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Suppressing Maritime Piracy: Exploring the Options in International Law

WORKSHOP REPORT

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Washington, DC
16 - 17 October 2009

A Workshop Report By:
Elizabeth Andersen
Benjamin Brockman-Hawe
Patricia Goff



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Preface

Suppressing Maritime Piracy: Exploring the Options in International Law captures the discussions and recommendations of a distinguished group of international law and governance professors, legal experts, and judges who met in Washington D.C. for a workshop convened through the efforts of One Earth Future Foundation, the Academic Council on the United Nations System, and the American Society of International Law.¹ The workshop examined the legal framework currently employed to suppress piracy and explored potential alternatives or augmentations to the existing structures.

More than anything else, the workshop revealed the immense complexity surrounding piracy. Two important aspects of the problem that emerged during the workshop are worth highlighting here:

First, although there is a general tendency today to associate piracy with the failed state of Somalia, only about 40% of piracy events actually occur around the Horn of Africa. Maritime piracy is a persistent global criminal activity, and solving the Somali problem does not solve piracy in the rest of the world. It is important to keep in mind, while considering the findings of this workshop, that the legal framework applies globally.

Second, piracy is a distinct crime in itself, but it often involves a complex nexus of other crimes, which are subject to different jurisdictional and legal rules than piracy. Pirate groups often commit, for example, assault, theft, kidnapping, torture, extortion, money laundering, and arms dealing — some of which may under certain circumstances constitute piracy while others may not. The legal responses to piracy should take into consideration this complexity.

The report indicates that while the legal framework for dealing with piracy is well established, there are practical difficulties in implementation and outstanding questions that require further research. Our organizations welcome the opportunity to engage with others to develop appropriate avenues for this research.

Finally, we would like to sincerely thank the participants in the workshop for generously sharing their time and expertise. We would also like to thank the many people who supported us. The workshop was conducted under 'Chatham House Rules,' and thus this report does not associate particular participants to particular points of view, and it does not reflect the views of every individual at the workshop on all subjects. We believe it does reflect the depth and importance of the discussion and are pleased to present it as a contribution to the understanding of a contemporary global issue.



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¹ See Appendix B for further descriptions of these three partners.

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Abbreviations

ACUNS	Academic Council on the United Nations System
ASIL	American Society of International Law
IMB	International Maritime Bureau
ICC	International Criminal Court
ICTR	International Criminal Tribunal – Rwanda
ICTY	International Criminal Tribunal – Yugoslavia
OEF	One Earth Future Foundation
SUA Convention	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

Piracy is one of the oldest international crimes. From the 6th century BCE Thracian pirates of the Mediterranean to the 13th century CE Japanese Woku, pirates have threatened the interests of seafaring nations wherever and whenever the oceans have been used for commercial purposes. Despite this extensive history, piracy had all but disappeared from the attention of the international community when pirates operating in the Straits of Malacca and off the coast of Somalia began receiving significant press coverage. In 2008, pirates hijacked the *Faina*, a Belize-flagged vessel transporting 33 T-72 tanks and ammunition to Kenya, and commandeered the *Sirius Star* supertanker, which was carrying more than \$100 million in oil to the United States. These events were a wakeup call to the international community. Within a very short time period, the United Nations passed

Worldwide pirate attacks in the first nine months of 2009 exceeded the total number of attacks reported in 2008.

four resolutions on piracy, the EU and NATO authorized the deployment of multilateral counter-piracy forces, and the United States, United Kingdom, Denmark, the Netherlands, France, Pakistan, India, Iran, and Russia were contributing their naval resources to international anti-piracy efforts.

Despite the unprecedented attention the issue of piracy received in 2008-2009 and the cooperative efforts of more than a dozen countries to curb this crime, according to the International Maritime Bureau's (IMB) Piracy Reporting Center's October 2009 report, worldwide pirate attacks in the first nine months of 2009 exceeded the total number of attacks reported in 2008, and by the third quarter reached the highest level since the IMB began tracking piracy incidents in 1992.²

These statistics are particularly telling in light of the fact that the real number of pirate attacks is undoubtedly greater. It is widely believed that as many as 50 percent of pirate attacks are not reported, due to shipowners' fears that doing so will increase insurance premiums and result in costly post-incident investigations. The IMB report also reveals that pirates have adapted to the counter-piracy operations of states by extending their reach and becoming increasingly violent. For example, whereas Somali pirates for years confined their activities to the Gulf of Aden and the East Coast of Somalia, since 2008 their operations

² Article 101 of the UNCLOS restricts piracy to acts that occur on the high seas (see *infra* Session II(A) p.6). An act which is otherwise equivalent to piracy but that occurs within the territorial waters of a state would be classified as an armed robbery at sea. The IMB's broader definition of piracy covers any "act of boarding or attempting to board any ship with intent to commit theft or any other crime and with the attempt to or capability to use force in the furtherance of that act," even if those acts occur while the vessel is in the territorial sea, archipelagic waters, or port of a state. Thus, the IMB data includes incidents that would be excluded under the international legal definition.

expanded to threaten ships in the Red Sea, the East Coast of Oman, and the Bab el Mandab Straits. The report also notes that the number of piracy incidents in which guns were used has risen 200 percent from 2008 levels.

In addition to the direct peril in which piracy places crew members, contemporary piracy poses a significant threat to states and industry. The yearly costs of global piracy are estimated in the billions, though uncertainty about the exact economic toll suggests that further research in this area is warranted. Hijackings at sea also may have significant geopolitical repercussions. As maritime security decreases around coastal states, the legitimacy of local governments is undermined. In a world where 60 percent of the world's crude oil moves by ship it is not unimaginable that a piratical act or the results thereof (a ship laden with oil but abandoned by pirates to drift in a congested sea lane) could lead to serious environmental damage. Nor are these threats confined to a particular geographic area. Although piratical attacks around the Horn of Africa and the Gulf of Aden accounted for approximately 40% of attacks in 2008, the territorial waters of, and the seas around Nigeria, Indonesia, India, Bangladesh, and Tanzania have also been host to a substantial number of pirate attacks. In sum, piracy today presents a serious global problem.

Development of the necessary tools to catch pirates has proceeded in the private, national, and international spheres. Shippers have redesigned their defense policies and upgraded their onboard deterrents, and states have collaborated to dispatch naval warships to those regions most affected by piracy. The UN has reinforced these efforts with resolutions obliging coastal States Parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) to accept SUA offenders for prosecution unless they can explain why the Convention does not apply. In addition, the applicable UN Security Council resolutions reaffirm the power of navies to pursue pirates, in the case of Somalia even expanding these powers by authorizing pursuit on land. Although these cooperative efforts resulted in the capture of hundreds of pirates over the last year, few of the captured pirates have gone through the full prosecutorial process and many have been released without prosecution, limiting the deterrent effect of anti-piracy efforts to date.

Piratical attacks around the Horn of Africa and the Gulf of Aden accounted for approximately 40% of attacks in 2008.... piracy today [is] a serious global problem.

There is an international legal framework under the United Nations Convention on the Law of the Sea (Law of the Sea Convention or UNCLOS) for the apprehension and prosecution of pirates and the SUA Convention provides for the transfer of captured SUA offenders ashore and mutual legal assistance between States Parties to the SUA Convention. In practice, however, efforts to bring pirates to justice in national courts have foundered due to many legal and practical chal-

allenges, including concerns regarding the security and impartiality of local judges; a lack of clarity with respect to the steps that capturing ships must take in order not to run afoul of their human rights obligations; difficulties in the process of preserving and transporting evidence; inadequate national laws relating to the crime; and reluctance on the part of countries to prosecute pirates for fear that they will be forced to grant them (and their families) asylum once their sentence has been served.

Efforts to bring pirates to justice in national courts have foundered.

