

Login

[Forgotten your password?](#)

[Login with your Library Card »](#)

[Login with Athens/Access Management Federation »](#)

[Don't have an account?](#)

**Oxford Law Citator**

Contents

Expand All [+] | Collapse All [-]

- [+] [A Notion](#)
- [+] [B Historical Evolution of Legal Rules](#)
- [+] [C Current Legal Status \(United Nations Convention on the Law of the Sea\)](#)
- [+] [D New Legal Rules](#)
- [+] [E Aerial Terrorism and Terrorism at Sea](#)
- [+] [F Evaluation and Outlook](#)
- [Select Bibliography](#)
- [Select Documents](#)

[Sign up for alerts](#)



## Piracy

Ivan Shearer

**Content type:** Encyclopedia entries  
**Article last updated:** October 2010

**Product:** Max Planck Encyclopedia of Public International Law [MPEPIL]

### Subject(s):

Security assistance — Piracy — Jurisdiction of states, universality principle — UNCLOS (UN Convention on the Law of the Sea)

Published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum.

### A. Notion

1 Piracy is an act of robbery, or other act of violence or depredation, committed at sea, otherwise than in war, launched from one vessel to another, and committed for the purpose of private gain. It is the first crime to have been recognized as a crime against international law and subject to universal jurisdiction (→ *Jurisdiction of States*). It was described as follows in the → *Permanent Court of International Justice (PCIJ)* in 1927 by Judge Moore in *The 'Lotus' Case (France v Turkey)* (PCIJ Series A No 10; → *Lotus, The*):

Piracy by the law of nations, in its jurisdictional aspects, is *sui generis*. Though statutes may provide for its punishment, it is an offence against the law of nations; and as the scene of the pirate's operations is the high seas, which it is not the right or the duty of any nation to police, he is denied the protection of the flag he may carry, and is treated as an outlaw, as the enemy of mankind—*hostis humani generis*—whom any nation may in the interest of all capture and punish. (at 70)

2 As stated by President Guillaume of the → *International Court of Justice (ICJ)* in the → *Arrest Warrant Case (Democratic Republic of the Congo v Belgium)* ([2002] ICJ Rep 3), → *customary international law* knows of only one true case of universal jurisdiction: piracy. Other examples of so-called universal jurisdiction derive from international conventions.

3 Although doubts have been expressed regarding its comprehensiveness, and thus its exclusion of prior customary international law, the normal reference point for a modern definition of piracy is [Art. 101 UN Convention on the Law of the Sea](#) (see paras 13–20 below). As stated in the current edition of *Oppenheim's International Law*, that definition 'must be regarded as having great authority' (at 747).

4 Piracy is also a notion known to the municipal criminal law of States. It may receive a more limited or more expanded definition in those laws. For example, under the law of the United Kingdom since the early 19th century slave-trading on the → *high seas* has been included in the definition of piracy (→ *Slavery*). The distinction between piracy under municipal law and under international law—the latter described as *piracy iure gentium*—was discussed by the Privy Council of the United Kingdom on appeal from the courts of Hong Kong in the case *Re Piracy Jure Gentium* ([1934] AC 586) in which it was held that actual robbery was not an essential element of the crime and that attempted robbery would suffice. Municipal piracy laws may only be enforced in the same way as other municipal criminal laws. Only piracy as defined by international law allows for the assumption of jurisdiction on the basis of universality.

5 The notion of 'pirate radio stations', reflected in [Art. 109 UN Convention on the Law of the Sea](#) whereby jurisdiction is given to States to suppress these on the high seas, is not a true example of piracy (→ *Pirate Broadcasting*). Still less is the notion of 'piracy' justified as applied to the unlawful sale and use of copyrighted material such as music, films, and books.

### B. Historical Evolution of Legal Rules

6 The origins of piracy go back to ancient times. It seems that it was Cicero (*De Officiis* iii 29) who first described pirates as the enemies of all peoples (*hostes humani generis*), a concept of enduring relevance especially with respect to universality jurisdiction.

7 The growth of modern international law in the post-Westphalian order (→ [Westphalian System](#)) had to take account of the rapid increase in the incidence of piracy, which was most prevalent in the → [Mediterranean Sea](#) (eg the Barbary Corsairs) and on the trade routes between Europe and the Americas. The heyday of piracy was during the 17th and 18th centuries, when pirate ships cruised the seas looking for victims. The legal problems were twofold: what law applied beyond the territorial seas of States? And how could jurisdiction be exercised on the high seas to arrest, bring to trial, and punish pirates?

