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You Are Free to Commit Piracy and Armed Robbery Against Ships But Please Do Not Do It In This Place: Geographical Scope of Piracy and Armed Robbery Against Ships Under UNCLOS and Related International Instruments

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I
ABSTRACT

This article examines the geographical scope of piracy and armed robbery against ships. It clarifies, where, in the various maritime zones, these two maritime offences can and cannot be committed. The need for clarification of these issues arose from developments in Somali piracy which resulted in a lot of challenges to international law generally and piracy jurisprudence in particular. Adding to the challenges was the introduction of the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (SUA Convention) offences and the International Maritime Organisation (IMO)'s separation of piracy definition from armed robbery against ships.[1] Some of these issues

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have consequently cast doubts, not only on the internationally accepted definition, but also on the geographical scope of piracy within the United Nations Convention on the Law of the Sea ('UNCLOS' or the 'Convention'). The Geneva Convention on the High Seas ('Geneva Convention') did away with the old notion of piracy being committed in or on dry land and in inland and territorial seas. Among the lingering doubts are, however, where in the various maritime zones the offence of piracy and armed robbery against ships can be committed? The other is the apparent distinction between the high seas and areas beyond national jurisdiction (ABNJ) and the attribution of piracy to both in Article 101 of the Convention. This has been partly solved by the introduction of the offence of armed robbery against ships, SUA offences[2] and various IMO Codes and Guideline on Piracy.[3] Although neither deal directly with piracy, the IMO instruments eliminated some uncertainties on the nature and geographical scope of piracy within inland, internal, territorial and archipelagic waters; while SUA deals with maritime terrorist offences other than piracy. However, remaining uncertainties include the interchangeable and, therefore, confusing alternative use by the Convention of 'sovereign rights' and 'sovereign jurisdictions' in the affected

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responsibilities, shortcomings in and views expressed in the article are the author's own. A version of this article was first presented at the International Law Section of the 109th Annual Conference of the Society of Legal Scholars, Queen Mary University of London, 3–7 September 2018.

[1]IMO Resolution A.1025(26) (Annex, paragraph 2.2) on IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, determined that armed robbery against ships consists of any of the following acts:

> (a) any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;
>
> (b) any act of inciting or of intentionally facilitating an act described above.

[2]Introduced by the: Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (SUA 1988); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988 (SUA Prot 1988) and Protocol for the Suppression of Unlawful acts against the safety of Fixed Platforms Located in the Continental Shelf, 2005 (SUA Prot 2005).

[3]Principally the: IMO Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships, other than Piracy Resolution A.1025(26). Adopted on 2 December 2009 (Agenda item 10); Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships; the IMO Guidelines to Assist in the Investigations of Crimes of Piracy and Armed Robbery against Ships Ref. T2-MSS/2.11.4.1 MSC.1/Circ.1404 23 May 2011 and; the IMO PIRACY: elements of national legislation pursuant to the United Nations Convention on the Law of the Sea.

maritime zones. Furthermore, there remains the issue of where the high seas begin and end in relation to the contiguous zone, the EEZ and the continental shelf. Finally, there is the still hitherto albeit theoretical question of whether piracy is a single- or three-dimensional offence.

II
INTRODUCTION

This article examines in which maritime zones piracy and armed robberies against ships can be committed. International Law approach to piracy has changed greatly after the Geneva Conventions. International efforts at modern piracy definition started with the *League of Nations Draft,* (LON), 1925,[4] followed by the *Harvard Research Draft,* 1932[5] and the *International Law Commission Draft* (ILC Draft), 1956.[6] Prior to that, piracy meant almost any violent attack on ships in most zones including the territorial sea and dry land.[7] Then it was generally agreed that piracy could be committed even in inland and territorial seas as well.[8] Indeed, the Barbary pirates frequently raided South Western England, kidnapping young women for sale in North Africa and the Mediterranean region.[9] Piracy was then governed by customary international law in the form of municipal laws of many nations. A number of regional organisations attempted codifications of the law of the sea conventions in the 19th and 20th centuries. However, the first really intergovernmental effort, the *League of Nations*, failed

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[4]League of Nations, Acts of the Conference for the Codification of International Law, (LN. doc. C.351.M.145, 1930, V.); Report of the Second Commission, League of Nations Publication V. Legal, 1930.V. 9 (C.230, M. I 17, 1930. V).

[5]For the Harvard Reports see (1932) 26 AJIL Supp. 743–872 on piracy; the corresponding draft article was 16.

[6]International Law Commission, see Art 13(1) of the UN Charter; 42 AJIL Supp.2 (1948). What turned out to be Article 15 of the Geneva Convention and Article 101 of UNCLOS was Article 39 in the ILC Draft.

[7]Douglas Guilfoyle, Committing Piracy on Dry Land: Liability for Facilitating Piracy, published, July 26, 2012; https://www.ejiltalk.org/committing-piracy-on-dry-land-liability-for-facilitating-piracy/ (accessed on 10/10/2019).

[8]See generally, Ivan R. Dee's narration History of John Arquilla: Insurgents, Raiders, and Bandits: How Masters of Irregular Warfare Have Shaped Our World, July 16, 2011, tracing the history and development of piracy through land and sea.

[9]Ben Johnson, Barbary Pirates and English Slaves, https://www.historic-uk.com/HistoryUK/HistoryofEngland/Barbary-Pirates-English-Slaves/ (accessed on 05/11/2019).

to materialise into an international instrument, as did the privately-based *Harvard Research Draft.*

So, it was the ILC Draft which resulted in the first Geneva Conventions,[10] while the Second Geneva Conference 1960[11] was aborted. The geographical scope of piracy narrowed to high seas and the ABNJ,[12] from the Geneva Convention and now UNCLOS. UNCLOS also combined the four Geneva Conventions into one instrument.[13] Although both Conventions solved part of the geographical scope problems they nevertheless introduced many others principally:

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[10]The Geneva Convention 1958 is sometimes referred to as UNCLOS 1. Article 15 thereof corresponds to Article 39 of the ILC draft Articles. In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958: Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964; the Convention on the Continental Shelf, entry into force: 10 June 1964; the Convention on the High Seas, entry into force: 30 September 1962; and the Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966. Our main interest is the Third Convention on the High Seas. The First United Nations Conference on the Law of the Sea (UNCLOS I) from February 24 until April 29, 1958. UNCLOS I adopted the four conventions, which are commonly known as the 1958 Geneva Conventions: The Convention on the Territorial Sea and Contiguous Zone; The Convention on the High Seas; The Convention on Fishing and Conservation of the Living Resources of the High Seas; and The Convention on the Continental Shelf. While considered to be a step forward, the conventions did not establish a maximum breadth of the territorial sea.

[11]The Second United Nations Conference on the Law of the Sea (UNCLOS II) from March 17 until April 26, 1960. UNCLOS II did not result in any international agreements. The conference once again failed to fix a uniform breadth for the territorial or establish consensus on sovereign fishing rights. Negotiations for UNCLS II, 1960, collapsed due to disagreements over the delimitation of the territorial Sea.

[12]The Third United Nations Conference on the Law of the Sea (UNCLOS III) from 1973 to 1982. UNCLOS III addressed the issues bought up at the previous conferences. Over 160 nations participated in the 9-year convention, which finally came into force on November 14, 1994, 21 years after the first meeting of UNCLOS III and one year after ratification by the sixtieth state. The first sixty ratifications were almost all developing states. A major feature of the convention included the definition of maritime zones- the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, the high sea, the international sea-bed area and archipelagic waters. The convention also made provision for the passage of ships, protection of the marine environment, freedom of scientific research, and exploitation of resources. Text of the treaty http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.(accessed on 08/09/2019). List of countries that have ratified UNCLOS conventions http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm (accessed on 07/08/2019).

[13]These were namely: (a) Convention on the Territorial Sea and Contiguous Zone, entry into force: 10 September 1964; (b) Convention on the Continental Shelf, entry into force: 10 June 1964; (c) Convention on the High Seas, entry into force: 30 September 1962; and (d) Convention on Fishing and Conservation of Living Resources of the High Seas, entry into force: 20 March 1966. Although UNCLOS I was considered a success, it left open the important issue of breadth of territorial waters.

(a) why the introduction of the ABJN in the Convention in addition to the high seas;

(b) failure to distinguish where the high seas begin and end in relation to the contiguous zone, the EEZ and the continental shelf;

(c) failure to distinguish between sovereign rights[14] and sovereign jurisdiction[15] of States especially in the contiguous zone, the EEZ and the continental shelf; and

(d) other related problems arising from the piracy definition below.

To try and ease the problem of the piracy definition against the backdrop of Somali piracy, the IMO introduced SUA Convention offences and separated piracy from armed robbery against ships. The latter contains an almost identical definition of piracy as in UNCLOS Article 101(a) with the exception that it cannot be committed within a State's internal waters, archipelagic waters and territorial sea.[16]

The aim of this analysis is to evaluate those rights and their jurisdictional aspects and, consequently, explain where piracy can or cannot be committed under UNCLOS and why. Although it touches on other aspects, in as far as they affect the definition of piracy, the paper focuses on the nature of the offence and its geographical scope. In that context the paper's attempts at the analysis is audacious.[17] The article uses the UNCLOS, piracy

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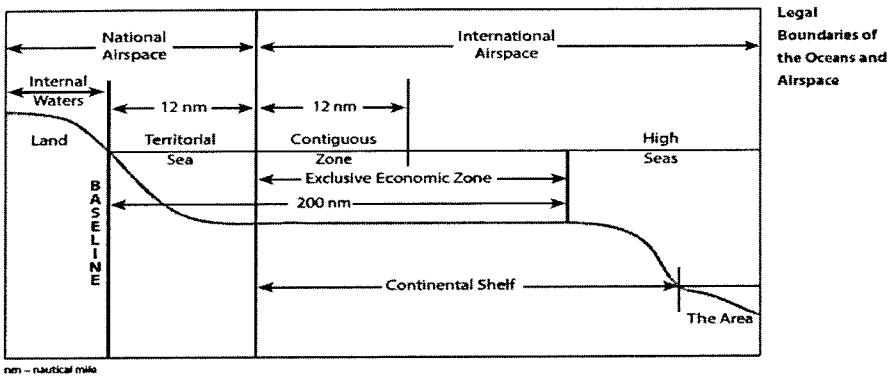
[14]A sovereign right refers to a legal right possessed by a state or its agencies and enables a state to carry out its official functions for the benefit of the public. A Sovereign right is distinct from certain proprietary rights because those proprietary rights may be possessed by private persons. It is also distinct from sovereign jurisdiction below. This paper argues that states have only sovereign rights from the CZ outwards. That is clearly demonstrated in Article 193 of the Convention "Sovereign right of States to exploit their natural resources."