To consider these problems and examine the possibilities for prosecuting pirates before various international and national courts, the Academic Council on the United Nations System, the American Society of International Law, and One Earth Future Foundation hosted a workshop on October 16-17, 2009. The workshop took place in Washington, DC, and hosted experts in the field of international criminal law, the Law of the Sea, international governance, naval security, and maritime piracy. Several key questions were addressed, among them:

- **Might the crime of piracy be added to the jurisdiction of the International Criminal Court (ICC)? If so, how might this be achieved?**
- **What are the advantages and disadvantages of using (third party) national governments to try apprehended pirates? How might universal jurisdiction work in practice with regard to the crime of piracy in the current era?**
- **What are the prospects for a special tribunal on piracy? How might this be established? By whom or under whose auspices? Through which processes?**

Each of these three sets of questions were addressed in separate workshop discussions, summarized in the following pages.

Session I: Piracy and the International Criminal Court

The session confirmed that expanding the ICC's jurisdiction to cover treaty crimes, including piratical acts, was theoretically possible and participants discussed possible legal frameworks for doing so. However, workshop participants identified many legal, practical, and political impediments to this approach and concluded that this was at best a long-term option should alternatives fail. Among other points, participants questioned the existence of political support among ICC States Parties and the capacity of the ICC to take on this crime; some doubted whether expanding ICC jurisdiction would deter pirates; and others argued that expanding the jurisdiction of the ICC would be incompatible with the mandate of the Office of the Prosecutor to prosecute the "most serious crimes of concern to the international community."

A. Bringing piracy within the remit of the ICC

The Rome Statute established the jurisdiction of the ICC to hear cases concerning the crime of genocide, crimes against humanity, war crimes and aggression. In early drafts of the Statute, however, the International Law Commission anticipated an ICC with jurisdiction over fourteen crimes identified in other treaties (the so-called 'treaty crimes'), including drug trafficking and crimes covered by the SUA Convention. These treaty crimes were included in early drafts of the Rome Statute in response to calls from Caribbean states to have a forum that could deal with these crimes, but were excluded from later drafts of the Statute based on concerns that annexing treaty crimes would (i) overwhelm and trivialize the Court, (ii) increase the number of threats to which the Court and witnesses would be exposed, (iii) require participating states to reveal information concerning intelligence gathering, (iv) result in a Court à la carte, and (v) raise too many complicated questions concerning the relationship between the Rome Statute and individual treaties (e.g. would a state have to ratify both the Statute and the treaty in order for treaty crimes to be covered?).

Ultimately the drafters of the Rome Statute left the treaty crimes out of the jurisdiction of the ICC. However, piracy crimes could today be brought within the jurisdiction of the ICC by amendment or protocol. It was suggested that it would be easier to proceed through protocol than amendment, since any amendment to the Rome Statute must be adopted by two-thirds and thereafter ratified by seven-eighths of the States Parties in order to come into effect. A protocol, on

the other hand, would come into effect only for those States that sign onto it and could even be agreed to by states that are not Parties to the Rome Statute.

It was also recommended that any Protocol to the Rome Statute intended to cover piracy should (i) establish a separate Chamber of the ICC solely responsible for presiding over piracy-related cases, (ii) create a comprehensive provision that defines piracy and recognizes the numerous crimes – such as hostage-taking, money laundering, or organized crime – it can encompass, and (iii) look beyond existing treaties and towards domestic laws in crafting an international definition of piracy and related offenses. Several participants noted that a Chamber developed through this process need not sit in The Hague or be referred to merely as a “piracy chamber” since it would take into account the organizational complexity associated with modern piracy.

Pirates were unlikely to be deterred unless the higher-level perpetrators or masterminds of piratical acts were prosecuted.

B. Discussion and analysis

1. Deterrent effect

Workshop participants speculated about the deterrent effect ICC jurisdiction might have on piracy. It was noted that the ICC is a young court that has not had much opportunity to demonstrate its potential for deterrence. Nevertheless, there is some evidence that the ICC does deter those who would perpetrate international crimes. It was noted that in three of the four situations under investigation by the ICC Office of the Prosecutor, States Parties have self-referred problems to the ICC, concluding that they are unable to prosecute those responsible in national fora, just as most states have been reluctant to shoulder the burden of prosecuting pirates. Perhaps similar self-referrals might occur in the case of piracy, increasing the overall number of prosecutions and thus, in theory, providing enhanced deterrence. It was also pointed out that pirates were unlikely to be deterred unless the higher-level perpetrators or masterminds of piratical acts were prosecuted and that an enforcement mechanism—such as the ICC—with jurisdiction and capacity to investigate and prosecute acts on land would be required to pursue these ‘big fish’.

Several factors that would reduce any deterrent effect of prosecutions before the Court were also identified. First, it was noted that the ICC has limited resources and would be able to pursue only a limited number of piracy cases, which in turn would have only a limited deterrent effect. The group debated the relative expense of prosecutions before an international tribunal and national courts and this was identified as a subject for further inquiry. Second, it was suggested that deterring piracy could only occur through its de-legitimation as an economic activity, a process to which the Court could not contribute. Third, the principle of

complementarity was identified as a factor limiting the Court's deterrent effect. Because the Court can only take a case if the State Party to the ICC is determined to be unwilling or unable to prosecute the alleged criminal activity domestically, there is the possibility that substantial effort could be devoted to bringing piracy within the remit of the Court only to have States prefer to prosecute domestically for the same reasons that treaty crimes were excluded from the Rome Statute in the first place.

2. The purpose of the Court

The ICC was established to try "the most serious crimes of international concern." Several participants felt that to expand the jurisdiction of the Court beyond the core crimes already embodied in the Rome Statute risked trivializing the Court. These participants pointed to a disconnect between the crimes of piracy and the Preamble to the Rome Statute, which frames the Court's existence as a response to commission of "grave crimes [that] threaten the peace, security and well-being of the world", as well as the relatively low costs to most states of an economic crime like piracy compared to the high cost to states of war crimes, crimes against humanity, and genocide. The point was also raised that the differences between core and treaty crimes posed challenges from a jurisprudential standpoint; for example, there may be statutes of limitations placed on or amnesties granted for treaty crimes, but not core crimes.

In response, some participants noted that crimes like piracy and drug trafficking are in fact costing some states a lot of money. It was also suggested that the benefits of contributing to an international community governed by law and order justify the high cost of pursuing justice through the ICC, even in light of the relatively low cost of piracy to most states. Finally, it was argued that creating a separate Chamber of the Court to handle piracy cases would help avoid the jurisprudential issues that had been identified.

Creating a separate Chamber of the Court to handle piracy cases would help avoid jurisprudential issues.

3. Building local capacity

The question of the relationship between international involvement in the prosecution of pirates and the development of local capacity repeatedly arose during the workshop. Some participants felt that states should or would only be interested in investing substantial resources in legal solutions that contributed to a culture of rule of law in the region where pirates are operating, and that prosecuting pirates before the ICC did not fulfill this prerequisite. In addition, some argued that victim states (flag states, states of crewmember victims, vessel owner states, cargo owner states, etc.) should also be encouraged to undertake prosecutions as they incur a heavy impact. Further, the SUA Convention's "prosecute or extradite" mechanism made such prosecutions logistically possible. However, other participants argued that ICC jurisdiction could spur investment in complementary capacity in local courts. A Special Chamber of the ICC could be located anywhere and have the same positive effect

on rule of law as the presence of the International Criminal Tribunal for Rwanda (ICTR) operating in Tanzania had on domestic Rwandan criminal courts. The subject of the relationship between international, regional, and national accountability processes was identified as worthy of further consideration, particularly in relationship to the piracy problem.

4. Other issues

Sentencing and asylum: If pirates are found guilty by the ICC they will likely receive substantially shorter sentences than those doled out to individuals found guilty of the crimes already included in the Rome Statute. Concern was expressed that this circumstance would lead to a dearth of states willing to incarcerate convicted pirates, since upon their release pirates could attempt to bring political asylum claims on behalf of themselves and their families before the government of the incarcerating state. It was suggested that prosecutions of pirates locally through domestic courts in the region affected by piracy could avoid this problem.

Victim states (flag states, states of crewmember victims, vessel owner states, cargo owner states, etc.) should also be encouraged to undertake prosecutions.... A Special Chamber of the ICC could be located anywhere.

The 2010 Review Conference: In May 2010, the ICC will have its first review conference. There was general consensus that the incorporation of treaty crimes into the ICC framework would not be on the agenda for that meeting and that States Parties were not interested in reopening debates regarding this issue.

