Removing the Eye Patch: Taking a Closer Look at Modern Piracy Prevention

Jason W. Power

Available at: https://works.bepress.com/jason_power/1/
Removing the Eye Patch: Taking a Closer Look at Modern Piracy Prevention

By:

Jason Power

2007
INTRODUCTION

I. HISTORY OF PIRACY
   A. Piracy Defined
   B. Piracy in it’s Infancy
   C. Piracy in the 1500’s
   D. Letters of Marque and Privateering
      i. Letters of Marque
      ii. Privateering or Legalized Piracy

II. FAMOUS PIRATES IN HISTORY
   A. Cheng I Sao
   B. Fleau Des Espagnois
   C. Grace O’Malley
   D. Stede Bonnet

III. MODERN DAY PIRACY
   A. Acts Constituting Piracy Today
   B. Types of Piratical Attacks Today
      i. Hit and run robbery
      ii. Cargo heist and hostage attacks
      iii. Phantom ship
      iv. Pre-Planned Stowaway

IV. PIRACY PREVENTION TODAY
   A. ShipLoc
   B. Secure Ship
C. Long Range Acoustic Device........................................................................................................ 27
D. Security Alert Systems................................................................................................................ 29
   i. Singtel Mobile Satellite Business (MSB) .................................................................................... 29
   ii. MPS Sea Guard..................................................................................................................... 30

V. PIRACY PREVENTION IMPROVEMENTS.............................................................................. 31
   A. Universal Jurisdiction................................................................................................................. 31
   B. Bringing Back Privateers.......................................................................................................... 33
   C. Arming Sailors ........................................................................................................................ 35
   D. More Stringent Security Runs .................................................................................................. 36
   E. More Awareness of the IMB’s Piracy Reporting Center............................................................ 37
   F. Planting Beacons on Goods to Track Pirates ............................................................................ 38

CONCLUSION ................................................................................................................................. 39
Introduction

Piracy has existed since humans were capable of roaming the waters of the world. Pirates were the scourges of the world’s oceans for many years, plundering and pillaging at will any ship that they desired. For most people, this is when piracy existed, the times of pirates like Blackbeard, Captain Kid, and the famous ship called Jolly Roger. But what most people do not know is this was not the end of piracy. This is not a reference to the latest blockbuster hit movie. Piracy is just as prevalent today as it was during the sixteenth and seventeenth centuries that have been portrayed in movies. Today however, piracy is not nearly as glamorous as it was historically portrayed. Historically, pirates sailed in single masted sloops, large warships, or brigantines armed with multiple cannons whereas today’s pirates sail in twin engine speed boats armed with rocket launchers, machine guns, and tracking software.

To respond to the ever growing threat of piracy, many companies have developed technology to aid in the war against piracy. In addition, many nations have implemented anti-piracy task forces to bring down this plague of the seas in the modern world.

Aiding private companies in the fight against piracy, the efforts of organizations like the International Maritime Organization and the Piracy Reporting Center located in Kuala Lumpur, Malaysia, whose purpose is to raise awareness of piracy hotspots, and give details about their methods and attacks, may help the world’s waterways soon become a safer place for commercial and leisure crafts.

This paper will examine the history of piracy and the impact piracy has had on the trade of commerce. It will further explore certain prevention methods that are already in use and propose future methods of prevention. Section I of this paper traces the history associated with piracy from the Greek and Roman periods and some of the aspects that are attached with piracy.
Section II explores the lives of some pirates that are not famous, but were some of the most ruthless and cunning pirates of their day. Section III examines modern day piracy and what acts are deemed to constitute piracy today. Section IV examines advancements in piracy prevention and the pros and cons that go along with those innovations. Finally, section V considers other possibilities in terms of additional approaches and methods to aid in disrupting the acts of piracy.

I. **History of Piracy**

To understand the impact that piracy is having in modern times and the huge threat piracy creates to shipping in today’s world, a description of piracy and a basic understanding of its history is necessary. Before learning the history of a subject, it is necessary to know what the subject is.

A. **Piracy Defined**

Piracy, as defined by the International Maritime Bureau (IMB) is:

> “An act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.”

The definition stated by the International Maritime Bureau (“IMB”) is meant to cover all actual or attempted attacks whether the ship is berthed, at anchor, or at sea. The IMB has taken

---


2 The ICC International Maritime Bureau (IMB) is a specialized division of the International Chamber Of Commerce (ICC). The IMB is a non-profit making organization, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. IMB’s main task is to protect the integrity of international trade by seeking out fraud and malpractice. For over 20 years, it has used industry knowledge, experience and access to a large number of well-placed contacts around the world to do this: identifying and investigating frauds, spotting new criminal methods and trends, and highlighting other threats to trade. As well as helping to prevent crime, the IMB also has a duty to educate both the shipping community and a wider audience that comprises just about every entity engaged in trade. To this end, the IMB runs a regular series of courses and training programs that have a wide-
this view of piracy in contrast to the United Nations Convention on Law of the Sea (UNCLOS) which focuses on ships on the high seas and outside the jurisdiction of any state.4

The 1982 UNCLOS describes piracy as consisting of:

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

i) on the high seas, against another ship or aircraft, or against person or property 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).5

Used in conjunction with the definition of piracy, armed robbery against ships is defined as any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of “piracy”, directed against a ship or against person or property on board such ship, within a State’s jurisdiction over such offenses.6

The IMB noted that the International Maritime Organization (IMO) at its 74th meeting of the Maritime Safety Committee addressed this matter in the draft Code of practice for the

---

3 ICC REPORT 2006, supra note 1.
4 Id.
6 ICC REPORT 2006, supra note 1.
Investigation of Crimes of Piracy and Armed Robbery against ships.\textsuperscript{7} According to the IMB, Article 101 of the 1982 UNCLOS and the IMB definition of piracy now cover actual or attempted attacks whether the ship is berthed, at anchor or at sea.\textsuperscript{8}

While there is now a definition covering ships while in port or in shipping lanes, the issue still remains as to whether anything is being done to protect ships from the acts defined by the IMB and UNCLOS. Because piracy has changed over the years, methods of deterrence have had to change with it or fail. Modern pirates choose to sail in small motorized boats armed with rocket launchers and machine guns, in contrast to the days of Jean Lafitte and Blackbeard, who sailed in large ships at full mast with cannons ready. Today, the primary issues are whether the modern approaches to battling piracy are sufficient and what can be done to improve upon those methods.

\textbf{B. Piracy in it’s Infancy}

From an historical perspective, piracy has stretched the gambit from robbery on the high seas to copying movies in a theater to downloading protected material from the internet. The concept though of maritime piracy dates back more than three thousand years.\textsuperscript{9} But that concept depends on the desired meaning of the word “pirate.”\textsuperscript{10} It is suggested that piracy can be traced back to the beginnings of navigation, but the earliest records of ships fighting at sea are dated to the Mediterranean around 1190 B.C.\textsuperscript{11} A great early description of piracy comes from Homer’s epic poem The Iliad and the Odyssey.\textsuperscript{12} But as described by Homer, “it became hard to

\begin{footnotesize}
\begin{enumerate}
\item ICC REPORT 2006, \textit{supra} note 1.
\item \textit{Id.}
\item Pirates! Fact & Legend, \textit{supra} note 9.
\end{enumerate}
\end{footnotesize}
distinguish pirates from heroes because both were out to plunder and kill, the only difference being their god-given fate.”

The earliest documented evidence of the word piracy was between 500-330 B.C. when the Greeks used the words “leistes” and “peirates” to describe both an armed robber and a plunderer at sea. Both “leistes” and “peirates” where used to describe what is now considered piracy and land based banditry. The Greek historian Plutarch described pirates as “those who attack without legal authority not only ships, but maritime cities.”

