932).

⁹¹ UNCLOS art. 105, *supra* note 58. “On the high seas, or in any place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.” *Id.*

⁹² *See* Morrell, *supra* note 22, at 24-25; *see also* M Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, (2001) 42 VA. J. INT'L L. 108-112.

⁹³ Ahmad, *supra* note 61, at 62.

⁹⁴ Mazyar Ahmad, *Maritime piracy operations: Some legal issues*, 4 JOURNAL OF INTERNATIONAL MARITIME SAFETY, ENVIRONMENTAL AFFAIRS, AND SHIPPING 3, 62-69 (2020), (citing Rubin, A.P, *Piracy*, THE HARVARD RESEARCH IN INTERNATIONAL LAW: CONTEMPORARY ANALYSIS AND APPRAISAL, 229-249, (2007)).

⁹⁵ Tamsin Paige, *Piracy and Universal Jurisdiction*, 34 MACQUARIE LAW JOURNAL 134, (2013), <http://www.austlii.edu.au/au/journals/MqLawJl/2013/17.pdf>; Neil Boister, *International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court?* 23 CRIMINAL LAW FORUM 307, 295- 318, (2013).

responsible party liable.⁹⁶ This language signals that the state is required to exercise universal jurisdiction to prosecute acts of genocide.⁹⁷

Conversely, UNCLOS merely provides grounds for standing,⁹⁸ where article 105 affords the seizing state the discretion to assert jurisdiction over a pirate and allows the capturing state to “decide the penalty to be imposed and determine what is to be done with the captured ship and property onboard.”⁹⁹ Many States choose not to exercise jurisdiction, which results in pirates going unpunished.¹⁰⁰ The U.S. National Security Council wrote, “Somali-based piracy is flourishing because it is . . . nearly consequence-free.”¹⁰¹ For example, “a North Atlantic Treaty Organization (NATO) warship came across suspected pirates in a broken boat and, pursuant to international norms concerning ‘distressed mariners,’ gave them a tow back to port.”¹⁰²

A state that chooses to exercise universal jurisdiction over a pirate must then prosecute under their individual state’s laws.¹⁰³ Because of the deference to the domestic States’ laws, the United Nations General Assembly (UNGA) asked 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.”¹⁰⁴ Further, the UNGA urged each state to “adopt appropriate national legislation that would assist ‘enforcement personnel in the prevention, reporting, and investigation of incidents, bringing the alleged perpetrators to justice, by international law.’”¹⁰⁵ Unfortunately, the United States is in the minority of States which have individually adopted national legislation based on Article 101 of UNCLOS.¹⁰⁶ In the United States, the laws outline the nature of the crime and make piracy punishable by life imprisonment.¹⁰⁷ However, most States do not have the same freedoms that the United States or other democratic nations have.¹⁰⁸ Therefore, regardless of

⁹⁶ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9 1948, S. EXEC. DOC. O, 81-1 (1949), 78 U.N.T.S. 277 art. 1-2, 4.

⁹⁷ *Id.*

⁹⁸ Boister, *supra* note 98; Bringham, *supra* note 87.

⁹⁹ Ahmad, *supra* note 61.

¹⁰⁰ Eugene Kontorovich, *A Guantanamo on the Sea: The Difficulties of Prosecuting Pirates and Terrorists*, 98 CALIF. L. REV. 243, 244 (2010).

¹⁰¹ National Security Council, *Countering Piracy off the Horn of Africa: Partnership & Action Plan* 12 (2008).

¹⁰² Kontorovich, *supra* note 103, at 244.

¹⁰³ Geiss, R., and A. Petrig. 2011. *Piracy and Armed Robbery at Sea: The Legal Framework for Counter-Piracy Operations in Somalia and the Gulf of Aden*. New York: Oxford University Press. Petrig, A. 2013. “The Use of Force and Firearms by Private Maritime Security Companies against Suspected Pirates.” *International and Comparative Law Quarterly* 62 (3): 667–701.

¹⁰⁴ United States Government, *Maritime Security Sector Reform (MSSR)*, BUREAU OF POLITICAL-MILITARY AFFAIRS (2007).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* 18 U.S.C. § 2280; 18 U.S.C. § 1651; 18 U.S.C. § 1652; 18 U.S.C. § 1653; Rubin, A. P. 2007. “Piracy.” In *The Harvard Research in International Law: Contemporary Analysis and Appraisal*, edited by J. P. Grant and W. S. Craig Barker, 229–245. Buffalo, New York: William S. Hein & Company.; Kontorovich, E. 2009a. “The Define and Punish Clause and the Limits of Universal Jurisdiction.” *Northwestern University Law Review* 103 (1): 149–204.

¹⁰⁸ *See id.*

whether they have specified laws dealing with piracy, many States choose not to impose those laws out of “fear of political retaliation, the imposition of economic or legal sanctions, or becoming a target for maritime terrorism.”¹⁰⁹ Consequently, the lack of a standard for imposing legal action against pirates has become an increasing issue, particularly in certain geographical regions.¹¹⁰ For example, in 2008, during the wave of Somali hijackings, the United Nations Security Council was forced to acknowledge the “issue of prosecution of apprehen[sion] of pirates in 2008 as:”

(W)ith concern that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice.¹¹¹

To further compound the jurisdictional confusion, some argue that Article 15 of UNCLOS does not actually invoke universal jurisdiction.”¹¹² Boister asserts that piracy “is not a crime of universal jurisdiction but a crime which occurs outside the sovereign territory of any state and thus all [S]tates have a concurrent municipal jurisdiction.”¹¹³ This argument relies on the major differences between international criminal law and transactional law.¹¹⁴ Even if concurrent jurisdiction is not applied to piracy, flag state jurisdiction may be an alternative to universal jurisdiction.

