

"YO HEAVE HO!": UPDATING AMERICA'S PIRACY LAWS

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In the light of far-reaching developments in the field of international law and foreign relations, the law of piracy is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion It is recommended . . . that at some opportune time in the near future, the subject of piracy be entirely reconsidered and the law bearing on it modified and restated in accordance with the needs of the times.¹

INTRODUCTION

The upsurge in piracy and violent maritime crime in the last quarter century has brought increased attention to the international law of piracy. Commentators such as B.H. Dubner² and A.P. Rubin³ have explored the topic in its transnational legal aspect, while R. Villar⁴ and E.F. Ellen, Director of the I.C.C.-International Maritime Bureau,⁵ have chronicled the extent of the problem and

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1. 18 U.S.C. ch. 81 (1988) (Historical and Revision Notes).
2. B. DUBNER, *THE LAW OF INTERNATIONAL SEA PIRACY* (1980); Dubner, *The Law of International Sea Piracy*, 11 N.Y.U.J. INT'L L. & POL'Y 471 (1979).
3. A. RUBIN, *THE LAW OF PIRACY* (1988); Rubin, *Terrorism and Piracy: A Legal View*, in 3 *TERRORISM: AN INTERNATIONAL JOURNAL* 117 (1979).
4. R. VILLAR, *PIRACY TODAY: ROBBERY AND VIOLENCE AT SEA SINCE 1980* (1985).
5. *VIOLENCE AT SEA: A REVIEW OF TERRORISM, ACTS OF WAR AND PIRACY, AND COUNTERMEASURES TO PREVENT TERRORISM* (E. Ellen ed. 1987) [hereinafter *VIOLENCE AT SEA*]; *PIRACY AT SEA* (E. Ellen ed. 1989) [hereinafter *E. ELLEN, PIRACY AT SEA*]; E. ELLEN, *PORTS IN PERIL* (forthcoming). The I.C.C.-International Maritime Bureau has also been responsible for the publication of three reports dealing with the problems of piracy in the 1980's. See I.C.C.-INTERNATIONAL MARITIME BUREAU, *A REPORT INTO THE INCIDENCE OF PIRACY AND ARMED ROBBERY FROM MERCHANT SHIPS* (1983) [hereinafter *I.M.B. FIRST REPORT*]; *A SECOND REPORT INTO THE INCIDENCE OF PIRACY AND ARMED ROBBERY FROM MERCHANT SHIPS* (1984) [hereinafter *I.M.B. SECOND REPORT*]; *A THIRD REPORT INTO THE*

suggested some practical solutions.⁶ At the same time, surprisingly little seems to have been written about American *municipal* law on the subject,⁷ and no one seems to have taken up the challenge of suggesting revisions to the existing provisions of the United States Code.

This Article will examine one portion of Title 18, Chapter 81 of the United States Code, dealing with Piracy and Privateering, and will suggest problems with the Code sections *as they currently exist*. This discussion will then be followed by a second round of analysis, in which suggested draft changes for the Chapter are proposed. The following changes may not meet with general approval, and further refinement, or indeed alternate approaches, may prove more useful. What are being offered here are simply some initial thoughts on redrafting, which may serve as *one* basis of discussion for revamping the American law of piracy. At the same time it is also important to note that *other* sections of the Code also deal with piracy and related matters.⁸ Chapter 81 has been selected for treatment in part because of its recognized importance as a summation of United States law on the subject,⁹ and in part because of its key position in any discussion of other sections.¹⁰ A conclusion will serve to summarize some of the problems to be surmounted in a redrafting as well as a suggestion of the way ahead.

INCIDENCE OF PIRACY AND ARMED ROBBERY FROM MERCHANT SHIPS (1985) [hereinafter I.M.B. THIRD REPORT].

6. See generally R. VILLAR, *supra* note 4; VIOLENCE AT SEA, *supra* note 5; and E. ELLEN, PIRACY AT SEA, *supra* note 5. See also K. HAWKES, MARITIME SECURITY (1989); *Seaports and Harbors Subcommittee of the ASIS [American Society for Industrial Security] Standing Committee on Transportation Security*, MARITIME SECURITY MANUAL (1990) [hereinafter ASIS].

7. A notable exception is Rubin's chapter, "The United States of America and the Law of Piracy," in A. RUBIN, *supra* note 3, at 122-200. This treatment, however is largely historical in nature. See also *A Collection of Piracy Laws in Various Countries*, in 26 AM. J. INT'L L. SUPP. 887, 893-97 (1932) (1932 Harvard Research Project) (the section on "United States of America") [hereinafter *A Collection of Piracy Laws in Various Countries*].

8. See 18 U.S.C. §§ 960-967 (1988) (Ch. 45: Foreign Relations); 18 U.S.C. §§ 2192-2193 (1988) (Ch. 107: Seamen and Stowaways); 18 U.S.C. §§ 2271-2278 (1988) (Ch. 111: Shipping); 33 U.S.C. §§ 381-387 (1988) (Ch. 7: Regulations for the Suppression of Piracy); 46 U.S.C.A. app. §§ 1801-1809 (1989) (Ch. 37: International Maritime and Port Security); 46 U.S.C.A. app. §§ 1901-1904 (1989) (Ch. 38: Maritime Drug Law Enforcement).

9. See A. RUBIN, *supra* note 3, at 383-85 (Appendix VI, C), the only part of the Code references to the subject reprinted *in toto*.

10. 33 U.S.C. §§ 381-387 (1988), for example, deal with "Regulations for the Suppression of Piracy," a topic which cannot usefully be discussed except in relation to a revamped 18 U.S.C. ch. 81.

I. GENERAL BACKGROUND

Serious discussion of Chapter 81 must be grounded on the historical development of the United States' laws on piracy. This background will perforce be brief, as the topic has already been treated in some depth by Professor Rubin.¹¹ It will not follow the obvious path of citing *caselaw*, although there are piracy cases aplenty, particularly in the earlier years of the 19th century.¹² Rather, *legislative* high-points will be noted, along with something of the social context which led to changes in the statutes. It will be shown that today's Chapter 81 is a composite creation of America's piratical past, whose arrested growth does not reflect more recent developments in maritime crime. Hence, the need for revision.

Article I, section 8 of the United States Constitution notes that Congress "shall have the Power . . . To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations."¹³ The first substantive law on the subject of piracy is an Act of April 30, 1790, section 8, which states:

That if any person or persons shall commit upon the high seas, or in any river, haven, basin or bay, out of the jurisdiction of any particular state, murder or robbery, or any other offence which if committed within the body of a county, would by the laws of the United States be punishable with death; or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship; every such offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death. . . .¹⁴

Subsequent sections dealt with *privateering* against the United

11. See A. RUBIN, *supra* note 3. The reader is referred to the source cited therein for a more in-depth discussion of the subject. See also *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 893-97.

12. For a useful discussion of these, see A. RUBIN, *supra* note 3, at 127-200. It is interesting that with the exception of *People v. Lol-Lo and Saraw*, 43 PHIL. REP. 19 (1922), Rubin does not cite to any U.S. piracy case after the *Ambrose Light*, 25 F. 408 (S.D.N.Y. 1885), 18 DEAK 112. See A. RUBIN, *supra* note 3, at 416-19.

13. U.S. CONST. art. 1, § 8, cl.10. See also the discussion in A. RUBIN, *supra* note 3, at 124, 126-27 ("There is no hint that anybody conceived of 'piracy' as a crime at international law, but only as a felony at English Common Law.")

14. Act of Apr. 30, 1790, § 8, 1 Stat. 112 (An Act for the punishment of certain crimes against the United States) [hereinafter Act of 1790].

States or its citizens,¹⁵ accessories,¹⁶ concealment of a pirate or of stolen property,¹⁷ "confederation" with pirates,¹⁸ and maiming at sea.¹⁹

15. *Id.* § 9. Section 9 reads:

[I]f any citizen shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high sea, under colour of any commission from any foreign prince, or state, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged and taken to be a pirate, felon, and robber, and on being thereof convicted shall suffer death.

See also A. RUBIN, *supra* note 3, at 154-55.

16. Act of 1790, *supra* note 14, § 10. Section 10 reads:

[E]very person who shall, either upon the land or the seas, knowingly and wittingly aid and assist, procure, command, counsel or advise any person or persons, to do or commit any murder or robbery, or other piracy aforesaid, upon the seas, which shall affect the life of such person, and such person or persons thereupon do or commit any such piracy or robbery, then all and every such person so as aforesaid aiding, assisting, procuring, commanding, counselling, or advising the same, either upon the land or the sea, shall be, and they are hereby declared, deemed and adjudged to be accessory to such piracies before the fact, and every such person being thereof convicted shall suffer death.