C. Further inquiry

The group identified the following questions for further inquiry:

- **How do regional and international justice solutions complement one another? Would pursuit of a regional and international solution simultaneously be beneficial?**
- **What is the actual estimated cost of pursuing justice through the ICC? How does this compare to other prosecutorial fora?**

Session II: Piracy, Universal Jurisdiction, and the Law of the Sea: Prospects and Possibilities

This session confirmed the existence of universal jurisdiction for piracy on the high seas and illuminated our ability to make use of this legal instrument. It was argued that the principle of universal jurisdiction does not solve the lack of capacity or willingness to prosecute in states authorized to prosecute, nor cover the full range of actual maritime crimes of concern.

A. The operation of universal jurisdiction

Participants agreed that universal jurisdiction exists for piracy, grounded in international customary law and the Law of the Sea Convention. As such, any state is authorized to prosecute the crime of maritime piracy. However, it is important to emphasize that the straightforward application of universal jurisdiction pertains only to the crime of piracy, defined in its strictest sense in Article 101 of UNCLOS, as:

“(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).”

There is a tendency outside of legal circles to use the term piracy to refer to a range of crimes committed against or on seafaring vessels or on the water. Not all of these count as piracy by the strict legal definition, nor would all be subject to universal jurisdiction since these other crimes often fall within the jurisdiction of a territorial sovereign.

There was disagreement as to whether the principle of universal jurisdiction in international law obligates or allows states to prosecute pirates. UNCLOS provides some guidance on this issue. Article 100 of UNCLOS indicates that “all

states shall cooperate to the fullest possible extent in the repression of piracy on the high seas.”³ Article 105 says that the state carrying out the seizure “may” try the apprehended pirates, though the right to try does not rest exclusively with the seizing state in UNCLOS since univer-

sal jurisdiction gives jurisdiction to all states. Thus, the ship’s flag state or the government of which the pirate is a national could also try him/her. Some commentators read these and other provisions as creating a duty for states, which many are neglecting. Kenya, by this interpretation, would be seen as fulfilling its affirmative duty by prosecuting pirates on its soil. Other commentators reject this interpretation, arguing that the concept of universal jurisdiction permits, but does not require, states to prosecute maritime pirates.

Willingness on the part of the United States or Europe to participate in prosecutions may provide an incentive to other states to carry out prosecutions.

B. Discussion and analysis

1. Jurisdictional gaps of universal jurisdiction

Universal jurisdiction does not apply when crimes are committed in territorial waters, nor does it allow authorities to pursue pirates to their sanctuaries inside territorial limits or on land. Notwithstanding this limitation, UN Security Council Resolution 1851 purports to permit states to venture into Somali territory to capture pirates. Outside of Somalia, there may be strategies for creating a nexus, such as stationing shipriders on vessels who are nationals of states that are willing to prosecute. However, in most cases, governments must be willing to help. Many participants noted that, even where the UN resolution prevails, there is reluctance to impinge on Somali sovereignty for political and practical reasons, especially ashore. Universal jurisdiction is most effective when it exists in tandem with strong and willing states. Where governance is weak, pirates can take refuge to a land base inside sovereign territory.

2. Reluctance to prosecute

Discussion during this session focused on the practical, political, and economic disincentives to prosecute pirates. Commentators identified the following disincentives: overseeing prosecutions is costly and logistically challenging; local communities may benefit from pirate activity, making them hesitant to oppose their actions; prosecuting states may be unable or unwilling to imprison convicted pirates or to face their asylum claims upon release; governments may worry about the optics of prosecution (for example, Kenyans concerned about prosecuting fellow Africans for crimes committed against non-Africans).

³ The commentary of the International Law Commission with respect to this provision reads as follows: “any State having an opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law. Obviously, the State must be allowed a certain latitude as to the measures it should take to this end in any individual case.”

The point was made that the high costs of prosecution are exacerbated by the reality that the majority of those prosecuted are the so-called “foot soldiers” from the skiffs as opposed to the “kingpins” overseeing a pirate network. Indeed, a willingness on the part of the United States or Europe to participate in prosecutions, perhaps where “kingpins” are concerned, may provide an incentive to other states to carry out prosecutions.

3. Capacity to try pirates

The principle of universal jurisdiction calls for domestic prosecution of apprehended pirates. However, several participants noted that not every country has the capacity to do so while guaranteeing the rights of the accused, and in the process of such prosecutions countries risk running afoul of international standards of fairness, due process, and human rights. Additionally, there are no uniform procedural standards across the national contexts where prosecution might occur and domestic legal systems may lack the necessary legislation to prosecute fairly and effectively. Finally, because not all countries would mete out the same punishment for the crime of piracy, domestic prosecution of piracy could raise issues of legitimacy and accountability. It was suggested by some that both the development of model legislation and reliance on international courts would help domestic legal systems reform their substantive law and prosecute in a manner consistent with international law.

4. Other Issues

The nexus between rule-of-law, the economy, and piracy: There was a general recognition that piracy off the coast of Somalia represents a unique case. The long-term solution requires rebuilding the collapsed Somali governance infrastructure. In the intervening period, building the domestic rule-of-law capacity of other governments in the region willing to prosecute pirates seems wise. Such an approach would help to bring regional domestic legal systems up to international standards. Doing so might have a stabilizing effect in the region. Financing such capacity building may also provide an incentive to states to participate where otherwise they would not.

Even outside of the Gulf of Aden, some participants insisted on the link between piracy and economic disadvantage. Although effective maritime enforcers might be better equipped to fight piracy, the ultimate solution must be one that deals with the political system ashore, i.e. a nation building solution.

Though many were persuaded by the argument in favor of capacity building and, perhaps, nation building, others harbored deep concerns about the international community’s ability to carry out such a strategy. Nearly two decades of unsuccessful international efforts directed at Somalia highlight the significant uncertainty and cost of such capacity building. Moreover, recent international events suggest that there are significant, potentially negative consequences to the imposition of law and institutions from without and some cautioned against it in this case.

A variety of actors: In general, the discussion underscored that finding a solution to maritime piracy requires acknowledgement of the range of actors and interests implicated. For example, both public and private sector actors have a stake in defeating piracy. However, their motivations are not identical. While private sector actors have a more limited interest in seeking to offset or prevent the high costs in terms of loss of life and loss of property, governments must also consider the threat to the social order posed by maritime piracy. This should provide an incentive (and perhaps an imperative) for states to take the lead in devising a solution to maritime piracy.

In addition to public and private sector actors, some participants noted that people from the developed and developing world experience piracy differently and to differing extents. This should be borne in mind in considering options for suppressing piracy.

An opportunity for engagement: The point was made that piracy may provide a political opening to dialogue with governments that otherwise might see developed country or US overtures on security and military issues as adversarial.

DISINCENTIVES TO PROSECUTE PIRATES

- Overseeing prosecutions is costly and logistically challenging
- Local communities may benefit from pirate activity, making them hesitant to oppose their actions
- Prosecuting states may be unable or unwilling to imprison convicted pirates or to face pirates' asylum claims upon release
- Governments may worry about the optics of prosecution (i.e., Kenyans concerned about prosecuting fellow Africans for crimes committed against non-Africans).

Problems not solved by universal jurisdiction: Participants were careful to note that the exercise of universal jurisdiction alone will not prevent the commission of an act of piracy or facilitate the apprehension of suspected pirates. Prosecutions undertaken under the authority of universal jurisdiction will only deter potential pirates if states are concurrently willing to commit to deploying a sufficient number of naval forces to combat pirates and shippers are more willing to report acts of piracy affecting their vessels.