[15]A sovereign jurisdiction, on the other hand, refers to the state's authority to exercise legal power. In international law, sovereignty and jurisdiction are equivalent; a sovereign has jurisdiction within its territory (inland, territorial and archipelagic waters) to the exclusion of all other powers. This is why early theorists of modern sovereignty claimed that sovereignty is indivisible.

[16]See Note 1 above.

[17]Among many others who have written are: UNCTAD: Maritime Piracy: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy Part II Studies in Transport Law and Policy, No.2, UN NY and Geneva 2014, paras 19–22; Arron N. Honniball: The "Private Ends" of International Law

Diagram A. DIAGRAMATICAL REPRESENTATION OF THE MARITIME ZONES



Source: https://sites.tufts.edu/lawofthesea/chapter-two/ (accessed on 20/06/2019)

definition. For clarity, discussions under each zone include its description, sovereign rights, sovereign jurisdictions and its relations to piracy. This is important as the extent of a state's jurisdiction determines where piracy can and cannot be committed. The same argument applies to the difference between sovereign jurisdiction (legal jurisdiction) and sovereign rights (economic jurisdiction). The paper uses Diagrams A and B to demonstrate its argument as indicated below.

Piracy: The Necessity of the Legal Clarity in Relation to Violent Political Activists, International Crimes Database (ICD), ICD Briefing October 2015, www.internationalcrimesdatabase.org; Bartosz Fiedurick: The Definition of Piracy Under Article 101 of the United Nations Convention on the Law of the Sea – An Attempted Legal Analysis; Konrad Marciniak: International Law on Piracy and Some Current Challenges Related to its Definition, Symposium on Maritime Piracy in International Law, 2012, Vol. 1, Polish Review of International and European Law, Issue 3–4, pp. 97–140. The origin of the term 'private ends' as a condition of piracy is found within; M. Matsuda and M. Wang Chung-Hui, Report by the Sub-Committee of Experts for the Progressive Codification of International Law, questionnaire No. 6, (1926) 20 Amer. J. Int'l L. Supp., pp. 223–224. It may have been adapted from legal scholarship, which used the term to distinguish the now defunct necessity of an 'intention to rob' – D. Guilfoyle, Political Motivation and Piracy: What History Doesn't Teach Us About Law, Blog of the European J. Int'l L. (EJIL: Talk!) (17 June 2013); D. Guilfoyle, Piracy and Terrorism, in P. Koutrakos and A. Skordas, The Law and Practice of Piracy at Sea: European and International Perspectives 33–52, p. 52 (Hart Publishing, 2014). Intention to rob has been dismissed as a requirement e.g. as stated by the International Law Commission in its drafting work that would form the basis of the Convention on the High Seas; International Law Commission, Articles concerning the Law of the Sea with commentaries, II Yearbook of the International Law Commission, p. 282 (1956).

III
GEOGRAPHICAL SCOPE OF PIRACY DEFINITION

The cumulative effects of the above drafts and the international negotiations resulted in UNCLOS as the latest and premier instrument governing the law of water space. Among its improvements was the limitation of maritime zones into:

(a) internal waters;

(b) the territorial sea;

(c) archipelagic waters;[18]

(d) the contiguous zone;

(e) the EEZ;

(f) the continental shelf;

(g) the high seas other than the Area; and

(h) the Area.[19]

Despite its omission from UNCLOS, the paper includes discussions on inland waters in internal waters (para. (a) above) due to uncertainties regarding shared enclosed inland seas and shared waters, and in territorial waters (para. (b) above) it contains the now internationally agreed definition of piracy in Article 101, thus:

Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

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[18]For avoidance of confusion, zones (a)-(c) are normally treated as the territorial waters or territorial seas.

[19]These categorisations of the maritime zones are for the purposes of this paper only and might not tally with the traditional divisions which for instance combines (a)-(c) into one (territorial sea or waters and (f) and (g) under the high seas).

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

(ii) against a ship, aircraft, persons or property *in a place outside the jurisdiction of any State;*

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

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). (*emphasis added*)

As already indicated, the focus of this paper is, *inter alia*, to examine whether the geographical scope of piracy in Article 101(a)(i) and (ii) is limited to only the high seas and the ABNJ, or is much broader.[20] The paper argues first that the scope of piracy is wider than provided in the UNCLOS provisions. Furthermore, that in terms of determining in which of the maritime zones piracy can be committed, the paper argues that the definition leaves a number of unanswered issues, viz.;

(a) it is not settled where the high seas begin and end in relation to the contiguous zone, the EEZ and the Continental Shelf, and if so whether it overlaps with these zones[21] —the answer to this issue being significant in determining where piracy can and cannot be committed;

(b) what is meant by State "jurisdictions" in those zones?

(c) whether or not "rights" are erroneously confused with "jurisdiction" in Articles 101(b) above;

(d) whether the introduction of the IMO's Code,[22] Guidelines on Armed Robbery against Ships,[23] and Guidelines on Elements of

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[20]For background information see also: Rubin, A.P. The Law of Piracy (1988); Rubin, A.P., Piracy, in Bernhardt (ed), Encyclopaedia of Public International Law, 1989, pp. 259–62

[21]Ibid; see also Bernie, P. Piracy: Past Present and Future, 11 Mar. Pol., 163 at 171 (1987).

[22]See Note 1.

[23]Ibid.

Piracy,[24] has eliminated all possible uncertainties over piracy definition and geographical scope;

(e) why the Conventions added the ABJN concept to the high seas as a geographical scope;

(f) whether the introduction of SUA offences has completely eliminated the doubts over the definition of piracy and its geographical scope;

(g) the position of other non-violent maritime offences;[25] and

(h) whether piracy is a single or a three-dimensional maritime offence.

The analysis will start with consideration of the inland and territorial sea (internal and archipelagic waters). On the geographical scope of piracy, the IMO Guidelines on Elements of Piracy provide that:

(i) Geographic scope:

12 As regards the geographic scope for the definition of piracy, article 101(a) (i) refers to acts committed "on the high seas" while article 101(a) (ii) refers to acts committed "in a place outside the jurisdiction of any State." [Note 14] Article 101 of UNCLOS should be read in conjunction with article 58(2), which provides that "articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part." Thus, the geographic scope of article 101(a) should be read to include the exclusive economic zone of any State. [Note 15]. Accordingly, when the acts set forth in article 101(a) are committed beyond the territorial sea of any State, they

[24]Ibid.

[25]The definition of piracy for the purposes of this paper is that of Article 101 of UNCLOS. The paper is aware of other numerous organizational definitions such as IMO's Armed Robbery against Ships, SUA offences. For these and other non-governmental organisations definitions see: oceansbeyondpiracy.org/sites/default/files/attachments/Piracy%20definition%20table.pdf (accessed on 10/10/2019).

are considered acts of piracy under the Convention.[26]

Pursuant to this Guideline, piracy could be committed in any area beyond the territorial sea which includes the contiguous zone, the EEZ, the continental shelf, the high seas and the ABNJ. This IMO interpretation of UNCLOS' piracy definition, and of its geographical scope, concurs with that of the *UNCTAD Report on Piracy*, which provides that:

> 23. Certain key elements of the definition are highlighted below.
>
> Geographical scope
>
> 24. The definition refers to acts of piracy that occur "on the high seas" or "in a place outside the jurisdiction of any State." [Note 24] Accordingly, acts of piracy that occur in the territorial or internal waters of a State do not fall within the definition provided by article

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[26]IMO LEGAL COMMITTEE 98th session Agenda item 8 LEG 98/8/1 18 February 2011 Original: Piracy: elements of national legislation pursuant to the United Nations Convention on the Law of the Sea, 1982, Submitted by the United Nations Division for Ocean Affairs and the Law of the Sea (UN-DOALOS), para 12;

[Note 14] within the quote therein provides that:

> With regard to the meaning of the phrase "in a place outside the jurisdiction of any State", the International Law Commission (ILC), in its Commentary to article 39, which was the basis for article 101 of UNCLOS, stated "[i]n considering as 'piracy' acts committed in a place outside the jurisdiction of any State, the Commission had chiefly in mind acts committed by a ship or aircraft on an island constituting terra nullius or on the shores of an unoccupied territory. But the Commission did not wish to exclude acts committed by aircraft within a larger unoccupied territory, since it wished to prevent such acts committed on ownerless territories from escaping all penal jurisdiction." Document A/CN.4/104, at p. 282;

While Note 15 therein provides that:

> Subparagraphs (b) and (c) of article 101 respectively on voluntary participation in the operation of a pirate ship or aircraft and incitement and intentionally facilitating an act of piracy, do not explicitly set forth any particular geographic scope. It is also important to distinguish piracy from armed robbery against ships. The latter is defined by IMO Assembly resolution A.1025(26) on the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ship adopted on 2 December 2009. According to article 2.2 of this Code, "Armed robbery against ships" means any of the following acts:
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> 1. any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea;
>
> 2. any act of inciting or of intentionally facilitating an act described above. (emphasis added).