17. *Id.* § 11. Section 11 reads:

[A]fter any murder, felony, robbery or other piracy whatsoever aforesaid, is or shall be committed by any pirate or robber, every person who knowing that such pirate or robber has done or committed any such piracy or robbery, shall on the land or at sea receive, entertain or conceal any such pirate or robber, or receive or take into his custody any ship, vessel, goods or chattels, which have been by any such pirate or robber piratically and feloniously taken, shall be, and are hereby declared, deemed and adjudged to be accessory to such piracy or robbery, after the fact; and on conviction thereof, shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars

18. *Id.* § 12. Section 12 reads:

[I]f any seaman or other person shall commit manslaughter upon the high seas, or confederate, or attempt or endeavour to corrupt any commander, master, officer or mariner, to yield up or to run away with any ship or vessel, or with any goods, wares, or merchandise, or to turn pirate, or to go over to or confederate with pirates, or in any wise trade with any pirate knowing him to be such, or shall furnish such pirate with any ammunition, stores or provisions of any kind, or shall fit out any vessel knowingly and with a design to trade with or supply or correspond with any pirate or robber upon the seas; or if any person or persons shall any ways consult, combine, confederate or correspond with any pirate or robber on the seas, knowing him to be guilty of any such piracy or robbery; or if any seaman shall confine the master of any ship or other vessel, or endeavour to make a revolt in such ship;(a) such person or persons so offending, and being thereof convicted, shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.

19. *Id.* § 13. Section 13 reads:

[I]f any person or persons, within any of the places upon the land under the sole and exclusive jurisdiction of the United States, or upon the high seas, in any vessel belonging to the United States, or to any citizen or citizens thereof, on purpose and of malice aforethought, shall unlawfully cut off the ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, cut off the nose or a lip, or cut of or disable any limb or member of any person, with intention in so doing to maim or disfigure such person in any the manners before mentioned, then and in every such case the person or persons so offending, their counsellors, aiders and abettors (knowing of and privy to the offence aforesaid) shall on conviction, be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.

The next major legislation on piracy, the Act of March 3, 1819, "to protect the commerce of the United States, and punish the crime of piracy,"²⁰ dealt mainly with regulations for the suppression of piracy outside the purview of Chapter 81 as it now exists.²¹ Section 5, however, stated:

[t]hat if any person or persons whatsoever, shall, on the high seas, commit the crime of piracy, as defined by the law of nations, and such offender or offenders, shall afterwards be brought into or found in the United States, every such offender or offenders shall, upon conviction thereof, . . . be punished with death.²²

As Rubin notes, this was in reaction to the decision in *United States v. Palmer*,²³ which held that American jurisdiction did *not* cover "acts by foreigners on the high sea against victims who were not Americans. . . ."²⁴ This provision was extended to prior piracies by an Act of May 15, 1820,²⁵ which also

expressly makes it "piracy" with a penalty of death for Americans to be engaged in the slave trade abroad or to detain a "negro" or "mulatto" with the intent to enslave. . . . This use of the word "piracy" in connection with the international slave trade

20. Act of Mar. 3, 1819, ch. 77, 3 Stat. 510 (An Act to protect the commerce of the United States, and punish the crime of piracy) [hereinafter Act of 1819].

21. Most of these relate to provisions in 33 U.S.C. §§ 381-387 (1988).

22. Act of 1819, *supra* note 20, § 5 (section 6 of the Act limited the time that the provisions of the Act of 1819 would remain in force to "the end of the next session of Congress.")

23. *United States v. Palmer*, 16 U.S. (3 Wheat.) 610 (1818).

24. A. RUBIN, *supra* note 3, at 141; *see also id.* at 140-42, 158-59. According to Chief Justice Marshall,

[t]he constitution having conferred on congress the power of defining and punishing piracy, there can be no doubt of the right of the legislature to enact laws punishing pirates, although they may be foreigners, and may have committed no particular offense against the United States. The only question is, has the legislature enacted such a law? . . . [No.] [N]o general words of a statute ought to be construed to embrace [offenses] when committed by foreigners against a foreign government.

Palmer, 16 U.S. (3 Wheat.) at 630-31, 632-33, *quoted in* A. RUBIN, *supra* note 3, at 141. *See also A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894 ("Questions as to the scope of Section 8 of the Act of 1790 led to the enactment of a new provision in the Act of March 3, 1819 [Section 5].")

25. Act of May 15, 1820, §§ 1-2, 3 Stat. 600 (An Act to continue in force "An act to protect the commerce of the United States, and punish the crime of piracy," and also to make further provisions for punishing the crime of piracy) [hereinafter Act of 1820]. The statement in *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894, that "the latter legislation [Act of 1820] permitted Section 5 of the Act of 1819 to expire" appears to be inaccurate. Act of 1820, § 2, reads in pertinent part: "That the fifth section of the said act [of 1819] be, and the same is hereby continued in force, as to all crimes made punishable by the same, and heretofore committed, in all respects or fully as if the duration of the said section had been without limitation." It is the case, however, that this section precluded the operation of § 5 of the Act of 1829 against any *subsequent* piracies. *But see* A. RUBIN, *supra* note 3, at 144-45.

presumably represents an attempt . . . to develop the international law, as the "law of nations," by changing the municipal law of the United States, using the label, and hoping that other states in the international legal order would follow suit. To the extent that was the aim, it failed.²⁶

Another provision of the Act of 1820, section 3, also appears to have resulted from the Court's decision in *United States v. Palmer*.²⁷ During the 1830s and 1840s, two acts had ramifications

26. A. RUBIN, *supra* note 3, at 147-48. See also *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894; Act of 1820, *supra* note 25, §§ 4, 5. According to section 4:

[I]f any citizen of the United States, being of the crew of ship's company of any foreign ship or vessel engaged in the slave trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned in the whole or part, or navigated for, or in behalf of, any citizen or citizens of the United States, shall land, from any such ship or vessel, and, on any foreign shore, seize any negro or mulatto, not held to service or labour by the laws of either of the states or territories of the United States, with intent to make such negro or mulatto a slave, or shall decoy, or forcibly bring or carry, or shall receive such negro or mulatto on board any such ship or vessel with intent as aforesaid, such citizen or person shall be adjudged a pirate; and, on conviction thereof shall suffer death.

Section 5 continues:

That if any citizen of the United States, being of the crew or ship's company of any foreign ship or vessel engaged in the slave trade, or any person whatever, being of the crew or ship's company of any ship or vessel, owned wholly or in part, or navigated for, or in behalf of, any citizen or citizens of the United States, shall forcibly confine or detain, or aid and abet in forcibly confining or detaining, on board such ship or vessel, any negro or mulatto not held to service by the laws of either of the states or territories of the United States, with intent to make such negro or mulatto a slave, or shall, on board any such ship or vessel, offer or attempt to sell, as a slave, any negro or mulatto not held to service as aforesaid, or shall, on the high seas, or anywhere on tide water, transfer or deliver over, to any other ship or vessel, any negro or mulatto, not held to service as aforesaid, with intent to make such negro or mulatto a slave, or shall land, or deliver on shore, from on board any such ship or vessel, any such negro or mulatto, with intent to make sale of, or having previously sold, such negro or mulatto, as a slave, such citizen or persons shall be adjudged a pirate; and, on conviction thereof . . . shall suffer death.

27. See REV. STAT. U.S. § 5370 (1878), which cites both to the Act of 1820 and the preceding case of *United States v. Palmer*. With its emphasis on *robbery*, this section is obviously related to the court's consensus in *Palmer*

[t]hat . . . the crime of *robbery*, committed by a person on the high seas, on board of any ship or vessel belonging exclusively to subjects of a foreign state, or persons within a vessel belonging also exclusively to the subjects of a foreign state, is not piracy within the true intent and meaning of the act [of 1790, section 8] . . . and is not punishable in the courts of the United States.

Palmer, 16 U.S. (3 Wheat.) at 632, *quoted in* A. RUBIN, *supra* note 3, at 141-42 (emphasis added). Section 3 of the Act of 1820 reads:

That, if any person shall, upon the high seas, or in any open roadstead, or in any haven, basin, or bay, or in any river where the sea ebbs and flows, commit the crime of robbery, in or upon any ship or vessel, or upon any of the ship's company of any ship or vessel, or the lading thereof, such person shall be adjudged to be a pirate: and, being thereof convicted before the circuit court of the United States for the district into which he shall be brought, or in which he shall be found, shall suffer death. And if any person engaged in any piratical cruise or enterprise, or being of the crew or ship's company of any piratical ship or vessel, shall land from such ship

for early piracy statutes. One of the new laws, passed in 1835, changed the death penalty for revolt or mutiny under section 8 of the Act of 1790 from death to a fine and imprisonment.²⁸ The other, section 5 of the Act of 1846, also *appears* to have reduced punishment for a crime under the Act of 1790.²⁹

or vessel, and, on shore, shall commit robbery, such person shall be adjudged a pirate: and on conviction thereof before the circuit court of the United States for the district into which he shall be brought, or in which he shall be found, shall suffer death: *Provided*, That nothing in this section contained shall be construed to deprive any particular state of its jurisdiction over such offences, when committed within the body of a county, or authorize the courts of the United States to try any such offenders, after conviction or acquittance, for the same offence, in a state court.