In the Roman Empire, the words “praedo” and “pirata” were used to describe piracy. “Pirata” is a derivative of the Greek word for piracy, “peirates” and is where the English word pirate is derived. “Praedo” and “pirata” defined land based and sea-faring pirates similar to that of the Greeks. Over the years, piracy has left the realm of land based aggression that ancient writers described and has now moved to ocean based aggression.

The idea of piracy remained clouded because the Greeks and Romans used their terms for pirates also to refer to undesirable others. This further confusion makes writing a history of piracy more difficult because many different seafarers were considered pirates merely because they disrupted the Roman way of life. With the Romans at the helm, piracy extended its reach to include those societies that did not follow the rules of war and so were deemed in a constant state of war.

13 Goodwin, supra note 11, at 978.
14 Id. at 976.
15 Id.
16 Pirates! Fact & Legend, supra note 9.
17 Goodwin, supra note 11, at 976.
18 Id. at 977.
19 Id.
20 Id.
21 Id. at 978.
22 Id.
23 Id. at 979.
C. Piracy in the 1500’s

During the sixteenth century, piracy was not discouraged, but was in fact encouraged by some countries who viewed their pirates as national heroes.24 Pirates were viewed as heroes in their own countries during these times because many captains, while deemed pirates by enemy nations, sailed the seas disrupting enemy nations’ trading routes and greatly increasing the royal treasury.25 But unlike privateers, pirates were not outright given a cut of the plunder.26 By the eighteenth century, this positive view of piracy would be reversed and those who were once viewed as heroes now became criminals.27

The condemnation of piracy was based on the consolidation of state sovereignty, the rise of mercantilist economic theories, and developments in international laws and diplomacy.28 During the eighteenth century, pirates became outlaws, and were allowed to be shot by anyone on sight because with pirates like Blackbeard and John Gow interfering with trade routes, favorable trade relations were becoming strained.29 Therefore, English courts began to place great weight on the heinousness of piracy and stated that “suffer pirates, and the commerce of the world must cease.”30 English courts went further to degrade piracy by stating that piracy could lead to the “destruction of the innocent English, the total loss of the Indian trade, and thereby the impoverishment of this kingdom.”31

Although piracy was cracked down upon by the English, privateering was quickly becoming a legal method of sea robbery.32

24 Id.
25 Id. at 980.
26 Id.
27 Id.
28 Id.
29 Id.
29 Pirates! Fact & Legend, supra note 9.
31 Id.
32 Goodwin, supra note 11, at 981.
D. Letters of Marque and Privateering

Between the 16th and 18th centuries, privateering became a popular and lucrative way to earn a livelihood for the privateer himself operating under a letter of marque and reprisal, as well as his sponsoring nation.

i. Letters of Marque

A letter of marque and reprisal is an official warrant or commission from a national government authorizing the designated agent to search, seize, or destroy specified assets or personnel belonging to a party which had committed some offense under the laws of nations against the assets or citizens of the issuing nation.33

The first letter of marque and reprisal was issued in 1243 by Henry III of England.34 Following the letter of marque issued by Henry III and up to the Declaration of Paris in 1856, many commanders of vessels became famous as privateers. Many privateers such as Sir Frances Drake and Kanhoji Angria also turned to piracy.35

The original function of a letter of marque was to right a private wrong.36 Since the early 18th century, letters of marque have been used by national governments to augment the national navy.37 Once a captain operating under a letter of marque captured a designated ship, he was required to bring the captures ship before an Admiralty Court to ensure it was not property of a neutral state.38

35 Id.
36 Id.
37 Id.
38 Id.
ii. Privateering or Legalized Piracy

In contrast to piracy, privateering consisted of a private ship and its captain and crew operating under a letter of marque and reprisal.\(^{39}\) The purpose of a privateer was to capture merchant ships belonging to an enemy nation by order of another nation.\(^{40}\) Privateers are not to be classified as legal pirates. The distinction between acts of privateering and acts of piracy is the distinction between captures jure belli under control of government authority and for the benefit of a political power organized as a government de jure or de facto, and mere robbery on the high seas committed from motives of personal gain like theft or robbery on the land.\(^{41}\)

Privateers were typically used during times of war to aid the naval force as a private warship.\(^{42}\) When privateers were authorized to seize an enemy ship, the captured crew members were treated as prisoners of war.\(^{43}\) Privateers were used to prevent piracy and as a source to interrupt enemy trading during war times.\(^{44}\)

Privateering became an ever increasing line of work and looked favorably upon by the home nation because the nation did not have to pay the crew, arm or supply them.\(^{45}\) Instead of being paid by the sponsoring nation, the privateer was given a percentage of the sold plunder in exchange for their immunity which made many privateers wealthy.\(^{46}\)

A privateer was not always saved by a letter of marque because whether one was considered a pirate or a legally operating privateer often depended on whose custody the individual found himself in, that of the country that had issued the commission, or that of the

\(^{39}\) Letter of Marque, supra note 33.
\(^{41}\) 61 Am. Jur. 2d Piracy § 2.
\(^{43}\) Id.
\(^{44}\) Id.
\(^{46}\) Id.
object of attack. Although privateers were sanctioned by the nation issuing the letter of marque, many privateers did not limit their actions to those issued and in the end became more like pirates.

As unregulated marine warfare fell to the side, privateers began to disappear as international trade grew and the British dominated the sea. On April 16, 1856 the major European nations drafted and passed the Declaration of Paris, which was an annex to the 1856 Treaty of Paris. The Declaration of Paris stated specifically that “Privateering is and remains abolished.”

II. Famous Pirates in History

Everyone has ideas of what a pirate looks like. But not everyone knows the stories behind piracy and specific pirates. There are many pirates that have had a large impact on piracy and the European nations, but that are shadowed behind the more famous pirates such as Blackbeard or Captain Kidd. Many pirates were known for their ruthlessness to crew and captives however, some pirates are known for their kind and gentle nature. This section is an attempt to get some rather unknown, but very interesting pirates recognition.

A. Cheng I Sao

Cheng I Sao also know as Cheng Shih was a prostitute that married a sea robber. Alongside her husband, Cheng I Sao lead the Red Flag Fleet from 1807 through 1810, a confederation of pirates with over 1500 ships and over 50,000 sailors that ranged the whole

---

47 Piracy, supra note 40.
48 Privateer, supra note 42.
50 Letter of Marque, supra note 33.
51 The End of Privateering, supra note 49.
Chinese coast and South to Malaysia.53 While pirating the coastline, Cheng and her husband ransomed captives and extorted payment from coastal villages to not attack.54 The Chinese code of conduct for the rules and rewards of Chinese pirates stated that each pirate receive two plundered pieces for every ten captured.55 Cheng did not abide by the rules of conduct and therefore stored the plunder in warehouses to ensure her squadrons were always armed and ready.

