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PIRACY LAWS AND THE EFFECTIVE PROSECUTION OF PIRATES

Diana Chang*

Abstract: This Note analyzes the current international legal framework for the punishment and prosecution of maritime piracy. Piracy is an international problem that disrupts global maritime trade and endangers the safety and security of crewmen and ship owners. Although it is a well-recognized principle that each state has universal jurisdiction to prosecute pirates, the conflicting international definitions of piracy and the preponderance of attacks near states that lack resources to effectively prosecute pirates create a gap in enforcement within the international legal framework. This Note proposes that cooperating states should establish regional international piracy tribunals that can apply an appropriate, uniform definition of piracy while providing the judicial resources to enforce international piracy laws.

INTRODUCTION

Maritime piracy is a continuing international problem that disrupts shipping lanes, the world economy, and the safety and security of crewmen and ship owners. In the first nine months of 2009, there were 294 reported pirate attacks from all over the world. These attacks included thirty-four successful hijackings and 559 hostages. The majority of these reported attacks occur in Southeast Asia, off the Horn of Africa, and along the West Coast of Africa, with a few attacks scattered along the coast of South America.

Within international law there is a well-recognized principle that each state has universal jurisdiction to prosecute pirates. Nevertheless,

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3 Id.


the current legal framework creates a problem of “catch and release” because pirates are often released shortly after their capture due to lax domestic laws that do not adequately punish the offenders, or due to a state’s unwillingness to prosecute the offenders for various political reasons.6

Part I of this Note outlines the current international and regional legal framework for the prosecution of pirates. It discusses the applicable international treaties and organizations that relate to maritime security and how these treaties and organizations affect states on a regional and domestic level. Part II identifies problems with the existing international legal framework, specifically, the lack of uniformity in the prosecution and punishment of pirates. Part III suggests that the variety of domestic laws creates a confusing patchwork of penalties and procedures that could be resolved with the creation of regional piracy tribunals.

I. BACKGROUND

A. International Legal Framework Governing the Safety of Maritime Navigation

Piracy is an international crime that falls under every state’s jurisdiction under customary international law.7 Universal jurisdiction endows every state with the right to prosecute and punish piracy regardless of where the attack occurs.8 Because of universal jurisdiction, each state has the responsibility to prosecute pirates under its own domestic laws irrespective of a pirate’s original nationality, the registry of the ship, or the destination of the cargo.9

The United Nations Convention on the Law of the Sea (UNCLOS) codified the customary international law on piracy in Articles 100 to 107.10 Given that UNCLOS is a codification of customary international law, it is binding on every state including non-parties to the convention.11 Articles 100 to 107 of UNCLOS govern the provisions relating to

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7 Bederman, supra note 5, at 76.
9 Martin N. Murphy, Small Boats, Weak States, Dirty Money: The Challenge of Piracy 12 (2009); see Bederman, supra note 5, at 189.
11 Azubuike, supra note 8, at 49.
the definition, jurisdiction, and obligations of member states seeking to pursue, capture, and prosecute maritime pirates.\textsuperscript{12} Under UNCLOS, there are four essential elements to the definition of piracy: 1) an illegal act involving violence, detention, or depredation 2) committed for private ends 3) on the high seas 4) involving at least two ships.\textsuperscript{13} UNCLOS also reaffirms the idea of universal jurisdiction because it gives every state jurisdiction to seize and prosecute pirates according to that state’s domestic laws.\textsuperscript{14}

By contrast, the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) expands the types of activity that may be prosecuted while limiting the jurisdictional requirements necessary to prosecute.\textsuperscript{15} This treaty defines an offense as 1) intentionally seizing or damaging a ship or 2) attempting to seize or damage a ship.\textsuperscript{16} The SUA definition eliminates the motive requirements that UNCLOS contains in its “for private ends” element.\textsuperscript{17} The convention also expands the UNCLOS definition of piracy because it applies to any ship navigating to, through, or from the territorial seas.\textsuperscript{18} Under SUA, a state has jurisdiction over an offense only if it is committed against a ship flying that state’s flag, in that state’s territory, or committed against a national of that state.\textsuperscript{19}