Prof. Rubin offers a convincing interpretation of these changes in terms of the conflicting legal philosophies of the day:

It seems likely that the Supreme Court's difficulties dealing with these cases reflected a deep jurisprudential split between Story and Washington, the "naturalists," taking an expansive view of American jurisdiction to apply an international law of "piracy" to foreigners who interfered with foreign shipping in disregard of the legal order's normal demand for some "standing" in the state whose judicial arm had the accused "pirates" before it, and the "positivists," Johnson and Marshall, who insisted that, regardless of judges' perceptions of abstract "justice," "reason" or the presumed needs of society, the jurisdiction of the American courts was restricted to such cases as the Congress by legislation had given to it, and who interpreted the intention of the Congress narrowly. The compromise as of 1820 was to allow jurisdiction in those cases in which American "standing" could be supported in the usual way plus those in which no other state in the international legal order could assert a greater "standing" or legal interest. The limits of this approach were reached when the defendants derived their authority for committing depredations at sea from commissions issued by unrecognized foreign officials; the "naturalists" wanted to consider those cases as within American judicial purview, the "positivists" did not.

A. RUBIN, *supra* note 3, at 163. Morrison's statement that section 3 was drafted to replace section 5 of the Act of 1819 (for subsequent crimes), see *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894, can be seen to support Rubin's concept of a "compromise" with a retention of jurisdiction, but disappearance of any reference to the "law of nations." Morrison goes on to note that "[i]n spite of the overlapping between this section [3] and Section 8 of the Act of 1790, both remained upon the statute books." *Id.*

28. Act of Mar. 3, 1835, § 1, 4 Stat. 775 (An Act in amendment of the acts for the punishment of offences against the United States) [hereinafter Act of 1835]. While the *punishment* was changed, *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894, is incorrect in implying that reference to the 1790 offense as piracy had been abolished.

29. See *supra* note 14 and accompanying text. Act of Aug. 8, 1846, § 5, 9 Stat. 72 (An Act to regulate the proceedings in the Circuit and District Courts of the United States, and for other Purposes) [hereinafter Act of 1846]. Section 5 reads:

That if any captain, or other officer or mariner, of a ship or vessel on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, shall piratically or feloniously run away with any such ship or vessel, or any goods or merchandise on board such ship or vessel to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate, every such person so offending shall be deemed guilty of felony, and, on conviction thereof, shall be punished by fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both, according to the nature and aggravation of the offense.

See also *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 894-95. While it is true that the definite identification of the offender as a pirate is not present, his conduct may still be "piratical" under the Act of 1846. Nor is it clear that section 8 of the Act of 1790 has been superseded. No mention is made of deleting this precursor. Additionally the

The Piracy Act of 1847 derives from the Mexican War of 1846-48. "At that time the United States, as a matter of municipal law, extended the treatment as 'pirates' even to foreigners acting under valid commissions by foreign governments if those commissions were inconsistent with the provisions of a treaty to which the United States is a party. . . ."30

Incredible as it may appear, the above acts incorporate the bulk of the substantive *piracy* provisions of Chapter 81.³¹ While subsequent years have seen revisions in the *arrangement* of these statutes,³² their general *content* has remained largely unchanged for over a century and a half!³³ At the same time, this period, particu-

former act reads "piratically *and* feloniously" rather than "piratically *or* feloniously." Still, it does appear that the *intent* was to provide a milder response to the crime.

30. A. RUBIN, *supra* note 3, at 155. According to the Act of Mar. 3, 1847, 9 Stat. 175 (An Act to provide for the Punishment of Piracy in certain Cases) [hereinafter Act of 1847], any subject or citizen of any foreign State, who shall be found and taken on the sea, making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the State of which such person is a citizen or subject, when by such treaty such acts of such person are declared to be piracy, may be arraigned, tried, convicted, and punished before any circuit court of the United States for the district into which such person may be brought, or shall be found, in the same manner as other persons charged with piracy may be arraigned, tried, convicted, and punished in said courts.

Act of 1847. This appears to have been due to the threat of Spanish privateers in the Mediterranean, acting under commissions from the Mexican government during the latter's war with the United States. See 2 J. MOORE, A DIGEST OF INTERNATIONAL LAW 972-73 (1906); Menefee, *Terrorism at Sea: The Historical Development of an International Legal Response*, in *VIOLENCE AT SEA*, *supra* note 5, at 207 n.22. See also the section on "United States of America" in *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 895.

31. Relevant non-piracy provisions will be discussed below under "Chapter 81 and Its Problems."

32. Cf. 60 REV. STAT. U.S. § 5339 ff (1878) [hereinafter REVISED STATUTES]; Act of Mar. 4, 1909, 35 Stat. 1088, 1145 (An Act to codify, revise, and amend the penal laws of the United States) [hereinafter Act of 1909]; Act of June 25, 1948, 62 Stat. 683, 744 (An Act to revise, codify and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure") [hereinafter Act of 1948].

33. *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 895-96 notes only the following substantive changes:

- Revising the provisions of section 5 of the Act of 1819 in the REVISED STATUTES, *supra* note 32, (*but see supra* note 25, noting that this had never been superseded—the section was thus still in force, but was made applicable to occurrences *subsequent* to 1820);
- Broadening the definition of individuals considered to be pirates due to their participation in the slave trade from that given in sections 4 and 5 of the Act of 1820 to that given in the REVISED STATUTES (from "any citizen of the United States" to "[e]very person");
- Changing the death penalty under the Act of 1790 to "imprisonment at hard labor for life" (in Act of Jan. 15, 1897, 29 Stat. 487 (An Act to reduce the cases in which the penalty of death may be inflicted) [hereinafter Act of 1897]);
- Changing the penalty under the Act of 1897 to "imprisonment for life" in the Act of 1909;

larly the half-century since the Second World War, has seen important changes in occurrences of violence at sea. The 1856 Declaration of Paris,³⁴ for example, virtually put an end to privateering.³⁵ While the United States did not accede to this document, it has generally followed its provisions,³⁶ and the overall disappearance of privateering from international law³⁷ itself points up the obsolescent nature of much of Chapter 81. As some scholars have pointed out, an *emerging* problem has been the takeover of vessels by passengers for political purposes.³⁸ The ancestry of the *Achille Lauro* stretches back to the *Santa Maria*, the *Falke*, the *Montezuma*, numerous American Civil War seizures, and the *Cagliari*.³⁹ All of these takeovers occurred *after* the last substantive revision of Chapter 81. The problem of localized piracy, seemingly confined to the Aegean,⁴⁰ the South China Sea,⁴¹ and Malay Archipelago⁴² after the

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- Repealing the sections derived from section 8 of the Act of 1790 (dealing with robbery on the seas) and section 3 of the Act of 1820 in the Act of 1909, leaving only a section based on section 5 of the Act of 1819 (given new teeth, by the REVISED STATUTES);
 - Changing sections dealing with accessories before the fact to remove references to piracy in the Act of 1909;
 - Enacting a *general* section "providing in broad terms that whoever directly commits any act constituting an offence defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal." Act of 1909, § 332.

A review of the Act of 1948 *suggests* the general correctness of Morrison's statement that "[i]n the new United States Code, which has not yet been finally adopted, no material changes have been made in the law relating to piracy." *A Collection of Piracy Laws in Various Countries*, *supra* note 7, at 896. (One possible exception is section 1660 which appears to be closely related to section 11 of the Act of 1790, but which does not appear in the Piracy section of the REVISED STATUTES or the Act of 1909.)

34. See generally F. STARK, *THE ABOLITION OF PRIVATEERING AND THE DECLARATION OF PARIS (1897)*. See also Menefee, *Terrorism at Sea*, *supra* note 30, at 191; C. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 439-40 (1954); T. BOWLES, *THE DECLARATION OF PARIS OF 1856 (1900)*; Malkin, *The Inner History of the Declaration of Paris [1927]* BRIT. Y.B. INT'L L. 1 (1927); 2 J. MOORE, *supra* note 30, at 561-83.

35. See F. STARK, *supra* note 34, at 139-60; C. COLOMBOS, *supra* note 34, at 439-40; T. BOWLES, *supra* note 34, at 100; E. MACLAY, *A HISTORY OF AMERICAN PRIVATEERS* 503-04 (1924).

36. See F. STARK, *supra* note 34, at 147-52, 154-56; C. COLOMBOS, *supra* note 34, at 439-40, 472-73; E. MACLAY, *supra* note 35, at 503-04; 2 J. MOORE, *supra* note 30, at 552-58, 563-83.

