

# UNCHARTED WATERS: SHOULD INTERNATIONAL MARITIME TERRORISM BE INCLUDED IN THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT?

JUAN-PABLO PEREZ-LEON-ACEVEDO\* AND GIORGI CHAKHVADZE\*\*

*The International Criminal Court (ICC) lacks jurisdiction over international terrorism. Despite related academic literature, no academic publication discusses whether the ICC should have jurisdiction over international maritime terrorism. This deserves attention due to the increasing importance of this global phenomenon in the last few decades. Consequently, this Article considers whether international maritime terrorism should be included in the ICC's jurisdiction. First, it discusses international maritime terrorism as a manifestation of the emerging international crime of international terrorism, examining i) whether there is an accepted or an emerging legal definition of international maritime terrorism, ii) whether international maritime terrorism is a serious threat to or attack against international peace and security, and iii) whether there is an emerging customary rule criminalizing international maritime terrorism. Then, the ICC law—particularly the Rome Statute, travaux préparatoires, and amendment proposals—and the ICC's practice on crimes committed by international terrorist groups or involving serious threats to maritime*

---

Copyright © 2023 Juan-Pablo Perez-Leon-Acevedo & Giorgi Chakhvadze

\* Doctor Perez-Leon-Acevedo holds a PhD from Åbo Akademi University (Finland), an LLM from Columbia University (United States), and an LLB from the Pontifical Catholic University of Peru. He is a DPhil in Law student at the University of Oxford; an affiliated researcher at the Faculty of Law, University of Oslo; a lecturer at Catholic University of Peru and Abo Akademi University; and a visiting professor (international law) at Universidad Tecnológica del Perú. He has also served in different capacities at, inter alia, the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, and the International Tribunal for the Law of the Sea.

\*\* Mr. Giorgi Chakhvadze is a doctoral candidate at the Faculty of Law of the Ivane Javakishvili Tbilisi State University, Georgia. He is also a lecturer at the Lithuanian Maritime Academy, the Batumi Shota Rustaveli State University (Georgia), the BAU International University Batumi (Georgia), and the AVICENNA Batumi Medical University (Georgia).

*security are examined to determine the feasibility, advisability, or even necessity to incorporate international maritime terrorism into the Rome Statute. Finally, this Article argues for incorporation based on three main normative grounds: i) better protection of the marine environment (environmental security); ii) contribution towards filling important jurisdictional gaps concerning maritime zones; and iii) contribution towards coherence across supranational courts on international maritime terrorism and maritime security.*

|   |    |
|---|----|
| I. INTRODUCTION .....   | 40 |
| II. INTERNATIONAL MARITIME TERRORISM AS AN EMERGING OR<br>POTENTIAL INTERNATIONAL CRIME .....                                       | 44 |
| A. International Terrorism and International Maritime Terrorism:<br>Towards a Legal Definition of an International Crime .....      | 44 |
| 1. The <i>Actus Reus</i> of International Maritime Terrorism.....   | 46 |
| 2. The <i>Mens Rea</i> of International Maritime Terrorism .....  | 47 |
| B. International Maritime Terrorism as a Threat to or an Attack against<br>International Peace and Security .....                   | 49 |
| C. National Practice and Related <i>Opinio Juris</i> .....  | 53 |
| III. LAW AND PRACTICE OF THE ICC .....  | 61 |
| A. The Rome Statute: <i>Travaux Préparatoires</i> and Amendment Proposals   | 62 |
| B. The ICC's Practice .....   | 66 |
| IV. NORMATIVE CONSIDERATIONS .....  | 72 |
| A. Inclusion of International Maritime Terrorism in the Rome Statute to<br>Better Protect the Marine Environment.....               | 72 |
| B. Inclusion of International Maritime Terrorism to Help in Sorting out<br>ICC's Jurisdictional Gaps or Jurisdictional Issues ..... | 76 |
| C. Coherence or Consistency Across Supranational Courts.....  | 88 |
| V. CONCLUSION.....  | 97 |
| VI. APPENDIX.....   | 98 |

## I. INTRODUCTION

Many scholars have examined the exclusion of international terrorism from the International Criminal Court (ICC)'s jurisdiction,<sup>1</sup> namely from the Rome Statute of the ICC (Rome Statute).<sup>2</sup> Some scholars have considered

---

1. See, e.g., Patrick Robinson, *The Missing Crimes*, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT* 497, 510–21 (Antonio Cassese et al. eds., 2002) (relating international terrorism to drug crimes and explaining why international terrorism is excluded from the draft code of the ILC); WILLIAM A. SCHABAS, *THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY ON THE ROME STATUTE* 114, 117–18, 120–22 (2d ed. 2016) (explaining why terrorism is not included in the jurisdiction of the ICC).

2. Rome Statute of the International Criminal Court, *adopted* Jul. 17, 1998, 2187 U.N.T.S. 90

that exclusion to be positive, mainly due to the lack of a general-consensus definition of international terrorism in international law.<sup>3</sup> However, others have expressed support for expanding the ICC's jurisdiction to include international terrorism,<sup>4</sup> especially serious manifestations thereof,<sup>5</sup> and/or including other serious threats to maritime security such as piracy.<sup>6</sup>

Although some scholars have examined maritime terrorism,<sup>7</sup> no academic publication specifically discusses whether the ICC should have jurisdiction over international maritime terrorism. This deserves more attention due to—among other reasons—the increasing importance of international maritime terrorism this century. For instance, the Institute for the Analysis of Global Security stated that “maritime terrorism has emerged as a formidable threat in the world, targeting both civilian and naval vessels[.]”<sup>8</sup> The post-9/11 context demonstrates the vulnerability of the international security system to the threat of international terrorism, including international maritime terrorism.<sup>9</sup> International terrorism is not an

---

(entered into force Jul. 1, 2002) [hereinafter Rome Statute].

3. See, e.g., Antonio Cassese, *The Statute of the International Criminal Court: Some Preliminary Reflections*, 10 EUR. J. INT'L L. 145, 146 (1999) (proposing that excluding terrorism from the International Criminal Court is wise because it is best investigated at the national level); Markus Wagner, *The ICC and its Jurisdiction – Myths, Misperceptions and Realities*, in MAX PLANCK YEARBOOK OF UNITED NATIONS LAW 410, 415, 475 (Armin von Bogdandy & Rudiger Wolfrum eds., 2003) (favoring the exclusion of terrorism under ICC jurisdiction).

4. E.g., Peter J. Wertheim, *Should ‘Grave Crimes of International Terrorism’ be included in the Jurisdiction of the International Criminal Court?*, 22 POL'Y & SOC'Y 1, 5 (2003); Michael Lawless, *Terrorism: An International Crime*, 63 INT'L J.: CANADA'S J. OF GLOB. POL'Y ANALYSIS 139, 150, 155, 158 (2007/2008); Kathleen Maloney-Dunn, *Humanizing Terrorism Through International Criminal Law: Equal Justice for Victims, Fair Treatment of Suspects, and Fundamental Human Rights at the ICC*, 8 SANTA CLARA J. INT'L L. 69, 69–86 (2010); Coman Kenny, *Prosecuting Crimes of International Concern: Islamic State at the ICC?*, 33 UTRECHT J. INT'L & EUR. L. 120, 120–45 (2017).

5. See, e.g., Vincent-Joël Proulx, *A Postmortem for International Criminal Law? Terrorism, Law and Politics, and the Reaffirmation of State Sovereignty*, 11 HARV. NAT'L SEC. J. 152, 212–13 (2020) (noting that small scale terrorism can be handled domestically but large scale terrorism would be better handled internationally by the ICC).

6. See, e.g., Yvonne M. Dutton, *Bringing Pirates to Justice: A Case for Including Piracy Within the Jurisdiction of the International Criminal Court*, 11 CHI. J. INT'L L. 197, 197–241 (2010) (noting that piracy should be addressed by the ICC); Melanie O'Brien, *Where Security Meets Justice: Prosecuting Maritime Piracy in the International Criminal Court*, 4 ASIAN J. INT'L L. 81, 81–102 (2014) (noting that piracy should be prosecuted in the ICC).

7. See, e.g., SAIFUL KARIM, *MARITIME TERRORISM AND THE ROLE OF JUDICIAL INSTITUTIONS IN THE INTERNATIONAL LEGAL ORDER* (2017) (ebook); Juan-Pablo Perez-Leon-Acevedo, *International Law and Maritime Terrorism*, EJIL: TALK! BLOG (Nov. 19, 2019) <https://www.ejiltalk.org/international-law-and-maritime-terrorism/> (addressing what maritime terrorism presents); Efthymios Papastavridis, *Maritime Terrorism in International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM 60 (Ben Saul ed., 2020).

8. *Maritime Terrorism: a new challenge for NATO*, INSTITUTE FOR THE ANALYSIS OF GLOBAL SECURITY (Jan. 24, 2005), <http://www.iags.org/n0124051.htm>.

9. Int'l Maritime Org. [IMO] A22/Res.924, *Review of Measures and Procedures to Prevent Acts*

entirely land-based phenomenon, and while international maritime terrorism acts make up a relatively small portion of international terrorist acts,<sup>10</sup> the perpetration of international maritime terrorism has increased in the last decades,<sup>11</sup> particularly in the context of the global war against terrorism. Moreover, security reports do not list all international maritime terrorism incidents as there are problems or limitations related to data collection.<sup>12</sup>

Without being exhaustive, international maritime terrorism in the last four decades has included, *inter alia*, the following acts: i) the Achille Lauro incident, where Palestine Liberation Front members seized an Italian flag cruise ship in 1985;<sup>13</sup> ii) a terrorist incident involving an excursion vessel in Greek territorial sea in 1988;<sup>14</sup> iii) the bombing of Royal Fleet Auxiliary Fort Victoria by the Provisional Irish Republican Army in 1990;<sup>15</sup> iv) the hijacking of the Turkish ferry Avrasya-Eurasia by gunmen supporting Chechen fighters against Russia in 1996;<sup>16</sup> v) the destruction of the oil tanker Silk Pride off the coast of Sri Lanka by Liberation Tigers of Tamil Eelam suicide bombers in 2001;<sup>17</sup> vi) Al-Qaeda attacks against the U.S. destroyer Cole in Yemen in 2000, a French oil tanker in Limburg in 2002, Al Basra oil terminal in Iraq in 2004, and the U.S.S. naval vessels Ashland and Kearsage in 2005;<sup>18</sup> vii) Hezbollah's attack against the Israeli Corvette Ahi-Hanit in 2006;<sup>19</sup> viii) the Al-Qaeda's affiliate Abdallah Azzam Brigades attack on

---

*of Terrorism Which Threaten the Security of Passengers and Crews and the Safety of Ships* (Nov. 20, 2001),

[https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.924\(22\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.924(22).pdf).

10. There were about 314 incidents of maritime terrorism (1970–2014). See MARTIN N. MURPHY, CONTEMPORARY PIRACY AND MARITIME TERRORISM: THE THREAT TO INTERNATIONAL SECURITY, 45 (2007) (“The number of terrorist attacks at sea has been miniscule as a proportion of terrorist attacks overall.”); GLOBAL TERRORISM DATABASE, [www.start.umd.edu/gtd](http://www.start.umd.edu/gtd) (last visited Nov. 19, 2023) (showing different visual representations of terrorism happening around the globe).

11. See LLOYD'S LIST, <https://lloydlist.maritimeintelligence.informa.com/> (last visited Nov. 19, 2023) (noting that the statistics of maritime terrorist acts are constantly increasing).

12. PATRICIA SCHNEIDER, MARITIME TERRORISM: T. . . TERGRUPPEN UND ANSCHLAGSTYPEN 15 (2012).

13. Malvina Halberstam, *International Maritime Navigation and Installations on the High Seas*, in I INTERNATIONAL CRIMINAL LAW 815, 818–19 (Cherif Bassiouni ed., 3d ed., 2008).

14. Associated Press, *Terrorists Kill 9 and Wound 98 on Excursion Vessel Near Athens*, N.Y. TIMES, Jul. 12, 1988.

15. JAMES KRASKA & RAUL PEDROZO, INTERNATIONAL MARITIME SECURITY LAW 740 (2013).

16. Phillip Null, *Case Study: MV Avrasya Hostage Siege*, LEXIPOL (Jan. 17, 2011), <https://www.police1.com/terrorism/articles/case-study-mv-avrasya-hostage-siege-QovHI5MW9mwRgQnV/>.

17. Papastavridis, *supra* note 7, at 60.

18. Mark Munson, *Port Security in the Persian Gulf* 47 (June 2008) (Master's Thesis, Naval Postgraduate School), <https://apps.dtic.mil/sti/citations/ADA483475>.

19. Papastavridis, *supra* note 7, at 61.

the Japanese super-tanker *M. Star* in the Strait of Hormuz in 2010);<sup>20</sup> ix) incidents in the Indian subcontinent, such as Al-Qaeda's attempt to hijack a Pakistani Navy frigate in 2014;<sup>21</sup> x) an Islamic State-affiliated group's attack on an Egyptian vessel in the Mediterranean Sea in 2015;<sup>22</sup> xi) the Pakistan-based militant groups Lashkar-e-Taiba's and Jaish-e-Mohammed's plans to attack Indian ports and ships in 2018;<sup>23</sup> xii) an attack against four Saudi oil tankers following warnings that Iran or proxies could target shipping in 2019;<sup>24</sup> xiii) the ambush and seizure of three fishermen by an Islamic State-affiliated group in the Philippines off the coast of East Sabah in 2019;<sup>25</sup> and xiv) international maritime terrorism incidents or related activities in the Malacca, Singapore, and Hormuz straits.<sup>26</sup>

Serious attacks against maritime security and/or international crimes involving international terrorism committed at sea are not a new phenomenon, even for the ICC.<sup>27</sup> While the ICC cannot directly exercise its jurisdiction over international terrorism and international maritime terrorism,<sup>28</sup> the ICC has increasingly dealt with international crimes committed by terrorist groups or alleged international crimes committed at sea.<sup>29</sup>

Against this backdrop, this Article addresses the following question: should international maritime terrorism be included in the ICC's jurisdiction? To answer it, this Article proceeds with three main sections. Section I discusses international maritime terrorism as an underlying criminal act or a manifestation of the (potentially) emerging autonomous

---

20. *Id.*

21. *Id.*

22. *Egypt Navy Ship 'Hit by Sinai Militants' Missile*, BBC NEWS (Jul. 16, 2015), <https://www.bbc.com/news/world-middle-east-33557180>.

23. ABHIJIT SINGH, *MARITIME TERRORISM IN ASIA: AN ASSESSMENT 2* (Observer Rsch. Found., ed., 2019).

24. Patrick Wintour, *Saudi Oil Tankers Show 'Significant Damage' After Attack – Riyadh*, THE GUARDIAN (May 13, 2019), <https://www.theguardian.com/world/2019/may/12/uae-four-merchant-ships-reported-sabotaged>.

25. Kenneth Yeo, *Kidnapping in the Sulu Sea: Implications on Terrorism in the Philippines*, THE DIPLOMAT (Oct. 4, 2019), <https://thediplomat.com/2019/10/kidnapping-in-the-sulu-sea-implications-on-terrorism-in-the-philippines/>.

26. See Vinita Ramani, *Troubled Waters-Piracy and Maritime Security in Southeast Asia*, KONTINENTALIST (Aug. 22, 2019), <https://kontinentalist.com/stories/troubled-waters-piracy-and-maritime-security-in-southeast-asia> (describing instances of maritime terrorism in those places); Papastavridis, *supra* note 7, at 61 (highlighting an instance of maritime terrorism in the Strait of Hormuz in 2010).

27. See discussion *infra* Section III.

28. See generally Rome Statute, *supra* note 2 (establishing that the Court's jurisdiction is limited to certain specified crimes).

29. See discussion *infra* Section III.B.

international crime of terrorism. Section II examines i) whether and to what extent there is an internationally accepted or emerging legal definition of international terrorism, focusing on international maritime terrorism; ii) whether and to what extent international terrorism, particularly international maritime terrorism, may be considered a serious threat to or attack against international peace and security; and iii) whether and to what extent there is an emerging customary international law rule criminalizing international maritime terrorism based on relevant state practice. Then, Section III addresses the ICC's law and practice to determine more closely the feasibility, advisability, and even necessity of including a crime of international maritime terrorism in the Rome Statute. This analysis of the ICC's law includes the Rome Statute, the *travaux préparatoires* thereof, and proposals to amend it, while the analysis of the ICC's practice concerns the extent to which the Court has previously exercised jurisdiction over crimes committed by international terrorist groups and/or crimes involving serious threats to maritime security. Finally, Section IV examines whether international maritime terrorism should be included in the Rome Statute based on three normative grounds, namely, whether such an inclusion: i) may be a tool to better protect the marine environment; ii) may contribute to filling important jurisdictional gaps concerning the ICC's jurisdiction over atrocities committed in maritime zones; and iii) may contribute towards a synergy or convergence among diverse supranational courts when tackling international terrorism, international maritime terrorism, and other serious threats to or attacks against maritime security.

## II. INTERNATIONAL MARITIME TERRORISM AS AN EMERGING OR POTENTIAL INTERNATIONAL CRIME

This Section seeks to provide the general framework underlying the main research question of this Article, namely, whether international maritime terrorism should be included in the Rome Statute. It does so by examining international maritime terrorism as an emerging or potential international crime. Subsection A presents the main legal elements of international maritime terrorism amidst the ongoing discussion of whether international terrorism (international maritime terrorism included) can be considered an international crime *per se*. Then, subsection B characterizes international maritime terrorism as an attack against international peace and security. Finally, subsection C examines national practice and related *opinio juris* concerning the criminalization of international maritime terrorism.

### A. International Terrorism and International Maritime Terrorism:

## Towards a Legal Definition of an International Crime

Most scholars are still skeptical of considering international terrorism, which encompasses international maritime terrorism, as an international crime, mainly due to the lack of a common and generally accepted definition of international terrorism. Thus, international terrorism is usually categorized as a transnational crime, or a special sub-category thereof, that is very close to the core international crimes.<sup>30</sup> However, based on growing international and state practice—such as those found in the UN Security Council (UNSC) Resolutions,<sup>31</sup> the UN Draft Comprehensive Convention on International Terrorism,<sup>32</sup> national legislations and jurisprudence,<sup>33</sup> contents of international or regional counter-terrorism treaties and levels of ratification thereof,<sup>34</sup> the Special Tribunal for Lebanon (STL)’s *Ayyash* decision that provided a jurisprudential definition of international terrorism,<sup>35</sup> and regional instruments<sup>36</sup>—authors have also recognized that there may be an emerging consensual definition of international terrorism itself as an international crime;<sup>37</sup> that such a definition may already exist, at

---

30. See, e.g., BEN SAUL, *DEFINING TERRORISM IN INTERNATIONAL LAW* 270, 319 (2008) (arguing that terrorism should be defined as an international crime); CARSTEN STAHN, *A CRITICAL INTRODUCTION TO INTERNATIONAL CRIMINAL LAW* 31 (2019) (explaining that “[d]efinitions of terrorism in regional and domestic instruments vary greatly”); Guénael Métraux, *The United Nations Special Tribunal for Lebanon: Defining International Terrorism*, in *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM*, *supra* note 7, at 588, 597–98 (providing an overview of the Special Tribunal for Lebanon’s definition of international terrorism); ROBERT CRYER ET AL., *AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE* 334 (2019) (defining terrorism as a transnational crime).

31. E.g., S.C. Res. 1566 (Oct. 8, 2004); S.C. Res. 1904 (Dec. 17, 2009).

32. Draft Comprehensive Convention on International Terrorism, Working Document Submitted by India, Preamble, U.N. Doc. A/C.6/55/1 (Aug. 28, 2000).

33. See *infra* Section II.C (noting the increase in national criminalization of international terrorism).

34. See *infra* Section II.B. & Section II.C (noting that various Conventions and Organizations recognize that threats to international maritime security are also threats to international peace and security).

35. See *Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/1, Interlocutory Decision on the Applicable Law, (Special Tribunal for Lebanon Feb. 16, 2011) (defining international terrorism as a criminal act intended to intimidate the population in an international context).

36. E.g., Council Directive 2017/541, 2017 O.J. (L 88/6).

37. See Kai Ambos & Anina Timmermann, *Terrorism and Customary International Law*, in *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM*, *supra* note 7, at 16, 27–30. See also KAI AMBOS, *TREATISE ON INTERNATIONAL CRIMINAL LAW: VOLUME II: THE CRIMES AND SENTENCING* 232 (2014) (“[O]ne cannot disagree with the fact that a core or basic definition of terrorism has emerged in international law”); *Id.* at 234 (International terrorism “is on the verge of becoming a true international crime. This is also confirmed by the special treatment of terrorism by the UN Security Council and the General Assembly, which in any case makes clear that terrorism is a ‘special’ transnational offence that may come closer to a true international crime than ‘ordinary’ transnational offences. Also, extreme forms of terrorism may amount to war crimes or crimes against humanity and thus be directly punishable under international law”).

least applicable in peacetime;<sup>38</sup> or even that international terrorism is an international crime.<sup>39</sup>

Discussing in detail and answering the question of whether international terrorism, including international maritime terrorism, as such is an international crime exceeds the scope of this Article. Yet, the legal elements of international terrorism as an emerging international crime, identified in some of the above-mentioned primary legal sources and invoked by scholars, are considered part of a working framework applicable to international maritime terrorism.

### 1. The *Actus Reus* of International Maritime Terrorism

The *actus reus*, or “objective” element of international terrorism, involves any criminal act that is already punishable—such as murder, injuries, kidnapping, bombing, property damages, etc.—that also presents a transnational element, meaning it is not limited to the territory of just one state.<sup>40</sup> However, for the more narrow crime of international maritime terrorism, the *actus reus* includes crimes detailed in specific counter-maritime terrorism multilateral treaties: Article 3 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention),<sup>41</sup> Article 2 of the 1988 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Convention Protocol),<sup>42</sup> Article 4 of the 2005 Protocol to the SUA Convention (adding Articles *3bis*, *3ter*, and *3quarter* to the SUA Convention, which expanded aspects such as the range of maritime terrorism offenses),<sup>43</sup> and Article 4 of the 2005 Protocol to the

---

38. ANTONIO CASSESE & PAOLA GAETA, CASSESE’S INTERNATIONAL CRIMINAL LAW 148–49 (3d ed. 2013).

39. Cherif Bassiouni, *Perspectives on International Terrorism*, in I INTERNATIONAL CRIMINAL LAW, *supra* note 13, at 697, 726.

40. Vera Alizade, *Criminalization of International Terrorism in International Law*, IX INTERNATIONAL SCIENTIFIC AND PRACTICAL INTERNET CONFERENCE: MODERN CHALLENGES AND TOPICAL PROBLEMS OF SCIENCE, EDUCATION AND PRODUCTION: INTERSECTORAL DISPUTES (Oct. 16, 2020); CASSESE & GAETA, *supra* note 38, at 149–50; Kai Ambos & Anina Timmermann, *Terrorism and Customary International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM, *supra* note 7, at 16, 22; Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Interlocutory Decision on the Applicable Law, ¶¶ 83, 85 (Special Tribunal for Lebanon Feb. 16, 2011).

41. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation art. 3, Mar. 10, 1988, 1678 U.N.T.S. 201 [hereinafter 1988 Safety of Maritime Navigation Convention].

42. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf art. 2, Mar. 10, 1988, 1678 U.N.T.S. 201 [hereinafter 1988 Fixed Platforms Protocol].

43. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation art. 4, Oct. 14, 2005, 1678 U.N.T.S. 201, [hereinafter 2005 Safety of Maritime



SUA Convention Protocol (adding Articles *2bis* and *2ter* to the SUA Convention Protocol).<sup>44</sup>

Based on the above-mentioned 1988 instruments, the *actus reus* of international maritime terrorism originally included: i) seizing or controlling a ship or a fixed platform by force or a threat thereof;<sup>45</sup> ii) violence against a person, damages to a ship, maritime navigational facilities, or a fixed platform, or placement of a substance or a device on a ship or a fixed platform, if such an act endangers safe navigation;<sup>46</sup> iii) destruction of a ship, maritime navigational facilities, or a fixed platform;<sup>47</sup> and iv) injuries or killing of persons in connection with the previous crimes.<sup>48</sup> With the above-listed 2005 Protocols, the *actus reus* of international maritime terrorism was expanded to include: i) using biological/chemical/nuclear weapons, radioactive materials, or hazardous substances on ships or platforms and/or against ships or platforms;<sup>49</sup> and ii) using ships to cause death, serious injuries or damages, including environmental damages.<sup>50</sup> Importantly, land preparation for terrorism at sea would arguably fall within the *actus reus* of international maritime terrorism.<sup>51</sup>

## 2. The *Mens Rea* of International Maritime Terrorism

The *mens rea*, or “mental” element of international terrorism, specifies that i) it has to be committed intentionally, and ii) the perpetrator has to have a special intent or purpose to spread terror among the population or compel a government or international organization to do or abstain from doing something.<sup>52</sup> However, the perpetrator is not required to have a purpose of

Navigation Protocol].

44. Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms art. 2, Oct. 14, 2005, 1678 U.N.T.S. 201 [hereinafter 2005 Fixed Platforms Protocol].

45. 1988 Safety of Maritime Navigation Convention, *supra* note 41, art. 3(1)(a); 1988 Fixed Platforms Protocol, *supra* note 42, art. 2(1)(a).

