



The Legal Issues of Private Armed Security on Commercial Ships

By Grace Rodden and James Walsh III

Introduction

In 1765, William Blackstone wrote that piracy is a principal offense against the law of nations, and “every community has the right, by rule of self-defense to inflict punishment upon [pirates].”¹ Today, piracy in the Horn of Africa region presents a plethora of logistical and legal challenges to the international community. The pirates are working out of the failed state of Somalia near busy commercial traffic lanes surrounded by regional states with relatively small navies—a location that provides them with a large coastline from which to launch attacks as well as a sanctuary when they return.² International naval forces in the region patrol a large area of the ocean but have a limited number of ships, and even those are often too far away to prevent an attack by pirates—an attack that typically occurs in less than 30 minutes.

The Somali pirates are primarily interested in attacking opportunistic targets, regardless of flag state or citizenry of the crew, in order to kidnap crew members and seize vessels for ransom. These seizures present the commercial industry with a difficult choice: pay the ransom, knowing that these payments encourage and fund future attacks, or refuse to do so and thereby risk the safety of the crew and fate of the ship. The international community’s early failures to coordinate efforts to combat Somali piracy were attributable to an inadequate naval presence as well as an insufficient capacity and will to prosecute the perpetrators. This failure to combat the Somali piracy allowed the pirates to grow stronger, wealthier, and more daring.

However, decisive actions against piracy present other troubling problems. For example, the U.S. Navy launched a successful rescue operation of the U.S.-flagged *Maersk Alabama* that resulted in the death of three pirates. In response, the pirates assigned a team to launch retaliatory attacks on U.S.-flagged vessels and fired rocket-propelled gre-

nades on the U.S.-flagged *Liberty Sun*. This new threat of violence has prompted some merchant vessel owners to engage armed private security contractors (PSCs) for protection.

U.S. Piracy Law

The Define and Punish Clause, Article I, § 8, cl. 10, of the Constitution grants Congress the power “[t]o define and punish Piracies and Felonies committed on the high seas, and Offenses against the Law of Nations.” Defining piracy as specific acts or by reference to the law of nations has jurisdictional implications. Piracy, as defined by the law of nations, is a crime that can be prosecuted by any nation but is restricted to those acts defined by the international community to constitute acts of piracy. However, if Congress chooses to expand the definition of piracy beyond the law of nations, the effect would be to limit the jurisdiction of U.S. courts to those acts with a nexus to the United States. Congress has had mixed success in enacting legislation securing jurisdiction to prosecute acts of piracy.³

Congress’s first antipiracy legislation, found in the Act of 1790, acts of murder and robbery on the high seas as punishable by death if those same acts committed on land “would by the laws of the United States be punishable by death.”⁴ In 1818, in *United States v. Palmer*⁵ the U.S. Supreme Court examined the Act of 1790 and held that robbery committed on the high seas constituted an act of piracy and is punishable by death despite the fact that robbery committed on land would not receive the death penalty. However, the Court narrowly construed the Act of 1790 as providing jurisdiction only over acts of “municipal” piracy requiring a nexus to the United States. Thus, acts of piracy by foreign citizens committed on vessels owned by foreign citizens were not punishable in U.S. courts.⁶

The following year, Congress addressed the *Palmer* decision by passing the Act of 1819.⁷ Section 5 of the Act

of 1819 referred to the crime of piracy “as [that] defined by the law of nations” and included language stating, “offenders shall be brought into or found in the United States.” The act intended to establish a broad proscription against piracy and to ensure that U.S. courts had jurisdiction over all acts of piracy regardless of any nexus to the United States. In *United States v. Smith*, the Supreme Court held that Congress properly exercised its constitutional authority to define and punish, through reference to the definition of piracy under the law of nations, and the Court declared that “piracy, by the law of nations, is robbery upon the sea.”⁸

The statutory definition of piracy has remained unchanged since 1819 and is codified under chapter 81 of Title 18 of the U.S. Code. § 1651 of Title 18 states: “Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterward brought into or found in the United States, shall be imprisoned for life.” Two recent decisions from the Eastern District of Virginia, *United States v. Said*⁹ and *United States v. Hasan*,¹⁰ have reached different interpretations of the definition of piracy under § 1651. In both cases, the defendants mistakenly fired on a U.S. naval vessel that they mistook for a merchant vessel. The issue before each court was whether firing on a vessel was an act of piracy under § 1651.