2. The SUA Convention

The basis for jurisdiction over maritime terrorism is “*Aut Dedere Aut Judicare*,” defined as “require[ing] a state which has hold of someone who has committed a crime of international concern either to extradite the offender to another state which is prepared to try him or else to take steps to have him prosecuted before its own courts.”¹¹⁵ Therefore, unlike piracy, an international obligation is imposed on States to prosecute.¹¹⁶ Additionally, the SUA Convention applies to territorial waters as well as the high seas.¹¹⁷ Because the SUA Convention applies to both

¹⁰⁹ Lennox-Gentle, *supra* note 10 (citing Raphael Perl & Ronald O'rourke, Congo Research Serv., RS 20721, Terrorist Attack On USS Cole: Background And Issues For Congress (Jan. 30, 2001), available at <http://www.gwu.edu/~nsarchiv/insae/bbinsae/bb55/crs20010130.pdf> (Detailing The Terrorist Attack On The USS Cole)).

¹¹⁰ Ahmad, *supra* note 61 (citing Oceanus.org., 3 Out of 10 Pirates Released Due to Lack of Evidence, Says Spanish Admiral, <http://www.oceanuslive.org/main/viewnews.aspx?uid=00000708>).

¹¹¹ *Id.* (quoting Sec. Council Res., 6046th Meeting, 2008b, 1851, *Adoption by the Security Council at Its 6046th Meeting on 16 December 2008*, (UN Doc. Dec. 2008)).

¹¹² Boister, *supra* note 98.

¹¹³ Paige, *supra* note 98.

¹¹⁴ *Id.*

¹¹⁵ M. Cherif Bassiouni and Edward M. Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (M Nijhoff 1995).

¹¹⁶ Halberstam, *supra* note 42, at 309.

¹¹⁷ SUA, *supra* note 26 art. 4.

territories, it applies to piracy and maritime terrorism.¹¹⁸ This overlap in jurisdiction leads to confusion in which jurisdictional standard should apply.¹¹⁹

IV. The Conflation of Maritime Terrorism and Piracy

While there are apparent differences between maritime terrorism and piracy, numerous similarities contribute to their conflation in international law.¹²⁰ Additionally, many scholars attribute the most recent conflation to the September 11th attack.¹²¹ For example, in March 2003, DEQI MADRIM, an Indonesian tanker, was hijacked by ten armed men who seized control of the ship.¹²² Based on UNCLOS' definition of piracy, this hijacking would meet the requirements of piracy.¹²³ However, the hijackers' motive was to practice steering tankers in crowded sea lanes, similar to the "September 11 hijackers' training in Florida flight schools."¹²⁴ Situations involving terrorist pirates, such as this, have increasingly become more common, contributing to the conflation of the two concepts.¹²⁵

A. Similarities between Piracy and Maritime Terrorism

1. Enemy of Mankind

Pirates and maritime terrorists commit crimes for numerous reasons. It is well settled that piracy is predicated on financial gain while terrorism is motivated by "political goals beyond the immediate act of attacking a maritime target."¹²⁶ However, while some pirates merely seek financial gain, other pirates want a larger reward (*i.e.*, terror).¹²⁷ This overlapping motive cannot be ignored.¹²⁸

Since the Declaration of Paris, pirates acting on their own accord "were considered to be engaging in acts of maritime terrorism."¹²⁹ Therefore, international laws have classified pirates as

¹¹⁸ Morrell, *supra* note 22, at 58.

¹¹⁹ *Id.* at 25.

¹²⁰ *Id.* see also Singh, *supra* note 48; Eric Shea Nelson, *Maritime Terrorism and Piracy: Existing and Potential Threats*, (2012) 3 Global Security Studies 15.

¹²¹ Young I, *supra* note 66. Guzzini S (2011) *Securitization as a casual mechanism; Security Dialogue*; 42 (4-5): 329-341; see also Silverstein P (2005) *The new barbarians: Piracy and terrorism on the North African frontier*, 5 The New Centennial Review 1, 179-212.

¹²² Gal Luft and Anne Korin, *Terrorism Goes to Sea*, FOREIGN AFFAIRS (Dec. 2004), <http://www.iags.org/fa2004.html>.

¹²³ UNCLOS, *supra* note 58, at 436; see also Luft, *supra* note 125.

¹²⁴ Luft, *supra* note 125; see also Brian Patrick Hill, Thesis, *Maritime Terrorism and the Small Boat threat to the United States: A proposed response*, NAVAL POSTGRADUATE SCHOOL, Mar. 2009 (noting "that it is frightening that a chemical tanker with possibly hazardous material on board could so easily be sized and put under the control of criminals . . . Suppose that pirates take over a tanker carrying six hundred tons of liquefied natural gas and turn it over to terrorists")

¹²⁵ Luft, *supra* at 125.

¹²⁶ Young I, *supra* note 66, at 274-75.

¹²⁷ Burgess I, *supra* note 21; see Azubuike, *supra* note 57.