101. [Note 25]

25. That being said, article 101 should be read in conjunction with article 58(2), which provides that rules of international law that apply on the high seas also apply to the exclusive economic zone (EEZ) in so far as they are not incompatible with the provisions of UNCLOS that relate to the EEZ. [Note 26] The geographical scope of article 101(a) should therefore be read to include the EEZ of any State. [Note 27] As a result, acts of piracy that are committed in a State's EEZ will be treated as though they had been committed on the high seas, and any State may assert jurisdiction over the crime as long as it occurs outside the territorial waters of any State.[27]

For those reasons this paper further argues that the geographical scope of piracy is not limited to the high seas and ABNJ as provided in the Convention's definition. It also follows that the definition is not mutually exclusive and should be read together with other provisions of the Convention, as well as commentaries thereon from the IMO and related organizations. The rest of this paper will now examine where piracy and, where applicable, robbery against ships, can be committed in the various maritime zones.

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[27]Paragraphs 23–25 of the UNCTAD Report, with the squares indicating notes within the quotes.

[24] With regard to the meaning of the phrase "in a place outside the jurisdiction of any State," the International Law Comission (ILC), in its Commentary to article 39, which was the basis for article 101 of UNCLOS, states: "[I]n considering as 'piracy' acts committed in a place outside the jurisdiction of any State, the Commission had chiefly in mind acts committed by a ship or aircraft on an island constituting terra nullius or on the shores of an unoccupied territory. But the Commission did not wish to exclude acts committed by aircraft within a larger unoccupied territory, since it wished to prevent such acts committed on ownerless territories from escaping all penal jurisdiction." See United Nations (1956), Report of the International Law Commission Covering the Work of Its Eighth Session, 23 April to 4 July 1956, Commentary to the Articles Concerning the Law of the Sea. A/3159, page 27.

[25] Acts that occur in the territorial waters of a State would instead fall within the definition of "armed robbery against ships." See further below.

[26] Article 58(2) provides: "Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this part."

[27] Subparagraphs (b) and (c) of article 101, respectively, on voluntary participation in the operation of a pirate ship or aircraft and incitement and intentionally facilitating an act of piracy, do not explicitly set forth any particular geographical scope.

IV
INLAND AND INTERNAL WATERS

A. Description

This zone is composed of enclosed inland waters (excluded from the Convention) and internal waters. The latter, covered in Articles 8–12 of the Convention, are on the seaward side and include all water and waterways on the landward side of the baseline. However, the Convention does not deal with inland water (rivers, lakes, canals and enclosed inland seas which form a part of inland waters), but is concerned with internal waters (Article 8), river estuaries (Article 9), bays (Article 10), ports (Article 11) and roadsides (Article 12). With the exception of access to ports, international canals and transboundary rivers, foreign vessels have no right of passage within inland and internal waters. Although without any bearing on piracy's geographical scope, a vessel on the high seas assumes jurisdiction under the internal laws of its flag State. Therefore, the pursuit of a ship by the coastal state may only take place in the internal waters and is required to end when reaching the contiguous zone. These three sub-zones are covered in Article 2 of the Convention. Internal waters form part of the seas (see diagram A above) inward of the baseline and the territorial sea; and the internal waters of archipelagic states (see below).

B. Sovereign Rights

In the hinterland inland waters, sovereignty of the state is equal to that which it exercises on the dry mainland: full absolute sovereign jurisdiction. That full and exclusive sovereign right extends to the seaward internal waters. Here the coastal state is free to make laws relating to its internal waters, regulate any use, and use any resource (see Diagram B below). In the absence of agreements to the contrary, foreign vessels have no right of passage within internal waters, and this lack of right to innocent passage is the key difference between internal waters and territorial waters. In the maritime security context, however, a coastal state can prevent privately contracted armed security personnel (PCASP) from entering its ports and internal waters if carriage of weapons is forbidden in national legislation. Moreover, once entering a port, PCASP (and the vessel which they are aboard) can be held accountable for other violations that took place at sea if: (a) they in

some way impacted the port state or, (b) for other reasons interfered with the permission of the flag state.

C. Sovereign Jurisdiction

1. Inland Waters

Lakes and rivers are considered internal waters. The coastal State has full and absolute sovereign jurisdiction in inland waters. In inland waters, the state has the same degree of sovereignty that it exercises on the mainland. Some inland waters such as canals and international transboundary navigable rivers may cast doubts. When a foreign vessel is authorized to enter inland waters, it is subject to the laws of the coastal State, with one exception: the crew of the ship is subject to the law of the flag State. This extends to labour conditions as well as to crimes committed on board the ship, even if docked at a port. Totally enclosed inland seas in a single state cause no jurisdictional problems; shared enclosed inland seas like the Great Lakes between the U.S. and Canada and the Caspian Sea, or semi-enclosed seas like the Black Sea and the Mediterranean, may be more doubtful, the details of which are beyond the scope of this paper. Subject to that, there is no material difference between sovereign rights and sovereign jurisdiction in this zone. This is sovereign territory.

2. Internal Waters

Equally, the coastal state has full sovereign jurisdiction in its internal waters: waters landward of the baseline are defined as internal waters, over which the state has complete sovereignty. Not even innocent passage is allowed without explicit permission from said state. These include coastal state jurisdictions under the Convention[28] and port state jurisdictions and controls.[29] Enforcement measures of the coastal state can be taken for violations of static standards while in port, as well as for violations that occurred within the coastal state's maritime zones and beyond.

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[28]Coastal State's jurisdiction relates to its own maritime zones, and encompasses the resources and activities therein as well as external impacts on them-Part I and Part II, UNCLOS.

[29]Port State jurisdiction is the competence of States to exercise prescriptive (or legislative) and enforcement jurisdiction over foreign vessels within their ports; rights derived from the Convention and the various Memoranda on Port State Controls.

However, foreign vessels are not usually held to non-maritime or security port state laws so long as the activities conducted are not detrimental to the peace and security of the locale. As indicated above, the coastal state is free to make laws relating to its internal waters, regulate any use, and use any resource. In the absence of agreements to the contrary, foreign vessels have no right of passage within internal waters, and this lack of right to innocent passage is the key difference between internal waters and territorial waters.

Offences committed in the harbour, and crimes committed there by the crew of a foreign vessel, always fall in the jurisdiction of the coastal state. The coastal state can intervene in ship affairs when the master of the vessel requires intervention of the local authorities, when there is danger to the peace and security of the coastal state, or to enforce customs rules. A vessel in the high seas assumes jurisdiction under the internal laws of its flag state. Pursuit of a ship by the coastal state may only take place in the internal waters and is required to end when reaching the contiguous zone. These full sovereign jurisdictions make this a piracy free zone. Subject to above exceptions there are no material differences between sovereign rights and sovereign jurisdiction in the inland and internal waters. This too is sovereign territory.

D. Piracy Offences

For the above reasons, piracy cannot be committed in the inland and internal waters of the coastal state. They are both parts of the state's territory and neither are parts of the high seas (Art.101(a)(i)) or an ABJN (Art.101(a)(ii)). The removal of the offence of piracy from dry land, inland and internal waters is the critical difference introduced to customary international law first by the Geneva Conventions, and then by UNCLOS. However, armed robberies against ships, SUA and other maritime-related offences can be committed in inland and internal waters including in the unshared enclosed inland sea. That was the whole rationale of the introduction of SUA Convention and offences. Piracy can still be committed in a shared enclosed inland sea, such as the Caspian Sea, and shared semi-enclosed seas such as the Black and Mediterranean, with no, or only restricted areas of the contiguous zones, EEZ and the continental shelf.

Accordingly, and with those exceptions, it follows from the above analyses that, contrary to customary law, modern piracy in its strictest sense, cannot be committed in inland and internal

waters. First, because, they form neither the high seas nor the ABNJ. Second, because in this zone the coastal state has full sovereign rights and absolute sovereign legal jurisdictions over all affairs. The coastal states' laws apply in this zone exclusively and the domestic courts have full competence and jurisdiction in all civil and criminal matters.

Third, apart from the maritime aspects of internal waters and inland seas, this zone normally includes rivers, lakes, artificial dams and canals which do not ordinarily constitute any sea or ocean. With those exceptions, piracy cannot now be committed in inland waters. The ILC Draft too was adamant on this point, in their Commentary, first stating in their Fourth Conclusion on their Article 39 that:

> (iv) Piracy can be committed only on the high seas or in a place situated outside the territorial jurisdiction of any State, and cannot be committed within the territory of a State or in its territorial sea.

and then in the ensuing Third Conclusion of their Commentary that:

> (3) As regards point (iv), the Commission considers, despite certain dissenting opinions, that where the attack takes place within the territory of a State, including its territorial sea, the general rule should be applied that it is a matter for the State affected to take the necessary measures for the repression of the acts committed within its territory. In this the Commission is also following the line taken by most writers on the subject.

The only lingering doubt was whether piracy can be committed in enclosed or inland seas such as the Caspian and Black Seas bordering and shared by other states. That doubt has been eliminated for the following reasons; UNCLOS covers enclosed and semi-enclosed seas in Article 122 (definition) and Article 123 (duty to co-operate). However, it has no reference to the commission of piracy in these regions, save for providing that, "States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention."[30] So technically piracy can be committed in these seas since the co-operation under Article 123 of the Convention is restricted to

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[30]UNCLOS, Article 123.

exploration, marine scientific research and the preservation of the marine environment.[31] However, armed robbery against ships, excluding piracy, SUA and other maritime offences (violent or clandestine), can certainly be committed in these waters, noting that the zone includes the rest of the territorial sea below.[32]

IV
TERRITORIAL SEA

A. Description

The territorial sea and the archipelagic waters are covered in UNCLOS Articles 1–32 and are defined by UNCLOS as a belt of coastal waters extending at most 12 nautical miles (22.2 km; 13.8 mi) from the baseline (usually the mean low-water mark) of a coastal state. If this would overlap with another state's territorial sea, the border is taken as the median point between the states' baselines, unless the states in question agree otherwise. A state can also choose to claim a smaller territorial sea. According to the Convention, a nation's internal waters include waters (discussed above) on the side of the baseline of a nation's territorial waters that is facing toward the land, except in archipelagic states. It includes waterways such as rivers and canals (also discussed above), and sometimes the water within small bays. When a foreign vessel is authorized to enter inland waters, it is subject to the laws of the coastal State, with one exception: the crew of the ship is subject to the law of the flag state. This extends to labour conditions as well as to crimes committed on board the ship, even if docked at a port. Vessels were given the right of innocent passage through any territorial waters, with strategic straits allowing the passage of military craft as transit passage, in that naval vessels are allowed to maintain postures that would be illegal in territorial waters. The coastal state can also temporarily suspend innocent passage in specific areas of her territorial seas, if doing so is essential for the protection of her security.

