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International Regime for the Security and Safety of Shipping Lanes

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ABSTRACT

Maritime security, as one of the fundamental components of the legal order of the seas, is conceptually distinct from maritime safety and concerns the prevention and suppression of intentional, violent, and organized threats against ships, persons, and maritime facilities. Despite the absence of a single, universally accepted definition of maritime security in international law, the proliferation of threats such as maritime terrorism, piracy, organized smuggling, and the abuse of the freedoms of the high seas has underscored the necessity of developing specialized legal regimes in this field. Employing a descriptive–analytical approach, the present article first elucidates the conceptual dimensions of maritime security and maritime transportation and then examines the inherent characteristics of ships and the maritime environment that may create opportunities for "legal evasion." It demonstrates how the technical and geographical features of maritime transportation can facilitate the commission of transnational unlawful acts. The article subsequently analyzes the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol concerning fixed platforms located on the continental shelf, as the principal treaty instruments for addressing maritime security threats, with particular regard to their scope of application, covered offences, jurisdiction, prosecution, and extradition. Focusing on the tension between the principle of freedom of navigation on the high seas and the exercise of state jurisdiction, particularly in light of the jurisprudence of the International Tribunal for the Law of the Sea, the article demonstrates that although the expansion of criminal and preventive jurisdiction is necessary to combat maritime terrorism, in the absence of an appropriate legal balance it may itself become a threat to the fundamental freedoms of the seas and to the stability of the international legal order.

Keywords: *International Maritime Organization; international law of the sea; maritime transportation; unlawful acts against the safety of maritime navigation*

Introduction

The seas, as vital arteries of communication and economic activity in the contemporary world, play a fundamental role in shaping the international order, the development of global trade, and collective security. Today, a substantial proportion of the movement of goods, energy, and even people takes place through maritime routes; consequently, maritime security and related activities can no longer be regarded merely as technical or economic matters but have instead become multidimensional issues with profound legal, political, and security implications. Within this framework, any disruption to maritime security may have consequences extending beyond the borders of a single state and may affect regional and international stability.

Despite the growing importance of the seas, international law has thus far provided no single, universally accepted definition of "maritime security." This concept lies at the intersection of security, safety, state sovereignty, and the fundamental freedoms of the high seas, thereby giving rise to conceptual ambiguities and practical legal challenges. On the one hand, freedom of navigation, as one of the long-established principles of the law of the sea, constitutes the foundation for the common use of the seas; on the other hand, the increase in threats such as maritime terrorism, piracy, organized smuggling, and exploitation of legal gaps has prompted states to adopt broader security measures, some of which may themselves conflict with fundamental principles of international law.

In this context, the International Maritime Organization, as a specialized agency of the United Nations, has played a central role in regulating the legal regime of maritime security and, through the adoption of binding instruments, particularly the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its supplementary protocols, has sought to address existing legal gaps concerning violent acts at sea. Nevertheless, the expansion of states' criminal jurisdiction, the application of the principle of "prosecute or extradite," the scope of coastal-state powers, and the relationship between such powers and the exclusive jurisdiction of the flag state remain controversial issues in the international law of the sea.

Using an analytical–legal approach, this article seeks to clarify the concept of maritime security and distinguish it from maritime safety, examine the legal frameworks governing the security of maritime transportation, and assess the effectiveness of the 1988 Convention and its related protocols in addressing contemporary threats. It also focuses on international judicial practice, particularly the jurisprudence of the International Tribunal for the Law of the Sea, to examine the conflict between freedom of navigation and the exercise of state jurisdiction, with a view to determining the extent to which international law has succeeded in balancing security requirements with the preservation of fundamental maritime freedoms.

Maritime Security

Maritime security has four fundamental components: diplomacy, intelligence, military force, and economic instruments. It is fundamentally different from what is referred to as maritime safety, which is limited to the environmental and apparent safety of the sea. Most experts identify four distinct areas of maritime security, which, in order of importance, are territorial-sea security, security of marine and subsea resources, maritime health security, and maritime transportation security. Given the differing approaches and priorities adopted by states at the domestic and international levels concerning maritime norms, the security dimensions of the sea may vary. Nevertheless, in principle and in most security doctrines, seven distinct areas are considered in this regard: security against threats from foreign states, transportation security, resource-management security, security against smuggling, security against terrorism, security against natural events, and security relating to oceanographic principles. (1) A part of maritime security must undoubtedly be regarded as connected with the security of transportation by sea, which is commonly referred to as maritime transportation security.