37. See C. COLOMBOS, *supra* note 34, at 472-73.

38. See Birnie, *Piracy, Past, Present and Future*, 11 MARINE POLICY 163, 174-76 (1987); Menefee, *supra* note 30, at 198-201; Menefee, *Piracy, Terrorism and the Insurgent Passenger: A Historical and Legal Perspective* in MARITIME TERRORISM AND INTERNATIONAL LAW 43 (N. Ronzitti ed. 1990).

39. See Menefee, *supra* note 30, at 194, 198-201, 206 n.14; Menefee, *supra* note 38, at 43-47.

40. See Menefee, *Scourges of the Sea: Piracy and Violent Maritime Crime*, in 1 MARINE POLICY REPORTS 13, 14 (1989); PIRACY IN THE LEVANT 1827-8 (C. Jones ed. 1934).

41. See Menefee, *supra* note 40, at 14; D. MURRAY, *PIRATES OF THE SOUTH CHINA*

Caribbean "campaign" of the 1820s and 1930s,⁴³ has broken out anew in the post-War years. Clusters of piratical activity are found in West Africa, the Malaccan Straits area, the Philippines, and the Caribbean, not to mention in ports such as Santos, Brazil.⁴⁴ Often, the objects of the assaults are United States vessels, cargos, or nationals.⁴⁵ At the very least, these activities should call for a *review* of Chapter 81, as the issue is not a *theoretical* one, but a contemporary problem affecting American lives and property.

Finally, there are developments undreamed of by the drafters of the Code's piracy statutes. Submarines, offshore platforms, pipelines and cables have widened the sphere of potential maritime operations.⁴⁶ Bombs allow for "remote-controlled mayhem," while telephones have opened the floodgates to *threatened* actions.⁴⁷ The rise of environmental issues (and, unfortunately, of environmental extremists) have provided new incentives for maritime violence. In the last fifteen years, for example, six whaling vessels have been attacked (and five sunk) in protests against depletion of cetaceans. Sealing, fishing, ocean dumping, and nuclear energy provide lightning-rods for similar potential outbursts.⁴⁸ The international law of

COAST 1790-1810 (1987). *See also* BOK, *CORSAIRS OF THE CHINA SEAS* (1936); A. COURSE, *PIRATES OF THE EASTERN SEAS* (1966); G. FOX, *BRITISH ADMIRALS AND CHINESE PIRATES 1832-1869* (1940); J. HAY, *THE SUPPRESSION OF PIRACY IN THE CHINA SEA, 1849 (1889)*; A. LILIUS, *I SAILED WITH CHINESE PIRATES* (1930); F. LOVIOT, *A LADY'S CAPTIVITY AMONG CHINESE PIRATES IN THE CHINA SEAS* ([c.1860]); H. MILLER, *PIRATES OF THE FAR EAST* (1970); C. NEUMANN, *HISTORY OF THE PIRATES WHO INFESTED THE CHINA SEA, FROM 1807 TO 1810* (1831); B. SCOTT, *AN ACCOUNT OF THE DESTRUCTION OF THE FLEETS OF THE CELEBRATED PIRATE CHIEFTAINS* (1851).

42. *See* H. KEPPEL, *EXPEDITION TO BORNEO OF H.M.S. DIDO FOR THE SUPPRESSION OF PIRACY* (1968); A. RUBIN, *PIRACY, PARAMOUNCY AND PROTECTORATES* (1974); O. RUTTER, *THE SEA WIND: TALES OF THE SEA—ROBBERS OF MALAYA* (1930); A. COURSE, *supra* note 41.

43. *See* Menefee, *supra* note 40, at 14 (misprinted as "1820's and 1930's"); D. BUTTING, *THE PIRATES 178-87* (1978); P. GOSSE, *THE HISTORY OF PIRACY 213-31* (1946); R. WARD, *PIRATES IN HISTORY 157-58* (1974). *See also* F. BRADLEE, *PIRACY IN THE WEST INDIES AND ITS SUPPRESSION* (1923); G. ALLEN, *OUR NAVY AND THE WEST INDIAN PIRATES* (1927); Calkins, *The Repression of Piracy in the West Indies, 1824-25*, in 37 UNITED STATES NAVAL INSTITUTE PROCEEDINGS 1197 (1911); Goodrich, *Our Navy and the West Indies Pirates: A Documentary History*, 42 UNITED STATES NAVAL INSTITUTE PROCEEDINGS 1171, 1461, 1923 (1916); 43 UNITED STATES NAVAL INSTITUTE PROCEEDINGS 84, 312, 483, 683, 1197, 1449, 1727, 2023 (1917).

44. *See* Menefee, *supra*, note 40, at 16-20, 21-23; Hyslop, *Contemporary Piracy*, in *PIRACY AT SEA*, *supra* note 5, at 8-20; R. VILLAR, *supra* note 4; I.M.B. FIRST REPORT, *supra* note 5; I.M.B. SECOND REPORT, *supra* note 5; I.M.B. THIRD REPORT, *supra* note 5.

45. *See generally* Menefee, *supra* note 40.

46. *See generally* Nyhert & Kessler, *Ocean Vessels and Offshore Structures*, in A. EVANS & J. MURPHY, *LEGAL ASPECTS OF INTERNATIONAL TERRORISM* 187 (1978).

47. *See* Menefee, *Terrorism, Extortion, and the Cruise Industry*, in ASIS, *supra* note 6, at 26-27.

48. *See* Menefee, *Maritime Terror in Europe and the Mediterranean*, 12 *MARINE*

piracy has been at least *partially*⁴⁹ codified in the 1958 Geneva Convention on the High Seas and in its successor, the 1982 Convention on the Law of the Sea.⁵⁰ But, during this century and a half of change and development, the United States Code provisions on piracy have remained frozen.

II. CHAPTER 81 AND ITS PROBLEMS

In examining Chapter 81 and its problems, it seems most useful to proceed with a section by section review of the law as it now stands. The criticisms and comments offered herein do not pretend to be complete, but should indicate some problems with the Code provisions as they exist, and will, hopefully, provide a basis for future discussion.

A. Section 1651: Piracy Under Law of Nations⁵¹

This section is obviously derived from section 5 of the Act of March 3, 1819. The only major difference is that life imprisonment has been substituted for the death penalty.⁵² The provision raises two questions. First, if the 1958 Convention on the High Seas and its successor, the 1982 Convention, are judged to be the *complete and exclusive* codification of the intended crime of piracy, section 1651 would *not* cover all cases of piracy "against a ship, aircraft, persons or property in a place outside the jurisdiction of any State."⁵³ Similarly, the specified high seas nexus might well *omit*

POLICY 143, 146-47 (1988).

49. For arguments that this codification was not complete and that a separate customary international law of piracy still exists, see Menefee, *The Achille Lauro and Similar Incidents as Piracy: Two Arguments*, in PIRACY AT SEA, *supra* note 5, at 179; and 2 D. O'CONNELL, THE INTERNATIONAL LAW OF THE SEA 970 (1984) ("[T]he question is open whether it is comprehensive so as to preclude reliance upon customary international law, where this may differ, or has superseded customary law.").

50. See Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200; 450 U.N.T.S. 82 (arts. 14-22) [hereinafter Convention on the High Seas]; United Nations Convention on the Law of the Sea, Dec. 10, 1982, U.N. Doc. A/CONF.62/122, reprinted in UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 206, 248-49 (M. Nordquist ed. 1985) (arts. 100-107) [hereinafter Convention on the Law of the Sea]. The Convention on the Law of the Sea has not yet entered into force.

51. See *infra* Appendix I: Piracy Provisions: United States Code, for the text.

52. See *supra* text at note 20 and notes 20, 33.

53. See *supra* note 49 and accompanying text. The quotation comes from Article 101 of the 1982 Convention which reads in pertinent part:

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

some acts "of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft"⁵⁴ or acts "of inciting or of intentionally facilitating" piratical acts.⁵⁵

If the two Conventions are *not* considered to be a definitive codification of the international law of piracy,⁵⁶ the question arises as to

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 acts done for public ends if they (1) otherwise satisfy the definition of paragraph (a) and (2) are directed toward ships, property, or nationals of third States neutral to the conflict;

(c) 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;

Convention on the Law of the Sea, *supra* note 50. See also Article 15 of the Convention on the High Seas, *supra* note 50. At the very least, piracy committed in Antarctica, which is covered by the Conventions, would *not* be included under section 1651. See 2 D. O'CONNELL, *supra* note 49, at 970-71; Menefee, *supra* note 38, at 60. While O'Connell states that "[p]aragraph (b) would apply, for example, in waters adjacent to Antarctica," 2 D. O'CONNELL, *supra* note 49, at 971, it is clear that *land-based* actions could also fall within the Conventions' ambit. See *id.* at 970-71 (noting that the International Law Commissions' 1956 Report "explained sub-paragraph (b) as referring to *terrae nullius*. . ."). Other possible areas falling under the broader international definition *might* include some drying reefs (although this appears less likely with the advent of 200 mile EEZ's) or, in certain circumstances, ice islands. All questions of "air piracy" or aerial hijacking will be left to one side in this discussion, as they are covered by another part of the United States Code. See 49 U.S.C.A. app. §§ 1472-1473 (1990).