46. 1988 Safety of Maritime Navigation Convention, *supra* note 41, art. 3(1)(b), (c), (d); 1988 Fixed Platforms Protocol, *supra* note 42, art. 2(1)(b), (d).

47. 1988 Safety of Maritime Navigation Convention, *supra* note 41, art. 3(1)(e); 1988 Fixed Platforms Protocol, *supra* note 42, art. 2(1)(c).

48. 1988 Safety of Maritime Navigation Convention, *supra* note 41, art. 3(1)(g); 1988 Fixed Platforms Protocol, *supra* note 42, art. 2(1)(e).

49. 2005 Safety of Maritime Navigation Protocol, *supra* note 43, art. 3bis(1)(a)(i)–(ii), 3bis(1)(b)(i); 2005 Fixed Platforms Protocol, *supra* note 44, art. 2bis(a)–(b).

50. 2005 Safety of Maritime Navigation Protocol, *supra* note 43, art. 3bis(1)(a)(iii).

51. See KARIM, *supra* note 7, at 44–45 (providing that the customary international law definition of maritime terrorism includes acts perpetrated against facilities).

52. See, e.g., Draft Comprehensive Convention on International Terrorism, Working Document Submitted by India, art. 2, U.N. Doc. A/C.6/55/1 (Aug. 28, 2000); Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Interlocutory Decision on the Applicable Law, ¶¶ 83, 85 (Special Tribunal for Lebanon Feb. 16, 2011); CASSESE & GAETA, *supra* note 38, at 150–51; Kai

spreading terror to satisfy the *mens rea* legal element of international terrorism, *stricto sensu*.<sup>53</sup>

The general *mens rea* of international terrorism also applies to international maritime terrorism.<sup>54</sup> For example, in terms of counter-maritime terrorism multilateral treaties, the SUA Convention establishes that “any person commits an offense if that person unlawfully and intentionally” commits any of the criminal acts indicated in the Convention and refers to threats “aimed at compelling a physical or juridical person to do or refrain from doing any act[.]”<sup>55</sup> After its 2005 modification, the SUA Convention importantly lays down that “the purpose of the act . . . is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act[.]”<sup>56</sup> Indeed, the *mens rea*—and *actus reus*—of international maritime terrorism were present in the terrorist attack that led to the adoption of the SUA Convention: the Achille Lauro incident in 1985, where Palestine Liberation Front members seized an Italian-flag cruise ship, holding the ship’s crew and passengers as hostages and threatening to kill them.<sup>57</sup> They demanded that Israel release 50 Palestinian prisoners to spare the lives of the passengers and threatened to blow up the ship in case of an attempted rescue mission.<sup>58</sup>

Finally, it must be remarked that the above-mentioned analysis corresponds to the characterization of international terrorism, including international maritime terrorism, as an emerging international crime. Yet, terrorist attacks may also constitute war crimes and crimes against humanity subject to specific legal frameworks,<sup>59</sup> which exceed the scope of this Article. For instance, attacks against war ships during and in connection with hostilities in armed conflicts are primarily regulated by international

Ambos & Anina Timmermann, *Terrorism and Customary International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM, *supra* note 7, at 16, 24.

53. CASSESE & GAETA, *supra* note 38, at 151; Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Interlocutory Decision on the Applicable Law, ¶ 106 (Special Tribunal for Lebanon Feb. 11, 2011); Human Rights Council, *Negative Effects of Terrorism on the Enjoyment of Human Rights*, ¶ 10, U.N. Doc. A/HRC/48/66 (Aug. 9, 2021).

54. See KARIM, *supra* note 7, at 45–46 (elaborating on the connection between maritime terrorism and international terrorism under customary international law).

55. 1988 Safety of Maritime Navigation Convention, *supra* note 41, arts. 3(1), 3(2)(b).

56. *Id.* art. 3bis(1)(a).

57. Indeed, one passenger was killed. See Halberstam, *supra* note 13, at 819–20 (“The impetus for this Convention was the seizure of the *Achille Lauro* . . .”).

58. See Dean C. Alexander, *Maritime Terrorism and Legal Responses*, 19 DENV. J. INT’L L & POL’Y 529, 540 (1991) (describing the Achille Lauro incident where demands were made to release Palestinian prisoners).

59. See CASSESE & GAETA, *supra* note 38, at 153–58 (providing the definition of aggression under the UN Charter and stating that “one cannot see what would stand in the way of extending criminal liability for aggression to individuals who do not belong to, nor act on behalf of, a state”).

humanitarian law under the doctrine of *lex specialis* rather than counter-international maritime terrorism treaties.<sup>60</sup> Nevertheless, there may be, in certain circumstances, a “twofold legal characterization of the same conduct or the combined simultaneous application of two different bodies of law to the same conduct[.]”<sup>61</sup>

## B. International Maritime Terrorism as a Threat to or an Attack against International Peace and Security

As scholars have determined, a constitutive feature of international crimes is that these atrocities seriously affect universal or particularly significant international values such as international peace and security.<sup>62</sup> Indeed, the Preamble to the Rome Statute in its third paragraph explicitly “[r]ecogniz[es] that such grave crimes threaten the peace, security and well-being of the world[.]”<sup>63</sup> Authors have considered that international terrorism,<sup>64</sup> including international maritime terrorism,<sup>65</sup> constitutes a threat to or an attack against international peace and security, and this sub-section examines these international instruments and other sources on international terrorism.

Authors have considered how the UNSC’s practice has been to interpret the concept of international peace and security in a broad manner.<sup>66</sup> The

---

60. See 2005 Safety of Maritime Navigation Protocol, *supra* note 43, art. 2bis(2) (explaining that activities of armed forces during armed conflicts are understood under international humanitarian law).

61. CASSESE & GAETA, *supra* note 38, at 157.

62. E.g., Kai Ambos & Anina Timmermann, *Terrorism and Customary International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM, *supra* note 7, at 16, 23; CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 142 (2d ed., 2012).

63. Rome Statute, *supra* note 2, Preamble.

64. Kai Ambos & Anina Timmermann, *Terrorism and Customary International Law*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM, *supra* note 7, at 16, 23; SAUL, *supra* note 30, at 315–17; CASSESE & GAETA, *supra* note 38, at 20 (noting that defining terrorism would provide States with a functional, alternative response to terrorism).

65. See Rudiger Wolfrum, *Fighting Terrorism at Sea*, in LEGAL CHALLENGES IN MARITIME SECURITY 1, 1–40 (Myron Nordquist & Rudiger Wolfrum eds., 2008) (discussing the options and limitations under international law in fighting terrorism at sea); KARIM, *supra* note 7, at 42–65 (defining maritime terrorism and discussing the evolution of international law concerning maritime terrorism); Papastavridis, *supra* note 7, at 62 (noting that maritime terrorism could pose threats to international peace and security). See also Michael Plachta, *The Lockerbie Case: The Role of the Security Council in Enforcing the Principle Aut Dedere Aut Judicare*, 12 EUR. J. INT’L L. 125, 136 (2001).

66. See, e.g., Jure Vidmar, *Norm Conflicts and Hierarchy in International Law: Towards a Vertical International Legal System*, in HIERARCHY IN INTERNATIONAL LAW: THE PLACE OF HUMAN RIGHTS 63, 68 (Jure Vidmar & Erika D. Wet eds., 2012) (noting that the broad scope of international peace and security includes traditional threats as well as systematic human rights violations); S.C. Res. 23500 (Jan. 31, 1992) (underlining the need for all member states to fulfill their obligations in relation to arms control and disarmament and recognised that the proliferation of WMD constitutes a threat to international peace

UNSC has constantly reiterated that the prevention of *all* forms of international terrorism, including international maritime terrorism, is essential for the maintenance of international peace and security.<sup>67</sup> Furthermore, the UNSC is firm in its assessments and refers to international terrorism as an act against or a threat to international peace and security or a particularly serious crime.<sup>68</sup> Since international terrorism in all its forms constitutes one of the most serious threats to international peace and security, the UN efforts conceptually consider the serious threat posed by international maritime terrorism, which is also in line with the UNSC's resolutions.<sup>69</sup> When Libya's prosecution of suspects in an airplane explosion over Lockerbie in 1988 became problematic and impunity became an issue, the UNSC—via Resolution 748—stated that Libya's failure to effectively prosecute terrorists amounts to a threat to international peace and security that enabled the UNSC to act under Chapter VII of the UN Charter.<sup>70</sup>

As for the relationship between international maritime terrorism and other serious threats to international maritime security, attention should be drawn to the UNSC's practice on piracy off Somalia's coast,<sup>71</sup> albeit there are differences between piracy and international maritime terrorism. Unlike international maritime terrorism, piracy can only be committed on the high seas or outside the jurisdiction of states, requires at least two ships involved, and is usually driven by private purposes under the UN Convention on the Law of the Sea (UNCLOS).<sup>72</sup> Yet, the comprehensive analysis of such practice arguably shows that, when dealing with piracy, the UN's aim is to resolve the problem of international maritime security in general through different capacity-building programs and legal or policy frameworks, such as a maritime security coordination committee.<sup>73</sup> The qualification of piracy and armed robbery as a threat to international peace and security may be *mutatis mutandis*. This is applicable to international maritime terrorism since the UNSC considers that piracy fuels, among others, international maritime terrorism in a context where the UN's ultimate goal is to design optimal

---

and security).

67. *E.g.*, S.C. Res. 1267 (Oct. 15, 1999); S.C. Res. 1269 (Oct. 19, 1999); S.C. Res. 1333 (Dec. 19, 2000); S.C. Res. 1363 (2001).

68. *E.g.*, S.C. Res. 1267 (Oct. 15, 1999); S.C. Res. 1269 (Oct. 19, 1999); S.C. Res. 1333 (Dec. 19, 2000); S.C. Res. 1363, (Jul. 30, 2001); S.C. Res. 1368 (Sep. 12, 2001); S.C. Res. 1373 (2001); S.C. Res. 1904 (Sep. 28, 2009).

69. *E.g.* S.C. Res. 1373 (Sep. 28, 2001).

70. Plachta, *supra* note 65, at 136.

71. *E.g.*, S.C. Res. 2500 (Dec. 4, 2019); S.C. Res. 2383 (Nov. 7, 2017); S.C. Res. 2125 (Nov. 18, 2013); S.C. Res. 920 (Nov. 3, 2021).

72. *See* United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

73. S.C. Res. 843 (Oct. 7, 2016).

counter-measures against *all* threats to security and peace in the sea.<sup>74</sup>

Under the UN International Law Commission (ILC)'s Draft Comprehensive Convention on Terrorism, which includes international maritime terrorism, the suppression of international terrorism serves to maintain international peace and security.<sup>75</sup> Article 24 of the 1991 ILC Draft Code of Crimes against the Peace and Security of Mankind included international terrorism;<sup>76</sup> however, it was later excluded.<sup>77</sup>

In turn, the UN General Assembly has expressed its deep concern about the persistence of terrorist acts, stressing the importance of further international cooperation among states, international or regional organizations, and other agencies to prevent and eliminate *all* forms and manifestations of terrorism because international terrorism “may pose a threat to international peace and security[.]”<sup>78</sup> Notwithstanding their non-binding effects, these General Assembly's resolutions arguably evidence trends in the formation of customary international law regarding international terrorism, including international maritime terrorism.

Following the 9/11 attacks, the International Maritime Organization also adopted measures with the understanding of international maritime terrorism as a serious threat to maritime security. Specifically, the International Code for the Security of Ships and of Port Facilities (2004) was adopted, which was developed as an amendment to the International Convention for the Safety of Life at Sea.<sup>79</sup>

Concerning international jurisprudence, the STL's jurisprudence in *Ayyash et al.* is of particular importance, entering a “new phase in fighting terrorism through the rule of law[.]”<sup>80</sup> The STL provided a highly original approach to the interpretation of national criminal legislation regarding international terrorism. On February 14, 2005, a massive explosion in Beirut

---

74. S.C. Res. 2383 (Nov. 7, 2017); S.C. Res. 859 (Oct. 12, 2017).

75. Draft Comprehensive Convention on International Terrorism, Working Document Submitted by India, Preamble, U.N. Doc. A/C.6/55/1 (Aug. 28, 2000).

76. *Report of the Commission to the General Assembly on the Work of its Forty-Third Session*, [1991] 2 Y.B. Int'l L. Comm'n 101, U.N. Doc. A/CN.4/SER.A/1991/Add.1 (Part 2).

77. *See Report of the Commission to the General Assembly on the Work of its Forty-Eighth Session*, [1996] 2 Y.B. Int'l L. Comm'n 17–53, U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2) (presenting the text of and commentaries to the draft Code as adopted by the International Law Commission at its forty-eighth session).

78. *See, e.g.*, G.A. Res. 49/60, at 4–5 (Feb. 17, 1995) (encouraging the cooperation among States to combat terrorism).

79. *See* Papastavridis *supra* note 7, at 69 (noting the role of the IMO).

80. *See* Daniel D.N. Nsereko, *The Special Tribunal for Lebanon and the Global Response to Terrorism*, in INTERNATIONAL LAW AND THE PROTECTION OF HUMANITY 438, 450 (Pia Acconci et al. eds., 2017) (discussing the importance of the Ayyash case on combatting terrorism).

killed 22 people including former Lebanese Prime Minister Rafik Hariri.<sup>81</sup> As a hybrid criminal tribunal, the STL applied the definition of terrorism under the Lebanese Criminal Code (Article 314).<sup>82</sup> In 2011, the STL broadly interpreted the scope of its statute by providing a general definition of terrorism, which is applicable during peacetime under customary international law based on a survey of diverse legal sources.<sup>83</sup> Although several scholars have criticized this decision for its methodology and findings,<sup>84</sup> authors have increasingly acknowledged its importance as an attempt to define international terrorism as an autonomous international crime.<sup>85</sup> The consideration of terrorist acts as threats to or attacks against international peace and security also underlined the STL's *Ayyash et al.* trial judgment<sup>86</sup> and appeals judgment<sup>87</sup> in 2020 and 2022 respectively. Notably, STL Judge Baragwanath—in agreement with the UNSC's qualification—considered the terrorist attack against Hariri as a “threat to international peace and security[.]”<sup>88</sup>

At the regional level, the Inter-American Convention against Terrorism (2002) qualifies international terrorism as a threat to international peace and security.<sup>89</sup> Article 2 lists, *inter alia*, the 1988 SUA Convention and its 1988 Protocol.<sup>90</sup> Similarly, the Preamble of the South Asian Association for

---

81. *Rafik Hariri Killing: Hezbollah Duo Convicted of 2005 Bombing on Appeal*, BBC (Mar. 10, 2022), <https://www.bbc.com/news/world-middle-east-60691507>.

82. See Joseph Rikhof, *Special Court for Lebanon Conviction for Terrorism*, *Global Justice Journal*, THE PKI GLOBAL JUSTICE INSTITUTE (Sept. 18, 2020) <https://globaljustice.queenslaw.ca/news/special-court-for-lebanon-conviction-for-terrorism> (noting the application of the “terrorism” definition in the Lebanese Criminal Court).

83. Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Interlocutory Decision on the Applicable Law, ¶ 85 (Special Tribunal for Lebanon Feb. 16, 2011).

84. See Matthew Gillett & Matthias Schuster, *Fast-Track Justice: The Special Tribunal for Lebanon Defines Terrorism*, 9 LEIDEN J. INT'L L. 989–1020 (2011) (commenting on the overinclusive and underinclusive nature of the STL's decision and definition of terrorism); Manuel Ventura, *Terrorism According to the STL's Interlocutory Decision on the Applicable Law: A Defining Moment or a Moment of Defining?*, 9 LEIDEN J. INT'L L. 1021–42 (2011) (commenting on the controversial far reaching implications of the STL decision).

85. See, e.g., AMBOS, *supra* note 37, at 231–32; Ben Saul, *Defining Terrorism: A Conceptual Minefield*, in THE OXFORD HANDBOOK OF TERRORISM 34, 44–45 (Erica Chenoweth et al. eds., 2019) (noting the usefulness of the STL decision); Proulx, *supra* note 5, at 181–82 (generally discussing the importance of the STL decision).

86. Prosecutor v. Ayyash, STL-11-01/T/TC, Judgment, (Special Tribunal for Lebanon Aug. 18, 2020).

87. Prosecutor v. Merhi, STL-11-01/A-2/AC, Appeal Judgment, (Special Tribunal for Lebanon Mar. 10, 2022).

88. *Id.* at 206 (Baragwanath, J., concurring).

89. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

90. *Id.* art. 2.

Regional Cooperation's (SAARC) Convention against Terrorism (1987) recognizes the seriousness of terrorism as it affects regional security, peace, and stability and references counter-international maritime terrorism multilateral treaties in Article 1, namely the 1988 SUA Convention and its 1988 Protocol.<sup>91</sup> The EU Directive on Combating Terrorism refers to terrorism as a security threat, including the "seizure of . . . ships[.]"<sup>92</sup> In the African Union, the Protocol that creates the prospective African Court of Justice and Human and Peoples' Rights,<sup>93</sup> which includes terrorism (Article 28G), also refers to the need to promote peace and security in its preamble.<sup>94</sup>

Finally, the *Kadi* case before the Court of Justice of the European Union (CJEU)<sup>95</sup> is important from the perspective of the UNSC's sanctions on individuals accused of international terrorism as attacks against international peace and security vis-à-vis international and regional human rights law. Although the CJEU views the relationship between the EU legal order and the UN Charter as horizontal, it acknowledged that the UNSC can sanction persons committing international terrorism because this is a crime against international peace and security.<sup>96</sup> The jurisprudence of the European Court of Human Rights (ECtHR) also confirms this position.<sup>97</sup>

### C. National Practice and Related *Opinio Juris*

When discussing the incorporation of international terrorism, including international maritime terrorism, into the Rome Statute, scholars have underexplored the extent to which *national* practice as such and related *opinio juris* have dealt with international terrorism, especially international maritime terrorism. Since international crimes included in the Rome Statute correspond to or codify serious criminal offenses under customary international law,<sup>98</sup> it is crucial to identify whether and to what extent

91. South Asian Association for Regional Cooperation [SAARC], Regional Convention on Suppression of Terrorism (1987), Preamble, art. 1, (Nov. 4, 1987).

92. Council Directive 2017/541 of the European Parliament and of the Council on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, Preamble, art. 3(1)(e) (2017).

93. Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Jun. 27, 2014, <https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights> [hereinafter Malabo Protocol].

94. *See id.* at 1 ("Recognizing . . . the commitment to settle their disputes through peaceful means").

95. Case C-402/05, *Kadi v. Comm'n*, 2008 E.C.R. I-06351.

96. *Id.* at 308.

97. *E.g.*, *Al-Skeini v. U.K.*, 53 Eur. Ct. H.R. 589 (2011) <https://hudoc.echr.coe.int/fre?i=002-428>; *Al-Jedda v. U.K.*, App. No. 27021/08, (Jul. 7, 2011), <https://hudoc.echr.coe.int/eng?i=001-105612>.

98. *See, e.g.*, CASSESE & GAETA, *supra* note 38, at 17–21 (describing the role of customary law in international criminal law); SCHABAS, *supra* note 1, at 111–22 ("[T]he jurisdiction [of the Court] is limited to 'the most serious crimes of concern to the international community as a whole,'" such as

international terrorism in general, and international maritime terrorism in particular, have been criminalized in state practice worldwide. Thus, this sub-section primarily examines domestic criminal legislation as complemented with national jurisprudence and levels of ratification of counter-international maritime terrorism treaties in order to identify the extent to which international terrorism, especially international maritime terrorism, should be incorporated into the Rome Statute based on the existence of “a general [state] practice accepted as law[.]”<sup>99</sup>

Yet, this sub-section does not aim to identify or establish a *common specific* definition of international maritime terrorism or international terrorism across diverse national practice sources. That each state adopts its own definitions of crimes certainly underlies this disclaimer. What this sub-section seeks to show is that there are arguably increasing trends of national criminalization of international terrorism, including international maritime terrorism, complemented with other examples of relevant state practice. To address concerns about the principle of legality related to the potential inclusion of international terrorism and international maritime terrorism in the Rome Statute, an emerging customary rule on the criminalization of international maritime terrorism may be invoked if one is found to exist.<sup>100</sup>

This Article involves a survey of 100 states, paying attention to their respective national criminal law provisions on terrorism as of February 2023. The states considered herein correspond to all major world regions, continents, and legal traditions.<sup>101</sup> A very large majority of all the states considered herein have become parties to the Rome Statute.<sup>102</sup> The following trends were found.

First, a large majority of states have criminalized terrorism

---

genocide, crimes against humanity, and war crimes).

99. Statute of the International Court of Justice, art. 38(1)(b).

100. Rome Statute, *supra* note 2, arts. 22, 23.

101. National legislations considered correspond to: Australia, Austria, Albania, Algeria, Andorra, Angola, Antigua, Argentina, Armenia, Bahamas, Barbados, Barbuda, Belarus, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Burundi, Cambodia, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Grenada, Guatemala, Guinea, Guyana, Hungary, Iceland, Indonesia, Iraq, Italy, Jamaica, Latvia, Lebanon, Malaysia, Mauritius, Mexico, Moldova, Montenegro, Morocco, Mozambique, New Zealand, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Solomon Islands, South Korea, Singapore, Spain, Switzerland, Tanzania, Tajikistan, Thailand, Tonga, Trinidad and Tobago, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, Uruguay, the United Kingdom, the United States, Uzbekistan, Vanuatu, Venezuela, Vietnam, Zambia, and Zimbabwe.

102. Assembly of States Parties to the Rome Statute, INTERNATIONAL CRIMINAL COURT, <https://asp.icc-cpi.int/states-parties> (last visited Sept. 30, 2023).



nationally.<sup>103</sup> This confirms the results of a major survey published by the UN Codification Division in 2005 showing that a very large number of states had already criminalized terrorism in their respective national criminal legislations.<sup>104</sup>

Second, a number of states have criminalized terrorism by providing a general definition thereof, without necessarily including specific manifestations of terrorism such as international maritime terrorism. However, most of these general definitions are comprehensive or broad enough to apply to maritime terrorism since there are normally references to terrorist acts committed against any means of transportation.<sup>105</sup> These include references to ships, ports, or the sea, in many legislations.<sup>106</sup> Moreover, most of these laws are consistent with the general defining legal elements of international terrorism, particularly certain criminal actions to instill a state of terror or disturb public peace in order to compel domestic or international authorities to do or restrain from doing something.<sup>107</sup> While

---

103. See *infra* Appendix (providing compiled list of criminal statutes in these countries).

104. See U.N. OFFICE OF LEGAL AFFAIRS, CODIFICATION DIV., NATIONAL LAWS AND REGULATIONS ON THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, PART II (A-L), U.N. Doc. ST/LEG/SER.B/23, U.N. Sales. No. E/F.05.V.7 (2005), [legal.un.org/legislativeseries/pdfs/volumes/book23.pdf](http://legal.un.org/legislativeseries/pdfs/volumes/book23.pdf); U.N. OFFICE OF LEGAL AFFAIRS, CODIFICATION DIV., NATIONAL LAWS AND REGULATIONS ON THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM, PART II (M-Z), U.N. Doc. ST/LEG/SER.B/24, U.N. Sales. No. E/F.05.V.7 (2005), [legal.un.org/legislativeseries/pdfs/volumes/book24.pdf](http://legal.un.org/legislativeseries/pdfs/volumes/book24.pdf) (providing a compilation of national laws and regulations regarding the suppression of terrorism in member states to the U.N. General Assembly). See also Juan-Pablo Perez-Leon-Acevedo, *Terrorism at Sea as a Manifestation of International Terrorism and Prosecutorial Mechanisms*, in XI BRAZILIAN Y. INT'L L. 155–56 (2016) (compiling and discussing various state laws addressing terrorist acts at sea).

105. See, e.g., Bhutan (Criminal Code, art. 329); Chile (Law 18,314, art. 2); China (Counter-Terrorism Law (as amended in 2018), art. 3); Colombia (Criminal Code, art. 343); Denmark (Criminal Code, Section 114); Hungary (Criminal Code, § 314(4)(c)); Iceland (Criminal Code, art. 100a, 4); Mauritius (Prevention of Terrorism Act, Part II – Acts of Terrorism and Related Offences 3. Prohibition of Acts of Terrorism); Montenegro (Criminal Code, art. 365); Oman (Criminal Code, art. 113); Peru (Decree Law 25475, art. 2); Russia (Criminal Code, art. 205); Seychelles (Prevention of Terrorism Act 2004, Part I – Preliminary, Interpretation 2); Singapore (Terrorism (Suppression of Financing) Act, Part 1, Preliminary Section, Interpretation 2 (vii)); South Korea (Anti-Terrorism Act, art. 2); Turkey (Law on Fight Against Terrorism of Turkey Act No. 3713, art. 1); Zimbabwe (Criminal Law (Codification and Reform) Act, § 23(1)(c)(iv)).

106. See, e.g., Albania (Criminal Code, art. 230); Algeria (Criminal Code, art. 87bis); Armenia (Criminal Code, art. 308); Bosnia and Herzegovina (Criminal Code, art. 201(4)(e)); Brazil (Law 13.260/2016, art. 2(1)(iv)); Brunei (Anti-Terrorism Financial and Other Measures Act, Interpretation 2(1)); Burundi (Criminal Code, art. 614); Czech Republic (Criminal Code, § 311(1)(e)); Gabon (Criminal Code, arts. 194–95); France (Criminal Code, arts. 421-1(1), 421-2); Latvia (Criminal Code, § 79); Lebanon (Criminal Code, art. 315); Morocco (Criminal Code, art. 218-1); Mozambique (Criminal Code, art. 382(1)); Samoa (Counter Terrorism Act 2014; Part 4: Maritime Safety: 36. Seizure of a Ship or Fixed Platform); Spain (Criminal Code, art. 573); Vietnam (Criminal Code, art. 282).