Cheng imposed very harsh punishments for sailors that did not abide by the rules of conduct.56 Any sailor who disobeyed an order or stole from the common plunder was beheaded and deserters lost their ears.57 The offense for first time concealment of booty was to be flogged and the second offense was punishable by death.58 Rape of a female captive was an especially brutal crime under Cheng and was punishable by execution.59 If the female captive agreed to the sex, the man was beheaded while weights were tied to the woman’s legs and she was tossed overboard.60

In the end, Chinese officials had tried multiple tactics to bring Cheng and the Red Flag Fleet to justice only to lose sixty-three ships.61 On two occasions, the Red Flag Fleet was ambushed by citizens of the coastal villages only to have those villages burnt to the ground and the men slaughtered.62 Even the navies of Portugal and Britain could not defeat Cheng I Sao.63 Finally in 1810, a general amnesty was offered to all pirates and Cheng I Sao decided to take

---

54 Cindy Vallar, supra note 52.
55 Id.
56 Id.
57 Id.
58 Id.
59 Id.
60 Id.
61 Privateer Dragons of the Caribbean, supra note 53.
62 Id.
63 Id.
advantage of it.\textsuperscript{64} She negotiated pardons for almost all of her men, and even managed to get the Red Flag Fleets leader, Chang Pao a lieutenancy in the Chinese Army.\textsuperscript{65} With such a long list of brutal punishments and great battles against many different countries it is no wonder that Cheng was one of the most notorious and feared pirates of her day.

B. Fleau Des Espagnois

Fleau Des Espagnois also known as the “Flail of the Spaniards,” was born Jean David Nau in 1635 in France.\textsuperscript{66} After almost a decade as an indentured servant in the Caribbean, Jean David Nau became a buccaneer and for seven years was called L’Ollonais.\textsuperscript{67} During this time, Nau gathered a strong following of eager recruits, yet his reputation for brutality made him known as one of the cruelest of all pirates.\textsuperscript{68}

While still getting his start as a pirate, L’Ollonais’s crew was attacked by Spanish soldiers.\textsuperscript{69} Although wounded during the battle, L’Ollonais escaped the battle by rubbing blood over his body and hiding among the dead.\textsuperscript{70} While Spanish soldiers celebrated the death of the great pirate, he and a crew of pirates invaded and held a town for ransom, only to then hold the rescue party that was sent by the Governor of Havana for ransom as well.\textsuperscript{71} To make sure the governor knew of his message, L’Ollonais beheaded all but one of the rescuers, sending him back to the governor with the message that “I shall never henceforward give quarter to any Spaniard whatsoever.”\textsuperscript{72}

\begin{itemize}
\item \textsuperscript{64} Id.
\item \textsuperscript{65} Id.
\item \textsuperscript{67} Id.
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} Id.
\item \textsuperscript{71} Id.
\item \textsuperscript{72} Id.
\end{itemize}
In 1667, L’Ollonais sailed with eight ships and about 600 men to Maracaibo, Venezuela where they raided a Spanish ship and its cargo worth 40,000 gold pieces of eight, jewels, and cacao. After seizing the fort guarding the city, the crew of pirates searched for the citizens and tortured them until the location of their wealth was made known.

After the conquest at Maracaibo, L’Ollonais set sail for Gibraltar where he found himself outnumbered, yet he was victorious only losing seventy of his men versus the five hundred Spaniards who died. After taking all the wealth of Gibraltar, L’Ollonais returned to Maracaibo and demanded a ransom which allowed each of his sailors to receive more than one hundred pieces of eight.

Later that year, L’Ollonais mounted an attack against San Pedro where he was ambushed by Spanish soldiers. After defeating the soldiers, he tortured the remaining soldiers until they informed him how to avoid any future ambushes on the way to the city. It has been written that during this questioning that L’Ollonais “drew his cutlass, and with it cut open the breast of one of those poor Spaniards, and pulling out his heart with his sacrilegious hands, began to bite and gnaw it with his teeth, like a ravenous wolf, saying to the rest: I will serve you all alike, if you show me not another way.”

---

73 Pieces of eight refer to the Spanish dollar (also known as "pieces of eight" or the eight real coin) is actually the silver coin, worth eight reales, that was minted in the Spanish Empire after a Spanish currency reform in 1497. (citing from http://en.wikipedia.org/wiki/Spanish_dollar) (last visited March 1, 2007).
74 Cindy Vallar, supra note 66.
75 Id.
76 Gibraltar is a UK overseas territory located near the southernmost tip of the Iberian Peninsula overlooking the Strait of Gibraltar. The territory shares a land border with Spain to the north. Gibraltar has historically been an important base for the British Armed Forces and is the site of a British naval base. It is probably most famous for the geological formation the Rock of Gibraltar. (citing from http://en.wikipedia.org/wiki/Gibraltar) (last visited March 1, 2007).
77 Cindy Vallar, supra note 66.
78 Id.
79 Id.
80 Id.
81 Id.
L’Ollonais’s brutality was remarkable in that he did not only burn his victims or cut out their tongues, but in cutting them to pieces he would start with a slice of flesh then move to hand, then an arm, and finally a leg.\textsuperscript{82} He was also known for a torture called “woolding,” where he would tie a cord around his victim’s eyes and tightened the cord by twisting it with a stick until the man’s eyes popped out of his head.\textsuperscript{83}

The life of L’Ollonais ended when he landed in Cartagena, Bolívar, Columbia and was captured by the Indians of Darien.\textsuperscript{84} He was killed in a similar fashion than that of his own torture, by being torn to pieces and thrown into the fire.\textsuperscript{85}

C. Grace O’Malley

Grace O’Malley or Granuaile was an Irish female pirate given the nickname “Pirate Queen of Connacht.”\textsuperscript{86} Granuaile was from an Irish clan from the South shore of Clew Bay and Claire Island.\textsuperscript{87} Born in to a family of sailors who were not allowed to trade with the local port of Galway, Granuaile’s family took to lifting cattle of the warring clans and from that became quite successful.\textsuperscript{88} Born in 1530, Granuaile was a tomboy that sought out danger and despised cowardice.\textsuperscript{89} One account states that when her father, the chieftain of the O’Malley clan, was attacked on a return voyage from Spain, Granuaile disobeyed her father’s orders to stay below deck and instead leapt onto the back of her father’s attacker which caused a diversion allowing her father to turn the battle in his favor.\textsuperscript{90}

\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{87} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Cath Reese, supra note 86.
Around the age of sixteen, Granuaile was married and had three children.91 When her husband was shown to be inept at protecting his people, Granuaile stepped forward and against the law became chieftain of the clan.92 After the death of her husband, Granuaile was denied her inheritance and returned to her homeland followed by 200 men who then under Granuaile’s leadership embarked on a career of piracy, or as Granuaile stated “maintenance by land and sea.” From her home of Clare Island, Granuaile controlled all shipping in the area either by charging for protection, hiring out navigators, or just raiding ships.93

In order to claim rights to land to further her control over the local seas, Granuaile married the owner of a castle named Rockfleet Castle which was hidden from view but was in a position so that all shipping lanes could be watched.94 Upon gaining her rights to the castle, Granuaile locked her husband out of the castle and declared her divorce.95 Granuaile’s reputation as a great pirate was made greater when on the day after the birth of her third son, while at sea her ship was attacked by Algerian pirates and even though she had just given birth the day before, Granuaile charged up on deck and joined the battle, winning against the Algerian pirates in the end.96

In 1574, Rockfleet Castle was laid siege to by the English.97 After eighteen days of holding a defense, Granuaile turned and attacked, forcing the English to retreat.98 She would later be called “a most famous feminine sea captain” by Sir Henry Sidney.99
Upon her capture in 1577, she was imprisoned for a year and a half. Before her escape, Lord Justice Drury called her “a woman that hath impudently passed the part of womanhood and been a great spoiler and chief commander and director of thieves and murders at sea.” Her escape was acquired through sheer political ingenuity when Granuaile promised to betray another that was being sought after by the English.