54. See Convention on the Law of the Sea, *supra* note 50, art. 101(b); Convention on the High Seas, *supra* note 50, art. 15(2). Under section 1651, informed operation of a pirate ship or aircraft within an area *not* deemed to be high seas (i.e., *possibly* territorial waters) would not qualify a piracy under the *statute*, although it *would* "as defined by the law of nations." See also *supra* note 53, suggesting that acts in Antarctic waters would also not qualify as piracy in Chapter 81 as presently constituted.

55. See Convention on the Law of the Sea, art. 101(c), *supra* note 50; Convention on the High Seas, art. 15(3), *supra* note 50. Again, if these acts occurred on land or in other areas excluding the "high seas" as defined by American law, they would not be covered. See notes 54 & 58 and accompanying text.

56. See *supra* note 49 and accompanying text. See also Menefee, *supra* note 38, at 60-61 which states:

An argument may also be made that the *Achille Lauro* insurgents were guilty of piracy under customary international law. This would mean, of course, that the definitions of the 1958 and 1982 Conventions were not *exclusive*. Such a view is not as unorthodox as it might seem. D.P. O'Connell himself notes: "Article 15 is one of the least successful essays in codification of the Law of the Sea, and the question is open whether it is comprehensive so as to preclude reliance upon customary international law . . ." and again "[p]iracy remains a difficult legal concept, partly because of doubts as to the inclusiveness of the definition in Article 15 of the Geneva Convention of the High Seas. . . ." It is no more reasonable to argue that piracy is *exclusively* defined by the Convention than it would be to claim that those nations who are not party to the *Convention* do not therefore recognize piracy *jure gentium*. State practice is the key here. While it is true that one nation's characterization of insurgents as pirates has not always been recognized by others, it does not follow that it *may not* be so recognized, or that such a characterization is necessarily municipal rather than international in nature. The fact that piracy issues have been argued in *every* prior passenger takeover which has been investigated would suggest

what constitutes piracy "as defined by the law of nations." Would the Nyon Agreement qualify?⁵⁷ Would piratical acts *within* territorial waters? Could there be *conflicting* definitions, and if so, would *both* apply?

The worst problem with this section appears to be the use of the term "high seas." As used in section 1651, this does not appear to have the jurisdictional meaning which it has acquired in international law, but rather to attach to *any* waters beyond the low water mark.⁵⁸ It would therefore seem appropriate for the term to be used in its correct treaty sense or, alternately, to be dropped in any revision of section 1651.

B. Section 1652: Citizens as Pirates⁵⁹

This section derives from section 9 of the Act of April 30, 1790.⁶⁰ Its purpose was to cover acts of privateering by American citizens, but it has been wrenched out of context and this, plus a number of changes in circumstance, has resulted in several problems. The most obvious is the demise of privateering; people simply do not cruise on the seas "under color of any commission"⁶¹ to commit hostile acts against the United States or its citizens, to murder, or to rob. While politically-motivated crimes by American citizens still occur,⁶² the dwindling role of formalities in interna-

some justification for not recognizing the exclusivity of the *Convention* if its definition of piracy cannot be found to encompass the subject.

57. See Menefee, *supra* note 30, at 196-97; Birnie, *supra* note 38, at 168-69; Goldie, *Low Intensity Conflict at Sea*, 14 SYRACUSE J. INT'L L. 597, 616-21 (1988); Goldie, 1937 *Nyon Arrangement—1937 Geneva Agreement Supplementary to the Nyon Arrangement, Commentary*, in THE LAWS OF NAVAL WARFARE 489 (N. Ronzitti ed. 1988). The agreement analogized attacks on neutral ships by unidentified submarines (during the Spanish Civil War) to "acts of piracy."

58. See *United States v. Pirates*, 18 U.S. (5 Wheat.) 184 (1820); *United States v. Wilson*, 28 Fed. Cas. no. 16,731 (S.D.N.Y. 1856); *United States v. Gourlay*, 25 Fed. Cas. no. 15,241 (S.D.N.Y. 1823); *United States v. Ross*, Fed. Cas. no. 16,196 (C.C.R.I. 1813). See also A. RUBIN, *supra* note 3, at 137, which states:

It would appear from *U.S. v. Tully and Dalton* from the passage in *Molloy* cited by Judge Davis that the English conception of the jurisdiction of the Admiral in England, which extended to all navigable matters, was applied to foreign waters also, that the phrase "high sea" had a somewhat different meaning than it has today, when it is distinguished from territorial waters.

That this broad interpretation of the phrase "high sea" was in fact the interpretation held by Story and other expansive interpreters of the law needed to suppress "piracy" seems clear. (Footnotes omitted).

But see *United States v. Kessler*, 26 Fed. Cas. no. 15,528 (C.C. Pa. 1829); A. RUBIN, *supra*, note 3, at 170-71.

59. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

60. See *supra* note 15 and accompanying text.

61. 18 U.S.C. § 1652 (1988).

62. See 2 D. O'CONNELL, *supra* note 49, at 973 n.265 ("When U.S. mutineers di-

tional law make it desirable to omit specific references to commissions from a revised statute. At the same time, bearing in mind the possibility of ideological crimes which are *non-political* in nature,⁶³ thought should be given to a more expansive description of the criminal mind-set involved.

Another tangle arises from the reference to "any murder or robbery, or any act of hostility against the United States, or against any citizen thereof."⁶⁴ As currently phrased, *all murders or robberies* by U.S. citizens falling under the terms of the statute would be included, but *only those other acts of hostility directed against the United States or its citizens* are covered by this section. The murder or robbery of a British passenger by an American for political purposes would thus appear to be covered by this section of the Code, but *not* his kidnap or torture. A decision should be made as to whether only political crimes by Americans against the United States or fellow citizens should be covered, or whether it is desirable that maritime political crimes against *any* nation or national by an American should fall within the Code's ambit.

There are again questions of jurisdiction.⁶⁵ In addition to the problems of terminology, the extension of territorial waters and Exclusive Economic Zones means that fewer crimes will be committed *outside* national jurisdiction.⁶⁶ It must therefore be decided whether cases occurring *within* national jurisdiction should be left to the jurisdiction of the coastal state, or whether the United States should preserve at least the *option* of exerting its own jurisdiction. Finally, one must consider whether only *citizens* should be covered by this section, or whether others, such as resident aliens, should be included as well.

verted the American ship *Columbia Eagle* to Cambodia [during the Vietnam War], the U.S. did not demand their return for piracy but when one of them returned voluntarily he was charged, *inter alia*, with piracy under the U.S.C. . . . He was convicted only of mutiny and assault. . . .").

63. These include the actions of environmental extremists, mentioned *supra* note 48 and accompanying text.

64. 18 U.S.C. § 1652 (1988).

65. See *supra* note 58 and accompanying text. While no discussion of this is given in the U.S.C.A., it will be *assumed* that the use of the term "high seas" is consistent throughout Chapter 81. Should this *not* be the case, further problems would, of course, arise.

66. See Menefee, *Foreward*, in I.M.B. THIRD REPORT, *supra* note 5, at ii ("[t]he redefinition of high seas . . . to exclude economic zones and archipelagic waters substantially reduced theoretical jurisdiction over piracy as defined in international law."). See also Birnie, *supra* note 38, at 171-73 (agreeing on the problem of jurisdiction, but not on the question of the EEZ's status).

C. Section 1653: Aliens as Pirates⁶⁷

Section 1653 is a direct descendent of the Act of March 3, 1847.⁶⁸ While its title and positioning suggest that it is intended as a counter-point to section 1652, several differences prevent the two statutes from serving as mirror images. First, the provision that the individual must be "a citizen or subject of [a] foreign state"⁶⁹ could allow a *stateless* alien to escape punishment.⁷⁰ Next, the requirement that the individual be "found and taken on the sea"⁷¹ disallows any possibility of later capture on land, regardless of whether the national's country assents to extradition, the individual is apprehended in a third county, or capture occurs within the territorial (dry land) confines of the United States itself! Finally, there may (or may not) be a difference between the term "high seas" and "sea."⁷²

Again returning to changed concepts, "making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same,"⁷³ has a nineteenth century flavor which has not "kept" well. It would be far more to the point to speak of ideologically or politically motivated actions. Similarly, the *absence* of a bilateral (or multilateral) treaty declaring certain acts to be piracy should not permit the citizens of any particular state to "cruise" with impunity.⁷⁴ Following such logic, the term "Barbary pirates" would be an oxymoron!⁷⁵ As in prior sections,⁷⁶ the *extent* of jurisdiction is also open to question. Should the current "high seas" jurisdiction (assuming that is what is meant by "sea") be retained, or should a different scope of potential jurisdiction be contemplated?