8 As to the first problem, international law conceded to States the right to apply and enforce their criminal laws in their territorial seas, then commonly regarded as extending to three nautical miles from shore (→ [Territorial Sea](#)). Municipal laws would thus cover these areas, whether crimes of a piratical nature were termed piracy *eo nomine* or assault, robbery, or murder. The right of → [hot pursuit](#) allowed States to pursue vessels committing crimes on their land territory or territorial seas into the high seas, provided the pursuit was 'hot and continuous', to arrest them in any place, other than in the territorial sea of another State, and to bring the criminals to justice in their own courts.

9 As to the second problem, except in cases of hot pursuit from land or from within territorial waters, international law in general forbade interference on the high seas with vessels of any flag other than vessels of the same flag as the intercepting ship (→ [Flag of Ships](#)). An exception had to be made for pirate ships for they acknowledged no allegiance to any flag, whether they feigned a flag or not (or flew the 'Jolly Roger' skull and crossbones flag). Pirates thus constituted a species of international outlaw (→ [Individuals in International Law](#)).

10 To be distinguished from pirates were privateers, who carried letters of marque issued by a recognized State authorizing them to attack and capture vessels having the nationality of a State with which it was at war. → [Privateering](#) was formally abolished by the Paris Declaration of 1856 (→ [Paris, Declaration of \[1856\]](#)). The right to attack → [merchant ships](#) in time of war is now governed by the modern law of armed conflict, including international humanitarian law (→ [Armed Conflict, International](#); → [Humanitarian Law, International](#)).

11 An attempt was made in the first half of the 20th century to assimilate attacks on merchant shipping by → [submarines](#) to piracy (→ [Submarine Warfare](#)). During World War I attacks against merchant ships by submarines were regarded as infringing the principle of distinction between combatants and non-combatants. An attempt to redress the problem by designating such actions as piracy was made in 1922 in the Washington Treaty for the Limitation of Naval Armament (25 LNTS 202), but that treaty failed to secure the requisite number of ratifications and did not enter into force. In 1936 the London [Procès-Verbal relating to the Rules of Submarine Warfare](#) (173 LNTS 353) was adopted and entered into force for many States, including all the participants in World War II, requiring that merchant vessels be exempted from attack unless their crews and passengers were removed to a place of safety. By the → [Nyon Agreement \(1937\)](#) attacks by submarines against merchant ships not belonging to either of the parties to the conflict in the → [Spanish Civil War \(1936–39\)](#) constituted 'acts contrary to the most elementary dictates of humanity, which should be justly treated as acts of piracy' (at para. 1). It is difficult to understand in legal terms how this characterization can be justified. It has not been attempted in any other instrument.

12 Piracy received its first comprehensive definition by an international convention in [Art. 15 Geneva Convention on the High Seas of 1958](#) ('High Seas Convention'). That definition, and the ancillary provisions relating to piracy in [Arts 14 and 16 to 21](#), were based on the preparatory work of the United Nations → [International Law Commission \(ILC\)](#), which, in turn, drew on the Draft Convention on Piracy prepared by the Harvard Research in International Law published in 1932.

### C. Current Legal Status (United Nations Convention on the Law of the Sea)

13 By adopting without amendment the provisions relating to piracy contained in the High Seas Convention, the [UN Convention on the Law of the Sea of 1982](#) may now be regarded as expressing the current law of piracy both as conventional and as general international law (→ [Law of the Sea](#)).

14 Art. 101 UN Convention on the Law of the Sea defines piracy as follows: Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or 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;
- (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 (a) or (b).

15 It is to be noted that the convention definition requires that there must be two vessels involved, the piratical act being launched from one against the other. This excludes some earlier conceptions of piracy that allowed for the crime to be constituted by acts committed by persons already on board the victim vessel as passengers or crew ('internal seizures'). The vessel from which the piratical attack is launched must be a private vessel (but see [Art. 102 UN Convention on the Law of the Sea](#)); the victim vessel need not be. The inclusion of aircraft in the definition goes beyond earlier customary law and is an example of progressive development of international law (→ [Codification and Progressive Development of International Law](#)), pursuant to [Art. 13 UN Charter](#) and the

mandate of the ILC. A 'place outside the jurisdiction of any State' was explained by the Commentary to the Draft Articles concerning the Law of the Sea of the International Law Commission (UN ILC, 'Report of the International Law Commission Covering the Work of its Eighth Session' [23 April–4 July 1956] GAOR 11th Session Supp 9, 27) as referring to an island constituting terra nullius or the shores of an unoccupied territory (→ [Territory, Discovery](#)).