Each court differed as to whether Congress intended for § 1651 to remain static from the time of enactment or whether it could evolve along with international law. The court in *Said* focused on what piracy under the law of nations meant in 1819 and relied on the Supreme Court’s decision in *Smith*, concluding that piracy is robbery at sea. The court also stated that international law regarding piracy was unsettled and failed to provide an authoritative definition of piracy. In *Hasan*, the court held “that both the language of 18 U.S.C. § 1651 and Supreme Court [in *Smith*] indicate that the ‘law of nations’ connotes a changing body of law, and that the definition of piracy in 18 U.S.C. § 1651 must therefore be assessed according to the international consensus definition at the time of the alleged offense.”¹¹ Consequently, the *Hasan* court found that Article 101 of the 1982 United Nations Convention on Law of the Sea (UNCLOS) represented the current accepted definition of piracy under the law of nations and, as such, did not require an actual robbery at sea.¹²

International Piracy Law

Piracy is a universal crime and a violation of customary international law.¹³ The international law of piracy is found in both the UNCLOS and the 1958 Convention on the High Seas, each of which reflects customary international law in this regard.¹⁴ The UNCLOS defines piracy as “any illegal act] of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship ... on the high seas.”¹⁵ Pirate ships are, in effect, an exception to the general rule that ships on the high seas fall under the exclusive jurisdiction of the ship’s flag state and require the consent of the flag state to be boarded, searched, and detained. International law allows for all states to board, search, and detain vessels and individuals

suspected of piracy,¹⁶ because pirates are recognized as “hostis humani generis”—an enemy to all mankind.¹⁷

The U.S. Response to Piracy

Consistent with a strong national interest in maritime security and ensuring freedom of the seas, in December 2008, the National Security Council (NSC) issued the “Countering Piracy off the Horn of Africa: Partnership and Action Plan,” which outlines strategies to prevent, disrupt, and punish pirates. The plan calls for facilitating a group of countries to share intelligence, to develop agreements to formalize custody and prosecution of pirates, and to encourage best management practices to enable vessels to avoid attacks by pirates. In addition, the plan encourages interested countries to conduct persistent and effective counterpiracy operations to stop, capture, and punish the pirates. In this regard, the U.S. actively participates in Combined Task Force 151, a multinational naval force consisting of a coalition of approximately 20 nations that is dedicated to conducting counterpiracy operations under the mission-based mandate to deter, disrupt, and suppress piracy in the Gulf of Aden, the Arabian Sea, the Indian Ocean, and the Red Sea.¹⁸

The U.S. Maritime Administration (MarAd) is an agency that promotes, develops, and maintains a merchant marine capable of carrying waterborne commerce in peace and the necessary sealift support in times of war or national emergency. MarAd, which has a unique role among federal agencies, owns and operates a fleet of vessels and oversees several programs that provide support to U.S.-flagged vessels, many of which sail to the Gulf of Aden in support of Operation Enduring Freedom. The agency is capable of providing training platforms, timely information, and operational advice to owners and operators of U.S.-flagged ships in the Horn of Africa. In addition, the U.S. Merchant Marine Academy, which is operated by MarAd, provides counterpiracy training to the next generation of the U.S. merchant marine.

The Maritime Security Transportation Act of 2002 provides the U.S. Coast Guard with additional legal authority to regulate the safety and security of cargo, ships, and seafarers.¹⁹ Pursuant to the act, the Coast Guard has developed regulations requiring owners and operators of ships flying the U.S. flag to prepare Vessel Security Plans to assess and plan for security threats such as piracy; these plans are subject to Coast Guard review and approval. When specific security measures are reasonably necessary in order to deal with particular threats, the Coast Guard will issue a Maritime Security Directive, and Chapter 701 of the Maritime Security Transportation Act mandates that U.S. vessels comply with all these directives. Maritime Security Directive 104-6 (series) provides guidance to U.S. vessels engaged in voyages through high-risk waters and encourages U.S. vessels to consider using private security contractors. The Coast Guard has also developed piracy-related Port Security Advisories to provide additional guidance and direction to U.S. vessels operating in high-risk waters.²⁰