SUA also imposes an obligation on member states to extradite or prosecute the suspected offender.\textsuperscript{20} If the capturing state cannot establish jurisdiction, SUA requires that it extradite the offender to a state that has successfully established jurisdiction.\textsuperscript{21} Thus far, there are 134 countries that have subscribed to SUA, but the mandatory extradite or prosecute requirement deters many Southeast Asian states from ratifying it.\textsuperscript{22}

\textsuperscript{12} UNCLOS, supra note 10, arts. 100–107.
\textsuperscript{13} Id. art. 101; Rosemary Collins & Daud Hassan, Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian Perspective, 40 J. MAR. L. & COM. 89, 94 (2009).
\textsuperscript{14} See UNCLOS, supra note 10, art. 105.
\textsuperscript{15} Suppression of Unlawful Acts Against the Safety of Maritime Navigation arts. 3, 6, Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA]; Collins & Hassan, supra note 13, at 89, 106–08.
\textsuperscript{16} SUA, supra note 15, art. 3.
\textsuperscript{17} Collins & Hassan, supra note 13, at 107.
\textsuperscript{18} SUA, supra note 15, art. 4.
\textsuperscript{19} Id. art. 6.
\textsuperscript{20} Id. art. 10; Collins & Hassan, supra note 13, at 108.
\textsuperscript{21} SUA, supra note 15, art. 10.
In addition to multilateral treaties, there are several international organizations such as the International Chamber of Commerce’s International Maritime Bureau (IMB) and the International Maritime Organization (IMO) that seek to ensure the safe navigation of ships.\(^{23}\) The IMB is a non-profit organization whose stated goal is to fight maritime crime, such as piracy.\(^{24}\) The IMB established its Piracy Reporting Centre in Kuala Lumpur, Malaysia to monitor and provide advice on the growing piracy problem worldwide.\(^{25}\) The Piracy Reporting Centre is funded through voluntary contributions.\(^{26}\) The Centre’s stated purpose is to provide a centralized information center on pirate attacks and to educate and warn shippers and traders about high-risk areas.\(^{27}\) The IMB also performs other functions such as investigation services and litigation support.\(^{28}\) Additionally, it has the capability to track hijacked and phantom ships.\(^{29}\)

For statistical purposes, the IMB adopts a broad definition of piracy that includes actual and attempted attacks both when the ship is at anchor or at sea.\(^{30}\) Thus, the IMB defines “piracy and armed robbery” as “an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.”\(^{31}\) The IMB’s expansive definition affects the number of attacks that the IMB will track.\(^{32}\) Since this definition differs from the UNCLOS and SUA

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\(^{25}\) IMB Piracy Reporting Centre, supra note 23.

\(^{26}\) Id.

\(^{27}\) Id.


\(^{29}\) IMB Investigation Services, supra note 28; IMB Case Work, supra note 28.

\(^{30}\) IMB Report, supra note 24, at 4.

\(^{31}\) Id.

definitions of piracy, not every incident reported to IMB would be considered formal piracy under international law.\(^33\)

In contrast to the IMB’s stated purpose, the IMO’s purpose is to develop a regulatory framework to maintain safe, secure, and efficient shipping over the high seas.\(^34\) To improve security on the high seas and at port facilities, the IMO develops initiatives to combat two types of threats: piracy, as defined in UNCLOS, and armed robbery at sea.\(^35\) Piracy can only occur on the high seas, while armed robbery at sea can only occur in territorial waters that are within twelve miles of a nation’s coastline.\(^36\)

Recognizing the importance of domestic laws in the successful prosecution of pirates, the IMO passed Resolution A. 1025 (26), which encourages states to ratify enabling legislation that would codify their universal jurisdiction over piracy and establish procedures to facilitate the prosecution of pirates.\(^37\) Resolution A. 1025 (26) also recommends guidelines for piracy investigation strategies.\(^38\) The resolution suggests that flag states of the victimized ship should take the lead in investigations for piracy incidents; conversely, the state in whose territorial waters the incident occurs should bear the responsibility to investigate armed robbery at sea.\(^39\)

The IMO not only creates a technical framework to deal with piracy and armed robbery at sea, but it also aims to foster regional agreements to counter piracy.\(^40\) It holds regional seminars and workshops in piracy-infested areas to identify measures that may diminish pirate attacks in that specific region.\(^41\) In the past decade, the IMO has held re-

\(^{33}\) Azubuike, supra note 8, at 45.