107. See, e.g., Argentina (Act No. 25, 241 on repentant offenders); Australia (The Security Legislation Amendment Terrorism Act, § 100.1); Bulgaria (Criminal Code, art. 108(a)); Croatia

some states also include a political, religious, or another kind of motivation as a legal element of the terrorism crime,<sup>108</sup> others have not included it.<sup>109</sup>

Third, a growing number of national legislation refers to the international or transnational dimensions of terrorism. Accordingly, national legislation has included specific additional terrorist offenses such as participation in an international or transnational terrorist organization and participation in a terrorist group overseas.<sup>110</sup>

Fourth, an increasing number of states have not only criminalized terrorism in a general manner but have also criminalized specific manifestations of terrorism such as maritime terrorism.<sup>111</sup> Based on the legislation examined, maritime terrorism offenses can be broadly categorized as follows: i) seizure of, control over, or deviation of ships; ii) violence against persons on board, including killings and serious injuries; iii) attacks against ports or other maritime navigation facilities; iv) placement or carrying of weapons, devices, or explosive substances that threaten safe navigation; v) destruction of or infliction of damages to ships; and vi) unlawful acts against the safety of fixed platforms located on the continental shelf and/or islands.<sup>112</sup>

---

(Criminal Code, art. 141); Egypt (Anti-Terrorism Law, art. 2); Guatemala (Criminal Code, art. 391); Mozambique (Criminal Code, art. 382(1)); Malaysia (Criminal Code, Chapter VIA, 130B); Norway (Criminal Code, Chapter 18, § 131); South Korea (Anti-Terrorism Act, art. 2); Spain (Criminal Code, art. 573); Tajikistan (Criminal Code, art. 179); Tanzania (Prevention of Terrorism Act, Part II, § 4(2)(b)(ii)); Thailand (Criminal Code, § 135/1); Turkmenistan (Criminal Code, art. 271(1)); United Kingdom (Terrorist Act, Introductory Part 1, 1); Ukraine (Criminal Code, art. 258); 18 U.S.C. § 2331 (2001); Uzbekistan (Criminal Code, art. 155).

108. *See, e.g.*, Angola (Criminal Code, art. 298); Belarus (Criminal Code, art. 289 (1)); Brazil (Law 13.260/2016, art. 2); Canada (Criminal Code, 83.01, 1b, A); Central African Republic (Criminal Code, art. 296); Guinea (Criminal Code, art. 574); Indonesia (Anti-Terrorism Law, art. 1(2)); Iraq (Criminal Code, § 1, ¶ 21); Malaysia (Criminal Code, Chapter Via, 130B); Moldova (Criminal Code, art. 278); New Zealand (Terrorism Suppression Act, Part 1, 5); Uganda (Criminal Code, Section 26, 6); United Kingdom (Terrorist Act, Introductory Part 1(1)); Vanuatu (Criminal Code, Section 73C, 1).

109. *See, e.g.*, Andorra (Criminal Code, art. 362); Austria (Criminal Code, § 129a); Bolivia (Criminal Code, art. 133); Chad (Law 003/PR/2020, art. 2.1); Estonia (Penal Code, § 237); Georgia (Criminal Code, art. 323); Grenada (Criminal Code, 230A, 1(f)); France (Criminal Code, art. 421-1); Gabon (Criminal Code, art. 194); Lebanon (Criminal Code, art. 315); Lithuania (Criminal Code, art. 2521(1)); Philippines (Republic Act No. 11479, § 3(e)).

110. *See, e.g.*, Antigua and Barbuda (The Prevention of Terrorism Act, 2005, Part I); Bahamas (Anti-Terrorism Act 2018, Part III – Terrorist Offences, 14. Offence of Terrorism); Capo Verde (Criminal Code, art. 315); Chad (Law 003/PR/2020, arts. 12(d), 14); Costa Rica (Criminal Code, art. 7); Spain (Criminal Code, art. 575(3)); Switzerland (Criminal Code, art. 260 Sexies (3)); Vietnam (The Anti-Terrorism Law, art. 3).

111. *See, e.g.*, Antigua and Barbuda (The Prevention of Terrorism Act, 2005, Part I); Barbados (Anti-Terrorism Act, Part II, Terrorism, 3. Offence of Terrorism); Guyana (Part 1 Preliminary, 2. Interpretation); Saint Kitts and Nevis (Anti-Terrorism Act, 2002, Part I, 2. Interpretation); Trinidad and Tobago (Anti-Terrorism Act, Part II Offences, 3. Terrorist Act).

112. *See, e.g.*, Belgium (Criminal Code, art. 137); Canada (Criminal Code, 83.01, 1(vii)); Central

Generally, the national incorporation of maritime terrorism offenses in the national legislation examined has been consistent with the definitions contained in counter-maritime terrorism treaties such as the 1988 SUA Convention, its 1988 Protocol, and their 2005 Protocols. Some legislation has totally or partially extrapolated and adapted the maritime terrorism offenses from the said UN counter-maritime terrorism treaties under the label of “piracy” or has inaccurately mixed up maritime terrorism with piracy.<sup>113</sup> There are some national criminal law legislations that contain references or renvoi to UN counter-terrorism treaties and/or other international law sources, which include UN counter-maritime terrorism treaties.<sup>114</sup>

Although there is an important volume of national jurisprudence dealing with international terrorism, the amount of national case law on international maritime terrorism is much more limited. This corresponds to the higher frequency of terrorism on land than terrorism at sea.<sup>115</sup> Thus, some national cases on international maritime terrorism and some national case law that indirectly invoked legal sources on maritime terrorism are considered herein.

An example of this indirect invocation can be seen in the 2002 Canadian Supreme Court case *Suresh v. Canada*.<sup>116</sup> In *Suresh*, the Court relied on, among others, the International Convention for the Suppression of the

---

African Republic (Criminal Code, arts. 297, 302–307); Costa Rica (Criminal Code, arts. 265–266); El Salvador (Special Counter-Terrorism Law, arts. 17, 18, 23–24, 26); Finland (Criminal Code, § 7, Decree on the Application of Chapter 1, Section 7 of the Criminal Code (627/1996), Subsection 13); Guinea (Criminal Code, arts. 574, 578, 579); Panama (Criminal Code, arts. 325–338).

113. *E.g.*, Guinea (Criminal Code, arts. 578–579); Panama (Criminal Code, arts. 325–338); Poland (Criminal Code, art. 170); Council Framework Decision 2002/475/JHA, On Combating Terrorism, art. 1, 2002 O.J. (L 140) 4 (EU); Netherlands (Criminal Code, art. 381).

114. *E.g.*, Barbados (Anti-Terrorism Act, Part II, Terrorism, 3. Offence of Terrorism); Guyana (Anti-Terrorism and Terrorist Related Activities Act 2015); Italy (Criminal Code, art. 270 Series); Jamaica (The Terrorism Prevention Act of 2005, Terrorist Activity and Offences, ¶ 3 (Terrorist Activity)); Netherlands (Criminal Code, arts. 13–15); Panama (Criminal Code, art. 293); Saint Kitts and Nevis (Anti-Terrorism Act, 2002, Part I, 2. Interpretation); Saint Lucia (Chapter 3.16 Anti-Terrorism Act, Part I Preliminary, 2. Interpretation); Saint Vincent and the Grenadines (Act No. 34 of 2002, 2. Interpretation); Solomon Islands (Counter-Terrorism Act 2009, Part 1 – Preliminary, 2); Tonga (Counter Terrorism and Transnational Organised Crime Act 2013; Part 1 – Preliminary; 3 Definition of Terrorist Act); Trinidad and Tobago (Anti-Terrorism Act, Part II Offences, 3. Terrorist Act); Tuvalu (Counter Terrorism and Transnational Organised Crime Act 2009 No. 6 of 2009 (Part 1 – Preliminary; § 4)); Zambia, (Anti-Terrorism Act, Part I Preliminary, 2. Interpretation); Cambodia (Law on Counter Terrorism, art. 1).

115. *See* Katharina Theresa K. . .ndler, Violence at Sea: The Legal Framework to Combat Maritime Terrorism 8 (Sept. 2016) (Master’s Thesis, The Arctic University of Norway), <https://munin.uit.no/handle/10037/12492?locale-attribute=en> (stating that maritime terrorist attacks present only 0,2-2% of all violent acts committed by terrorists); PETER CHALK, THE MARITIME DIMENSION OF INTERNATIONAL SECURITY. TERRORISM, PIRACY, AND CHALLENGES FOR THE UNITED STATES 19 (2008); MURPHY, *supra* note 10, at 45; Munson, *supra* note 18.

116. *Suresh v. Canada* (Minister of Citizenship and Immigration) [2002] 1 S.C.R. 3 (Can.).

Financing of Terrorism, whose annex explicitly refers to the SUA Convention and its 1988 Protocol, and some scholarship on maritime terrorism in making its decision.<sup>117</sup> The Court noted but was not ultimately persuaded that “the term ‘terrorism’ is so unsettled that it cannot set the proper boundaries of legal adjudication . . . [t]he annex [to the Convention against Financing of Terrorism] lists nine treaties that are commonly viewed as relating to terrorist acts[.]”<sup>118</sup> It importantly added that “[t]his definition catches the essence of what the world understands [.]”<sup>119</sup>

Another example arises out of the U.S. Court of Appeals for the Ninth Circuit in 2008. In *United States v. Shi*, the Circuit upheld the conviction of a Chinese national for violence on board a Taiwanese-owned, Seychelles-flagged, Chinese-crewed vessel in the Pacific Ocean.<sup>120</sup> This case was the first prosecution under the statute that codified obligations of the United States pursuant to the SUA Convention.<sup>121</sup>

Similarly, in *Flanagan vs. Islamic Republic of Iran*, family members of victims of the U.S.S. Cole—a missile destroyer targeted by an al-Qaeda’s suicide bombing attack when being refueled in Yemen’s Aden harbor on 13 October 2000—sued several states before the U.S. District Court for the District of Columbia for materially supporting al-Qaeda.<sup>122</sup> A central issue in the case was whether an attack against the vessel amounted to an extrajudicial killing.<sup>123</sup> In 2016, the Court qualified these bombings as international maritime terrorism and held that they were killings, that of which “the coordination and planning required to carry them out indicated that they were deliberated[.]”<sup>124</sup> In 2016, the government of the United States charged Al-Nashiri, an alleged al-Qaeda’s senior member, and accused him of orchestrating al-Qaeda’s operations in the Gulf of Aden against the U.S.S. Cole and the French super tanker M/V Limburg.<sup>125</sup> The government convened a military commission to try him, which exemplifies state practice on prosecuting international maritime terrorism.<sup>126</sup>

---

117. *Id.* ¶¶ 94–96.

118. *Id.* ¶ 96.

119. *Id.* ¶ 98.

120. *United States v. Shi*, 525 F.3d 709 (9th Cir. 2008).

121. *See* Violence Against Maritime Navigation, 18 U.S.C. § 2280 (1977) (codifying the unlawful acts against the safety of maritime navigation in conformity with the Convention); Eugene Kontorovich, *United States v. Shi*, 103 AM. J. INT’L L. 734, 734 (2009) (writing that *United States v. Shi* is the first prosecution brought under the statute).

122. *Flanagan v. Islamic Republic of Iran*, 190 F. Supp. 3d 138 (D.D.C. 2016).

123. *Id.* at 160–63.

124. *Id.* at 163.

125. *In re Al-Nashiri*, 855 F.3d 110 (D.C. Cir. 2016).

126. *Id.*

There is also important state practice related to the adoption of counter-international maritime terrorism instruments, especially treaties. For instance, following the Achille Lauro incident and an ambiguous qualification of this act as piracy by some states, Italy, Egypt, and Austria proposed to adopt a new convention, which would become the SUA Convention, to deal specifically with maritime terrorism and fill a legal lacuna.<sup>127</sup> Furthermore, there is an increasing trend of adopting and ratifying international and regional treaties as well as other legal instruments relevant to international maritime terrorism. As of November 1, 2023, for example, the SUA Convention has 166 States Parties, the 1988 Protocol to the above-mentioned Convention has 157 States Parties, the 2005 Protocol to the SUA Convention has 53 States Parties, the 2005 Protocol to the SUA Convention-Protocol has 46 States Parties,<sup>128</sup> and the Convention against Financing of Terrorism has 190 Parties.<sup>129</sup> Figure 1 below comparatively shows the number of States Parties to these counter-terrorism treaties vis-à-vis the number of States Parties to the Rome Statute, the UNCLOS, and

---

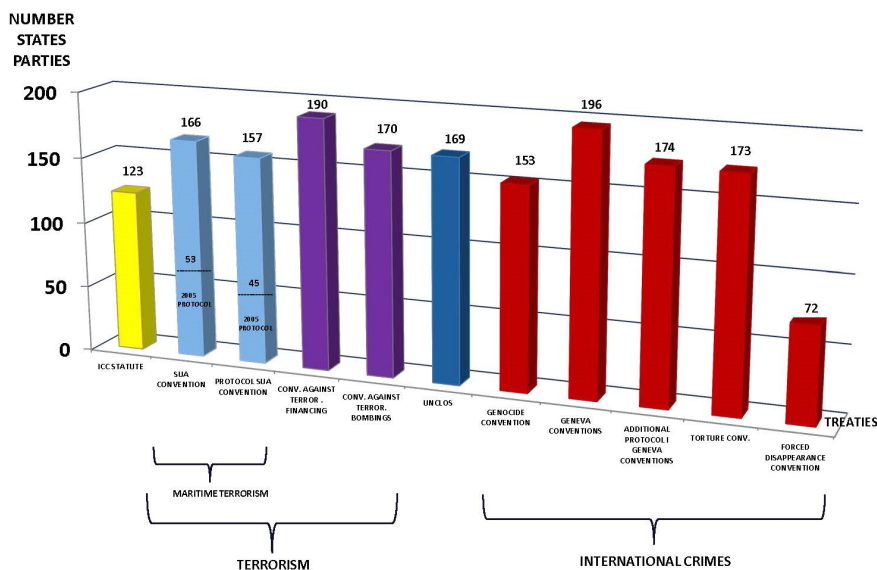
127. Helmut Tuerk, *Combating Terrorism at Sea —The Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 15 U. MIA. INT'L & COMP. L. REV. 337, 344 (2008).

128. See Int'l Maritime Org. [IMO], *Status of Treaties*, <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/StatusOfTreaties.pdf> (last visited Nov. 1, 2023) (listing the number of contracting states by treaty). Besides this website, the number of State Parties to the international treaties indicated in Figure 1 below were obtained from the following websites: *The States Parties to the Rome Statute*, INTERNATIONAL CRIMINAL COURT, <https://asp.icc-cpi.int/states-parties> (last visited Nov. 1, 2023); *Convention on the Prevention and Punishment of the Crime of Genocide*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en&\\_gl=1\\*1bj4bno\\*\\_ga\\*MTE4NjgwMTU4NC4xNjk3Nzc0MzE5\\*\\_ga\\_TK9BQL5X7Z\\*MTcwMjg3MDcyMy4xOC4xLjE3MDI4MTA3NzcuMC4wLjA](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en&_gl=1*1bj4bno*_ga*MTE4NjgwMTU4NC4xNjk3Nzc0MzE5*_ga_TK9BQL5X7Z*MTcwMjg3MDcyMy4xOC4xLjE3MDI4MTA3NzcuMC4wLjA) (last visited Nov. 1, 2023); *United Nations Convention on the Law of the Sea*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (last visited Nov. 1, 2023); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en) (last visited Nov. 1, 2023); *International Convention for the Suppression of Terrorist Bombings*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-9&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en) (last visited Nov. 1, 2023); *International Convention for the Suppression of the Financing of Terrorism*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-11&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en) (last visited Nov. 1, 2023); *International Convention for the Protection of All Persons from Enforced Disappearance*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=_en) (last visited Nov. 1, 2023); *International Humanitarian Law Databases*, INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties> (last visited Nov. 1, 2023).

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

international treaties dealing with core international crimes. At the International Court of Justice (ICJ), states have litigated cases concerning violations of some counter-terrorism treaties, as detailed later.

FIGURE 1: TREATIES AND NUMBER OF STATES PARTIES



Regarding regional counter-terrorism treaties, the Inter-American Convention against Terrorism and SAARC Convention have arguably gained momentum in their respective regions; the former has been ratified by the majority of the Organization of American States Members (24 out of 35) and the later has been ratified by 8 Asian states as of February 2023.<sup>130</sup> Maritime terrorism in the Malacca and Singapore Straits led the Philippines, Indonesia, and Malaysia to act via the adoption of the 2017 Trilateral Cooperative Agreement<sup>131</sup> as well as ASEAN.<sup>132</sup> In 2019, the Philippines and

130. See *General Information of the Treaty*, DEPARTMENT OF INTERNATIONAL LAW, ORGANIZATION OF AMERICAN STATES, <https://www.oas.org/juridico/english/sigs/a-66.html> (displaying a chart listing ratification of the Inter-American Convention against Terrorism by country) (last visited Dec. 1, 2023); *SAARC Agreements & Conventions*, SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION, <https://www.saarc-sec.org/index.php/resources/agreements-conventions?limit=20&limitstart=0> (listing the SAARC Regional Convention on Suppression of Terrorism and the Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism) (last visited Dec. 1, 2023).

131. Prashanth Parameswaran, *What's Next for the Sulu Sea Trilateral Patrols?*, THE DIPLOMAT (Sept. 18, 2018), <https://thediplomat.com/2018/09/whats-next-for-the-sulu-sea-trilateral-patrols/>.

132. Prashanth Parameswaran, *ASEAN Terrorism Threat in Focus at 2018 Shangri-La Dialogue*,

India also adopted a bilateral agreement to enhance their maritime security, particularly concerning maritime terrorism.<sup>133</sup> Similar developments have taken place in Europe. Within the Council of Europe, 35 out of the current 46 Members were States Parties to the European Convention on the Prevention of Terrorism as of February 2023.<sup>134</sup> In turn, the 27 EU Member states have adopted the Directive on Combating Terrorism, in which the seizure of ships is criminalized.<sup>135</sup> In conclusion, the international and national practice analyzed in this section shows that international terrorism, specifically international maritime terrorism, is arguably an emerging international crime. It has been demonstrated that international maritime terrorism is a threat to or an attack against international peace and security, based on the analysis of a plethora of international instruments and/or international legal sources, namely, UN Security Council's Resolutions, UN General Assembly's Resolutions, the practice of the International Law Commission, and the practice of the International Maritime Organization, as well as international jurisprudence and regional practice. Crucially, this is further corroborated by analyzing national practice trends, including the analysis of national criminal legislations trends, national case law examples, and state practice at the regional level and before international courts as well as by providing information about the status of international treaties on international maritime terrorism (the number of ratifications).

### III. LAW AND PRACTICE OF THE ICC

Although the ICC *lege lata* lacks jurisdiction over international terrorism and its manifestations, such as international maritime terrorism, this section aims to demonstrate that legal or factual aspects directly or indirectly related to international maritime terrorism have been actually present in the law and practice of the ICC. In this context, subsection A examines the *travaux préparatoires* of the Rome Statute and amendment proposals concerning international terrorism, including international maritime terrorism. Subsection B analyzes the ICC's practice on incidents either involving international terrorism or serious threats to or attacks against maritime security.

---

THE DIPLOMAT (June 8, 2018), <https://thediplomat.com/2018/06/asean-terrorism-threat-in-focus-at-2018-shangri-la-dialogue/>.

133. Krissy Aguilar, *Philippines, India to Strengthen Ties on Maritime Security, Fight vs Terrorism*, INQUIRER (Oct. 18, 2019), <https://globalnation.inquirer.net/181212>.

134. Council of Europe Convention on the Prevention of Terrorism, May 16, 2005, C.E.T.S. 196.

135. Directive 2017/541, of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, 2017 O.J. (L. 88/6).

### A. The Rome Statute: *Travaux Préparatoires* and Amendment Proposals

The Rome Statute does not explicitly incorporate the crime of international terrorism, including international maritime terrorism, into the jurisdiction of the court. However, terrorist acts such as maritime terrorism can fall under the ICC's jurisdiction if the legal elements of international crimes under the ICC's jurisdiction are met.<sup>136</sup> These legal elements overall correspond to: genocide, when the underlying criminal conduct is committed with a special intent to destroy a protected group (Rome Statute, Article 6); crimes against humanity, when the underlying criminal conduct is perpetrated as part of a widespread or systematic attack against a civilian population (Rome Statute, Article 7); or war crimes, when the underlying criminal conduct is connected to an armed conflict (Rome Statute, Article 8).

During the adoption of the Rome Statute, certain delegations unsuccessfully tried to introduce terrorism within crimes against humanity.<sup>137</sup> However, the ICC cannot exercise jurisdiction over international terrorism or international maritime terrorism per se pursuant to the language of the Rome Statute as it stands. Hence, it is important to examine the *travaux préparatoires* of the Rome Statute and proposals to amend it to further shed light on the feasibility or advisability of incorporating international maritime terrorism into the Rome Statute.

Under the ILC's Draft Statute for an International Criminal Court (1994), the projected institution would have jurisdiction over “[c]rimes, established under or pursuant to the treaty provisions listed in the Annex, which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern[.]”<sup>138</sup> Among these treaty provisions, the

---

136. See *Report of the Commission to the General Assembly on the work of its Forty-sixth Session*, [1994] 2 Y.B. Int'l L. Comm'n 41, U.N. Doc. A/CN.4/SER.A/1994/Add.1 (Part 2) (listing preconditions to the exercise of jurisdiction); Andreas Zimmermann, *Article 5*, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY* 110 (Kai Ambos ed., 2020) (stating that although terrorism was not included in the Rome Statute, acts of terrorism come within jurisdiction of the Court if they fulfill the regular criteria of genocide or those of specific crimes against humanity, or if they constitute war crimes); ROBERTA ARNOLD, *THE ICC AS A NEW INSTRUMENT FOR REPRESSING TERRORISM* (2004) (determining that despite the initial exclusion as a “treaty crime,” terrorism may come within the jurisdiction of the ICC as one of the crimes listed in Article 5 of the ICC statute); Roberta Arnold, *Terrorism, War Crimes and the International Criminal Court*, in *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM*, *supra* note 7, at 271–84 (arguing that notwithstanding the initial exclusion of terrorism from the ICC's jurisdiction, acts of terrorism are within its jurisdiction as war crimes under Article 8 of the ICC statute).

137. U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Documents of the Committee as a Whole*, 242, U.N. Doc. A/CONF.183/C.1/L.27/Rev.1 (Vol. III) (July 1998).

138. *Report of the Commission to the General Assembly on the work of its Forty-sixth Session*, [1994] 2 Y.B. Int'l L. Comm'n 38, U.N. Doc. A/CN.4/SER.A/1994/Add.1 (Part 2).



crimes defined by Article 3 of the SUA Convention and Article 2 of its 1988 Protocol were listed.<sup>139</sup> These treaties were included because: i) they define the crimes so that the future international criminal court can apply the treaty crime definition, respecting the principle of legality; and ii) these treaties recognize the principle of *aut dedere aut judicare*, the option of an international criminal court's jurisdiction, or both of them "thus recognizing clearly the principle of international concern[.]"<sup>140</sup> Additionally, these treaties were included in the jurisdiction of an international criminal court because they are of universal scope, in force, and do not simply regulate conduct or merely prohibit conduct solely on an inter-state basis.<sup>141</sup>

To fall within the jurisdiction of an international criminal court, the ILC remarked that terrorism crimes "should have constituted an exceptionally serious crime of international concern" as indicated in the ILC's Draft Statute for an International Criminal Court itself and highlighted the importance of a systemic factor in the commission of terrorism such as maritime terrorism.<sup>142</sup> Although the ILC reckoned that—as of 1994—there was no single definition of terrorism developed by the international community, it highlighted that "there are definitions of the term in some regional conventions" and that "terrorism practised in any form is universally accepted to be a criminal act[.]"<sup>143</sup> Unlike international maritime terrorism, the ILC excluded piracy as defined in the 1958 Convention on the High Seas (Article 14) and the UNCLOS<sup>144</sup> from the jurisdiction of an international criminal court as those "provisions confer jurisdiction only on the seizing State" and "cover a very wide range of acts[.]"<sup>145</sup> Thus, the ILC "decided not to include piracy as a crime under general international law[.]"<sup>146</sup>

Article 5 ("Crimes within the jurisdiction of the Court") of the ICC Draft Statute of the Preparatory Committee on the Establishment of an International Criminal Court included and defined "terrorism" as follows:

Undertaking, organizing, sponsoring, ordering, facilitating, financing,

---

139. *Id.* at 67–68.

140. *Id.* at 41.

141. *Id.* at 68.

142. *Id.* at 41.

143. *Id.*

144. *See* UNCLOS, *supra* note 72, art. 1 (defining "piracy" as engaging in, facilitating, or inviting illegal acts of violence or detention committed for private ends by the crew or passengers of a private ship or aircraft, as well as any acts of voluntary participation in the operation of a ship with knowledge of facts making it a pirate ship).