The International Response to Piracy

In 2008, the U.N. Security Council responded to the Somali pirate attacks on commercial ships by passing several resolutions under Chapter VII of the UN Charter, which authorized the use of force against the Somali pirates, who are considered a threat to international security.²¹ Piracy, by definition, occurs on the high seas. This definition initially caused difficulty for naval forces responding to the threat of attack when Somali pirates evaded capture by fleeing into the Somali territorial sea.²² The UN Security Council's Resolution 1816²³ and subsequent resolutions²⁴ authorized foreign forces to enter Somalia's territorial sea in order to apprehend pirates and those suspected of piracy.²⁵ Resolution 1816 also allowed the pursuit and capture of suspected pirates in Somalia's territorial waters.²⁶ Resolution 1838 authorized the patrol of the waters off the Horn of Africa by foreign naval vessels and aircraft and urged states to promulgate International Maritime Organization (IMO) guidelines to ships sailing under their nation's flag to take measures designed to prevent an act of piracy.²⁷ Resolution 1851 broadened the scope of Resolution 1816 and gave nations the right to take "all necessary measures" against piracy, including military use of force on Somali land.²⁸

While the UNCLOS's definition of piracy is broad, it does not expressly include other crimes that Somali pirates may commit at sea, such as attempt or conspiracy to commit piracy, kidnapping, and hostage-taking; murder; or hijacking of vessels.²⁹ Resolution 1846 endorsed the use of the 1988 Convention of Suppression of Unlawful Acts Against the Safety of Maritime Navigation as a means of extraditing and prosecuting Somali pirates for their crimes.³⁰ The Convention authorizes a ship's master to turn over those suspected of violating the Convention to a coastal state party and specifically addresses hostage-taking, hijacking, and murder committed by pirates.

The International Maritime Organization is also working to eradicate piracy. Since 1983, the IMO has adopted a series of resolutions providing governments, ship owners, and masters with guidance on measures to take to prevent or defend themselves against acts of piracy.³¹ This guidance includes having security plans in place before sailing, posting additional lookouts while transiting pirate-infested waters, using evasive steering maneuvers, installing physical barriers on the ship to deter attacks such as razor or electrified wire, and using other countermeasures such as water spray to keep pirates from boarding.³² In an effort to help combat the growing piracy problem off the Horn of Africa, the IMO produced the Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden—known as the Djibouti Code of Conduct—which is designed to facilitate the exchange of information between regional countries and forces and also furthering regional states' ability to prosecute pirates.³³

The IMO discourages placing arms on commercial ships. In its latest report, the IMO Maritime Security Council reaffirmed its stance against shipowners' use of PSCs for Gulf of Aden transits,³⁴ even though the IMO pre-

viously decided that the "carriage of firearms was a matter for flag States to decide."³⁵ The IMO has several reasons for its current position:

- The IMO is concerned that armed guards on ships will cause violence to escalate, resulting in more deaths and injuries to ships' crews.
- The use of force at sea by PSCs and by pirates may impose additional dangers to vessels, persons, and cargo (including flammable cargo and hazardous materials), and the IMO fears that some of the weapons used by PSCs and Somali pirates could cause a leak of hazardous material or even an explosion onboard.
- The rules governing PSC personnel's use of force are unclear.
- It is uncertain whether individual employees of a PSC and the PSC itself may be held accountable both civilly and criminally for wrongdoing resulting from the use of force.³⁶

Laws That Apply to Private Security Contractors

The use of PSCs on ships raises a number of potential legal scenarios. If a PSC uses force resulting in the death or injury of both crew and pirates, multiple states could assert jurisdiction over issues concerning the use of force. Legal standards and authorities differ from country to country, and countries have different standards for judging whether the PSC's personnel acted in self-defense or whether their use of force was necessary or proportional. Seizure of pirates and their pirate vessels can also pose a problem for PSCs and shipowners. When read together, Articles 105 and 107 of the UNCLOS suggest that only a government may seize pirates, pirate ships, and property onboard.³⁷ The draft commentary on these UNCLOS provisions states that a "seizure" within the meaning of the article "does not occur "... in the case of a merchant ship which has repulsed an attack by a pirate ship and, in exercising its right of self-defense, overpowers the pirate ship and subsequently hands it over to a warship or to the authorities of a coastal State."³⁸ However, since nations differ on how they choose to adjudicate piracy, acts of self-defense, and other harm arising from rightful and wrongful action of PRC personnel, shipowners and PSCs may potentially be held liable for acts of self-defense against attacks by pirates.³⁹

International law governing private security contractors is unclear. Because PSCs contract directly with private shipping companies, not with national governments, issues of oversight, transparency, liability, and abuse are potentially more complicated than they are in the case of previous alleged PSC abuses occurring under government contracts.⁴⁰ It has been suggested that the Geneva Conventions and following Protocols governing state actions in armed conflict could apply in cases of piracy;⁴¹ however, it is unclear whether such laws pertaining to government armed forces can be extended to PSCs.⁴²