**16** It is also to be noted that the convention definition requires that the motive of the attack be 'for private ends' ([Art. 15 UN Convention on the Law of the Sea](#)), eg for robbery, and not for political ends (see the cases of the *Santa Maria* and the *Achille Lauro* below). In the case of *Castle John v NV Mabeco*, the Belgian Court of Cassation held in 1986 that a Greenpeace vessel had committed piracy against an allegedly polluting Dutch vessel when it attacked it, because the act of violence was 'in support of a personal point of view' and not political (at 540).

**17** Further, the convention establishes a duty to co-operate in the repression of piracy ([Art. 100 UN Convention on the Law of the Sea](#)). Piracy may be committed by → [warships](#) (→ [State Ships](#)) or government aircraft whose crew has mutinied ([Art. 102 UN Convention on the Law of the Sea](#)). The significance of this provision is that, in cases of mutiny, the ship or aircraft can no longer be regarded as engaging the responsibility of the State of the flag (→ [Responsibility of States for Private Actors](#)), and hence may be apprehended at will. It may be going too far, however, to assimilate to a pirate ship a government ship, eg a naval patrol boat engaged in fisheries protection, whose crew engages in 'shaking down' the vessels it stops and boards for inspection, since disobedience to orders, even resort to criminality, ordinarily fall short of mutiny. A ship or aircraft is defined as being a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of piracy.

**18** The application to piracy of the universality principle of criminal jurisdiction (→ [Criminal Jurisdiction of States under International Law](#)) is reflected in [Art. 105 UN Convention on the Law of the Sea](#), which provides that on the high seas, or in any place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, arrest the persons responsible and seize the property on board. The courts of the seizing State may decide on the penalties to be imposed—although declining in use, the laws of some States prescribe the death penalty—and determine the action to be taken with regard to the seized vessel and property, subject to the rights of third parties acting in good faith. By [Art. 106 UN Convention on the Law of the Sea](#), liability is incurred towards the State of nationality of a seized vessel for loss or damage incurred where seizure has taken place without adequate grounds. A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect ([Art. 107 UN Convention on the Law of the Sea](#)). The universality principle of criminal jurisdiction is also importantly reflected in [Art. 110 \(1\) UN Convention on the Law of the Sea](#) relating to the right of visit of vessels on the high seas. This article generally prohibits all acts of interference on the high seas save for certain exceptions, one of which is that 'the ship is engaged in piracy'.

**19** The definition of piracy under the UN Convention on the Law of the Sea and in customary international law, as applying to acts committed on the high seas, is capable of misunderstanding. Before the institution of the → [exclusive economic zone](#) in the modern international law of the sea, the high seas began where the outer limit of the territorial sea was reached. The high seas now begin at the outer limit of the exclusive economic zone—200 nautical miles seaward of the territorial sea → [baselines](#). However, this does not mean that piracy under international law cannot be committed within the exclusive economic zone. [Art. 58 \(2\) UN Convention on the Law of the Sea](#) states that 'Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part'. These articles include those relating to piracy. Hence, piratical acts committed in the exclusive economic zone are treated as though they had been committed on the high seas. The exclusive economic zone also encompasses the → [contiguous zone](#), by reason of the definition of the spatial extent of the zone as defined in [Art. 55 UN Convention on the Law of the Sea](#).

## D. New Legal Rules

**20** The requirements of the accepted definition of piracy that *a*) there be two vessels involved, a piratical attack being launched from one vessel against the other, and *b*) that the motive of the attack be 'for private ends' (ie not for political purposes), have led to the creation of new rules by international conventions to fill these gaps in → [international criminal law](#).

**21** The phenomenon of aircraft → [hijacking](#) began to occur in the 1960s. Although popularly termed at the time 'aerial piracy', the strict appropriateness of the term is lacking owing to the absence of the two elements mentioned above. Hijackings do not in practice occur through an attack by one aircraft against another—only military aircraft have the offensive capability to force another aircraft to divert or land; they are committed by persons on board the victim aircraft who pose initially as bona fide passengers. Virtually all hijackings have a political purpose, eg to publicize a cause, exact political concessions or revenge, or to be used as a weapon (eg in the attacks on the World Trade Center in New York on 11 September 2001).