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[31]Ibid.

[32]See paragraph (a) of IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, under piracy in the territorial sea.

B. Sovereign Rights

Apart from the exceptions in paragraph (a) (application of coastal state laws) immediately above, the coastal state has full and absolute sovereign rights from the baseline. As in inland and internal waters, it is free to set laws, regulate use, and use any resource. Everything from the baseline to a limit not exceeding twelve miles is considered the State's territorial sea. Territorial seas are the most straightforward zone. Much like internal waters, coastal States have sovereignty and jurisdiction over the territorial sea (see Diagram B below). These rights extend not only on the surface but also to the seabed and subsoil, as well as vertically to airspace. The vast majority of States have established territorial seas at the 12 nautical mile limit, but a handful have established shorter thresholds. While territorial seas are subject to the exclusive jurisdiction of the coastal states, the coastal states' rights are further limited by the passage rights of other states, including innocent passage through the territorial sea and transit passage through international straits.[33] This is the primary distinction between internal waters and territorial seas. There is no right of innocent passage for aircraft flying through the airspace above the coastal state's territorial sea. Other rights include those of the port-state control and the general rights of coastal states under the Convention.

C. Sovereign Jurisdiction

There is no material difference between states' sovereign rights and sovereign jurisdiction in the territorial sea. Thus, as in inland and internal waters above, the territorial sea is regarded as the sovereign territory of the state, although foreign ships (military and civilian) are allowed innocent passage through it, or transit passage for straits; this sovereignty also extends to the airspace over and seabed below. Offences committed in the harbour and crimes committed there by the crew of a foreign vessel always fall within the jurisdiction of the coastal State. The coastal State can intervene in a ship's affairs only when the master of the vessel requires intervention of the local authorities, when there is danger to the peace and security of the coastal State, or to enforce customs rules.

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[33]These rights are described in detail in Part II Section Three: UNCLOS-Freedom of Navigation of the Convention.

In this zone, the coastal state is free to set laws, regulate use, and use any resource. Vessels are given the right of innocent passage through any territorial waters, with strategic straits allowing the passage of military craft as transit and innocent passage,[34] in that naval vessels are allowed to maintain postures that would be illegal in territorial waters. The coastal state can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of their security. As will be apparent below, these full sovereign jurisdictions make this a piracy free zone.

D. Piracy Offences

For the same reasons as in the inland and internal waters above, piracy cannot now be committed in the territorial sea. Like the inland and internal waters, the zone too is neither part of the high seas (Art.101(a)(i)) nor of an ABJN (Art.101(a)(ii)) both of which are pirate 'free' areas. Any piracy and related maritime offences in the zone are therefore subject to exclusive domestic courts' jurisdiction. Also, for the same reasons as in inland and internal waters, armed robbery and other maritime related offences may be committed in the territorial sea. This was the rationale for the removal of and replacement of piracy with armed robbery against ships through the introduction of the SUA Convention and SUA offences. Other maritime offences committable in this zone include thefts, pilferage, barratry, and other clandestine offences. These, however, as offences against the owner and goods, do not constitute threats to the ship or maritime security and are therefore not the subject of this article.

In defining armed robbery against ships, IMO's *Code of Practice*[35] determined that armed robbery against ships consists of any of the following acts:

(a) any illegal act of violence or detention or any act of depredation,

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[34]"Innocent passage" is defined by the convention as passing through waters in an expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal state. Fishing, polluting, weapons practice, and spying are not "innocent," and submarines and other underwater vehicles are required to navigate on the surface and to show their flag. Article 18 UNCLOS.

[35]IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships and other details are detailed in A 26/Res.1025(26) Resolution A.1025(26) (Annex, paragraph 2.2).

> or threat thereof, *other than an act of piracy,* committed for private ends and directed against a ship or against persons or property on board such a ship, *within a State's internal waters, archipelagic waters and territorial sea*;
>
> (b) any act of inciting or of intentionally facilitating an act described above. (*emphasis added*).

This definition is based on, and is identical to, that of Article 101 of UNCLOS, with the exception that piracy cannot be committed in the internal waters, archipelagic waters and the territorial sea. The omission of the contiguous zone from the above IMO Code definition is noteworthy and by inference a further proof that piracy is committable in the contiguous zone. It is also significant that UNCLOS' definitions of internal waters, archipelagic waters and territorial sea, are contained in Part II dealing with the territorial sea and contiguous zone. Therefore, for the same reasons as in the case of inland, internal and archipelagic waters above, piracy cannot be committed in the territorial sea. First, because it does not form part of the high seas or the ABNJ piracy "permitted" zones; Second, because the territorial sea neither borders nor is it adjacent to the high seas; and Third, because neither is it an extension of the territory of the coastal state. Thus, the option for the possibility of inclusion of other violent maritime offences into piracy has been removed by the introduction of the offence of Armed Robbery against Ships. Furthermore, although SUA offences are mainly maritime terrorism-related, they too are committable in the internal waters and the territorial sea pursuant to SUA Convention 1988, and the 1988 and 2005 SUA Protocols. Accordingly, armed robbery against ships, SUA and other maritime offences (violent or clandestine), can be committed in this zone. The same rules apply to archipelagic waters.

VI
ARCHIPELAGIC WATERS

A. Description

Although archipelagic waters are part of the territorial sea, they are discussed separately here for sake of clarity. Archipelagic waters within the outermost islands of archipelagic states are

treated as internal waters, with the exception that innocent passage must be allowed, although the archipelagic state may designate certain sea lanes in these waters. The Convention set the definition of Archipelagic States in Part IV (Articles 46–54), which also defines how the state can draw its territorial borders.[36]

B. Sovereign Rights

As in the rest of the territorial sea, the state has full sovereignty rights over these waters, but subject to existing rights including traditional fishing rights of immediately adjacent states. So those rights are slightly less than those in the internal and territorial waters above. Once again, however, foreign vessels have right of innocent passage through archipelagic waters (like territorial waters). Thus, the archipelagic waters within the outermost islands of archipelagic states are treated as internal waters, with the exception that innocent passage must be allowed, although the archipelagic state may designate certain sea lanes in these waters. This is one of the main distinctions between normal territorial waters and archipelagic internal waters. Otherwise the state's sovereign rights in this zone are the same as sovereign jurisdiction and are without prejudice before the archipelagic states' port state and coastal state jurisdiction in the zone under the Convention.

C. Sovereign Jurisdiction

With the above exceptions, the archipelagic state has full and absolute jurisdiction in archipelagic waters equivalent to those in internal and territorial waters, of which it is a part. Because all archipelagic waters within the outermost islands of an archipelagic state, such as Indonesia or the Philippines, are also considered internal waters, they are treated the same with the exception that innocent passage through them must be allowed. Like internal waters, archipelagic waters include littoral areas such as ports, rivers, inlets and other marine spaces landward of the baseline

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[36]A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated Archipelagic Waters. If the country is an archipelago or has an archipelago under it, a baseline is drawn between the outermost points of the islands, subject to these points being sufficiently close to one another, virtually consigning the waters to internal and/or territorial sea, with all that it entails. All waters inside this baseline are designated Archipelagic Waters.

(low-water line) where the port state has jurisdiction to enforce domestic regulations. They are not separate or independent from inland waters and/or the territorial sea, but are rather part of, and alternatives to, them. However, they are covered separately here for the sake of clarity. As will be apparent below, the full sovereign jurisdiction makes this a piracy free zone. Archipelagic waters are sovereign territory.

D. Piracy

Like the contiguous zone, the archipelagic waters are another area that provides another grey area in the geographical scope of piracy, as they form part of the inland, internal and territorial sea, and are also subject to specific features in the Convention. However, depending on the gap between borders of other states or between archipelagic states, piracy cannot be committed in this zone. The commission of two maritime offences (armed robbery against ships and SUA offences including maritime terrorism) are, however, possible in the zone. It will be remembered that the UNCTAD Report above agreed with the notion that: "Acts that occur in the territorial waters of a state would instead fall within the definition of armed robbery against ships."[37] The Report also draws attention to Article 58(2) of the Convention providing that: "Articles 88 to 115 and other pertinent rules of international law apply to the exclusive zone in so far as they are not incompatible with this part."[38] This supposition suggests piracy cannot be committed in the archipelagic waters as part of the territorial waters. So, it is anything but piracy and/or SUA offences in the territorial sea, and, accordingly archipelagic waters. Nor does it seem that piracy can be committed in archipelagic waters. However, Armed Robbery against Ships and SUA offences can be committed in this zone.[39]

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[37]UNCTAD Report Note 25 at 7.
[38]Ibid, Note 26 at p7.
[39]See Note 3.

VII
THE CONTIGUOUS ZONE

A. Description

The contiguous zone, a zone between the territorial sea and the EEZ and/or the continental shelf, is covered in only one Article (Article 33) in the Convention. Beyond the 12nm (22 km or13.5 miles) territorial sea limit, there is a further 12 nm (22 km or 13.5 miles) from the territorial sea baseline limit, the contiguous zone, a band of water extending farther from the outer edge of the territorial sea to up to 24 nautical miles (44.4 km or 27.6 miles) from the baseline, within which a state can exert limited control for the purpose of preventing or punishing "infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea."[40] The contiguous zone is an intermediary zone between the territorial sea and the high seas extending enforcement limited jurisdiction of the coastal state to a maximum of 24 nm from baselines for the purposes of preventing or punishing violations of customs, fiscal, immigration or sanitary (and thus residual national security) legislation. In the maritime security context, this can certainly include monitoring any activities which can result in armed violence or the import of weapons into the state. Therefore, the coastal state can take measures to prevent or regulate armed maritime security activities out to 24 nm under the reasoning that it is undertaking customs enforcement and operations to prevent movement of arms into its waters and ports.