The laws of the nation whose flag is flown on ships and the laws of the shipping company's territorial state hold shipowners accountable for actions that take place onboard their vessels.⁴³ These laws may be extended to

PSCs through contractual agreements.⁴⁴ Commentators and those in the shipping industry also suggest that international law norms may be applied and enforced through these contracts⁴⁵—for example, the contract could include a requirement that PSCs abide by relevant international and domestic legal regulations applicable to state actors.⁴⁶

The Montreux Document

In response to the increased use of PSCs, the government of Switzerland and the International Committee of the Red Cross, in collaboration with 17 participating nations, drafted the Montreux Document in an effort to better regulate the practices of PSCs.⁴⁷ The document, which contains rules and best practices for PSCs operating in areas of armed conflict⁴⁸ specifically addresses government-contracted PSCs but also calls for independently operating PSCs and PSCs contracted by nonstate parties to adopt the same practices. The Montreux Document clarifies private security contractors' international obligations consistent with the Geneva Conventions and other relevant international laws and defines states' obligations under existing human rights and humanitarian law. The document provides a mechanism for holding PSCs accountable for violating international and domestic laws and delineates the obligations of "Contracting States," "Territorial States," and "Home States," further clarifying when PSCs must follow international or domestic law. The Montreux Document does not specifically address PSCs on ships; however, applying the Montreux Document's overarching policy of oversight and compliance in the maritime context can facilitate using PSCs appropriately as a counterpiracy measure.

International Code of Conduct

In 2009, private security firms came together, with the assistance of the Swiss, American, and British governments, to endorse the principles of the Montreux Document and to create an International Code of Conduct for PSCs⁴⁹—an important step forward toward committing PSCs to abide by the rule of law, to respect human rights, and to follow the "Respect, Protect, Remedy" framework endorsed by the UN Human Rights Council and the Montreux Document. The International Code of Conduct is intended to be the basis of an independent governance and oversight mechanism to maintain and oversee the administration of the code of conduct. Governments and corporations employing PSCs may incorporate the International Code of Conduct in their service contracts if any violation of the code is seen as constituting a breach of contract. The creation and development of oversight mechanisms to ensure accountability may help alleviate uneasiness and uncertainties surrounding PSCs.

Support for the Use of Private Security Contractors

The use of PSCs increasingly has the approval of industry and the implicit approval of governments as a suitable alternative to a multinational naval coalition that is unable to protect every ship sailing in high-risk waters.⁵⁰ In a press release issued Feb. 11, 2011, the International Chamber of Shipping (ICS) implicitly acknowledged the beneficial use

of armed guards on ships to thwart pirates.⁵¹ The press release stated that it is within the ship operator's discretion to place armed guards on ships, and that "ship operators must be able to retain all possible options available to deter attacks and defend their crews against piracy."⁵² The ICS maintains that individual states are responsible to eradicate piracy but believes that governments have not allocated the resources needed to fight piracy, thus requiring the increased use of armed security guards on ships.⁵³

Pirates are capable of capturing supertankers, such as the *Sirius Star*, and U.S.-flagged ships, like *Maersk Alabama*, and the multinational naval coalition has had limited success in deterring pirate attacks. PSCs arguably save the private shipping and insurance industries money by avoiding the need to transit via alternative and longer routes—often around the Cape of Good Hope. Some maritime insurance companies have declared the Gulf of Aden a "war risk" zone and charge higher premiums for transiting the area.⁵⁴ PSCs may serve to reassure insurance companies that the ship, crew, and cargo will arrive safely, thereby keeping costs down. Some insurance companies may offer discounts to shipowners that hire PSCs when transiting through pirate-laden waters. When an actual hijacking occurs, considerable costs are incurred for negotiations and ransom payments. In addition, if a state decides to attempt to recapture a hijacked vessel, the potential for damage to the vessel and loss of crew members' lives is high.⁵⁵

Armed security teams are often former members of the military and are highly trained in the proper handling of weapons and use of force during a crisis. Having PSCs onboard vessels sailing in high-risk waters, such as the Gulf of Aden, may deter pirates from attacking the ship, because, unlike before, ships are no longer unarmed and vulnerable, and, therefore, the pirates involved face increased risks. For example, on March 9, 2011, pirates targeted the *Maersk Alabama* again. This time, however, the armed security force onboard fired warning shots, thereby foiling the attack.⁵⁶