In 1586, Granuaile was captured again and was prepared for the gallows only to be saved when her son-in-law took her place as hostage. Upon the capture of her sailors and the death of her eldest son and the imprisonment of her youngest son by the English, Granuaile petitioned Queen Elizabeth I to pardon her for her actions of stealing because of the English’s making her people starve which Granuaile eloquently styled as the situation “constrained your highness’ fond subject to take arms and by force to maintain herself and her people by sea and by land the space of forty years.” As a final word, Granuaile told Queen Elizabeth I that if she was able to maintain some of her power, she and her army would “during her life, invade with sword and fire all your Highness’s enemies wheresoever they are or shall be without any interruption of any person or persons whatsoever.”

Finally, in 1593, Granuaile sailed to meet Queen Elizabeth I face to face and although what was said at that meeting remains a mystery, Queen Elizabeth I released Granuaile’s son and let her return to her homeland where she commanded ships until her death around 1603.

---

100 Id.
101 Id.
102 Id.
103 Id.
104 Id.
105 Id.
106 Cindy Vallar, supra note 88.
D. Stede Bonnet

Known as the “gentleman pirate,” Stede Bonnet was born into a wealthy family in the 1680’s.\textsuperscript{107} After possibly serving as a major in the King’s Guards during the war with Spain, Bonnet retired to Barbados where he owned a sugar plantation.\textsuperscript{108} After some time as a sugar plantation owner, Bonnet decided to set sail as a pirate and bought his very own sloop, ten cannon, and crew.\textsuperscript{109}

To keep his profession as a pirate a secret from his family, Bonnet sailed as far as Virginia and would burn any ships from Barbados that he raided.\textsuperscript{110} As time passed, Bonnet’s crew began to show signs of a mutiny, until the crew had a chance meeting with the pirate Blackbeard sometime in late 1717.\textsuperscript{111} Bonnet and Blackbeard then sailed together until Blackbeard decided it was time for one of his crew to sail Bonnet’s ship and Bonnet was then relieved of his duties.\textsuperscript{112}

After Blackbeard tricked Bonnet out of his loot, Bonnet changed his name to Captain Edwards and then Captain Thomas.\textsuperscript{113} After being pardoned, Bonnet sailed back to the Virgin Islands on his ship, the ‘Royal James’ in order to become a privateer but was sidetracked when he decided to track Blackbeard instead.\textsuperscript{114}

In 1718, Bonnet was tracked down by Colonel William Rhett after Bonnet had attacked a ship whose crew then informed the governor of the great suffering that the pirates were
causing.\textsuperscript{115} In late 1718 Bonnet finally met his end when he was hanged and buried next to his crew at the low water mark.\textsuperscript{116}

III. \textbf{Modern Day Piracy}

As the nineteenth and twentieth centuries approached, piratical attacks seemed to almost cease, in part because of the increase in size of merchant vessels, increased naval patrolling, regular administration of most islands and land areas of the world, and general international recognition of piracy as an international offense.\textsuperscript{117} Despite these impediments, piracy is still a problem today and although reported attacks have steadily decreased in the last couple of years, piracy still poses a problem. Because of the readily available technology that pirates are able to get and the methods for attacking, piracy will continue to be a threat unless stricter measures are taken.

Piracy today is no longer large ships with full sails and canons ready to fire. Today’s pirates are armed with GPS trackers, high-speed boats and machine guns. As the world made its turn into the nineteenth and twentieth centuries, the same factors that began to hinder piracy also began to encourage it over time.\textsuperscript{118}

The influx of technology created larger and faster merchant vessels which can function with fewer crew members, but also gave pirates who are privy to the same technology much less resistance on those ships.\textsuperscript{119} The increased size of naval forces patrolling harbors has created more safety when ships are docked, but have left many ships vulnerable while in open waters.\textsuperscript{120}

Increased administration of the islands of the world have prompted decisions by former colonies

\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Id.
not to maintain ties with their home countries, and the financial inability of some governments to afford effective Naval assets are factors which have simply encouraged pirate attacks.\textsuperscript{121} Finally, international recognition of piracy has lessened in countries that do no have the political will to smash it, yet those same countries are the primary locations for the world’s commercial fleets.\textsuperscript{122}

Piracy today poses many of the same problems as during its early days. Still today, police do not have authority and cannot do much at open sea.\textsuperscript{123} Many nations do not have water police, and many pirates hide behind national flags.\textsuperscript{124}

Pirates today can be primarily found in Southeast Asia, with 83 actual or attempted attacks in 2006. During that year, 47 attacks also occurred in the Indian Ocean, while South America experienced 29 attacks.\textsuperscript{125} Pirates are divided into two types.\textsuperscript{126} First are small time pirates. Such pirates like the pirates of the past, are self-interested and go only for the loot on ships.\textsuperscript{127} In contrast, organized pirates are usually connected to similar groups, have ties with land based organized crime, and sometimes are connected with local authorities.\textsuperscript{128} Organized pirates typically are one link in a chain of organized crime and loot ships of all size to fulfill their portion of the chain.\textsuperscript{129}

\begin{itemize}
\item \textsuperscript{121} Id.
\item \textsuperscript{122} Id., The counties that are the primary sources of the world’s commercial fleets are Panama, Honduras, and Liberia with approximately 64 million gross tonnage fleets.
\item \textsuperscript{124} Id.
\item \textsuperscript{125} ICC REPORT 2006, supra note 1.
\item \textsuperscript{126} The Way of the Pirates, supra note 123.
\item \textsuperscript{127} Id.
\item \textsuperscript{128} Id.
\item \textsuperscript{129} Id.
\end{itemize}
A. Acts Constituting Piracy Today

Piracy is no longer limited to unauthorized acts of violence committed by a private vessel on the open sea against another vessel with intent to plunder.\footnote{Malvina Halberstam, \textit{Terrorism on the High Seas: The Achille Lauro, Piracy and the IMO Convention on Maritime Safety}, 82 A.J.I.L. 269, 274.} As refined by the IMB and UNCLOS, acts of piracy may now include the act of dispossessing the master of a vessel and seizing control of the ship or any of its property.\footnote{61 Am. Jur. 2d Piracy § 6.}

In the United States, Congress has declared that any sailor who commits violence against his commander which prohibits that commander from defending his ship, or sailors who enter into piratical enterprises, or lands a vessel to commit robbery on shore are labeled as pirates.\footnote{\textit{Id.} § 3.}

Along with dispossession, any act in which one willfully sinks or destroys an innocent merchant ship with the sole intent of gratifying a lawless appetite has committed an act of piracy.\footnote{\textit{Id.} § 6.}

Apart from the Greek and Roman definition of piracy involving land based attacks, piratical aggression in the modern era has many of the same appearances as ancient definitions. Today the primary targets for pirates are cargo ships\footnote{ICC REPORT 2006, \textit{supra} note 1.}, which is similar to what the Greeks and Romans designated as piracy.