\(^{34}\) Introduction to IMO, supra note 23.


\(^{36}\) Azubuike, supra note 8, at 50; Zou Keyuan, supra note 32, ¶ 8.


\(^{38}\) See generally id. (describing the suggested piracy investigation guidelines for member countries).

\(^{39}\) Id.

\(^{40}\) Piracy and Armed Robbery Against Ships, supra note 35.

gional seminars in Southeast Asia, Brazil, and with the states in the Gulf of Aden.42

B. Regional Institutions and Domestic Developments in the Enforcement of International Laws

In recent years, there has been a trend towards more regional approaches to solve the piracy problem.43 In 2004, sixteen regional Southeast Asian states signed the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships (ReCAAP), which was the first multilateral agreement to address piracy in Southeast Asia.44 ReCAAP established an Information Sharing Centre in Singapore.45 In 2009, twenty-eight nations and six international organizations formed the Contact Group on Piracy off the Coast of Somalia to address piracy problems emanating from the Horn of Africa.46 The common stated objectives for both regional groups include promoting information exchange, supporting capacity-building efforts, and facilitating the regional operations of member states.47

Other regional organizations aimed at maintaining maritime security include the Maritime Organization of West and Central Africa (MOWCA), which has its own sub-regional coast guard network.48 More recently, in an IMO-sponsored meeting for East African states, nine East African states signed the Djibouti Code, which creates a network of information centers to report pirate attacks.49 Although this agreement is

42 ReCAAP Info. Sharing Centre, About ReCAAP ISC, http://www.recaap.org/about/about1_2.html (last visited Apr. 20, 2010) [hereinafter About ReCAAP ISC].
43 Id.
45 Id.; About ReCAAP ISC, supra note 44, at 3.
47 Id. at 519, 520.
not legally binding, signatories agreed to arrest and prosecute pirates and to help repatriate hostages.\footnote{Id. at 520.}

Despite the codification of universal jurisdiction and the push for greater regional cooperation, customary international law still requires domestic legislation to prosecute the crime.\footnote{Baumgartner Testimony—Piracy Hearing, supra note 43, at 27; see Collins & Hassan, supra note 13, at 102, 104; Niclas Dahlvang, Thieves, Robbers, & Terrorists: Piracy in the 21st Century, 4 Regent J. Int’l L. 17, 39 (2006).} Because states have discretion in their construction of domestic legislation on piracy, the incorporation of the full jurisdictional provisions from SUA and UNCLOS varies from state to state.\footnote{Murphy, supra note 9, at 12.} For instance, China has no specific anti-piracy legislation but rather prosecutes piracy under its general Criminal Code.\footnote{Collins & Hassan, supra note 13, at 102.} China’s general Criminal Code incorporates any crime that is defined in a Chinese-ratified international treaty.\footnote{Id.} In contrast, Australia has incorporated all of UNCLOS’s piracy provisions into Part IV of its Crimes Act of 1914.\footnote{Id.} Similarly, the United States has enacted the majority of the provisions from the SUA in 18 U.S.C. § 2280.\footnote{Violence Against Maritime Navigation, 18 U.S.C. § 2280 (1996); Dahlvang, supra note 51, at 23.}

UNCLOS and SUA themselves are silent regarding the prosecution of captured pirates, leaving such decisions to the discretion of each individual state’s legal systems.\footnote{See SUA, supra note 15, art. 10; UNCLOS, supra note 10, art. 105.} Consequently, it is difficult for some states to prosecute pirates because of procedural impediments that are not “forward-thinking.”\footnote{Baumgartner Testimony—Piracy Hearing, supra note 43, at 27.} Other states lack resources to spend on a full trial and possible imprisonment of the accused.\footnote{Kraska & Wilson, supra note 1, at 3.}

