

2012

## Analyzing sources of extradition for pirates to Seychelles

Ramnik Samrao

Follow this and additional works at: [https://scholarlycommons.law.case.edu/war\\_crimes\\_memos](https://scholarlycommons.law.case.edu/war_crimes_memos)



Part of the [Criminal Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Samrao, Ramnik, "Analyzing sources of extradition for pirates to Seychelles" (2012). *War Crimes Memoranda*. 33.

[https://scholarlycommons.law.case.edu/war\\_crimes\\_memos/33](https://scholarlycommons.law.case.edu/war_crimes_memos/33)

This Memo is brought to you for free and open access by the War Crimes at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in War Crimes Memoranda by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.



CASE WESTERN RESERVE  
UNIVERSITY  
SCHOOL OF LAW

MEMORANDUM FOR THE ATTORNEY GENERAL OF SEYCHELLES

---

ISSUE: ANALYZING SOURCES OF EXTRADITION FOR PIRATES TO SEYCHELLES

---

Prepared by Ramnik Samrao

J.D. Candidate, May 2012

Spring Semester 2012



## TABLE OF CONTENTS

<u>Table of Contents</u> .....	i
<u>Table of Authorities</u> .....	iii
<u>I. ISSUE</u> .....	1
<u>II. SUMMARY OF CONCLUSIONS</u> .....	1
1. The only extradition treaty Seychelles has is with the United States.....	1
2. Seychelles has extradition agreements with many countries through the Commonwealth of Nations.....	2
3. The SUA Convention may provide for extradition of pirates.....	2
4. The AU Terrorism Convention may provide for extradition of pirates.....	2
5. The Hostage Taking Convention may provide for extradition of pirates.....	2
6. The Transnational Organized Crime Convention may provide for extradition of pirates.....	3
7. The European Union Naval Force provides Seychelles custody of pirates.....	3
8. The London Conference on Somalia has generated consensus and momentum for extradition arrangements where they are lacking in the region.....	3
<u>III. FACTUAL BACKGROUND</u> .....	4
<u>IV. ANALYSIS</u> .....	5
<u>A. Piracy and Extradition in Seychelles</u> .....	5
<u>B. Sources for Extraditing Pirates</u> .....	10
i. <u>Treaty Succession</u> .....	10
a. <u>Clean Slate Rule</u> .....	10
b. <u>Devolution Agreements</u> .....	11
c. <u>Modern Practice</u> .....	11
ii. <u>Commonwealth of Nations</u> .....	15
iii. <u>SUA Convention</u> .....	29
iv. <u>Organization for African Unity Convention on the Prevention and Combatting of Terrorism</u> .....	32
v. <u>International Convention Against the Taking of Hostages</u> .....	37
vi. <u>United Nations Convention Against Transnational Organized Crime</u> .....	39

<u>vii. Custody Through EU Relationship</u> .....	41
<u>viii. London Conference on Somalia</u> .....	43
<b><u>V. CONCLUSION</u></b> .....	45
<b><u>APPENDIX A</u></b> .....	49

## **TABLE OF AUTHORITIES**

### **BOOKS**

1. M. CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW, VOLUME II, MULTILATERAL AND BILATERAL ENFORCEMENT MECHANISMS (3d ed. 2008)
2. ROBIN GEISS AND ANNA PETRIG, PIRACY AND ARMED ROBBERY AT SEA: THE LEGAL FRAMEWORK FOR COUNTER-PIRACY OPERATIONS IN SOMALIA AND THE GULF OF ADEN (2011)
3. IVAN ANTHONY SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971)

### **CASES**

4. *Eain v. Wilkes*, 641 F.2d 504 (7th Cir. 1981), *cert. denied*, 454 U.S. 894 (1981)
5. *Hoxha v. Levi*, 465 F.3d 554 (3d Cir. 2006)
6. *Kastnerova v. United States*, 365 F.3d 980 (11th Cir. 2004)
7. *Koskotas v. Roche*, 931 F.2d 169 (1st Cir. 1991)
8. *Quinn v. Robinson*, 783 F.2d 776 (9th Cir. 1986)
9. *Republic v. Ali and Ten (10) Others*. Sey. Supreme Court, Crim. Side No. 14 (2010)
10. *Republic v. Dahir and Ten (10) Others*, Sey. Supreme Court, Crim. Side No. 51 (2009)
11. *Then v. Melendez*, 92 F.3d 851 (9th Cir. 1996)
12. *United States v. Shi*, 525 F.3d 709 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 324 (2008)

### **INTERNATIONAL AGREEMENTS**

13. Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led forces in the Republic of Seychelles in the framework of the EU military operation Atalanta, Eur.-Sey.
14. Exchange of Letters between the European Union and the Republic of Seychelles on the Conditions and Modalities for the Transfer of Suspected Pirates and Armed Robbers from EUNAVFOR to the Republic of Seychelles and for their Treatment after such Transfer, Eur.-Sey.
15. Organization for African Unity Convention on the Prevention and Combatting of Terrorism
16. United States-United Kingdom Treaty of 1931
17. 1038 U.N.T.S. 135 (1977)

18. 1958 Geneva Convention on the High Seas
19. 1978 Vienna Convention on Succession of States in Respect of Treaties
20. 1988 Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation
21. 2000 United Nations Convention Against Transnational Organized Crime

### **LEGISLATION**

22. Brunei Gazette, Feb. 9, 2006
23. Cyprus Criminal Code
24. Extradition Act
25. Extradition Act
26. Extradition Act
27. Extradition Act
28. Extradition Act
29. Extradition Act
30. Extradition Act
31. Extradition Act
32. Extradition Act
33. Extradition Act
34. Extradition Act
35. Extradition Act
36. Extradition Act
37. Extradition Act
38. Extradition Act, 1962
39. Extradition Act, 1962
40. Extradition Act, 1965

41. Extradition Act, 1972
42. Extradition Act 1974
- 42.1 Extradition Act 1974
43. Extradition Act 1974
44. The Extradition Act, 1974
45. Extradition Act 1975
46. Extradition Act, 1986
47. Extradition Act 1987
48. Extradition Act 1988
49. Extradition Act, 1990
50. Extradition Act, 1991
51. Extradition Act 1992
52. Extradition Act, 1993
53. Extradition Act, 1994
54. Extradition Act, 1996
55. Extradition Act 1999
56. Extradition Act 2003
57. Extradition Act 2003
58. Extradition Act 2003
59. Extradition Act 2004
60. Extradition Act 2010
61. Extradition (Commonwealth and Foreign Territories) Act
62. Extradition (Commonwealth Countries) Act
63. Extradition (Commonwealth Countries) Regulations 2010
64. Extradition (Designated Commonwealth Countries) Order 1991 (U.K. S.I. 1700 of 1991)



65. Extradition Law
66. Extradition of Fugitive Offenders Act 1973
67. Fugitive Offenders Act
68. Fugitive Offenders Act 1967
69. Fugitive Offenders (Commonwealth) Act, 1969
70. Ghana Penal Code
71. Guyana Criminal Code
72. Namibia Gazette, April 9, 1997
73. Uganda Extradition Act, 1964
74. Vanuatu Extradition Act, 2002
75. 1955 Seychelles Penal Code
76. 1966 Commonwealth Scheme for the Rendition of Fugitive Offenders
77. 1972 Extradition Act
78. 2002 London Scheme for Extradition Within the Commonwealth

### **NEWS ARTICLES**

79. *Britain Funds Seychelles Anti-Piracy Plan*, UNITED PRESS INT'L, (Feb. 23, 2012, 6:30 AM) [http://www.upi.com/Top\\_News/Special/2012/02/23/Britain-funds-Seychelles-anti-piracy-plan/UPI-71631329996600/](http://www.upi.com/Top_News/Special/2012/02/23/Britain-funds-Seychelles-anti-piracy-plan/UPI-71631329996600/)
80. *Conference Details*, U.K. GOV'T, <http://www.fco.gov.uk/en/global-issues/london-conference-somalia/conference-details/> (last accessed April 17, 2012)
81. *London Conference Backs Somalia Terror Fight*, BBC, (Feb. 23, 2012, 1:37 PM), <http://www.bbc.co.uk/news/uk-politics-17131208>
82. *Seychelles to launch UN-backed courts to combat piracy*, UNITED NATIONS, (May 5, 2010), <http://www.un.org/apps/news/story.asp?NewsID=34601&Cr=piracy&Cr1>
83. *Seychelles / United Nations: Piracy Prosecution Center to be Established*, U.S. GOV'T, May 7, 2010), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205401964\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401964_text)
84. *Somalia Conference Sees Important New Action on Piracy*, U.K. GOV'T, (Feb. 23, 2012, 6:31 PM), <http://ukinsomalia.fco.gov.uk/en/news/?view=News&id=734552282>

85. *Update on UNODC anti-piracy work with Seychelles*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, (May 11, 2010), <http://www.unodc.org/unodc/en/frontpage/2010/May/update-on-unodc-anti-piracy-work-with-seychelles.html>

### **OFFICIAL WEBSITES**

86. Commonwealth of Nations Extradition and Rendition of Fugitive Offenders publication

87. *Member States*, COMMONWEALTH SECRETARIAT, <http://www.thecommonwealth.org/Internal/191086/142227/members/> (last accessed April 17, 2012)

88. *Treaties in Force 2011*, United States

89. UK Extradition Treaties

### **OTHER**

90. Paying Piracy Ransoms memorandum

### **REPORTS**

91. Amended Report by the Government of the Republic of Seychelles to the United Nations Counter Terrorism Committee

### **SCHOLARLY ARTICLES**

92. Kenneth J. Keith, *Succession to Bilateral Treaties by Seceding States*, 61 AM. J. INT'L L. 521 (1967)

93. Eugene Kontorovich, *United States v. Shi*. 525 F.3d 709, cert. denied, 129 S.Ct. 324 (2008), 103 AM. J. INT'L L. 734

94. I. R. C. Kawaley, *How Useful Are Devolution Agreements? The Seychelles Experience*, 35 INT'L & COMP. L.Q. 717 (1986)

95. Jonathan Mallamud, *Optional Succession to Treaties by Newly Independent States*, 63 AM. J. INTL. L. 782 (1969)

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

97. 1970 U.N.Y.B. INT'L L. COMM'N, vol. II, 102 (1970)

## **I. ISSUE\***

This memorandum will address potential piracy extradition sources, including various treaties and conventions, both bilateral and multilateral, and assess their viability in extraditing pirates to Seychelles. This includes an analysis of treaty succession from the United Kingdom of Great Britain and Northern Ireland, from which the Republic of Seychelles gained independence in 1976. It will also address more recent developments in the fight against piracy, including pirate custody obtained from the European Union Naval Force, and specifically focuses on more recent developments with Somalia.

## **II. SUMMARY OF CONCLUSIONS**

### **1. The only extradition treaty Seychelles has is with the United States.**

On 29 June 1976, Seychelles gained independence from the United Kingdom. On the same date, Seychelles agreed to succeed to the treaty obligations in force at the time for the United Kingdom. But on 22 October 1979, Seychelles repudiated that agreement by expressing to the UN Secretary-General an intention to review each treaty and decide for itself if it was to recognize those obligations. The general result of this is that Seychelles, with the exception of the 1931 US-UK Extradition Treaty, Seychelles has no extradition treaties with other countries.

---

\* Extradition: The Attorney General would like an analysis of all Seychelles extradition agreements with East African and European countries and the U.S., dating back prior to independence where relevant, which are still in force today, as they would apply to obtaining pirates from third states for trial in the Seychelles. Context: The Seychelles will not go and "snatch", abduct, or otherwise take an individual from a third country. Accordingly, the Attorney General wants to have a better understanding of the Seychelles extradition agreements with neighboring/relevant states, tracing back prior to their independence. He mentioned that there is a Belgium-Seychelles-UK extradition treaty from 1901 that he believes is still in force, and he wants to ensure that he understands all such agreements and their implications for piracy.