Since the field of maritime transportation and the shipping industry involves several influential and relatively distinct actors with different roles, including international vessel insurers, classification societies, the International Maritime Organization, banking terminals, and local agencies, it necessarily operates under a specific international regime incorporating both permanent and variable features, including principles, rules, and norms. Moreover, because the three sources of law—legislation, custom, and international practice—also play their particular roles in this maritime regime, they are in some respects dependent on international and regional political powers. For this reason, the prominent role of international relations in the enduring sphere of this industry merits careful consideration. Major international and regional political powers, through an organization known as the International Maritime Organization, a United Nations specialized agency and a principal regulatory institution with an Assembly, Secretariat, and Legal Committee, have sought at different times to guide and direct the shipping industries of maritime states and, through policymaking, to establish a permanent and relatively stable regime in this important and determinative sector. It should be noted that although transportation security is not strategically equivalent in importance to other areas of maritime security, it is nevertheless highly significant because it encompasses various components, including the ship as a floating means of transport at sea, transportation companies, and goods and persons as the subjects of transportation. International sanctions, just as they have had evident effects on various sectors of the Iranian economy, have also severely weakened Iran's shipping and maritime industries, particularly over the past decade. Considering that 80% of global transportation is conducted by water, shipping should be regarded as the beating heart of the global economy, and the isolation of Iranian shipping has inflicted serious damage on Iran's economy. Among the most important harms suffered by maritime transportation since the imposition of sanctions have been reductions in maritime transportation, the detention of Iranian vessels because of financial debts or difficulties in international payments, and, in some instances, even the forced sale of such vessels. Despite the damage sustained by Iran's shipping industry as a consequence of international sanctions, Iran continues to benefit from maritime transportation due to its geographical position, geopolitical location, and access to several seas. In general, in order to depict the state of Iran's transportation security, it is necessary, on the one hand, to have a comprehensive understanding of the position of maritime transportation globally and, on the other hand, given its relatively low cost, to take into account its unparalleled role in reducing transportation costs and promoting economic development. (2)

It should be noted that, despite the positive characteristics of maritime transportation described above, this mode of transportation is also subject to certain vulnerabilities, to the extent that some major powers, including the United States, regard the security of maritime transportation routes as one of their primary extraterritorial missions. Threats to maritime transportation security are diverse and may generally be classified into three categories: first, acts of war or aggression by one state against the maritime transportation of another state. Every state-owned or public ship carries the flag of its state and, therefore, a ship is regarded as a floating territory and a part of the territory of the flag state. Any military action against a ship or territorial sea is regarded as analogous to aggression against territory. Second, criminal acts, foremost among which are maritime terrorism and piracy. Most threats identified in relation to maritime transportation security are criminal in nature, including:

1. Domestic threats or threats posed by the coastal state, terrorist threats, transnational criminal threats and maritime piracy, environmental destruction, and illegal maritime migration. (2)
2. Following the collapse of the Soviet Union and the emergence of a unipolar world, which resulted in the decline of warfare in various regions of the world, terrorist acts and maritime piracy, sometimes motivated by political considerations and carried out on behalf of states, began to increase. For this reason, maintaining maritime transportation security is an international responsibility shared by all states. However, because of the significant role and strategic importance of ports in the United States and Europe from the perspective of domestic and international trade, these ports constitute important targets for terrorists. (1)

3. The third issue that endangers international transportation security arises from the fragmentation of maritime transportation laws and norms, some of which originate in international instruments.

Different national and international enforcement mechanisms, as well as systems of compensation for the aforementioned threats, exist. However, more important than compensation and enforcement sanctions are preventive measures, because preventive measures are applied more rapidly than punishments and compensation and constitute the basis for preventing the realization of a threat or danger. A preventive measure means prompt lawful action designed to prevent the occurrence of danger, crime, or war. Such lawful actions, which are essentially responses to danger or threat, have both national and international dimensions, with measures adopted by the Security Council constituting the most prominent form of international preventive action. In commercial maritime transportation, most preventive measures are applied within state territory, and the fundamental challenge arising in this context is the ambiguity surrounding the nature and scope of preventive measures necessary to safeguard maritime transportation security, measures that may themselves become threats to maritime transportation.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its accompanying Protocol concerning fixed platforms located on the continental shelf were adopted on March 10, 1988, at the initiative of the International Maritime Organization with the objective of addressing existing legal gaps in combating violent acts at sea, and entered into force on March 1, 1992. By criminalizing new acts and granting states jurisdiction to prosecute, try, or extradite offenders, these treaties introduced a significant development in the law of maritime security and were subsequently revised in 2005. As one of the international counterterrorism instruments, the Convention provides comprehensive rules concerning the arrest, prosecution, and extradition of perpetrators of violent acts against the safety of ships.

The hijacking of the Italian passenger vessel *Achille Lauro* on October 7, 1985, during which an American citizen was killed, exposed a significant gap in existing conventions concerning the prevention of terrorists from escaping justice. (3, 4) This incident generated widespread international reactions, including a statement by the President of the Security Council on October 9, 1985, and the adoption of resolutions by the International Maritime Organization and the United Nations General Assembly expressly condemning all forms of terrorism and calling for strengthened maritime security measures.