Even in states that possess the necessary resources and procedures for pirate prosecution, political reasons may prevent a pirate’s prosecution.\footnote{International Efforts to Combat Maritime Piracy: Hearing Before the Subcomm. on International Organizations, Human Rights and Oversight of the Comm. on Foreign Affairs H.R., 111th Cong. 27 (2009) (testimony of Ambassador Stephen Mull, Senior Advisor, Under Secretary for Political Affairs, U.S. Department of State) [hereinafter Mull Testimony—Piracy Hearing].} For example, the United Kingdom will not prosecute pirates of certain nationalities because its asylum laws might allow the offender to
remain in the country indefinitely after trial.\textsuperscript{61} In addition, the British Foreign Office in London issued a legal opinion stating that Somalian pirates who would be subject to harsh treatment in Somalia cannot be deported because such deportation would violate the British Human Rights Act.\textsuperscript{62} Similarly, the Portuguese will only arrest pirates when Portuguese nationals or ships are involved.\textsuperscript{63}

To resolve this enforcement problem, the United States and the United Kingdom signed a Memorandum of Understanding with Kenya in 2009 to send pirates captured by their navies to Kenyan courts for prosecution.\textsuperscript{64} Given the massive Kenyan caseload and Kenya’s inexperienced legal system, there are doubts as to whether this agreement will lead to more effective prosecutions of pirates.\textsuperscript{65}

Even after offenders are successfully prosecuted, states differ in the type of punishments meted out.\textsuperscript{66} For example, China has no word for “piracy,” and thus it prosecutes pirates for armed robbery and murder instead.\textsuperscript{67} Its punishments range from as few as ten years in prison to death.\textsuperscript{68} Likewise, the Brazilian pirates who robbed and murdered a famous New Zealand yachtsman were sentenced to thirty-seven years for armed robbery and murder, instead of piracy.\textsuperscript{69} When adjudicating on the charge of piracy, Indian courts sentenced fourteen Indonesian pirates to seven years of hard labor,\textsuperscript{70} and Argentina may sentence a pirate to three to fifteen years in prison even if no one is killed during the attack.\textsuperscript{71} By contrast, Indonesian courts have been known to give pirates as little as two to four years in prison.\textsuperscript{72}

\textsuperscript{61} Id. at 28; Peter Mwaurap, Op-Ed., Why Kenya Must Not Be Used to Dump Suspected Pirates, DAILY NATION (Nairobi), Apr. 17, 2009, http://www.nation.co.ke/oped/Opinion/-/440808/561166/-/459d42/-/index.html.
\textsuperscript{63} Wrong Signals; Piracy, Pirates and Legal Knots, Economist, May 9, 2009, at 1.
\textsuperscript{64} Baumgartner Testimony—Piracy Hearing, supra note 43, at 17.
\textsuperscript{65} See Mwaurap, supra note 61. But see Kraska & Wilson, supra note 1, at 3.
\textsuperscript{66} Mull Testimony—Piracy Hearing, supra note 60, at 32; see Dahlvang, supra note 51, at 24–25.
\textsuperscript{67} Zou Keyuan, supra note 32, ¶ 55.
\textsuperscript{68} Id.
\textsuperscript{70} Dahlvang, supra note 51, at 25.
\textsuperscript{72} Id. at 40.
The variations of legal frameworks within the international community and among states creates a variety of definitions and penalties for piracy.\textsuperscript{73} This lack of uniformity in piracy laws interferes with the effective prosecution of pirates.\textsuperscript{74}

II. Discussion

The current international legal framework on piracy is flawed because it does not provide a universally applicable definition of piracy, and because it does not create uniform guidelines for the prosecution and punishment of pirates.\textsuperscript{75} There is a discrepancy between the offense of piracy under international law and how the offense is actually prosecuted and punished under each state’s domestic laws.\textsuperscript{76}

The UNCLOS definition of piracy has four elements: 1) an illegal act involving violence, detention, or depredation 2) committed for private ends 3) on the high seas 4) involving at least two ships.\textsuperscript{77} Scholars criticize the first element because it categorically excludes all attempted hijackings or clandestine attacks, where attackers board at night and steal cargo without the knowledge of the crew.\textsuperscript{78} Thus, while this definition adequately describes Somali pirate attacks in which pirates are generally armed with AK-47s and rocket-propelled grenades,\textsuperscript{79} it does not adequately describe pirate attacks in Southeast Asia and Brazil that may include clandestine robberies of ships at anchor.\textsuperscript{80}