B. Types of Piratical Attacks Today

As previously mentioned, today, there are many different types of pirate attacks ranging from simple robbery of crew, stealing cargo and taking hostages, commandeering the whole ship, and using a trick known as “pre-planned stowaway.”\footnote{Michael S. McDaniel, \textit{Modern High Seas Piracy}, http://www.cargolaw.com/presentations_pirates.html#type_attacks (last visited February 20, 2007).}
i. Hit and run robbery

The hit and run attack involves boarding a merchant vessel, robbing the crew and fleeing. Most attacks on ships occur during the early morning hours between 1:00am and 6:00am. The pirates use the fact that most crew members are either still asleep or are just getting started below deck and therefore are not able to notice the men boarding the ship.

ii. Cargo heist and hostage attacks

A second type of pirate attack is called a cargo heist and hostage attack. This involves the pirates robbing the crew and making off with the cargo, sometimes taking crew members as hostages. This type of attack by professional pirates normally requires a larger crew of pirates in order to remove all the desired cargo. A Vanuatu flagged Pollution Control Vessel around Nigeria experienced an attack by professional pirates in January 2006 when their vessel was attacked by around 40 armed pirates.

iii. Phantom ship

A third type of attack is called the “phantom ship.” This act involves pirates taking over one vessel and then using it as a “phantom ship” which they then use to steal any goods from merchants that consign goods to that ship. These types of pirates tend to be the most sophisticated and are normally linked to land based criminal organizations that quickly sell off the stolen goods. The phantom ship attack was utilized in Indonesia when a Malaysian tanker

---

136 Id.
137 Id.
138 Id.
139 Id.
140 Id.
141 ICC REPORT 2006, supra note 1.
143 Id.
144 Id.
was taken.\textsuperscript{145} The pirates then repainted the ship’s funnel and life boats, changed its name and then rendezvoused with another tanker for transferring the ship’s cargo costing the tankers $740,000.\textsuperscript{146}

\textbf{iv. Pre-Planned Stowaway}

A less sophisticated way for pirates to attack a vessel is from within. A scheme given the title “Pre-Planned Stowaway Trick,” puts a phony crew member on board the targeted vessel.\textsuperscript{147} When the time is right the stowaway radios the ship’s location and route to the attackers, allowing the ship to be a sitting duck.\textsuperscript{148} The pre-planned stowaway trick was used by the motor tanker M/T Palau Mas which acted as a phantom ship to rob at least 21 other vessels in Indonesian Seas.\textsuperscript{149} Pirates had planted a phone crew aboard the M/T Palau Mas who then telephoned the ships route and position allowing the vessel to be taken.\textsuperscript{150}

Another type of trick that has been used by pirates is where pirates use prostitutes to lure the targeted crew into submission so that the vessel is easier to attack and less resistance will be encountered.\textsuperscript{151}

Modern pirates have technology such as radar and GPS to track ships, unlike the attacks of Blackbeard or Jean Lafitte.\textsuperscript{152} With such technological advantages as machine guns coupled with a lack of fear, it is no wonder that pirates are a force to be reckoned with. With such astronomical profits at stake, often totaling in the millions,\textsuperscript{153} pirates have become sophisticated players in the robber arena.

\textsuperscript{145} McDaniel, \textit{supra} note 135.
\textsuperscript{146} \textit{Id.}
\textsuperscript{147} \textit{Id.}
\textsuperscript{148} \textit{Id.}
\textsuperscript{149} \textit{Id.}
\textsuperscript{150} \textit{Id.}
\textsuperscript{151} \textit{Id.}
\textsuperscript{152} \textit{Id.}
\textsuperscript{153} \textit{Id.}
The number of attacks has dropped by over 200 incidents since 2003. Although piratical acts of aggression have largely declined, the problem still exists. Knives have been the weapon of choice for pirates with between 76 and 143 knife attacks per year, followed closely by attacks with guns ranging between 53 and 100 per year, since 2003. The decline in attacks overall is evidence that nations are increasing in their knowledge of the problem of piracy today and taking measures to hinder it.

IV. Piracy Prevention Today

On July 1, 2004, the Ship Security Alert System (SSAS) instituted a regulation for all passenger ships, mobile offshore drilling units, and cargo ships of 500 tons or more to be equipped with an alarm system to ensure security. All ships thereafter built must comply with the regulation.

The regulation further states that a ships security alert system must obtain power from the ship’s primary power source as well as another appropriate source. The activation points of the alert device must be accessible from the bridge of the ship and maintain a silent status so as to not alert anyone on the ship. Transmission of all distress codes by the alert system should be directed to shore and identify the ships location and identity through a unique code generated in accordance with the Global Maritime Distress and Safety System distress procedures.
Ship Security Alert Systems have shown to be a great asset to the shipping industry. A Turkish bulk carrier was saved from a pirate attack in January 2006 by an SSAS alert when five pirates armed with machine guns and rocket launchers attacked the Turkish carrier. After activating the SSAS alert, a coalition warship was notified and responded to the alert within thirty minutes along with a helicopter which caused the pirates to stop firing, saving the carrier.

A. ShipLoc

The ShipLoc system provides ship owners with long range tracking of their ships. The system reports between 6 and 24 times a day and immediate alerts if triggered. Once installed on the vessel, ShipLoc transmits via satellite to the fleet operator information such as speed, heading, location, as well as meteorological information that could cause issues with the vessel. In compliance with SSAS regulations, ShipLoc alerts are silent and are sent solely to shore and not to other ships in the area. ShipLoc has been approved by the International Maritime Bureau as the only SSAS system which is 100% reliable by using a second location system independent of GPS, to verify the GPS fixes.

However, with the technology and intelligence that some pirates are equipped with, hacking into a system such as ShipLoc is not unreasonable. In September, 2000 a man was arrested for hacking into several NASA computers. If someone is capable of hacking into a sophisticated system like NASA, there is no reason that a computer savvy pirate or a cohort could not hack into a commercial system like ShipLoc.

162 ICC REPORT 2006, supra note 1.
163 Id.
165 Id.
166 Id.
167 ShipLoc, supra note 159.
The consequences of a pirate hacking into the ShipLoc system could be disastrous for users globally. Vessels everywhere would become completely vulnerable to pirate attacks. All shipping routes would become known and the exact locations of vessels would make the pirate’s job much easier. ShipLoc gives users the ability to manage accounts which include private information such as designating zones which alert the user if their vessel enters those specified areas, and even retains estimated time of arrival calculations.\textsuperscript{169} If this system were ever to be infiltrated then attacks could be much easier to implement because the pirates would know what zones the user is worried about and stay just outside those zones so that the vessel owners and crew would not have their guard up. Pirates could just as easily change the estimated time of arrival by just a half hour or more. If the ship then does not arrive in port on time there would be no alarm because the ShipLoc system was tampered with allowing the pirates plenty of time to rob the vessel. The Pirates would then have plenty of time to get away before the vessel could get to shore and notify authorities. If pirates have been able to place phony crews aboard commercial vessels then there is little reason to think that a sophisticated group of professional pirates could not infiltrate an equally sophisticated company.

ShipLoc is also equipped with a silent alarm that can be triggered from any location on the ship. In the past pirates have been able to place phony crew members on ships to call ahead with the location of the ship, so it should be no surprise that a stowaway could infiltrate crew members and discover the locations of the switches and relay that information to the attackers so that they knew what locations to keep an eye on. Although ShipLoc has been approved by the International Maritime Bureau, it seems that there are many things that could cause ShipLoc to be a better help to the pirates than to the vessel utilizing it.

B. Secure Ship

Secure Ship is a product of Secure Marine a maritime security consultant. Secure Ship electrifies a ship’s hull using a 9,000 volt electrified fence that is erected around the ship. Using this non-lethal system to prevent the boarding of a ship allows the sailors on board the ship to work without having to carry firearms because the product can be activated at any time. Using the same technology that has been used at military installations and prisons, Secure Ship protects the crew and guests from unwanted intruders and robberies while still allowing the ship to conduct normal business. As well as the security of 9,000 volts, Secure Ship is armed with a siren that is activated when the electric fence is touched. Secure ship is marketed to commercial vessels as well as private mega yachts as a means of protection from the threat of a piratical attack.

Secure Marine claims that at 9,000 volts, Secure Ship is not lethal to those unfortunate enough to come into contact with it. The electric chair though, which has been used for as an execution method in many states uses electrical currents with a maximum voltage of 2,000 volts to stop the heart and induce unconsciousness. It seems that if an electric chair uses merely 2,000 volts to stop a person’s heart, that Secure Ship’s advertised 9,000 volts would do more than merely stun or deter the person in contact with it.