¹²⁸ *Id.*

¹²⁹ Lennox-Gentle, *supra* note 10, at 203.

“*hostes humani generis*,” or the “enemy of all mankind.”¹³⁰ Pirate Black Sam Bellamy stated to one of his hostages: “I am a free prince, and have as much authority to make war on the whole world as he who has a 100 sail of ships and an army of 100,000 men in the field.”¹³¹ Similarly, modern terrorists are considered enemies of States.¹³² President Theodore Roosevelt said in a 1901 speech that “[a]narchy is a crime against the whole human race; and all mankind should band against the anarchist. [President McKinley’s assassin’s] crime should be made an offense against the law of nations, like piracy and that form of manstealing known as the slave trade.”¹³³

Morell correctly construes President McKinley’s reference to an anarchist to fit within the meaning of terrorist.¹³⁴ “Both pirates and terrorists deliberately employ . . . extraterritorial enclaves, removed from the protection and jurisdiction of the nation-state, and declared war against civilization . . . as a means of pursuing their activities.”¹³⁵ Additionally, laws, customs, and policymakers have continuously grouped piracy and maritime terrorism, as both crimes pose global security threats.¹³⁶ Therefore, both pirates and terrorists may be treated as “enemies of all mankind” and thus “countermeasures and regulation may be treated uniformly across both crimes.”¹³⁷

2. Identical Features within the Nature of the Crime

From start to finish, the process of carrying out a crime of piracy or maritime terrorism is substantively similar. First, both crimes require preparation and planning to ensure a successful outcome.¹³⁸ Second, both generally target civilians.¹³⁹ Third, pirates and maritime terrorists use violence to further their overall objective; whether taking hostages, using deadly weapons, or using explosives.¹⁴⁰ Finally, both crimes pose a high threat to international security and the global economy.¹⁴¹

¹³⁰ See *United States v. Smith*, 18 U.S. 153, 156 (1820); *United States v. Cargo of the Brig Malek Adhel*, 43 U.S. 210, 232 (1844) (holding that states could exercise universal jurisdiction over pirates because of the heinous nature of piracy offenses).

¹³¹ *Burgess II*, *supra* note 33.

¹³² *Morrell*, *supra* note 22.

¹³³ *Id.* at 31 (citing R. Jensen, *The United States, International Policing and the War against Anarchist Terrorism, 1900-1914* (2001) 13 *TERRORISM AND POLITICAL VIOLENCE* 15, 19).

¹³⁴ *Id.*

¹³⁵ *Burgess II*, *supra* note 33.

¹³⁶ *Morrell*, *supra* note 22; see Mikkel Thorup, ‘*Enemy of Humanity: The Anti-Piracy Discourse in Present-Day Anti-Terrorism*’ (2009) 21 *TERRORISM AND POLITICAL VIOLENCE* 401 (drawing a comparison between pirates and terrorists because their behavior falls outside the normal boundaries of what is considered good behavior).

¹³⁷ *Id.*

¹³⁸ Rheny Wahyuni Pulungan, *The Limitation For the International Law on Piracy and Maritime Terrorism: Options for Strengthening Maritime Security in the Malacca Straits* (2014) (Ph.D. dissertation, Melbourne Law School).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

B. Terrorist Organizations' Use of Pirates

Regardless of the differences between maritime terrorism and piracy, it is undeniable that some terrorist organizations use piracy to enhance their agendas.¹⁴² Military research supports the contention that terrorists and pirates have, to some extent, joined forces.¹⁴³ The fear is that because terrorist groups have shifted from an extremist focus to a more maritime focus, they may hire pirates to carry out their objectives.¹⁴⁴

This shift to a heavy maritime focus is rationalized for five reasons.¹⁴⁵ First, maritime security is weak.¹⁴⁶ Coastal security is stretched thin due to the “overwhelming dependence of maritime trade on passage through congested checkpoints.”¹⁴⁷ Further, domestic security is at its peak following 9/11, making acts of terror on land difficult.¹⁴⁸ Second, “the growth of commercial enterprises” has provided means for terrorists to acquire the “necessary training and resources for operating the sea.”¹⁴⁹ For example, members of the Indonesian-based Jemaah Islamiyah have enrolled in commercial scuba lessons, which scholars believe to be for the sole purpose of facilitating “underwater attacks against gas and oil pipelines off the coast of Mindanao.”¹⁵⁰ Third, maritime attacks further their goal of economic destabilization, delivery of cargo, damage due to the delay, and spoilage of perishable cargo.¹⁵¹ For example, in 2000, Al-Qaida attacked the USS COLE during the ship’s refueling operations when two suicide bombers pulled alongside and blew up the vessel.¹⁵² The organization spent \$40,000 on the attack and caused nearly \$250 million in damage to the ship.¹⁵³ The purpose of this attack was to remove the warship from service for an extended period and cost the government millions of dollars in repairs.¹⁵⁴ Fourth, maritime terrorism still inflicts “mass coercive punishment.”¹⁵⁵ Cruise ships are the most common target because they cater to upper-class Westerners.¹⁵⁶ For example, the Abu Sayyaf terrorist group bombed the SUPER FERRY 14 in the Philippines after only a few months of planning and no more than \$400 of supplies (16 sticks of dynamite).¹⁵⁷ The attack ended with over 116 dead and created the impression that ferries and cruise liners were easy targets open to copycat strikes.¹⁵⁸ Fifth, “the expansive global container-shipping complex offers terrorists a logical channel that

¹⁴² See Lennox-Gentle, *supra* note 10; see also Mellor, *supra* note 72.