2. **Seychelles has extradition agreements with many countries through the Commonwealth of Nations.**

Seychelles is a member of the Commonwealth of Nations. The Commonwealth of Nations provides for extradition between member states, provided the state has enacted implementing legislation. The Commonwealth has 53 member states. The African states covered are Botswana, Cameroon, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

3. **The SUA Convention may provide for extradition of pirates.**

The Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA) is a potential source for extraditing pirates. The Convention provides that it serves as an extradition treaty at the discretion of the country requested to extradite provided that an actual extradition agreement does not exist already. The major limitation is limited jurisdiction.

4. **The AU Terrorism Convention may provide for extradition of pirates.**

The Organization of African Unity Convention on the Prevention and Combatting Terrorism applies to 54 African states. An argument can be made that piracy fits the definition of terrorism in the Convention. The AU consists of every African state except Morocco, but not all members have ratified the convention. The convention requires a state to prosecute criminals or extradite them upon a valid extradition request. The major limitation is limited jurisdiction.

5. **The Hostage Taking Convention may provide for extradition of pirates.**

The International Convention Against the Taking of Hostages is a potential extradition source. The Convention provides that it serves as an extradition treaty at the discretion of the

country requested to extradite provided that an actual extradition agreement does not exist already. The major limitation is limited jurisdiction.

6. **The Transnational Organized Crime Convention may provide for extradition of pirates.**

The United Nations Convention Against Transnational Organized Crime is a potential extradition source. The Convention provides that it serves as an extradition treaty at the discretion of the country requested to extradite provided that an actual extradition agreement does not exist already. The major limitation is limited jurisdiction.

7. **The European Union Naval Force provides Seychelles custody of pirates.**

Through an informal arrangement, the European Union cooperates with Seychelles' battle against piracy via European Union Naval Force which patrols the Gulf of Aden and surrounding areas for pirates. It seems unlikely that the EU would be willing to transfer pirates captured by EUNAVFOR to Seychelles but not extradite those pirates that are found within its actual territorial jurisdiction, but there is no binding agreement.

8. **The London Conference on Somalia has generated consensus and momentum for extradition arrangements where they are lacking in the region.**

The recent London Conference on Somalia has led to greater developments in combatting piracy. It includes multiple expressions of cooperation between states to combat piracy including agreements between Seychelles and Somalia on the transfer of convicted pirates for imprisonment in Somalia. The Conference expressed intent to create extradition arrangements where they are lacking the region.

### **III. FACTUAL BACKGROUND**

Only a few years ago piracy was popularly thought to be a thing of the past, something that made for good movies, television, and Halloween costumes. But recently, piracy has become a major international problem and has received much attention around the world. Last year, piracy near the Horn of Africa, the area off the coast of Somalia, resulted in approximately \$7,000,000,000 in damages.<sup>1</sup> Piracy's base is Somalia. Somalia is the key in the fight against piracy. Piracy is both a cause and a symptom of Somalia's instability. Piracy is a lucrative alternative for many people in Somalia and that will not change until the country recovers. But until a land solution to piracy emerges, fighting pirates on the water and in the courtroom remains a top priority. As the fight against pirates around the Horn of Africa heats up, pirates are sailing south towards Seychelles.<sup>2</sup>

Seychelles, an island country off the coast of Africa and northeast of Madagascar in the Indian Ocean, came to the forefront in the fight against piracy in May 2010. As the pirates sailed south towards Seychelles looking for more opportunities to commit piracy, Seychelles was forced to respond to protect its sovereignty. The first step was to amend the penal code to allow for universal jurisdiction over piracy.<sup>3</sup> Then, in May 2010, Seychelles announced it would establish new piracy courts backed by the United Nations.<sup>4</sup> This major step came after an

---

<sup>1</sup> *Britain Funds Seychelles Anti-Piracy Plan*, UNITED PRESS INT'L, (Feb. 23, 2012, 6:30 AM) [http://www.upi.com/Top\\_News/Special/2012/02/23/Britain-funds-Seychelles-anti-piracy-plan/UPI-71631329996600/](http://www.upi.com/Top_News/Special/2012/02/23/Britain-funds-Seychelles-anti-piracy-plan/UPI-71631329996600/). [Electronic copy provided in accompanying USB flash drive at Source 79]

<sup>2</sup> *Seychelles to launch UN-backed courts to combat piracy*, UNITED NATIONS, (May 5, 2010), <http://www.un.org/apps/news/story.asp?NewsID=34601&Cr=piracy&Cr1>. [Electronic copy provided in accompanying USB flash drive at Source 82]

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; *Update on UNODC anti-piracy work with Seychelles*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, (May 11, 2010), <http://www.unodc.org/unodc/en/frontpage/2010/May/update-on-unodc-anti-piracy-work-with-seychelles.html>. [Electronic copy provided in accompanying USB flash drive at Source 85]

agreement with the European Union to transfer pirates captured by the European Union Naval Force in the area to Seychelles for prosecution.<sup>5</sup> The piracy courts and the EUNAVFOR work in tandem to capture and prosecute pirates. Recently, the United Kingdom has announced efforts to establish a new piracy center in Seychelles to pursue piracy kingpins.<sup>6</sup> But many pirates still elude capture. Wherever they reside, it is in the world's interest to prosecute them. Even where some countries are prosecuting pirates, some pirates ultimately go free either because they are not tried in the first place due to lack of resources or their sentences are minimal or nonexistent due to lack of resources.<sup>7</sup> Seychelles has demonstrated its willingness to take up the cause but to do so it needs custody over those pirates which requires extradition. Seychelles' willingness to prosecute, punish, and imprison pirates makes it a key party in the fight against piracy and will end the capture and release or prosecute and release practice that is prevalent in cases.

#### **IV. ANALYSIS**

This section first addresses the extradition law in Seychelles because it is important to understand how extradition is governed in Seychelles. It then clarifies what constitutes and what does not constitute piracy in Seychelles. Finally, extradition sources are then examined and assessed for their viability to bring alleged pirates to Seychelles for prosecution.

##### **A. Piracy and Extradition in Seychelles**

Extradition in Seychelles is governed by Extradition Act, 1991.<sup>8</sup> The Act governs Seychelles extradition process under any agreement to which Seychelles is a party. Section 4 of

---

<sup>5</sup> *Seychelles, supra* note 2; *Update, supra* note 4.

<sup>6</sup> *Britain, supra* note 1.

<sup>7</sup> *Id.*; *Update, supra* note 4.

<sup>8</sup> Extradition Act, 1991. [Electronic copy provided in accompanying USB flash drive at Source 50]

the Extradition Act provides for dual criminality as the basis for extraditable offenses.<sup>9</sup> Dual criminality means that for an offense to be extraditable, the facts constituting the crime must be punishable in both the state requesting extradition and the extraditing state. And, in the case of this Act, that crime must be punishable by at least 12 months imprisonment. This does not mean that the nomenclature of the extraditable offense must be exactly the same. It means only that the facts constituting the crime be punishable as discrete crimes in each separate state despite what that crime may be called in either state. Piracy, the quintessentially international crime, is condemned and punished universally. The Extradition Act specifically cites piracy as a crime whose factual circumstances is an extraditable offense.<sup>10</sup>

For Seychelles, extradition is a potentially powerful tool in the fight against piracy. Ultimately, Seychelles has some form of extradition agreement with many countries in Africa and worldwide. The forms these various agreements take are generally agreements through intergovernmental organizations. Peculiarly, piracy, though one of the first truly international crimes, has never been clearly defined. Defining piracy was one of Seychelles' first obstacles in combatting piracy. The other major obstacle was jurisdiction—both procedurally and practically.

The first step for Seychelles was to procedurally establish jurisdiction over piracy through its own laws. To establish that jurisdiction Seychelles amended its penal code to allow for universal jurisdiction over piracy.<sup>11</sup> The Seychelles piracy statute now reads:

65(1) Any person who commits any act of piracy within Seychelles or elsewhere is guilty of an offense and liable to imprisonment for 30 years and a fine of R1 million.

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Seychelles, supra* note 2.



65(2) Notwithstanding the provisions of section 6 and any other written law, the courts of Seychelles shall have jurisdiction to try an offense of piracy whether the offense is committed within the territory of Seychelles or outside the territory of Seychelles.

65(3) Any person who attempts or conspires to commit, or incites, aids and abets, counsels or procures the commission of, an offense contrary to section 65(1) commits an offense and shall be liable to imprisonment for 30 years and a fine of R1,000,000.

65(4) For the purposes of this section "piracy" includes:

(a) any illegal act 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 a ship or aircraft;

(ii) against a ship, an aircraft, a person or property in a place outside the jurisdiction of any State or,

(b) any act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or a pirate aircraft.

65(5) A ship or aircraft shall be considered a pirate ship or a pirate aircraft if:

(a) it has been used to commit any of the acts referred to in subsection (4) and remains under the control of the persons who committed those acts; or

(b) it is intended by the person in dominant control of it to be used for the purpose of committing any of the acts referred to in subsection (4).

65(6) A ship or aircraft may retain its nationality although it has become a pirate ship or pirate aircraft. The retention or loss of nationality shall be determined by the law of the State from which such nationality was derived.

65(7) Members of the Police and Defense Forces of Seychelles shall on the high seas, or may in any other place outside the jurisdiction of any State, seize a pirate ship or pirate aircraft, or ship or aircraft taken by piracy and in the control of pirates, and arrest the persons and seize the property on board. The Seychelles Court shall hear and determine the case against such persons and order the action to be taken as regards the ships, aircraft or property seized, accordingly to the law.

The next challenge was literally a challenge, in court, to the new Seychelles laws and prosecuting practices. In *Republic v. Ali and Ten (10) Others*, the Seychelles Supreme Court set out to answer the challenge.<sup>12</sup> At paragraph 2 the Court stated “[a]ny person who is guilty of piracy or any crime connected with or akin to piracy shall be liable to be tried and punished according to the law of England for the time being in force. The phrase “time being in force” according to established principles and case law refers to the common law prevailing in England as at the 29th of June 1976.”<sup>13</sup> At paragraph 4 the Court limited piracy to offenses committed for private gain, not political crimes, which is in accord with customary international law. The Court then finds that there is no single definition of piracy and that it is ever-changing to meet the needs of the day. After wading through some definitions of piracy, the Court found, at ¶7-10, that the law of England at the relevant time established universal jurisdiction and incorporated Articles 15-17 of the 1958 Geneva Convention on the High Seas into the definition of piracy.

Those articles read:

#### Article 15

Piracy consists of any of the following acts:-

(1) Any illegal acts of violence, 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:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(2) 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;

---

<sup>12</sup> *Republic v. Ali and Ten (10) Others*. Sey. Supreme Court, Crim. Side No. 14 (2010). [Electronic copy provided in accompanying USB flash drive at Source 9]

<sup>13</sup> This recitation of the law refers to the previous piracy law. *See* 1955 Seychelles Penal Code section 65. [Electronic copy provided in accompanying USB flash drive at Source 75]

(3) Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or sub paragraph 2 of this article.

#### Article 16

The acts of piracy, as defined in article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

#### Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that Act.<sup>14</sup>

Through these findings, the Seychelles Supreme Court established both that universal jurisdiction over piracy is proper, and the proper definition of piracy—at least under the Seychelles penal code.<sup>15</sup> Article 15 (2) and (3) are read criminalize attempt and aiding and abetting piracy. It is important to note here that piracy is a discrete and separate crime from robbery at sea. Robbery at sea is factually similar to piracy but it occurs in a state’s territorial waters and therefore is not “on the high seas” as piracy requires. Therefore, robberies at sea committed in Somalia’s waters, or another state’s territorial waters, would not constitute piracy and would not be extraditable.

With these initial obstacles cleared, the remaining obstacle to prosecuting pirates is actual custody over alleged pirates. Extradition is a legitimate way to clear this obstacle.