172 Id.
173 Id.
174 Id.
176 The electric chair uses an initial voltage of 2,000 volts for up to 15 seconds which is then lowered to reduce the current flow to approximately 8 amps (citing from http://en.wikipedia.org/wiki/Electric_Chair) (last visited February 23, 2007).
The way that the Secure Ship is designed, the electrified fence is erected around the perimeter of the boat extending outwards to prevent someone from boarding the ship.\textsuperscript{177} If the device stretches outwards to prevent unwanted boarding then it seems to act like a double edged sword for the crew members of the ship during a crisis such as the crew members need the ability to jump overboard to escape a fire or escaping a sinking ship. If the ship is utilizing the Secure Ship electrified fence then it would prevent the crew members from safely escaping. Secure ship does have many points on the ship to turn off the device, but in the event of a large crisis on the ship such as an explosion of flammable cargo, many times crew members will not have the chance to find a junction box to disable the device which results in the decision by the crew member to risk the crisis on board or risk severe burns and possible drowning as a result of the voltage of the electrified fence and its high voltage output.

Arguably, if the Secure Ship device can act as a double edged sword for an escaping crew member then it could also be used by pirates attacking the ship to gain an advantage. Secure ship seems like the perfect way to hold crew members in one place for ransom purposes. Besides, similar devices have been used in prisons to prevent inmates from escaping, so it is feasible that a group of pirates using a scheme to secretly get aboard could use Secure Ship to prevent the crew members from leaving thus preventing ransom from being sought.

Pirates could also use the Secure Ship system to prevent their own ships from being invaded by naval forces. If pirates take over a ship that has the Secure Ship system in place, there is no reason that the system could not be modified by the pirates to prevent a land based shutdown giving the pirates their own ship that is incapable of being boarded and taken.

With Secure Ship’s benefits that boarding is less likely to occur because of the threat of shock, the risk of death, severe burning and respiratory shutdown, along with the potential that

\textsuperscript{177} Secure-Marine, \textit{supra} note 171.
the ship could fall into the wrong hands, Secure Ship is a plausible deterrent to piracy, but an
even greater threat to the ship’s crew during an evacuation.

C. Long Range Acoustic Device

The Long Range Acoustic Device (LRAD) is a breakthrough long-range hailing and
warning device designed to communicate with authority, affect behavior, and help determine
intent.\textsuperscript{178} Developed by American Technology Corporation, the LRAD focuses sound waves at a
particular target without interference from ambient noise.\textsuperscript{179} The LRAD comes in three different
frequency ranges for commercial vessels.\textsuperscript{180} American Technology Corporations acoustic
devices have been used by grocery stores for in store advertising systems, the Bellagio Hotel for
ambient noise, college campuses, military installations, jet communications support and on
ships.\textsuperscript{181} The primary purposes for the LRAD device is behavior modification or voice
communications over long distances.\textsuperscript{182} It even acts as a warning device for close ships.\textsuperscript{183} To
note the deterrent effect of the LRAD, the noise level that is the normal threshold of pain for a
normal person is 130 dB, and because the LRAD works at a low level of 145 dB then it is easy to
see how it could be a deterrent for an attacking boat.\textsuperscript{184} As recently as November 2005, LRAD
has been used in the maritime world when the luxury cruise ship Seabourn Spirit used the LRAD
to repel pirates attempting to attack the vessel with rocket propelled grenades off the coast of

\begin{footnotes}
\footnote{178}{American Technology Corporation, Commercial/ LRAD, \url{http://www.atcsd.com/site/content/view/15/29/} (last
visited February 16, 2007).}
\footnote{179}{Id.}
\footnote{180}{The LRAD device ranged in decibels from 145dB to 151dB \textit{(citing from Id.)}.}
\footnote{181}{American Technology Corporation, Commercial/ Project Highlight, \url{http://www.atcsd.com/site/content/view/17/29/} (last visited February 16, 2007).}
\footnote{182}{American Technology Corporation, \textit{supra} note 178.}
\footnote{183}{Id.}
\footnote{184}{How stuff works.com, How LRAD works, \url{http://science.howstuffworks.com/lrad.htm/printable} (last visited February 18, 2007).}
\end{footnotes}
Somalia.\textsuperscript{185} Thanks to American Technology Co., the pirates were unsuccessful in their attack.\textsuperscript{186}

Critics of the LRAD system have voiced their opinions of the drawbacks to such a device. The National Institute on Deafness and Other Communication Disorders has reported that any sound over 90 dB can damage a person's hearing.\textsuperscript{187} Because any sound over 90 dB can damage hearing, it is no surprise that critics have argued that 145 dB could very well cause long lasting damage to a person's hearing.\textsuperscript{188} Airport workers can show the precautionary methods taken by people in occupations with sound levels close to that of the LRAD. A jet engine runs at a level of 140 dB and registers as painful to the human ear.\textsuperscript{189} Airport workers are thus expected to wear protective gear to prevent hearing loss.\textsuperscript{190}

Along with potential hearing loss, extreme noise levels like that of the LRAD can cause problems in the rest of the body in addition to the ears. Excessive noise has been shown to increase blood pressure, can change the way the heart beats, and can increase the breathing rate.\textsuperscript{191} With such negative aspects, noise levels put out by systems like the LRAD seem more harmful than helpful.

Other issues with the LRAD system are that there are some groups that have claimed the LRAD has caused deaths while being used.\textsuperscript{192} Finally, a major criticism that could render the device useless is the fact that some groups suggest that wearing ear plugs can make the LRAD

\textsuperscript{185} American Technology Corporation, supra note 181.
\textsuperscript{186} Id.
\textsuperscript{187} How stuff works.com, supra note 184.
\textsuperscript{188} Id.
\textsuperscript{190} Id.
\textsuperscript{191} Id.
\textsuperscript{192} How stuff works.com supra note 184.
sound waves ineffective.\textsuperscript{193} If wearing earplugs could render the LRAD system useless then all pirates everywhere in the world could still scour the seas looking for their next target all the while protected themselves with a pair of one dollar ear plugs.

D. Security Alert Systems

Security alert systems are positioning systems that send signals to the owners of vessels in order to track the cargo and location of a vessel. Many companies have designed security alert systems that are required to conform to the SOLAS Regulation, but in researching the various types of security alert systems, two stood out, the Singtel Mobile Satellite Business and the MPS Sea Guard.

i. Singtel Mobile Satellite Business (MSB)

A company called 3i Technologies has created a tracking system with Absolute Communications called SmartTRAC which will enable ship owners to track their ships and cargo.\textsuperscript{194} The program is a PC based, off the shelf program that allows the user to track their ships through communication channels including satellite, GPS, GPRS & TCP/IP.\textsuperscript{195} Any vessel can use the SmartTRAC program within the regions that the program is operational in for such services as messaging, vehicle position reporting and electronic mail functionality.\textsuperscript{196} Applications of SmartTRAC include mobile asset tracking, valuable consignment monitoring, planning and route analysis, ETA confirmation and mobile e-mail.\textsuperscript{197} According to the International Maritime Organization, SmartTRAC has proven itself the most reliable and secured system in place in over 20 countries.\textsuperscript{198}

\textsuperscript{193} Id.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
However, the MSB system appears to fall short of full effectiveness for similar reasons as the ShipLoc system. The PC based specifications of the MSB system, open itself up to being hacked into especially because it, like most other programs could probably be downloaded from the internet.