**22** The first of these conventions was the Hague [Convention for the Suppression of Unlawful Seizure of Aircraft 1970](#), popularly known as the 'Hijacking Convention'. It establishes as an offence the action of any person:

who on board an aircraft in flight (a) unlawfully, by force or threat thereof, or by any form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act. (Art. 1)

The jurisdiction provisions of the convention come close to reflecting the universality principle but not completely.

Whereas in the case of piracy, where jurisdiction is unqualifiedly universal in the sense that no national element or connection is required to be shown in order for the prosecuting State to proceed, in the case of hijacking there must be a link between the offence or the offender with the prosecuting State of a kind set out in Art. 4 Convention for the Suppression of Unlawful Seizure of Aircraft, namely that the offence is committed on board an aircraft registered in that State, that the aircraft lands in that State with the alleged offender still on board, or that the offence is committed on board a leased aircraft having a connection with that State. The prosecuting State may also assume jurisdiction where, for any reason, the alleged offender is present in its territory and it does not extradite the offender to another State having jurisdiction to prosecute (→ [Extradition](#)). Finally, the convention 'does not exclude any criminal jurisdiction exercised in accordance with national law' (Art. 4 (3) [Convention for the Suppression of Unlawful Seizure of Aircraft](#)). This, for example, would cover cases where the alleged offender was of the nationality of the prosecuting State (active nationality principle of jurisdiction), or where any of the victims of the hijacking were of that nationality (passive nationality principle of jurisdiction), assuming that the prosecuting State has so legislated. The need for such connections makes more appropriate the terms 'quasi-universal jurisdiction' or 'subsidiary universal jurisdiction' (the latter term was favoured by President Guillaume in the *Arrest Warrant Case* to describe the regimes of this convention and other international conventions establishing international crimes such as the conventions on sabotage of aircraft, the taking of hostages, war crimes, crimes against humanity, and crimes against internationally protected persons). It is technically possible for a State to provide under its domestic law for true universality of jurisdiction in these cases, but the possibility of using such a law against other States must be regarded as doubtful following dicta of several judges of the International Court of Justice in the *Arrest Warrant Case*.

**23** The internally launched seizure of the Portuguese passenger ship *Santa Maria* in 1961 (see M Whiteman [ed], *Digest of International Law* 4, 665–67) led to an academic debate whether this constituted piracy. Not only were the offenders already on board the ship posing as passengers but their motives were entirely political. They were eventually given asylum in Brazil, thus rendering the question moot. However, a similar incident occurred in 1985, when Palestinians, who had already boarded the Italian cruise ship *Achille Lauro* posing as passengers, seized the ship on the high seas, took the passengers and crew hostage, and demanded the release of Palestinian prisoners in Israeli jails. A disabled American passenger on board was callously killed by being thrown over the side in his wheelchair. The offenders were eventually captured and brought to trial in Italy, where they were convicted of terrorism offences (see also → [Achille Lauro Affair \[1985\]](#)). In response to this incident, which was not regarded as piracy in the accepted sense, the → [International Maritime Organization \(IMO\)](#) in 1988 sponsored the negotiation of the Convention for the [Suppression of Unlawful Acts against the Safety of Maritime Navigation](#) ('the SUA Convention'). This convention does not characterize internal seizures as piracy but creates offences and establishes jurisdiction over them in a similar manner to those conventions cited above and to be characterized as 'quasi-universal' or 'subsidiary universal' jurisdiction.

**24** Since piracy can also be regarded as one of the offences covered by the SUA Convention, States Parties have the duty to establish their jurisdiction in cases, inter alia, 'where the alleged offender is present in its territory and it does not extradite him' to any of the other States Parties that have established their jurisdiction on one or more of the particular bases set out in Art. 6 SUA Convention. The convention may therefore provide a basis of jurisdiction where pirates are captured at sea by warships participating in anti-piracy patrols and are handed over to a nearby coastal State for investigation and prosecution.