---

<sup>14</sup> 1958 Geneva Convention on the High Seas, Articles 15-17. [Electronic copy provided in accompanying USB flash drive at Source 18]

<sup>15</sup> Although Seychelles is not a party to the High Seas Convention, and is instead a party to the United Nations Convention on the Law of the Seas, the piracy definitions contained in each are identical. The Seychelles Supreme Court used the High Seas Convention definitions because those were the ones in place in 1976.

## **B. Sources for Extraditing Pirates**

The most common legal sources for extradition are found in treaties and international conventions. Treaties include both bilateral and multilateral treaties that are individually executed between states. These treaties are most commonly thought of as executed between sovereign states themselves, but they may also enter into force through treaty succession. International conventions are international agreements upon issues which there is near global consensus. A common source of international conventions is the United Nations. Beyond these formal agreements, informal extradition arrangements are not uncommon especially in the specific context of piracy around the Horn of Africa. Finally, open and ongoing negotiations for extradition agreements are ripe right now and should not be overlooked.

### **i. Treaty Succession**

Treaty succession is the process by which a newly independent state succeeds to the treaties in force in its territory immediately prior to independence. The most typical example is a colony, upon independence, succeeding to the treaties in force of its parent-sovereign. Although no consensus international practice emerged or governed in history, there were three general practices. The practices govern both amicable declarations of independence and revolutionary or seceding independence.

#### **a. The Clean-Slate Rule**

The clean-slate rule is the traditional and most commonly followed doctrine. The rule provides that when new states gain independence they “start life unencumbered” by their sovereign’s treaties in force in that territory.<sup>16</sup> In other words, there was no succession to treaties upon independence. This rule also governed revolutions. States that gained independence

---

<sup>16</sup> Kenneth J. Keith, *Succession to Bilateral Treaties by Seceding States*, 61 AM. J. INT’L L. 521 (1967). [Electronic copy provided in accompanying USB flash drive at Source 92]

through revolution or secession were precluded from succeeding to their sovereign's treaties in force.<sup>17</sup> This was the original rule and it was in favor, with various exceptions,<sup>18</sup> until the nineteen-sixties.<sup>19</sup>

#### b. Devolution Agreements

Devolution agreements, or the blanket-adoption rule,<sup>20</sup> began to come in favor by the nineteen-sixties. These agreements explicitly devolved all of the sovereign's treaties in force for a particular colonial territory to the newly independent former colony. This was generally accomplished through an exchange of letters.<sup>21</sup> As one might expect, blanket-adoption made little sense to many newly independent states because the treaties in force most likely served the sovereign and not necessarily the colony. As the practice quickly fell out of favor, the modern practice emerged.

#### c. Modern Practice

Again, there is no consensus practice, but the modern practice generally calls for a newly independent state to review each treaty individually and choose on its own whether to succeed to it or not. And then, if it chose not to succeed to the treaty or convention, to accede to it in its own right if possible. Most international conventions remain open for accession from any state in the future after they are initially signed into law. The modern practice emerged quickly as

---

<sup>17</sup> Jonathan Mallamud, *Optional Succession to Treaties by Newly Independent States*, 63 AM. J. INTL. L. 782 (1969). [Electronic copy provided in accompanying USB flash drive at Source 95]

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> I. R. C. Kawaley, *How Useful Are Devolution Agreements? The Seychelles Experience*, 35 INT'L & COMP. L.Q. 717 (1986). [Electronic copy provided in accompanying USB flash drive at Source 94]; Kawaley is the former "Senior State Counsel in the Attorney-General's Chambers, Seychelles, Attached to the Ministry of Planning and External Relations."

<sup>21</sup> *Id.*

many colonies began gaining independence from the former British Empire, and other colonizers, in the middle of the twentieth century.<sup>22</sup> Some countries chose this approach decades earlier.<sup>23</sup> The 1978 Vienna Convention on Succession of States in Respect of Treaties attempted to codify and create consensus on treaty succession.<sup>24</sup>

Seychelles originally entered into a devolution agreement with the United Kingdom but then rescinded that agreement and chose to review each treaty individually instead.

#### d. Seychelles and Treaty Succession

Seychelles, a former colony in the British Empire, gained independence on 29 June 1976. In an exchange of notes on the same day, Seychelles agreed to a devolution agreement with the United Kingdom that succeeded all treaties in force for the territory to Seychelles.<sup>25</sup> But, on 22 October 1976, Seychelles repudiated that agreement and instead chose to succeed to none of the applicable treaties in force.<sup>26</sup> That note reads, in part:

The Minister wishes to advise the Secretary-General that the Seychelles Government does not consider itself bound by treaties coming within the ambit of the treaty succession agreement and the Seychelles Government reserves itself the right to review such treaties and decide whether to adopt or terminate the rights and obligations arising from such treaties. A list of all treaties to which the Seychelles Government wishes to accede in its own right will be deposited with the Secretary-General as soon as possible.

---

<sup>22</sup> *Id.*

<sup>23</sup> 1970 U.N.Y.B. INT'L L. COMM'N, VOL. II, 102 (1970). [Electronic copy provided in accompanying USB flash drive at Source 97]

<sup>24</sup> 1978 Vienna Convention on Succession of States in Respect of Treaties. [Electronic copy provided in accompanying USB flash drive at Source 19]

<sup>25</sup> 1038 U.N.T.S. 135 (1977). [Electronic copy provided in accompanying USB flash drive at Source 17]

<sup>26</sup> Kawaley, *supra* note 20.; It should be noted that this is the only source found for the repudiating note. The result that there are no Seychelles extradition treaties is in accord with research revealing no extradition treaties and the Amended Report by the Government of the Republic of Seychelles to the United Nations Counter Terrorism Committee which states, "The only Bilateral Extradition Treaty in existence is that between Seychelles and UK." [Electronic copy provided in accompanying USB flash drive at Source 91]

e. Status of UK Extradition Treaties Applicable to Seychelles and Treaty Succession

The following treaties are of particular importance in analyzing Seychelles' treaty succession practices as pertinent in this memorandum: United States-United Kingdom Treaty of 1931, Belgium-United Kingdom Treaty of 1901, and France-United Kingdom Treaty of 1876.

One major extradition treaty applicable to Seychelles treaty succession is the United States-United Kingdom Treaty of 1931.<sup>27</sup> Article 3 of that treaty provides that piracy "by the law of nations" is an extraditable offense.<sup>28</sup> This treaty is particularly important because the United Kingdom was the sovereign to many African countries.

According to the 2011 United States *Treaties in Force*, the treaty remains in force today for the following countries that succeeded to it after gaining independence from the United Kingdom: Burma, Fiji, The Gambia, Ghana, Guyana, Kenya, Lesotho, Malawi, Nauru, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Swaziland, Tanzania, Tonga, and Zambia.<sup>29</sup> Practically, an initial obstacle to the viability of such an old treaty is that a defendant subject to extradition may question the status of the treaty. The general argument against enforcing such an old obligation is that because such an old obligation it is no longer binding as it has lapsed or that a successor government did not succeed to the treaty in the first place. But these types of older treaties have been upheld in many challenges.<sup>30</sup> But this does not

---

<sup>27</sup> United States-United Kingdom Treaty of 1931. [Electronic copy provided in accompanying USB flash drive at Source 16]

<sup>28</sup> *Id.*

<sup>29</sup> *Treaties in Force 2011*, United States, 246. [Electronic copy provided in accompanying USB flash drive at Source 88]

<sup>30</sup> In *Hoxha v. Levi*, 465 F.3d 554, 562-63 (3d Cir. 2006), Albania requested extradition of Hoxha from the United States to Albania. Hoxha was accused of three murders in Albania in 1996 and had since moved to the United States and become a citizen in 2002. The request was made under the United States-Kingdom of Albania extradition treaty of 1933. The defendant argued that because the Kingdom of Albania no longer existed then the treaty was no

mean that this treaty necessarily allows for extradition between these countries and Seychelles. For that to be the case, when these countries succeeded to this treaty when they became newly independent, the treaty would have had to remain in force between that new country and the United Kingdom as well. But that is not the case because the United Kingdom treats extradition with these countries separately, as members of the Commonwealth of Nations and therefore did not maintain bilateral extradition treaties with them.<sup>31</sup> Ultimately, the treaty binds and governs only extradition between the United States and Seychelles.

As relevant here, the France-United Kingdom Treaty of 1876 governed extradition for the colonial territories of modern Madagascar and Tunisia. Tunisia, on 22 May 1959, rejected succeeding to the treaty.<sup>32</sup> Madagascar, from all indications, also rejected succeeding to the treaty.<sup>33</sup> Therefore, there was nothing for Seychelles to succeed to.

Although the status of former Belgian colonies Rwanda, Burundi, and Democratic Republic of the Congo with respect to succeeding to the Belgium-United Kingdom Treaty of

---

longer in force. The court deferred to the views of the executive branches finding that treaty succession is a political question. Based on the executive positions, particularly the United States' *Treaties in Force*, the treaty was found valid.; In *Kastnerova v. United States*, 365 F.3d 980, 986-87 (11th Cir. 2004), the Czech Republic requested extradition of Kastnerova from the United States to the Czech Republic. Kastnerova was accused of three counts of fraud in the Czech Republic. The request was made under the United States-Czechoslovakia extradition treaty of 1925. The defendant argued that the treaty did not survive the breakup of Czechoslovakia in 1993. The court again deferred to the executive branches' view on the status of the treaty. After examining the evidence of the executive branches' view on the treaty, in particular the United States' *Treaties in Force*, the court concluded that the treaty was still valid.; In *Then v. Melendez*, 92 F.3d 851, 853-55 (9th Cir. 1996), Singapore requested extradition of Then from the United States to Singapore. The request was made under the United States-United Kingdom extradition treaty of 1931. The defendant argued that because no extradition treaty between the United States and Singapore had ever been ratified and therefore extradition was not possible. The court deferred to the executive again because the validity of an extradition treaty is a political question. Based on the practice of the countries, and the fact that the treaty was listed in the United States' *Treaties in Force*, the court concluded that Singapore succeeded to the treaty and it was still valid. [Electronic copies provided in accompanying USB flash drive at Sources 5, 6, 11]

<sup>31</sup> 2002 London Scheme for Extradition Within the Commonwealth. [Electronic copy provided in accompanying USB flash drive at Source 78]; *see also* UK Extradition Treaties. [Electronic copy provided in accompanying USB flash drive at Source 88]; Extradition Act 2003. [Electronic copy provided in accompanying USB flash drive at Source 56]

<sup>32</sup> 1970, *supra* note 23.

<sup>33</sup> *Id.*



1901 is unclear, indications are that they did not succeed to the treaty.<sup>34</sup> Moreover, because Seychelles chose not to succeed to the United Kingdom's treaties in force at independence, they would not have succeeded to Seychelles.

## ii. Commonwealth of Nations

The Commonwealth of Nations is an intergovernmental organization similar to the United Nations but comprised almost entirely of former British colonies. The following countries are members in the Commonwealth of Nations: Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu, and Zambia.<sup>35</sup> Fiji is a suspended member. The Commonwealth provides for extradition amongst member states based on the 1966 London Scheme on the Rendition of Fugitive Offenders.<sup>36</sup> The London Scheme was updated in 2002.<sup>37</sup> The London Scheme itself is not binding. It serves as a base model. Member states still need to enact legislation to implement

---

<sup>34</sup> There is no evidence of United Kingdom extradition treaties with these countries; Extradition with Rwanda may be available through the Commonwealth of Nations. *See* section ii, *infra*.