Following these developments, the Maritime Safety Committee of the International Maritime Organization placed the development of technical and security measures on its agenda and, in 1986, issued a recommendatory circular concerning enhanced ship and port security. Nevertheless, because such measures lacked adequate criminal enforcement mechanisms and jurisdictional provisions, they were considered insufficient for effectively combating maritime terrorism, thereby creating a need for binding international rules. (5)

Ultimately, following the Security Council's emphasis on strengthening international cooperation and proposals submitted by Austria, Italy, and Egypt, a draft Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was prepared and adopted at the March 1988 diplomatic conference in Rome. (4) The Convention, to which more than 140 states are now parties, constitutes the principal legal framework for preventing, prosecuting, and punishing terrorist acts in the field of international maritime navigation.

Maritime Transportation as a Context for Evasion

Maritime transportation refers to a branch of transportation involving the carriage of goods or passengers by sea and should be distinguished from water transportation, which also includes inland lakes and rivers. From another perspective, it should be acknowledged that the term maritime transportation has two meanings: “first,” in the economic sense, maritime transportation refers to operations involving the movement of goods and passengers by sea; and, second, in the legal sense, maritime transportation refers to the legal realization of such operations. (6) In general, this form of transportation is carried out by ships and within the maritime environment. Given the vast extent of maritime routes and the high capacity of ships for transporting goods and passengers, there are considerable opportunities to evade legal frameworks for the purpose of conducting unlawful activities, as discussed below.

Capacities of the Means of Transportation: The Ship

A ship is generally a means of transport that moves on water and is used to carry cargo or passengers. (7) Under Iranian law, pursuant to Article 52(4) of the Iranian Maritime Law of 1964, a ship means any means used to transport cargo at sea. Under this definition, units such as barges and lighters, although in practice used for transferring cargo in shallow ports, do not necessarily fall within the legal concept of a ship. The judicial practice of countries such as the United Kingdom also regards a ship as any cargo-carrying seagoing vessel used to transport goods between ports. (8)

In French judicial practice, since 1844 a ship has also been defined as a unit capable, through its particular equipment and organization, of providing regular maritime service. Although this definition resolves certain ambiguities, it has nevertheless been regarded as incomplete because it also encompasses small floating units. (9) Some legal systems, including those of Romania and Greece, distinguish ships from other floating units and incorporate criteria such as seaworthiness, technical preparedness, passenger or cargo transportation, and official registration into the definition of a ship. (9)

There is likewise no uniform definition of a ship in international instruments. The 2008 Rotterdam Rules define a ship as any vessel used for the carriage of goods by sea. Other conventions, including the 1957 Brussels Convention and treaties concerning passenger carriage and load lines, provide different definitions of a ship according to their specific subject matter. Accordingly, in both domestic and international law, adopting a subject-specific definition of a ship is an accepted practice. (10)

Because no uniform approach exists to defining a ship, its general characteristics are sometimes described instead of providing a conceptual definition. These include the requirements that a ship be a floating structure capable of moving on water, possess certain minimum dimensions and the capacity to carry passengers or goods, and have navigation as its principal purpose. Nevertheless, the concept of a ship may also include recreational, fishing, and war vessels, although the applicable legal rules differ for each category.

From a legal perspective, ship registration is of fundamental importance because registration signifies recognition of the vessel as a ship and provides the basis for legal consequences such as nationality and criminal and civil protection. Pursuant to Article 1 of the Iranian Maritime Law, a seagoing ship with a capacity of at least 25 tons may, subject to requirements including Iranian ownership and lawful registration, acquire Iranian nationality and the right to fly the flag of the Islamic Republic of Iran. Special conditions are also provided under which certain oil tankers may be registered and acquire Iranian nationality.

Realities of the Transportation Environment: The Sea

The sea constitutes a powerful context for evasion from legal rules because a large part of the seas and oceans is free and difficult to control. Moreover, the maritime boundary beyond the territorial sea cannot be controlled as easily as a land border. Whereas at a land border it is possible to close the border or arrest persons or means of transport, and even unauthorized aircraft can be controlled through the use of high-speed jets, it is unclear what measures may be used to control an unauthorized vessel leaving the territorial sea. Therefore, the sea, as the environment of maritime transportation, must be understood according to its legal classification. The sea may be divided into maritime jurisdictional areas and the high seas. Maritime territory is a narrower concept than aquatic territory. Aquatic territory consists of areas in which states exercise rights and may be divided into three categories: areas in which the state exercises sovereignty in a manner analogous to its land territory, namely (a) internal waters, (b) the territorial sea, and (c) archipelagic waters; areas in which the state applies certain regulations or exercises part of its sovereign authority, namely the contiguous zone or supervision zone; and areas in which the state exercises sovereign rights, namely (a) the continental shelf and (b) the exclusive economic zone. (11)

Ships Subject to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation

Ships falling within the scope of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation must satisfy conditions specified by the Convention both in terms of the use of the ship and geographically.