145. *Report of the Commission to the General Assembly on the work of its Forty-sixth Session*, [1994] 2 Y.B. Int'l L. Comm'n 68, U.N. Doc. A/CN.4/SER.A/1994/Add.1 (Part 2).

146. *Id.*

encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create terror, fear or insecurity in the minds of public figures, groups of persons, the general public or populations, for whatever considerations and purposes of a political, philosophical, ideological, racial, ethnic, religious or such other nature that may be invoked to justify them.<sup>147</sup>

Moreover, the definition of terrorism referred to a list of UN counter-terrorism treaties, including the SUA Convention and its 1988 Protocol.<sup>148</sup> Importantly, the Preparatory Committee noted that it considered maritime terrorism crimes “without prejudice to a final decision on their inclusion in the Statute” and discussed them “only in a general manner and did not have time to examine them as thoroughly as the other crimes[.]”<sup>149</sup> However, it is notable that there were more proposals to include terrorism in the Rome Statute than there were to include piracy.<sup>150</sup>

Ultimately, terrorism, including maritime terrorism, was excluded from the Rome Statute despite strong attempts from a number of states to include it prior to and during the Rome Conference, particularly on the part of Algeria, India, Sri Lanka, and Turkey.<sup>151</sup> Most states rejected the inclusion of international terrorism crimes such as international maritime terrorism for two reasons. First, they rejected it on the basis that there was no generally accepted legal definition of terrorism at that time, despite the fact that the UN Convention on the Suppression of Terrorist Bombings, which is the first UN treaty containing a general definition of terrorism, was adopted in 1997.<sup>152</sup> Second, conferring jurisdiction over a crime of international terrorism might have largely politicized the ICC,<sup>153</sup> since one person’s terrorist may be another person’s freedom fighter.

Nevertheless, the Rome Conference’s Final Act included Resolution E, which recommended “that a Review Conference pursuant to article 123 of the Statute of the International Criminal Court consider the crimes of

---

147. U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Report of the Preparatory Committee on the Establishment of an International Criminal Court*, 27, U.N. Doc. A/CONF.183/2/Add/1 (Apr. 14, 1998).

148. *Id.* at 27–28.

149. *Id.* at 27.

150. *See* O’Brien, *supra* note 6, at 87 (explaining that despite being the first recognized international crime, piracy was left out of the Rome Statute).

151. *See* Zimmermann, *supra* note 136, at 109; U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Summary Records of the Plenary Meetings and of the Meetings of the Committee of the Whole*, 73, 86, 106, 123, U.N. Doc. A/CONF.183/13 (July 15, 1998).

152. *See* Zimmermann, *supra* note 136, at 109.

153. *Id.* *See also* U.N. GAOR, 51st Sess., Supp. No. 22, at 26, U.N. Doc. A/51/22, 26 (Sep. 13, 1996) (explaining that including “international terrorism” in the Rome Statute might “lessen the resolve of States to conduct national investigations and prosecutions and politicize the functions of the [ICC]”).

terrorism . . . with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court[.]”<sup>154</sup> Although not much attention had been paid to incorporating international terrorism into the Rome Statute, the Netherlands informally submitted an amendment proposal to introduce the “crime of terrorism” in Article 5(1) of the Rome Statute prior to the 2010 Kampala Review Conference.<sup>155</sup> However, this proposal was not presented at the conference because it lacked sufficient support.<sup>156</sup>

After the Kampala Review Conference, the Netherlands re-introduced its amendment proposal to include terrorism in the Rome Statute via the inclusion of the literal “e” in Article 5(1) of the Rome Statute<sup>157</sup> so that the ICC can exercise jurisdiction over this crime “once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations[.]”<sup>158</sup>

The Netherlands provided, among others, these sound remarks. First, although it reckoned that there were arguments raised about the “lack of a universally agreed definition of terrorism[.]” it emphasized the feasibility of moving forward and starting the inclusion of the terrorism crime in the Rome Statute.<sup>159</sup> Second, the Netherlands noted that while other states raised questions about the value of embroiling the ICC in prosecuting terrorism taking into account other international efforts, such as the UN Draft Comprehensive Convention on International Terrorism, and the impact of such inclusion on the ICC’s consolidation and universality,<sup>160</sup> these states also acknowledged “the threat posed by terrorism[.]”<sup>161</sup> The Netherlands highlighted that terrorist acts constitute “serious crimes of concern to the international community[.]”<sup>162</sup>

Third, the Netherlands remarked on the frequent impunity of terrorist acts in cases when states are seemingly unwilling or unable to investigate and prosecute the said crimes, which calls for the ICC’s role: “[a]fter all, the Court has been established to prosecute the most serious crimes of concern

---

154. U.N. Diplomatic Conference, *supra* note 151, at 71.

155. *See* Zimmermann, *supra* note 136, at 115.

156. *Id.*

157. ICC, Assembly of States Parties, *Report on the Working Group on Amendments 17–18*, ICC-ASP/10/32 (Dec. 9, 2011).

158. *Id.* at 18.

159. *Id.* at 4.

160. *Id.*

161. *Id.*

162. *Id.*

to the international community[.]”<sup>163</sup> Fourth, the Netherlands stated that it understood and partially shared comments seeking to avoid altering the delicate balance contained in the Rome Statute; however, it importantly added that “the Statute should be considered from a holistic perspective. Furthermore, terrorism had been included in Resolution E of the 1998 Rome Conference Final Act for future consideration[.]”<sup>164</sup> Nevertheless, at the Meeting of the Working Group on Amendments of the Assembly of States Parties to the Rome Statute on June 5, 2013, the Netherlands formally withdrew its amendment proposal to include terrorism in the ICC’s jurisdiction.<sup>165</sup>

## B. The ICC’s Practice

While the ICC has yet to examine events that constitute international maritime terrorism, it has increasingly dealt with incidents either involving international terrorism or serious threats to or attacks against maritime security. This section examines these incidents to illustrate the advisability and necessity to extend the ICC’s jurisdiction over international terrorism, especially international maritime terrorism.

The ICC has dealt with situations and cases that have involved terrorist actions committed by armed groups that are linked to international terrorist networks. The situations and cases concerning atrocities committed in Mali and Libya clearly illustrate this point. The ICC has continuously recognized that Mali presents a deteriorating security situation, with the involvement of, as well as continuous and violent attacks by, terrorist groups.<sup>166</sup> The ICC also remarked on the level of crime committed in Libya by organizations that perpetrate atrocities of a transnational and terrorist nature.<sup>167</sup> The cases stemming from the *Situation in Mali* have led to the conviction of Al-Mahdi

---

163. *Id.*

164. *Id.*

165. See Zimmermann, *supra* note 136, at 115.

166. See ICC, Assembly of States Parties to the Rome Statute, Fifteenth Session, *Official Records Vol. II*, ¶¶ 139, 594, ICC-ASP/15/20 (Nov. 16–24, 2016) (explaining that continued violent attacks by terrorist groups in Mali have required various security arrangements for people, property, and assets in the country); ICC, Assembly of States Parties to the Rome Statute, Eighteenth Session, *Official Records Vol. II*, ¶ 539, ICC-ASP/18/20, (Dec. 2–7, 2019) (noting that the deteriorating security situation in Mali includes the possibility of terrorist groups targeting international actors).

167. See ICC, Assembly of States Parties to the Rome Statute, Fifteenth Session, *Official Records Vol. II*, ¶¶ 26, 130, 191, ICC-ASP/15/20 (Nov. 16–24, 2016) (noting that ongoing crimes in Libya are transnational, organized, and financial in nature); ICC, Assembly of States Parties to the Rome Statute, Sixteenth Session, *Official Records Vol. II*, ¶ 113, ICC-ASP/16/20 (Dec. 4–14, 2017) (noting that the OTP is continuously receiving evidence concerning crimes committed in relation to the February 2011 revolution).

and the trial of Al-Hassam.<sup>168</sup> These cases concern war crimes and crimes against humanity rather than terrorist offenses due to the lack of the ICC's jurisdiction over the latter. Nevertheless, the ICC has recognized that Al-Mahdi and Al-Hassam were members of or associated with Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM), which are armed groups involved in terrorist attacks.<sup>169</sup>

For instance, the ICC found in the *Al-Mahdi* judgment that the occupation of Timbuktu and the destruction of mausoleums and a mosque by AQIM “took place in the context of and were associated with a non-international armed conflict between Malian Government forces and groups including Ansar Dine and AQIM[.]”<sup>170</sup> Cases stemming from the *Situation in Libya* have corresponded to state agents involved in the fight against terrorist groups in Benghazi, including Ansar al-Sharia; the February 17 Revolutionary Martyrs' Brigade; the Rafallah Al-Sahati militia; and the eastern Libya Shield brigade, which formed the Benghazi Revolutionaries Shura Council.<sup>171</sup>

As for the ICC Office of the Prosecutor (ICC-OTP), it made explicit references to terrorism in its 2016 *Policy paper on case selection and prioritization*.<sup>172</sup> Thus, the ICC-OTP: i) indicated that it will seek to cooperate and assist states, upon request, regarding serious crimes under national law such as terrorism;<sup>173</sup> and ii) established that, concerning case selection criteria and especially gravity of crimes at the ICC, “the impact of the crimes may be assessed in light of, *inter alia* . . . the terror subsequently instilled[.]”<sup>174</sup>

Concerning the ICC's practice, there have been incidents corresponding to attacks against maritime security. In late 2010, the ICC-OTP opened a preliminary examination to determine whether two incidents that occurred in the Yellow Sea and allegedly committed by the Democratic People's Republic of Korea, which is not a State Party to the Rome Statute, could

---

168. ICC, *Situation in the Republic of Mali*, Investigation, ICC-01/12, ICC, <http://www.icc-cpi.int/mali> (last visited Dec. 1, 2023).

169. See Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment and Sentence, ¶¶ 31, 49 (Sep. 27, 2016); Prosecutor v. Al Hassan, ICC-01/12-01/18, Rectificatif à la Décision Relative à la Confirmation des Charges [Correction to the Decision Relating to the Confirmation of Charges], ¶¶ 73, 210 (Nov. 13, 2019); Prosecutor v. Simba, Case No. ICTR-01-76-T, Judgment and Sentence, ¶ 23 (Dec. 13, 2005).

170. Prosecutor v. Al Mahdi, ICC-01/12-01/15, Judgment and Sentence, ¶ 49 (Sep. 27, 2016).

171. See, e.g., Prosecutor v. Al-Werfalli, ICC-01/11-01/17, Warrant of Arrest, ¶ 6 (Aug. 15, 2017).

172. ICC-OTP, *Policy Paper on Case Selection and Prioritisation*, ¶ 7 (Sep. 15, 2016), [www.icc-cpi.int/sites/default/files/itemsDocuments/20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](http://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf) [hereinafter ICC Policy Paper].

173. *Id.* ¶ 7.

174. *Id.* ¶ 41.

constitute war crimes under the ICC's jurisdiction.<sup>175</sup> These incidents were the sinking of the Cheonan, a South Korean warship, on 26 March 2010 in which 46 men died and the shelling of South Korea's Yeonpyeong Island on 23 November 2010.<sup>176</sup> The ICC-OTP found that, since this was a military attack, there was no violation of the Rome Statute.<sup>177</sup> Nonetheless, the ICC-OTP added that its decision did not condone the Democratic People's Republic of Korea resorting to armed force because the applicable law is *ius in bello* rather than *ius ad bellum*.<sup>178</sup>

Scholars determined that the shelling of Yeonpyeong Island constituted an attack against a legitimate target in accordance with international humanitarian law,<sup>179</sup> and the related criminal liability for the sinking of the Cheonan has been examined under the crime of aggression rather than war crimes.<sup>180</sup> The inclusion of international maritime terrorism based on the SUA Convention, its 1988 Protocol, and their 2005 Protocols in the Rome Statute, may precisely provide important aspects that can to some extent be considered by the ICC to better interpret some legal elements of Article 8*bis* ('Crime of aggression') of the Rome Statute involving maritime incidents, namely, the blockade of the ports or coasts or armed attacks on the sea or marine fleets.<sup>181</sup>

On May 14, 2013, the Comoros, a State Party to the Rome Statute, referred to the ICC-OTP the situation with respect to the May 31, 2010, Israeli raid on the Humanitarian Aid Flotilla bound for Gaza Strip.<sup>182</sup> The referral encompassed incidents allegedly on the Mavi Marmara ship, registered in the Comoros, and other flotilla vessels bearing flags of States Parties to the Rome Statute committed from May 31, 2010 to June 6, 2010

---

175. See ICC-OTP, *Situation in the Republic of Korea Article 5 Report*, ¶ 2 (June 2014), <https://www.icc-cpi.int/sites/default/files/iccdocs/otp/SAS-KOR-Article-5-Public-Report-ENG-05Jun2014.pdf>.

176. *Id.*

177. *Id.* ¶¶ 13–14, 16.

178. *Id.* ¶ 82.

179. See Marco Longobardo, *Everything is Relative, Even Gravity: Remarks on the Assessment of Gravity in ICC Preliminary Examinations, and the Mavi Marmara Affair*, 14 J. INT'L CRIM. JUST. 1011, 1028 (2016).

180. See Nu R. Jung, *A Study on the Efficacy of the Kampala Amendments for Suppression of Aggression: Examined by the Case of Armed Conflicts in the Korean Peninsula*, 10 LOY. U. CHI. INT'L L. REV. 157, 172 (2013) (explaining that the sinking of Cheonan by North Korea qualifies as one of the seven acts of aggression stipulated in Article 8 *bis* (2) of the Rome Statute).

181. See Rome Statute, *supra* note 2, art. 8 *bis* 2(c), (d) (including the blockade of ports and attacks by armed forces of a State on territory such as the sea as acts of aggression).

182. Situation on Registered Vessels of Comoros, the Hellenic Republic and the Kingdom of Cambodia [hereinafter Flotilla Situation], ICC-01/13-34, Decision on the Request of Comoros to Review the Prosecutor's Decision not to Initiate an Investigation, ¶ 1 (Jul. 16, 2015).

and onwards.<sup>183</sup> The ICC-OTP found that there was a reasonable basis to believe that war crimes of willful killing and serious injuries and outrages upon personal dignity were perpetrated by the Israeli Defense Forces during the interception and takeover of one of the flotilla vessels, the Mavi Marmara.<sup>184</sup> However, the ICC-OTP considered that this did not have sufficient gravity to justify ICC's further actions and decided not to initiate an investigation.<sup>185</sup> Upon the Comoros' request, the Pre-Trial Chamber reviewed this decision and found that the ICC-OTP made errors, requesting that the Prosecutor reconsider her decision in accordance with the Chamber's directions.<sup>186</sup>

The following Pre-Trial Chamber's findings or criteria are relevant when the ICC examines crimes committed on the sea vis-à-vis the ICC's jurisdiction and may be *mutatis mutandis* relevant or applicable if international maritime terrorism is included in the Rome Statute. First, the Chamber considered that the scale of the crimes reported would be a compelling indicator of sufficient gravity: ten killings, fifty to fifty-five injuries, and possibly hundreds of instances of outrages upon personal dignity, torture, or inhuman treatment.<sup>187</sup> As the Chamber pointed out, these figures exceeded the number of casualties in cases that the ICC-OTP previously investigated and prosecuted, such as *Bahar Idriss Abu Garda*, which involved 12 killings and 8 injuries, and *Abdallah Banda*, which involved 12 killings respectively.<sup>188</sup>

Second, the Chamber concluded that there was a reasonable basis to believe that torture or inhuman treatment was committed onboard the Mavi Marmara, including forcing passengers to remain kneeling on decks exposed to seawater spray, wind gusts from helicopters, and the sun, which resulting in first-degree burns; blindfolding or putting hoods over passengers' heads; beating passengers; denying them medication and access to toilet services; and limiting access to water and food.<sup>189</sup> The Chamber added that this should be considered when assessing the *nature* of the crimes as part of the gravity

---

183. *Id.*

184. *See* Flotilla Situation, ICC-01/13-6-AnxA, Notice of Filing the Report Prepared by the Office of the Prosecutor Pursuant to Art. 53(1) of the Rome Statute, ¶ 139 (Feb. 4, 2015) (detailing prosecutorial findings regarding the incident that took place onboard the Mavi Marmara).

185. *See id.* ¶¶ 142–44 (concluding that the factors such as the scale, impact and manner of the crimes committed by the IDF do not prove to be enough to warrant an investigation).

186. Flotilla Situation, ICC-01/13-34, Decision on the Request of Comoros to Review the Prosecutor's Decision not to Initiate an Investigation, ¶ 3 (Jul. 16, 2015).

187. *See id.* ¶¶ 25–26 (explaining that the Mavi Marmara was carrying over 500 civilian passengers who sustained a variety of injuries and deaths).

188. *Id.* ¶ 26.

189. *Id.* ¶ 29.

test.<sup>190</sup>

Third, the Chamber considered the *manner* of commission to further sustain its consideration of a potential case of sufficient gravity.<sup>191</sup> The Chamber referred to the use of live fire by the Israeli Defence Forces prior to boarding, cruel and abusive treatment of detained passengers in Israel, cruel treatment of passengers during the taking of the Mavi Marmara and attempts to conceal the crimes, and the absence of crimes in the other flotilla vessels as serious as those perpetrated in the Marmara.<sup>192</sup> This was due to great differences between the Marmara and the other vessels, namely, the Marmara carried at least 546 activists that comprised approximately 80% of the individuals on the flotilla, including—according to some accounts—”activists” allegedly linked to the terrorist organization Hamas. It also did not carry humanitarian supplies.<sup>193</sup>

Finally, the Chamber considered that the ICC-OTP should have recognized that the events potentially had an impact beyond victims. For example, there was international concern resulting in fact-finding missions of the UN Human Rights Council and the UN Secretary-General.<sup>194</sup> The Chamber found that this “is somehow at odds with the Prosecutor’s simplistic conclusion that the impact of the identified crimes points towards the insufficient gravity of the potential case(s) on the mere grounds that the supplies carried by the vessels in the flotilla were ultimately later distributed to the population in Gaza[.]”<sup>195</sup>

The ICC Prosecutor stood by her decision not to investigate<sup>196</sup> and the Chamber did not act further to encourage her to reconsider her decision.<sup>197</sup> Some scholars have found that the ICC-OTP’s decision was factually and legally sound<sup>198</sup> because they consider that the Mavi Marmara’s main intention was to breach the blockade as an act of protest and, thus, Israeli Defence forces were entitled to capture the vessel to protect their blockade.<sup>199</sup> Nevertheless, the ICC-OTP should have considered, among

---

190. *Id.* ¶ 30.

191. *Id.* ¶ 32.

192. *See id.* ¶¶ 36–43 (explaining the tactics employed by Israeli forces).

193. *Id.* ¶ 43.

194. *Id.* ¶ 48.

195. *Id.*

196. *See* Flotilla Situation, ICC-01/13-111, Decision on the Application for Judicial Review by the Government of Comoros, ¶¶ 1–8 (Sep. 16, 2020) (providing that the Comoros requested a review of the 2019 Decision not to Investigate).

197. *Id.* ¶¶ 106, 112.

198. Geert-Jan Knoops & Tom Zwart, *The Flotilla Case Before the ICC: The Need to Do Justice While Keeping Heaven Intact*, 15 INT’L CRIM. L. REV. 1069, 1097 (2015).

199. *Id.* at 1084.



other aspects, the narrow spatial element of the Mavi Marmara when evaluating gravity. There is the risk that only atrocities perpetrated on land would fall within the ICC's jurisdiction as "the obviously restricted dimensions of a ship could not likely be the stage of mass atrocities such as those that normally are the object of the OTP's activity[.]"<sup>200</sup> This will be necessary to take into account if international maritime terrorism is included in the ICC's jurisdiction.

In early 2019, the ICC-OTP received a communication that alleged the commission of crimes against humanity of other inhumane acts and persecution by Chinese officials, pursuant to Articles 7(1)(k) and 7(1)(h) of the Rome Statute respectively, related to certain activities in some areas of the South China Sea.<sup>201</sup> The allegations included: i) forced and intentional exclusion of Philippine nationals from using resources in some relevant areas of the sea; ii) massive illegal reclamation and artificial island-building in the Spratly Islands, significantly damaging the marine life in the area; and iii) support and toleration of illegal and harmful fishing by Chinese nationals, likely causing serious environmental damages.<sup>202</sup> The ICC-OTP confirmed that the alleged criminal acts took place in areas outside the Philippines' territorial sea, namely, areas farther than 12 nautical miles from its coastal line, but still within areas corresponding to its declared exclusive economic zone (EEZ).<sup>203</sup>

Nevertheless, the ICC-OTP concluded that "a State's EEZ (and continental shelf) cannot be considered to comprise part of its 'territory' for the purpose of article 12(2)(a) of the Statute[.]"<sup>204</sup> It added that "while article 12(2)(a) also extends the Court's jurisdiction to crimes committed on board vessels registered in a State Party, this condition likewise is not met, given that the alleged crimes were purportedly committed on board Chinese registered vessels" and that "the remaining basis for the exercise jurisdiction (active personality) under article 12(2)(b) is also not met, given the Chinese nationality of the alleged perpetrators in question[.]"<sup>205</sup> Thus, the ICC-OTP concluded that the alleged crimes fell short of the ICC's territorial or personal jurisdiction.<sup>206</sup>

---

200. Longobardo, *supra* note 179, at 1030.

201. ICC-OTP, *Report on Preliminary Examination Activities*, ¶44, (Dec. 5, 2019), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/191205-rep-otp-PE.pdf> [hereinafter ICC-OTP Report on Preliminary Examination Activities].

202. *Id.*

203. *Id.* ¶46.

204. *Id.*

205. *Id.* ¶51.

206. *See id.* (further analysis of this rejected communication is given later in section IV when examining normative considerations on international maritime terrorism and ICC's jurisdictional issues).

In any event, there is no specific jurisprudence of international and hybrid criminal tribunals concerning international crimes on board vessels.<sup>207</sup> This further suggests the advisability of or need for expanding the ICC's jurisdiction over international maritime terrorism, relying on the definitions of terrorism crimes under the SUA Convention, its 1988 Protocol, and their 2005 Protocols. This should enable the ICC to develop relevant jurisprudence on international maritime terrorism or other international crimes that constitute serious threats to or attacks against international peace and security. Indeed, such incorporation can provide the ICC with a more comprehensive legal framework to better address ongoing or recent atrocities such as some of those committed in Ukraine, as briefly examined later.

#### IV. NORMATIVE CONSIDERATIONS

This section proposes and discusses three normative grounds for including international maritime terrorism in the Rome Statute. Section A corresponds to the need for better protection of the marine environment. Section B argues that the ICC can better address or contribute to clarifying how to properly address jurisdictional gaps or jurisdictional conflicts related to criminal incidents at sea. Section C concerns the advisability of or need for consistency or coherence across diverse supranational courts that may tackle international terrorism, including international maritime terrorism.

##### A. Inclusion of International Maritime Terrorism in the Rome Statute to Better Protect the Marine Environment

In the context of environmental challenges and an increasing “environmental” turn to international courts, these judicial bodies can be environmental change agents and contribute to the development of environmental international rule of law, which may strengthen the international courts' legitimacy.<sup>208</sup> There is indeed a general trend toward recognizing the use of international criminal law and the ICC to protect the environment.<sup>209</sup>

---

207. See Longobardo, *supra* note 179, at 1028–30 (providing that there is no “significant ICC case law on crimes committed on board vessels”).

208. See CHRISTINA VOIGT, INTERNATIONAL COURTS AND THE ENVIRONMENT: THE QUEST FOR LEGITIMACY 2–21 (2019) (explaining the influence that international courts can have on the development of environmental international law).

209. See Jessica Lawrence & Kevin Heller, *The Limits of Article 8(2)(B)(IV) of the Rome Statute, the First Ecocentric Environmental War Crime*, 20 GEO. INT'L ENVTL. L. REV. 61, 61–96 (2007) (arguing that Article 8(2)(B)(IV) can be used to protect the environment); Kai Ambos, *Protecting the Environment through International Criminal Law?*, EJIL: TALK! (Jun. 29, 2021), [www.ejiltalk.org/protecting-the-environment-through-international-criminal-law](http://www.ejiltalk.org/protecting-the-environment-through-international-criminal-law) (documenting a recent proposal to create a core international crime of ecocide).

International bodies such as the UNSC<sup>210</sup> and the UN Secretary-General,<sup>211</sup> as well as scholars,<sup>212</sup> have increasingly remarked that environmental threats to, attacks against, and/or damages on the seas or marine environment can also constitute a maritime security concern and may even have consequences on, or pose a threat to, international peace and security. Indeed, this relationship between security and environmental protection is explicitly recognized in the UN Draft Comprehensive Convention on International Terrorism.<sup>213</sup>

Maritime terrorism crimes such as the 2004 attack against the Iraqi oil platforms or those that may involve the destruction of pipelines, installations, or structures associated with the exploitation of marine natural resources cause environmental damage.<sup>214</sup> The growth in the number and seriousness of attacks such as robberies, homicides, and hijackings especially against merchant shipping in port and in transit potentially increase “major environmental damage” and “threaten peaceful maritime commerce in many areas of the world[.]”<sup>215</sup> International maritime terrorism incidents are not as common as those on land; however, “nightmare scenarios” can include attacks intended to cause environmental damage by, for example, spilling oil.<sup>216</sup> Serious threats to maritime security such as international maritime

---

210. See Press Release, Security Council, Security Council Holds First-Ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers, U.N. Press Release SC/9000 (Apr. 17, 2007) (commenting on the many dangers of environmental threats); G.A. Res. 63/281 (Jun. 3, 2009) (showing examples of international bodies that are concerned about environmental threats).