C. Further Inquiry

The group identified the following questions for further inquiry:

- **Conduct a needs assessment for specific countries that have shown a willingness to prosecute pirates to determine what they require to bring their prosecutorial and judicial processes to international legal and human rights standards. Ongoing trials in Kenya should be monitored and assessed to determine the need for capacity building and to evaluate the long term viability of this option;**
- **Ascertain which international organizations have developed model laws/best practices for domestic prosecution of piracy and assess the challenges of diffusing these to states willing to conduct prosecutions;**
- **Conduct a survey of asylum laws in Europe, the United States, and select other countries to determine whether convicted pirates must or can remain in the country where they have been imprisoned upon release; and**
- **Determine how states can modernize their domestic piracy and maritime criminal legislation to be consistent with UNCLOS and SUA and to provide all available bases for asserting jurisdiction over piracy and maritime criminal acts.**

Session III: An *Ad Hoc* International Tribunal for Piracy

This session confirmed that it would be technically possible to create an *ad hoc* tribunal with jurisdiction over piracy crimes through consent or the Security Council's Chapter 7 powers. Several participants noted the lack of political will for creating an *ad hoc* tribunal and questioned the necessity of an *ad hoc* tribunal in light of the perceived "comprehensive" international legal regime that already prohibits piratical acts and provides for the possibility of suppression through national prosecutions. A major factor weighing against an *ad hoc* piracy tribunal is the expense, perceived to be significantly more than the alternative of building national capacity to prosecute pirates in the affected region.

A. The creation of an *ad hoc* piracy tribunal

Ad hoc tribunals have been created through both mandatory or consent based mechanisms. The classic mandatory mechanism is the UN Security Council, which relied on Chapter 7 of the UN Charter to create the International Criminal Tribunal for the Former Yugoslavia (ICTY) and ICTR. An *ad hoc* tribunal established through this mechanism benefits from the imprimatur of the Security Council and imposes on all states a duty to cooperate. However, the Security Council cannot act pursuant to Article 7 absent a threat to peace and security, and an *ad hoc* tribunal can not be established until this threshold is crossed. Thus far there has been little Security Council support for the position that piracy constitutes such a threat. Security Council Resolutions 1816 and 1838 do not say that piracy is a threat to peace and security but more generally indicate "that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat against international peace and security in the region." Although there is some indication that the Chinese would support a resolution acknowledging that piracy is a threat to international peace and security, no other state has publicly adopted this position.

More recently states have switched to consent-based models for the creation of *ad hoc* tribunals. These models exist along a spectrum of internationality, often referred to as "hybrid" courts because they combine elements of both domestic, national courts and international tribunals. The first model is that of a tribunal established by treaty between the UN and a target state, like the Special Court for Sierra Leone. Although this model could probably not be applied to Somalia

since that state has no functioning government, it could be applied to the establishment of a piracy tribunal in Kenya or other neighboring state. A second consent-based model for a piracy court would be the UN administrative body model, such as that adopted in East Timor or Kosovo, whereby the UN exercises sovereign authority, including legislative functions. It is doubtful, however, that the UN would be interested in taking this responsibility upon itself and establishing a court in Somalia through administration and management of the state. A third model is that of the Palace of Justice trials held in Nuremberg, which were imposed on Germany but occurred based on the consent of the allied powers. Thus we might conceive of a piracy tribunal imposed on a weak state like Somalia with the consent of states in the global community.

It would be technically possible to create an ad hoc tribunal with jurisdiction over piracy crimes through consent of the Security Council.

Consent-based models allow for potential host states to negotiate for benefits in exchange for their agreement to support a special tribunal, a factor that may result in more state buy-in than a tribunal established through Chapter 7. Further, although consent-based international courts do not benefit from the Security Council requirement that states cooperate with international courts, the establishment and functioning of the consent-based tribunals mentioned above indicates that states will voluntarily cooperate with international tribunals to deal with international crimes when it is in their interest to do so.

B. Discussion and analysis

1. Political will

The international *ad hoc* tribunals constituted in the past have been criticized for costing more than anticipated, permitting trials to advance at a slow pace and operating as a fig leaf to conceal international apathy. According to many workshop participants, these perceptions of the *ad hoc* tribunal system contribute to a lack of political will to pursue an *ad hoc* piracy tribunal. Other participants, however, noted that while the creation of previous *ad hoc* courts in some cases was (arguably) a cynical gesture made to conceal an absence of political will, in fact *ad hoc* tribunals tend to take on a life of their own and have contributed substantially to international justice. Moreover, there is no reason to assume that trials before an *ad hoc* piracy tribunal would occur at the same pace as those before, for example, the ICTY or ICTR. The law governing piratical acts is not as complex as that governing genocide or crimes against humanity, and procedural rules could be developed to speed the trial process. With respect to costs, it was observed that it had yet to be empirically demonstrated that empowering multiple states to prosecute piracy cases would be cheaper than establishing a single international piracy tribunal.

There is a lack of political will to craft purely domestic solutions to the problem of prosecuting pirates.... An ad hoc tribunal could fill this void.

Several participants pointed out that the ICTY and ICTR were not perceived by governments as having succeeded in reaching their goals. These participants argued that for this reason alone states would rather assist with foreign prosecutions in national courts than fund another *ad hoc* international tribunal.

2. The purpose of an *ad hoc* tribunal

Several participants were of the opinion that an *ad hoc* piracy tribunal was redundant in light of the SUA Convention, which covers most piratical acts, fills any gaps left by UNCLOS and allows perpetrators to be extradited for trial in other SUA countries if a capturing state is unwilling to prosecute. Others pointed out that some states are not using these existing treaties to prosecute pirates and that many states have not revised their domestic anti-piracy laws to reflect the norms embodied in SUA and UNCLOS. This situation demonstrates a lack of political will to craft a purely domestic solution to the problem of prosecuting pirates. It was suggested that an *ad hoc* tribunal could fill this void by encouraging states to adopt anti-piracy measures they would not otherwise adopt. Additionally, the point was made that the statute governing an *ad hoc* tribunal could fill a legal void by defining crimes in such a manner that prosecutors could bring multiple charges against an accused.

It was generally acknowledged that the presence of an *ad hoc* tribunal in a host state would have a positive effect on the rule of law in that state. However, several participants noted that, with respect to piracy off the Somali Coast, establishing a court in Somalia posed too great a security threat and implicated too many sensitive political issues for Western countries to entertain the idea. More generally, the point was made that many countries would prefer prosecuting pirates through their own courts over accepting foreign involvement.

One participant noted that the *ad hoc* tribunal solution had thus far only been deployed when there was a perceived need to elevate a judicial process above local politics, and protect defendants from domestic biases. In the case of piracy, however, it is doubtful that there was sufficient cause for concern that pirates would not receive a fair trial in a domestic jurisdiction to justify the establishment of an *ad hoc* tribunal on these grounds.

The point was also raised that an international *ad hoc* institution would likely achieve only minimal success in prosecuting the 'big fish' involved in piracy. One participant felt that prosecutors at *ad hoc* international institutions lack incentives to make deals with accused individuals to testify against the 'big fish' (even when deals are 'reasonable' by the standards of domestic prosecutions) and, as a result, are less likely than national prosecutors to pursue those deriving the

most profit from practical acts. Moreover, several participants expressed a view that *ad hoc* tribunals are often overwhelmed with cases involving ‘foot soldiers’ and have little incentive to move quickly through their case docket. If an *ad hoc* piracy tribunal manifested these same tendencies, it is doubtful that it would deter the ‘big fish’ from continuing to pursue maritime crimes.

3. Other issues

Investment of time: Several participants expressed concern at the substantial length of time it would take to establish an *ad hoc* piracy tribunal. The point was made that an *ad hoc* tribunal could be pursued in conjunction with other domestically-oriented strategies and that negotiations for a tribunal be completed in the medium- to long-term.

Problems left unsolved: Several participants noted that the creation of an *ad hoc* tribunal does not solve many of the problems faced by states in their attempts to capture and deter pirates. First, the existence of an *ad hoc* tribunal does not increase the probability of capturing the ‘ringleaders’ of pirate gangs. Second, an international tribunal does not solve any of the evidentiary issues faced by prosecutors and states (e.g. the fact that crew members and navy personnel must be taken off duty in order to testify at trials or the high cost of preserving and transporting evidence to the prosecutorial venue). Third, the creation of an *ad hoc* tribunal carries with it some of the same problems faced by states that have already indicated their willingness to prosecute pirates (e.g. host states face an increased risk of retribution by pirates and may have to deal with asylum requests by acquitted or released defendants). Finally, an *ad hoc* solution does not solve problems associated with capturing pirates, who cannot be militarily engaged until they commit a piratical act, by which time it is too late to detain and deter.