67. See *infra* Appendix: Piracy Provision: United States Code, for the text.

68. See *supra* note 30 and accompanying text.

69. 18 U.S.C. § 1653 (1988).

70. Thus a stateless Palestinian resident of an Arab nation with treaty ties to the United States might not be found guilty of piracy in a United States court even if his conduct was in contravention of the treaty (assuming that he was not guilty of piracy according to the law of nations as referred to in 18 U.S.C. § 1651 (1988)).

71. 18 U.S.C. § 1653 (1988).

72. *Id.* There appears to be no case law discussing this issue, but it is at least arguable that "sea" could refer to *all* waters subject to tidal ebb and flow. See also *supra* notes 58 & 65 and accompanying text.

73. 18 U.S.C. § 1653 (1988).

74. See *id.* Arguably, these are just the states whose citizens would *need* a deterrent in the form of a United States status prohibiting piratical conduct.

75. See R. WARD, *supra* note 43, at 123 ("the Barbary rulers considered their corsairs as military units at war on the sea with any nation that did not have a treaty agreement with them.").

76. See *supra* notes 58, 65-66 and accompanying text.

D. *Section 1654: Arming or Serving as Privateers*⁷⁷

This section is based on section 4 of the Act of 1818.⁷⁸ Like section 1652, it deals with the problem of privateering by U.S. nationals under color of a commission,⁷⁹ and suffers from similar defects. In addition to problems with "privateering" itself,⁸⁰ and the limitation of the section to "citizen[s] of the United States,"⁸¹ section 1654, unlike section 1652, does *not* apply within U.S. territorial waters.⁸² Thus, some privateering activities by American citizens in American waters would be covered by the Code while *others* would not. The wording of the section, furthermore, makes it illegal to (intentionally) furnish a *vessel* for privateering purposes, but arguably does not cover the furnishing of *armaments*.⁸³ Similarly, the phrase, "with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States," is liable to varying interpretations.⁸⁴ Nor do the problems end here. "Whoever takes the command of or enters on board of any such vessel with such intent,"⁸⁵ *could* be taken as referring to an *intent to take command*, rather than an intent to cruise against United States citizens or property. It can also be argued that, as phrased, the purchaser of an interest in a privateer need not buy with *intent* that the boat cruise against American targets to be liable under the penalties of law.⁸⁶

77. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

78. Act of Apr. 20, 1818, § 4, 3 Stat. 447, 448 (An Act in addition to the "Act for the punishment of certain crimes against the United States"). Section 4 reads in pertinent part:

That if any citizen or citizens of the United States shall, without the limits thereof, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid or be concerned in the furnishing, fitting out, or arming, any private ship or vessel of war, or privateer, with intent that such ship or vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or shall take the command of, or enter on board of any such ship or vessel, for the intent aforesaid, or shall purchase any interest in any such ship or vessel, with a view to share in the profits thereof, such person, so offending, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years; and the trial for such offence, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

79. See *supra* note 58 and accompanying text.

80. See *supra* notes 61-63 & 73 and accompanying text.

81. 18 U.S.C. § 1654 (1988).

82. See *id.*; 18 U.S.C. § 1652 (1988); *supra* notes 65-66 and accompanying text.

83. See 18 U.S.C. § 1654 (1988).

84. *Id.* In particular, it is unclear whether *specific* intent is called for, or whether a *general* intent would be deemed sufficient to bring an activity under the purview of the statute.

85. 18 U.S.C. § 1654 (1988).

86. *Id.*

*E. Section 1655: Assault on Commander as Piracy*⁸⁷

The origin of this provision dates back to the first substantive American law on piracy, the Act of April 30, 1790.⁸⁸ While this section is fairly straightforward, it is interesting that it only includes the *crew* of a vessel and not its *passengers*. In light of several passenger-led takeovers,⁸⁹ one might question the wisdom of this exclusion. Additionally, the appropriateness of unrestrained jurisdiction as to locale and perpetrators is also open to challenge.⁹⁰

*F. Section 1656: Conversion or Surrender of Vessel*⁹¹

Like section 1655, section 1656 derives from the 1790 "Act for the Punishment of Certain Crimes Against the United States."⁹² It is interesting, however, that although the original statute arguably made no territorial restrictions for this crime, and while section 1655 has no spatial restrictions, section 1656 is limited to vessels "upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States. . . ."⁹³ As in the case of the former section, no provision is made for crimes committed by *passengers*.⁹⁴

*G. Section 1657: Corruption of Seamen and Confederating with Pirates*⁹⁵

This section is based on section 12 of the Act of 1790.⁹⁶ In addition to lacking spatial restrictions and not requiring any American nexus, section 1657 seems to be *generally* obsolete with regard to piratical actions affecting United States interests.⁹⁷ It is also questionable whether the "confining" of the master by a member of the crew has any proper connection with "corruption" and "confederation."⁹⁸

87. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

88. Act of 1790, *supra* note 14, § 8.

89. See *supra* note 38 and accompanying text.

90. See 18 U.S.C. § 1655 (1988). Theoretically, hindering in *any* place, by *any* person would be subject to United States jurisdiction.

91. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

92. See Act of 1790, *supra* note 14, § 8.

93. 18 U.S.C. § 1656 (1988).

94. See *id.*

95. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

96. See Act of 1790, *supra* note 14, § 12; *supra* note 18 and accompanying text.

97. See generally Menefee, *The United States and Post-War Piracy*, in PIRACY AT SEA, *supra* note 5, at 61.

98. See 18 U.S.C. § 1657 (1988). The confining of the master should more properly

H. Section 1658: Plunder of Distressed Vessel⁹⁹

This section derives from provisions of the Act of 1790 and a law of 1825.¹⁰⁰ One major problem appears to be the meaning of "upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States."¹⁰¹ Does this mean that the former specified locations may be *anywhere*, even outside normal American admiralty and maritime jurisdiction, or does use of the words "any other place" suggest that there is a clear jurisdictional limit to the ambit of the statute? Also, the emphasis in subsection (b) on *lights* neglects more recent navigational developments, in particular, the possibility of tampering with *other* sets of markers, or indeed with ship navigational devices or radio beacons. At the same time, it *may* be that willful obstruction of escape from a wreck is no longer a crime which bothers American shipping.

I. Section 1659: Attack to Plunder Vessel¹⁰²

Section 1659 of the Code is also derived from the Act of 1825.¹⁰³ Once again there is the problem of "high seas" which formerly did not have the restrictive meaning which now attaches to the term.¹⁰⁴ Another question can be likened to the "one ship/two ships" controversy in international law.¹⁰⁵ Does this provision's language, "maliciously attacks or sets upon any vessel belonging to another,"¹⁰⁶ implicitly *exclude* "same ship" robberies? While the wording is not so compelling as the Convention on the High Seas' reference to "acts against another ship or aircraft,"¹⁰⁷ it is subject to a similarly restrictive interpretation.¹⁰⁸

be considered along with the topic of mutiny. See 18 U.S.C. §§ 2192-2193 (1989).

99. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

100. See Act of 1790, *supra* note 14, § 16; and Act of Mar. 3, 1825, § 9, 4 Stat. 115 (An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes) [hereinafter Act of 1825].

101. 18 U.S.C. § 1658 (1988).

102. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

103. See Act of 1825, *supra* note 100, § 6.

104. See *supra* notes 58, 65-66, 76 & 82 and accompanying text.

105. See Menefee, *supra* note 49, at 179; Menefee, *supra* note 38, at 60.

106. 18 U.S.C. § 1659 (1988).

107. Convention on the High Seas, *supra* note 50, art. 15(1)(a).

108. While it might be argued that no mention is made of a two-ship requirement, it is hard to see how a vessel could be "set upon" from itself.

J. Section 1660: Receipt of Pirate Property¹⁰⁹

This provision *appears* to find its source in section 11 of the Act of 1790 and section 8 of the Act of 1825.¹¹⁰ Again, like section 1655,¹¹¹ there is a wide (perhaps *too* wide) scope of spatial jurisdiction and of persons potentially falling under the section's provisions.

K. Section 1661: Robbery Ashore¹¹²

Section 1661, the last provision of chapter 81, can be traced back to section 3 of the Act of 1820.¹¹³ Again lacking limits as to places or persons involved,¹¹⁴ this provision is an extremely overbroad interpretation of piracy—largely irrelevant in the modern context, and potentially disruptive (from a jurisdictional standpoint) in those few cases where it might apply.¹¹⁵

Chapter 81 as it now exists suffers from certain defects, some of which have resulted from poor drafting, others from the piecemeal approach to the problem of piracy, and still others from changes in the world to which these laws must be applied. Many of the weaknesses are due to more than one and cause, and several have appeared again and again in our review of the statutes. These problems exist because of potential discrepancies with international law. In broad summary they are:

- The one ship/two ships problem
- The "private ends" problem
- The problem of defining "high seas"
- Problems of spatial jurisdiction
- Problems of jurisdiction over individuals
- Problems of jurisdiction over specific acts
- Coverage of problems no longer current
- Lack of coverage of current problems

Any successful revision of Chapter 81 must take *all* of these defects

109. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

110. See Act of 1790, *supra* note 14, § 11; *supra* note 17 and accompanying text; Act of 1825, *supra* note 100, § 8. While the Act of 1790 mentions piracy, the Act of 1825, surprisingly, does not.