## E. Aerial Terrorism and Terrorism at Sea

**25** As already described in the evolution of new legal rules, piracy is increasingly regarded as linked to the phenomenon of → [terrorism](#). Had the *Santa Maria* and *Achille Lauro* incidents been the result of externally launched attacks, and been motivated by private purposes, such as robbery, they would have constituted classic instances of piracy. However, they were not, and they prompted the creation of new rules of international law through particular conventions. The attack on the twin towers of the World Trade Center in New York on 11 September 2001 demonstrated how hijacked civilian aircraft could be used as offensive weapons for terrorist purposes. Those attacks similarly did not constitute piracy. As yet a terrorist attack constituted by a piratical boarding of a vessel at sea containing volatile or other dangerous cargo—or more likely an internal seizure of such a vessel—which is then brought into a port to be exploded, has not occurred. But it is an eventuality to be expected and against which measures of coastal State security are being taken.

**26** Thus far, conventions in relation to particular aspects of terrorism have been negotiated piecemeal. They have not incorporated an equation to piracy, nor have they adopted a true universality basis of jurisdiction. The Comprehensive Convention on Terrorism, which has been under negotiation in the United Nations since 1996, has not yet been concluded.

## F. Evaluation and Outlook

**27** The rules relating to piracy under international law may now be regarded as settled by the provisions of the UN Convention on the Law of the Sea. There is little point in searching for modification or supplementation of those rules in supposed pre-existing customary international law.

**28** It has been stated above that the heyday of piracy was to be found in the 17th and 18th centuries. These were certainly the times recorded—and even celebrated—in histories, fiction, and on the screen. To the popular mind pirates tend to be represented by adventure films such as 'Pirates of the Caribbean'. Yet the true picture is more sinister and threatening, indeed dire.

**29** The present era has unfortunately seen a return to lawlessness at sea. The phenomenon of sea piracy has taken on a new lease of life, particularly off the coasts of States with weak governments and little maritime surveillance capability, or with corrupt officials. Off certain coasts of Africa, and in waterways in South-East Asia,

pirates today constitute a grave menace. Modern merchant ships are largely automated and operate with fewer crew members than in earlier times. Pirates come aboard from small vessels unobserved and rob—at best—the crew and passengers, or—at worst—murder them as well ('Dead men tell no tales'). Accounts of recent piratical attacks include evidence of utmost ruthlessness and callous disregard for human life. Increasingly, the ship itself has been taken hostage for ransom. Some pirates convincingly pose as customs officials of nearby coastal States. Ships and their cargoes may also be made to vanish entirely, to reappear elsewhere with a new identity.

**30** Efforts are being made through a number of channels to combat piracy. The IMO is among the organizations active in this endeavour. The United Nations Office on Drugs and Crime ('UNODC') also plays a significant role, especially through its joint EC/UNODC Counter-Piracy Project, based in Nairobi. The → [International Chamber of Commerce \(ICC\)](#), through its International Maritime Bureau, monitors the incidence of piracy and similar attacks throughout the world. Concerned governments in affected regions have negotiated co-operation agreements and have instituted studies and training programmes. Ship owners are reluctant to encourage the use of arms on board in defence against pirates: there is a fear that violence will be all the greater if force is met with force. There is also the danger of explosion in cargoes, particularly in the case of oil tankers, and of cargoes such as liquefied natural gas. Some ship owners are experimenting with non-lethal means of self-defence, but the details are necessarily difficult to obtain in order to preserve the element of surprise.

**31** The [United Nations Security Council, in Resolution 1816 \(2008\)](#) of 2 June 2008, noted the lack of capacity of the Transitional Federal Government ('TFG') of Somalia to interdict pirates or patrol and secure either the international → [sea lanes](#) off the coast of Somalia or Somalia's territorial waters (→ [Somalia, Conflict](#)). The resolution decided that States co-operating with that government in the fight against piracy and armed robbery off the coast of Somalia were authorized to enter the territorial sea of Somalia for the purpose of repressing such acts. The wider significance of this resolution is doubtful in view of the express declaration made in the resolution that it was approved by the TFG of Somalia for a period of six months (renewable), that it is not applicable to waters other than those of Somalia, and that it shall not be considered as establishing customary international law. In subsequent Resolutions 1838 (2008), 1846 (2008), 1851 (2008), and 1897 (2009), the UN Security Council has, inter alia, urged protection for humanitarian sea convoys destined for Somalia (→ [Humanitarian Assistance, Access in Armed Conflict and Occupation](#)); noted with approval the launching of the EU maritime protection operation 'Atalanta' in the Somali region, as well as associated efforts of NATO and of other States assisting in their national capacities; the formation in January 2009 by 24 UN Member States and five international organizations of the Contact Group on Piracy off the Coast of Somalia; and the adoption of a Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, adopted under the auspices of IMO at Djibouti on 29 January 2009. The Security Council has also expressed concern that 'escalating ransom payments' are fuelling the growth of piracy in the region. By Resolution 1851 (2008), the Security Council extended the authority of co-operating States, at the request of the TFG, to undertake all necessary measures 'that are appropriate in Somalia' (at para. 6), thus authorizing a right of entry into Somali land territory.