¹⁴³ See generally Chalk, *supra* note 3.

¹⁴⁴ *Id.*; see also Martin N Murphy, *Contemporary Piracy and Maritime Terrorism: The Threat to International Security* (Routledge 2009) 14.

¹⁴⁵ Chalk, *supra* note 3.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Chalk, *supra* note 3.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Hill, *supra* note 127.

¹⁵³ *Id.*

¹⁵⁴ Akiva Lorenz, *The Threat of Maritime Terrorism to Israel*, MARITIME TERRORISM RESEARCH CENTER, <https://www.ict.org.il/Article.aspx?ID=983#gsc.tab=0> (last visited Oct. 24, 2021).

¹⁵⁵ Chalk, *supra* note 3.

¹⁵⁶ Hill, *supra* note 127.

¹⁵⁷ Chalk, *supra* note 3.

¹⁵⁸ *Id.*

favors the covert movement of weapons and personnel.”¹⁵⁹ Instead of terrorists intending to place a bomb or other form of explosives on these large merchant vessels, they use them to transport illegal weapons across seas.¹⁶⁰

1. Pirates Acting on Behalf of a Terrorist Group

It is unlikely that a formal partnership will ensue between a terrorist group and pirates because their long-term goals substantially differ.¹⁶¹ While a pirate may have a motive beyond monetary gain, they would not jeopardize the entire global shipping industry because this would undermine their entire operation.¹⁶² Further, a pirate would not want to bring attention to their attack, unlike a terrorist group, because that would heighten security measures.¹⁶³

However, regardless of the logistics involved in a joint operation, the fear is not that they will intertwine their operations, but that terrorist groups will sub-contract pirates.¹⁶⁴ Pirates are skilled in seizing a ship, hijacking the crew, leveraging ransom, and steering a ship through coastal waters.¹⁶⁵ The concern is that a terrorist organization will seek skilled pirates’ training to carry out a maritime act of terror successfully.¹⁶⁶ Furthermore, “[s]everal scenarios have been suggested in which terrorists could employ pirates to seize oil or natural gas tankers and then use them as ‘floating bombs,’ or to block narrow sea lanes to disrupt maritime trade, instigate an environmental disaster or hijack freighters to be reregistered under flags of convenience as ghost ships.”¹⁶⁷

2. Pirates Funding Terrorism

While terrorism is generally inexpensive, organizations still require capital to carry out their agendas.¹⁶⁸ Some organizations have turned to illegal crimes or trade for funding.¹⁶⁹ For example, Hezbollah and Al-Qaeda partake in illegal diamond trade, while the Revolutionary Armed Forces of Columbia and the Taliban partake in the drug trade.¹⁷⁰ However, organizations have occasionally relied on pirate ransoms for funding.¹⁷¹ “The International Institute for Strategic Studies reported that in 2010, Al-Shabaab were providing weapons and training to pirates in return

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Morrell, *supra* note 22.

¹⁶² *Id.*

¹⁶³ *Id.* (quoting Singh, *supra* note 48; Eric Shea Nelson, *Maritime Terrorism and Piracy: Existing and Potential Threats*, (2012) 3 GLOBAL SECURITY STUDIES 15).

¹⁶⁴ Chalk, *supra* note 3.

¹⁶⁵ Lydelle Joubert, *The Extent of Maritime Terrorism and Piracy: A Comparative Analysis* (2013) 41 SOUTH AFRICAN JOURNAL OF MILITARY STUDIES.

¹⁶⁶ *Id.*

¹⁶⁷ Morrell, *supra* note 22 (quoting Ghost ship, “an old mariner’s term for any vessel found sailing without her crew,” Brian Hicks, *Ghost Ship: The Mysterious True Story of the Mary Celeste and Her Missing Crew* (Ballantine Books 2004) 5; Open Sea Pro, *Which Flag of Convenience Do You Prefer?* (OpenSeaPro), <https://opensea.pro/blog/flags-of-convenience>).

¹⁶⁸ Bjorn Moller, *Piracy, maritime terrorism and naval strategy*, DIIS Report 2009:02.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *See e.g., id.*

for a percentage of the ransom money received from the hijackings and hostage ransoms.”¹⁷² Somali politician Mohamud Mohamed even said, “Al-Shabaab and pirates are one and the same.”¹⁷³

C. Why the Similarities led to the Conflation of Piracy and Terrorism

The overwhelming similarities between piracy and maritime terrorism have intentionally or unintentionally led policymakers and conventions to conflate piracy and terrorism so that there is no distinction between the crimes.¹⁷⁴ Policy language directly confirms this conflation.¹⁷⁵ First, as previously addressed, the SUA convention “places piracy and maritime terrorism under the umbrella of safety of maritime navigation and maritime security.”¹⁷⁶ Second, the 2005 Protocol to the SUA Convention failed to define piracy or maritime terrorism, keeping them conflated.¹⁷⁷ Third, the International Maritime Bureau (IMB), which was created to lay a foundation for maritime crime deterrence, fails to distinguish between security for piracy and security for terrorism.¹⁷⁸ While these are only a few examples of conventions failing to distinguish between piracy and terrorism, they carry significant legal weight and act as guidance when considering how to categorize the crimes and punish accordingly.¹⁷⁹