111. See *supra* note 90 and accompanying text.

112. See *infra* Appendix: Piracy Provisions: United States Code, for the text.

113. See *supra* note 27 and accompanying text.

114. See *supra* notes 90 & 111 and accompanying text.

115. This appears to be a particularly egregious interference with the jurisdiction of other states as it could, for example, allow for trial *in the United States* of a Moro National Liberation Front member for a crime committed in Malaysia! See Menefee, *Terrorist Threat to Commerce in the Philippines*, 6 I.C.C. COMMERCIAL CRIME INTERNATIONAL 4 (Nov. 1988).

into consideration.

III. SUGGESTED DRAFT REVISIONS TO CHAPTER 81

As in the review of Chapter 81 as it now exists, the proposed revised draft of the piracy and privateering articles will be discussed section by section. Because of a general reorganization of the chapter in the suggested draft, these divisions are not necessarily comparable to their "predecessors." Again, it should be emphasized that this revision represents only one of *several* potential approaches to the problem, and is offered only as a basis for further discussion.

A. Section 1651: Piracy Under Law of Nations

Whoever commits the crime of piracy as defined by the law of nations and is afterwards brought into or found in the United States, shall be imprisoned not more than _____.

This section is derived from *former* section 1651,¹¹⁶ its placement reflecting the continuing importance of *piracy jure gentium* in the United States Code. The major change is the dropping of the phrase "on the high seas." If one accepts that the international crime of piracy has taken place *only* on the high seas, the phrase is clearly redundant. If, on the other hand, one embraces a customary scope *wider* than that defined in the 1958 or 1982 Conventions, retention of the phrase would severely diminish United States jurisdiction. It seems most appropriate to adapt the international crime *in toto* as a U.S. cause of action in a broad statute, and allow further U.S. interpretation of the international crime of piracy to develop before the courts. This has the additional advantage of flexibility, allowing for possible changes in *international* law on the subject without requiring further amendment to the Code.

B. Section 1652: Piracy Against United States Persons or Property

Whoever commits any illegal act of violence, detention, or depredation against a United States citizen, or resident alien, or his property, on board a ship or maritime structure and is afterwards brought into or found in the United States, shall be imprisoned not more than _____.

116. See *supra* notes 51-58 and accompanying text.

This provides for United States jurisdiction over piracies based on a nexus with the injured party or the property involved. Crimes against resident aliens as well as citizens are included and *all* maritime structures, not only vessels, are covered. While conflicts may occur when another flag state is involved or when the crime takes place in the territorial waters of another country, this section at least provides *grounds* for jurisdiction should the United States desire to institute proceedings.

C. Section 1653: Piracy within the Territorial Jurisdiction of the United States

Whoever commits some element of any illegal act of violence, detention, or depredation against a national or resident alien of any country, or his property, in waters or on board a ship or maritime structure within the territorial jurisdiction of the United States, shall be imprisoned not more than ____.

Paralleling the form of the new section 1652, this provides a second basis for U.S. piratical jurisdiction: occurrence within waters covered by American jurisdiction, or on a U.S. flag vessel or maritime structure subject to American law. While more restricted *geographically*, this section compensates by applying to a national or resident alien of *any* country, rather than only to United States citizens and residents.

D. Section 1654: Piracy by United States Citizen or Resident Alien

Whoever, being a United States citizen or resident alien or purporting to act under United States authority, commits any illegal act of violence, detention, or depredation against a national of any country, or resident alien, or his property, on board a ship or maritime structure, shall be imprisoned not more than ____.

Like the suggested revisions of sections 1652 and 1653, this section provides a third major ground of jurisdiction. Here, rather than the identification of the victim or property involved, or the place of occurrence being paramount, the important point is the nexus between the accused and the United States. In addition to citizens or resident aliens, those who commit their crimes under purported American authority are also held to have subjected themselves to potential United States jurisdiction.

E. Section 1655: Privateering

Whoever furnishes, fits out, arms, or serves in a privateer or private vessel engaged in public ends (including, but not limited to, the promotion of political causes) who commits any illegal act of violence, detention, or depredation against any individual or his property or any ship or maritime structure without the express authority of the United States government, when

a) The perpetrator of the act is a United States citizen or resident alien or purports to act under United States authority; or

b) The individual against whom the act is committed is a United States citizen or resident alien or the property, ship or maritime structure involved belongs to a United States citizen or resident alien; or

c) Some element of the act is committed within the territorial jurisdiction of the United States;

shall be imprisoned not more than _____, or fined not more than _____ if a reasonable person would have deemed that the act was likely to occur.

This is *generally* based on current section 1654.¹¹⁷ Its subsections parallel the three bases of jurisdiction for piracy offered in the new draft versions of sections 1652-1654: connections with the victim or object of the crime, connections with the locale where the crime took place, or connections with the criminal. It is also arguable that if the Declaration of Paris *did* abolish privateering in international law,¹¹⁸ that resort to this practice could be considered an *international crime* and, as such, could be punished *municipally* as a violation of the law of nations;¹¹⁹ but this has *not* been incorporated into the proposed draft section. One change which *has* been made is the expansion of the section to include *all* those guilty of violent illegal acts in support of "public ends" (i.e. *non-private* ends).¹²⁰

117. See *supra* notes 77-86 and accompanying text.

118. See *supra* notes 34-37 and accompanying text.

119. This would make privateering the equivalent of piracy, the slave trade, or, arguably, of gun or drug-running. Such a section could read:

Whoever commits the crime of privateering as defined by the law of nations and is afterwards brought into or found in the United States shall be imprisoned not more than _____.

Alternatively, new section 1651 could be changed to read "the crimes of piracy or of privateering."

120. The section has thus been found to incorporate those acts of violence which would be deemed "non-piratical." Together with sections 1652-1654, these sections thus comprise a coherent whole in dealing with *municipal* crimes of violence. This would still leave a gap in the coverage of acts in support of "public ends" under *international* law, even if changes

This change would be in the spirit of 46 U.S.C.A. app. section 1806(1), calling for a review of "the adequacy of *domestic* and international sanctions against terrorists who seize or attempt to seize vessels."¹²¹ While its application to all public ends acts of violence (such as those committed by environmental extremists) might be controversial, the requirement that a reasonable person must have deemed the occurrence of the act to be likely should prevent *excessive* curtailment of legitimate protests.

F. Section 1656: Theft or Conversion of Vessel, Maritime Structure, Cargo or Effects

Whoever, being a captain, officer, crewman, or passenger of a vessel or owing any duty of care to its cargo, or having any legal responsibility for a maritime structure and its effects, assists in the theft or conversion of said vessel, cargo, structure, or effects when

- a) The perpetrator is a United States citizen or resident alien or purports to be such; or
- b) The ship is a United States flag vessel or the ship or cargo has owners who are United States citizens or resident aliens or the maritime structure or its effects are owned by United States citizens or resident aliens; or
- c) Some element of the theft or conversion has been committed within the jurisdiction of the United States;

shall be imprisoned not more than _____ or fined not more than _____.

The new section 1656 derives from its predecessor.¹²² It again utilizes the three bases of jurisdiction which have appeared elsewhere in this draft revision,¹²³ allows for the possibility of passenger takeovers,¹²⁴ and has been broadened to include maritime structures other than ships. Additionally, the wording "assists in the theft or conversion," has been used to replace the earlier concepts of "piratically or feloniously run[ning] away" or "yield[ing] up such vessel voluntarily."¹²⁵

were made to incorporate the concept of privateering.

121. 46 U.S.C. app. § 1806(1) (1989).

122. See *supra* notes 91-94 and accompanying text.

123. See *supra* text accompanying notes 117-18.

124. See *supra* note 38 and accompanying text.

125. 18 U.S.C. § 1656 (1989).

G. *Section 1657: Intentional Wrecking or Plunder of a Vessel, Maritime Structure, or Cargo*

a) Whoever intentionally causes the wrecking of a vessel or maritime structure by act or omission, either directly or by modification or destruction of any marker or safety device; or

b) whoever intentionally plunders, steals, or destroys a vessel or maritime structure, or any money, goods, merchandise, or other effects belonging to it when said vessel or maritime structure is in distress, wrecked, lost, stranded, or cast away; or

c) whoever intentionally obstructs or interferes with the rescue of a person or persons aboard a vessel or maritime structure in distress, wrecked, lost, stranded, or cast away, or, the legal salvage of such a vessel or maritime structure, or of the money, goods, merchandise, or other effects aboard it;

when the perpetrators are, or purport to be, United States citizens or resident aliens, when the vessel is registered under the United States flag, or when vessel, maritime structure, money, goods, merchandise, or other effects are owned by United States citizens or resident aliens, or when the intentional act, omission, or obstruction is committed within the jurisdiction of the United States, shall be imprisoned not more than ____ or fined not more than ____.