. In Terms of the Use of the Ship

Warships, state ships used as naval auxiliaries, customs or police vessels, and ships withdrawn from navigation or laid up are excluded from the scope of the Convention. Although the Convention does not provide a definition of a warship, given that the Legal Committee, when drafting the Convention, sought consistency with the definitions contained in the 1982 United Nations Convention on the Law of the Sea, the definition of a warship contained in that Convention may be applied here. (12)

State ships involved in the exercise of public authority and the performance of governmental functions are excluded from the scope of the Convention. Accordingly, other state-owned ships used for commercial purposes, as well as state-owned icebreakers and research vessels, are subject to the provisions of the Convention. (12)

Furthermore, ships temporarily anchored in port for repairs cannot be regarded as ships withdrawn from service or navigation and thereby excluded from the provisions of the Convention. Given the Convention’s very broad definition of a ship, except for the exclusions mentioned above, all types of cargo ships, oil tankers, fishing vessels, recreational vessels, and research ships, regardless of their capacity, fall within the scope of the Convention.

Geographical Scope

The Convention applies “where the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single state, or the lateral limits of its territorial sea with adjacent states.” Accordingly, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation applies to ships used in international voyages and ships scheduled to undertake such voyages. Ships used in domestic voyages (cabotage) and navigating exclusively within the territorial sea of a coastal state are excluded from the scope of the Convention, and any unlawful act against them is governed exclusively by the domestic law of the coastal state, except where perpetrators or alleged perpetrators of offences set out in the Convention are found, in relation to ships engaged in coastal commercial navigation, within the territory of a state party other than the flag state, in which case the provisions of the Convention apply. (12)

Offences Covered by the Convention

The Convention adopts an enumerative approach to identifying criminal acts. Pursuant to Article 3(1) of the Convention, any person commits an offence if that person unlawfully and intentionally:

(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

(c) destroys a ship or causes damage to a ship or its cargo that is likely to endanger the safe navigation of the ship;

(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance likely to destroy that ship or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation if such act is likely to endanger the safe navigation of a ship;

(f) communicates information known to be false, thereby endangering the safe navigation of a ship;

(g) kills or injures any person in connection with the commission or attempted commission of any of the offences set forth in subparagraphs (a) to (f).

Only acts that, by their nature, endanger the safe navigation of a ship fall within the scope of the Convention. These provisions were modeled on the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Since ships are less vulnerable than aircraft, however, these provisions have a more limited effect on the protection of maritime security, because a terrorist act may endanger passengers or crew members by threatening violent action without endangering the safety of the ship itself. As its title indicates, the Convention focuses on the safety of the ship, while the security of persons and property on board is protected only indirectly. Thus, Article 3(g) brings the killing or injury of persons within the scope of the Convention only where such acts are committed in connection with other offences covered by the Convention that endanger the safety of the ship. The Convention treats an attempt to commit an offence as an offence in itself. Implementation of this provision may be problematic in some states whose legal systems do not punish attempts. Incitement or assistance in the commission of an offence, together with participation in the offence, is also treated as criminal. Although complicity is a relatively new concept and is not defined in many legal systems, and courts have interpreted it differently, the Convention places these two concepts together in a single provision and thereby assigns them equal legal significance. (12)

Under the Convention, threats to commit violent acts against persons on board a ship, threats to destroy a ship or cause damage to the ship or its cargo, and threats to destroy or seriously damage maritime navigational facilities or seriously interfere with their operation constitute offences only where they are, by their nature, capable of endangering the safety of the ship. Accordingly, a mere threat does not fall within the scope of the Convention; rather, the circumstances must indicate that the threat was likely to endanger the ship's safety, even where the threat itself was simple. Under the Convention, acts constitute offences where they are inherently unlawful, although the meaning of the term "unlawful" has been left ambiguous. It appears, however, that determining unlawfulness in each case has been left to the domestic law of the states concerned. Although terrorist acts may be carried out by states, the Convention contains no reference to state responsibility in this regard. This issue was initially raised by Saudi Arabia and Kuwait during the preliminary negotiations because of their concerns regarding violent acts against neutral vessels in the Persian Gulf during the Iran–Iraq War. Saudi Arabia sought to include violations committed by states and to recognize state responsibility under the Convention. Nicaragua and Libya submitted similar proposals to the conference, although their proposals were limited to the issue of "state terrorism." Kuwait also sought the inclusion of violent violations committed by states, except that the Kuwaiti proposal contemplated the personal responsibility of the perpetrators rather than the responsibility of the states themselves. Although none of these proposals was accepted, because the Convention contains no provision inconsistent with the latter position, it may be argued that the phrase "any person" at the beginning of Article 3(1) implicitly indicates that persons acting as agents of a state who commit offences covered by the Convention may also bear responsibility. (12)

Delivery of Accused or Offending Persons by the Master of a Ship

In view of the security risks arising from keeping a detained terrorist on board a ship, as well as situations in which a vessel navigates far from its flag state or flies a flag of convenience belonging to a landlocked state, and because an accused person cannot be detained indefinitely or for a prolonged period and only a limited number of vessels are equipped to hold offenders or suspects on board for extended periods, the Convention permits the master of a ship flying the flag of a state party, where appropriate, to deliver such persons to another contracting state. (3)