Moreover, the “private ends” element in the UNCLOS definition is heavily criticized because it incorporates a motive requirement that excludes political terrorism and not-for-profit attacks.\textsuperscript{81} For example, an armed attack meant to bring international attention to a group’s struggle for independence is not executed for “private ends” because it is not performed to profit the attackers.\textsuperscript{82} In similar fashion, hijacking

\textsuperscript{73} See generally Dahlvang, supra note 51; Zou Keyuan, supra note 32.
\textsuperscript{74} Baumgartner Testimony—Piracy Hearing, supra note 43, at 27.
\textsuperscript{75} Collins & Hassan, supra note 13, at 97–98, 108–09.
\textsuperscript{76} Id. at 112.
\textsuperscript{77} See UNCLOS, supra note 10, art. 101.
\textsuperscript{78} Collins & Hassan, supra note 13, at 96–97.
\textsuperscript{82} Collins & Hassan, supra note 13, at 99.
done for a political motive is also not piracy under the UNCLOS definition. Accordingly, political motivation becomes a legitimate defense to piracy under this definition.

Furthermore, the “two-ship” requirement excludes mutiny as an act of piracy because the internal seizure of a ship does not involve two separate ships. Scholars have often debated whether to add political terrorism and mutiny to the UNCLOS definition of piracy. Political terrorism and mutiny, however, have different root causes and different solutions than piracy does. Terrorists typically seek to draw attention to a cause regardless of whether the offenders profit from the attack, while pirates are solely motivated by profit and seek to avoid attention. For this reason, expanding the UNCLOS definition of piracy is not constructive in building an effective international legal framework for the prosecution and punishment of modern day piracy because piracy and terrorism require different solutions.

Finally, the “high seas” element of the UNCLOS definition of piracy may apply best to Somali piracy, but it is a severe limitation on Southeast Asian piracy. In the Gulf of Aden, the coordinated naval presence of an international fleet has driven pirates to attack up to 700 miles from the coastline, an area that is well past the twelve-mile territorial seas. Conversely, most attacks in Southeast Asia occur in narrow straits that fall within a nation’s territorial seas. Therefore, in Southeast Asia, even if caught, the attackers cannot be prosecuted for “piracy” because their acts would not fall within the UNCLOS definition of piracy.

While the SUA attempts to fill the legal gaps within the UNCLOS provisions, it is in no way a complete solution to the piracy problem. On the one hand, SUA creates a more comprehensive legal framework because it eliminates the private ends requirement, broadens the geo-

83 Id.
84 Id.
85 Dahlvang, supra note 51, at 28.
86 See Kavanagh, supra note 81, at 128.
87 See Collins & Hassan, supra note 13, at 100.
88 Id.
89 Id.; see Kraska & Wilson, supra note 79, at 45.
91 See Somali Pirates Seize Chinese Ship, supra note 90 (noting that pirates boarded a Chinese cargo ship 700 miles east of the Somali coastline).
92 Collins & Hassan, supra note 13, at 97.
93 See id.
94 Id. at 107–08.
graphical limits of the crime, and imposes a strict prosecute or extra-
dite requirement on its members. On the other hand, SUA limits the
idea of universal jurisdiction by restricting jurisdiction to states that
have some connection to the offense. Moreover, SUA provisions are
only binding on states that are parties to the convention.

Additional confusion ensues among international and regional
organizations when determining which definition of piracy to en-
force. The IMB ignores both the UNCLOS and SUA definitions, and
instead defines piracy as boarding a vessel with the intent to commit a
crime. By contrast, the IMO recognizes two international maritime
crimes: piracy, as defined by UNCLOS, and armed robbery at sea.
The divide is further exacerbated at the regional cooperative level. ReCAAP follows the IMO bipartite definition of piracy while the U.S.-
led naval forces off the coast of Somalia promote the SUA definition.