C. Further Inquiry

The group identified the following questions for further inquiry:

- **Is the problem of piracy easier to solve in some locations than others? If so, should we be directing our efforts towards confronting the problem in one of the ‘easier’ locations first and then applying those lessons to later efforts?**
- **Can it be demonstrated, empirically, that empowering multiple states to prosecute piracy cases is cheaper than establishing a single international piracy tribunal?**

Session IV: Conclusions and Recommendations

Workshop participants noted that identifying a forum for prosecution of pirates is an important part of any conversation about piracy suppression. Nonetheless, participants reiterated that this is only one aspect of the problem of modern piracy. Issues ranging from port security, to on board security for shippers, to the need to address the problems associated with Somalia's status as a failed state are also relevant and pressing.

A. Towards a new prosecutorial strategy

Although the unprecedented anti-piracy naval operations undertaken by the international community have thwarted several hijacking and kidnapping attempts on the high seas, their utility is limited by the lack of political will and capacity for prosecuting pirates. Regional, domestic, or international courts could address these problems in different ways and with varying degrees of success. Whichever strategy or combination of strategies involving courts is eventually pursued, consensus emerged that it should take account of the following:

First, any solution must reflect the reality that piracy is a global, not a local, problem. Pirate attacks occur in areas as far apart as the South China Sea and the coast of Namibia. Moreover, just as states may cooperate to thwart pirate attacks, pirates may cooperate by trading information and pooling resources to reduce the effectiveness of counter-piracy operations.

Second, there are two tiers of actors executing piratical acts – the perpetrators on the ground and the ring-leaders. While pursuit of each may require a different legal or military strategy, any prosecutorial rules or fora developed to try pirates should take into account the importance of holding the 'big fish' accountable.

Third, no solution to piracy can ignore human rights concerns. Ensuring that the trials of accused pirates are procedurally fair; articulating a framework for the capture and detention of pirates that is consistent with human rights law;

The utility of naval operations is limited by the lack of political will and capacity for prosecuting pirates.

and balancing the need to prosecute against the risk of asylum claims once an accused has served his/her sentence must be priorities of any prosecutorial strategy, whether that strategy is developed or implemented at a national, regional, or international level.

Fourth, a long-term solution to piracy would seem to require capacity building at the domestic level. Piracy is an extension of land-based violence, itself rooted in weak state institutions, poverty, domestic lawlessness, and corruption. A critical part of developing a strategy for prosecuting pirates should therefore take into account a commitment to supporting local institutions (including courts), promoting a culture of rule of law, and adding value to local economies.

Finally, the issues of cost, capacity, and a lack of political will have conspired to lead many states to regularly decline to accept captured pirates for prosecution in their domestic courts. Since increasing the number of pirates prosecuted is a key part of anti-piracy efforts, a future prosecution strategy should include:

Any solution must reflect the reality that piracy is a global problem and no solution can ignore human rights concerns.

- (1) providing support to those states that have already demonstrated a willingness to prosecute pirates,
- (2) addressing the concerns of states that have evinced an unwillingness to prosecute by working with them to reform national laws to make prosecutions more convenient and less risky, and
- (3) continued consideration of the role a regional or international court could play in anti-piracy efforts should domestic prosecutions prove inadequate to suppress piracy.

B. Specific issues with respect to domestic, regional and international prosecutions

Some questions raised by the workshop participants arose regardless of which prosecutorial fora was under consideration. These questions included: would perpetrators of piratical acts be treated differently from ring-leaders? If so, how? How could the shipping industry be encouraged to support this solution? How can efficiency and legitimacy of outcomes be assured? How can capacity building be undertaken and financed?

Other questions are particular to the institution concerned. With respect to regional or hybrid courts one must ask how legitimate efficiency and cost concerns of governments can be addressed. Where would such a court(s) be located to maximize deterrence while ensuring the safety of the court staff, victims and witnesses, and the host state? Concerning the option of adding a Protocol to the ICC to cover prosecution, one must question whether the prosecution of pirates at the world's only potentially universal international criminal court trivializes

efforts to prosecute its core crimes against humanity. One must wonder, too, at the political practicality of this solution in the context of the current ICC review process. Finally, domestic prosecutions raise the question of how the implementation of international law can be standardized across domestic contexts to promote efficiency and fairness.

C. Moving forward in the near-term

1. Engagement with relevant states

Workshop participants noted that experience from other regions may be informative for current challenges off the Horn of Africa. For example, piracy has been reduced in the Straits of Malacca in recent years. Cooperation among regional powers (Malaysia, Singapore, and Indonesia in particular) seems to have been effective. It may be the case that the approach of these states can be replicated in other regional contexts.

Participants discussed the possibility of involving countries suffering direct harm from maritime piracy in the development and implementation of a solution. Four flag states – Panama, Marshall Islands, Bahamas, and Liberia – account for a significant number of commercial vessels. At the moment, these governments are not fully engaged in all aspects of piracy suppression. Yet if they made a concerted effort, it might be effective.

2. Other ideas

Over the course of all three sessions, several ideas were developed that would strengthen the capacity of the international community to capture and the ability of shippers to deter or outrun pirates. One idea was to pursue the creation of ‘exclusion zones’ covering areas prone to pirate attacks. An exclusion zone was conceived of as a predetermined area of the ocean wherein the presence or lack of certain equipment, excessive power, or large amounts of fuel on a detained vessel would give rise to a presumption that it is a pirate vessel. These presumptions could operate as *de facto* evidentiary standards to be relied upon by prosecutors to show intent. A variety of measures implicating the behavior of shippers were also proposed. Changing domestic regulations to allow the shipping industry to have access to the latest in deterrent technology, e.g., night-vision goggles, or allowing shippers to store weapons in lockers in ports where firearms are not permitted on ship (currently vessels may be forced to throw weapons overboard before entering port) would allow shippers to take greater responsibility for defending themselves within legal parameters.

Idea: Create ‘exclusion zones’—predetermined areas of the ocean wherein the presence or lack of certain equipment, excessive power, or large amounts of fuel on a detained vessel would give rise to a presumption that it is a pirate vessel. These presumptions could operate as de facto evidentiary standards to be relied upon by prosecutors to show intent.

There was also broad support for developing model laws and best practices geared toward domestic governments willing to prosecute piracy on their soil. These included encouraging the various domestic contexts where prosecution of pirates may take place to adopt standardized procedures and standards for investigation and evidence-gathering, and undertaking a needs assessment in order to determine the extent of capacity building required to bring domestic legal procedures and practices up to international standards.

D. General issues for further inquiry

As in the prior three sessions, the group identified several questions for further inquiry:

- **How to situate the case of Somalia in the broader analysis of contemporary maritime piracy?**
- **How to reconcile requirements that any solution to piracy be legitimate on the one hand, and efficient and effective on the other?**
- **How to involve private-sector actors, especially from the shipping industry, who often perceive some solutions to piracy to be disruptive to their business and costly without delivering appreciable results?**

Appendix A

Issues for further inquiry

- How do regional and international justice solutions complement one another? Would pursuit of a regional and international solution simultaneously be beneficial?
- What is the actual estimated cost of pursuing justice through the ICC? How does this compare to other prosecutorial fora?
- Conduct a needs assessment for specific countries that have shown a willingness to prosecute pirates to determine what they require to bring their prosecutorial and judicial processes to international legal and human rights standards. Ongoing trials in Kenya should be monitored and assessed to determine the need for capacity building and to evaluate the long term viability of this option;
- Ascertain which international organizations have developed model laws/best practices for domestic prosecution of piracy and assess the challenges of diffusing these to states willing to conduct prosecutions;
- Conduct a survey of asylum laws in Europe, the United States, and select other countries to determine whether convicted pirates must or can remain in the country where they have been imprisoned upon release;
- Determine how states can modernize their domestic piracy and maritime criminal legislation to be consistent with UNCLOS and SUA and to provide all available bases for asserting jurisdiction over piracy and maritime criminal acts;
- Is the problem of piracy easier to solve in some locations than others? If so, should we be directing our efforts towards confronting the problem in one of the 'easier' locations first and then applying those lessons to later efforts?