B. Sovereign (Economic) Rights

The Convention does not provide for any additional economic rights of the coastal state within the continental shelf, save for providing that states may also establish a contiguous zone from the outer edge of the territorial seas to a maximum of 24 nm from the baseline (see Diagram B below). It is from this zone that the state's

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[40]This will typically be 12 nm (22 km or 14 miles) wide, but could be more (if a state has chosen to claim a territorial sea of less than 12 nautical miles), or less, if it would otherwise overlap another state's contiguous zone. However, unlike the territorial sea, there is no standard rule for resolving such conflicts and the states in question must negotiate their own compromise.

full sovereign jurisdiction begins to diminish, which in turn affects piracy's geographical scope. However, it would be safe to assume the state's economic rights in the contiguous zone are less than those in the territorial sea but equivalent to those in the continental shelf and EEZ. This zone exists principally to bolster a state's law enforcement capacity and prevent criminals from fleeing the territorial sea. Within the contiguous zone, a state has the right to both prevent and punish infringement of fiscal, immigration, sanitary, and customs laws within its territory and territorial sea. Unlike the territorial sea, the contiguous zone only gives sovereign rights to a state on the ocean's surface and floor. It does not provide for air and space rights. The coastal state has full sovereign rights over natural resources in the contiguous zone. Thus, although here a state can continue to enforce laws, this is, however, to only four specific areas: customs, taxation, immigration and pollution, if the infringement started within the state's territory or territorial waters, or if this infringement is about to occur within the state's territory or territorial waters. This makes the contiguous zone a hot pursuit area.

C. Sovereign Jurisdiction

From the above descriptions, the contiguous zone is a zone of limited sovereign rights and no full sovereign jurisdiction. As mentioned above, it is rather a zone of limited enforcement in which a State can continue to enforce laws in four specific areas: customs, taxation, immigration and pollution, but only if the infringement started within the state's land, internal, inland archipelagic waters' territory or territorial sea, or if this infringement is about to occur within the state's territory or territorial sea. Second, this makes the contiguous zone also a hot pursuit area,[41] but not necessarily an exclusive criminal jurisdiction area and, therefore, a possible piracy area. Consequently, unlike the above zones (inland, internal, and archipelagic waters), the question becomes slightly blurred in the contiguous zone.

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[41]The participating States at the League of Nations Codification Conference of 1930 broadly agreed on the validity of the right of hot pursuit, but the proposed convention on territorial waters in which it was included was never ratified. It was finally codified as Article 23 of the Geneva Convention; Nicholas M. Poulantzas, The Right of Hot Pursuit in International Law, Brill–Martinus Nijhoff (2002).

First, the contiguous zone was not well thought out, as it was not intended from the beginnings of the UNCLOS negotiations; rather it was a compromise buffer zone to appease those mainly developing countries that had or wished to claim a 24nm (44km or 27miles) territorial sea. Second, jurisdiction of the coastal state is not as exclusive in the contiguous zone as it is in the above zones. On the contrary, the coastal state's jurisdiction is limited to mainly civil matters such as customs, fiscal, immigration and sanitation; but not criminal jurisdiction under which piracy falls. Third, of the four specific "jurisdictional areas" or categories in the zone, the nearest equivalent to a criminal offence (jurisdiction) is domestic immigration, which also has nothing to do with piracy. These limited sovereign jurisdictions would in themselves make this a potential piracy "friendly" zone.

D. Piracy Offences

The position on piracy in land waters and the territorial sea (internal and archipelagic waters) is clear. They border the contiguous zone but do not form part of or border the high seas. However, the situation in the contiguous zone is not that clear. First, it borders the EEZ, which itself sometimes forms part of the high seas. Second, both the IMO and International Maritime Bureau (IMB) definitions of piracy make no distinction between the nature or location of piracy, including unlawful acts against vessels, whether in internal waters, within or outside port facilities, and within or outside territorial waters.[42] Third, the contiguous zone does not form part of, nor is it an extension of, the state's territory, so it does not have the same state status as internal waters and the territorial sea in which the coastal State has full sovereignty and criminal jurisdiction. Fourth, and above all, it is not explicit whether the high seas begin in the contiguous zone, or beyond it. Once again various diagrammatical presentations show the high seas as including, or overlapping, the contiguous zone. For those

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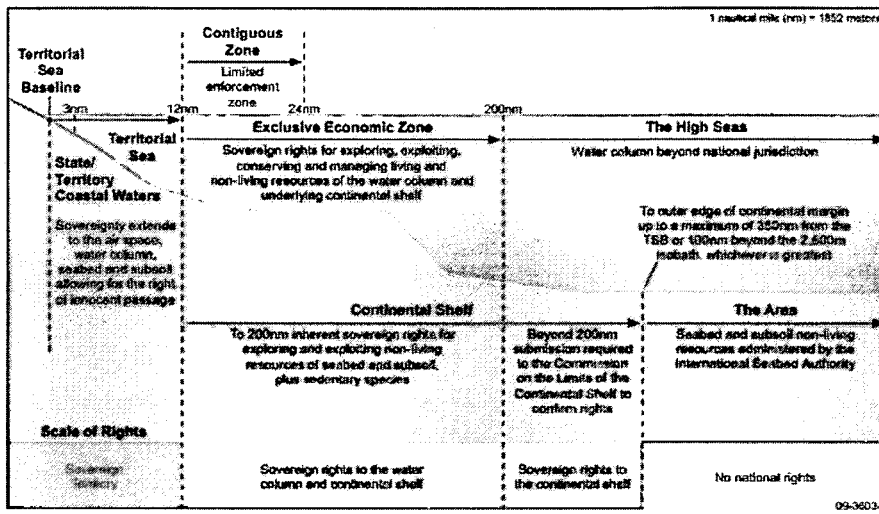
[42]The IMB Piracy Reporting Centre (IMB-PRC) follows the definition of Piracy as laid down in Article 101 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and Armed Robbery as laid down in Resolution A.1025 (26) adopted on 2 December 2009 at the 26th Assembly Session of the International Maritime Organisation (IMO). "Armed robbery against ships" means any of the following acts: any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within: https://www.icc-ccs.org/piracy-reporting-centre.

DIAGRAM B. GOVERNING RIGHTS IN AREAS BEYOND NATIONAL JURISDICTION(ABNJ)



Source: https://thewire.in/diplomacy/maritime-territory-continental-shelf-unclos-india (accessed 25/06/2019)

reasons the high seas may well include and/or begin in the contiguous zone, in which case it might also be part of the ABNJ and, therefore, piraceable. Fifth, the *IMO Code on Armed Robbery against Ships* (see above), other than piracy, includes only internal waters, territorial waters and archipelagic waters, but excludes the contiguous zone. SUA offences (see above), other than piracy, may be also committed in the zone. Further, the contiguous zone can be part of the EEZ and the continental shelf, in both of which piracy is committable by inference, therefore, this is a piracy territory. Thus, piracy can be committed in the contiguous zone despite technically not being the high seas (Art 101(a)(i), an ABNJ (Art 101(a)(a)(ii) or armed robbery zone.

VIII
THE EXCLUSIVE ECONOMIC ZONE

A. Description

An EEZ is an area which extends from the baseline to a maximum of 200 nm (370.4 km or 230.2 miles), and thus includes the contiguous zone. In colloquial usage, the term may include the continental shelf. The term does not include either the territorial sea or the continental shelf beyond 200 nm. In casual use, the term may include the territorial sea and even the continental shelf, although the term does not include either the territorial sea or the continental shelf beyond the 200 nm limit.[43] The EEZ is extensively covered in Articles 55-75 of UNCLOS. First, as is the case with the contiguous zone, the EEZ too was an afterthought, not a subject of the original negotiations. Rather, the EEZs were another compromise over fishing and oil: another buffer zone designed to appease by compensating states with the continental shelf. Accordingly, it was introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important.[44] Second, to emphasize the limitations of the coastal state's apparent "jurisdiction," foreign nations have the freedom of navigation and overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables, and state jurisdiction withers gradually with the distance from the baseline.

B. Sovereign (Economic) Rights

The EEZ is a zone prescribed by the Convention over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind (see Diagram B above). However, the coastal state does not have the same jurisdiction enjoyed in the inland, internal, territorial and archipelagic waters. It has only rights. A coastal nation has control of all economic resources within its EEZ, including fishing,

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[43]The EEZs were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The success of an offshore oil platform in the Gulf of Mexico in 1947 was soon repeated elsewhere in the world, and by 1970 it was technically feasible to operate in waters 4,000 metres deep.

[44]William R. Slomanson, Fundamental Perspectives on International Law, 294, (5th ed. Belmont, CA: Thomson-Wadsworth) (2006).

mining, oil exploration, and any pollution of those resources. The EEZ is a sea zone prescribed by the Convention over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind. The difference between the territorial sea and the exclusive economic zone is that the first confers full sovereignty over the waters, whereas the second is merely a "sovereign right" which refers to the coastal state's rights below the surface of the sea. The surface waters, as can be seen in the map, are international waters. Unlike the territorial sea and the contiguous zone, the EEZ only allows for the previously mentioned resource rights and the law enforcement capacity to protect those rights. It does not give a coastal State the right to prohibit or limit freedom of navigation or overflight, subject to very limited exceptions. Within this area, the coastal nation has sole exploitation rights over all-natural resources. In casual use, the term may include the territorial sea and even the continental shelf. The difference between the territorial sea and the EEZ is that the first confers full sovereignty over the waters, whereas the second is merely a "sovereign right" which refers to the coastal state's rights below the surface of the sea. The surface waters, as can be seen in the map, are international waters.