<sup>35</sup> *Member States*, COMMONWEALTH SECRETARIAT, <http://www.thecommonwealth.org/Internal/191086/142227/members/> (last accessed April 17, 2012). [Electronic copy provided in accompanying USB flash drive at Source 87]

<sup>36</sup> 1966 Commonwealth Scheme for the Rendition of Fugitive Offenders. [Electronic copy provided in accompanying USB flash drive at Source 76]

<sup>37</sup> 2002 London Scheme, *supra* note 31.

this extradition arrangement before it can be enforced.<sup>38</sup> Most members simply adopted the model without any major changes.<sup>39</sup> Seychelles Extradition Act, 1991 implemented the London Scheme. The Extradition Act, 1991 opts for a modern dual criminality approach to extradition.<sup>40</sup> Dual criminality is in accord with the updated 2002 London Scheme for Extradition within the Commonwealth.<sup>41</sup> The Act also lists piracy as an example, in the First Schedule, for one of the crimes that would create an extraditable offense under the dual criminality rule.<sup>42</sup>

This means that if piracy is a crime in a Commonwealth country—as it most certainly is because each Commonwealth country, with the exceptions of Mozambique and Rwanda, were British dominions and Britain criminalized piracy—then Seychelles can request extradition of alleged pirates from that country to Seychelles for prosecution under the umbrella of the Commonwealth of Nations. Moreover, pirates are subject to universal jurisdiction because of their status as *hostis humani generis* under customary international law. An analysis of implementing legislation for each Commonwealth country follows.

Antigua and Barbuda implemented the London Scheme in its Extradition Act, 1993.<sup>43</sup> It adopts the dual criminality approach for extraditable offenses.<sup>44</sup>

---

<sup>38</sup> M. CHERIF BASSIOUNI, INTERNATIONAL CRIMINAL LAW, VOLUME II, MULTILATERAL AND BILATERAL ENFORCEMENT MECHANISMS (3d ed. 2008) 414-15. [Electronic copy provided in accompanying USB flash drive at Source 1]; IVAN ANTHONY SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971) 54-57. [Electronic copy provided in accompanying USB flash drive at Source 3]

<sup>39</sup> *Id.*

<sup>40</sup> Extradition Act, 1991, *supra* note 8.

<sup>41</sup> 2002 London Scheme for Extradition Within the Commonwealth, *supra* note 31.

<sup>42</sup> Extradition Act, 1991, *supra* note 8.

<sup>43</sup> Extradition Act, 1993. [Electronic copy provided in accompanying USB flash drive at Source 52]

<sup>44</sup> *Id.* at section 4.

Australia implemented the London Scheme in its Extradition Act 1988.<sup>45</sup> Any offense punishable by not less than 12 months imprisonment is an extraditable offense.<sup>46</sup> Seychelles is specifically listed as a partner in Australia's Extradition (Commonwealth Countries) Regulations 2010.<sup>47</sup>

The Bahamas implemented the London Scheme in its Extradition Act, 1994.<sup>48</sup> Section 5 of the Act adopts the dual criminality approach for extraditable offenses provided they are punishable by at least two years imprisonment.<sup>49</sup> Seychelles was designated a partner by Extradition (Designated Commonwealth Countries) Order 1994 (Subsidiary Legislation No. 75 of 1994).<sup>50</sup>

Bangladesh passed its extradition act in 1974.<sup>51</sup> Unlike other Commonwealth countries' acts which make specific provision for Commonwealth countries, Bangladesh's act applies to countries where there is an existing extradition treaty.<sup>52</sup> But section 4 of the act allows for extradition between countries where there is no extradition treaty provided that Bangladesh finds

---

<sup>45</sup> Extradition Act 1988. [Electronic copy provided in accompanying USB flash drive at Source 48]

<sup>46</sup> *Id.* at section 5.

<sup>47</sup> Extradition (Commonwealth Countries) Regulations 2010. [Electronic copy provided in accompanying USB flash drive at Source 63]

<sup>48</sup> Extradition Act, 1994. [Electronic copy provided in accompanying USB flash drive at Source 53]

<sup>49</sup> *Id.* at section 5.

<sup>50</sup> Commonwealth of Nations Extradition and Rendition of Fugitive Offenders publication. Available at <http://www.thecommonwealth.org/Internal/38061/documents/>. [Electronic copy provided in accompanying USB flash drive at Source 86]

<sup>51</sup> Extradition Act 1974. [Electronic copies provided in accompanying USB flash drive at Sources 42, 42.1]

<sup>52</sup> *Id.* at sections 3, 4.

extradition “expedient.”<sup>53</sup> Piracy is specifically listed as an extraditable offense in the Schedule.<sup>54</sup>

Barbados implemented the London Scheme in its Extradition Act.<sup>55</sup> Piracy is listed as an extraditable offense in the Schedule.<sup>56</sup> Seychelles was designated as a Commonwealth country by Designated Commonwealth Countries (Extradition Order) 1982 (Statutory Instrument No. 175 of 1982).<sup>57</sup>

Belize has no extradition act itself but still operates under the 1967 UK Fugitive Offenders Act.<sup>58</sup> Seychelles was designated a partner for this former territory—known as British Honduras—by Fugitive Offenders (Designated Commonwealth Countries) Belize Order 1977 (Belize Statutory Instrument No. 19 of 1977).<sup>59</sup> As an British colony piracy is most certainly against the law. This is confirmed by Belize’s extradition treaty with the United States.<sup>60</sup>

Botswana implemented the London Scheme in its Extradition Act, 1990.<sup>61</sup> Botswana adopted the dual criminality approach provided the extraditable offense would be punishable by at least two years imprisonment in Botswana.<sup>62</sup>

---

<sup>53</sup> *Id.* at section 4.

<sup>54</sup> *Id.* at Schedule.

<sup>55</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 24]

<sup>56</sup> *Id.* at Schedule.

<sup>57</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Extradition Act, Schedule. [Electronic copy provided in accompanying USB flash drive at Source 25]

<sup>61</sup> Extradition Act, 1990. [Electronic copy provided in accompanying USB flash drive at Source 49]

<sup>62</sup> *Id.* at section 3.

Brunei's Extradition Act applies to countries published as partners in the state *Gazette*.<sup>63</sup> The Act lists piracy as an extraditable offense in the First Schedule.<sup>64</sup> Seychelles is listed as an extradition partner in the *Gazette*.<sup>65</sup>

Canada's Extradition Act states that countries must have a specific extradition agreement with Canada or designated in the Schedule.<sup>66</sup> Section 9 of the act states that "[t]he names of members of the Commonwealth or other States or entities that appear in the schedule are designated as extradition partners."<sup>67</sup> But Seychelles is conspicuously absent from the Schedule.<sup>68</sup>

Cyprus implemented the London Scheme in its Extradition of Fugitive Offenders Law 1970.<sup>69</sup> The Act adopts the list approach for extraditable offenses.<sup>70</sup> Seychelles was designated as a partner through the United Kingdom by Extradition of Fugitive Offenders (Designated Commonwealth Countries) Order 1972 (Cyprus P.I. No. 50 of 1972).<sup>71</sup> Piracy is against the laws of Cyprus.<sup>72</sup>

---

<sup>63</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 26]

<sup>64</sup> *Id.* at First Schedule.

<sup>65</sup> Brunei Gazette, Feb. 9, 2006, 344. [Electronic copy provided in accompanying USB flash drive at Source 22]

<sup>66</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 27]

<sup>67</sup> *Id.* section 9.

<sup>68</sup> *Id.* at Schedule.

<sup>69</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Cyprus Criminal Code, section 69. [Electronic copy provided in accompanying USB flash drive at Source 23]

Dominica implemented the London Scheme in its Extradition Act.<sup>73</sup> Piracy is an extraditable offense in the Schedule, and Seychelles is a designated partner in the Schedule.<sup>74</sup>

Fiji first implemented the London Scheme in its 1972 Extradition Act.<sup>75</sup> Piracy was listed as an extraditable offense and Seychelles was listed as an extradition partner. Fiji repealed the Act in 2003 and enacted the Extradition Act 2003.<sup>76</sup> The 2003 Act adopted the dual criminality approach.<sup>77</sup> Seychelles is still listed in Schedule 1 as an extradition partner.<sup>78</sup>

The Gambia implemented the London Scheme in its Extradition Act 1986.<sup>79</sup> It provides for extradition throughout the Commonwealth.

Ghana implemented the London Scheme in its Extradition Act, 1960.<sup>80</sup> It provides for extradition throughout the Commonwealth. Piracy is against the laws of Ghana.<sup>81</sup>

Grenada implemented the London Scheme in its Fugitive Offenders Act 1969.<sup>82</sup> Seychelles is an extradition partner under Commonwealth (Designated Countries) Order 1990.<sup>83</sup>

Guyana implemented the London Scheme in its Fugitive Offenders Act.<sup>84</sup> It provides for extradition throughout the Commonwealth and Seychelles is specifically recognized through

---

<sup>73</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 28]

<sup>74</sup> *Id.* at Schedule.

<sup>75</sup> 1972 Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 77]

<sup>76</sup> Extradition Act 2003. [Electronic copy provided in accompanying USB flash drive at Source 57]

<sup>77</sup> *Id.* at section 3.

<sup>78</sup> *Id.* at Schedule 1.

<sup>79</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>80</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>81</sup> Ghana Penal Code, section 193. [Electronic copy provided in accompanying USB flash drive at Source 70]

<sup>82</sup> Commonwealth on Nations Extradition, *supra* note 50.

<sup>83</sup> *Id.*

Section 3 and the Guyana constitution.<sup>85</sup> The Act adopts the dual criminality approach. Piracy is against the laws of Guyana.<sup>86</sup>

India's Extradition Act, 1962, governs extradition in India.<sup>87</sup> The Act adopts dual criminality. It is unclear whether or not Seychelles is included as a Commonwealth country under the Act.

Jamaica implemented the London Scheme in its Extradition Act.<sup>88</sup> The Act adopts the dual criminality approach for extraditable offenses provided they are punishable by at least two years imprisonment.<sup>89</sup> Seychelles was designated an extradition partner in Extradition (Designated Commonwealth Countries) Order 1991 (LN 58 of 1991).<sup>90</sup>

Kenya implemented the London Scheme in its Extradition (Commonwealth Countries) Act.<sup>91</sup> The Act provides for dual criminality for extraditable offenses, provided they are punishable by at least 12 months imprisonment.<sup>92</sup> And piracy is listed in the Schedule as an example offense. Seychelles was designated an extradition partner by Extradition (United Kingdom Dependent Territories) Order 1971 (L.N. No. 260 of 1971).<sup>93</sup>

---

<sup>84</sup> Fugitive Offenders Act. [Electronic copy provided in accompanying USB flash drive at Source 67]

<sup>85</sup> *Id.* at section 3.

<sup>86</sup> Guyana Criminal Code, section 320. [Electronic copy provided in accompanying USB flash drive at Source 71]

<sup>87</sup> Extradition Act, 1962. [Electronic copy provided in accompanying USB flash drive at Source 38]

<sup>88</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 29]

<sup>89</sup> *Id.* at section 5.

<sup>90</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>91</sup> Extradition (Commonwealth Countries) Act. [Electronic copy provided in accompanying USB flash drive at Source 62]

<sup>92</sup> *Id.* at section 3.

<sup>93</sup> Commonwealth of Nations Extradition, *supra* note 50.

Kiribati implemented the London Scheme in its Extradition Act.<sup>94</sup> The Schedule lists both piracy as an extraditable offense and Seychelles as a designated extradition partner.<sup>95</sup>

Lesotho implemented the London Scheme in its Fugitive Offenders Act 1967.<sup>96</sup> The Act adopts the dual criminality approach. Piracy is also listed as an example in the First Schedule.<sup>97</sup> Seychelles was designated as a partner through the United Kingdom in Fugitive Offenders Act 1967 Designation of Countries (L.N. No. 29 of 1971).<sup>98</sup>

Malawi implemented the London Scheme in its Extradition Act.<sup>99</sup> The Act lists both piracy as an extraditable offense and Seychelles as an extradition partner.<sup>100</sup>

Malaysia's Extradition Act 1992 is similar to Bangladesh's extradition act.<sup>101</sup> It provides for extradition where there is a specific agreement. But section 3 states, "[w]here a country in respect of which no order has been made under section 2 makes a request for the extradition thereto of a fugitive criminal, the Minister may personally, if he deems it fit to do so, give a special direction in writing that the provisions of this Act shall apply to that country in relation to the extradition thereto of that particular fugitive criminal." Extraditable offenses are subject to

---

<sup>94</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 30]

<sup>95</sup> *Id.* at Schedule.