This arrangement, proposed by Spain and modeled on the 1963 Tokyo Convention concerning offences and certain other acts committed on board aircraft, was initially opposed in the Legal Committee because it granted a private individual the authority to make a politically sensitive decision and simultaneously imposed an obligation on states to accept an accused person. (12)

It nevertheless appears unlikely that a shipmaster would make such an important decision without first consulting the competent authorities of the flag state. Despite this concern, states parties were required to accept the request of the master of a ship flying the flag of another contracting state to deliver any person whom the master, on reasonable grounds, believes has committed one of the offences set forth in Article 3. They may refuse delivery only where they have grounds to consider that the Convention is not applicable to the particular case and must state such grounds in a declaration rejecting delivery. The flag state must ensure that the master of its ship, whenever practicable before entering the territorial sea of the receiving state with such a person on board, notifies the authorities of the receiving state of the intention to deliver that person and the reasons for doing so, and provides the receiving authorities with all evidence relating to the offence that is in the master's possession. The person concerned becomes subject to the domestic laws of the receiving state so as to prevent escape from judicial proceedings. Accordingly, that state is not automatically obliged to arrest and detain the delivered person; rather, such determination is left to the state itself. (5)

The receiving state is required, without undue delay, to take the necessary measures to ensure the presence of that person within its territory for the purpose of criminal proceedings or extradition procedures. Upon receiving the accused person, the receiving state may request the flag state to take that person into custody for prosecution. If the flag state accepts the request, it shall take custody of the accused and initiate the necessary investigations for prosecution or extradition to other states possessing jurisdiction. If, however, the flag state rejects the receiving state's request for delivery of the accused, it must provide the receiving state with a statement of the reasons for such refusal. It should be emphasized that this procedure, in which the accused is transferred from the receiving state to the flag state, is not extradition and is not conditional upon judicial investigation in the receiving state. Nevertheless, because under this procedure the accused is transferred to a place where prosecution or extradition may occur, it closely resembles a form of "modified extradition." Accordingly, certain legal systems may find it difficult to reconcile such a procedure with constitutional protections of human rights and may therefore refrain from delivering an accused person to another state. The receiving state may also, following appropriate investigation, extradite the accused at the request of states seeking extradition, or upon requesting another contracting state having jurisdiction and that state accepting the request, so that the accused may be subjected to jurisdiction in accordance with the Convention or the domestic law of that state. If the flag state refuses to take custody of the accused, or if the receiving state itself refuses to transfer the accused to the flag state or does not extradite that person to another competent state, the receiving state may institute criminal proceedings against the accused. In all circumstances, the receiving state is required to respect the individual rights of the accused. The accused has the right immediately to communicate with or be visited by a representative of the state of nationality or, in the case of a stateless person, by a representative of the state in which that person has permanent residence.

Jurisdiction

Under customary international law and international treaty law, a ship possesses the nationality of the state whose flag it flies. The 1958 Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea contain similar provisions in this regard, requiring the state of registration to exercise jurisdiction over vessels flying its flag and providing that, on the high seas, a ship is subject to the exclusive jurisdiction of that state "save in exceptional cases expressly provided for in international treaties or in these Articles." The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation significantly departs from the principle of exclusive flag-state jurisdiction. Nevertheless, this departure may be justified on the basis that the suppression of terrorism constitutes an exceptional circumstance and that the relevant rules are expressly provided for in an international treaty, as required by both the 1958 and 1982 Conventions. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation provides for two categories of criminal jurisdiction: mandatory and optional jurisdiction. Mandatory jurisdiction requires every state party to establish its jurisdiction where the ship on or against which the offence is committed was flying the flag of that state at the time of the offence (the traditional jurisdiction of the flag state), where the offence is committed in the territory of that state, including its territorial sea (territorial jurisdiction), or where the alleged offender is a national of that state (active personality jurisdiction). These bases of jurisdiction granted to states under the Convention correspond to the same grounds recognized under general international law and commonly invoked by states in exercising jurisdiction and therefore do not encounter any substantial legal difficulty. (4)

Optional jurisdiction—under the Convention, contracting states may, if they so choose, exercise jurisdiction in certain circumstances. Where the offender is a stateless person, the state in whose territory that person has habitual residence may assert jurisdiction. This is a modified form of personal jurisdiction under which stateless persons permanently resident in the territory of a state are treated similarly to nationals of that state. Contracting states whose nationals have become victims of offences covered by the Convention are also granted passive personality jurisdiction. The inclusion of this form of jurisdiction in the Convention, in addition to seeking to broaden jurisdictional bases so as to ensure prosecution and adjudication of such offences, resulted from the serious concerns of states whose nationals had been taken hostage, injured, or killed in terrorist attacks.