1. Conflation after 9/11

The conflation of maritime terrorism and piracy arguably began after 9/11.¹⁸⁰ September 11 predicated the fear that terrorists would shift from the use of planes to vessels as means of mass destruction.¹⁸¹ Specifically, 9/11 inspired terrorists to use the vessel to “ram another vessel, warship, port facility, or offshore platform and cause mass-casualty destruction.”¹⁸² Additionally, in the wake of 9/11, the Bush administration launched the war on terror, announcing that “terrorism will be viewed in the same light as slavery, piracy, or genocide: behavior that no respectable government can condone or support and all must oppose.”¹⁸³ This statement announced the

¹⁷²Morrell, *supra* note 22 (quoting IISS, ‘Somalia’s Al-Shabaab Steps up Attacks’ (2010) 16 Strategic Comments 1).

¹⁷³ WARKA, *Al-Shabaab and pirate work together: Galmudug Official*, MARITIME SECURITY REVIEW, (Feb. 29, 2016), <http://www.marsecreview.com/2016/02/al-shabaab-pirates-working-together/>

¹⁷⁴ Morrell, *supra* note 22, at 28-29

¹⁷⁵ See e.g., SUA, *supra* note 26.

¹⁷⁶ Morrell, *supra* note 22, at 37; see also Young I, *supra* note 66 (arguing that the conflation of piracy and terrorism in the SUA was intentional by the U.S. so that weaker states would be heavily influenced to adopt extraterritorial jurisdiction).

¹⁷⁷ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 14 October 2005) IMO 15/21 art 3. [hereinafter referred to as 2005 Protocol].

¹⁷⁸ Official International Commercial Crimes Services, INTERNATIONAL MARITIME BUREAU, <https://www.icc-ccs.org/icc/imb/> (last accessed Apr. 2, 2021).

¹⁷⁹ See *id.*; see also Morrell, *supra* note 22; SUA, *supra* note 26; 2005 Protocol, *supra* note 180.

¹⁸⁰ Singh, *supra* note 48, at 441.

¹⁸¹ *Id.* at 444.

¹⁸² *Id.*

¹⁸³ *Id.* See also White House (2002) *National security strategy of the United States* (released in September), available at <http://www.state.gov/documents/organization/63562.pdf>.

National Strategy for Maritime Security (NSMS), which consequently placed maritime security (*i.e.*, piracy) under the War on Terror.¹⁸⁴ Following this statement, “militant secessionists in Muslim areas of the Philippines and Indonesia adopted maritime tactics.”¹⁸⁵

V. The Problems with Conflating Piracy and Terrorism and Solutions on how to Separate the Crimes

A. The Problems

Despite the existing policy relating to maritime security, piracy, and terrorism, there is an apparent lack of differentiation between what acts constitute piracy versus terrorism and the corresponding courses of punishment.¹⁸⁶ Furthermore, the conflation of piracy and terrorism leads to a misunderstanding of maritime security.¹⁸⁷ There are three main problems: (1) there is no guidance for classifying a crime as piracy or terrorism, (2) there is no “catch-all prosecutorial net” for true crimes of piracy that fall outside the scope of the definition, and (3) there is no prosecutorial requirement for pirates under UNCLOS’ definition.¹⁸⁸

First, because there is no legal guidance on how to classify a crime as either piracy or maritime terrorism, scholars have argued that terrorism should fall within the purview of piracy.¹⁸⁹ They suggest that because pirates and terrorists are “violent nonstate actors with trans-border operations,” universal jurisdiction should apply to both.¹⁹⁰ Because there is no clear standard for maritime terrorism, at first glance, this may seem like a viable solution.¹⁹¹ However, this reasoning is problematic.¹⁹² If terrorists were treated as pirates, then the ambiguous legal standards surrounding piracy would apply.¹⁹³ Most concerning is that universal jurisdiction would extend to terrorists, meaning that States would have the option to prosecute terrorists.¹⁹⁴ While acts of piracy are dangerous, terrorist attacks are known for their mass destruction.¹⁹⁵ For example, the well-

¹⁸⁴ Singh, *supra* note 48, at 445; see also White House (2005), *supra* note 121.

¹⁸⁵ Singh, *supra* note 48, at 444.

¹⁸⁶ See Karim, *supra* note 29, at 83; see also Morrell, *supra* note 22.

¹⁸⁷ Dana Dillon, *Maritime Piracy: Defining the Problem* 165 (2005) Project MUSE, SAIS REVIEW.

¹⁸⁸ See generally Kontorovich, *supra* note 103; Morrell, *supra* note 22; Knyazeva, *supra* note 11.

¹⁸⁹ Dee, *e.g.*, Guilfoyle I, *supra* note 53, at 33; Guilfoyle II, *supra* note 68; Bahar, *supra* note 53, at 5; see also Anthony J. Colangelo, *Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and the Intersection of National and International Law*, 48 HARV. INT’L L.J. 121, 201 (2007); Ingrid Detter, *The Law of War and Illegal Combatants*, 75 GEO. WASH. L. REV. 1049, 1096–1101 (2007); Morris L. Sinor & Robin M. Blackwood, *Confronting Nomadic Terrorism*, 52 NAVAL L. REV. 98, 117 (2005).