<sup>96</sup> Fugitive Offenders Act 1967. [Electronic copy provided in accompanying USB flash drive at Source 68]

<sup>97</sup> *Id.* at First Schedule.

<sup>98</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>99</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 31]

<sup>100</sup> *Id.*

<sup>101</sup> Extradition Act 1992. [Electronic copy provided in accompanying USB flash drive at Source 51]



the dual criminality rule and 12 month minimum sentences—meaning at least punishable by 12 months imprisonment.<sup>102</sup>

Malta implemented the London Scheme in its Extradition Act.<sup>103</sup> It provides for extradition throughout the Commonwealth. The Act adopts the dual criminality approach and lists piracy as an example in the Schedule.<sup>104</sup>

Mauritius implemented the London Scheme in its Extradition Act.<sup>105</sup> It applies to all Commonwealth countries and lists piracy as an example of a dual criminality offense in the First Schedule.<sup>106</sup>

Namibia implemented the London Scheme in its Extradition Act, 1996.<sup>107</sup> It adopts the dual criminality rule for extraditable offenses provided that they are punishable by at least 12 months imprisonment. It provides for extradition throughout the Commonwealth for those countries that are published in the national Gazette. Seychelles was published in the Gazette on 9 April 1997.<sup>108</sup>

Nauru implemented the London Scheme in its Extradition of Fugitive Offenders Act 1973.<sup>109</sup> It provides for extradition throughout the Commonwealth, provided there is reciprocity in extradition, and adopts the dual criminality approach with piracy listed as an example.

---

<sup>102</sup> *Id.* at section 6.

<sup>103</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 32]

<sup>104</sup> *Id.* at Schedule.

<sup>105</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 33]

<sup>106</sup> *Id.* at section 3A, First Schedule.

<sup>107</sup> Extradition Act, 1996. [Electronic copy provided in accompanying USB flash drive at Source 54]

<sup>108</sup> Namibia Gazette, April 9, 1997, 2. [Electronic copy provided in accompanying USB flash drive at Source 72]

<sup>109</sup> Extradition of Fugitive Offenders Act 1973. [Electronic copy provided in accompanying USB flash drive at Source 66]

New Zealand implemented the London Scheme in its Extradition Act 1999.<sup>110</sup> It provides for extradition throughout the Commonwealth and adopts the dual criminality approach for extraditable offenses.<sup>111</sup> Extradition includes New Zealand free associations.

Nigeria implemented the London Scheme in its Extradition Act.<sup>112</sup> It provides for extradition throughout the Commonwealth.<sup>113</sup> The Act adopts dual criminality for extraditable offenses provided they are punishable by two years imprisonment.<sup>114</sup>

Pakistan's Extradition Act, 1972 is like that of Bangladesh and Malaysia—it applies in circumstances where an existing extradition treaty is in place.<sup>115</sup> But any state may request extradition under section 4 and it may be granted where Pakistan “considers it expedient.”<sup>116</sup> Piracy is a listed offense in the Schedule.

Papua New Guinea implemented the London Scheme in its Extradition Act 1975.<sup>117</sup> It adopts the dual criminality approach. Piracy is listed in Schedule 1. Seychelles was designated an extradition partner by Extradition (Commonwealth Countries) (Amendment) Regulations (No. 9 of 1984).<sup>118</sup>

---

<sup>110</sup> Extradition Act 1999. [Electronic copy provided in accompanying USB flash drive at Source 55]

<sup>111</sup> *Id.* at sections 4, 13, 14.

<sup>112</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 34]

<sup>113</sup> *Id.* at section 2.

<sup>114</sup> *Id.* at section 20.

<sup>115</sup> Extradition Act, 1972. [Electronic copy provided in accompanying USB flash drive at Source 41]

<sup>116</sup> *Id.* at section 4.

<sup>117</sup> Extradition Act 1975. [Electronic copy provided in accompanying USB flash drive at Source 45]

<sup>118</sup> Commonwealth of Nations Extradition, *supra* note 50.

Saint Kitts and Nevis passed its Extradition Act in 1961.<sup>119</sup> It was applied to Seychelles as a United Kingdom dependency in Fugitive Offenders Act 1969.<sup>120</sup>

Saint Lucia implemented the London Scheme in its Extradition Act, 1986.<sup>121</sup> It provides for extradition throughout the Commonwealth. Piracy is listed in the Schedule.

Saint Vincent and the Grenadines implemented the London Scheme in its Fugitive Offenders Act 1989.<sup>122</sup> It provides for extradition throughout the Commonwealth.

Samoa implemented the London Scheme in its Extradition Act 1974.<sup>123</sup> It applies for extradition throughout the Commonwealth and adopts the dual criminality rule.

Sierra Leone implemented the London Scheme in The Extradition Act, 1974.<sup>124</sup> It applies throughout the Commonwealth. Piracy is a listed offense in the Fifth Schedule.

Singapore implemented the London Scheme in its Extradition Act.<sup>125</sup> It applies throughout the Commonwealth. Piracy is a listed offense in the First Schedule. Seychelles was designated a partner by Extradition (Commonwealth Countries) (Consolidation) Declaration (Cap. 103, 12 1 1990).<sup>126</sup>

---

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Extradition Act, 1986. [Electronic copy provided in accompanying USB flash drive at Source 46]

<sup>122</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>123</sup> Extradition Act 1974. [Electronic copy provided in accompanying USB flash drive at Source 43]

<sup>124</sup> The Extradition Act, 1974. [Electronic copy provided in accompanying USB flash drive at Source 44]

<sup>125</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 35]

<sup>126</sup> Commonwealth of Nations Extradition, *supra* note 50.

Solomon Islands implemented the London Scheme in its Extradition Act 2010.<sup>127</sup> The Act adopts the dual criminality rule provided there is a 12 month minimum sentence. Seychelles is listed in Schedule 1. Piracy was listed in the previous extradition act.<sup>128</sup>

South Africa passed its extradition law in its Extradition Act, 1962.<sup>129</sup> It adopts the dual criminality rule with six month minimums. The Act provides only for extradition where there is an actual agreement between states. But it also gives the President power to consent to extradition with any state.

Sri Lanka implemented the London Scheme in its Extradition Law.<sup>130</sup> It provides for extradition throughout the Commonwealth. Piracy is a listed offense in the Schedule.

Swaziland implemented the London Scheme in its Fugitive Offenders (Commonwealth) Act, 1969.<sup>131</sup> Piracy is a listed offense in the Schedule. Seychelles was designated a partner through the United Kingdom by Designation of United Kingdom Order, 1970 (L.N. No.9 of 1970).<sup>132</sup>

Tanzania's extradition law is the Extradition Act, 1965.<sup>133</sup> It allows for extradition upon request provided the Minister consents. Piracy is listed as an offense in The Schedule.

---

<sup>127</sup> Extradition Act 2010. [Electronic copy provided in accompanying USB flash drive at Source 60]

<sup>128</sup> Extradition Act 1987. [Electronic copy provided in accompanying USB flash drive at Source 47]

<sup>129</sup> Extradition Act, 1962. [Electronic copy provided in accompanying USB flash drive at Source 39]

<sup>130</sup> Extradition Law. [Electronic copy provided in accompanying USB flash drive at Source 65]

<sup>131</sup> Fugitive Offenders (Commonwealth) Act, 1969. [Electronic copy provided in accompanying USB flash drive at Source 69]

<sup>132</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>133</sup> Extradition Act, 1965. [Electronic copy provided in accompanying USB flash drive at Source 40]

Tonga implemented the London Scheme in its Extradition Act.<sup>134</sup> Piracy is a listed offense in Schedule 1. Seychelles was designated an extradition partner in Extradition (Designated Countries) Order 1988.<sup>135</sup>

Trinidad and Tobago implemented the London Scheme in its Extradition (Commonwealth and Foreign Territories) Act.<sup>136</sup> Seychelles is listed as a partner in the subsidiary legislation. The Act adopts dual criminality with 12 month minimums.

Tuvalu implemented the London Scheme in its Extradition Act 2004.<sup>137</sup> Act adopts dual criminality with one year minimums. Seychelles is listed as a partner in Schedule 1.

Uganda passed its extradition law in 1964.<sup>138</sup> Piracy is a listed offense in the Schedule. It provides for extradition between Commonwealth countries with which agreements had been reached by 1964. This most likely includes Seychelles as a United Kingdom dependency at the time.

United Kingdom most recently implemented the London Scheme in its Extradition Act 2003.<sup>139</sup> It provides for extradition throughout the Commonwealth. Seychelles was designated a partner by Extradition (Designated Commonwealth Countries) Order 1991.<sup>140</sup> It adopts the dual

---

<sup>134</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 36]

<sup>135</sup> Commonwealth of Nations Extradition, *supra* note 50.

<sup>136</sup> Extradition (Commonwealth and Foreign Territories) Act. [Electronic copy provided in accompanying USB flash drive at Source 61]

<sup>137</sup> Extradition Act 2004. [Electronic copy provided in accompanying USB flash drive at Source 59]

<sup>138</sup> Uganda Extradition Act, 1964. [Electronic copy provided in accompanying USB flash drive at Source 73]

<sup>139</sup> Extradition Act 2003. [Electronic copy provided in accompanying USB flash drive at Source 58]

<sup>140</sup> Extradition (Designated Commonwealth Countries) Order 1991 (U.K. S.I. 1700 of 1991). [Electronic copy provided in accompanying USB flash drive at Source 64]

criminality rule with 12 month minimums.<sup>141</sup> Piracy is against the laws of the United Kingdom. Extradition includes United Kingdom territories.

Vanuatu implemented the London Scheme in 2002.<sup>142</sup> The act lists Seychelles as a partner. The act adopts dual criminality with 12 month minimums. Piracy was a listed offense in the previous version of the act.<sup>143</sup>

Zambia implemented the London Scheme in its Extradition Act.<sup>144</sup> It provides for extradition throughout the Commonwealth.<sup>145</sup>

Seychelles, for its part, has designated at least Australia, Bangladesh, Barbados, Botswana, Canada, Ceylon, Cyprus, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nauru, New Zealand, Nigeria, Pakistan, Sierra Leone, Samoa, Singapore, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, and United Kingdom.

The status of extradition laws in Cameroon, Maldives, Mozambique, and Rwanda is unknown. But as members of the Commonwealth they should adopt legislation implementing the London Scheme or otherwise providing for extradition to Commonwealth countries. The same holds true for those countries—Bangladesh, Canada, India, Pakistan, South Africa—where extradition is not explicitly made available to Seychelles.

---

<sup>141</sup> Extradition Act 2003, *supra* note 139 at section 137.

<sup>142</sup> Vanuatu Extradition Act, 2002. [Electronic copy provided in accompanying USB flash drive at Source 74]

<sup>143</sup> *Id.* at Schedule.

<sup>144</sup> Extradition Act. [Electronic copy provided in accompanying USB flash drive at Source 37]

<sup>145</sup> Extradition (Declared Commonwealth Countries) Order 1986 (S.I. No. 60 of 1986); *see* Commonwealth of Nations Extradition, *supra* note 50.

### iii. SUA Convention

The Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA) is a major international agreement that aims to battle violent acts at sea.<sup>146</sup> The SUA Convention applies to 156 countries around the world. Article 3 lists the offenses that trigger the Convention.<sup>147</sup> Article 3 states:

Any person commits an offence if that person unlawfully and intentionally:

1. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
2. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
3. destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
4. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
5. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
6. communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
7. injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).

Article 3 also criminalizes attempted offenses and aiding and abetting those offenses. Most cases of piracy or attempted piracy likely trigger this Convention because those pirates most

---

<sup>146</sup> 1988 Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation. [Electronic copy provided in accompanying USB flash drive at Source 20]

<sup>147</sup> *Id.*

probably “seize[] or exercise[] control over a ship by force or threat thereof or any other form of intimidation.” Importantly, this reaches internal hijackings, like mutiny, where piracy must involve two ships. Therefore, the SUA offenses are broader than piracy.<sup>148</sup> And although the SUA Convention is not an extradition treaty in its own right, it may serve as one under specific conditions.