Moreover, under the Convention, where in an emergency a state is subjected to coercion or threats intended to compel it to perform or refrain from performing an act, it may, on the basis of sovereignty, exercise extraterritorial jurisdiction for the protection of its national interests. Any state party that establishes such optional jurisdiction in the aforementioned cases, or subsequently renounces it, is required to notify the Secretary-General of the International Maritime Organization. The inclusion of optional jurisdiction reflects a compromise between states supporting mandatory jurisdiction based on the nationality of the victim or threats and coercion directed at a state, and states opposing jurisdiction founded on such bases. (3)

Pursuant to Article 6(4) of the Convention, where a state party in whose territory the offender or alleged offender is found refuses to extradite that person to requesting states possessing jurisdiction, it is required to establish its own jurisdiction. The obligation of the state in whose territory the accused or offender is found to establish jurisdiction is conditional upon, first, a request for extradition having been made; second, the requesting state having established its jurisdiction in accordance with Article 6(1) and (2) of the Convention; and third, the arresting state having refused extradition. Accordingly, in the absence of any of these conditions—for example, where no state has requested extradition and therefore no extradition request has been refused—there is no obligation to exercise jurisdiction. Furthermore, Article 10(1) cannot impose such an obligation in these circumstances, because that provision applies only to cases to which Article 6 applies, whereas the situation under consideration falls outside the scope of that Article. In fact, this provision concerns cases in which the state where the accused or offender is discovered does not possess any of the mandatory bases of jurisdiction under Article 6(1), because if such jurisdictional grounds existed, there would be no need to impose a separate obligation to establish jurisdiction. Nevertheless, where such a state refuses to extradite the accused or offender to another state possessing jurisdiction and requesting extradition, whether pursuant to Article 6(4), the optional jurisdiction criteria contained in Article 6(2), or its domestic law pursuant to Article 6(5), it is required to exercise its own jurisdiction.

By establishing a quasi-universal system of judicial jurisdiction, the drafters of the Convention sought to ensure that in every circumstance at least one contracting state would have jurisdiction to prosecute and adjudicate the offence. Nevertheless, concern remains that the multiplicity of jurisdictional bases may generate conflicts among contracting states possessing jurisdiction. (12) Despite the expansion of judicial jurisdiction through the Convention, no provisions have been included concerning states' law-enforcement jurisdiction to board ships, conduct inspections and searches, or arrest offenders or persons accused of offences.

Prosecution and Extradition of Offenders or Persons Accused of Offences

As with most international counterterrorism conventions, the principle of extradition or prosecution constitutes the underlying rationale of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime

Navigation. The Convention requires states parties, whenever they find within their territory an offender or person accused of committing any offence covered by the Convention, without exception and regardless of whether the offence was committed within their territory, to submit the case without delay to their competent authorities for the purpose of prosecution, so that those authorities may make their decision in the same manner as in the case of other serious offences under the laws of that state. (13) Some commentators believe that this provision indicates that there is no absolute obligation to punish and therefore regard it as a defect in the Convention that may allow terrorists to escape punishment.

In our view, however, the intention of the drafters in requiring referral to the competent authorities was merely to ensure a fair trial before an independent judicial body. Given Article 5 of the Convention, which requires states parties to make the offences set forth in Article 3 punishable under their domestic law by appropriate penalties reflecting the serious nature of those offences, this criticism does not appear justified. In some cases, the state detaining the offender may have no connection whatsoever with the offence and may have no interest in prosecuting or trying that person. It may therefore extradite the person to one of the requesting states that has established jurisdiction. The purpose of such provisions is to ensure that such persons do not, at least within the territory of states parties, find a safe haven. (5)

Given the possibility that several states may possess jurisdiction and consequently submit multiple extradition requests, many states sought to grant the state having custody of the offender or accused person discretion in choosing among requesting states. During the preliminary negotiations, some delegations proposed rules establishing an order of priority among bases of criminal jurisdiction, under which the flag state would enjoy priority over other states requesting extradition. Although this criterion was not accepted, the state having custody of the offender or accused was required, in selecting the state to which the person would be extradited, to take into consideration the interests and responsibilities of the flag state as well as the requesting state's capacity to safeguard the rights of the offender or accused pursuant to Article 7(3) of the Convention. (12)

Under the Convention, extradition is at the discretion of the requested state and is subject to the conditions prescribed by the law of that state. Where the requested state makes extradition conditional upon the existence of an extradition treaty between itself and the requesting state, and no such treaty exists, the requested state may regard the Convention as the legal basis for extradition. With respect to existing extradition treaties, the Convention requires contracting states to treat the offences set forth in Article 3 as extraditable offences under such treaties. Contracting states must also amend the provisions of existing extradition treaties where they are inconsistent with the Convention and must include such offences as extraditable offences in any subsequent extradition treaty concluded between them. States parties that do not make extradition conditional upon the existence of a treaty are required to recognize the offences covered by the Convention as extraditable offences between themselves. Although in dualist states certain legislative procedures must be completed before treaties can create rights and obligations, in many states Article 11 itself provides a legal basis for extradition. (4)