**32** Practical problems of law enforcement have arisen in the case of the Somali pirates. Naval forces of more than 20 nations have captured hundreds of pirates, as well as deterring many other piratical attacks. However, what is to be done with those captured? It is impractical to conduct trials on board a capturing vessel consistently with international fair trial standards, and highly inconvenient to transfer them to the territory of the capturing flag State to be prosecuted, sentenced, and imprisoned there. Return to their home States after conviction may encounter objections based on human rights considerations. As a result, some have simply been returned to the Somali coast and released. Others have been handed over to the nearby State of Kenya where investigations and prosecutions are conducted under Kenyan law pursuant to agreements concluded by Kenya with the EU, and with the United Kingdom and the United States. Negotiations are also ongoing for similar agreements with other regional States. The UN Security Council, in Resolution 1846 (2009), noted that the SUA Convention should be taken into account as giving Kenya a valid basis of jurisdiction (at para. 15), thus implicitly allaying the doubt that Art. 105 UN Convention on the Law of the Sea restricted the right to prosecute for piracy to the authorities of the capturing State. There are limits, however, to the capacity of Kenya and other coastal States of the region to assume the heavy burdens of dealing with so many accused pirates, even with considerable logistical support from the international community. These problems have led to proposals by several States, notably the Netherlands, for the creation of a regional piracy tribunal under the auspices of the United Nations until such time as Somalia is sufficiently restored in its national institutions to be able to discharge its duty to repress piracy.

**33** In the absence of authorization by the UN Security Council to enter a foreign territorial sea, in areas where anti-piracy patrols are operative it seems highly artificial that a warship of State A cannot enter the territorial waters of State B, without that State's permission, in order to bring a piratical attack to an end, and, if possible, to effect an arrest. Such permission may be given in advance, pursuant to bilateral or multilateral agreements. Alternatively, where no such co-operative arrangements exist, resort might be had to so-called 'assistance entry' by a ship or aircraft of one State which witnesses a piratical attack occurring in the territorial seas of another. The notion of assistance entry is recognized in the practice of some States, notably the United States of America (Thomas and Duncan 120) but not universally. The notion rests on the common-sense view that a reasonable coastal State would raise no objection to any action urgently required to save lives, and having no ulterior motive such as any of the activities prohibited in the territorial sea by Art. 19 (2) UN Convention on the Law of the Sea. This view would also apply a fortiori in the case of a 'failed State' where there is no effective government in power capable of policing its territorial waters (→ [Failing States](#)). Moreover, the duty to render assistance to persons in danger or distress, contained in Art. 98 UN Convention on the Law of the Sea (and Art. 12 High Seas Convention) significantly imposes this duty 'at sea', not as in other articles 'on the high seas'.