211. U.N. Secretary-General, *Oceans and the Law of the Sea*, ¶ 39, UN Doc. A/63/63 (Mar. 10, 2008).

212. See generally Nico Schrijver, *International Organization for Environmental Security*, 20 SEC. DIALOGUE 115, 115 (1989) (“[E]nvironmental problems have also become security problems . . . .”); Linda A. Malone, *Green Helmets: A Conceptual Framework for Security Council Authority in Environmental Emergencies*, 17 MICH. J. INT’L L. 515, 520 (1996); Alex Tewes, Laura Rayner & Kelly Kavanaugh, *Australia’s Maritime Strategy in the 21st Century*, PARLINFO (Nov. 29, 2004), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F3L7F6%22>; NATALIE KLEIN, MARITIME SECURITY AND THE LAW OF THE SEA, 97 (2011); Kirsten Davies & Thomas Riddell, *The Warming War: How Climate Change is Creating Threats to International Peace and Security*, 30 GEO. ENV’T. L. REV. 1, (2017); KARIM, *supra* note 7, at 4–5; Ricardo Pereira, *After the ICC Office of the Prosecutor’s 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide?*, 31 CRIM. L. F. 179, 192 (2020) (noting that the UN Security Council has recognized that attacks on the environment have negative implications for international peace).

213. Draft Comprehensive Convention on International Terrorism, Working Document Submitted by India, art. 2(1)(b), U.N. Doc. A/C.6/55/1 (Aug. 28, 2000). See also Amrith Rohan Perera, *The Draft United Nations Comprehensive Convention on International Terrorism*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM, *supra* note 7, at 120–28.

214. See KLEIN, *supra* note 212, at 98.

215. J. Ashley Roach, *Initiatives to Enhance Maritime Security at Sea*, 28 MARINE POLICY 43, 43 (2004).

216. Bjørn Møller, *Piracy, Maritime Terrorism and Naval Strategy*, DIIS REPORT, 2009, at 23–24.

terrorism and piracy can involve risks of considerable international environmental disasters.<sup>217</sup>

Hence, the incorporation of international maritime terrorism into the Rome Statute can serve to enhance the protection of the marine environment from severe damages. The original SUA Convention and its 1988 Protocol lacked references to causing environmental damages as part of international maritime terrorism. However, Article 2 of the 2005 Protocol, which amends Article 1(1)(c)(iii) of the 1988 SUA Convention, establishes that: “‘serious injury or damage’ means . . . substantial damage to the environment, including air, soil, water, fauna, or flora[.]”<sup>218</sup> Additionally, the 2005 Protocol to the 1988 Protocol to the 1988 SUA Convention (Article 4) added Article 2*bis* to the latter Protocol, which criminalizes unlawful and intentional acts whose purpose is “to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” and involves the following criminal acts:

- (a) uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN [biological, chemical, nuclear] weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- (b) discharges, from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
- (c) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a) or (b).

The aftermath of the 9/11 attacks and the context of the global war on terror prompted these normative changes, which include acts that intentionally inflict serious damages on the marine environment by spreading biological, radioactive, or even nuclear substances.<sup>219</sup> Hence, the inclusion of international maritime terrorism contained in the amended SUA Convention and its Protocol in the Rome Statute can provide better protection of the marine environment from serious environmental damages. Moreover, it is consistent with the ILC’s work on crimes against peace and security of mankind,<sup>220</sup> which would be later considered in the drafting of

---

217. CHALK, *supra* note 115, at 17; Dutton, *supra* note 6, at 199.

218. 2005 Safety of Maritime Navigation Protocol, *supra* note 43, art. 1(c)(iii).

219. See KARIM, *supra* note 7, at 59; José Luis Jesus, *Protection of Foreign Ships against Piracy and Terrorism at Sea: Legal Aspects*, 18 INT’L J. MAR. & COASTAL L. 363, 394 (2003).

220. See Giovanni Chiarini, *Ecocide and International Criminal Court Procedural Issues: Additional Amendments to the ‘Stop Ecocide Foundation’ Proposal 9–10* (UCC Ctr. for Crim. Just. and Hum. Rts., Working Paper Series No. 15, 2021).

the Rome Statute. Indeed, the ILC explicitly mentioned “acts causing serious damage to the environment[,]”<sup>221</sup> including references to treaties banning nuclear weapons “on the seabed and the ocean floor, and in the subsoil thereof[,]”<sup>222</sup> indicating “massive pollution of the [. . .] seas[,]”<sup>223</sup> and remarking the fundamental importance of protecting the environment, the seas, and their ecosystems.<sup>224</sup>

Such incorporation would also be consistent with and would strengthen the ICC-OTP’s policy to focus on the investigation into and prosecution of crimes that cause serious environmental damages.<sup>225</sup> In fact, the ICC-OTP has explicitly established that as part of its case selection criteria, particularly concerning the gravity of crime(s), it will consider, among other aspects, “crimes committed by means of, or resulting in, the destruction of the environment[;]” “the terror subsequently instilled[;]” and “environmental damage inflicted on the affected communities.”<sup>226</sup> Thus, the ICC-OTP’s case selection criteria arguably present elements of environmental security.

Furthermore, the inclusion of international maritime terrorism in the Rome Statute can further reinforce and complement the ongoing initiative of amending the Rome Statute through the incorporation of the crime of ecocide. This amendment proposal currently includes only a very general reference to “hydrosphere”<sup>227</sup> and broadly defines ecocide as “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts[.]”<sup>228</sup>

Yet, there are scholars who are skeptical of whether international or transboundary environmental crimes can be considered or defined as

221. *Report of the Commission to the General Assembly on the work of its Thirty-sixth session*, [1984] 2 Y.B. Int’l L. Comm’n 11, U.N. Doc A/CN.4/SER.A/1984/Add.1 (Part 2).

222. *Id.* at 16.

223. *Documents of the Thirty-eighth session*, [1986] 2 Y.B. Int’l L. Comm’n 61, U.N. Doc. A/CN.4/SER.A/1986/Add.1 (Part 1) (1986).

224. *Report of the Commission to the General Assembly on the work of its Forty-third session*, [1991] 2 Y.B. Int’l L. Comm’n 107, A/CN.4/SER.A/1991/Add.1 (Part 2).

225. See ICC Policy Paper, *supra* note 172, ¶¶ 40–41.

226. *Id.*

227. See *Independent Expert Panel for the Legal Definition of Ecocide, Commentary and Core Text*, STOP ECOCIDE FOUNDATION (June 2021), <http://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>. (providing definition of hydrosphere in art. 8 ter 2(e)).

228. *Id.* art. 8 ter 1; See *Ecocide, a Word That Defines the Crimes Committed Against the Planet*, IBERDROLA, <https://www.iberdrola.com/sustainability/ecocide> (last visited Oct. 14, 2023) (examples of the crime of ecocide may include: i) damage to the oceans as a result of oil spills, plastic-related pollution, industrial overfishing; ii) deforestation as a consequence of intensive agriculture and farming; iii) air pollution; and iv) soil and water pollution).

international crimes in the narrow sense unlike, among others, international terrorism.<sup>229</sup> Some cast serious doubts on the advisability of including ecocide as part of the Rome Statute.<sup>230</sup> If ecocide is ultimately not incorporated in the Rome Statute, the inclusion of international maritime terrorism could partially fill the gap left regarding the protection of the marine environment. With or without the ecocide crime in the ICC's jurisdiction, the inclusion of international maritime terrorism can complement the current and very limited protection of the marine environment afforded by the Rome Statute. At the moment, such protection is limited to war crimes when an intentional attack is linked to an international armed conflict "in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated[.]"<sup>231</sup> Under the Rome Statute, there is no similar war crime in the context of internal armed conflicts.

#### B. Inclusion of International Maritime Terrorism to Help in Sorting out ICC's Jurisdictional Gaps or Jurisdictional Issues

Concerning the fight against impunity related to international crimes, international and national criminal courts should aim to close accountability gaps that are determined by, among other constraints, traditional jurisdictional limits.<sup>232</sup> International maritime terrorism normally involves complex jurisdictional links that may require the intervention of supranational institutions such as the ICC to complement concurrent, conflicting, or alternative national jurisdictions that may include both states that are and are not parties to the Rome Statute. For states that are not parties to the Rome Statute, jurisdictional and even impunity gaps can be potentially sorted out via the UNSC's referral of a situation to the ICC under Article 13(b) of the Rome Statute. When a State Party to the Rome Statute refers a situation to the ICC or the ICC-OTP *proprio motu* initiates an investigation, the ICC jurisdiction under Article 12 of the Rome Statute is limited to: "(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration

---

229. See Pereira, *supra* note 212, at 191 (stating that "arguably environmental crimes cannot be defined as international crimes in the strict sense as understood under international criminal law").

230. See Patrick Canning, *Climate Crime at the ICC - Environmental Justice through the Looking Glass*, ENV., NAT. RES., & ENERGY L. (Jan. 13, 2022), [law.lclark.edu/live/blogs/177-climate-crime-at-the-icc-environmental-justice](http://law.lclark.edu/live/blogs/177-climate-crime-at-the-icc-environmental-justice) (arguing that prosecuting ecocide exceeds the scope of the Rome Statute).

231. Rome Statute, *supra* note 2, art. 8(2)(b)(iv).

232. See Theodor Meron, *Closing the Accountability Gap: Concrete Steps Toward Ending Impunity for Atrocity Crimes*, 112(3) AM. J. INT'L L. 433, 434-37 (2018) (noting the importance of courts to limit the accountability gap).

of that vessel or aircraft;” or “(b) The State of which the person accused of the crime is a national[.]”

Indeed, the aforementioned jurisdictional matrix is *mutatis mutandis* illustrated by the previously examined Flotilla incident at the ICC. Nine Turkish nationals and one dual Turkish-US national died on board a vessel navigating under the flag of the Comoros.<sup>233</sup> Turkey and the United States are not States Parties to the Rome Statute, while the Comoros is.<sup>234</sup> It also involved other ships registered in Greece and Cambodia, which are States Parties to the Rome Statute,<sup>235</sup> as well as ships registered in Turkey and the United States, which—as previously mentioned—are not States Parties.<sup>236</sup> Moreover, most of the maritime areas, namely the high seas, the international seabed, and the Antarctic Ocean, are beyond states’ jurisdiction and are global commons,<sup>237</sup> which further enhances the need to expand the ICC’s jurisdiction over international maritime terrorism.

Under existing international instruments, jurisdiction over unlawful acts against the safety of maritime navigation depends on the specific crime. While piracy is a crime under universal jurisdiction whereby all states have the right to seize a pirate ship or aircraft on the high seas or in any other place outside the exclusive jurisdiction of the states, international maritime terrorism cases require the flag state’s consent.<sup>238</sup> The same basically holds true for the jurisdictional scope of the SUA Convention, which requires a link between the flag state and the particular offense, and provides three alternative conditions for the establishment of jurisdiction over the crime: i) where the offense is committed on or against a vessel flying the flag of a State Party to the SUA Convention, ii) where the offense takes place in the territory or territorial sea of a State Party to the SUA Convention, or iii) when

---

233. See Office of the Prosecutor, *Situation on Registered Vessels of Comoros, Greece and Cambodia, Article 53(1) Report*, ¶¶ 5–6, 12 (Nov. 6, 2014) [hereinafter Flotilla Situation Report].

234. States Parties to the Rome Statute, *supra* note 102.

235. *Id.*

236. See *id.*; Knoops & Zwart, *supra* note 198, at 1071–72.

237. See KEYUAN ZOU, *GLOBAL COMMONS AND THE LAW OF THE SEA 1–2* (2018) (noting that “in addition to high seas and Antarctica, the international seabed is also a visible global commons”).

238. 2005 Fixed Platforms Protocol, *supra* note 44, art. 8bis, ¶ 5(b), (c) (“if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as ‘the flag State’ for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, 3bis, 3ter or 3quater has been, is being or is about to be committed, and the flag State shall either: (i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or (ii) conduct the boarding and search with its own law enforcement or other officials; or (iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or (iv) decline to authorize a boarding and search”).

the offender is a national of a State Party to the SUA Convention.<sup>239</sup>

Maritime zones are under the national sovereignty of coastal states and under the UNCLOS, this sovereignty includes internal waters, territorial sea up to 12 nautical miles from the coastal line, international straits, and archipelagic waters.<sup>240</sup> In these maritime zones, coastal states have both full prescriptive and enforcement jurisdiction over international maritime terrorism with the exclusion of innocent passage in the territorial sea, sea lanes passage through archipelagic waters, and transit passage of foreign vessels through straits which generally should not be hampered or suspended.<sup>241</sup> The issue of maritime security in zones under the national sovereignty of coastal states and the ICC's potential jurisdiction has come into international legal parlance in the context of the Russian invasion of Ukraine. This has been the result of various reports about the seizure and attack of commercial vessels by Russia in the Black Sea that were present in Romania's territorial waters<sup>242</sup> as well as the illegal blockade in the Sea of Azov, affecting inter alia the port of Mariupol, which may even be constitutive of the crime of aggression under Article 8bis of the Rome Statute.<sup>243</sup> While Romania is a State Party to the Rome Statute, neither Russia nor Ukraine is a State Party to the Rome Statute. However, Ukraine has unilaterally accepted the ICC's jurisdiction through two declarations under Article 12(3) of the Rome Statute and 41 states based on Article 14 of the Rome Statute have triggered the ICC's jurisdiction leading to the ICC's *Situation in Ukraine*.<sup>244</sup> Given Russia's military attacks on commercial vessels and civilian port infrastructure which was, for instance, the case in Odessa, the issue of state-sponsored terrorism has become very topical.<sup>245</sup>

Under the UNCLOS, in the contiguous zone (beyond and adjacent to

---

239. 1988 Safety of Maritime Navigation Convention, *supra* note 41, art. 6.

240. UNCLOS, *supra* note 72, art. 2(1).

241. *See id.* arts. 19(1), 25, 27, 44; S.C. Res. 1373 (Sept. 28, 2001); S.C. Res. 1540 (April 28, 2004).

242. EMEA News, *Russia Seizes Ukraine-flagged Tanker and Bulker in Black Sea*, SHIP & BUNKER (Feb. 28, 2022), <https://shipandbunker.com/news/emea/402595-russia-seizes-ukraine-flagged-tanker-and-bulker-in-black-sea>.

243. Alexander Lott, *Russia's Blockade in the Sea of Azov: A Call for Relief Shipments for Mariupol*, EJIL: TALK! (Mar. 14, 2022), <http://www.ejiltalk.org/russias-blockade-in-the-sea-of-azov-a-call-for-relief-shipments-for-mariupol/>.

244. *See* ICC, *Situation in Ukraine*, Investigation, ICC-01/22, <https://www.icc-cpi.int/ukraine> (last visited Dec. 1, 2023) [hereinafter ICC Situation in Ukraine].

245. *See* Jeff Seldin & Margaret Besheer, *Russia Bombs Odesa Port, Compromising Ukrainian Grain Deal*, VOA NEWS (July 23, 2022), [www.voanews.com/a/russia-hits-black-sea-port-hours-after-agreeing-not-to/6670829.html](http://www.voanews.com/a/russia-hits-black-sea-port-hours-after-agreeing-not-to/6670829.html) (last visited Aug. 23, 2022); Julia Payne, *Ukraine Says Two Commercial Ships Hit by Russian Missiles Near Odessa Port*, REUTERS (Feb. 26, 2022), [www.reuters.com/world/europe/moldovan-flagged-tanker-hit-by-missile-ukraine-coast-2022-02-25/](http://www.reuters.com/world/europe/moldovan-flagged-tanker-hit-by-missile-ukraine-coast-2022-02-25/) (last visited Aug. 23, 2022).



the territorial sea, up to 24 nautical miles from the coastal line), states enjoy specific rights such as the exercise of control to prevent and punish the infringement of customs, fiscal, immigration, or sanitary laws and regulations within their territory or territorial sea as well as the enforcement of jurisdiction in certain matters.<sup>246</sup> In the contiguous zone, the exercise of effective state jurisdiction differs from that of maritime zones under the national sovereignty of coastal states. As the contiguous zone is not subject to the coastal state's sovereignty, it should be questioned whether the ICC may exercise its jurisdiction when the crime is committed by a national of a state that is not party to the Rome Statute in the contiguous zone of a State Party to the Rome Statute. The UNSC can trigger the ICC's jurisdiction regardless of the location of the crime or the perpetrator's nationality,<sup>247</sup> which is a sort of "universal jurisdiction[.]"<sup>248</sup>

Nonetheless, the ICC's jurisdiction triggered by states or the ICC-OTP is limited to crimes committed in the territory of a State Party pursuant to Article 12(2)(a) of the Rome Statute or by a national of a State Party pursuant to Article 12(2)(b), plus the respective expansions of jurisdiction when non-Parties to the Rome Statute such as Ukraine<sup>249</sup> authorize the ICC's jurisdiction pursuant to Article 12(3). The ICC's potential jurisdiction over international crimes committed in the contiguous zone may well be supplemented by the coastal states' sovereign powers within the limits of international law. This arguably means that coastal states can or should take enforcement action in this zone if the terrorist vessel violates customs, fiscal, and immigration laws.<sup>250</sup>

The EEZ is an area beyond and adjacent to the territorial sea not exceeding 200 nautical miles from the baseline of the territorial sea where states enjoy certain sovereign rights and jurisdiction.<sup>251</sup> In this regard, the ICC-OTP arguably adopted a traditional approach to the UNCLOS by distinguishing, in a very rigid manner, between areas subject to state sovereignty from areas in which the coastal state exercises sovereign rights to find that alleged crimes against humanity committed by Chinese officials on board Chinese-registered vessels in the EEZ and continental shelf of the Philippines fell short of the ICC's territorial jurisdiction under Article

---

246. UNCLOS, *supra* note 72, art. 33(1).

247. Rome Statute, *supra* note 2, arts. 12(2), 13.

248. George Fletcher & Jens Ohlin, *The ICC - Two Courts in One?*, 4 J. INT'L CRIM. JUST. 428 (2006).

249. ICC Situation in Ukraine, *supra* note 244.

250. UNCLOS, *supra* note 72, art. 19(2).

251. *Id.* art. 55.

12(2)(a) of the Rome Statute.<sup>252</sup> This certainly reveals a narrow approach to the ICC's *ratione loci* (territorial) jurisdiction that may lead to some impunity gaps (see Table 2 below).

It may be argued that this approach is not fully consistent with a teleological interpretation of the Rome Statute, in which the preamble establishes that “the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation” as well as that the State Parties are “[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes[.]”<sup>253</sup> The inclusion of international maritime terrorism can provide an excellent avenue and opportunity for the ICC to jurisprudentially clarify the ICC's territorial jurisdictional scope or *ratione loci* jurisdiction as applied to maritime zones in a manner that is fully coherent with its proclaimed major goal of fighting against impunity.

The EEZ and continental shelf are not subject to territorial sovereignty; however, they are maritime spaces over which states exercise national jurisdiction, unlike maritime spaces beyond national jurisdiction, such as the high seas.<sup>254</sup> Moreover, the ICC-OTP qualified “maritime zones beyond the territorial sea” as “international waters[.]”<sup>255</sup> a term that is not entirely consistent with the maritime zones recognized in the UNCLOS and doctrine.<sup>256</sup> This is because such terminology may seemingly conflate maritime spaces under national jurisdiction with maritime spaces beyond national jurisdiction.

Despite the ICC-OTP's limited definition of territory for the ICC's jurisdictional purposes concerning the sea, which excluded the EEZ altogether<sup>257</sup> (see Figure 2 below), scholarship commenting on the ICC's jurisdiction and the EEZ has pointed out that the recognition of the fact that the ICC's jurisdiction in several cases may extend to the EEZ (see Figure 3 below) is, at least, not against the object and purpose of the UNCLOS and is further corroborated by the International Tribunal for the Law of the Sea (ITLOS)'s jurisprudence, including the *Enrica Lexie* and *Arctic Sunrise* cases.<sup>258</sup> Moreover, if international maritime terrorism and/or ecocide is

---

252. ICC-OTP Report on Preliminary Examination Activities, *supra* note 201, ¶¶ 44–51.

253. Rome Statute, *supra* note 2, Preamble, ¶¶ 4, 5.

254. See YOSHIFUMI TANAKA, *THE INTERNATIONAL LAW OF THE SEA*, 94–235 (3d ed. 2019).

255. ICC-OTP Report on Preliminary Examination Activities, *supra* note 201, ¶ 48.

256. See, e.g., TANAKA, *supra* note 254, at 94–235.

257. ICC-OTP Report on Preliminary Examination Activities, *supra* note 201, ¶ 46.

258. In the *Enrica Lexie* incident, the Permanent Court for Arbitration held that “piracy at sea

incorporated into the Rome Statute, the ICC can potentially work within its mandate in a complementary and synergetic manner alongside domestic jurisdictions in determining whether international crimes committed in the EEZ have detrimental environmental and economic effects.

Furthermore, the inclusion of international maritime terrorism within the ICC's jurisdiction may be useful for the coastal states' enforcement powers which may go beyond the hot pursuit right. While, under the UNCLOS, the hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own state or of a third state,<sup>259</sup> the ICC may exercise jurisdiction if at least one element of the crime is committed in the territory of a State Party to the Rome Statute. In the *Lotus* case, the Permanent Court of International Justice (PCIJ) supported a limited understanding of the territoriality of criminal law, holding that states may only enforce their domestic law beyond their territory if an international treaty or customary rule provided for such an opportunity.<sup>260</sup> It importantly held that "the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State[.]"<sup>261</sup>

However, the ICC's practice arguably transcends this traditional approach. In the *Bangladesh/Myanmar Situation*, the ICC held that it may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh, and potentially other crimes "[i]f it were established that at least an element of another crime within the jurisdiction of the Court . . . is committed on the territory of a State Party[.]"<sup>262</sup> This principle, which in legal scholarship is referred to as the objective territoriality or ubiquity principle, provides that "a crime that includes a consequences element shall be regarded as committed at the place where those consequences occurred[.]"<sup>263</sup> and may be *mutatis mutandis* used for

---

constitutes an international crime. All states have the right and duty to protect their vessels against piracy at sea including in the EEZ of a coastal State," which, *mutatis mutandis*, may extend to international maritime terrorism. In the "Arctic Sunrise" Arbitration, the International Tribunal for the Law of the Sea concluded that the coastal State's criminal jurisdiction in the EEZ may inter alia extend to international maritime terrorism insofar as such conduct would have negative economic implications on the coastal State. See Michael Kearney, *The Exclusive Economic Zone, Territory and Territorial Jurisdiction in the Rome Statute*, 20 INT'L CRIM. L. REV. 1204–10 (2020).

259. See UNCLOS, *supra* note 72, art. 111(3).

260. S.S. *Lotus* (Fr. v. Tur.), 1927 P.C.I.J. (ser. A) No. 10, at ¶ 52.

261. *Id.* at ¶¶ 18–19.

262. *Situation in Bangladesh/Myanmar, Decision on the Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute*, ICC-RoC46(3)-01/18, ¶ 74 (Sep. 6, 2018).

263. Anonymous Author, *Territorial Jurisdiction of the International Criminal Court over the Russian Leadership: Locus Delicti in Complicity Cases*, EJIL: TALK! (Mar. 24, 2022), [www.ejiltalk.org/territorial-jurisdiction-of-the-international-criminal-court-over-the-russian-leadership-](http://www.ejiltalk.org/territorial-jurisdiction-of-the-international-criminal-court-over-the-russian-leadership-)

international maritime terrorism which starts in the territorial sea and continues in the contiguous zone and other maritime zones. In interpreting Article 12(2)(a) on the ICC's territorial jurisdiction, the ICC-OTP importantly referred to Article 27(1) of the UNCLOS, the *Lotus* case, and state practice—such as that of England, Canada, the United States, and China—to show that territorial jurisdiction is a permissive concept.<sup>264</sup> Under Article 12(2)(a) of the Rome Statute, the ICC's territorial jurisdiction may be extended to crimes committed on board a vessel if the state of registration is a State Party to the Rome Statute.<sup>265</sup>

To broaden the territorial scope of the ICC's jurisdiction, it is possible to notice how the ICC's Pre-Trial and Appeals Chambers try to overcome the hurdle of gravity threshold that, in certain occasions, is used by the ICC-OTP as a justification for not investigating into a particular situation, which arguably happened in the situation referred to the ICC by the Comoros.<sup>266</sup> In this situation, the ICC-OTP's decision not to proceed with an investigation was based on the following factors: i) “the total number of victims . . . reached relatively limited proportions as compared, generally, to other cases investigated by the office[;]”<sup>267</sup> ii) the crimes were not systematic or the result of a plan or policy; and iii) the crimes did not have a significant impact beyond the immediate victims and their families.<sup>268</sup> The ICC's Pre-Trial Chamber disagreed with the ICC-OTP as the former considered that the gravity threshold was actually met because the number of victims was sufficiently large and a broad impact was not an essential precondition to meet the gravity threshold, which was later confirmed by the ICC Appeals Chamber.<sup>269</sup>

If international maritime terrorism is included in the ICC's jurisdiction, the above-mentioned permissive territorial jurisdiction or objective territorial jurisdiction<sup>270</sup> may be *mutatis mutandis* used by the ICC for

---

locus-delicti-in-complicity-cases/.

264. Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute at ¶¶38, 40, ICC-RoC46(3)-01/18-1 (Apr. 9, 2018).

265. Rome Statute, *supra* note 2, art. 12 (2)(a).

266. See Referral Memorandum from the Union of the Comoros, to Fatou Bensouda, Prosecutor, ICC, ¶ 25 (May 14, 2013) (referring the Gaza Freedom Flotilla Situation to the ICC and discussing why the crimes committed meet the gravity threshold).

267. Flotilla Situation Report, *supra* note 233, ¶ 138.

268. *Id.* ¶¶ 137, 141.

269. Flotilla Situation, Decision on the Request of the Union of the Comoros to review the Prosecutor's Decision not to Initiate an Investigation, ICC-01/13-34, ¶ 49 (Jul. 16, 2015); Flotilla Situation, Decision on the Application for Judicial Review by the Government of the Union of the Comoros, ICC-01/13-68, ¶ 96–101 (Nov. 15, 2018).

270. See generally MICHAEL VAGIAS, THE TERRITORIAL JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT (2014) (discussing the history and scope of ICC jurisdiction).

international maritime terrorism that starts in the territorial sea and continues in the contiguous zone and other maritime zones. The principle of objective territoriality, which gains momentum with the Russian invasion of Ukraine, is also well-recognized in several states such as France, Germany, the Netherlands, and Belgium.<sup>271</sup>

Further, it could be argued that the ICC's potential objective territorial jurisdiction over criminal acts that are also materially constitutive of international maritime terrorism is not an exercise of supplemental jurisdiction, that is, of the ICC's jurisdiction beyond its *ratione loci* jurisdictional constraints<sup>272</sup> or a sort of "universal jurisdiction." Rather, it is a broad manifestation of the ICC's *ratione loci* jurisdiction under the Rome Statute. In this regard, some scholars put forward the view that ICC-OTP's recent investigations—and potentially the exercise of the ICC's objective territorial jurisdiction—in situations where crimes committed are not confined to the territories of States Parties to the Rome Statute or the nationals of States Parties thereof, such as the *Situation in Afghanistan*, are still *intra vires* (within the ICC's powers).<sup>273</sup> Thus, the said principle may play a role in terrorism crimes committed in maritime zones which started in the territorial sea and continue in other maritime zones or vice-versa. For a graphic illustration of these points, see Figure 3 below.

In the continental shelf, which contains the seabed and subsoil of the submarine area,<sup>274</sup> coastal states have certain sovereign rights and powers of functional character for the purposes of exploring and exploiting their natural resources.<sup>275</sup> However, the question may arise whether the UNCLOS confers upon coastal states criminal jurisdiction over the continental shelf<sup>276</sup> and whether these states may take law enforcement action over international maritime terrorist acts that, in principle, fall outside their explicit sovereign rights and powers under the UNCLOS. For instance, Article 79(1) of the UNCLOS envisages the right of all states to lay submarine cables and

---

271. Anonymous Author, *supra* note 263; Cedric Ryngaert, *Territorial Jurisdiction Over Cross-frontier Offences: Revisiting a Classic Problem of International Criminal Law*, 9 INT'L CRIM. L. REV. 187, 189 (2009).

272. See generally Peter Tzeng, *Supplemental Jurisdiction Under UNCLOS*, 38 HOUS. J. INT'L L. 499 (2015) (providing a theory of supplemental jurisdiction that strikes for a balance between granting UNCLOS tribunals excessive jurisdiction and overcurtailing their jurisdiction).

273. See Monique Cormier, *Testing the Boundaries of the ICC's Territorial Jurisdiction in the Afghanistan Situation*, 78 QUESTIONS INT'L L. 43, 51 (2021) (arguing that the ICC may have jurisdiction even when the crimes did not take place within the territory of a State Party to the Rome Statute).

274. UNCLOS, *supra* note 72, art. 76(1).

275. *Id.* arts. 78–81.

276. See Korontzis Tryfon, *Exceptions to the Criminal Jurisdiction of the Coastal State on Merchant and on Naval Vessels in the Hellenic Legal Order*, 1 EUR. SCIENT. J. 312, 321 (2014) (arguing that the "UNCLOS does not predict criminal jurisdiction of the coastal state over the continental shelf.").

pipelines on the continental shelf.<sup>277</sup> Furthermore, the coastal states should be consulted over the delineation of the course for the laying of such pipelines.<sup>278</sup> Nonetheless, the coastal states have no jurisdiction over such cables and pipelines. This means that, if damages result from a maritime terrorist act, the flag state or the nationality state that could exercise jurisdiction may have no interest in taking action against the offending vessel or individuals, thereby creating a jurisdictional gap.<sup>279</sup> In this regard, there is a certain trend of modern companies that, to avoid obligations stemming from international treaties, tend to register their vessels in the states “with different, and usually lesser, standards,” which may undermine the lack of interest from such states to exercise effective jurisdiction over their flagged vessels.<sup>280</sup> The 1988 SUA Convention Protocol extends coastal states’ jurisdiction over terrorist offenses against fixed platforms.<sup>281</sup> Nonetheless, gaps remain within this regime.<sup>282</sup>

A scenario presenting a jurisdictional gap or potential concurring jurisdiction may occur when a third state (other than the coastal state) operates a fixed platform on the continental shelf of a coastal state. If that third state’s nationals are held hostage by terrorists, it cannot intervene under the 1988 SUA Convention Protocol and its 2005 revision because boarding the platform would be asserting jurisdiction against the coastal state’s exclusive jurisdiction.<sup>283</sup> The inclusion of international maritime terrorism within the Rome Statute may be useful in sorting out such scenarios of jurisdictional gaps or concurring jurisdictions of coastal states and flag states.

Concerning the high seas, which are part of the common heritage of mankind,<sup>284</sup> the UNCLOS is silent on which states should be given priority when jurisdictional conflicts arise between coastal states and flag states in the exercise of jurisdiction over crimes committed in the said maritime zone. Namely, the UNCLOS provides no solution to potential jurisdictional conflicts. Furthermore, as international maritime terrorism is not generally covered by the right of visit,<sup>285</sup> and high seas are beyond national

---

277. UNCLOS, *supra* note 72, art. 79(1).

278. *Id.* art. 79(3).

279. *See id.* art. 113 (providing that states shall adopt laws governing injuries to submarine cables or pipelines caused by ships flying their flag and by individuals under their jurisdiction).

280. KLEIN, *supra* note 212, at 64.

281. 1988 Fixed Platforms Protocol, *supra* note 42, art. 3(1).

282. KLEIN, *supra* note 212, at 103.

283. *Id.*

284. *See* UNCLOS, *supra* note 72, art. 87 (providing that the high seas are open to all States).

285. The right of visit presents an important exception to the principle of the exclusive jurisdiction of flag states on the high seas. Under the UNCLOS, this right is accorded to warships of non-flag states,

jurisdiction, a negative conflict of jurisdiction may also arise when no state is willing or able to exercise jurisdiction over international maritime terrorism, thereby requiring the application of an international treaty such as the Rome Statute or a UNSC resolution to fill such a jurisdictional gap.

The right of visit does not extend to international maritime terrorism *per se*,<sup>286</sup> and the *M/V So San* incident demonstrates that exercising the right to visit to prosecute international maritime terrorism acts goes beyond the scope of Article 110 of the UNCLOS and requires the existence of an international treaty or a UNSC resolution.<sup>287</sup> For instance, if a stateless vessel engaged in terrorism is boarded by the coastal state under the right of visit, it may only entail the boarding and search of the vessel based on its statelessness and not the exercise of further jurisdictional powers by the coastal state for the prosecution of international maritime terrorism, unless this crime is included in applicable international instruments binding on the state(s) in question or in the respective domestic legislations.<sup>288</sup> All of these potential jurisdictional issues make a stronger case for the incorporation of international maritime terrorism in the Rome Statute.

Potential territorial jurisdictional gaps are also inherent to the Arctic Ocean, which is virtually not under the sovereignty of any state except for twelve nautical miles of territorial sea where the right of innocent passage applies.<sup>289</sup> This region is historically divided into ownership sectors of the subarctic states, and there is even a proposal for the internationalization of

---

namely, a warship that encounters a foreign merchant ship on the high seas may board it if it has reasonable ground for suspecting that the vessel is engaged in the following activities: a) piracy; b) slave trading; c) unauthorized broadcasting; d) the ship is without nationality; or e) “though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.” *Id.* art. 110(1).

286. *Id.* art. 110(1) (providing that warships must have a reasonable ground before boarding a foreign ship).

287. See Craig H. Allen, *The Peacetime Right of Approach and Visit and Effective Security Council Sanctions Enforcement at Sea*, 95 INT’L L. STUD. 400, 404 (2019) (arguing that “the bases for exercising a right of visit cannot develop beyond the present text of Article 110, except by treaty or a Chapter VII decision by the Security Council”); Paul Kerr, *U.S. Stops Then Releases Shipment of N. Korean Missiles*, ARMS CONTROL ASSOCIATION (June 1, 2018), [www.armscontrol.org/act/2003-01/news/us-stops-then-releases-shipment-n-korean-missiles](http://www.armscontrol.org/act/2003-01/news/us-stops-then-releases-shipment-n-korean-missiles) (documenting an incident where the stateless vessel *M/V So San* was boarded by the Spanish and U.S. naval forces in the Indian Ocean; as the boarding of the vessel was lawful due to the vessel’s statelessness, there was no reason to arrest the crew and confiscate the cargo, as the transport of ballistic missiles by sea was not prohibited by international law or the relevant domestic legislations of the U.S. and Spain); Papastavridis, *supra* note 7, at 65 (highlighting the deficit of Article 110 and explaining that “the right to visit stateless vessels does not *ipso facto* entail the full extension of the jurisdictional powers of the boarding state”).

288. See Kerr, *supra* note 287 (providing an example of an incident where there was no jurisdiction to arrest the crew and confiscate the cargo); UNCLOS, *supra* note 72, art. 110(1)(d).

289. *Chapter 8: The Arctic and the LOSC*, THE GRADUATE SCHOOL OF GLOBAL AFFAIRS AT TUFTS UNIVERSITY, [sites.tufts.edu/lawofthesea/chapter-eight/](http://sites.tufts.edu/lawofthesea/chapter-eight/).

the Arctic; however, the vast amount of the water surface corresponds to the EEZ and the high seas.<sup>290</sup> Thus, international maritime terrorism committed in these areas may remain unprosecuted unless a supranational court such as the ICC can exercise jurisdiction over the offenders.

Not all states are States Parties to the UNCLOS,<sup>291</sup> which further complicates settling jurisdictional disputes between littoral states over maritime jurisdiction. As high seas represent more than 50% of our planet's surface,<sup>292</sup> serious criminal conducts such as international maritime terrorism in this vast maritime area may remain unregulated. The same holds true for the Antarctic region and the international seabed, which are not subject to state sovereignty and are part of the common heritage of mankind.<sup>293</sup> Accordingly, there are important jurisdictional gaps that the ICC may partially fill when the UNSC triggers the ICC's jurisdiction (see Figures 2 and 3 below) or when the ICC applies other jurisdictional criteria such as objective territoriality, which may apply beyond the hot pursuit right.

Finally, the inclusion of international maritime terrorism within the ICC's jurisdiction may contribute to a more consistent interpretation and application of relevant international treaties concerning jurisdictional issues. This is also legitimized by the development of the concept of high seas, namely, the international community's gradual shift from the *mare liberum* (freedom of the seas) concept to *mare nostrum* (our sea) concept, which primarily rests on safety and security interests and proclaims that the protection of the high seas should not be seen as an obligation of certain states but of the whole international community.<sup>294</sup> If we view contemporary international law of the sea on the high seas and in areas outside of coastal states' exclusive jurisdiction as a balance between these two important concepts, this may legitimize the potential contribution of the ICC as a supranational court that aims to be of a truly global scope towards filling jurisdictional and impunity gaps when addressing the most serious international crimes committed at sea such as international maritime terrorism.

---

290. *Id.*

291. See *Chapter XXI: Law of the Sea*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (listing 169 States Parties as of June 2023).

292. David Freestone, *Problems of High Seas Governance*, in *THE WORLD OCEAN IN GLOBALISATION: CHALLENGES AND RESPONSES* 1, 2 (Davor Vidas & Peter Schei eds., 2010).

293. See Antarctic Treaty arts. 4(1), 5, Dec. 1, 1959, 402 U.N.T.S. 71; Yoshifumi Tanaka, *Protection of Community Interests in International Law: The Case of the Law of the Sea*, 15 MAX PLANCK Y. UN L. 329, 342 (2011).

294. See generally Philip Allot, *Mare Nostrum: A New International Law of the Sea*, 86 AM. J. INT'L L. 764, 773 (1992) (conceptualizing a new law of the sea, where the sea is "mare nostrum (our sea)").



FIGURE 2:  
ICC'S JURISDICTION AND MARITIME ZONES (I)

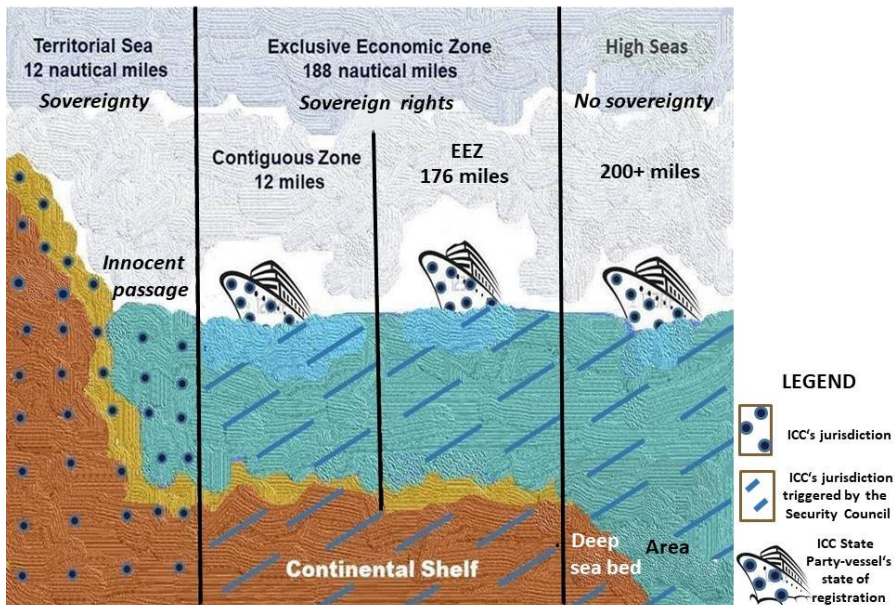
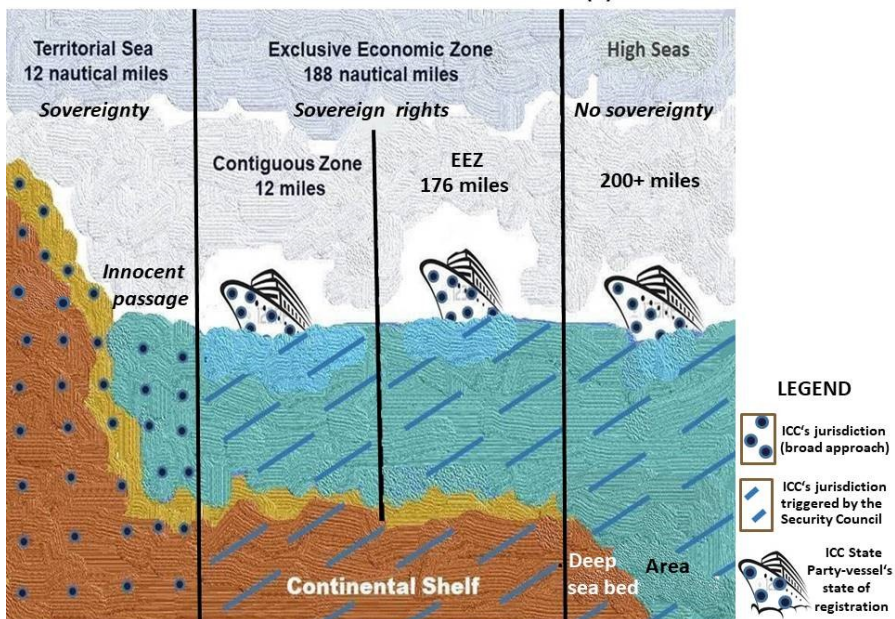


FIGURE 3:  
ICC'S JURISDICTION AND MARITIME ZONES (II)



### C. Coherence or Consistency Across Supranational Courts

Since the ICC is part of a family of supranational courts, it is key to examine how previous, existing, or planned supranational justice institutions engage or may engage with international maritime terrorism or other serious threats to maritime security within each court's mandate. This examination corresponds to the broader discussion on convergence and divergence across supranational courts,<sup>295</sup> as well as the fragmentation and unification in international law.<sup>296</sup> Although each supranational court's specific mandate must be borne in mind and respected, the underlying normative ground is to ensure a certain level of consistency or coherence across diverse supranational courts when these bodies deal with the same phenomenon: international terrorism, including international maritime terrorism. Coherence or consistency belongs to the international rule of law.<sup>297</sup> It is also a useful standard or criterion for assessing the legitimacy and effectiveness of supranational courts.<sup>298</sup> As the only permanent international criminal judicial institution, the ICC should expand its jurisdiction over international maritime terrorism and, through its law and jurisprudence, contribute to a more coherent international law of international maritime terrorism.

Under the auspices of the League of Nations, the Convention for the Creation of an International Criminal Court and its annexed statute were adopted in 1937.<sup>299</sup> For the purposes of this court's jurisdiction, "terrorism" was a series of crimes "directed against a State and intended or calculated to

---

295. For works discussing convergence and divergence across supranational courts, see, for example, Pierre-Marie Dupuy, *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31 N.Y.U. J. INT'L L. & POL. 791 (1999); Tullio Treves, *Fragmentation of International Law: The Judicial Perspective*, 27 AGENDA INT'L 213 (2009); A FAREWELL TO FRAGMENTATION: REASSERTION AND CONVERGENCE IN INTERNATIONAL LAW (Mads Andenas & Eirik Bjorge eds., 2015); PHILIPPA WEBB, INTERNATIONAL JUDICIAL INTEGRATION AND FRAGMENTATION (2013).

296. See, e.g., Georges Abi-Saab, *Fragmentation or Unification: Some Concluding Remarks*, 31 N.Y.U. J. INT'L L. & POL. 919 (1999) (summarizing the findings of a debate on the fragmentation of international law); Martti Koskenniemi & P. .ivi Leino, *Fragmentation of International Law?: Postmodern Anxieties*, 15 LEIDEN J. INT'L L. 553 (2002) (arguing about the institutional tensions regarding the fragmentation of international law); Int'l Law Comm'n, Rep. on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, U.N. Doc. A/CN.4/L.702 (2006) (discussing the challenges arising from the fragmentation of international law).

297. See, e.g., JAN KLABBERS, ANNE PETERS & GEIR ULFSTEIN, THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW 4 (2009) ("[O]ur aim is to see what a constitutional international legal order could look like.").

298. See YUVAL SHANY, ASSESSING THE EFFECTIVENESS OF INTERNATIONAL COURTS (2014) (surveying the effectiveness of international courts); LEGITIMACY AND INTERNATIONAL COURTS (Nienke Grossman et al. eds., 2018) (examining how international courts obtain legitimacy).

299. Cherif M. Bassiouni, *Chronology of Efforts to Establish an International Criminal Court*, 86 REVUE INTERNATIONALE DE DROIT PENAL 1163, 1184 (2015) (Fr.).

create a state of terror in the minds of particular persons, or a group of persons or the general public.”<sup>300</sup> Neither instrument entered into force; however, such a court was conceived as subsidiary to national criminal jurisdictions and permanent.<sup>301</sup>

Among international and hybrid criminal tribunals, the International Criminal Tribunal for the Former Yugoslavia developed jurisprudence on terrorism as a war crime;<sup>302</sup> however, it lacked jurisdiction over international terrorism itself. Contrariwise, the STL is the first international or hybrid criminal tribunal to have jurisdiction over terrorism under Article 2(a) of the STL Statute, which refers to the Lebanese Criminal Code provisions on terrorism, that explicitly refer to the destruction of a vessel or other facility or impediments to transports.<sup>303</sup>

As indicated previously, some scholars have partially criticized the decision on terrorism rendered by the STL Appeals Chamber in *Ayyash et al.* in 2011 because of its methodology for identifying customary international law on terrorism and/or for some of the legal elements identified by the Chamber as constitutive of a customary definition of international terrorism.<sup>304</sup> However, overall, scholars have extensively drawn attention to the decision when discussing an emerging customary international definition of the crime of international terrorism.<sup>305</sup> Be that as it may, the sources invoked by the STL Appeals Chamber in identifying the legal elements of the crime of international terrorism included: the 1988 SUA Convention and its 1988 Protocol the Additional Protocol on Combating Terrorism to the Agreement Among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Form; and the UNCLOS provisions on the high seas.<sup>306</sup> Thus, there was an explicit reference to

---

300. Convention for the Prevention and Punishment of Terrorism art. 1, Nov. 16, 1937, 19 League of Nations O.J. 23.

301. Rome Statute, *supra* note 2, art. 1.

302. *See, e.g.*, Prosecutor v. Stanislav Galic, Case No. IT-98-29-A, Judgement, ¶ 162 (Int’l Crim. Trib. for the Former Yugoslavia Nov. 30, 2006).

303. Statute of the Special Tribunal for Lebanon art. 2(a), U.N. Doc. S/RES/1757 (May 30, 2007).

304. *See, e.g.*, Gillett & Schuster, *supra* note 84 (criticizing the court’s decision); Ventura, *supra* note 84, at 1041 (summarizing the court’s decision and saying that “[o]nly time will tell whether the decision will enter international law’s hall of fame”).

305. *See, e.g.*, AMBOS, *supra* note 37, at 231–32 (discussing the decision in the context of defining international terrorism); SAUL, *supra* note 30, at 44–45 (providing different ways to define terrorism); Proulx, *supra* note 5, at 181 (arguing that it is unclear whether the STL decision would help or hamper “a potential rapprochement between terrorism and [the] ICL”).

306. Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, STL-11-01/1, Interlocutory Decision on the Applicable Law, ¶¶ 66 n.92, 89 nn.140, 142 (Special Tribunal for Lebanon Feb. 16, 2011).

treaties on international maritime terrorism and/or serious security threats to maritime security.

In addition to the arguable need for ICC jurisprudence on the legal definition of international maritime terrorism, the STL's jurisprudence suggests that the inclusion of international maritime terrorism in the jurisdiction of the court can lead to jurisprudential developments in areas such as evidence collection, criminal liability modes, and sentencing criteria that are specifically tailored to international maritime terrorism. Regarding criminal liability modalities, for example, the STL Trial Chamber remarked that the genesis and wording of Article 3(1)(a)(b) concerning criminal responsibility of the STL Statute is "in Article 2 (3) of the 1997 *International Convention for the Suppression of Terrorist Bombings*"<sup>307</sup> and pointed out that the latter has 170 state ratifications.<sup>308</sup> The Trial Chamber also correctly noted that Article 25 (3)(d) of the Rome Statute—with its 123 State Parties—is virtually identical to Article 3(1)(b) of the STL Statute and also comes from Article 2(3) of the aforementioned counter-terrorism convention.<sup>309</sup> As *obiter dicta* (stated in passing), the Chamber considered that "this provides evidence of *opinio juris*, but finding consistent state practice is more challenging and beyond the scope of this judgment[.]"<sup>310</sup> Finally, the STL Trial Chamber's analysis of sentencing factors powerfully remarked that:

176. [T]his shocking terrorist attack inflicted a form of collective harm on the Lebanese people. Apart from the effects on the immediate victims, direct and indirect, the Lebanese population was collectively harmed by this reprehensible attack on their system of government . . .

199. The motives of the perpetrators of the attack on Mr Hariri in intending to murder him and thus spread terror could also be considered as an aggravating feature . . . His murder . . . in a huge explosion would attract enormous publicity and cause many Lebanese to experience fear, insecurity and loss . . .

249. [Ayyash's] criminality is so grave that the only appropriate sentence is the maximum available, namely imprisonment for the remainder of his life.<sup>311</sup>

At the regional level, the African Union's Malabo Protocol, which is not yet in force, foresees the establishment of a new African Court of Justice

---

307. Prosecutor v. Ayyash, STL-11-01/T/TC, Judgment, ¶ 5902 (Special Tribunal for Lebanon Aug. 18, 2020).

308. *Id.* ¶ 5904.

309. *Id.* ¶¶ 5902, 5904.

310. *Id.* ¶ 5904.