If the diversity of definitions for piracy were not problematic
enough, it is compounded by the fact that no international legal frame-
work exists that establishes clear guidelines for the prosecution and pun-
ishment of pirates. UNCLOS does not establish a practical framework
to prosecute and punish pirates because it allows the individual seiz-
ing state to “decide upon the penalties.” UNCLOS only defines the
circumstances under which universal jurisdiction applies but does not
set a universal penalty or empower a single tribunal to hear the charge
of piracy. Similarly, SUA does not mention trial procedures or estab-
lish penalties for its defined offenses. The lack of uniformity on an
international level results in various punishments for piracy that range

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95 Id.; Zou Keyuan, supra note 32, ¶ 21.
96 SUA, supra note 15, art. 6 (listing situations in which a state party can establish its ju-
risdiction); see Collins & Hassan, supra note 13, at 108.
97 Azubuike, supra note 8, at 56.
98 Compare Piracy and Armed Robbery Against Ships, supra note 35, with IMB Report,
supra note 24, at 4.
99 Dahlvang, supra note 51, at 21; Zou Keyuan, supra note 32, ¶ 10.
100 Piracy and Armed Robbery Against Ships, supra note 35.
101 Compare About ReCAAP ISC, supra note 44, with Baumgartner Testimony—Piracy Hear-
ing, supra note 43, at 17.
102 Zou Keyuan, supra note 32, ¶ 9.
103 See Baumgartner Testimony—Piracy Hearing, supra note 43, at 17.
104 See Zou Keyuan, supra note 32, ¶¶ 53–55.
105 Kavanagh, supra note 81, at 145.
106 UNCLOS, supra note 10, art 105.
107 Id.
108 Collins & Hassan, supra note 13, at 108.
from three years to life in prison. Additionally, a pirate will likely have no familiarity with the domestic criminal procedures of the prosecuting state.

This variety in prosecution and punishment can also lead to tense international relations when certain states are unwilling to expend their own resources to capture and prosecute pirates. UNCLOS leaves the prosecution of captured pirates to the discretion of each state, some of which are unwilling to prosecute pirates at all. Consequently, the enforcement of international piracy laws is only as effective as the domestic legal institutions that are willing and able to prosecute the crime. Thus, powerful countries with developed legal systems, which incorporate the international definitions of piracy, are more likely to punish pirates than less developed countries. This phenomenon has the unintended side-effect of imposing a Western view of retribution and punishment on pirates from developing countries. Furthermore, the uncertainty as to whether a pirate will be successfully prosecuted may decrease a state’s willingness to cooperate in the pursuit and capture of pirates altogether.

Universal jurisdiction is ineffective in successfully punishing piracy because it creates a patchwork of domestic legal frameworks for the prosecution and punishment of piracy which is inadequate to effectively address the modern piracy concern.

III. Analysis

To address the issue of effective piracy prosecution, scholars have proposed three categories of solutions: 1) change the existing international definition to a uniform definition of piracy followed by uniform domestic legislation; 2) supplement existing international treaties with multilateral and bilateral treaties; and 3) allow international courts to

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109 Baumgartner Testimony—Piracy Hearing, supra note 43, at 32; Mull Testimony—Piracy Hearing, supra note 60, at 32; Goodwin, supra note 71, at 1005.
111 Collins & Hassan, supra note 13, at 103, 109; Goodwin, supra note 71, at 1003.
112 See Kavanagh, supra note 81, at 145.
114 Id. at 556.
115 Id.
116 Collins & Hassan, supra note 13, at 109.
117 See Collins & Hassan, supra note 13, at 109; Kavanagh, supra note 81, at 145.
enforce international piracy laws.\textsuperscript{118} Of these three solutions, the establishment of regional international courts is the only option that can be accomplished without infringing on the territorial sovereignty of states and without creating a superfluous number of treaties.\textsuperscript{119}

Regional piracy tribunals could enforce an applicable regional definition of piracy and create a uniform criminal procedure and punishment.\textsuperscript{120} They could apply a uniform definition of piracy applicable to each region.\textsuperscript{121} Therefore, instead of states applying their own definition of piracy, regional piracy tribunals would apply a common definition of piracy to each region.\textsuperscript{122} Regional piracy tribunals could provide “uniformity in treatment”\textsuperscript{123} that would remove the problems created by the variety of punishments and procedures that currently exist and could result in the more effective prosecution of piracy.\textsuperscript{124}