C. Sovereign Jurisdiction

However, the coastal State has no legal jurisdiction in the EEZ. It cannot prohibit passage or loitering above, on, or under the surface of the sea that is in compliance with the laws and regulations adopted by the coastal state in accordance with the provisions of the Convention, within that portion of its exclusive economic zone beyond its territorial sea. Before UNCLOS, coastal nations arbitrarily extended their territorial waters in an effort to control activities which are now regulated by the exclusive economic zone, such as offshore oil exploration or fishing rights. Indeed, the exclusive economic zone is still popularly, though erroneously, called a coastal nation's territorial waters. The EEZ is another intermediary zone, lying between the territorial sea (12 nm) and the high seas to the maximum extent of 200nm. Although high seas' freedoms concerning general navigation principles remain in place, in this zone the coastal state retains exclusive sovereignty over exploring, exploiting and conserving all-natural resources. The coastal state therefore can take action to prevent infringement by third parties of its economic assets in this area including, inter

alia, fishing, bio-prospecting and wind-farming. In order to safeguard these rights, the coastal state may take necessary measures including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with international laws and regulations. This non-existent sovereign jurisdiction makes this a potential piracy zone.

D. States' Obligations

As in the continental shelf, below, the coastal state's sovereign jurisdiction is not only curtailed in this zone, but the coastal state may in fact also have general obligations imposed under Part XII of the Convention (Article 192). For instance, foreign nations have the freedom of navigation and overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables. So, the coastal state not only has to allow these rights, but also undertakes not only not to damage these cables and pipelines but also to protect them in its EEZ. Under the Convention the coastal state can also adopt measures to prevent, reduce and control pollution of the marine environment (Article194), and has a duty not to transfer damage or hazards, or transform one type of pollution into another (Article 195), and must cooperate on a global or regional basis in the protection of the marine environment (Article 197).

E. Piracy and Other Maritime Offences in the Zone

Unlike other zones whose existence derived from earlier international law, the EEZ was a creation of the Convention. States may claim an EEZ that extends 200nm from the baseline. In this zone, a coastal State has the exclusive right to exploit or conserve any resources found within the water, on the sea floor, or under the sea floor's subsoil. These resources encompass both living resources, such as fish, and non-living resources, such as oil and natural gas. States also have exclusive rights to engage in offshore energy generation from the waves, currents, and wind within their EEZ. Article 56 also allows States to establish and use artificial islands, installations and structures, conduct marine scientific research, and protect and preserve the marine environment through Marine Protected Areas. Article 58 declares that Articles 88 to 115 of the Convention relating to high seas rights apply to the EEZ "in so far as they are not incompatible with this Part [V]." Once again,

the State does not have full jurisdiction in the EEZ, as it does in the inland, internal, territorial sea and archipelagic waters; it has only rights, hence the Convention's use of jurisdiction in this zone is inaccurate. The EEZ is also not a natural extension of a State's land territory; rather, the State's position is reduced to those of having sovereign and exclusive rights over the exploitation of natural resources.

It becomes increasingly hazy where the high seas begin and end, i.e., whether the high seas include all or only part of the EEZ. Consequently, diagrammatic representation of the geographical scope in scenarios provides conflicting perspectives. Some suggest that the high seas include the EEZ while others do not. Therefore, the EEZ may also well be in, or form part of, the high seas and the ABNJ. For those reasons, piracy could be committed here. The size of the EEZ of some countries makes it more likely that piracy can be committed in this zone. For instance, due to its features, the U.S. has the largest EEZ in the world, totalling 3.4 million square nautical miles.[45] In fact, the EEZs of states worldwide constitute 38% of the oceans of earth that were considered part of the high seas prior to adoption of the Convention, hence the persisting grey area between the two. For those reasons, the EEZ is the most misunderstood of all the maritime zones by policymakers in states around the world. Finally, Articles 101 (b) and (c), on voluntary participation in the operation of a ship or aircraft and incitement and intentionally facilitating an act of piracy respectively, do not explicitly set forth any particular geographical scope leaving the possibility open for piracy in the EEZ zone. Armed robberies against ships cannot be committed in the zone but SUA Protocol offences can as they affect fixed platforms in both the EEZ and the continental shelf (see below).

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[45]The EEZ's size derives from the large coastlines on the Atlantic Ocean, the Gulf of Mexico, the western continental U.S., Alaska, Hawaii and many small outlying Pacific islands. Although not a signatory of the Convention, the U.S follows its spirit and established an EEZ by Presidential Proclamation in 1983.

IX
THE CONTINENTAL SHELF

A. Descriptions

Article 76 provides the legal definition of a continental shelf of coastal countries. The rest of the continental shelf is contained in Articles 77-85 of UNCLOS. The continental shelf is defined as the natural prolongation of the land territory to the continental margin's outer edge, or 200 nm (370 km) from the coastal state's baseline, whichever is greater. A state's continental shelf may exceed 200nm (370 km or 231.25 miles) until the natural prolongation ends. However, it may never exceed 350nm (650 km or 400 miles) from the baseline; or it may never exceed 100 nautical miles (190 km or 120 miles) beyond the 2,500-meter isobath (the line connecting the depth of 2,500 meters).The continental shelf of a coastal nation extends out to the outer edge of the continental margin, but at least 200 nautical miles (370 km or 230 miles) from the baselines of the territorial sea if the continental margin does not stretch that far.[46] The legal definition of a continental shelf differs significantly from the economic and geological definitions. Thus, inhabited volcanic islands such as the Canaries, which have no actual continental shelf, nonetheless have a legal continental shelf, whereas uninhabitable islands have no shelf.

B. Sovereign (Economic) Rights

In terms of jurisdiction and rights issues, the continental shelf position is identical to that of the EEZ. Coastal states have only the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources "attached" to the continental shelf, but not to creatures living in the water column

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[46]The outer limit of a country's continental shelf shall not stretch beyond 350 nautical miles (650 km or 400 miles) of the baseline, or beyond 100 nautical miles (190 km or 120 miles) from the 2,500 metres (8,200 ft) isobath, which is a line connecting the depths of the seabed at 2,500 meters. The outer edge of the continental margin for the purposes of this article is defined as: (a) a series of lines joining points not more than 60 nautical miles (110 km or 69 miles) apart where the thickness of sedimentary rocks is at least 1% of the height of the continental shelf above the foot of the continental slope; or (b) a series of lines joining points not more than 60 nautical miles apart that is not more than 60 nautical miles from the foot of the continental margin.

beyond the EEZ. Articles 77 to 81 of the Convention define the rights of a country over its continental shelf. A coastal nation has control of all resources on or under its continental shelf, living or not, but no control over any living organisms above the shelf that are beyond its exclusive economic zone (see Diagram B above). This gives it the right to conduct hydrocarbon exploration and drilling works. Coastal states have the right of exploration and exploitation of the seabed and the natural resources that lie on or beneath it; however, other states may lay cables and pipelines if they are authorised by the coastal state.

To prevent abuse of the continental shelf provisions, the Convention established the Commission on the Limits of the Continental Shelf (CLCS). The CLCS uses scientists to evaluate States' claims about the extent of their continental shelves and whether they conform to the Convention's standards. The economic rights within the continental shelf extend only to non-living resources and sedentary living resources, such as shellfish. It also allows the coastal state to build artificial islands, installations, and structures. Other States can harvest non-sedentary living resources, such as finfish; lay submarine cables and pipelines; and conduct marine research as if it were international waters (see below). As with the EEZ, continental shelf rights do not grant a state the right to restrict navigation.

C. Sovereign Jurisdiction

States have no sovereign jurisdiction in the continental shelf. In relation to jurisdiction over the continental shelf, a continental shelf is still the subject of a developing jurisprudence, because a portion of a continent that is submerged under an area of relatively shallow water is known as a shelf sea.[47] The portion of the continental shelf beyond the 200 nautical mile limit is also known as the extended

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[47]Much of the shelves were exposed during glacial periods and interglacial periods. The shelf surrounding an island is known as an insular shelf. The continental margin, between the continental shelf and the abyssal plain, comprises a steep continental slope followed by the flatter continental rise. Sediment from the continent above cascades down the slope and accumulates as a pile of sediment at the base of the slope, called the continental rise. Extending as far as 500 km (310 miles) from the slope, it consists of thick sediments deposited by turbidity currents from the shelf and slope. The continental rise's gradient is intermediate between the slope and the shelf. Under UNCLOS, the name continental shelf was given a legal definition as the stretch of the seabed adjacent to the shores of a particular country to which it belongs. The foot of the continental slope is determined as the point of maximum change in the gradient at its base.

continental shelf. Countries wishing to delimit their outer continental shelf beyond 200 nautical miles have to submit scientific information to support their claim to the CLCS. The Commission then validates or makes recommendations on the scientific basis for the extended continental shelf claim. The scientific judgement of the Commission shall be final and binding. Validated extended continental shelf claims overlapping any demarcation between two or more parties are decided by bilateral or multilateral negotiation, not by the Commission.[48] The fact that there is no existing sovereign jurisdiction over this area makes this a piracy zone. Instead, apart from sovereign rights, the coastal state has more obligations than sovereign jurisdiction in the continental shelf.

D. States' Obligations

In this area the coastal state has even more obligations. The continental shelf is unlike any other maritime zone. A State's obligations are contained in Article 77, and can be compared to State's rights in Articles 56 and 58 of the Convention. Aside from its provisions defining ocean boundaries, the Convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority and the Common Heritage of Mankind principle. Furthermore, landlocked states are given a right of access to and from the sea, through the continental shelf, without taxation of traffic through transit states.

E. Piracy in the Continental Shelf

For those reasons, the whole or most of the EEZ could be part of the high seas and, therefore, also form the whole of part of the ABNJ. Accordingly, piracy can be committed on the continental

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[48]Countries have ten years after ratifying UNCLOS to lodge their submissions to extend their continental shelf beyond 200 nautical miles, or by 13 May 2009 for countries where the convention was ratified before 13 May 1999. As of 1 June 2009, 51 submissions have been lodged with the Commission, of which eight have been deliberated by the Commission and have had recommendations issued.

shelf. However, armed robbery against ships cannot be committed in the zone but SUA offences can, especially the 1988 Protocol and 2005 Protocol offences relating to the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

X
THE HIGH SEAS EXCLUDING ABNJ

A. Description

The ocean surface and the water column beyond the EEZ are referred to in Part VII (Articles 86-10) of the Convention as the high seas. The seabed beyond a coastal State's EEZs and continental shelf is known under the Convention as the Area. The Convention provides that the Area is considered "the common heritage of all mankind" and is beyond any national jurisdiction. States can conduct activities in the Area so long as they are for peaceful purposes, such as transit, marine science, and undersea exploration.