311. Prosecutor v. Ayyash, STL-11-01/S/TC, Sentencing Judgment, ¶¶ 176, 199, 249 (Special Tribunal for Lebanon Dec. 11, 2020).

and Human and Peoples' Rights with *inter alia* criminal jurisdiction.<sup>312</sup> Crimes under this new Court include piracy and terrorism.<sup>313</sup> The latter includes acts that violate the criminal laws of State Parties to the Malabo Protocol or the African Union laws, and that endanger life, integrity, or freedom, or cause death or serious injury or damage property, natural resources, environmental or cultural heritage when intended to:

1. 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
2. disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
3. create general insurrection in a State.<sup>314</sup>

This definition is very broad, which may cause problems with the principle of legality. Moreover, no transnational element is required, since the African Court will also exercise jurisdiction over domestic terrorism.<sup>315</sup> Such an approach contrasts with other international legal sources, including UN counter-terrorism treaties such as the SUA Convention and its Protocols, the UN Draft Comprehensive Terrorism Convention, and the STL's jurisprudence.<sup>316</sup> Yet, the aforementioned African Court's jurisdiction over terrorism, including maritime terrorism and piracy, reveals increasing attention to granting supranational courts with criminal jurisdiction over terrorism and/or other serious threats to maritime security. Since the Malabo Protocol's definition of terrorism presents some problems<sup>317</sup> and the African Court would likely struggle when facing complex terrorism cases committed at sea and beyond, the incorporation of international maritime terrorism in the Rome Statute and the ICC's related future jurisprudence could offer important interpretative elements to this regional court and other supranational criminal bodies that may be established.

Indeed, the inclusion of a well-crafted and consensual definition of international terrorism, including international maritime terrorism, in a major multilateral treaty such as the Rome Statute can have a broader impact. For example, such a legal definition may be taken into account in the drafting

---

312. See Malabo Protocol, *supra* note 93.

313. See *id.* at 26.

314. *Id.*

315. Ben Saul, *The Crime of Terrorism within the Jurisdiction of the African Court of Justice and Human and Peoples' Rights*, in *THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT, DEVELOPMENT AND CHALLENGES* 409, 422 (Charles C. Jalloh, et al. eds., 2019).

316. *Id.* at 422–23.

317. *Id.* at 423.

and adoption processes of constitutive instruments of future supranational, hybrid, and national courts with criminal jurisdiction over international maritime terrorism.

Additionally, there have been UN proposals to establish special criminal tribunals for piracy. In January 2011, an UN Secretary General's report to the UNSC proposed specialized courts prosecute piracy crimes related to Somalia: one court in Arusha, Tanzania, the second in Somaliland, and the third in Puntland in northeastern Somalia.<sup>318</sup> In April 2011, the UNSC supported the proposal.<sup>319</sup> There have been similar initiatives in Kenya, Seychelles, and Mauritius.<sup>320</sup> These UNSC piracy-related initiatives encourage discussion about the advisability of, or even the need for, similar proposals concerning international maritime terrorism. This is particularly poignant considering that international maritime terrorism is arguably an emerging customary international law crime against international peace and security, which can result in larger human casualties, more severe environmental harm, and broader social or political consequences than piracy usually does.

In addition to supranational courts that determine individual criminal responsibility, it is also important to briefly examine how supranational courts that establish state responsibility have addressed international maritime terrorism and/or serious threats to maritime security. This can further show that there is increasing attention to these pressing issues among diverse supranational courts. Moreover, as scholars<sup>321</sup> and the ILC<sup>322</sup> have determined, the same international wrong—such as an international maritime terrorism act in which there is some state involvement—may trigger *both* state responsibility and individual criminal liability. Indeed, the Rome Statute establishes that “[n]o provision in this Statute relating to

---

318. See U.N. Secretary-General, Letter dated 25 August 2010 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2010/451 (Aug. 25, 2010).

319. S.C. Res. 1976, ¶ 26 (Apr. 11, 2011).

320. See Efthymios Papastavridis, *Who Will Prosecute Piracy in Africa?*, in *THE INTERNATIONAL CRIMINAL COURT AND AFRICA* 320–21 (Charles Jalloh & Ilias Bantekas eds., 2017) (noting that “the international community has preferred the model of piracy prosecution centres in . . . Kenya, the Seychelles, Mauritius, and Tanzania”).

321. E.g., ANTONIO-AUGUSTO CANÇADO-TRINDADE, *INTERNATIONAL LAW FOR HUMANKIND: TOWARDS A NEW JUS GENTIUM* 367–74 (2010); Cherif Bassiouni, *Victims' Rights: International Recognition*, in *THE PURSUIT OF INTERNATIONAL CRIMINAL JUSTICE: A WORLD STUDY ON CONFLICTS, VICTIMIZATION, AND POST-CONFLICT JUSTICE*, 575, 577 (Cherif Bassiouni ed., 2010). THOMAS WEATHERALL, *DUALITY OF RESPONSIBILITY IN INTERNATIONAL LAW: THE INDIVIDUAL, THE STATE, AND INTERNATIONAL CRIMES* (2022).

322. See *Report of the Commission to the General Assembly on the work of its Fifty-third Session*, [2001] Y.B. Int'l L. Comm'n 30, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) (“These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”).

individual criminal responsibility shall affect the responsibility of states under international law[.]”<sup>323</sup>

This duality of individual criminal liability and state responsibility for the same wrongful act, namely an act of international maritime terrorism, can also impact resulting reparations to redress harm inflicted on victims that stems from international maritime terrorism. Under Article 75(6) of the Rome Statute, which concerns “[r]eparations to victims[.]” “[n]othing in this article shall be interpreted as prejudicing the rights of victims under national or international law.”<sup>324</sup> Considering the complexity of international maritime terrorism, its incorporation into the Rome Statute may synergistically contribute to the overall work of supranational courts pertaining to responsibility and resulting reparations; indeed, it can fill important gaps because, unlike other supranational courts examined, the ICC is the only international, permanent, and quasi-global court with criminal jurisdiction.

Although there is not yet a judgment on international maritime terrorism at international courts that addresses state responsibility, there has actually been increasing litigation before these institutions and involvement thereof in cases on international terrorism or in cases concerning serious maritime security issues. In this regard, the *Arctic Sunrise* incident—which consisted of the boarding and detention of the Netherlands-flagged vessel “Arctic Sunrise” by Russian authorities in the Russian EEZ while the vessel was trying to access the Prirazlomnaya oil rig and led to proceedings before the Permanent Court of Arbitration,<sup>325</sup> the ITLOS<sup>326</sup> and the ECtHR<sup>327</sup>—unravels *inter alia* the practical difficulty of distinguishing between acts directed against maritime security such as piracy or terrorism and protests at sea that may have implications for human rights.

The events related to the detention of the Arctic Sunrise are of a particular interest because Russia took an enforcement action to seize the Arctic Sunrise in its EEZ without any warning while basing its enforcement action on Article 60 of the UNCLOS.<sup>328</sup> It was arguably disproportionate and

---

323. Rome Statute, *supra* note 2, art. 25(4).

324. *Id.* art. 75(6).

325. Arctic Sunrise Arbitration (Neth. v. Russ.), 55 ILM 5, 9 (Perm. Ct. Arb. 2015).

326. *See generally* Arctic Sunrise Case (No. 22) (Neth. v. Russ.), Case No. 22, Order of Nov. 22, 2013, 22 ITLOS Rep. 230 (ordering the Russian Federation to release the ship and allow all detained passengers to leave the territory upon the posting of a bond or other financial security by the Netherlands).

327. *See generally* Bryan v. Russ., App. No. 22515/14, ¶¶ 5–13 (June 27, 2023), <https://hudoc.echr.coe.int/fre?i=001-225440> (summarizing the facts of the detention of the Arctic Sunrise).

328. *See* UNCLOS, *supra* note 72, art. 60 (“Artificial islands, installations and structures in the exclusive economic zone”).

had no legal basis, as Article 60 does not give coastal states jurisdiction over installations and their safety zones throughout the EEZ.<sup>329</sup> Furthermore, this case illustrates serious maritime security issues, as the Russian Federation's enforcement action in its EEZ was not grounded upon marine pollution concerns: the crew was detained, not released within ten days, and charged with piracy and hooliganism, which, at least, is against the spirit of Article 292 of the UNCLOS, which deals with the "[p]rompt release of vessels and crews[.]"<sup>330</sup>

In turn, the *Enrica Lexie* incident at the ITLOS—consisting of the killing of two Indian fishermen on board the Indian ship “St. Antony” off the coast of Kerala, India, the injury of other members of the crew, and damage to the ship as a result of gunfire from two Italian marines on board the “Enrica Lexie” vessel—demonstrates the practical usefulness of potentially broadening the ITLOS's jurisdiction to include terrorist acts committed at sea, because piracy is conceptually and geographically limited.<sup>331</sup> More recently, the ITLOS in its provisional measures decision in the *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation)* provided important criteria to distinguish between military and law enforcement activities.<sup>332</sup> This dispute concerns the arrest of three Ukrainian naval vessels and their 24 servicemen by authorities of the Russian Federation.<sup>333</sup> Following the incident, Ukraine instituted arbitral proceedings under Annex VII of the UNCLOS against the Russian Federation requesting the Tribunal to indicate provisional measures to promptly release the arrested naval vessels and return them to the custody of Ukraine, suspend criminal proceedings against the twenty-four detained Ukrainian servicemen and refrain from initiating new proceedings, and release the servicemen and allow them to return to Ukraine.<sup>334</sup> On the contrary, Russia objected to the jurisdiction of the ITLOS by relying on the *Philippines v. China* decision, arguing that the dispute submitted to the Annex VII arbitral tribunal concerned military activities, and under declarations made by Russia and Ukraine regarding the UNCLOS dispute

---

329. *Id.*

330. *Id.* art. 292.

331. *Enrica Lexie Incident (No. 24) (It. v. India)*, Case No. 24, Order of Aug. 24, 2015, ITLOS Rep. 182. For the facts of the *Enrica Lexie* Incident, see Written Observations of The Republic of India on the Request of the Italian Republic for the Prescription of Provisional Measures Under Article 209, Paragraph 1, (Feb. 26, 2016), available at <https://www.pcacases.com/pcadocs/Response/Indias%20Written%20Observations.pdf>.

332. *Case Concerning the Detention of Three Ukrainian Naval Vessels (No. 26) (Ukr. v. Russ.)*, Case No. 26, Order of May 25, 2019, ITLOS Rep. 283, ¶¶ 64–77.

333. *Id.* ¶ 24.

334. *Id.* ¶ 23.



settlement procedures, military activities ought to be excluded from the jurisdiction of an Annex VII arbitral tribunal.<sup>335</sup> While the UNCLOS does not provide a settled definition of “military activities” and the ITLOS decision sparked heated debate in international legal scholarship on the scope of the tribunal’s interpretation of the term under the UNCLOS, the tribunal importantly held that considering the circumstances of the incident, “what occurred appears to be the use of force in the context of a law enforcement operation rather than a military operation[.]”<sup>336</sup> While this case does not refer to international maritime terrorism per se, it indicates the growing number of internationally adjudicated maritime security events more generally.

As for the ICJ’s contentious jurisdiction,<sup>337</sup> the UN counter-terrorism treaties contain compromissory clauses which have proven to be particularly useful in triggering the ICJ’s jurisdiction in inter-state disputes. In this regard, Article 16(1) of the SUA Convention actually serves as a very important legal basis for the ICJ’s contentious jurisdiction over international maritime terrorism. At the ICJ, two relevant cases were closed without merits judgments: *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*<sup>338</sup> and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*.<sup>339</sup> Yet, there is an ongoing case, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*<sup>340</sup> which, if and when the ICJ renders the

---

335. *Id.* ¶ 52.

336. *Id.* ¶ 74. See also James Kraska, *Did ITLOS Just Kill the Military Activities Exemption in Article 298?*, EJIL: TALK! (May 27, 2019), <https://www.ejiltalk.org/did-itlos-just-kill-the-military-activities-exemption-in-article-298/>; Yurika Ishii, *The Distinction between Military and Law Enforcement Activities: Comments on Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine V. Russian Federation), Provisional Measures Order*, EJIL: TALK! (May 31, 2019), <https://www.ejiltalk.org/the-distinction-between-military-and-law-enforcement-activities-comments-on-case-concerning-the-detention-of-three-ukrainian-naval-vessels-ukraine-v-russian-federation-provisional-measures-order/>.

337. See Statute of the International Court of Justice, art. 36, ¶ 1 (“The jurisdiction of the [ICJ] comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”).

338. Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Pleadings, Oral Arguments, Documents, 1980 I.C.J. 249 (May 24).

339. Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.K.), Judgment, 1998 I.C.J. 9 (Feb. 27).

340. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Judgment, 2019 I.C.J. 558 (Nov. 8).

respective merits judgment, can provide important jurisprudence on the Convention for the Suppression of the Financing of Terrorism that explicitly refers to the SUA Convention and its 1988 Additional Protocol.

Related to the current Russo-Ukrainian scenario, in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russia)*, the ICJ has ordered provisional measures holding that it “is necessary, pending its final decision, for the Court to indicate certain measures in order to protect the right of Ukraine that the Court has found to be plausible[.]”<sup>341</sup> It may be expected that the ICJ will be more engaged going forward with cases involving state-sponsored international maritime terrorism, which may have effects on other institutions such as the ICC.

Finally, the CJEU in *Kadi* gave momentum for allowing the precedence of UNSC measures with regard to terrorism.<sup>342</sup> In an appeal judgment, the CJEU—relying on human rights considerations—deemed it necessary to review the lawfulness of EU measures.<sup>343</sup> However, it also drew attention to the importance of the protection of international peace and security and held that such review should not cover the lawfulness of the UNSC measures imposing sanctions on terrorist suspects.<sup>344</sup>

Thus, this section further evidenced the need to include international maritime terrorism in the jurisdiction of the ICC through the preceding discussion of corroborating *lex lata* and *lex ferenda* considerations. Broadly speaking, this was demonstrated through argumentation concerning: i) the role of this proposed incorporation in the light of an international environmental law perspective, that is, the inclusion of international maritime terrorism in the Rome Statute to better protect the marine environment; ii) the need for filling important jurisdictional gaps in different maritime zones, which yet again could be achieved by incorporating international maritime terrorism into the Rome Statute through its amendment; and iii) the need for coherence in international law by implementing an individual criminal responsibility system regarding international maritime terrorism at the ICC which could systemically operate alongside state responsibility determinations—the latter certainly determined by other international courts.

---

341. *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.)*, Provisional Measure, 2022 I.C.J. 208, ¶ 78 (Mar. 16).

342. Case C-402/05, *Kadi. v. Comm’n*, 2008 E.C.R. I-06351.

343. *Id.* ¶¶ 258–36.

344. *Id.*

## V. CONCLUSION

In light of the sources and analysis presented, it is found that international terrorism and international maritime terrorism constitute a threat to or an attack on international peace and security. Further, these ideas have received increasing attention in diverse national, regional, and international practice. These findings are related to the ongoing consideration of international terrorism and its manifestations, such as international maritime terrorism as an emerging—or potentially existing—international crime.

Concerning the Rome Statute, this article found that there have been unsuccessful attempts to introduce international terrorism and international maritime terrorism into the ICC's *ratione materiae* (subject matter) jurisdiction, both during the negotiation of the Rome Statute and in the process of amending it. As for the ICC's practice, both the ICC Chambers and the ICC-OTP have engaged with cases involving international terrorism or situations concerning threats to or attacks against maritime security.

Although the ICC *lex lata* (existing law) lacks jurisdiction over international terrorism, including international maritime terrorism, this article finds that it is advisable to amend the Rome Statute to incorporate international terrorism, especially international maritime terrorism, based on the following normative grounds. First, there is arguably a need to better protect the marine environment, which can be achieved through the incorporation of international maritime terrorism into the Rome Statute in light of environmental security considerations. Second, the inclusion of international maritime terrorism into the Rome Statute may help to fill jurisdictional gaps in maritime areas beyond state sovereignty as well as to sort out potential jurisdictional conflicts. This in turn can contribute to reducing the impunity gap concerning atrocities, which is central to the ICC's work. Third, said inclusion may contribute towards a coherent international law of international maritime terrorism across international courts that, within their respective mandates, may address the same global phenomenon. Since the ICC is the only permanent and quasi-global *criminal* court, the inclusion of international maritime terrorism into the Roman Statute can mutually complement and reinforce the work of supranational courts that determine state responsibility.

## VI. APPENDIX

| <b>States that have Criminalized Terrorism Nationally</b>   |
|---|
| <p><b>1. Australia</b><br/> <b>The Security Legislation Amendment (Terrorism) Act/Bill (2002), Section 100.1.</b><br/> <a href="https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r1517_first/toc_pdf/02954b01.pdf;fileType=application%2Fpdf">https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r1517_first/toc_pdf/02954b01.pdf;fileType=application%2Fpdf</a>.</p> |
| <p><b>2. Austria</b><br/> <b>Criminal Code, Section 129a.</b><br/> <a href="https://policehumanrightsresources.org/content/uploads/2016/08/Criminal-Code-Austria-1998.pdf?x19059">https://policehumanrightsresources.org/content/uploads/2016/08/Criminal-Code-Austria-1998.pdf?x19059</a> (As promulgated on 13 November 1998).</p>  |
| <p><b>3. Albania</b><br/> <b>Criminal Code, art.230.</b><br/> <a href="https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&amp;id=11&amp;catid=10&amp;m=0">https://euralius.eu/index.php/en/library/albanian-legislation?task=download.send&amp;id=11&amp;catid=10&amp;m=0</a> (As of 2017).</p>   |
| <p><b>4. Algeria</b><br/> <b>Criminal Code, art. 87 bis.</b><br/>           At (in the French language):<br/> <a href="https://www.equalrightstrust.org/sites/default/files/ertdocs//code_penal.pdf">https://www.equalrightstrust.org/sites/default/files/ertdocs//code_penal.pdf</a> (As of 2007).</p>   |
| <p><b>5. Andorra</b><br/> <b>Criminal Code, art. 362.</b><br/>           At (in the French language):<br/> <a href="https://legislationline.org/sites/default/files/documents/2e/Andorra_CC_2005_fr.pdf">https://legislationline.org/sites/default/files/documents/2e/Andorra_CC_2005_fr.pdf</a> (As of 2005).</p>  |
| <p><b>6. Angola</b><br/> <b>Criminal Code, art. 282.</b><br/>           At (in the Spanish language):<br/> <a href="https://www.wipo.int/edocs/lexdocs/laws/pt/ao/ao026pt.pdf">https://www.wipo.int/edocs/lexdocs/laws/pt/ao/ao026pt.pdf</a>.</p>   |
| <p><b>7. Antigua and Barbuda</b><br/> <b>The Prevention of Terrorism Act, 2005, Parts I and III.</b><br/> <a href="https://ondcp.gov.ag/wp-content/uploads/2014/05/pta_2005.pdf">https://ondcp.gov.ag/wp-content/uploads/2014/05/pta_2005.pdf</a>.</p>  |
| <p><b>8. Argentina</b></p>  |

|  |
|--|
| <p style="text-align: center;"><b>Act No. 25,241 on repentant offenders</b><br/> <b>See: 2005 United Nations Legislative Series NATIONAL LAWS AND REGULATIONS ON THE PREVENTION AND SUPPRESSION OF INTERNATIONAL TERRORISM Part II, p. 19.</b></p> <p style="text-align: center;"><a href="https://legal.un.org/legislativeseries/pdfs/volumes/book23.pdf">https://legal.un.org/legislativeseries/pdfs/volumes/book23.pdf</a>.</p> |
| <p style="text-align: center;"><b>9. Armenia</b><br/> <b>Criminal Code (as of 2021).</b></p> <p style="text-align: center;"><a href="http://www.foi.am/u_files/file/legislation/CRIMINAL%20CODE%20OF%20THE%20REPUBLIC%20OF%20ARMENIA.pdf">http://www.foi.am/u_files/file/legislation/CRIMINAL%20CODE%20OF%20THE%20REPUBLIC%20OF%20ARMENIA.pdf</a>.</p>   |
| <p style="text-align: center;"><b>10. Bahamas</b><br/> <b>ANTI-TERRORISM ACT, 2018, Anti-Terrorism Act 2018, Part III – Terrorist Offences, 14. Offence of Terrorism.</b></p> <p style="text-align: center;"><a href="https://ccb.finance.gov.bs/wp-content/uploads/2019/10/Anti-Terrorism-Act-2018.pdf">https://ccb.finance.gov.bs/wp-content/uploads/2019/10/Anti-Terrorism-Act-2018.pdf</a>.</p>                                |
| <p style="text-align: center;"><b>11. Barbados</b><br/> <b>Anti-Terrorism Act, Part II, Terrorism, 3. Offence of Terrorism.</b></p> <p style="text-align: center;"><a href="http://barbadosparliament-laws.com/en/showdoc/cs/158/se:1">http://barbadosparliament-laws.com/en/showdoc/cs/158/se:1</a>.</p>  |
| <p style="text-align: center;"><b>12. Belarus</b><br/> <b>Criminal Code of the Republic of Belarus (as amended to 26/10/2012), art. 289 (1).</b></p> <p style="text-align: center;"><a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=54631">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=54631</a>.</p>   |
| <p style="text-align: center;"><b>13. Belgium</b><br/> <b>Criminal Code (1867, as amended 2021): art. 137.</b></p> <p style="text-align: center;"><a href="https://legislationline.org/Belgium">https://legislationline.org/Belgium</a>.</p>   |
| <p style="text-align: center;"><b>14. Bhutan</b><br/> <b>Criminal Code, art. 329.</b></p> <p style="text-align: center;"><a href="https://www.warnathgroup.com/wp-content/uploads/2015/03/Bhutan-Penal-Code.pdf">https://www.warnathgroup.com/wp-content/uploads/2015/03/Bhutan-Penal-Code.pdf</a>.</p>  |
| <p style="text-align: center;"><b>15. Bolivia</b><br/> <b>Criminal Code, art. 133.</b></p> <p style="text-align: center;"><a href="https://www.cms.int/lions/sites/default/files/document/cms_nlp_bol_codigo_penal.pdf">https://www.cms.int/lions/sites/default/files/document/cms_nlp_bol_codigo_penal.pdf</a>.</p>   |
| <p style="text-align: center;"><b>16. Bosnia and Herzegovina</b></p>   |

|   |
|---|
| <p style="text-align: center;"><b>Criminal Code, art. (4) (e).</b></p> <p><a href="https://rm.coe.int/bih-criminal-code-consolidated-text/16806415c8">https://rm.coe.int/bih-criminal-code-consolidated-text/16806415c8</a>.</p>  |
| <p style="text-align: center;"><b>17. Brazil</b></p> <p style="text-align: center;"><b>Law 13.260/2016, art. 2 (1) (iv).</b></p> <p><a href="https://www.unodc.org/uploads/icsant/documents/Legislation/Brazil/Law_13.260.pdf">https://www.unodc.org/uploads/icsant/documents/Legislation/Brazil/Law_13.260.pdf</a>.</p>  |
| <p style="text-align: center;"><b>18. Brunei</b></p> <p style="text-align: center;"><b>Anti-Terrorism Financial and Other Measures Act, Interpretation 2(1).</b></p> <p><a href="https://www.legal-tools.org/doc/a6faae/pdf/">https://www.legal-tools.org/doc/a6faae/pdf/</a>.</p>  |
| <p style="text-align: center;"><b>19. Bulgaria</b></p> <p style="text-align: center;"><b>Criminal Code, art. 108(a).</b></p> <p><a href="https://www.globalwps.org/data/BGR/files/Criminal%20Code.pdf">https://www.globalwps.org/data/BGR/files/Criminal%20Code.pdf</a>.</p>  |
| <p style="text-align: center;"><b>20. Burundi</b></p> <p style="text-align: center;"><b>Criminal Code, art. 614.</b></p> <p><a href="https://landwise-production.s3.us-west-2.amazonaws.com/2022/03/Burundi_Penal-Code-Revised_2009_FRENCH-1.pdf">https://landwise-production.s3.us-west-2.amazonaws.com/2022/03/Burundi_Penal-Code-Revised_2009_FRENCH-1.pdf</a>.</p>  |
| <p style="text-align: center;"><b>21. Cambodia</b></p> <p style="text-align: center;"><b>Law on Counter Terrorism, art. 1.</b></p> <p><a href="https://www.icj.org/wp-content/uploads/2013/04/Cambodia-Law-on-Counter-Terrorism-2007-eng.pdf">https://www.icj.org/wp-content/uploads/2013/04/Cambodia-Law-on-Counter-Terrorism-2007-eng.pdf</a>.</p>  |
| <p style="text-align: center;"><b>22. Canada</b></p> <p style="text-align: center;"><b>Criminal Code, 83.01, 1b, A.</b></p> <p><a href="https://laws-lois.justice.gc.ca/eng/acts/c-46/">https://laws-lois.justice.gc.ca/eng/acts/c-46/</a>.</p>   |
| <p style="text-align: center;"><b>23. Cape Verde</b></p> <p style="text-align: center;"><b>Criminal Code, art. 315.</b></p> <p><a href="https://policehumanrightsresources.org/content/uploads/2016/07/Penal-Code-Cape-Verde-2003-Good-version.pdf?x49094">https://policehumanrightsresources.org/content/uploads/2016/07/Penal-Code-Cape-Verde-2003-Good-version.pdf?x49094</a>.</p>   |
| <p style="text-align: center;"><b>24. Central African Republic</b></p> <p style="text-align: center;"><b>Criminal Code, art. 296.</b></p> <p><a href="https://acjr.org.za/resource-centre/penal-code-of-the-central-african-republic-2010/view">https://acjr.org.za/resource-centre/penal-code-of-the-central-african-republic-2010/view</a>.</p>   |
| <p style="text-align: center;"><b>25. Chad</b></p> <p style="text-align: center;"><b>Law 003/PR/2020, art. 2.1.</b></p> <p><a href="https://ihl-databases.icrc.org/en/national-practice/law-no-003pr2020-may-20-2020-suppression-acts-terrorism-republic-chad?activeTab=all-national-practice">https://ihl-databases.icrc.org/en/national-practice/law-no-003pr2020-may-20-2020-suppression-acts-terrorism-republic-chad?activeTab=all-national-practice</a>.</p> |
| <p style="text-align: center;"><b>26. Chile</b></p>   |