The primary target for piracy is still commercial vessels, however the MSB system is marketed towards only leisure boats and chartering companies. With functions such as asset tracking, mobile e-mail and route analysis, the MSB system seems more like a PDA than a shipping safety alarm.

ii. MPS Sea Guard

Mobile Protective Services, Inc. has created a program called MPS Sea Guard (MPS) to aid ship owners in tracking ships. The MPS program gives global coverage with precise locating capabilities which are delivered to the fleet operating company. With an alert notification system and activation points spread across the ship, once alerted to a distress notification, MPS sends alert messages via text and email to the fleet operating company. Once alerted, MPS then increases its beacon intervals to every 30 minutes, until the emergency is resolved.

Like ShipLoc and the MSB system, MPS Sea Guard gives the precise location of the ship to the requesting party. If the wrong party gains the ability to access that information then the results for vessels using the MPS Sea Guard system could be disastrous.

The MPS system is tamper proof and an alert notification is sent when any of the cover activation points is triggered and then reports are sent every 30 minutes until the issue is

200 Id.
201 Id.
202 Id.
resolved. A strategically planned group of pirates out merely to rob the crew members could without question make the most of that 30 minutes. A group of pirates in a speedboat armed with machine guns approaches a vessel equipped with MPS Sea Guard during the early morning. By the time any of the crew realizes that the ship has been boarded and can get to an activation point for the MPS system, the pirates could easily have traversed the ship and taken what they wanted. With the 30 minutes that are between the first beacon and the second, the pirates have already fled, never to be found.

V. Piracy Prevention Improvements

There are many theories for improving piracy prevention including uniform jurisdiction\(^{203}\), privatization of anti-piracy efforts\(^{204}\), and allowing crew members to defend themselves\(^{205}\), among others.

A. Universal Jurisdiction

One expert writes that “universal jurisdiction allows for the exercise of jurisdiction over certain actors or activities wherever they occur without regard to nationality or territoriality.”\(^ {206}\) Universal jurisdiction has been traditionally applied to piracy where any state has the right to seize a pirate ship and try those on board under that state’s laws.\(^ {207}\) An example of this is the United States vs. Furlong case where the United States Supreme Court found that the U.S. courts retain jurisdiction over a piratical murder committed on the high seas against a U.S. vessel by a foreigner upon a foreign vessel.\(^ {208}\)

\(^{203}\) Goodwin, supra note 11 at 988.
\(^{205}\) Id. at 313.
\(^{206}\) Goodwin, supra note 11 at 987.
\(^{207}\) Id.
\(^{208}\) U.S. v. Furlong, 18 U.S. 184.
The rationale behind universal jurisdiction for pirates is that pirates sail under no national flag, they are *hostis humani generis* or enemies of all mankind, the heinousness of the crime of piracy, and that piracy directly threatens many different nations.\(^\text{209}\)

The argument that pirates sail under no national flag is a farce in many cases today. Many pirates who roam the seas are connected with land based criminal organizations that would give them a nation to be tried under.\(^\text{210}\) If seized in another jurisdiction, their home nation would require extradition to be tried in a court likely ran by the criminal organization the pirate is connected with.\(^\text{211}\) This crooked system would give those pirates a better chance to be found not guilty thus making the arrest pointless.\(^\text{212}\) Thus, even if the ship is flagless the pirates on board are not without a nation.\(^\text{213}\)

The concept of pirates as *hostis humani generis* or enemies of all mankind has been the idea since the British began to criminalize the act of piracy. The rationale behind classifying pirates in this way is that pirates attack ships at random, basically taking on all countries at the same time.\(^\text{214}\) With pirates attacking vessels of all countries, giving universal jurisdiction to whomever is lucky enough to capture them seems to be a fair system.

The idea that pirates can be some of the most heinous individuals in the world is not that far fetched. Pirates instituted punishments such as flogging\(^\text{215}\), keelhauling\(^\text{216}\), walking the plank, and marooning on an island. The U.S. Supreme Court has stated that “no crime is greater than

\(^{209}\) Goodwin, *supra* note 11 at 988 – 1002.

\(^{210}\) *Id.* at 989.

\(^{211}\) *Id.*

\(^{212}\) *Id.*

\(^{213}\) *Id.*

\(^{214}\) *Id.*


\(^{216}\) Keelhauling is when a rope is passed under the ship as would be used to scrape barnacles off the ship’s keel. The offender to be keelhauled would be attached to the rope and thrown overboard and the rope pulled so as to force the offender underwater, underneath the ships hull and up the other side. The razor sharp barnacles would cut into the offender causing great pain. (*citing from* http://www.thepirateking.com/historical/pirates_punishments.htm) (last visited March 4, 2007).
If treason is the greatest crime, then one can imagine that such crimes as murder, rape, and kidnapping are all fighting for a close second. Although the crime of piracy can sometimes include acts of murder, rape, and the taking of hostages the general crime of piracy alone does not seem that heinous aside from keelhauling as compared to those specific crimes of treason, murder, rape, and kidnapping.

A good way to determine what a nation deems “heinous” is to look at how that nation has ruled on different cases. The United States punishes the crime of piracy under the law of nations with only life in prison, while the U.S. punishes treason and murder with death in some cases. With these punishments being given by the courts of the United States, it could be understood that although piracy is deemed a heinous act by many, courts on the other hand apparently do not deem it heinous enough to warrant a death penalty.

### B. Bringing Back Privateers

Often, the waterways that are the most prone to piracy do not have adequate naval forces to properly patrol those waters, thus leaving pirates to plunder at will. A solution to this problem is the privatization of anti-piracy efforts. If nations cannot patrol their own waters, then privately owned, armed ships should be allowed to patrol the waters.

It is arguable that without proper motivation the privateers will merely begin plundering the ships they come in contact with, thus making them pirates themselves. Article 107 of the UNCLOS requires that state ships on the high seas seizing pirate vessels be “marked and identifiable as being on government service and authorized to that effect.” The UNCLOS has

---

218 Goodwin, supra note 11 at 996.
219 Id. at 997.
220 Id.
221 Stiles, supra note 204 at 316.
222 Id. at 317.
223 Id.
even stated that states should formally commission private ships to hunt pirates.\textsuperscript{224} The UNCLOS gives a protection for those ships attacked by private hunters.\textsuperscript{225} If a private anti-piracy ship makes a seizure of a ship on the suspicion of piracy without adequate grounds, then that private ship is liable under the victim ship’s flag state.\textsuperscript{226}

Privateers were effective before, and they could be again. With more stringent restrictions on private efforts to battle piracy, privateering could be a solid prevention method for piracy.

However, as privateering became more popular in the past, privateers learned that piracy could be more lucrative than being a privateer. In today’s world, a person that has gained the knowledge of how to track pirates and fight them is armed with great knowledge of how then to become a pirate and avoid privateers like himself. This could be a greater threat to international commerce than the pirates were to begin with.

Still, with private entities acting as privateers, the issue of payment arises. The nations that need the privateers cannot adequately supply naval forces to their own waterways. One way to fund privateers would not be for the nation state to pays for the private protection, but the commercial vessels requesting an escort, as well as any payment through prizes collected from seizure of a pirate ship, be it a finder’s fee for its return or the ship itself.\textsuperscript{227}

A critical flaw in the privatization effort is that the UNCLOS allows ships a right of innocent passage in another state’s territorial waters, but that does not give the vessel or its escort

\begin{footnotesize}
\textsuperscript{224} Id.
\textsuperscript{225} Id. at 318.
\textsuperscript{226} Id.
\textsuperscript{227} Id.
\end{footnotesize}
the right to engage in conflict with other vessels.\textsuperscript{228} If the UNCLOS was amended to include this right to engage and protect other vessels then privatization efforts might be proper.\textsuperscript{229} This still leaves the waterways open to attack when a leisure craft or a commercial vessel without adequate funds to protect itself is sailing through those waterways.