Rights to resources in the Area are a more complicated matter. Living resources, such as fish, are available for exploitation by any vessel from any State. Although the Convention does not impose any limitations on fishing in the high seas, it encourages regional cooperation to conserve those resources and ensure their sustainability for future generations. On-living resources from the Area, which the Convention refers to as minerals, are handled differently from fish, since mineral extraction projects are capital intensive to build and administer. To maintain such projects without national control, the Convention created the International Seabed Authority, referred to as the Authority in the Convention document. This international body, headquartered in Jamaica, is responsible for administering these resource projects through a business unit called the Enterprise.

A. Sovereign (Economic) Rights

Coastal States have no sovereign economic rights in the high seas, which are vested in the Enterprise. The Enterprise was organized to be governed much like a public-traded corporation, with a Council (functioning as an Executive Committee) and a

Secretariat (which handles day-to-day administration). As an international body, the Authority also includes an Assembly of representatives from each nation which functions like a large Board of Directors. Unlike a publicly traded corporation, the Assembly is the supreme body for setting policy in the Authority. Since the ratification of the Convention, there has been limited activity in relation to these provisions. The High Seas, which lie beyond 200 nm from shore, are to be open and freely available to everyone, governed by the principle of equal rights for all. In agreeing to UNCLOS, all state parties acknowledged that the oceans are for peaceful purposes as the Convention's aim was to maintain peace, justice and progress for all people of the world. On the high seas, no state can act or interfere with justified and equal interests of other states. The Convention establishes freedom of activity in six spheres: navigation, overflight, laying of cables and pipelines, artificial islands and installations, fishing, marine and scientific research. Freedom of navigation is of utmost importance for all, and maritime security activities can be considered part of navigational activities as they protect vessels from interference by third parties.

B. Piracy in the High Seas

The high seas are exhaustively covered in Articles 86–120, and the Area in Articles 133-191, especially Articles 133–135 of the Convention. Apart from doubts as to where it starts and ends, this is the only zone where the Convention explicitly places piracy. However, Article 86 of UNCLOS defines the high seas by omission as: "All parts of the sea *that are not included* in the Exclusive Economic Zone (EEZ), in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." This provision is rather ambiguous. It does not mention either the contiguous zone or the continental shelf in its definition. It is generally agreed that internal waters, the territorial sea and archipelagic waters of a State are excluded from the high seas. However, it is doubtful whether the contiguous zone, the EEZ and the continental shelf are also wholly or only partially excluded from the high seas. Furthermore, and for that matter, where does that leave the contiguous zone and the continental shelf locations, both of which are omitted from the geographical definition of the high seas in Article 86? And where do the high seas begin and end in relation to the contiguous zone and the continental shelf? In other

words, from the said definition, piracy can be committed in any of the three zones.

XI
THE AREA INCLUDING ABNJ

A. Modern Concept of ABNJ

This is where the apparent confusion arises between the high seas (Article 101(a)(i) and the ABNJ (Article 101(a)(ii)). The marine Areas Beyond National Jurisdiction (ABNJ) are also commonly called the high seas. They include the high seas and the Area, and form both of those areas of the ocean for which no one nation has sole responsibility for management. But are they different, or the same area? That notwithstanding, in all, these make up 40 percent of the surface of our planet, comprising 64 percent of the surface of the oceans and nearly 95 percent of its volume. The ocean surface and the water column beyond the EEZ are referred to as the high seas in the Convention. Seabed beyond a coastal state's EEZs and continental shelf claims is known under the Convention as the Area. The Convention states that the Area is considered "the common heritage of all mankind" and is beyond any national jurisdiction. States can conduct activities in the Area so long as they are for peaceful purposes, such as transit, marine science, and undersea exploration. Resources are a more complicated matter. Living resources, such as fish, are available for exploitation by any vessel from any state. Although the Convention does not impose any limitations on fishing in the high seas, it encourages regional cooperation to conserve those resources and ensure their sustainability for future generation.

B. Rights and Jurisdiction

The coastal State has neither economic rights nor jurisdiction in the high seas. Everything in this zone and the Area are under the Seabed Authority jurisdiction for the benefit of all mankind. Non-living resources from the Area, which the Convention refers to as minerals, are handled differently from fish, since mineral extraction projects are capital intensive to build and administer. To maintain such projects without national control, the Convention created the International Seabed Authority, referred to as the Authority in the

Convention document. This international body, headquartered in Jamaica, is responsible for administering these resource projects through a business unit called the Enterprise. The Enterprise was organized to be governed much like a public-traded corporation with a Council (functioning as an Executive Committee) and a Secretariat (which handles day-to-day administration). As an international body, the Authority also includes an Assembly of representatives from each nation which functions like a large Board of Directors. Unlike a publicly traded corporation, the Assembly is the supreme body for setting policy in the Authority. Since the ratification of the Convention, there has been limited activity in relation to these provisions.

C. Piracy in the ABNJ

If piracy is committable in the high seas, why do we need the ABNJ?[49] Indeed, as questioned before, what is the ABNJ and why was it inserted in the Convention?[50] Kimbal opines that UNCLOS' provision of areas beyond the limits of national jurisdiction (ABNJ) include the following areas; the water column beyond TS where no EEZ has been declared, called the High Seas (Article 86); and the seabed which lies beyond the limits of the continental shelf, established in conformity with Article 76 of the Convention, designated as "the Area" (Article 1).[51] In its fourth conclusion and commentary on its equivalent draft Article 39, the Commission noted that:

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[49]Apart from Article 101(a)(i) and 101(a)(ii), the text or concept of ABNJ is also in the Preamble 6; Articles 1(1)(1), 142(1),142(2) and 211(6).

[50]With regard to the meaning of the phrase "in a place outside the jurisdiction of any State," the International Law Commission (ILC), in its Commentary to article 39, which was the basis for article 101 of UNCLOS, states: "[I]n considering as 'piracy' acts committed in a place outside the jurisdiction of any State, the Commission had chiefly in mind acts committed by a ship or aircraft on an island constituting terra nullius or on the shores of an unoccupied territory. But the Commission did not wish to exclude acts committed by aircraft within a larger unoccupied territory, since it wished to prevent such acts committed on ownerless territories from escaping all penal jurisdiction." See United Nations, Report of the International Law Commission Covering the Work of Its Eighth Session, 23 April to 4 July 1956. Commentary to the Articles Concerning the Law of the Sea. A/3159, page 27; UNCTAD Report Note 24 at p.7.

[51]Kimball, Lee A., The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the establishment of Marine Protected Areas (MPAs) in Marine Areas Beyond the Limits of National Jurisdiction, Secretariat of the Convention on Biological Diversity, Montreal, Technical Series no. 19, 64 pages, (2005).

> (4) In considering as "piracy" acts committed in a place outside the jurisdiction of any State, the Commission had chiefly in mind acts committed by a ship or aircraft on *an island constituting terra nullius [16A] or on the shores of an unoccupied territory.* But the Commission did not wish to exclude acts committed by aircraft within *a larger unoccupied territory*, since it wished to prevent such acts committed on ownerless territories from escaping all penal jurisdiction.[52] (*emphasis added*).

This commentary warrants a number of observations. First, reference to terra nullius and the shores of an unoccupied territory is probably because they were the favourite ancient pirates' hideouts beyond the reach or justice of any state. Second, the Commission must have considered them not part of the high seas, which is most unlikely. Third, it was a catch-all where the Commission wanted to have all possibilities covered. The idea of terra nullius was not only controversial even at the time of colonisation, to which it was linked, but is now outmoded due to recent developments in the law of the sea, in which almost all sea zones are either claimed or belong to the common heritage.[53] There are hardly any spaces left currently. Suffice to note that the ABNJ comprises the high seas and the seabed beyond the (extended) continental shelf of coastal states, and includes complex ecosystems[54] at vast distances from coasts, making sustainable

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[52]Terra nullius (/ˈtɛrə.nʌˈlaɪəs/, plural terrae nullius) is a Latin expression meaning "nobody's land", and was a principle sometimes used in international law to justify claims that territory may be acquired by a state's occupation of it, or land that is legally deemed to be unoccupied or uninhabited. In Australia the question of whether British colonizers had regarded the continent as terra nullius at the time of the original settlement, and, if so, whether this was a proper designation, was at the centre of several important legal cases in the late 20th and early 21st centuries.

[53]That notwithstanding, ABNJ also includes not just legal but also economic, political and scientific concepts of the marine areas: those areas of the ocean for which no one nation has sole responsibility for management. They are the common oceans that make up 40% of the surface of our planet, comprising 64% of the surface of the oceans and nearly 95% of its volume. Thus, the ABNJ is not only concerned with maritime zones but also wider environmental, conservation and management issues of the marine ecosystems, the details of which are beyond the scope of this paper.

[54]These ecosystems are subject to impacts from all sectors and human activities – from shipping to marine pollution to fishing and mining. Dealing with these can be compounded by problems in coordinating, disseminating and building capacity for best practices and in capitalizing on successful experiences, especially those related to the management of fisheries in ABNJ. Without urgent action, the currently unsustainable

management of fisheries resources and biodiversity conservation in those areas difficult and challenging.[55] However, although still contained in the geographical scope definition of piracy these wider aspects of ABJN have no bearings either on piracy or this paper.