The SUA Convention provides that the agreement itself may serve as an extradition treaty. Article 11 provides, in part, that “a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition.”<sup>149</sup> Article 11 goes on to provide that “[e]xtradition shall be subject to the other conditions provided by the law of the requested State Party.” Although this is a potentially powerful provision, its efficacy cannot be predicted.

Further, because the SUA Convention does not explicitly deal with piracy, a universal jurisdiction offense, it has limited jurisdiction. Article 6 defines that jurisdiction. It states that, as pertinent, jurisdiction exists when the offense is committed against or onboard a ship flying the flag of a state, by a national or resident of that state, or against a national of that state.<sup>150</sup> If jurisdiction exists under this definition then extradition can be asked for.

---

<sup>148</sup> But the piracy at issue here—the piracy off the coast of Somalia—almost always involves skiffs attacking another boat, the traditional type of piracy. Regardless, the fact that the SUA Convention applies to mutiny type situations is of important, but rare, use. For example it would have provided Seychelles with jurisdiction in the *United States v. Shi* case.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*



The potential reach and power of the SUA Convention was recently tested and confirmed in *United States v. Shi*.<sup>151</sup> *Shi* addressed “whether a foreign national who forcibly seizes control of a foreign vessel in international waters may be subject to the jurisdiction of the United States.” In *Shi*, “a Taiwanese fishing vessel registered in the Republic of the Seychelles, was sailing in international waters off the coast of Hawaii. The Captain of the vessel was Taiwanese, while its 29 crewmembers, including Lei Shi, the ship's cook, were mainland Chinese.” After being demoted from cook to deckhand and subject to ridicule and a severe beating, Shi fatally stabbed the Captain and the First Mate. He was convicted and sentenced to 36 years in prison. Shi appealed, challenging 18 U.S.C. § 2280, the statute implementing the SUA Convention in the United States, in various respects. The court affirmed that piracy is subject to universal jurisdiction. The court stated that a pirate cannot complain about jurisdiction and due process because “the universal condemnation of [his] conduct puts him on notice that his acts will be prosecuted by any state where he is found.” The court also found that the SUA Convention itself serves sufficient notice to pirates from states that are signatories to the Convention to obviate concerns for jurisdiction. This case legitimizes the SUA Convention as a tool in the fight against piracy. Moreover, the case is an example of both a mutiny-type situation which probably would not constitute piracy under international law and a case where Seychelles would have jurisdiction under the SUA Convention.

The SUA Convention is a potentially very powerful source for extradition over piracy crimes but there are important limitations. As one commentator noted, “*Shi* is the first time in nearly two hundred years that a U.S. court has invoked the doctrine of universal jurisdiction over

---

<sup>151</sup> *United States v. Shi*, 525 F.3d 709 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 324 (2008). [Electronic copy provided in accompanying USB flash drive at Source 12]

piracy,”<sup>152</sup> but also “perhaps the only case in the world brought under” the SUA Convention. The limitations built into this Convention include extradition discretion and limited jurisdiction. Extradition discretion refers to the discretion that the state receiving an extradition request has in treating the SUA Convention as an extradition treaty. Moreover, according to authors Geiss and Petrig, only Germany and the Netherlands have requested extradition under the SUA Convention.<sup>153</sup> The limited jurisdiction refers to the fact that SUA is not about piracy, it is about the enumerated offenses. And those offenses, unlike piracy, are not subject to universal jurisdiction. Therefore, there must be some connection to Seychelles for it to invoke the procedures and tools this Convention provides.

iv. Organization for African Unity Convention on the Prevention and Combatting of Terrorism

Another potential source for extradition is the Organization for African Unity Convention on the Prevention and Combatting of Terrorism.<sup>154</sup> The AU is an intergovernmental organization similar to the United Nations and the Commonwealth of Nations. Every African state, except for Morocco, is a member. There is an argument for applying this Convention to piracy. Because we are dealing with explicit statutory language, the argument must focus on that language and not on a general appraisal of whether piracy constitutes terrorism or not.

The Terrorism Convention defines terrorism as:

(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause

---

<sup>152</sup> Eugene Kontorovich, *United States v. Shi*, 525 F.3d 709, cert. denied, 129 S.Ct. 324 (2008), 103 AM. J. INT’L L. 734. [Electronic copy provided in accompanying USB flash drive at Source 93]

<sup>153</sup> ROBIN GEISS AND ANNA PETRIG, PIRACY AND ARMED ROBBERY AT SEA: THE LEGAL FRAMEWORK FOR COUNTER-PIRACY OPERATIONS IN SOMALIA AND THE GULF OF ADEN (2011) 187-89. [Electronic copy provided in accompanying USB flash drive at Source 2]

<sup>154</sup> Organization for African Unity Convention on the Prevention and Combatting of Terrorism. [Electronic copy provided in accompanying USB flash drive at Source 15]

serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii) create general insurrection in a State.

(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to(iii).<sup>155</sup>

An argument can be made that piracy fits into (a) (i) of the definition. There is no doubt that piracy fits (a) because it is an act which violates the criminal laws of a state and it may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons (the ship's crew), or causes damage to public or private property (the ship and/or its cargo/shipments). A closer call is whether, as (i) requires, piracy, at least the specific acts at issue for extradition, is calculated or intended to put in fear, force, coerce or induce the general public or any segment thereof (the ship's crew) to do or abstain from doing any act. It can be argued that the ship's crew is any segment of the general public, satisfying the first prong. And that the crew is coerced into not completing its mission satisfies the do or abstain from prong. It can also be said that piracy coerces the government or the general public to combat it outright or acquiesce to it, through fear, by paying ransoms or refraining from

---

<sup>155</sup> *Id.*

utilizing ships for recreation or to conduct business. And for an island country, ships are a huge part of the culture and economy. But it is a difficult argument.

There are several counterarguments. First is that terrorism is traditionally thought of as a political offense. And most extradition agreements provide that offenses of a political character are not extraditable. But piracy generally is not an offense with a political character—in fact it is the exact opposite. And as demonstrated, piracy arguably may fit into this Convention’s definition of terrorism despite lacking political character. Further, courts in the United States have applied a narrow definition to what constitutes “political.”<sup>156</sup> And Article 3 of the Convention states, “[p]olitical, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.” Although that is not an explicit extradition exception for terrorism, like those found in other conventions, if a political motive is not a defense to the act itself then it should not be a defense to extradition.

Moreover, that piracy cannot be terrorism is merely a concept. The concept derives from the phrase “for private ends” in the definition of piracy in the High Seas Convention and the United Nations Convention on the Law of the Sea. But there are many who believe that piracy is or can be terrorism.<sup>157</sup> For example, Malvina Halberstam argues that piracy is terrorism in her article *Terrorism on the High Seas*.<sup>158</sup> Halberstam argues that “for private ends” was only meant

---

<sup>156</sup> See *Eain v. Wilkes*, 641 F.2d 504, 518-23 (7th Cir. 1981), *cert. denied*, 454 U.S. 894 (1981) (must show crimes were “committed in the course of and incidental to a violent political disturbance such as a war, revolution or rebellion); *Koskotas v. Roche*, 931 F.2d 169, 172 (1st Cir. 1991) (“The “political offense” exception historically has embraced only offenses aimed either at accomplishing political change by violent means or at repressing violent political opposition.”); *Quinn v. Robinson*, 783 F.2d 776, 806, 807 (9th Cir. 1986) (“was not intended to and does not protect acts of international terrorism”; “The exception does not apply to political acts that involve less fundamental efforts to accomplish change or that do not attract sufficient adherents to create the requisite amount of turmoil.”). [Electronic copies provided in accompanying USB flash drive at Sources \_\_\_]

<sup>157</sup> See Paying Piracy Ransoms memorandum from last year, 60-67. [Electronic copy provided in accompanying USB flash drive at Source 90]

<sup>158</sup> Malvina Halberstam, *Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety*, 82 AM. J. INT’L L. 269 (1988). [Electronic copy provided in accompanying USB flash drive at

to exclude “acts committed by unrecognized insurgents that would be lawful if committed by recognized belligerents,” not all political offenses.<sup>159</sup>

Another obstacle would be legal challenges to the extradition in court. In *Republic v. Dahir and Ten (10) Others*, the Seychelles Supreme Court addressed a related question. In *Dahir*, after a surveillance aircraft identified possible pirates a Seychelles Coast Guard ship investigated. Upon investigating, the ship was attacked by the pirates. After capturing the pirates, the prosecutors alleged both piracy and terrorism charges.<sup>160</sup> The government alleged that because the pirates attacked a government ship the act constituted terrorism due to its broader political implications. The Court felt otherwise, finding that the crimes constituted plain old piracy and not terrorism.<sup>161</sup> Importantly, the Court did find that frustrated attempts at piracy are still piracy.<sup>162</sup> In a case like this then where the act is found not to be terrorism extradition would have been appropriate only as piracy which is not available under this Convention. And that piracy extradition would require a separate legal basis.

Of course this is not the same situation as alleging piracy is terrorism under the AU Terrorism Convention. The case deals with the Seychelles penal code and not extradition at all. But it may be indicative of a general attitude that piracy is not terrorism and those offenses should not be conflated.

---

Source 96]; Halberstam is a “Professor of Law, [at] Benjamin N. Cardozo School of Law, Yeshiva University. Much of the material for this article was gathered [she] served as Counselor on International Law, U.S. Department of State, Office of the Legal Adviser, and headed the U.S. delegation to meetings at which various drafts of the IMO Convention were considered.”

<sup>159</sup> *Id.* at 278-284.

<sup>160</sup> *Republic v. Dahir and Ten (10) Others*, Sey. Supreme Court, Crim. Side No. 51 (2009). [Electronic copy provided in accompanying USB flash drive at Source 10]

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

Provided the argument that piracy fits the Convention's definitions, Article 4 (2) (h) goes on to state that member states shall "try [criminals] in accordance with national legislation, or extradite them in accordance with the provisions of this Convention or extradition treaties concluded between the requesting State and the requested State and, in the absence of a treaty, consider facilitating the extradition of persons suspected of having committed terrorist acts." The article expresses a typical try-or-extradite provision which allows for states to force another state in which the pirate is located to try the pirate themselves or extradite the pirate for prosecution in the state requesting action. Moreover, the article encourages states to cooperate and facilitate extradition even in the absence of explicit extradition agreements. This article makes the AU Terrorism Convention a potentially powerful source to facilitate prosecuting pirates, provided that it does in fact apply to piracy.

But there are still several limitations to this potential. First is that the argument that piracy is terrorism under the Convention may not be accepted. Another limitation is that not every African state has ratified the Terrorism Convention.<sup>163</sup> Key states, like Somalia, have not ratified the convention. Moreover, the intent of the Convention is most likely to deal with terrorism that has a political character and not piracy of a private nature. And the most important limitation is the procedural one—the Convention has limited jurisdiction.<sup>164</sup> Jurisdiction only arises where the terrorist act occurs either in the state, by a state national or resident, against a state national, on board a vessel registered in the state, against the state, or against the state's national security. Ultimately, the Terrorism Convention only useful in the absence of any other

---

<sup>163</sup> See Appendix A.

<sup>164</sup> Organization for African Unity Convention, *supra* note 154, at Article 6.

legal instrument providing for extraditing pirates. States falling into this category include: Burundi, Congo, and Eritrea.

v. International Convention Against the Taking of Hostages

The 1979 International Convention Against the Taking of Hostages is a major multilateral agreement that deals with hostage situations. There are 168 parties to this Convention. Because much of the piracy off the coast of Somalia involves ransoms and hostages,<sup>165</sup> it is important to analyze this Convention as it may serve as another possible basis for extradition.

Article 1 of the Convention defines the offense of hostage taking as:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offense of taking of hostages within the meaning of this Convention.