Objections to Use of Private Security Contractors

Having the loosely regulated PSC industry enter into contracts with private shipowners raises some concerns among states, the international legal community, and private industry. The private contractual agreement arguably makes it easier for PSCs to evade compliance with international and domestic laws, and shipowners may ultimately be held responsible for actions taken by PSC personnel. PSCs operating under government contracts have been accused of human rights abuses, corruption, criminal violations, and disproportional use of force. When PSCs enter into contracts with governments, it is easier for governments to hold PSCs liable for violations of domestic and international laws. When PSCs enter into private contracts with private shipping companies operating in an international environment, PSCs may be able to escape liability because they are further removed from government control. Uncertainty exists over the rules governing the use of force and how PSCs may be held liable for excessive uses of force. Even though private industry may try to hold PSCs

liable contractually, it is unknown whether all jurisdictions will enforce the contract terms or otherwise hold PSCs accountable for wrongdoing. Moreover, the sometimes secretive nature of PSCs and their lack of transparency may make governments and international organizations reluctant to endorse the private shipping industry's use of PSCs, because governments have observed violations of international and domestic law by PSCs in the past.⁵⁷

Finally, international law and domestic laws of coastal states, including U.S. International Traffic in Arms Regulations, regulate the carrying of arms by PSCs on commercial ships.⁵⁸ In some countries, private gun ownership is illegal.⁵⁹ Other countries prohibit ships from entering their territory if arms are onboard and also ban the "loading or unloading" of firearms in a foreign port or within a coastal state's waters.⁶⁰ Shipping companies have resorted to flying arms off ships by helicopter or throwing weapons overboard prior to entering a port and purchasing new weapons later.⁶¹ States and private industry are also concerned that PSCs will cause pirates to react with more violence toward the ship's crew. In addition, it is unknown whether PSCs will successfully ward off attacks—for example, in 2008, three private security contractors from a British firm jumped off the ship after pirates boarded it because the contractors feared that they would be killed because of their status as security guards.⁶²

Conclusion

Piracy off the Horn of Africa will continue until the international community develops a comprehensive plan to deal with its root cause—lawlessness in the failed state of Somalia. Until law and order is restored in that country, the international community must increase its naval and diplomatic efforts and vigorously defend freedom of the seas through deterrence, disruption, and punishment of piracy. Even though using private security contractors may not be an ideal solution, it is one that should be considered when developing plans to protect the crews and ships navigating through high-risk waters. The risk of employing PSCs may be mitigated by a requirement by the states that PSCs abide by the best practices in the Montreux Document and by shipowners' incorporation of the International Code of Conduct in their contracts with firms that provide private security guards. **TFL**

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of the Maritime Administration, the Department of Transportation, or the United States.

Endnotes

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³⁹See Kraska and Wilson, *supra* note 13, at 263.

⁴⁰See Parsons, *supra* note 17, at 168–169, 171.

⁴¹See generally Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Parsons, *supra* note 17, at 171; See also, Laura A. Dickinson, *Public Law Values in a Privatized World*, 31 YALE J. INT'L L. 383, 388 (2006) (explaining that in many cases, even states are not held accountable for failing to abide by public international law values because enforcement mechanisms are weak).

⁴²Parsons, *supra* note 17, at 171.

⁴³*Id.*; Kraska and Wilson, *supra* note 13, at 262.

⁴⁴Parsons, *supra* note 17, at 174.

⁴⁵*Id.*; Dickinson, *supra* note 40, at 401–03.

⁴⁶Parsons, *supra* note 17, at 174; Dickinson, *supra* note 40, at 401–03.

⁴⁷Permanent Rep. of Switzerland to the United Nations, Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies

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ruled the FCC's interpretation of the act. The Supreme Court's decision in this case will affect the relationship between former monopolies and newer competitors in the telecommunications industry and may also have broader implications for the legal weight of agencies' amicus briefs. Full text is available at topics.law.cornell.edu/supct/cert/10-313. **TFL**

Prepared by L. Sheldon Clark and Omair Khan. Edited by Catherine Sub.