- **Can it be demonstrated empirically that empowering multiple states to prosecute piracy cases is cheaper than establishing a single international piracy tribunal?**
- **How to situate the case of Somalia in the broader analysis of contemporary maritime piracy?**
- **How to reconcile requirements that any solution to piracy be legitimate on the one hand, and efficient and effective on the other?**
- **How to involve private-sector actors, especially from the shipping industry, who often perceive some solutions to piracy to be disruptive to their business and costly without delivering appreciable results?**

Appendix B

The partner organizations

Academic Council on the United Nations System (ACUNS)

ACUNS is a professional association of educational and research institutions and individual scholars, teachers, and practitioners active in the work and study of multilateral relations, global governance, and international cooperation.



Through our core activities ACUNS stimulates, supports, and disseminates research and analysis on the United Nations, multilateralism, and international organization. ACUNS also promotes teaching on these topics, as well as dialogue and mutual understanding across and between the academic and practitioner communities. A special effort is made to ensure that advanced research conducted in universities finds its way into the programs of the UN system. ACUNS has Category I Consultative Status with the United Nations Economic and Social Council and has NGO Affiliate status with the UN Department of Public Information. ACUNS was founded at Dartmouth College in 1987. It was later hosted by Brown University and Yale University. In 2003, ACUNS moved to Wilfrid Laurier University, where it will reside through 2013.

American Society for International Law (ASIL)

ASIL is a nonprofit, nonpartisan, educational membership organization founded in 1906 and chartered by Congress in 1950. ASIL holds Category II Consultative Status to the Economic and Social Council of the United Nations and is a constituent society of the American Council of Learned Societies. The Society is headquartered at Tillar House in Washington, D.C. ASIL's mission is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice.



The Society's 4,000 members from nearly 100 nations include attorneys, academics, corporate counsel, judges, representatives of governments and nongovernmental organizations, international civil servants, students and others interested in international law. Through our meetings, publications, information services and outreach programs, ASIL advances international law scholarship and education for international law professionals as well as for broader policy-making audiences and the public.

One Earth Future Foundation (OEF)

OEF is a nonprofit, nongovernmental organization founded in 2007 by a business entrepreneur. We began operations in 2008 with a vision of using new and effective systems of global governance to achieve a world beyond war in one hundred years.



We believe that the current system of global governance, which predominantly relies upon nation-states as the primary legitimate actors in international relations, no longer effectively addresses global problems. We encourage new architectures of global governance that include business societies and civil societies alongside national governments in decision-making processes. OEF believes that these inclusive structures will be more effective and efficient at solving complex global issues in a peaceful manner.

OEF has both a think tank, which produces research papers, case studies, and informational databases, and a do-tank, which runs multi-stakeholder action projects. We also have a particular focus on bringing business to the global governance table.

Appendix C

WORKSHOP AGENDA Suppressing Maritime Piracy: Exploring the Options in International Law

Expert Workshop, October 16-17, 2009

FRIDAY, OCTOBER 16TH, 2009

Venue: Tillar House
6:00pm Opening Reception
7:00pm Dinner
Presentation by One Earth Future Foundation
Discussion: **“Maritime Piracy: Problems and Solutions”**

SATURDAY, OCTOBER 17TH, 2009

Venue: Tillar House

9:00am – 10:30am Roundtable 1
**Piracy and the International Criminal Court:
Prospects and Possibilities**
Leila Sadat, Washington University
Benjamin Schiff, Oberlin College

11:00am – 12:30pm Roundtable 2
**Piracy, Universal Jurisdiction, and the Law of the
Sea: Prospects and Possibilities**
Bernard Oxman, University of Miami
David Glazier, Loyola Law School, Los Angeles

12:30pm – 2:30pm Lunch

2:30pm – 4:00pm Roundtable 3
A Special Tribunal for Piracy: Prospects and Possibilities
Beth Van Schaack, Santa Clara University
Eugene Kontorovich, Northwestern University

4:15pm – 5:45pm Roundtable 4
The Legal Challenge of 21st Century Piracy

6:00pm Closing Reception

Appendix D

Participant bios

ELIZABETH (BETSY) ANDERSEN

Executive Director and Executive Vice President of the American Society of International Law (www.asil.org), the United States' premier institution for advancing the study and use of international law. ASIL was founded in 1906 by Elihu Root, who served as both Secretary of War and Secretary of State for President Theodore Roosevelt. Ms. Andersen became Executive Director of ASIL in October 2006.

Prior to joining ASIL, Ms. Andersen served as Executive Director of the American Bar Association's Central European and Eurasian Law Initiative (ABA CEELI) and as Executive Director of Human Rights Watch's Europe and Central Asia Division. Before joining Human Rights Watch, she served as Legal Assistant to Judge Georges Abi-Saab of the International Criminal Tribunal for the former Yugoslavia and as a law clerk to Judge Kimba M. Wood of the U.S. District Court of the Southern District of New York. Ms. Andersen is a graduate of Yale Law School, the Woodrow Wilson School of Public and International Affairs at Princeton University, and Williams College. Her area of expertise is international humanitarian, human rights, and refugee law.

JOHN BELLINGER III

A partner in the international and national security practices in Arnold & Porter, LLP, in Washington, DC. He is also an Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations. Mr. Bellinger served as Legal Adviser to Secretary of State Condoleezza Rice from April 2005 to January 2009, having previously managed her Senate confirmation and co-directed her State Department transition team. As Legal Adviser, he directed a staff of 170 lawyers who advise the Secretary of State, U.S. Ambassadors, and the State Department on U.S. and international law applicable to U.S. foreign policy.

Mr. Bellinger negotiated a number of treaties and international agreements, including the Third Additional Protocol to the Geneva Conventions; represented the United States before the international Court of Justice in the Medellin case and Iran-U.S. Claims Tribunal; and promoted an active dialogue with U.S. allies and international organizations on human rights and international humanitarian law issues. Mr. Bellinger received the Secretary of State's Distinguished Service Award for his efforts to promote international law. Prior to his appointment as

Legal Adviser, Mr. Bellinger served from February 2001 to January 2005 as Senior Associate Counsel to the President and Legal Adviser to the National Security Council at the White House. He previously served as Counsel for National Security Matters in the Criminal Division of the Justice Department during the Clinton Administration (1997-2001), as Special Counsel to the Senate Select Committee on Intelligence (1996), and as Special Assistant to Director of Central Intelligence William Webster (1988-1991). Mr. Bellinger received his A.B. from Princeton University's Woodrow Wilson School of Public and International Affairs in 1982, his J.D. from Harvard Law School in 1986, and an M.A. in Foreign Affairs from the University of Virginia in 1991.

DAVID GLAZIER

Professor of Law at Loyola Law School in Los Angeles. Previous to joining Loyola Law School, Professor Glazier was a lecturer at the University of Virginia School of Law and a research fellow at the Center for National Security Law, where he conducted research on national security, military justice and the law of war. He also served as a pro bono consultant to Human Rights First. Before attending law school, Glazier served twenty-one years as a US Navy surface warfare officer. In that capacity, he commanded the USS George Philip, served as the Seventh Fleet staff officer responsible for the US Navy-Japan relationship, the Pacific Fleet officer responsible for the US Navy-PRC relationship, and participated in UN sanctions enforcement against Yugoslavia and Haiti. Glazier has a JD from the University of Virginia School of Law where he served on the editorial boards of the Virginia Law Review and the Virginia Journal of International Law. He won the Best Note Award for 2003-04 and the 2003 Raven Society Scholarship, founded Virginia Law Veterans and co-founded Virginia Law Families, and was made a member of the Order of the Coif. Glazier also earned an MA from Georgetown University in government/national security studies and holds a BA in history from Amherst College. He was admitted to the Virginia bar in 2004.