Article 2 makes attempted hostage taking and aiding and abetting hostage taking also offenses within the meaning of the Convention. The offense of hostage taking is plainly committed in cases where the pirates actually seized a ship and hostages, and asked for a ransom. That situation is the goal of this Convention. A more difficult case is presented when those attempts are thwarted (i.e., attempted hostage taking) because it is difficult to prove that that was the intent. It would have to be shown that the pirates intended to detain and ransom people. The argument there would be, based on the prevalence of ransoming humans in piracy cases in the region, that that was the intent of the thwarted pirates. That is a difficult argument in cases where pirates are entirely thwarted—turned away before they even get off the skiff. In many piracy cases, though, this Convention should be triggered.

---

<sup>165</sup> *Supra* note 157.

Article 5 of the Convention spells out the jurisdiction requirements under the Convention. It states that jurisdiction requires either: a) a ship registered in the State; b) nationals or residents of the State; c) the act is committed to compel the State to do or abstain from an act; or d) a hostage is a national of the State.<sup>166</sup> This means that for Seychelles to invoke this Convention's tools, the offense must either involve a ship registered in Seychelles, pirates from Seychelles, Seychellois hostages, or, if possible, the offense was directed to compel the Seychelles government to do or abstain from doing an act (pay a ransom, stop prosecuting pirates, stop capturing pirates, for example).

Provided that there is an offense that triggers the Convention, and Seychelles has jurisdiction, then Article 10 serves to transform the Convention into an extradition treaty. Article 10 is the familiar 'may serve as an extradition treaty' provision. Again, it is up to the requested state whether or not to accept the Convention as a valid extradition treaty. Therefore, while using this Convention to seek extradition is viable, its efficacy cannot be predicted because it depends entirely on third parties. But, given the seeming consensus on prosecuting pirates in regional courts outside of Somalia, it is no stretch to believe states would cooperate in this manner.

Moreover, Article 8 is the familiar extradite or prosecute provision.<sup>167</sup> Under this provision, state parties are required to prosecute pirates in their territory or extradite them. Therefore, invoking the tools of this Convention should work to suppress piracy as a whole in one way or another.

---

<sup>166</sup> Organization for African Unity Convention, *supra* note 154, at Article 5.

<sup>167</sup> *Id.* at Article 8.



Ultimately, the SUA Convention is a better option to seek extradition under compared to the Hostage Taking Convention. The SUA definitions should cover all situations which would be an offense under the Hostage Taking Convention, and more situations, like entirely thwarted attempts of piracy where hostage taking intent cannot be shown or would be difficult to prove. But the Hostage Taking Convention is equally important, and useful, because there are some countries which are party to it and not to the SUA Convention. Those countries include: Angola, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Ethiopia, Gabon, Ivory Coast, Rwanda, and Somalia, among others. Still, again, the Convention is not as powerful as an actual extradition treaty which covers piracy, because, first, this Convention is discretionary as far as extradition is concerned, and second, because piracy is subject to universal jurisdiction whereas the offenses in this Convention are limited.

#### vi. United Nations Convention Against Transnational Organized Crime

The United Nations Convention Against Transnational Organized Crime, passed in 2000, is yet another possible source for extraditing pirates. There are 166 parties to this Convention. Article 3 lists the offenses that trigger the Convention.<sup>168</sup> This includes “[s]erious crime as defined in article 2 of the Convention; where there offense is transnational in nature and involves and organized criminal group.” Article 2 defines serious crime and organized criminal group. A serious crime means “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.” An organized criminal group is “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”

---

<sup>168</sup> 2000 United Nations Convention Against Transnational Organized Crime. [Electronic copy provided in accompanying USB flash drive at Source 21]

Because most pirates act in concert on a large scale the three person lower limit for a criminal group is likely to never be an obstacle.

Article 3 defines transnational as “(a) [an offense] committed in more than one State; (b) [an offense] committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) [an offense] committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) [an offense] committed in one State but has substantial effects in another State.”<sup>169</sup>

Upon a first reading, it appears that the Convention would not apply to piracy because piracy is committed on the high seas not in any state. But Article 15 applies the Convention to offenses committed against a vessel registered in a state. Therefore, the Convention would apply to piracy, assuming piracy is a serious crime within the meaning of the Convention. And, according to recent Seychelles pirate sentences, it is.<sup>170</sup> Hence, piracy, largely planned in Somalia, committed against different vessels registered in many different states, fits the transnational definition in (a), (b), and (c). And because those same attacks require substantial resources to combat—patrol, capture, prosecute, imprison—from states that may have no connection to the actual vessel in a specific case, it fits the transnational definition in (d).

Once it is shown that piracy is a serious crime that is transnational in nature and involves and organized criminal group, the next obstacle under this Convention is jurisdiction. Article 15 provides that jurisdiction exists where the offense is committed in a state’s territory, onboard or

---

<sup>169</sup> *Id.* at Article 3.

<sup>170</sup> *See* Seychelles Penal Code section 65.

vessel registered in that state, against a national of that state, or by a national or resident of that state.<sup>171</sup> Assuming that jurisdiction is satisfied, extradition is the last remaining step.

Article 16 includes an extradite or prosecute provision.<sup>172</sup> It also has a provision to treat the Convention itself as an extradition treaty. But, again, this is at the discretion of the requested state. Yet, when combined with the extradite or prosecute provision, a request for extradition will bring about prosecution one way or another and would suppress piracy on a whole.

In conclusion, the Convention Against Transnational Organized Crime has potential but should be used only where the SUA or Hostage Taking conventions are not in force. Those countries includes Zimbabwe, among others.

#### vii. Custody Through EU Relationship

Responding to several United Nations Security Council Resolutions,<sup>173</sup> the European Union Naval Force took up the cause to fight piracy around the Horn of Africa. The EUNAVFOR launched Operation Atalanta, its official operation that fights piracy in the region today. As the EUNAVFOR presence began to be felt pirates sailed south towards Seychelles and Seychelles responded by expressing its interest in prosecuting pirates. These circumstances ripened into an amicable relationship between Seychelles and the European Union.

With Seychelles demonstrating its competence and willingness to prosecute pirates, EUNAVFOR began transferring captured pirates to Seychelles to prosecute them.<sup>174</sup> Because the relationship proved to be worthwhile Seychelles and the European Union entered into various

---

<sup>171</sup> *Id.* at Article 15.

<sup>172</sup> *Id.* at Article 16.

<sup>173</sup> United Nations Security Council Resolutions: 1814, 1816, 1838, 1846, 1851.

<sup>174</sup> *Seychelles / United Nations: Piracy Prosecution Center to be Established*, U.S. GOV'T, May 7, 2010), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205401964\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401964_text). [Electronic copy provided in accompanying USB flash drive at Source 83]

agreements codifying various aspects of the relationship.<sup>175</sup> But, as has been noted,<sup>176</sup> these transfers are more informal and are not true extraditions. What happens is that EUNAVFOR capture pirates in the Gulf of Aden, around the Horn of Africa, and further out in the Indian Ocean and then “handover” those pirates to regional states like Seychelles to prosecute them.<sup>177</sup> But, again, that is not legal extradition. Despite that these transfers do not constitute true extradition this relationship between Seychelles and the European Union is important in two respects.

First, these transfers eliminate the need for extradition with respect to the captured pirates that are transferred. Increasing the capture and transfer rate will further reduce the need for extraditions as alleged pirates are simply brought to Seychelles for prosecution in the first instance instead of taken to a different state, which would then require extradition for Seychelles to establish custody. These handovers remain an important and viable source for custody over pirates.

Second, this relationship and these arrangements lay the framework for future agreements. The agreements that have already been entered into and the transfers that routinely take place exhibit an amicable working relationship and a willingness to cooperate amongst the parties. It would not stretch circumstances to say that the European Union would be willing to voluntarily transfer pirates found within its own territory or to reach legal extradition agreements

---

<sup>175</sup> See Exchange of Letters between the European Union and the Republic of Seychelles on the Conditions and Modalities for the Transfer of Suspected Pirates and Armed Robbers from EUNAVFOR to the Republic of Seychelles and for their Treatment after such Transfer, Eur.-Sey.; Agreement between the European Union and the Republic of Seychelles on the status of the European Union-led forces in the Republic of Seychelles in the framework of the EU military operation Atalanta, Eur.-Sey. [Electronic copies provided in accompanying USB flash drive at Sources \_\_\_]

<sup>176</sup> GEISS AND PETRIG, *supra* note 153.

<sup>177</sup> This is a legitimate international practice under Article 8 of the SUA Convention and United Nations resolutions.

to accomplish the same because they already transfer pirates to Seychelles for prosecution routinely.

viii. London Conference on Somalia

On 22 February 2012, the London Conference on Somalia took place.<sup>178</sup> The Conference aimed directly at the problems in Somalia and how to solve them. While the focus of the Conference was on a wider scope than simply piracy, there were important developments specifically focused on piracy. These developments directly lead to an environment that is amenable to establishing binding extradition agreements.

The Conference was attended by leaders from around the world including representatives from the United States, United Nations, African Union, European Union, United Kingdom, and Somalia, among others.<sup>179</sup> The representatives agreed to “crack down on piracy by expanding on agreements to bring suspects to trial in countries away from Somalia.”<sup>180</sup> The Conference further affirmed the commitment to both prosecute pirates in the Seychelles and to ultimately imprison the convicted pirates in Somalia.<sup>181</sup> There were other significant developments involving Somalia around the Conference as well.

One day before the Conference, the United Kingdom announced it would spend \$870,000 establishing the Regional Anti-Piracy Prosecutions Intelligence Coordination Center in the

---

<sup>178</sup> *Conference Details*, U.K. GOV'T, <http://www.fco.gov.uk/en/global-issues/london-conference-somalia/conference-details/> (last accessed April 17, 2012). [Electronic copy provided in accompanying USB flash drive at Source 80]

<sup>179</sup> *Id.*

<sup>180</sup> *London Conference Backs Somalia Terror Fight*, BBC, (Feb. 23, 2012, 1:37 PM), <http://www.bbc.co.uk/news/uk-politics-17131208>. [Electronic copy provided in accompanying USB flash drive at Source 81]

<sup>181</sup> *Somalia Conference Sees Important New Action on Piracy*, U.K. GOV'T, (Feb. 23, 2012, 6:31 PM), <http://ukinsomalia.fco.gov.uk/en/news/?view=News&id=734552282>. [Electronic copy provided in accompanying USB flash drive at Source 84]; *Seychelles*, *supra* note 2.; UN Security Council Resolution 1976 (2011).

Seychelles.<sup>182</sup> Interpol, Netherland, and Seychelles will all contribute to the Center.<sup>183</sup> The Center will focus more on bringing piracy “kingpins” to justice rather than solely increasing efforts to combat pirates on the high seas.<sup>184</sup>

Moreover, Somaliland signed an agreement with Seychelles to transfer convicted pirates from prisons in Seychelles to prisons in Somaliland.<sup>185</sup> The agreement called for the first transfer to take place by the end of March. This agreement paves the way for further prosecutions in Seychelles as it decreases the stress on the prison system because Seychelles no longer will have to imprison every convicted pirate itself. At the same time, “Puntland made clear its commitment to the transfer of convicted pirates from prisons in the region to prisons in Puntland.”<sup>186</sup> If states follow through on their pledges, there will soon be a “seamless cycle of justice where pirates are caught at sea[], prosecuted in regional states and imprisoned in Somalia.”<sup>187</sup> This cycle idea where pirates are captured and then prosecuted in regional courts like Seychelles’ and then imprisoned in Somalia seems to be the prevailing course of action. The cooperation amongst states at the Conference in this respect represents a significant step towards and opportunity for reaching formal agreements regarding extradition in the region where those agreements are lacking.

---

<sup>182</sup> *Britain, supra* note 1.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Somalia Conference, supra* note 181.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

## **V. CONCLUSION**

Ultimately, Seychelles has a legal basis to request extradition of pirates to Seychelles with many countries in Africa and around the world. There are various sources for these legal bases. These bases take the form of treaties, agreements, and international conventions.