Regional piracy tribunals can be created from the regional cooperative arrangements that currently exist and could mimic the treaty-based foundation of the International Criminal Court.\textsuperscript{125} For example, ReCAAP in Southeast Asia could establish its own regional piracy tribunal within one member state, MOWCA could sponsor its own regional tribunal for West Africa, while the signatory states of the Djibouti Code could create one for East Africa.\textsuperscript{126} Furthermore, each regional piracy tribunal could derive its jurisdiction from a modified territorial jurisdiction principle, through which member states would establish a geographic scope that falls within the tribunal’s power.\textsuperscript{127} Such a geo-

\textsuperscript{118} See Murphy, supra note 9, at 19–20 (suggesting uniform definition and legislation); Collins & Hassan, supra note 13, at 90 (suggesting the creation of regional piracy tribunals); Kraska & Wilson, supra note 79, at 53 (suggesting supplementing international law with multilateral and bilateral agreements).

\textsuperscript{119} See Collins & Hassan, supra note 13, at 108 (discussing the problem with extradition treaties); Catherine Zara Raymond, Piracy and Armed Robbery in the Malacca Strait, 62 NAVAL WAR COLL. REV. 31, 35 (2009) (discussing Malaysia and Indonesia’s territorial sovereignty concerns).

\textsuperscript{120} See Azubuike, supra note 8, at 54 (noting that states may define and punish piracy according to their own laws).

\textsuperscript{121} See Collins & Hassan, supra note 13, at 92; Kraska & Wilson, supra note 79, at 44; Zou Keyuan, supra note 32, ¶¶ 16–19 (discussing the deficiencies of the UNCLOS definition of piracy); see also IMB Piracy Incident Report 2009, supra note 80.

\textsuperscript{122} See Murphy, supra note 9, at 19.

\textsuperscript{123} See id. at 103.

\textsuperscript{124} See Bassiouni, supra note 113, at 499.

\textsuperscript{125} See Kraska & Wilson, supra note 48, at 519; About ReCAAP ISC, supra note 44.

\textsuperscript{126} See Bottini, supra note 110, at 511 (describing territorial jurisdiction).
graphic scope could include both territorial seas and the high seas, and it would clarify jurisdiction and eliminate the problems associated with establishing post hoc jurisdiction after a pirate attack occurs.

Because the regional piracy tribunals would be treaty-based, they would complement domestic criminal justice systems rather than replace them. The regional piracy tribunal would offer an alternative forum for both member states and non-member states that are unable or unwilling to prosecute pirates. Like the International Criminal Court, regional piracy tribunals would not infringe on a state’s national sovereignty or domestic legal system.

In contrast, changing the existing international definition of piracy would not be as effective in the prosecution of pirates because the type of pirate attacks in each region vary due to their diverse geography. There is no single international definition of piracy that can successfully incorporate the many different regional variations in attacks that exist. In addition, since international definitions of piracy still require domestic enabling legislation to prosecute piracy, creating a uniform definition will not ensure that individual states take the necessary measures to pass legislation that applies the new definition.

Moreover, regional piracy tribunals can prevent the disputes over jurisdiction that individual states must negotiate under the current le-

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128 See UNCLOS, supra note 10, art. 101 (stating that an essential element of piracy includes the high seas); Murphy, supra note 9, at 8 (explaining that armed robbery at sea can only take place in territorial seas).
129 Dr. Azubuike stated:

A classic illustration of the universality principle in relation to piracy is offered by the Alondra Rainbow incident and prosecutions. The Alondra Rainbow was a Japanese owned tanker with a Filipino crew under the command of two Japanese officers. The tanker was sailing from Indonesia to Japan when pirates hijacked the ship. The Indian Navy later captured the pirates and towed the vessel to India. The pirates were tried and convicted by an Indian court.

See Azubuike, supra note 8, at 55.