Tolentino v. New York (09-11556)

Appealed from the New York State Court of Appeals (March 30, 2010)

Oral argument: March 21, 2011

Following an automobile stop, New York police officers ran Jose Tolentino's driver's license through the Department of Motor Vehicles' database and discovered that his driver's license had been suspended and that at least 10 suspensions were for failure to answer a summons or to pay a fine. Tolentino was subsequently indicted for aggravated unlicensed operation of a motor vehicle. On appeal, Tolentino argues his DMV records must be suppressed because

the information provided was the fruit of an unlawful stop. New York argues that, even if the stop was unlawful, the exclusionary rule has never been applied to information the government already possessed, because such an application would be unreasonable. The Supreme Court will have to balance the cost of suppressing highly probative evidence against the potential benefit of discouraging police from conducting random automobile stops without probable cause. Full text is available at topics.law.cornell.edu/supct/cert/09-11556. **TFL**

Prepared by Priscilla Fasoro and Justin Haddock. Edited by Eric Johnson.

Wal-Mart Stores Inc. v. Betty Dukes (10-277)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (April 26, 2010)

Oral argument: March 29, 2011

Betty Dukes and other women brought a Title VII employment discrimination suit against Wal-Mart Stores. The district court certified the class action, and the appeals court affirmed. Wal-Mart now appeals to the Supreme

Court, arguing that the class certification does not meet the requirements of Federal Rule of Civil Procedure 23(a). Wal-Mart also claims that class certification was improper under Federal Rule of Civil Procedure 23(b)(2), because the employees primarily seek monetary compensation in the form of back pay. However, the employees assert that they meet the requirements under Rule 23(a), because the class members share the common issue of discriminatory treatment under Wal-Mart policies. The employees further argue that class actions certified under Rule 23(b)(2) are not precluded from seeking monetary relief and deny that back pay is a form of monetary compensation. The Supreme Court's decision will affect the evidence required to bring an employment discrimination class action suit, the relief available to plaintiffs in a class action, and employers' willingness to settle cases in order to avoid liability in class actions. Full text is available at topics.law.cornell.edu/supct/cert/10-277. **TFL**

Prepared by Natanya DeWeese and James Rumpf. Edited by Joanna Chen.

During Armed Conflict, in letter dated Oct. 2, 2008, from the Permanent Rep. of Switzerland to the United Nations addressed to the Secretary-General, UN Doc. A/63/467-S/2008/636 (Oct. 6, 2008) (hereinafter cited as Montreux Document). There are 36 participating states, including the United States; *see also*, Parsons, *supra* note 17, at 172-75.

⁴⁸Montreux Document, *supra* note 47; Parsons, *supra* note 17, at 172-73.

⁴⁹International Code of Conduct for Private Security Companies and Private Military Companies (Nov. 9, 2010), available at www.icoc-psp.org/.

⁵⁰*See* Carolin Liss, *Privatizing the Fight Against Somali Pirates*, 1-18 (Murdoch University Asia Research Centre, Working Paper No. 152, 2008); Parsons, *supra* note 17, at 169, 176-77.

⁵¹International Chamber of Shipping Press Release, *Shipping Industry Changes Stance on Armed Guards*, (Feb. 15, 2011).

⁵²*Id.*

⁵³*Id.*; *see also* Kraska and Wilson, *supra* note 13, at 262 (explaining that many believe protection of commercial vessels is the responsibility of states); Liss, *supra* note 50, at 9.

⁵⁴Ploch, *supra* note 2, at 14; Parsons, *supra* note 17, at 176.

⁵⁵*See* Ploch, *supra* note 2, at 12, 14; Liss, *supra* note 50, at 8; Parsons, *supra* note 17, at 176-177.

⁵⁶*Pirates Target the Maersk Alabama Again*, CNN World (Mar. 9, 2011), available at www.cnn.com/2011/WORLD/africa/03/09/somalia.pirates.maersk/index.html.

⁵⁷Parsons, *supra* note 17, at 169-177; James Kraska and Brian Wilson, *Piracy Repression, Partnering and the Law*, 40 J. MAR. L. & COM. 43, 47-48 (2009).

⁵⁸Ploch, *supra* note 2, at 35-36; Kraska & Wilson, *supra* note 13, at 262-63; Parsons, *supra* note 17, at 177-78.

⁵⁹Kraska and Wilson, *supra* note 13, at 263.

⁶⁰*Id.* at 262-63; Parsons, *supra* note 17, at 169.

⁶¹Staff of House Committee on Transportation and Infrastructure, 112th Cong., U.S. Response to Piracy 11 (Comm. Print 2011).

⁶²Kraska and Wilson, *supra* note 13, at 263.