PATRICIA GOFF

Executive Director of the Academic Council on the United Nations System. Dr. Goff is Associate Professor of Political Science at Wilfrid Laurier University and a Senior Fellow at the Centre for International Governance Innovation, both in Waterloo, Ontario, Canada. She specializes in International Political Economy and International Relations Theory. Dr. Goff holds an Honours B.A. in French and Political Science from the University of Western Ontario; an M.A. in French Literature from McMaster University; a Diplôme d'études approfondies in Comparative Politics from the University of Paris; and a PhD in Political Science from Northwestern University. She is co-editor with Kevin C. Dunn of *Identity and Global Politics* (Palgrave Macmillan Press, 2004) and co-editor with Paul Heinbecker of *Irrelevant or Indispensable: the United Nations in the 21st Century* (Wilfrid Laurier University Press, 2005). She is also author of *Limits to Liberalization: Local Culture in a Global Marketplace* (Cornell University Press, 2007).

ROGER HAWKES

Director of Corporate Security and Crisis Management for Global Industries, an international offshore maritime engineering, dive, and construction company that provides offshore services to the oil and gas industry. Among his responsibilities includes managing vessel ISPS requirements and addressing the threat of piracy and waterborne terrorism and militant activity to a fleet of vessels operating throughout the world. Mr. Hawkes has established a maritime security and anti-piracy program that has been recognized by a number of major oil and gas companies as the best in class. He has directed security for a number of offshore oil and gas construction projects in the violent waters of the Bay of Guinea as well as Asia, Latin America, and the Middle East.

Earlier this year Hawkes completed what is probably the largest commercial anti-piracy and maritime security campaign, where he was responsible for the security of a major offshore construction project in the Bay of Guinea managing a maritime security package consisting of six armed security boats, a security command and control ship and over 150 armed and unarmed security personnel. Mr. Hawkes' career encompasses 26 years of law enforcement, military and private sector security experience. A former Texas police officer and active duty Navy officer, Mr. Hawkes currently serves as a Commander in the United States Navy Reserve. Mr. Hawkes' active duty Navy service includes having served eight years at sea on five ships including serving in command of a commissioned Naval Special Warfare ship.

ROBERT HAYWOOD

Chief Vision Officer and Executive Director for One Earth Future (OEF) Foundation. OEF is a new nonprofit organization with a vision of using new and effective systems of global governance to achieve a world beyond war. Prior to joining OEF in 2008, Mr. Haywood was the Senior Economic Development Advisor to the British forces in Iraq, and was heavily involved in using economic incentives to promote stability.

From 1985 to 2008 he was the Director of the Secretariat of the World Economic Processing Zones Association (WEPZA), a non-governmental organization of over 40 of the world's leading economic processing zones, special economic zones and industrial estates. Mr. Haywood has completed projects on economic zone development in China, Honduras, Mexico, the Dominican Republic, UAE, Tanzania, Nigeria, Jordan, Russia, Kuwait, Vanuatu, and many other countries. During the Oslo Peace Process in 1995 he mediated the industrial development agreement between the Israelis and Palestinians and developed the concept for the Qualified Industrial Zones (QIZs) to provide a peace dividend to Jordan for making peace with Israel. Within five years QIZs generated over one billion dollars in annual trade and created over 60,000 new jobs in Jordan.

Beyond economic zones, Mr. Haywood has been involved with international business since 1977, working on banking practices in the Middle East, and foreign investment development in Turkey. He managed a consumer products company in Hong Kong. He has also been an Associate Director and a Trustee of the Flagstaff Institute, a non-profit organization dedicated to research and publishing information on international trade. Mr. Haywood holds an Honors degree in Physics from Worcester Polytechnic Institute and a Master in Business Administration with distinction from Harvard University. He has done advance studies in International Business, Business Policy, and Economics at both Harvard, where he was on faculty for three years, and the University of Colorado, where he taught business policy courses.

EUGENE KONTOROVICH

Associate Professor at Northwestern University Law School, where he specializes in constitutional and international law. His scholarship has been published in leading scholarly journals such as the *Stanford Law Review*, *Virginia Law Review*, *University of Pennsylvania Law Review*, *American Journal of International Law*, and cited in judicial opinions as well as the popular press. He attended the University of Chicago for college and law school, and ultimately taught law there as a visiting professor for two years. After law school, he clerked for Judge Richard Posner on the United States Court of Appeals for the Seventh Circuit. Before entering law school, he worked as a reporter and editorialist at the *Wall Street Journal*, *New York Post* and other papers, and continues to provide occasional commentary in the press. He has also been consulted by attorneys representing alleged Somali pirates on trial in the U.S., Holland, and Kenya.

CHARLES LEACOCK, Q.C.

Director of Public Prosecution for the Government of Barbados. He graduated from the Hugh Wooding Law School, Trinidad and Tobago in 1983 with the Certificate of Legal Education, having previously obtained the LL.B (Hons) degree in law from the University of the West Indies (Cave Hill Campus) in 1981. In 1993 he was awarded the LL.M degree in Criminal Justice from King's College the University of London. An attorney-at-law for over 20 years he was called to the Inner Bar in 2001. From 2004 to 2007 he served as an Executive Committee Member of the International Association of Prosecutors. In 2009 he was named a Senator of the International Association of Prosecutors. In 1997 Mr. Leacock was the youngest person to date to be appointed to the post of Director of Public Prosecutions in Barbados. From 1997 Mr. Leacock has represented Barbados at Meetings of the International Criminal Court at the United Nations in New York and at The Hague, Netherlands. Mr. Leacock has appeared in several murder appeals at the Judicial Committee of the Privy Council in London in 1999, 2003, 2004 and 2007. He has equally appeared in cases at the Caribbean Court of Justice since 2006. In July 2009 he represented Barbados in two cases at the Inter American Court of Human Rights in Costa Rica.

REAR ADMIRAL CHARLES MICHEL, U.S. Coast Guard

Current Military Advisor to the Secretary of the Department of Homeland Security. He is the former Chief of Maritime and International Law and the former Director of Governmental and Public Affairs, U.S. Coast Guard Headquarters, Washington, DC. Tours of duty afloat included serving as Commanding Officer, USCGC RESOLUTE, as Executive Officer, USCGC DAUNTLESS, as Commanding Officer, USCGC CAPE CURRENT, and as Deck Watch Officer, USCGC DECISIVE. Rear Admiral Michel also served as Staff Attorney, Eighth Coast Guard District, New Orleans, Louisiana, head of the Operations Division, Office of Maritime and International Law, Office of the Judge Advocate General of the Coast Guard, Washington, DC, and as Legislative Counsel for the Office of Congressional and Governmental Affairs. Rear Admiral Michel's awards include the Legion of Merit, the Meritorious Service Medal, the Coast Guard Commendation Medal, the Coast Guard Achievement Medal, and the Coast Guard Letter of Commendation Ribbon. Rear Admiral Michel was the American Bar Association Young Lawyer of the Year for the Coast Guard in 1995, the Judge Advocate's Association Career Armed Services Attorney of the Year for the Coast Guard in 2000, and is currently a member of the Florida Bar. The Rear Admiral graduated from the U. S. Coast Guard Academy with a Bachelor of Science degree in marine engineering (with high honors) in 1985. In 1992, he graduated summa cum laude from the University of Miami School of Law as the salutatorian, receiving the Order of the Coif.

BERNARD H. OXMAN

Richard A. Hausler Professor of Law at the University of Miami School of Law and co-editor in chief of the American Journal of International Law. He has served as judge *ad hoc* on the International Court of Justice and on the International Tribunal for the Law of the Sea, in addition to serving as arbitrator in public and private international cases. Professor Oxman received his A.B. and J.D. degrees from Columbia, then served on active duty in the International Law Division of the Office of the Judge Advocate General of the Navy, after which he joined the U.S. Department of State, where he was the first Assistant Legal Adviser for Oceans, Environment, and Scientific Affairs. He actively participated in the negotiation of the UN Convention on the Law of the Sea as United States Representative to the Third United Nations Conference on the Law of the Sea and chair of the English Language Group of the Conference Drafting Committee. He teaches conflict of laws, international law, law of the sea, and torts at Miami, and has also taught at Berkeley, Johns Hopkins (SAIS), Paris (Assas), and Stanford. He was associate dean at Miami from 1987 to 1990, currently directs the law school's Master of Laws Program in Ocean and Coastal Law, and represents the law school on the university's Faculty Senate. Elected to the American Law Institute and the Council on Foreign Relations, he has written extensively on the law of the sea and other international law topics, and served twice on the Executive Council of the American Society of International Law, most recently as Vice President.