## Select Bibliography

P Gosse *The History of Piracy* (Tudor New York 1946).  
 BH Dubner *The Law of International Sea Piracy* (Nijhoff The Hague 1980).  
 AP Rubin *The Law of Piracy* (Naval War College Newport 1988).  
 RY Jennings (ed) *Oppenheim's International Law* (9th ed Longman Harlow 1992).  
 AR Thomas and JC Duncan (eds) *Annotated Supplement to the Commander's Handbook on the Law of Naval Operations* (Naval War College Newport 1999).  
 E Kontorovich 'The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation' (2004) 45 *HarvIntLJ* 183–237.  
 E Bertin-Mourof F Lelieur, and E Terroir *Terrorisme et piraterie, des menaces contemporaines à la sûreté des transports maritimes de marchandises* (L'Harmattan Paris 2005).  
 D Johnson (ed) *Piracy in South East Asia: Status, Issues and Responses* (Institute of Southeast Asian Studies Singapore 2005).  
 F Odier 'Piraterie, terrorisme—une menace pour les navires, un défi pour le droit de la mer' (2005) 10 *AnDrMer* 263–74.  
 Y Tassel 'Terrorisme, piraterie et guerre sous le rapport de l'assurance maritime' (2005) 23 *Annuaire de droit maritime et océanique* 77–94.  
 S Eklof *Pirates in Paradise: A Modern History of Southeast Asia's Maritime Raiders* (Nordic Institute of Asian Studies Copenhagen 2006).  
 GG Ong-Webb (ed) *Piracy, Maritime Terrorism and Securing the Malacca Straits* (Institute of Southeast Asian Studies Singapore 2006).  
 P Lehr (ed) *Violence at Sea: Piracy in an Age of Global Terrorism* (Routledge New York 2007).  
 R Middleton 'Piracy in Somalia: Threatening Global Trade, Feeding Local Wars' (Chatham House London 2008).  
 MH Nordquist and others (eds), *Legal Challenges in Maritime Security* (Nijhoff Leiden 2008).  
 R Wolfrum 'Fighting Terrorism at Sea: Options and Limitations under International Law' in MH Nordquist and others (eds) *Legal Challenges in Maritime Security* (Nijhoff Leiden 2008).  
 JT Gathii 'Jurisdiction to Prosecute Non-National Pirates Captured by Third States under Kenyan and International Law' (2009) 31 *LoyLIntl&ComplRev* 363–404.  
 D Guilfoyle *Shipping Interdiction and the Law of the Sea* (CUP Cambridge 2009).  
 E Kontorovich 'Introductory Note to Exchange of Letters between the European Union and the Government of Kenya on the Conditions and Modalities for the Transfer of Persons Suspected of Having Committed Acts of Piracy' (2009) 48 *ILM* 747–59.  
 T Treves 'Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia' (2009) 20 *EJIL* 399–414.  
 BA Ellemann A Forbes, and D Rosenberg (eds) *Piracy and Maritime Crime: Historic and Modern Case Studies* (Naval War College Press Newport 2010).  
 D Guilfoyle 'Counter-Piracy Law Enforcement and Human Rights' (2010) 59 *ICLQ* 141–69.  
 E Kontorovich "'A Guantánamo on the Sea": The Difficulty of Prosecuting Pirates and Terrorists' (2010) 98 *CallRev* 243–75.

## Select Documents

*Castle John v NV Mabeco* (19 December 1986) 77 *ILR* 537.  
 Convention for the Suppression of Unlawful Seizure of Aircraft (signed 16 December 1970, entered into force 14 October 1971) 860 *UNTS* 105.  
 Convention on the High Seas (done 29 April 1958, entered into force 30 September 1962) 450 *UNTS* 11.  
 Exchange of Letters between the European Union and the Government of Kenya on the Conditions and Modalities for the Transfer of Persons Suspected of Having Committed Acts of Piracy (6 March 2009) (2009) 48 *ILM* 751.  
 Harvard Law School, 'Draft Convention on Piracy' (1932) 26 *AJIL Supp* 739.  
 International Expert Group on Piracy off the Somali Coast, 'Piracy off the Somali Coast: Workshop Commissioned by the Special Representative of the Secretary-General of the UN to Somalia Ambassador' (10–21 November 2008).  
 International Maritime Organization, 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation' (concluded 10 March 1988, entered into force 1 March 1992) 1678 *UNTS* 221.  
 International Maritime Organization, 'Resolution 1: Annex: Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden' (29 January 2009).  
 Nyon Agreement (14 September 1937) 181 *LNTS* 135.  
 Procès-verbal relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of April 22nd, 1930 (6 November 1936) 173 *LNTS* 353.  
 Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (28 April 2005) 44 *ILM* 829.  
 Treaty for the Limitation of Naval Armament (6 February 1922) 25 *LNTS* 202.  
 United Nations Convention on the Law of the Sea (concluded 10 December 1982, entered into force 16 November 1994) 1833 *UNTS* 397.  
 UN ILC, 'Report of the International Law Commission Covering the Work of its Eighth Session' (23 April–4 July 1956) GAOR 11th Session Supp 9.  
 UNSC, 'Report of the Secretary-General Pursuant to Security Council Resolution 1846 (2008)' (16 March 2009) UN Doc S/2009/146.