During the drafting of the Convention at the diplomatic conference, Argentina, concerned that contracting states might classify these offences as political offences and thereby refuse extradition, proposed the inclusion of rules preventing states from rejecting extradition requests on the ground that the relevant offences were political. The Legal Committee declined to accept the proposal because such a rule might conflict with the legal systems and constitutions of certain states and could therefore create difficulties. To address this concern, however, contracting states were required, where they refused to extradite accused persons for political reasons, to prosecute those persons themselves. Because a state receiving an extradition request from another state asserting extraterritorial jurisdiction over an offender or accused person may refuse to recognize such an unconventional jurisdictional basis and decline extradition, Article 11(4) seeks to resolve this potential problem by requiring the offence to be deemed to have been committed within the territory of the contracting state requesting extradition. (4)

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988)

Following the *Achille Lauro* incident, the International Maritime Organization initiated the process of drafting a new instrument to address the gap in existing international conventions concerning the prevention of terrorist offenders from escaping justice. Accordingly, in 1986, the Council of the Organization established a preparatory committee to draft a Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. During the negotiations, states became concerned about the possibility that terrorist attacks could shift from ships to targets such as offshore oil and gas installations, and, following a proposal by the United States, protection of fixed platforms located on the continental shelf was also placed on the agenda, a proposal that received the support of coastal states. (4)

Ultimately, the Committee decided to formulate an optional protocol annexed to the principal Convention, leading to the adoption of the "Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf" alongside the principal Convention at the 1988 Rome Diplomatic Conference. (3) The Protocol constitutes a preventive measure because, at the time of its drafting, no major terrorist attack against fixed platforms had been reported, and it extends the provisions of the principal Convention, with the necessary modifications, to such platforms. (12)

The Protocol defines a "fixed platform" as an artificial island, installation, or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes. This encompasses oil and gas installations as well as pipelines and transfer equipment, while excluding military and defense installations. (4) Article 2 of the Protocol criminalizes offences analogous to those contained in the principal Convention, with a focus on threats to the safety of fixed platforms, including seizure of a fixed platform by force, acts of violence, destruction or serious damage, and killing or injury in connection with such acts. Nevertheless, certain offences contained in the principal Convention, such as communicating false information, are covered only where they are committed through a ship and fall within the scope of the principal Convention. (4)

With respect to jurisdiction, the Protocol, following the 1982 United Nations Convention on the Law of the Sea, establishes mandatory jurisdiction on the basis of the location of the fixed platform on the coastal state's continental shelf and thereby recognizes the coastal state's exclusive jurisdiction over such platforms. (5) The Protocol also emphasizes that its provisions do not prejudice the general rules of international law and the law of the sea and limits unilateral intervention by other states in relation to platforms located on the continental shelf of another state.

With respect to the extradition and prosecution of offenders, the provisions of the principal Convention apply *mutatis mutandis*, and participation in the Protocol is conditional upon participation in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Accordingly, the 1988 Convention and its supplementary Protocol constitute a single legal framework that entered into force in 1992. (12)

Freedom of the High Seas in Conflict with the Exercise of Coastal-State Jurisdiction

Freedom of navigation is one of the principles rooted in customary international law and is accepted in developed states, although it does not possess a specific enforcement mechanism. Nevertheless, the right to freedom of navigation is directly connected with the international order. The right to freedom of navigation both affects and is affected by the international order. Accordingly, the principle of freedom of navigation has been recognized in the United Nations Convention on the Law of the Sea. In cases involving violation of freedom of navigation, the international responsibility of the offending state and its obligation to provide compensation may be adjudicated before the International Tribunal for the Law of the Sea. The high seas are open to all states and to vessels flying their flags. Freedom of navigation and the corresponding obligation of all states to respect it derive from the relevant Convention rules. (14)

All ships have the right to navigate on the high seas and to engage in other lawful uses thereof. Bunkering on the high seas is one of the lawful uses available to ships possessing the necessary capacity and expertise to engage in such activity. Bunkering operates as a floating fuel station for ships and boats at sea and is made available so that vessels need not return to shore for refueling. (15)

Returning to shore for refueling is both costly and time-consuming and, in certain circumstances, impossible. A foreign ship intending to travel across the open sea cannot necessarily return to shore or port for refueling. Nevertheless, bunkering and the legal dimensions of its authorization or prohibition are not expressly addressed in the Convention. Apart from the possibility that the Convention's silence was deliberate, some commentators maintain that its drafters did not intend to regulate every issue arising from maritime activities. Nevertheless, silence in relation to bunkering does not imply prohibition; rather, such activity should be presumed permissible. Bunkering is an inherent requirement of navigation, without which long-distance maritime voyages would be difficult to envisage, and it constitutes an activity associated with the use of the seas. Operators in this field engage in bunkering while simultaneously exercising maritime use and freedom of navigation. This situation follows naturally from the Convention and other international instruments. Nevertheless, even such seemingly evident propositions may become disputed where states' interests, based on their particular interpretations of the Convention and other international instruments, so require. In some cases, state interpretations of these rules lack strong legal support, although judicial consideration remains necessary where a dispute arises with another party. In other cases, state interpretations possess a strong legal foundation and may contribute to the development and evolution of the international law of the sea. The Convention contains no restriction on bunkering activities for vessels on the high seas. Recognition of bunkering as falling within the concept of freedom of navigation permits reliance on the Convention's provisions concerning the freedom of the high seas, an aspect that has previously received comparatively little attention, although freedom of navigation entails requirements that have, to varying degrees, been considered in academic discourse and judicial proceedings. Accordingly, all states are obliged to respect the freedom of navigation of foreign vessels. This position is directly connected with the invalidity of exercises of sovereign authority by coastal, non-coastal, port, or flag states on the high seas. (15)