The main extradition sources are treaties and Commonwealth of Nations agreements. The only extradition treaty that Seychelles is a party to is the United States-United Kingdom Treaty of 1931. This treaty came into force through treaty succession. Treaty succession is how a newly independent state succeeds to the treaties in force of its former sovereign. Originally, Seychelles had chosen to succeed to all of the United Kingdom's treaties in force on 29 June 1976. But that agreement was repudiated only four months later and Seychelles chose instead to evaluate each treaty individually and then decide whether to succeed to it or not. The result of this process was that Seychelles succeeded only to the United States-United Kingdom Treaty of 1931.

Equally binding and powerful as treaties are Seychelles' agreements with other countries in the Commonwealth of Nations. Members of the Commonwealth agreed to a scheme that would regulate extradition amongst member states provided that they enact implementing legislation. The result is that extradition amongst the Commonwealth has been streamlined and there is no need for an actual treaty between Commonwealth members.

These sources are clearly preferable to conventions that Seychelles may be a party to. They are preferable because these sources are binding and because piracy is subject to universal jurisdiction which means the specific individual and crime at issue need no connection to Seychelles at all, it only needs to be piracy.

The remaining sources for extradition derive from international conventions. The SUA Convention is an example. The SUA Convention has 156 state parties but important states, like Somalia, have not ratified it. The SUA Convention applies to acts of violence on the high seas. Any act of piracy is most certainly fits the violating offense descriptions in the SUA Convention. The Convention itself provides that it may serve as an extradition treaty between member states that do not have them but require them for extradition under the state's laws. But this is solely in the requested state's discretion so the efficacy of asking for extradition under the SUA Convention cannot be predicted. Beyond this limitation is a jurisdictional limit. Because under the convention we are no longer dealing with piracy, there is no universal jurisdiction. For jurisdiction to be proper there must be some connection to Seychelles. Generally, that connection will be through the pirate, the crew, or the ship at issue. But, if those limitations are cleared, the SUA Convention is a legitimate and powerful tool in combatting piracy cannot be denied.

Another potential source for extradition is the AU Terrorism Convention. But again, key states like Somalia have not ratified it. The try-or-extradite or facilitate transfer provision is the key to unlocking the Convention's potential. The major limitations to using this Convention for extradition include that it was not designed for piracy, even though there is an argument that piracy fits the definition of terrorism in the Convention. Also, extradition is discretionary. And, again, there is limited jurisdiction because this is no longer extradition for piracy. But the Terrorism Convention may be invoked as a last resort where there are no other legal bases for extradition.

The Hostage Taking Convention is a further potential source for extradition. Ultimately, the Hostage Taking Convention is very similar to the SUA Convention. In scope, the



definitional offenses, and discretionary and jurisdictional limitations are nearly identical. The Hostage Taking Convention's importance surfaces where a state is not a party to the SUA Convention but is to the Hostage Taking Convention.

One more potential extradition source is the Transnational Organized Crime Convention. The definitional offenses in this Convention are more difficult to meet than those of the SUA and Hostage Taking Conventions but more amenable than the Terrorism Convention. While this Convention may potentially be invoked, it suffers from the same limitations that the other conventions suffer from.

Finally, there are informal custody arrangements. The most prominent of these is between Seychelles and EU NAVFOR. The EU NAVFOR routinely captures pirates and transfers them to countries like Seychelles who are willing to prosecute the alleged pirates. These informal transfers are legitimate under international law and remain an important source of custody over pirates.

Ultimately, while there do exist binding extradition arrangements over piracy with many countries, there are plenty of countries where binding agreements are lacking. And where those binding agreements are lacking, there may be potential extradition source, like an international convention, but these conventions are severely limited. Binding extradition agreements over piracy are undeniably preferable to potential sources of extradition over limited offenses. That is why it is important to reach specific agreements and not rely on international conventions. With the recent London Conference on Somalia, the international community has agreed to expand on extradition agreements in the region to bring pirates to trial in countries like Seychelles who are willing to prosecute them. With these latest developments, the time is ripe to make extradition agreements where they are lacking

**APPENDIX A**

Chart of Extradition Sources and Parties

Country Name	Treaty	Commonwealth Member With Implementing Legislation	Commonwealth Member Without Implementing Legislation or Explicit Application to Seychelles	SUA Convention	AU Terrorism Convention	Hostage Taking Convention	Transnational Organized Crime Convention
Afghanistan				X		X	X
Albania				X		X	X
Algeria				X	X	X	X
Andorra				X		X	
Angola					X	X	
Antigua and Barbuda		X				X	X
Argentina				X		X	X
Armenia				X		X	X
Australia		X		X		X	X
Austria				X		X	X
Azerbaijan				X		X	X
Bahamas		X		X		X	X
Bahrain				X		X	X
Bangladesh			X	X		X	

<b>Barbados</b>		X		X		X	
<b>Belarus</b>				X		X	X
<b>Belgium</b>				X		X	X
<b>Belize</b>		X				X	
<b>Benin</b>				X	X	X	X
<b>Bhutan</b>						X	
<b>Bolivia</b>				X		X	X
<b>Bosnia and Herzegovina</b>				X		X	X
<b>Botswana</b>		X		X		X	X
<b>Brazil</b>				X		X	X
<b>Brunei Darussalam</b>		X		X		X	X
<b>Bulgaria</b>				X		X	X
<b>Burkina Faso</b>				X	X	X	X
<b>Burundi</b>					X		
<b>Cambodia</b>				X		X	X
<b>Cameroon</b>			X			X	X
<b>Canada</b>			X	X		X	X
<b>Cape Verde</b>				X	X	X	X
<b>Central African Republic</b>						X	X
<b>Chad</b>					X	X	

Chile				X		X	X
China				X		X	X
Colombia						X	X
Comoros				X	X	X	X
Congo					X		
Cook Islands		X		X			X
Costa Rica				X		X	X
Croatia				X		X	X
Cuba				X		X	X
Cyprus		X		X		X	X
Czech Republic				X		X	
Democratic Republic of the Congo						X	X
Denmark				X		X	X
Djibouti				X	X	X	X
Dominica		X		X		X	X
Dominican Republic						X	X
Ecuador				X		X	X
Egypt				X	X	X	X
El Salvador				X		X	X

<b>Equatorial Guinea</b>				X	X	X	X
<b>Eritrea</b>					X		
<b>Estonia</b>				X		X	X
<b>Ethiopia</b>					X	X	X
<b>Fiji</b>		X		X		X	
<b>Finland</b>				X		X	X
<b>France</b>				X		X	X
<b>Gabon</b>					X	X	X
<b>The Gambia</b>		X		X	X		X
<b>Georgia</b>				X		X	X
<b>Germany</b>				X		X	X
<b>Ghana</b>		X		X	X	X	
<b>Greece</b>				X		X	
<b>Grenada</b>		X		X		X	X
<b>Guatemala</b>						X	X
<b>Guinea</b>				X	X	X	X
<b>Guinea Bissau</b>				X	X	X	X
<b>Guyana</b>		X		X		X	X
<b>Haiti</b>						X	
<b>Holy See</b>						X	
<b>Honduras</b>				X		X	X
<b>Hungary</b>				X		X	X

Iceland				X		X	
India			X	X		X	
Indonesia						X	X
Iran						X	
Iraq							X
Israel				X			X
Italy				X		X	X
Ivory Coast						X	
Jamaica		X		X		X	X
Japan				X		X	
Jordan				X		X	X
Kazakhstan				X		X	X
Kenya		X		X	X	X	X
Kiribati		X		X		X	X
Kuwait				X		X	X
Kyrgyzstan						X	X
Laos						X	X
Latvia				X		X	X
Lebanon				X		X	X
Lesotho		X			X	X	X
Liberia				X		X	X
Libya				X	X	X	X

<b>Lichtenstein</b>				X		X	X
<b>Lithuania</b>				X		X	X
<b>Luxembourg</b>						X	X
<b>Macedonia</b>				X		X	X
<b>Madagascar</b>				X	X	X	X
<b>Malawi</b>		X			X	X	X
<b>Malaysia</b>			X			X	X
<b>Maldives</b>			X				X
<b>Mali</b>				X	X	X	X
<b>Malta</b>		X		X		X	X
<b>Marshall Islands</b>				X		X	
<b>Mauritania</b>				X	X	X	X
<b>Mauritius</b>		X		X	X	X	X
<b>Mexico</b>				X		X	X
<b>Micronesia</b>				X		X	X
<b>Mongolia</b>				X		X	X
<b>Montenegro</b>				X		X	X
<b>Morocco</b>				X		X	X
<b>Mozambique</b>			X	X	X	X	X
<b>Myanmar</b>				X		X	X
<b>Namibia</b>		X		X			X
<b>Nauru</b>		X		X		X	

<b>Nepal</b>						X	
<b>Netherlands</b>				X		X	X
<b>New Zealand</b>		X		X		X	X
<b>Nicaragua</b>				X		X	X
<b>Niger</b>				X	X	X	X
<b>Nigeria</b>		X		X	X	X	X
<b>Niue</b>		X		X		X	
<b>North Korea</b>						X	
<b>Norway</b>				X		X	X
<b>Oman</b>				X		X	X
<b>Pakistan</b>			X	X		X	
<b>Palau</b>				X		X	
<b>Panama</b>				X		X	X
<b>Papua New Guinea</b>		X				X	
<b>Paraguay</b>				X		X	X
<b>Peru</b>				X		X	X
<b>Philippines</b>				X		X	X
<b>Poland</b>				X		X	X
<b>Portugal</b>				X		X	X
<b>Qatar</b>				X		X	X
<b>Romania</b>				X		X	X
<b>Russia</b>				X		X	X



<b>Rwanda</b>			X		X	X	X
<b>Saint Kitts and Nevis</b>		X		X		X	X
<b>Saint Lucia</b>		X		X			
<b>Saint Vincent and the Grenadines</b>		X		X		X	
<b>Samoa</b>		X		X			
<b>Sao Tome and Principe</b>				X		X	X
<b>Saudi Arabia</b>				X		X	X
<b>Senegal</b>				X	X	X	X
<b>Serbia</b>				X		X	X
<b>Seychelles</b>		X		X	X	X	X
<b>Sierra Leone</b>		X				X	
<b>Singapore</b>		X		X			X
<b>Slovakia</b>				X		X	X
<b>Slovenia</b>				X		X	X
<b>Solomon Islands</b>		X				X	
<b>Somalia</b>						X	
<b>South Africa</b>			X	X	X	X	X
<b>South Korea</b>				X		X	
<b>Spain</b>				X		X	X

<b>Sri Lanka</b>		X		X		X	X
<b>Sudan</b>				X	X	X	X
<b>Suriname</b>						X	X
<b>Swaziland</b>		X		X		X	
<b>Sweden</b>				X		X	X
<b>Switzerland</b>				X		X	X
<b>Syria</b>				X			X
<b>Tajikistan</b>				X		X	X
<b>Tanzania</b>		X		X	X	X	X
<b>Thailand</b>						X	
<b>Togo</b>				X	X	X	X
<b>Tonga</b>		X		X		X	
<b>Trinidad and Tobago</b>		X		X		X	X
<b>Tunisia</b>				X	X	X	X
<b>Turkey</b>				X		X	X
<b>Turkmenistan</b>				X		X	X
<b>Tuvalu</b>		X		X			X
<b>Uganda</b>		X		X	X	X	X
<b>Ukraine</b>				X		X	X
<b>United Arab Emirates</b>				X		X	X
<b>United Kingdom</b>		X		X		X	X

<b>United States</b>	X			X		X	X
<b>Uruguay</b>				X		X	X
<b>Uzbekistan</b>				X		X	X
<b>Vanuatu</b>		X		X			
<b>Venezuela</b>						X	X
<b>Viet Nam</b>				X			
<b>Yemen</b>				X		X	
<b>Zambia</b>		X					X
<b>Zimbabwe</b>							X