|   |
|---|
| <p><b>Law 18.314 of 1984 (Anti-Terrorism) as amended by law 20.074 of 2005.</b><br/> <a href="https://www.imolin.org/imolin//amlid/data/chi/document/law_18.314_of_1984__anti-terrorism__as_amended_by_law_20.074_of_2005.html?lng=fr">https://www.imolin.org/imolin//amlid/data/chi/document/law_18.314_of_1984__anti-terrorism__as_amended_by_law_20.074_of_2005.html?lng=fr</a><br/> <a href="https://www.imolin.org/doc/amlid/Chile_Ley%2018314%20de%201984_Anti-Terrorismo_actulizada%20ley%2020074%20de%202005.pdf">https://www.imolin.org/doc/amlid/Chile_Ley%2018314%20de%201984_Anti-Terrorismo_actulizada%20ley%2020074%20de%202005.pdf</a></p> |
| <p><b>27. China</b><br/> <b>Counter-Terrorism Law (as amended in 2018), art. 3.</b><br/> <a href="https://www.chinalawtranslate.com/en/counter-terrorism-law-2015/">https://www.chinalawtranslate.com/en/counter-terrorism-law-2015/</a></p>  |
| <p><b>28. Colombia</b><br/> <b>Criminal Code, art. 343.</b><br/> <a href="https://www.wipo.int/wipolex/en/text/190482">https://www.wipo.int/wipolex/en/text/190482</a></p>  |
| <p><b>29. Costa Rica</b><br/> <b>Criminal Code, art. 7.</b><br/> <a href="https://www.wipo.int/wipolex/en/text/222454">https://www.wipo.int/wipolex/en/text/222454</a></p>  |
| <p><b>30. Croatia</b><br/> <b>Criminal Code, art. 141.</b><br/> <a href="https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf">https://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf</a></p>   |
| <p><b>31. Cuba</b><br/> <b>Cuba, Criminal Code (as of 2009), art. 106.</b><br/> <a href="https://www.warnathgroup.com/wp-content/uploads/2015/03/Cuba-Penal-Code-Lawyers-Without-Borders-2009.pdf">https://www.warnathgroup.com/wp-content/uploads/2015/03/Cuba-Penal-Code-Lawyers-Without-Borders-2009.pdf</a></p>   |
| <p><b>32. Czech Republic</b><br/> <b>Criminal Code of the Czech Republic, Section 311 (1) (e).</b><br/> <a href="https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Czech-Republic-Criminal-Code.pdf">https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Czech-Republic-Criminal-Code.pdf</a></p>   |
| <p><b>33. Denmark</b><br/> <b>Criminal Code, Section 114.</b><br/> <a href="https://www.globalwps.org/data/DNK/files/Danish%20Criminal%20Code.pdf">https://www.globalwps.org/data/DNK/files/Danish%20Criminal%20Code.pdf</a></p>  |
| <p><b>34. Dominican Republic</b><br/> <b>Criminal Code (1884, as of 2007), art. 435.</b><br/> <a href="https://ihl-databases.icrc.org/en/national-practice/penal-code-dominican-republic-1884-2007">https://ihl-databases.icrc.org/en/national-practice/penal-code-dominican-republic-1884-2007</a></p>   |

|  |
|--|
| <p style="text-align: center;"><b>35. Ecuador</b><br/><b>Criminal Code, art. 156.</b><br/><a href="https://www.imolin.org/imolin/amlid/data/ecu/document/criminal_code.html">https://www.imolin.org/imolin/amlid/data/ecu/document/criminal_code.html</a>.</p>   |
| <p style="text-align: center;"><b>36. El Salvador</b><br/><b>Special Counter-Terrorism Law, arts. 17, 18, 23–24, 26.</b><br/><a href="https://www.acnur.org/fileadmin/Documentos/BDL/2016/10430.pdf">https://www.acnur.org/fileadmin/Documentos/BDL/2016/10430.pdf</a><br/>f.</p>  |
| <p style="text-align: center;"><b>37. Estonia</b><br/><b>Criminal Code, Section 237.</b><br/><a href="https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/60500/61938/F278276843/EST-60500.pdf">https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/60500/61938/F278276843/EST-60500.pdf</a>.</p>  |
| <p style="text-align: center;"><b>38. Finland</b><br/><b>Criminal Code, Section 7, Decree on the application of chapter 1, section 7 of the Criminal Code (627/1996), Sub-Section 13.</b><br/><a href="https://sherloc.unodc.org/cld/uploads/res/document/fin/the-criminal-code-of-finland_html/Criminal_code_of_Finland.pdf">https://sherloc.unodc.org/cld/uploads/res/document/fin/the-criminal-code-of-finland_html/Criminal_code_of_Finland.pdf</a>.</p> |
| <p style="text-align: center;"><b>39. France</b><br/><b>Criminal Code, arts. 421-1(1), 421-2.</b><br/><a href="https://www.equalrightstrust.org/ertdocumentbank/french_penal_code_33.pdf">https://www.equalrightstrust.org/ertdocumentbank/french_penal_code_33.pdf</a>.</p>   |
| <p style="text-align: center;"><b>40. Gabon</b><br/><b>Criminal Code, arts. 194-195.</b><br/><a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=109500&amp;p_count=8&amp;p_classification=01">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=109500&amp;p_count=8&amp;p_classification=01</a>.</p>  |
| <p style="text-align: center;"><b>41. Georgia</b><br/><b>Criminal Code, art. 323.</b><br/><a href="https://matsne.gov.ge/en/document/view/16426?publication=251">https://matsne.gov.ge/en/document/view/16426?publication=251</a>.</p>   |
| <p style="text-align: center;"><b>42. Grenada</b><br/><b>Criminal Code, art. 230A, 1 (f).</b><br/><a href="https://oig.cepal.org/sites/default/files/2012_criminal_codeamendmentact_grd.pdf">https://oig.cepal.org/sites/default/files/2012_criminal_codeamendmentact_grd.pdf</a>.</p>   |
| <p style="text-align: center;"><b>43. Guatemala</b><br/><b>Criminal Code, art. 391.</b><br/><a href="https://ihl-databases.icrc.org/en/national-practice/penal-code-1973">https://ihl-databases.icrc.org/en/national-practice/penal-code-1973</a>.</p>   |
| <p style="text-align: center;"><b>44. Guinea</b><br/><b>Criminal Code, art. 574.</b></p>   |



|  |
|--|
| <p><a href="https://ihl-databases.icrc.org/en/national-practice/law-criminal-code-2016">https://ihl-databases.icrc.org/en/national-practice/law-criminal-code-2016</a>.</p>  |
| <p style="text-align: center;"><b>45. Guyana</b><br/> <b>Criminal Code, Anti-Terrorism and Terrorist Related Activities Act 2015, Part 1 Preliminary, 2. Interpretation.</b></p> <p><a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=102173&amp;p_country=GUY&amp;p_count=186&amp;p_classification=01&amp;p_classcount=44">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=102173&amp;p_country=GUY&amp;p_count=186&amp;p_classification=01&amp;p_classcount=44</a>.</p> |
| <p style="text-align: center;"><b>46. Hungary</b><br/> <b>Criminal Code, Section 314(4)(c).</b></p> <p><a href="https://www.refworld.org/pdffd/4c358dd22.pdf">https://www.refworld.org/pdffd/4c358dd22.pdf</a>.</p>  |
| <p style="text-align: center;"><b>47. Iceland</b><br/> <b>Criminal Code, art. 100a, 4.</b></p> <p><a href="https://www.government.is/lisalib/getfile.aspx?itemid=dd8240cc-c8d5-11e9-9449-005056bc530c">https://www.government.is/lisalib/getfile.aspx?itemid=dd8240cc-c8d5-11e9-9449-005056bc530c</a>.</p>   |
| <p style="text-align: center;"><b>48. Indonesia</b><br/> <b>Anti-terrorism Law, art. 1 (2).</b></p> <p><a href="https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1546327/AntiTerrorismLawandProcessInIndonesia2.pdf">https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1546327/AntiTerrorismLawandProcessInIndonesia2.pdf</a>.</p>  |
| <p style="text-align: center;"><b>49. Iraq</b><br/> <b>Criminal Code, Section 1, para.21.</b></p> <p><a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=57206&amp;p_country=IRQ&amp;p_count=232&amp;p_classification=01.04&amp;p_classcount=5">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=57206&amp;p_country=IRQ&amp;p_count=232&amp;p_classification=01.04&amp;p_classcount=5</a>.</p>  |
| <p style="text-align: center;"><b>50. Italy</b><br/> <b>Criminal Code, art. 270 Sexies.</b></p> <p><a href="https://www.imolin.org/doc/amlid/Italy/penal_code.pdf">https://www.imolin.org/doc/amlid/Italy/penal_code.pdf</a>.</p>  |
| <p style="text-align: center;"><b>51. Jamaica</b><br/> <b>The Terrorism Prevention Act of 2005, Terrorist Activity and Offences, para. 3 (Terrorist Activity).</b></p> <p><a href="https://www.fid.gov.jm/www/wp-content/uploads/2013/11/Terrorism_Prevention-Act-2005.pdf">https://www.fid.gov.jm/www/wp-content/uploads/2013/11/Terrorism_Prevention-Act-2005.pdf</a>.</p>   |
| <p style="text-align: center;"><b>52. Latvia</b><br/> <b>Criminal Code, Section 79, 1.</b></p> <p><a href="https://likumi.lv/ta/en/en/id/88966-criminal-law">https://likumi.lv/ta/en/en/id/88966-criminal-law</a>.</p>   |
| <p style="text-align: center;"><b>53. Lebanon</b><br/> <b>Criminal Code, art. 315.</b></p>   |

|   |
|---|
| <p><a href="https://sherloc.unodc.org/cld/uploads/res/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf">https://sherloc.unodc.org/cld/uploads/res/document/lebanon-penal-code_html/Lebanon_Penal_Code_1943.pdf</a>.</p>   |
| <p><b>54. Malaysia</b><br/> <b>Criminal Code, Chapter VIA, 130B.</b><br/> <a href="https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS61339%202015.pdf">https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61339/117909/F1085941047/MYS61339%202015.pdf</a>.</p>  |
| <p><b>55. Mauritius</b><br/> <b>Prevention of Terrorism Act, Part II – Acts of Terrorism and Related Offences 3. Prohibition of Acts of Terrorism.</b><br/> <a href="https://www.bom.mu/sites/default/files/the_prevention_of_terrorism_act_2002_-_pdf_0.pdf">https://www.bom.mu/sites/default/files/the_prevention_of_terrorism_act_2002_-_pdf_0.pdf</a>.</p>  |
| <p><b>56. Mexico</b><br/> <b>NOTE: The legislation of Mexico does not specifically address the crime of terrorism.</b></p>  |
| <p><b>57. Moldova</b><br/> <b>Criminal Code, art. 278</b><br/> <a href="https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf">https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf</a>.</p> |
| <p><b>58. Montenegro</b><br/> <b>Criminal Code, art. 365.</b><br/> <a href="https://track.unodc.org/uploads/documents/BRI-legal-resources/Montenegro/3_-Criminal_Code_of_Montenegro_2018_English_version.pdf">https://track.unodc.org/uploads/documents/BRI-legal-resources/Montenegro/3_-Criminal_Code_of_Montenegro_2018_English_version.pdf</a>.</p>         |
| <p><b>59. Morocco</b><br/> <b>Criminal Code, art. 218-1.</b><br/> <a href="https://www.wipo.int/wipolex/en/legislation/details/19795">https://www.wipo.int/wipolex/en/legislation/details/19795</a>.</p>  |
| <p><b>60. Mozambique</b><br/> <b>Criminal Code, art. 382 (1).</b><br/> <a href="https://learningpartnership.org/sites/default/files/resources/pdfs/Mozambique-Penal-Code-2014-Portuguese.pdf">https://learningpartnership.org/sites/default/files/resources/pdfs/Mozambique-Penal-Code-2014-Portuguese.pdf</a>.</p>   |
| <p><b>61. New Zealand</b><br/> <b>Terrorism Suppression Act, Part 1, 5.</b><br/> <a href="https://www.legislation.govt.nz/act/public/2002/0034/latest/DLM152702.html">https://www.legislation.govt.nz/act/public/2002/0034/latest/DLM152702.html</a>.</p>   |
| <p><b>62. Netherlands</b></p>   |

|  |
|--|
| <p style="text-align: center;"><b>Criminal Code, art. 381.</b></p> <p><a href="https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf">https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf</a>.</p>   |
| <p style="text-align: center;"><b>63. Nicaragua</b></p> <p style="text-align: center;"><b>Criminal Code, art. 394.</b></p> <p><a href="https://www.wipo.int/wipolex/en/text/227667">https://www.wipo.int/wipolex/en/text/227667</a>.</p>   |
| <p style="text-align: center;"><b>64. Norway</b></p> <p style="text-align: center;"><b>Criminal Code, Chapter 18, Section 131.</b></p> <p><a href="https://lovdata.no/dokument/NLE/lov/2005-05-20-28">https://lovdata.no/dokument/NLE/lov/2005-05-20-28</a>.</p>   |
| <p style="text-align: center;"><b>65. Oman</b></p> <p style="text-align: center;"><b>Criminal Code, art. 113.</b></p> <p><a href="https://www.mjla.gov.om/eng/penallaw.aspx">https://www.mjla.gov.om/eng/penallaw.aspx</a>.</p>  |
| <p style="text-align: center;"><b>66. Panama</b></p> <p style="text-align: center;"><b>Criminal Code, arts. 325–338.</b></p> <p><a href="https://www.wipo.int/wipolex/en/text/189272">https://www.wipo.int/wipolex/en/text/189272</a>.</p>   |
| <p style="text-align: center;"><b>67. Peru</b></p> <p style="text-align: center;"><b>Decree Law 25475, art. 2.</b></p> <p><a href="http://www.cidh.org/countryrep/peru2000en/chapter2a.htm">http://www.cidh.org/countryrep/peru2000en/chapter2a.htm</a>.</p>   |
| <p style="text-align: center;"><b>68. Philippines</b></p> <p style="text-align: center;"><b>Republic Act No. 11479, Section 3(e).</b></p> <p><a href="https://lawphil.net/statutes/repacts/ra2020/ra_11479_2020.html">https://lawphil.net/statutes/repacts/ra2020/ra_11479_2020.html</a>.</p>  |
| <p style="text-align: center;"><b>69. Poland</b></p> <p style="text-align: center;"><b>Framework Convention on Combating Terrorism; Criminal Code, art. 170.</b></p> <p><a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32002F0475">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32002F0475</a>.</p> <p><a href="https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf">https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf</a>.</p> |
| <p style="text-align: center;"><b>70. Portugal</b></p> <p style="text-align: center;"><b>LFAT Law.</b></p> <p>Information about this law is available at:</p> <p><a href="https://www.cambridge.org/core/books/abs/comparative-counterterrorism-law/portugal/CC2F343F192C2B562E55872F2317B7D0">https://www.cambridge.org/core/books/abs/comparative-counterterrorism-law/portugal/CC2F343F192C2B562E55872F2317B7D0</a>.</p>  |
| <p style="text-align: center;"><b>71. Russia</b></p> <p style="text-align: center;"><b>Criminal Code, art. 205.</b></p> <p><a href="https://www.imolin.org/doc/amlid/Russian_Federation_Criminal_Code.pdf">https://www.imolin.org/doc/amlid/Russian_Federation_Criminal_Code.pdf</a>.</p>  |
| <p style="text-align: center;"><b>72. Saint Kitts and Nevis</b></p>  |

|   |
|---|
| <p><b>Anti-Terrorism Act, 2002, Part I, 2. Interpretation.</b><br/> <a href="https://www.imolin.org/doc/amlid/Saint_Kitts_and_Nevis/anti_terrorism_act_2002.pdf">https://www.imolin.org/doc/amlid/Saint_Kitts_and_Nevis/anti_terrorism_act_2002.pdf</a>.</p>  |
| <p><b>73. Saint Lucia</b><br/> <b>Chapter 3.16 Anti-Terrorism Act, Part 1 Preliminary, 2. Interpretation.</b><br/> <a href="http://attorneygeneralchambers.com/laws-of-saint-lucia/anti-terrorism-act">http://attorneygeneralchambers.com/laws-of-saint-lucia/anti-terrorism-act</a>.</p>                                     |
| <p><b>74. Saint Vincent and Grenadines</b><br/> <b>Act No. 34 of 2002, 2. Interpretation.</b><br/> <a href="http://www.vertic.org/media/National%20Legislation/Saint_Vincent_VC_UN_Anti-Terrorism_Act_2002.pdf">http://www.vertic.org/media/National%20Legislation/Saint_Vincent_VC_UN_Anti-Terrorism_Act_2002.pdf</a>.</p>   |
| <p><b>75. Samoa</b><br/> <b>Counter Terrorism Act 2014; Part 4: Maritime Safety: 36. Seizure of a Ship or Fixed Platform.</b><br/> <a href="https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98692/117508/F593073504/WSM98692.pdf">https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98692/117508/F593073504/WSM98692.pdf</a>.</p> |
| <p><b>76. Seychelles</b><br/> <b>Prevention of Terrorism Act 2004, Part I – Preliminary, Interpretation 2.</b><br/> <a href="https://seylli.org/akn/sc/act/2004/7/eng@2015-12-31">https://seylli.org/akn/sc/act/2004/7/eng@2015-12-31</a>.</p>  |
| <p><b>77. Solomon Islands</b><br/> <b>Counter-Terrorism Act 2009, Part 1 – Preliminary, 2.</b><br/> <a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&amp;p_isn=85456&amp;p_classification=01.04">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&amp;p_isn=85456&amp;p_classification=01.04</a>.</p>      |
| <p><b>78. South Korea</b><br/> <b>Anti-Terrorism Act, art. 2.</b><br/> <a href="https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48540&amp;lang=ENG">https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48540&amp;lang=ENG</a>.</p>   |
| <p><b>79. Singapore</b><br/> <b>Terrorism (Suppression of Financing) Act, Part 1, Preliminary Section, Interpretation 2 (vii).</b><br/> <a href="https://sso.agc.gov.sg/Act/TSFA2002">https://sso.agc.gov.sg/Act/TSFA2002</a>.</p>  |
| <p><b>80. Spain</b><br/> <b>Criminal Code, arts. 573; 575 (3).</b><br/> <a href="https://www.globalwps.org/data/ESP/files/Criminal%20Code.pdf">https://www.globalwps.org/data/ESP/files/Criminal%20Code.pdf</a>.</p>  |
| <p><b>81. Switzerland</b><br/> <b>Criminal Code, art. 260 Sexies (3).</b></p>   |

|  |
|--|
| <a href="https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en">https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en</a> .  |
| <b>82. Tanzania</b><br><b>Prevention of Terrorism Act, Part II, Section 4(2)(b)(ii).</b><br><a href="https://www.tanzanalaws.com/p/283-prevention-of-terrorism-act">https://www.tanzanalaws.com/p/283-prevention-of-terrorism-act</a> .  |
| <b>83. Tajikistan</b><br><b>Criminal Code, art. 179.</b><br><a href="https://www.warnathgroup.com/wp-content/uploads/2015/03/Tajikistan-Criminal-Code.pdf">https://www.warnathgroup.com/wp-content/uploads/2015/03/Tajikistan-Criminal-Code.pdf</a> .  |
| <b>84. Thailand</b><br><b>Criminal Code, Section 135/1.</b><br><a href="https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Thailand-Penal-Code.pdf">https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Thailand-Penal-Code.pdf</a> .   |
| <b>85. Tonga</b><br><b>Counter Terrorism and Transnational Organised Crime Act 2013;</b><br><b>Part 1 – Preliminary; 3</b><br><b>Definition of Terrorist Act (1).</b><br><a href="https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98656/117471/F-1641177339/TON98656.pdf">https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98656/117471/F-1641177339/TON98656.pdf</a> . |
| <b>86. Trinidad and Tobago</b><br><b>Anti-Terrorism Act, Part II Offences, 3. Terrorist Act.</b><br><a href="https://www.central-bank.org.tt/sites/default/files/page-file-uploads/anti-terrorism-act-chap-12.07.pdf">https://www.central-bank.org.tt/sites/default/files/page-file-uploads/anti-terrorism-act-chap-12.07.pdf</a> .                                  |
| <b>87. Turkey</b><br><b>Law on Fight Against Terrorism of Turkey Act No. 3713, art. 1.</b><br><a href="https://www.ilo.org/dyn/natlex/natlex4.detail%3Fp_lang%3Den%26p_isn%3D22104">https://www.ilo.org/dyn/natlex/natlex4.detail%3Fp_lang%3Den%26p_isn%3D22104</a> .  |
| <b>88. Turkmenistan</b><br><b>Criminal Code, art. 271 (1).</b><br><a href="https://www.wipo.int/wipolex/en/legislation/details/14676">https://www.wipo.int/wipolex/en/legislation/details/14676</a> .  |
| <b>89. Tuvalu</b><br><b>Counter Terrorism and Transnational Organised Crime Act 2009</b><br><b>No. 6 of 2009 (Part 1 –</b><br><b>Preliminary; Section 4).</b><br><a href="https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=85519&amp;p_country=TUV">https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&amp;p_isn=85519&amp;p_country=TUV</a> . |
| <b>90. Uganda</b><br><b>Criminal Code, Section 26,6.</b><br><a href="https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09">https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09</a> .  |
| <b>91. Ukraine</b>   |

|   |
|---|
| <p style="text-align: center;"><b>Criminal Code, art. 258.</b></p> <p style="text-align: center;"><a href="https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf">https://sherloc.unodc.org/cld/uploads/res/document/ukr/2001/criminal-code-of-the-republic-of-ukraine-en_html/Ukraine_Criminal_Code_as_of_2010_EN.pdf</a>.</p>          |
| <p style="text-align: center;"><b>92. Uruguay</b></p> <p style="text-align: center;"><b>Comprehensive Antiterrorism Law approved and regulated:</b></p> <p style="text-align: center;"><a href="https://www.ferrere.com/en/news/comprehensive-antiterrorism-law/">https://www.ferrere.com/en/news/comprehensive-antiterrorism-law/</a>.</p>   |
| <p style="text-align: center;"><b>93. United Kingdom</b></p> <p style="text-align: center;"><b>Terrorist Act, Introductory Part 1, 1.</b></p> <p style="text-align: center;"><a href="https://www.lawsociety.org.uk/topics/criminal-justice/anti-terrorism">https://www.lawsociety.org.uk/topics/criminal-justice/anti-terrorism</a>.</p>   |
| <p style="text-align: center;"><b>94. United States of America</b></p> <p style="text-align: center;"><b>18 U.S. Code, Chapter 113b – Terrorism, Section 2331.</b></p> <p style="text-align: center;"><a href="https://www.law.cornell.edu/uscode/text/18/part-I/chapter-113B">https://www.law.cornell.edu/uscode/text/18/part-I/chapter-113B</a>.</p>  |
| <p style="text-align: center;"><b>95. Uzbekistan</b></p> <p style="text-align: center;"><b>Criminal Code, art.155.:</b></p> <p style="text-align: center;"><a href="https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—ilo_aids/documents/legaldocument/wcms_127504.pdf">https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—ilo_aids/documents/legaldocument/wcms_127504.pdf</a>.</p>                           |
| <p style="text-align: center;"><b>96. Vanuatu</b></p> <p style="text-align: center;"><b>Criminal Code, Criminal Code, Section 73C, 1.</b></p> <p style="text-align: center;"><a href="https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88512/101229/F1616956608/VUT88512.pdf">https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88512/101229/F1616956608/VUT88512.pdf</a>.</p>   |
| <p style="text-align: center;"><b>97. Venezuela</b></p> <p style="text-align: center;"><b>Criminal Code, art. 181-A.</b></p> <p style="text-align: center;"><a href="https://www.wipo.int/wipolex/en/text/235415">https://www.wipo.int/wipolex/en/text/235415</a>.</p>  |
| <p style="text-align: center;"><b>98. Vietnam</b></p> <p style="text-align: center;"><b>Criminal Code, art. 282.</b></p> <p style="text-align: center;"><a href="https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf">https://www.policinglaw.info/assets/downloads/2015_Criminal_Code_of_Vietnam_(English_translation).pdf</a>.</p>  |
| <p style="text-align: center;"><b>99. Zambia</b></p> <p style="text-align: center;"><b>Anti-Terrorism Act, Part 1 Preliminary, 2. Interpretation.</b></p> <p style="text-align: center;"><a href="https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%206%20-%20Anti-terrorism%20pdf.pdf">https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%206%20-%20Anti-terrorism%20pdf.pdf</a>.</p> |
| <p style="text-align: center;"><b>100. Zimbabwe</b></p> <p style="text-align: center;"><b>Criminal Law (Codification and Reform) Act, Section 23(1)(c)(iv).</b></p> <p style="text-align: center;"><a href="https://www.refworld.org/pdfid/4c45b64c2.pdf">https://www.refworld.org/pdfid/4c45b64c2.pdf</a>.</p>   |