¹⁹⁰ Kontorovich, *supra* note 103, at 275.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See generally UNCLOS, *supra* note 58.

¹⁹⁴ *Id.*; see Paige, *supra* note 98, at 144; see also Kontorovich, *supra* note 103, at 251.

¹⁹⁵ Luft, *supra* note 125.

known terrorist group, Al-Qaeda, planned a series of maritime attacks which, thankfully, were “preempted before execution.”¹⁹⁶ This included an attack against the

USS The Sullivans in January 2000, additional bombings of the U.S. naval ships sailing in Singaporean, Malaysian, and Indonesian waters, suicide strikes against Western shipping interests in the Mediterranean, small boat ramming of supertankers transiting the Straits of Gibraltar, and attacks on cruise liners carrying Israeli tourists to Turkey.¹⁹⁷

If Al-Qaeda successfully carried out this attack, numerous lives would be lost, and a war would likely ensue.¹⁹⁸ While pirate attacks must be stopped, it is imperative to international security that terrorists are held responsible for their actions and are not allowed to evade punishment.¹⁹⁹ Thus, terrorists cannot be subject to the existing optional prosecution standard applicable to piracy. Additionally, classifying terrorists as pirates would undercut the severity of terrorism and skew the belief that only a few acts of maritime terrorism occur and the threat is not immediate.²⁰⁰ This false belief would result in maritime security forces on an international level relaxing their efforts, creating an ideal environment for terrorists to perpetrate attacks.²⁰¹ Furthermore, although minor, it is unethical to expect a pirate and a terrorist to undergo the same prosecutorial proceedings with similar outcomes as the severity of the crimes are vastly different.²⁰²

Second, UNCLOS’s definition of piracy is underinclusive and allows pirates to evade punishment merely because their action does not fall within the confines of a definition.²⁰³ For example, the IMB reported an increase in maritime piracy attacks from 90 in 1994 to 445 in 2003.²⁰⁴ However, only a fraction of these attacks meets UNCLOS’ definition of piracy, as many of the reported attacks were “stationary in port and are better classified as sea robbery.”²⁰⁵ Despite the recent compromises in maritime security, Sates never established or proposed a broader standard to ensure that a more significant number of attacks be prosecuted.²⁰⁶ At the very least,

¹⁹⁶ Chalk, *supra* note 3, at 20 (citing Watkins, Security, *Al’Qaeda Suspect Admits Role in Limburg*, LLOYD’S LIST, Jan. 21, 2003; Valencia, 2005a, p. 83; *Al Qaeda Has Multi- Faceted Marine Strategy*, AGENCE FRANCE PRESS (Jan. 20, 2003)).

¹⁹⁷ *Id.* at 21 (citing Bronson Percival, *Indonesia and the United States: Shared Interests in Maritime Security*, WASHINGTON, D.C.: UNITED STATES-INDONESIA SOCIETY, 9 (Jun. 2005); Murad Sezer, *Turkish Court Charges Suspected al-Qaeda Militant*, ASSOCIATED PRESS (Aug. 10, 2005); and *Security Fears Keep Israeli Ships from Turkey*, THE NEW YORK TIMES (Aug. 9, 2005)). – there are short forms in this that you have not previously cited and I have no idea what they are.

¹⁹⁸ See Chalk, *supra* note 3.

¹⁹⁹ *Id.*; see generally Hong, *supra* note 38.

²⁰⁰ See Chalk, *supra* note 3.; see generally Kontorovich, *supra* note 103.

²⁰¹ See Chalk, *supra* note 3; see generally Luft, *supra* note 192.

²⁰² See Chalk, *supra* note 3; see generally Luft, *supra* note 192.

²⁰³ See UNCLOS, *supra* note 58.

²⁰⁴ Lennox-Gentle, *supra* note 10; see also IMB Annual Report 2009, *supra* note 14.

²⁰⁵ *Id.*

²⁰⁶ See Kontorovich, *supra* note 103, at 247.

this expanded definition would allow States to exercise jurisdiction over those acts of piracy that do not meet the narrow definition.²⁰⁷

Third, as previously described, UNCLOS affords universal jurisdiction but does not demand prosecutorial action.²⁰⁸ Many States chose not to extend the jurisdiction and prosecute despite acknowledging the growing issue of maritime security.²⁰⁹ For instance, “when the Spanish Navy captured a group of suspected Somali pirates, a judge ordered them released on the grounds that prosecuting a crime that occurred thousands of miles away would be ‘a bit disproportionate.’”²¹⁰ Where a State does act, it often results in the release of pirates because of the “procedural delay[s] during trials or failure to achieve effective prosecution of apprehended pirates.”²¹¹ Without a demand for state action, the growing concern of maritime security will continue because pirates and terrorists are allowed to continue to evade punishment.²¹²

B. Solutions to De-conflate Maritime Terrorists and Pirates to Ensure Efficient Maritime Safety

1. Policy Recommendations

Policymakers and legislators must reform the language in the existing policy to de-conflate maritime terrorism and piracy.²¹³ Extensive rules, norms, and policies exist surrounding these issues; however, they “pull in opposite directions, frustrating antipiracy efforts.”²¹⁴ UNCLOS’ definition confines piracy to the high sea and acts outside of the jurisdiction of any state.²¹⁵ However, in 2003, only “27 percent of actual and attempted attacks against vessels, took place on the high seas . . . the rest of the attacks occurred in ports and territorial waters well inside the jurisdiction of a State.”²¹⁶ This is yet another example of how a maritime pirate could evade punishment by not falling under the purview of an underinclusive definition.²¹⁷

²⁰⁷ *Id.*

²⁰⁸ Mellor, *supra* note 72, at 211; *see* UNCLOS art. 105, *supra* note 58; *see also* SUA, *supra* note 26.