Jurisprudence of the International Tribunal for the Law of the Sea and the Coastal-State Approach

The *Norstar* case concerned a dispute between Italy and Panama regarding the limits of coastal-state jurisdiction and its relationship with the right to freedom of navigation. Between 1994 and 1998, the *Norstar* bunkered recreational boats and vessels on the high seas. Italy characterized this activity as a cover for fuel smuggling and tax evasion and, on that basis, justified the detention of the ship and arrest of its crew as an exercise of its judicial jurisdiction. The action was carried out in cooperation with Spain and within Spanish territorial waters and subsequently raised the issue of Italy's international responsibility before the International Tribunal for the Law of the Sea. (15)

Panama argued that Italy's exercise of jurisdiction, particularly through the detention of the vessel, violated the freedom of navigation provided for in Article 87 of the United Nations Convention on the Law of the Sea, a right traditionally regarded as one of the essential characteristics of the high seas. Italy, by contrast, argued that the detention had occurred within territorial waters, rather than on the high seas, and therefore did not fall within the prohibitions associated with Article 87 of the Convention. The dispute highlighted the fundamental question of the relationship between a coastal state's exercise of territorial or extraterritorial jurisdiction and the freedom of navigation of a foreign vessel in the jurisprudence of the International Tribunal for the Law of the Sea. (14)

In the Tribunal's jurisprudence, bunkering has been recognized as an aspect of freedom of navigation, a freedom that belongs to the flag state on the high seas and that, in the exclusive economic zone, may, depending on the subject matter involved, such as fisheries, fall within the jurisdiction of the coastal state. The distinction between the *Norstar* case and cases such as *Virginia G* lies in the fact that, in *Norstar*, bunkering was conducted neither in connection with fisheries nor within the exclusive economic zone, but rather on the high seas. (15)

The International Tribunal for the Law of the Sea has emphasized on this basis that applying the domestic law of a coastal state to lawful activities conducted by a foreign ship on the high seas constitutes, in principle, a violation of Article 87 of the Convention. Freedom of navigation is not confined solely to the physical presence of a ship on the high seas but also encompasses the right of access to and movement toward the high seas. Accordingly, detention of a vessel even within the territorial waters of a third state, where such detention is based on conduct whose material element occurred on the high seas, may be regarded as a violation of freedom of navigation and the exclusive jurisdiction of the flag state. (15)

Consequently, the Tribunal tends toward the view that the detention of the *Norstar* and the application of Italian domestic law to its activities, notwithstanding that the detention itself occurred within the territorial waters of a third state, resulted in a violation of the right to freedom of navigation enshrined in Article 87 of the United Nations Convention on the Law of the Sea, because freedom of navigation is a fundamental right that must also be respected throughout the vessel's passage toward the high seas.

Conclusion

The findings of this study demonstrate that maritime security, unlike maritime safety, is a dynamic and multilayered concept that is closely intertwined with politics, economics, technology, and the international legal order. The particular characteristics of maritime transportation, including the mobility of vessels, the vastness and limited controllability of the high seas, the diversity of vessel nationalities, and the multiplicity of relevant actors, create favorable conditions for the emergence of security threats. Such threats cannot be effectively contained solely through reliance on the domestic laws of individual states and instead require structured international cooperation. The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its supplementary Protocol constitute a serious attempt to address earlier legal gaps and establish a quasi-universal jurisdictional system designed to prevent the creation of "safe havens" for perpetrators of maritime offences. Nevertheless, the expansion of states' criminal and prosecutorial jurisdiction, particularly where it conflicts with the traditional principle of exclusive flag-state jurisdiction and freedom of navigation on the high seas, has generated significant legal challenges. An examination of the jurisprudence of the International Tribunal for the Law of the Sea, particularly in cases such as *Norstar*, demonstrates that the Tribunal emphasizes the need for a restrictive interpretation of coastal-state jurisdiction and respect for the fundamental freedoms of the seas, and regards the application of domestic laws to lawful activities on the high seas as contrary to the legal order established by the Convention. Accordingly, it may be concluded that the effectiveness of the legal regime of maritime security lies not in the unlimited expansion of jurisdiction, but rather in establishing a delicate balance between the effective prevention of security threats and the protection of the fundamental principles of the law of the sea; failure to maintain such a balance may transform maritime security from a protective mechanism into a destabilizing factor within the international order.

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Transparency of Data

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