MICHAEL J. STRUETT

Assistant Professor of Political Science in the School of Public and International Affairs at North Carolina State University. His research interests include international relations theory, international organizations, and the politics of international law. He is interested in the role of non-governmental organizations (NGOs) in world politics and particularly their participation in meetings of international organizations. He also has particular expertise on the International Criminal Court and the politics of war crimes trials. He is the author of *The Politics of Constructing the International Criminal Court: NGOs, Discourse, and Agency* (2008). Dr. Struett holds a Ph.D. in Political Science from the University of California – Irvine.

LEILA SADAT

Henry H. Oerschelp Professor of Law at the Washington University School of Law and the Director of the Whitney R. Harris World Law Institute. She is an internationally-recognized authority in international criminal law and human rights and a prolific scholar, publishing in leading journals in the United States and abroad. Trained in both the French and American legal systems, Sadat brings a cosmopolitan perspective to her work. Sadat is particularly well-known for her expertise on the International Criminal Court, and was a delegate to the U.N. Preparatory Committee and to the 1998 diplomatic conference in Rome at which the Court was established, and currently represents the government of Timor-Leste in the Review Conference. Sadat has published a series of articles on the Court and an award-winning monograph, *The International Criminal Court and the Transformation of International Law* (2002), which was supported by a grant from the U.S. Institute of Peace. She is the Director of the Crimes Against Humanity Initiative, a three-year project to study the problem of crimes against humanity and draft a comprehensive convention addressing their punishment and prevention.

Sadat has written extensively on the question of amnesties for atrocity crimes as part of the Princeton Project on Universal Jurisdiction, and has penned several highly regarded essays and articles on U.S. foreign policy following the September 11th attacks including *Extraordinary Rendition, Torture and Other Nightmares from the War on Terror*, *George Washington Law Review* (2007). From May 2001 until September 2003, Sadat served on the nine-member U.S. Commission for International Religious Freedom. Professor Sadat is often heard on national media, and has an active speaking schedule. She currently serves as Chairwoman of the International Law Student Association, Vice-President of the International Law Association (American Branch) and the International Association of Penal Law (AIDP), and is a member of the American Law Institute. Sadat has also served as a member of the Executive Council, Executive Committee, Program Committee and Awards Committee for the American Society of International Law. She received her B.A. from Douglass College, her J.D. from Tulane Law School, *summa cum laude*, and holds graduate law degrees from Columbia University School of Law (LLM, *summa cum laude*) and the University of Paris I - Sorbonne (*diplôme d'études approfondies*).

BEN SCHIFF

Professor of Politics, received his B.A. (1973) from Michigan State University and his Ph.D. (1982) from the University of California at Berkeley. He focuses on international politics and international organizations. He has published books on the International Atomic Energy Agency, the U.N. Relief and Works Agency for Palestine Refugees, on Afrikaners in South Africa at the end of apartheid, and about the International Criminal Court. His 2008 book, *Building the International Criminal Court* received the 2009 Chadwick Alger Prize from the International Studies Association for best book published in the previous year on international organization and multilateralism, and the 2009 ACUNS Book Award for best new book on the United Nations and UN system. He teaches courses on various aspects of international relations including the Israeli-Palestinian conflict, arms control, war, international organizations and international law.

RAMESH THAKUR

Inaugural Director of the Balsillie School of International Affairs, Distinguished Fellow at the Centre for International Governance Innovation, and Professor of Political Science at the University of Waterloo, Canada. Previously, Dr. Thakur was Vice Rector and Senior Vice Rector of the United Nations University (and Assistant Secretary-General of the United Nations) from 1998-2007. Educated in India and Canada, he was a Professor of International Relations at the University of Otago in New Zealand and Professor and Head of the Peace Research Centre at the Australian National University, during which time he was also a consultant/adviser to the Australian and New Zealand governments on arms control, disarmament and international security issues.

Thakur was a Commissioner and one of the principal authors of *The Responsibility to Protect* (2001), and Senior Adviser on Reforms and Principal Writer of the United Nations Secretary-General's second reform report (2002). The author and editor of over thirty books and 300 articles and book chapters, he also writes regularly for quality national and international newspapers around the world. His most recent books include *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge University Press, 2006) -- winner of the ACUNS 2008 award for the best recent book on the United Nations; and *War in Our Time: Reflections on Iraq, Terrorism and Weapons of Mass Destruction* (United Nations University Press, 2007).

HELMUT TUERK

Vice-President of the International Tribunal for the Law of the Sea, a post he has held since October 1, 2008. He has been a Member of the Tribunal since October 1, 2005. He holds a JD from the University of Vienna. Among his professional and diplomatic appointments, he has served the Government of Austria as Ambassador, Holy See, Sovereign Military Order of Malta and Republic of San Marino (2005–2006); Member, Austrian National Security Council (2002–2004); Director-General, Office of the Austrian Federal President (1999–2004); Ambassador,

United States of America, Permanent Observer to the Organization of American States, Ambassador, Commonwealth of The Bahamas (1993–1999); Deputy Secretary-General for Foreign Affairs (1991–1993); and Legal Adviser, Head of International Law Department (1982–1993).

Tuerk has participated in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (1989–1994); Informal consultations of the UN Secretary-General on the Law of the Sea (1993–1994); the Assembly of the International Seabed Authority (2003–2005); Panel of Arbitrators, International Energy Agency Dispute Settlement Centre (1986–1993); and the Committee of Legal Advisers of the Council of Europe on Public International Law (Vice-Chairman, 1988–1989; Chairman, 1990–1992). He was the Austrian Representative, Council of the International Seabed Authority (1996–1998) and President, Meeting of States Parties of the UN Convention on the Law of the Sea (1997–1998).

Tuerk has also published widely in several languages on topics ranging from international human rights law to the law of the sea, and the challenge of dealing with terrorism at sea, including “Combating Terrorism at Sea – the Suppression of Unlawful Acts against the Safety of Maritime Navigation”, *University of Miami International and Comparative Law Review*, vol. 15 Special Issue Spring 2008; and “Combating Terrorism at Sea – the Suppression of Unlawful Acts against the Safety of Maritime Navigation”, in *Legal Challenges in Maritime Security*, (M.H. Nordquist, R. Wolfrum et al. (eds), 2008.

BETH VAN SCHAACK

Associate Professor of Law at the Santa Clara University School of Law, where she teaches and writes in the areas of human rights, transitional justice, international criminal law, public international law, international humanitarian law, and civil procedure. Professor Van Schaack joined the law faculty from private practice at Morrison & Foerster LLP. As a Senior Associate at Morrison & Foerster, she practiced in the areas of commercial law, intellectual property, international law, and human rights. In particular, she was trial counsel for *Romagoza v. Garcia*, a human rights case on behalf of three Salvadoran refugees that resulted in a plaintiffs’ award of \$54.6 million.

Van Schaack also served on the criminal defense team for John Walker Lindh, the “American Taliban.” Prior to entering private practice, Professor Van Schaack was Acting Executive Director and Staff Attorney with The Center for Justice and Accountability, a non-profit law firm in San Francisco dedicated to the representation of victims of torture and other grave human rights abuses. She was also a law clerk with the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia. Since 1995, she has served as a legal advisor to the Documentation Center of Cambodia, an organization dedicated to staging a

legal accounting for the crimes committed during the Khmer Rouge era in Cambodia. In 2006, she served as Prosecutor for the International Citizen's Tribunal for Sudan, presided over by Nobel Laureate Wole Soyinka, which presented the case under international criminal law against President Omar Al-Bashir of Sudan. Professor Van Schaack is a graduate of Stanford University and Yale Law School.

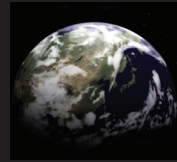
Workshop Rapporteurs

Benjamin Brockman-Hawe, American Society for International Law

Yvonne Dutton, University of Colorado, Boulder

Todd Hutchins, Law of the Sea Institute, University of California, Berkeley

Sarah Willey, Wilfrid Laurier University



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