More inclusive than either sections 1658 or 1659 of chapter 81 as it now exists,¹²⁶ the new section 1657 incorporates provisions of both its predecessors while retaining the three-pronged jurisdictional test used in earlier sections.¹²⁷ Provision is made to cover the destruction of markers or safety devices other than lights, to include maritime structures as well as vessels, and to punish *intentional* acts of omission as well as of commission.

H. *Section 1658: Knowing Receipt of an Illegally-Acquired Vessel, Maritime Structure, or Property*

Whoever knowingly receives or acquires a vessel, maritime structure, or property illegally converted or obtained by action falling under any section of this chapter shall be imprisoned not more than ____ or fined not more than ____.

Draft section 1658 is based on "former" section 1660, dealing with receipt of pirate property.¹²⁸ The scope of this section has been

126. See *supra* notes 99-108 and accompanying text.

127. See *supra* notes 117-18 and accompanying text.

128. See *supra* notes 109-11 and accompanying text.

theoretically expanded to cover goods knowingly received from other criminals besides robbers and pirates (including privateers and wreckers), thus meshing the section with all actions made criminal under previous sections.

I. Section 1659: Attempts

Whoever attempts any act which, if committed, would constitute a crime under any section of this chapter, shall be imprisoned not more than ____ or fined not more than ____.

This new section collects the scattered mentions of *attempted* actions in current chapter 81¹²⁹ and combines them in a single provision applying to all unsuccessful actions which, if completed, would have constituted a crime under any provision of the chapter.

J. Section 1660: Accessories

a) Whoever knowingly assists any person or persons in the commission of any act which constitutes a crime under any section of this chapter shall be imprisoned not more than ____ or fined not more than ____.

b) Whoever knowingly assists any person in avoiding the consequences of an act which constitutes a crime under any section of this chapter shall be imprisoned not more than ____ or fined not more than ____.

This final section of the draft revision of chapter 81 is related to section 1657 of the current code.¹³⁰ Its two subsections, made applicable to all actions made criminal under the chapter, deal with accessories before and after the fact.

CONCLUSION

A general review of the background to 18 U.S.C. Chapter 81 has shown that the laws on piracy do *not* reflect recent developments in maritime law. Additionally, reactions to *prior* developments have resulted in a composite chapter of laws which, as the reviser noted, cry out for "a fundamental reconsideration and complete restatement," including "drastic changes by way of modification and expansion."¹³¹

Analysis of Chapter 81 as it currently exists reveals problems

129. See 18 U.S.C. §§ 1654, 1687 (1989).

130. See *supra* notes 95-98 and accompanying text.

131. See *supra* note 1 and accompanying text.

due to: a) potential discrepancies with international law, b) spatial jurisdiction, c) jurisdiction over individuals, and d) jurisdiction over specific acts, notably over those which no longer constitute problems and over those other practices which have arisen since the 1840s. In response to this, a suggested draft revision of Chapter 81 has been offered, including sections dealing both with international piracy (section 1651) and with *municipal* piracy based on jurisdiction over the victim or object of the crime (section 1652), over the locale where the crime took place (section 1653), or over the alleged offender (section 1654). Other provisions offer an expanded concept of privateering (section 1655), of theft or conversion (section 1656), and of intentional wrecking or plunder (section 1657). Finally, knowing receipt of objects obtained by illegal actions under this chapter (section 1658), attempts (section 1659), and accessories before or after the fact (section 1660), represent a final grouping of offenses, rounding off the coverage of piracy and related crimes of maritime violence under a modified code.

It is hoped that this evaluation will serve as a starting point for further discussions, resulting in a "yo heave ho!" of the outdated piracy provisions of the Code and their replacement with a coherent set of laws on the subject, "modified and restated in accordance with the needs of the times."¹³²

132. *Id.*

APPENDIX

PIRACY PROVISIONS: UNITED STATES CODE TITLE 18:
 CRIMES AND CRIMINAL PROCEDURE CHAPTER
 81—PIRACY AND PRIVATEERING

Sec.

- 1651. Piracy under law of nations.
- 1652. Citizens as pirates.
- 1653. Aliens as pirates.
- 1654. Arming or serving on privateers.
- 1655. Assault on commander as piracy.
- 1656. Conversion or surrender of vessel.
- 1657. Corruption of seamen and confederating with pirates.
- 1658. Plunder of distressed vessel.
- 1659. Attack to plunder vessel.
- 1660. Receipt of pirate property.
- 1661. Robbery ashore.

SECTION 1651. PIRACY UNDER LAW OF NATIONS.

Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

SECTION 1652. CITIZENS AS PIRATES.

Whoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is a pirate, and shall imprisoned for life.

SECTION 1653. ALIENS AS PIRATES.

Whoever, being a citizen or subject of any foreign state, is found and taken on the sea making war upon the United States, or cruising against the vessels and property thereof, or of the citizens of the same, contrary to the provisions of any treaty existing between the United States and the state of which the offender is a citizen or subject, when by such treaty such acts are declared to be piracy, is a pirate, and shall be imprisoned for life.

SECTION 1654. ARMING OR SERVING ON PRIVATEERS.

Whoever, being a citizen of the United States, without the limits thereof, fits out and arms, or attempts to fit out and arm or is con-

cerned in furnishing, fitting out, or arming any private vessel of war or privateer, with intent that such vessel shall be employed to cruise or commit hostilities upon the citizens of the United States or their property; or

Whoever takes the command of or enters on board of any such vessel with such intent; or

Whoever purchases any interest in any such vessel with a view to share in the profits thereof—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

SECTION 1655. ASSAULT ON COMMANDER AS PIRACY.

Whoever, being a seaman, lays violent hands upon his commander, to hinder and prevent his fighting in defense of his vessel or the goods intrusted to him, is a pirate, and shall be imprisoned for life.

SECTION 1656. CONVERSION OR SURRENDER OF VESSEL.

Whoever, being a captain or other officer or mariner of a vessel upon the high seas or on any other waters within the admiralty and maritime jurisdiction of the United States, piratically or feloniously runs away with such vessel, or with any goods or merchandise thereof, to the value of \$50 or over; or

Whoever yields up such vessel voluntarily to any pirate—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

SECTION 1657. CORRUPTION OF SEAMEN AND CONFEDERATING WITH PIRATES.

Whoever attempts to corrupt any commander, master, officer, or mariner to yield up or to run away with any vessel, or any goods, wares, or merchandise, or to turn pirate or to go over to or confederate with pirates, or in any wise to trade with any pirate, knowing him to be such; or

Whoever furnishes such pirate with any ammunition, stores, or provisions of any kind; or

Whoever fits out any vessel knowingly and, with a design to trade with, supply, or correspond with any pirate or robber upon the seas; or

Whoever consults, combines, confederates, or corresponds with any pirate or robber upon the seas, knowing him to be guilty of any piracy or robbery; or

Whoever, being a seaman, confines the master of any vessel—
Shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

SECTION 1658. PLUNDER OF DISTRESSED VESSEL.

a) Whoever plunders, steals, or destroys any money, goods, merchandise, or other effects from or belonging to any vessel in distress, or wrecked, lost, stranded, or cast away, upon the sea, or upon any reef, shoal, bank, or rocks of the sea, or in any other place within the admiralty and maritime jurisdiction of the United States, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

b) Whoever willfully obstructs the escape of any person endeavoring to save his life from such vessel, or the wreck thereof; or

Whoever holds out or shows any false light, or extinguishes any true light, with intent to bring any vessel sailing upon the sea into danger or distress or shipwreck—

Shall be imprisoned not less than ten years and may be imprisoned for life.

SECTION 1659. ATTACK TO PLUNDER VESSEL.

Whoever, upon the high seas or other waters within the admiralty and maritime jurisdiction of the United States, by surprise or open force, maliciously attacks or sets upon any vessel belonging to another, with an intent unlawfully to plunder the same, or to despoil any owner thereof of any moneys, goods, or merchandise laden on board thereof, shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

SECTION 1660. RECEIPT OF PIRATE PROPERTY.

Whoever, without lawful authority, receives or takes into custody any vessel, goods, or other property, feloniously taken by any robber or pirate against the laws of the United States, knowing the same to have been feloniously taken, shall be imprisoned not more than ten years.

SECTION 1661. ROBBERY ASHORE.

Whoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and commits robbery on shore, is a pirate, and shall be imprisoned for life.