XII
THREE-DIMENSIONAL PIRACY

The remaining problem is the three dimensions of where piracy can be committed. We know states' rights extend to the seabed and the subsoil but can piracy also be committed underwater, on the seabed and the subsoil: i.e. Three-Dimensional Piracy! It may be questionable whether piracy can also be committed under water, on the seabed or under the seabed subsoil. There is nothing to suggest this is possible. Articles 101(a)(i) and (ii) specifically make references to the use of ships and aircrafts "on the high seas" and "in areas beyond national jurisdiction." These Articles are only

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management of many ABNJ fisheries, and the ineffective protection of related ecosystems, will have devastating results on marine biodiversity and on the socio-economic well-being and food security of the millions of people directly dependent on those fisheries.

[55]The Areas Beyond National Jurisdiction Program (ABNJ)—often referred to as Common Oceans—is a broad-scale, innovative approach to achieve efficient and sustainable management of fisheries resources and biodiversity conservation in marine areas that do not fall under the responsibility of any one country. To achieve this goal, the Program is comprised of four specific areas of work: Sustainable management of tuna fisheries & biodiversity Conservation; Sustainable fisheries management and biodiversity conservation of deep-sea living marine resources & Ecosystems; Ocean Partnerships for sustainable fisheries and biodiversity conservation; -Strengthening global capacity to effectively manage ABNJ.

> [18A] [Note within a quote] In point (iii), the Commission said "(iii) Save in the case provided for in article 40, piracy can be committed only by private ships and not by warships or other government ships."
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> [18B] [Note within a quote] There were two instruments here, the Nyon Arrangement and the Nyon Agreement, which supplement each other. They both arose from the Nyon Conference diplomatic conference held in Nyon, Switzerland in September 1937 to address attacks on international shipping in the Mediterranean Sea during the Spanish Civil War. The first agreement, signed on 14 September 1937, included plans to counterattack aggressive submarines. During the Spanish Civil War, nine Powers agreed to take collective measures to suppress attacks by submarines against merchant vessels. The Agreement refers in the preamble to the provisions of the London Treaty of 1930 and the procès-verbal of 1936 concerning submarine warfare. In the Supplementary Agreement of 17 September 1937, the same Powers made the principles of the first Agreement applicable to attacks by surface vessels and aircraft.

concerned with attacks and hijackings, i.e., piracy offences committed from and on the seawater surface, or from air by a ship or aircraft, but not a warship, submarine or any underwater vessels. However, it is possible that in the distant future rivalry for the deep seabed resources, an underwater vessel might attack and rob another of its harvest of the proceeds. Equally for now, at least, piracy cannot be committed on the seabed or sub-soil of any of the maritime zones or the deep seabed. So, the matter is speculative and hypothetical at the moment until there have been sufficient advances in underwater technology. The Commission was clear on this when noting that:

> (2) With regard to point (iii), [Note 18A] the Commission is aware that there are treaties, such as the Nyon Arrangement of 14 September 1937[18B], which brand the sinking of merchant ships by submarines, against the dictates of humanity, as piratical acts. But it is of the opinion that such treaties do not invalidate the principle that piracy can only be committed by private ships. In view of the immunity from interference by other ships which warships are entitled to claim, the seizure of such ships on suspicion of piracy might involve the gravest consequences. Hence the Commission feels that to assimilate unlawful acts committed by warships to acts of piracy would be prejudicial to the interests of the international community. The Commission was unable to share the view held by some of its members that the principle laid down in the Nyon Arrangement confirmed a new law in process of development. In particular, the questions arising in connexion with acts committed by warships in the service of rival Governments engaged in civil war are too complex to make it seem necessary for the safeguarding of order and security on the high seas that all States should have a general right, let alone an obligation, to repress as piracy acts perpetrated by the warships of the parties in question.

The issue is whether underwater vessels such as submarines can commit piracy and consequently, piracy can be committed underwater and by extension on the seabed and subsoil. From the Commission's indirect reference to the issue, it can, however, be safely assumed that piracy cannot be committed under the waters or the seabed or indeed the subsoils of the zones. At least during the drafting and negotiations of the Convention, apart from the existence of submarines, technology had not developed to enable the three-dimensional commission of piracy. Were under water

armed robbery and violence against submarines and other submersible vessels to become a reality due to further technological advances, UNCLOS may have to take another look. Thus, to conclude this; first, piracy can only be committed on the surface of the sea, on the high seas and in an ABJN. At least that makes it possible for commission by a ship or aircraft against another ship or aircraft. It follows therefore that piracy cannot be committed under the surface of the high seas water or waters of ABJN. At least ordinary ships or aircrafts cannot operate under water. Equally piracy cannot be committed on the seabed of the high seas and ABJN. This leaves room to create another offence where submarines and other underwater vessels attack underwater installations and vessels.

XIII
CONCLUDING REMARKS

In the era of customary maritime law and beyond, piracy was a general reference of maritime offences. Its commission was not limited to any geographical, let alone a maritime zone. Thus there was neither an international nor a unanimously agreed definition of the offence. Approaches to the problem of piracy were regional and the preserve of a few maritime nations who relied on the law of 'civilised' nations. The only common position was the treatment of piracy as a crime against humanity whose perpetrators were subject to the harshest treatment, most notably hangings in public places. However, with the creation of the League of Nations, the involvement of more nations and other global institutions such as the ILC and eventually the United Nations, that perception changed. The League of Nations, Harvard Research and ILC Draft Conventions played crucial roles in the internationalisation of the definition and understanding of piracy.

These culminated in the four Geneva Conventions. The sum total of the above developments was the drafting of an internationally agreed definition in Article 15 of the Geneva Convention on the High Seas and then Article 101of UNCLOS, the removal of piracy from dry land, inland, internal, territorial (including archipelagic) seas, and the contiguous zone. The result was piracy is now restricted to a few maritime zones. The other inference from these developments is that piracy is now more associated with zones with less sovereign jurisdiction and

economic rights. Thus, the farther from the coastline the more likely for a zone to become a pirate territory. Equally, the nearer the zone is to the territorial waters, the more likely it is to be an area for armed robbery against ships. Nevertheless, the SUA offences can be committed anywhere up to the EEZ and continental shelf.

Thus, although UNCLOS provides that piracy can only be committed in the high seas and areas in ABNJ, this is not an accurate reflection of current situations. That was the position in 1956 long before the concept of the contiguous zone, the EEZ and the continental shelf had crystallized as possible venues for piracy. The Convention probably made matters worse by suggesting that besides the high seas, piracy can also be committed in ABNJ, but without defining that area. This paper has demonstrated that by referring to piracy in the ABNJ, the ILC had in mind the status of uninhabited remote small islands, although in the same measure they did not wish to rule out larger uninhabited islands. The old concept that piracy could be committed in inland, internal and territorial waters has been superseded. That piracy can possibly be committed in inland, internal and territorial waters, including archipelagic waters, has been removed, first by the Geneva Convention on the High Seas which was rubberstamped by UNCLOS, both of which now restrict piracy to the high seas and ABNJ. Further, the introduction of SUA offences and the IMO's Guidelines on Piracy and Armed Robbery against Ships which declassifies acts outside the contiguous zone, continental shelf and high seas, has also removed acts from those zones which were once regarded as piracy related within the inland, internal and territorial sea.

That has, however, not solved the problems of the high seas on the one hand and the contiguous zone, continental shelf and the EEZ on the other. Accordingly, with conflicting guidelines regarding the beginning of the high seas, it would appear that the high seas could include part of the contiguous zone, continental shelf and the EEZ. However, by analysis and for the above reasons, piracy could also be committed in the contiguous zones the EEZ and the continental shelf as extensions of the high seas. This is partly because the reference to state's jurisdiction in those zones is inaccurate; it should be limited to only sovereign jurisdiction (economic rights). Part of the problem is that the Convention confuses sovereign (economic) rights with sovereign jurisdiction. Used loosely, coastal states of course have some sort of jurisdiction in the contiguous zone, EEZ and continental shelf. However, these

are different from full legal jurisdiction which States have in inland, internal, territorial and archipelagic waters. As it turns out, the coastal state has very limited national jurisdiction in these zones needed to determine the geographical scopes of piracy, leaving them open to piracy zones.

There is also the theoretical question of whether piracy can be three-dimensional. The Convention provides that piracy can only be committed on the sea surface by surface and air vessels, such as ships on the sea and aircrafts. This leaves no possibility of piracy being committed by underwater vessels such as submarines, etc. It also rules out commission of piracy on the seabed or under the ocean bed subsoil.

The only undisputed zones where piracy can be committed under the Convention is the high seas and the Area. Because they are different types of violent maritime offences, SUA offences (attack against ships, offshore installations and the use of nuclear, chemical and biological weapons) and Armed Robbery against Ships can also be committed in any of the maritime zones since both SUA and the IMO Guidelines on Armed Robbery against Ships do not exclude this possibility. It is probably for those doubts that the Conventions added references to the ABNJ to the high seas as zones where piracy can be committed. Although not its primary intention, hence the limited analysis on it, this paper has demonstrated that, despite its value as a leading instrument in this field, UNCLOS is not the definitive article it is put out to be. It still has gaps which need filling in. That is understandable. It could not have been expected that an international Convention of that magnitude which took 27 years to negotiate and involved so many State compromises could have taken care of every eventuality. Maybe it is time to invoke its Articles 312–314 on its amendments.

It is, therefore, open to amendments and already the proposed treaty on marine genetic rights (MGR) is showing the way out. This is being worked out by the *Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction* (BBNJ)[56] itself supplementing the *Convention*

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[56]Mandated by the General Assembly resolution 72/249; for details of the Intergovernmental Conference on an international legally binding instrument under the

on Biological Diversity.[57] The UNESCO *Convention on the Protection of the Underwater Cultural Heritage* 2011was the other convention that came in to plug the gap left by UNCLOS. Maybe a revisit of the areas where piracy can and cannot be committed might follow. This will however, need something more than the Somali piracy to necessitate the move. For now, it is one of (if not the best) codification of interñational law of any legal actors.

United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (General Assembly resolution 72/249), see, https://www.un.org/bbnj/content/meeting-coverage; https://www.un.org/bbnj/ (accessed on 02/9/2019).

[57]The Convention on Biological Diversity (CBD) 1992, is an international legally-binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; fair and equitable sharing of the benefits arising from the use of genetic resources.