²⁰⁹ Kontorovich, *supra* note 103 at 273.

²¹⁰ *Id.* (quoting Brian Reyes, *Spain Judge Hands over Somali Pirates*, LLOYD’S LIST (May 8, 2009), <http://www.lloydlist.com/ll/news/spain-judge-hands-over-somali-pirates-to-kenya/20017648702.htm%3Bjsessionid=F27F836B87FE26232224D8DC27830EEE>; *see also* Daniel Woolls, *Spain: About Face on Piracy Suspects*, *Chicago Defender* (May 8, 2009), <http://www.chicagodefender.com/article-4353-spain-about-face-on-piracy-suspects.html>).

²¹¹ Ahmad, *supra* note 61 at 63

²¹² *See id.*; Kontorovich, *supra* note 103.

²¹³ Dillon, *supra* note 190 at 155.

²¹⁴ Kontorovich, *supra* note 103 (quoting Jim Garamone, *Mullen Shocked by Pirate Attack on Supertanker*, AM. FORCES PRESS SERVICE, Dep’t of Def. (Nov. 17, 2008), <http://www.defenselink.mil/news/newsarticle.aspx?id=51972>).

²¹⁵ UNCLOS art. 101, *supra* note 58, at 60-61

²¹⁶ Dillon, *supra* note 190, at 156.

²¹⁷ *See* UNCLOS, *supra* note 58.

To fix the definitional gap, Dana Dillon suggests that there should be four categories of sea-based crimes: corruption, sea robbery, piracy, and maritime terrorism.²¹⁸ Piracy would include “actions against ships underway and outside the protection of port authorities in territorial waters, straits and the high seas,” and maritime terrorism would broadly be defined as “crimes against ships by terrorist organizations.”²¹⁹ To achieve this result, UNCLOS could broaden the definition of piracy to include acts by one ship, attacks in territorial waters, and “permit hot pursuit of suspected pirate vessel by foreign naval air and sea vessels into territorial waters with notification to and approval from the relevant authorities.”²²⁰ Furthermore, IMB must separate piracy and maritime terrorism into distinct categories with distinct definitions.²²¹

2. State Collaboration

Many States adhere to international law and policy when dealing with the issue of piracy and terrorism.²²² However, as established, international law and policy are vague, ambiguous and do not effectively address how States handle these crimes.²²³ While States should continue to lobby for policy reform on the issue, it is arguably more efficient for States to negotiate with allies and neighboring States.²²⁴ For example, neighboring states such as Indonesia and the Philippines could enact a treaty allowing surrounding states to pursue suspected pirate vessels into each other’s territorial waters..²²⁵

Furthermore, States should enter negotiations at the regional level to define and prevent maritime terrorism.²²⁶ Ideally, these conventions would “create uniform standards for inspection of ships and cargo, the sharing of intelligence information among port [S]tates, and reciprocal enforcement and inspection rights in one another’s maritime zones.”²²⁷ In 1934, the League of Nations passed a resolution stating that it was “the duty of every state neither to encourage nor tolerate on its own territory any terrorist activity with a political purpose.”²²⁸ The U.N. General

²¹⁸ Dillon, *supra* note 190, at 155.

²¹⁹ *Id.* at 157.

²²⁰ *Id.* at 160.

²²¹ *Id.* at 162.

²²² See Lennox-Gentle, *supra* note 10.

²²³ *Id.* at 204; see also Dillon, *supra* note 190; Mellor, *supra* note 72.

²²⁴ Dillon, *supra* note 190 at 160.

²²⁵ *Id.*

²²⁶ See Samuel Pyeatt Menefee, *Maritime Terror in Europe and the Mediterranean*, 12 MARINE POLICY 143, 151 (1988) (advocating a regional approach to terrorism and piracy based on case studies); see also Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that Are of International Significance, 2 Feb. 1971, 27 U.S.T. 3949, 1986 U.N.T.S. 195, <http://www.oas.org/juridico/english/Treaties/a-49.html> (Nov. 21, 2002); U.N. GAOR, 44th Sess., *SAARC Regional Convention on Suppression of Terrorism*, A/51/136 (U.N. Doc. 1989), <https://treaties.un.org/doc/db/Terrorism/Conv18-english.pdf>.

²²⁷ Mellor, *supra* note 72, at 387.