130 See Bassiouni, supra note 113, at 499–500 (noting that the International Criminal Court does not supplant or substitute national criminal justice systems).
131 See Azubuike, supra note 8, at 58.
132 See Bassiouni, supra note 113, at 500.
133 See Collins & Hassan, supra note 13, at 92. For an example of the different types of attacks in different regions, see IMB Live Piracy Map, supra note 4.
134 See Collins & Hassan, supra note 13, at 106–108 (discussing the deficiencies of SUA’s definition of piracy); Zou Keyuan, supra note 32, ¶¶ 16–19 (discussing the deficiencies of UNCLOS’s definition of piracy).
135 See Baumgartner Testimony—Piracy Hearing, supra note 43, at 27.
gal regime.\textsuperscript{136} By creating a single court that has jurisdiction over all incidents of piracy, irrespective of the states and nationalities involved, pirates can be prosecuted faster without the political wrangling that usually follows a pirate attack.\textsuperscript{137} Regional piracy tribunals can also operate despite the existence of states that are unable or unwilling to prosecute pirates in their own courts.\textsuperscript{138} These tribunals provide an alternative forum for states that lack the resources to prosecute pirates themselves.\textsuperscript{139}

On the contrary, the creation of more multilateral and bilateral treaties to supplement UNCLOS and SUA would not be as effective for the prosecution of pirates because most treaties only create binding obligations their member states.\textsuperscript{140} Thus, creating networks of mutual assistance through multilateral and bilateral treaties is only effective when every affected country is a party to that treaty.\textsuperscript{141} Although bilateral and multilateral treaties may help solve jurisdictional and prosecutorial issues,\textsuperscript{142} they are only effective when the seizing state has a treaty with all states possessing any interest in the specific attack.\textsuperscript{143} For example, if the seizing state does not have an extradition treaty with the particular states involved, the captured pirates may go unpunished.\textsuperscript{144}

Given the current international trend towards regional coordination in the fight against piracy, there already exists a basic foundation for coordination on which to create regional piracy tribunals.\textsuperscript{145} Regional coordination such as ReCAAP can set a uniform definition of piracy for all member states.\textsuperscript{146} Additionally, the IMB already has the capability to investigate international maritime crimes and to provide litigation support for countries seeking to prosecute international mari-

\textsuperscript{136} See Dahlvang, supra note 51, at 23; Kavanagh, supra note 81, at 156 (discussing jurisdiction in territorial waters).

\textsuperscript{137} See Kraska & Wilson, supra note 79, at 51 (discussing the difficulties of determining who will assume jurisdiction immediately after capturing a pirate).

\textsuperscript{138} See Azubuike, supra note 8, at 55, 58; Kraska & Wilson, supra note 1, at 3.

\textsuperscript{139} See Azubuike, supra note 8, at 55, 58.

\textsuperscript{140} IAN BROWNLEE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 627 (7th ed. 2008).

\textsuperscript{141} See Collins & Hassan, supra note 13, at 108 (discussing an example in which offenders go unpunished because no extradition treaty exists); Dahlvang, supra note 51, at 23 (discussing the problem with jurisdiction when extradition treaties exist).

\textsuperscript{142} See Kavanagh, supra note 81, at 157; Kraska & Wilson, supra note 79, at 55.

\textsuperscript{143} See Collins & Hassan, supra note 13, at 108.

\textsuperscript{144} Id.


\textsuperscript{146} See Zou Keyuan, supra note 32, ¶ 9.
time offenders.\textsuperscript{147} Thus, international organizations such as the United Nations or the IMO could easily combine the existing regional networks of cooperation with the IMB’s investigative capabilities as a foundation for the creation of regional piracy tribunals.\textsuperscript{148}

**Conclusion**

Piracy is an international crime that is subject to universal jurisdiction, which gives every state the right to prosecute and punish pirates. Because of differences in geography and types of attacks, the international definitions of piracy as defined in UNCLOS and SUA are both under and over-inclusive. In addition, because each state has discretion regarding whether and how they choose to prosecute and punish pirates, there is no firm international legal framework by which to prosecute pirates. The best solution to this patchwork of criminal prosecutions is to place universal jurisdiction in the hands of regional piracy tribunals. Each tribunal could enforce a definition of piracy that is more applicable to each specific region, provide uniform procedures and penalties, and offer an alternative forum for prosecution to states that lack the resources to prosecute themselves.

\textsuperscript{147} IMB Investigation Services, supra note 28.

\textsuperscript{148} For discussions concerning strengthening regional cooperation, see generally Hearing on International Efforts to Combat Maritime Piracy, supra note 6, at 17 (statement of Admiral William Baumgartner, J. Advocate Gen. and Chief Counsel, U.S. Coast Guard). For the ICC-IMB’s investigative capabilities, see IMB Investigation Services, supra note 28.