C. **Arming Sailors**

Unarmed crew members make the pirate’s job even easier. By arming the crew members it would offset the advantage that the pirates have by using smaller and faster boats.\textsuperscript{230} By arming sailors it allows them to defend their livelihood as well as their lives. The drawbacks are that a pirate confronted with a weapon may be prone to use deadly force.\textsuperscript{231} Being armed with a machine gun would make the crew members efforts suicidal at best.\textsuperscript{232}

Arguably crew members should be as equally armed as the pirates they risk encountering.\textsuperscript{233} With pirates that have probably been using such weapons as automatic rifles and rocket launchers much longer than any of the crew members, it seems again almost suicidal to equally arm the crew with such weapons.

The only hurdle is the laws of the ships state.\textsuperscript{234} No country has laws over the high seas, so ships and crew need only adhere to the laws of the home state.\textsuperscript{235} If states refuse to change their laws regarding arming sailors on their ships then it is arguable that pirates will learn of this and begin to target those nation’s ships, knowing that they will be easier targets because they are not armed.\textsuperscript{236}

\textsuperscript{228} *Id.* at 319.
\textsuperscript{229} *Id.*
\textsuperscript{230} *Id.* at 313.
\textsuperscript{231} *Id.*
\textsuperscript{232} *Id.*
\textsuperscript{233} *Id.*
\textsuperscript{234} *Id.* at 314.
\textsuperscript{235} *Id.*
\textsuperscript{236} *Id.*
While it is a plausible theory that commercial vessels should be armed, guns and rocket launchers are not the avenue to use. Even if the UNCLOS is amended to require inventory and inspection of weapons, the risk of weapons based mutinies or self inflicted wounds is too great. A better approach to arming sailors to prevent piracy is through the use of non-lethal means such as Secure Ship or the long range acoustic device (LRAD). Secure Ship could protect the ship from being boarded by pirates and the LRAD could fight off approaching pirates from a distance. These devices, although flawed in some respects, are a safer and less lethal deterrent for piracy efforts.

D. More Stringent Security Runs

Three countries, Malaysia, Indonesia, and Singapore have increased efforts to prevent piracy in the Malacca Strait. Since the three states have began their anti-piracy efforts, piracy attacks in the Malacca Strait have declined from 38 in 2004 to 11 in 2006.

In early February 2007, a Japan Coast Guard helicopter with Malaysian and Thai marine patrol boats simulated a hot pursuit of a pirate boat. This security run involved 203 enforcement personnel from three countries and was an attempt to aid in the efforts to combat piracy in the Malacca strait, which is one of the busiest shipping lanes in the world. To aid in the anti-piracy efforts, Malaysia has deployed two patrol boats, two high-speed boats and a helicopter, while Thailand has deployed four patrol boats.

With regular security runs through the world’s shipping lanes pirates will be put on notice that countries are tired of having their ships pilfered and pillaged. With the increase in security

---

237 Id. at 315.
239 ICC REPORT 2006, supra note 1.
240 Id.
241 Id.
242 Id.
maneuvers through the shipping lanes, anti-piracy forces will learn how to react to attacks in those areas in the least amount of time. Along with faster reaction time, more knowledge of the shipping lanes comes more knowledge of the surrounding area. This should limit the areas that pirates will have to run and hide.

E. More Awareness of the IMB’s Piracy Reporting Center

The piracy reporting center was created in 1992. The job of the piracy reporting center was to raise awareness of the threat of piracy in certain zones and list specific incidents of piracy to inform other vessels of the dangers in front of them. As stated above, many countries are performing maneuvers to aid in piracy prevention. The piracy reporting center works with national governments to reduce and ultimately eradicate piracy in the world.

The piracy reporting center for the IMB is located in Kuala Lumpur, Malaysia. Right now it is possible to check online for piracy alerts at the website for the International Chamber of Commerce (ICC). At this very moment the IMB and the piracy reporting center have up to date pirate attack reports for anyone to view. Along with giving information on avoiding piracy on the high seas, the piracy reporting center lists up to date accounts of acts of piratical aggression for the last seven days. This information needs to be more readily available through global industry publication and marine safety organizations.

The ICC broadcasts daily reports to ships in the Atlantic, Indian, and Pacific oceans. Along with daily reports to ships, the ICC website provides a piracy alert to all who go to the

---

244 Id.
245 Id.
246 ICC REPORT 2006, supra note 1.
site. If more sailors and vessel owners become aware of the ICC and the piracy alert system that the ICC operates, the ships could alter course to sail around the areas that have been attacked recently.

The piracy reporting center aids its members by providing services in the areas of providing information regarding piracy and armed robbery to authorities, assisting captains and crew members of attacked ships with their daily reports.

Critics may oppose the idea of sailing around the pirate prone areas because of shipping delays and increased shipping costs. Ship owners however, can charge higher prices to offset the loss of profits because of the extended trip, or offset those costs by the profits they save by not being plundered by pirates.

The issue then becomes whether the ship’s captain would rather take an extra day or two and get to port safely, or risk going through areas of high piratical aggression and risk losing their entire cargo. The reason for the piracy reporting center is to inform those that take the risk of a pirate attack just to get their product to port as fast as possible.

More awareness of the piracy reporting center and the benefits that it holds are a crucial way of informing vessel and leisure boat owners of the risks they may encounter on the seas of the world.

F. Planting Beacons on Goods to Track Pirates

Although there are tons upon tons of cargo being carried by vessels traversing the high seas everyday, there is very little chance of ever getting back that cargo after a successful pirate raid. One way to prevent piracy from flourishing is to plant tacking beacons into cargo containers and other items that are primarily taken by pirates.

\footnote{Id.} \footnote{Id.}
Once the pirates have stolen the cargo, they have unwittingly caused their own downfall because the naval forces or private pirate hunting forces will be able to track the cargo to wherever it is being held. Beacons could become a prime way of targeting pirates, getting back stolen cargo, or at least apprehending the pirate. With technology available today, tracking beacons could be placed on any size cargo, from commercial to personal effects and made of any type of material from wood to metal.

Although there are tracking programs in use such as ShipLoc, those systems are not adequate when cargo has left the vessel. With tracking beacons though, many ships and their cargo could be spared by pirates for fear that the naval forces could be knocking on their doors at any minute no matter where the pirate may choose to hide his loot.

**Conclusion**

Over the years piracy has evolved from being a profession of praise to being condemned as an act of mere thievery. With prevention of pirate attacks motivating the shipping industry, many companies have introduced innovative ideas such as ShipLoc, Secure Ship, the long range acoustic device, and many security alert systems to aid in the deterrence of attacks. Although all of these products aid in the deterrence of pirate attacks, without the nations of the world coming together to battle piracy uniformly, piracy will continue to flourish as ways around methods of deterrence are found.

If piracy is to be fought effectively, the pirates must be put on the defense. Employing private entities to act as privateers would be highly effective as long as proper motivation is given. Privateering was a successful deterrent before to aid in the fight against piracy and it can be so again. Privateering can only aid other vessels if those crew members stay informed of the
piracy statistics and readily report conflicts with pirates to the International Maritime Bureau and the Piracy Reporting center.

In the end, any method of piracy prevention is useless unless nations prepare for incidents by instituting safety measures for their waterways, and sailors take measures into their own hands by regularly reporting incidents of piracy and staying informed of current news.