²²⁸ 12 LEAGUE OF NATIONS O.J. 1759 (1934), http://legal.un.org/avl/pdf/ls/RM/LeagueofNationsOJ_Decl10Dec34.pdf; see also U.N. GAOR, 56th Sess., Supp. No. 10, *Report of the Int'l Law Comm.*, A/56/10, 43 (U.N. Doc. 2001)

Assembly and the Security Council have more recently confirmed that the 1934 Resolution remains valid and extends to maritime terrorism.²²⁹ The obligation requires states to maintain adequate security over their maritime borders and to openly communicate potential threats to other states..²³⁰

States that have enacted agreements have proven to be successful in piracy prevention. Asia enacted a multi-national agreement focused on preventing piracy-related crimes, known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).²³¹ The ReCAPP adopted UNCLOS' piracy definition but goes one step further in requiring "that members should make every effort to arrest pirates, seize their ships, and rescue victims of pirate attacks."²³² Further, the member States have open communication regarding the recent attacks and potential threats.²³³ The ReCAPP's communication system alerts vessels of possible attacks, and allows them to renavigate to safer waters.²³⁴ The ReCAPP is directly related to the Asian region's decrease in attacks.²³⁵

Another example of piracy prevention is the Combined Maritime Task Force 151 (CMF).²³⁶ Established in January 2009, the CMF is designed "to conduct counter piracy operations under a mission-based mandate throughout the Combined Maritime Forces area of responsibility to actively deter, disrupt, and suppress piracy in order to protect global maritime security and secure freedom of navigation for the benefit of all nations."²³⁷ This task force has been successful through the intervention of two United States Navy vessels in April 2010 off the coast of Somalia.²³⁸ Based on the two previous multi-national negotiations' (RECaap and CMT) successes, cooperation between States is a successful measure in curbing maritime terrorism and piracy.

[hereinafter referred to as Draft Articles] (stating that under international law, an omission by a state may also be considered a wrongful act).

²²⁹ See Measures to Eliminate International Terrorism, G.A. Res. 210, U.N. GAOR, 51st Sess., § 1(3), U.N. Doc. A/Res/51/210 (1997); see also Robert C. Bonner, *Speech Before the Center for Strategic and International Studies* 6 (Jan. 17, 2002) [hereinafter CSIS Speech], available at <http://www.customs.gov/about/speeches/speech0117-02.htm>.

²³⁰ See Draft Articles, *supra* note 231, at 168.

²³¹ *Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia*, Nov. 11, 2004, 2398 U.N.T.S. 43302, available at <http://treaties.un.org/doc/Publication/UNTSNolume%202398/v2398.pdf>. [hereinafter ReCAAP Agreement].

²³² *Id.* at art. 3.

²³³ *Id.* at art. 9.

²³⁴ *Id.*

²³⁵ David Tran, ReCAAP Success in Asia Prompts Call for Expansion, *GlobMaritime* (Feb. 29, 2008), <http://www.globmaritime.com/J20080229934/news/recaap-success-in-asia-prompts-call-for-expansion.html>.

²³⁶ Lennox-Gentle, *supra* note 10, at 208; Jack Phillips, *Pirates Captured, Released After 'Mother' Ship Sunk in Indian Ocean*, *EPOCH TIMES* (Apr. 2, 2010), <http://www.theepochtimes.com/n2/content/view/326301>.

²³⁷ U.S. Naval Forces Central Command, *Combined Task Force (CTF) 151*, COMBINED MARITIME FORCES, <https://www.cusnc.navy.mil/Combined-Maritime-Forces/>.

²³⁸ Mike Emanuel, *Pirate Season is Heating Up*, *FOX NEWS* (Apr. 2, 2010), <http://liveshots.blogs.foxnews.com/2010/04/02/pirate-season-is-heatingup/?test=latestnews>.

VI. Conclusion

As this comment has identified, terrorist groups increasingly use piracy to either fund their operations or carry out acts of violence.²³⁹ Although scholars and conventions have posed definitions for piracy and maritime terrorism, the definitions remain vague, ambiguous, and underinclusive.²⁴⁰ Further, the crimes have become intertwined and virtually synonymous throughout the years, especially since 9/11.²⁴¹ Conflation of maritime terrorism and piracy, furthered by the absence of concrete definitions for the terms, has created global uncertainty surrounding the violent acts, and has resulted in decreased and ineffective maritime security.²⁴² Thus, numerous pirates and terrorists can evade punishment.²⁴³ To remedy the years of conflation, UNCLOS, IMB, and other applicable treaties must define piracy and maritime terrorism separately and issue prosecutorial guidance.²⁴⁴ Additionally, States must be proactive in creating multi-national agreements and negotiations to combat this ambiguous language.²⁴⁵ An open dialogue about the issues is the first step in protecting and ensuring maritime safety.

²³⁹ Donna J Nincic, *Maritime Terrorism: How Real is the Threat?*, FAIR OBSERVER (Jul. 16 2012) (noting that ten out of the forty-four major terrorist groups have maritime capabilities). Dennis L Bryant, *Historical and Legal Aspects of Maritime Security* 17 USF MAR LJ 1, 3–4 (2004–05); see also Hong, *supra* note 38; Justin McCurry, *Japanese oil tanker hit by terrorist bomb, say inspectors*, THE GUARDIAN (Aug. 6, 2010).

²⁴⁰ See UNCLOS, *supra* note 58, at art. 101; SUA, *supra* note 26.

²⁴¹ Young I, *supra* note 66.

²⁴² Morrell, *supra* note 22, at 6; Singh, *supra* note 48, at pg; Nelson, *supra* note 123.

²⁴³ See UNCLOS, *supra* note 58; see also Dillon, *supra* note 190, at 161.

²⁴⁴ Dillon, *supra* note 190, at 163.

²⁴⁵ Lennox-Gentle, *supra* note 14, at 216.